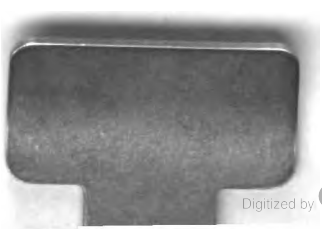

NEW

LAW DICTIONARY:

INTENDED

FOR GENERAL USE,

AS WELL AS FOR

GENTLEMEN OF THE PROFESSION.

BY RICHARD BURN, LL. D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

AND CONTINUED TO THE PRESENT TIME

By JOHN BURN, Esq. his Son,

ONE OF HIS MAJESTY'S JUSTICES OF THE PEACE FOR THE COUNTIES OF WESTMORLAND AND CUMBERLAND.

DUBLIN:

PRINTED BY BRETT SMITH,

FOR MESSRS. E. LYNCH, G. BURNET, P. BYRNE, P. WOGAN, J. RYSHAW, J. MILLIKEN, A. GRUEBER, W. M'KENZIE, J. MOORE, J. JONES, R. M'ALLISTER, J. PARKER, W. JONES, W. PORTER, J. RICE, H. WATTS.

M, D C C, X C II.

PREFACE.

THE work now preſented to the public, is carefully printed from a fair manuſcript, in the author's own hand-writing: to which there doth not appear to be any preface, or hint of the title that he might intend for it. It however ſo far coincides with his former publications, as to leave little doubt of his deſignation of it for the preſs; and he ſeems to have continued it, as matter occurred, till the time of his death.

It is now offered to the world, in the pleaſing confidence, that it will anſwer the end for

which, I have reaſon to think, it was originally intended: I mean, for the uſe and information of thoſe, who wiſh to have a rational knowledge of matters relating to their lives, properties, and other eſſential intereſts; to the critical knowledge of which, they are not profeſſionally bred.

The author early diſcovered the want of ſuch a Guide as might enable all ranks and profeſſions of men, to act conſiſtently, and prudently, in their reſpective paths of life. How far he hath contributed to this great end, in his JUSTICE OF THE PEACE, and ECCLESIASTICAL LAW, ſeems to be determined, by the general approbation with which thoſe publications have been received; and in what degree his preſent work may be thought eſſential to the ſame purpoſe, is ſubmitted to the wiſdom and candor of all competent judges.

My

My Father's very conſiderable attainments, not only in the learned and gothic languages, and in the law of the land; but alſo in matters of antiquity; ſeem to have induced him, to depend upon his own ſtrength; and to produce an ORIGINAL WORK, not copying (as is too often done) from other books of the kind; in ſome of which the ſervility of tranſcribing, from one work to another, is but too obvious: And I am joined in opinion by a learned friend, well acquainted with my Father's literary purſuits, that the preſent book hath no particular reference, except it be to his own previous publications; and that his real motive was, to facilitate the underſtanding of them; and to effect ſuch an acquaintance with the neceſſary terms, and technical language of the laws of his country, as might be profitable to thoſe perſons for whoſe uſe and advantage he had compiled his former works.

It

It is unneceſſary to aſſign the reaſons, why this publication hath been ſo long poſtponed; but it may be proper to obſerve, that the delay hath cauſed a neceſſity of accommodating certain particulars to the preſent ſtate of the law, wherein ſome material changes, and additions, are annually made; and theſe additions, where neceſſary, I have carefully endeavoured to ſupply.

Finally, I beg leave to inform the reader, that the preſent publication is by the advice, and earneſt ſolicitations, of my good friend Dr. CHARLES MORTON, of the Britiſh Muſeum, whoſe uniform friendſhip, and intimacy with my late Father, for a period of forty-eight years, have rendered him ſufficiently acquainted with the end and purpoſe of moſt of his literary labours. To that gentleman, therefore, I dedicate this poſthumous publication, as a memorial

morial of the friendly intercourſe and harmony, which ſubſiſted, for near half a century, between him and my honoured Father.

JOHN BURN.

Orton in Weſtmorland,
Jan. 1, 1792.

A B A

ABATEMENT is derived from the French, and ſignifies quaſhing, beating down, or deſtroying; and is uſed by our law in three ſenſes: The firſt is that of removing or *beating down* a *nuſance*. In which reſpect, the perſon aggrieved by the nuſance may abate or remove the ſame, without the formality of an action, ſo as he commit no riot in the doing of it. If a houſe or wall is erected ſo near to mine, that it ſtops my ancient lights (which is a *private* nuſance), I may enter my neighbour's land, and peaceably pull it down. Or if a new gate be erected acroſs the king's highway (which is a *public* nuſance), any of the king's ſubjects paſſing that way may cut it down and deſtroy it. And the reaſon why the law allows this ſummary method of doing one's ſelf juſtice is, becauſe injuries of this kind require an immediate remedy, and cannot wait for the ſlow progreſs of the ordinary forms of juſtice. 3 *Black.* 5.

The ſecond ſignification of abatement is, the defeating or overthrowing of an *action*, by ſome defect in the proceedings; as where exception is taken to the inſufficiency of the matter; to the incertainty of the allegation, by miſnaming either of the parties, or the place; to the variance between the writ and the ſpecialty or record; to the incertainty of the writ or declaration; or to the death of either of the parties before judgment had. For theſe and many other cauſes, the defendant oftentimes prays, that the ſuit of the plaintiff may for that time ceaſe. And in caſe of abatement in theſe reſpects, all writs and proceſs muſt begin *de novo*. In the caſe of an *indictment*, on a criminal proceſs, the defendant may plead in abatement, that his name is not as in the indictment ſpecified, or that they have given him a wrong addition, as yeoman inſtead of gentleman; and if the jury find it ſo, the indictment ſhall abate. But in the end, there is little advantage accruing to the defendant by means of this kind of dilatory plea; becauſe, if the exception be allowed, a new bill of indictment may be framed, according to what the priſoner in his plea avers to be the true name and addition. For it is a rule, upon all pleas in abatement, that he, who takes advantage of a flaw, muſt at the ſame time ſhew how it may be amended. 4 *Black.* 335.

The third ſpecies of abatement is, where the rightful poſſeſſion or freehold of the *heir* or *deviſee* is defeated or overthrown by the intervention of a ſtranger. And herein it differs from *intruſion*, which is the entry of a ſtranger after a particular eſtate of freehold is determined, before him in *remainder* or *reverſion*. An *abatement* is always to the prejudice of the *heir* or immediate *deviſee*; an *intruſion* is always to the prejudice of the *remainder-man* or *reverſioner*. For example: If a man dieth ſeiſed of lands in fee ſimple, and before the entry of his heir, a ſtranger enters thereon, this is an *abatement*; but if a man be tenant for life, with remainder to another in fee, and after the death of the tenant for life a ſtranger enters, this is an *intruſion*. The remedy in abatement or intruſion may be by entry, without the parties being put about to bring their action: for as the original entry of the wrong-doer was unlawful, this may therefore be remedied by the mere entry of him who hath right; unleſs a deſcent hath been caſt, which gives the heir of the abator or intruder a colourable title, and therefore he ſhall not be ouſted but by another making out a better claim. 3 *Black.* 175.

ABBEY, *abbatia*, is a ſociety of religious perſons, having an abbot or abbeſs to preſide over them. Some of theſe were ſo conſiderable in this kingdom, that the abbots of them were called to parliament, and had ſeats and votes in the houſe of lords. Of abbots and priors who ſtatedly and conſtantly enjoyed this privilege, there were twenty-nine in all; *viz.* the abbot of Tewkeſbury, the prior of Coventry, the abbots of Waltham, Cirenceſter, St. John's at Colcheſter, Croyland, Shrewſbury, Selby, Bardney, St. Bennet's of Hulme, Thorney, Hide, Winchelcomb, Battel, Reading, St. Mary's in York, Ramſey, Peterburg, St. Peter's in Glouceſter, Glaſtonbury, St. Edmundſburg, St. Auſtin in Canterbury, St. Alban's, Weſtminſter, Abingdon, Eveſham, Malmſbury, and Taviſtock, and the prior of St. John's of Jeruſalem, who was ſtyled the firſt baron of England, but it was with reſpect to the lay barons only, for he was laſt of the ſpiritual barons.

Abbey lands, before the diſſolution of the monaſteries, were many of them diſcharged from the payment of tithes; either by the pope's bulls, or by real compoſition with the parſon, patron, and ordinary; or by their order, as Ciſtertians, Templars, Hoſpitalars, and Præmonſtratenſes: But this was only ſo long as the lands remained in the hands of the ſeveral religious ſocieties, and were cultivated by them, and not in the hands of their tenants or leſſees. Theſe exemptions by the diſſolution had been aboliſhed, if they had not been continued by the act of parliament 31 *H.* 8. *c.* 13. with reſpect to ſuch of the monaſteries as were diſſolved by that act; which enacts, that they who ſhall have any lands belonging to the ſaid religious houſes, ſhall enjoy them diſcharged of the payment of tithes, in like manner as the abbots

abbots and others enjoyed the same at the time of their dissolution. Which act also created a new discharge, which was not before at the common law, that is, *unity of the possession* of the parsonage and land tithable in the same hand: for if the monastery, at the time of the dissolution, was seised of the lands and rectory, and had paid no tithes within the memory of man for the lands; those lands shall now be exempted from payment of tithe, by a supposed perpetual unity of possession; because the same persons that had the lands, having also the parsonage, could not pay tithes to themselves. And now, though the titles of discharge under the 31 *Hen.* 8. are many of them lost, and cannot be made out at this day; yet if the lands of a religious house have been held since the dissolution freed from the payment of tithes, it shall be intended that they were held so before. *Wood, b.* 2. *c.* 2.

ABBREVIATION. By statute 4 *G.* 2. *c.* 26. all law proceedings shall be in the English tongue, and written in a common legible hand and character, and in words at length and not abbreviated: but by 6 *G.* 2. *c.* 14. this is somewhat mitigated, which allows, that they may be written in the like manner of expressing numbers by figures as hath been commonly used, and with such abbreviations as are now commonly used in the English language.

ABDICATION, *abdicatio*, in general, is where a magistrate or person in office renounces and gives it up. So on king James the Second's leaving the kingdom, the commons voted that he had *abdicated* the government, and thereby the throne was become vacant. The lords would have had the word *deserted* to be made use of, but the commons thought it was not comprehensive enough, for then the king might have liberty of returning.

ABET, *abettare*, is to stir up or incite, encourage or set on; one who promotes or procures a crime. *Abettors* of murder, are such as command, procure, or counsel others to commit a murder; and in case they are present when the murder is committed, they shall be taken as principals, but if absent at the time of committing the fact, they shall be considered as accessaries only.

ABEYANCE, from the French *bayer*, to expect, is that which is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee simple in somebody, or else it is in *abeyance*; that is, though for the present it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land. Thus if a man be patron of a church, and presenteth a clerk to the same; the fee of the lands and tenements pertaining to the rectory is in the parson: but if the parson die, and the church becometh void, then is the fee in *abeyance*, until there be a new parson presented, instituted, and

inducted. 1 *Inſt.* 342. And though where no perſon is ſeen or known in whom the *inheritance* can veſt, it may be in abeyance, as in a limitation to ſeveral perſons, and the ſurvivor, and the heirs of ſuch ſurvivor, becauſe it is uncertain who will be ſurvivor: yet the *freehold* cannot, becauſe there muſt be a tenant to the præcipe always. 1 *Vezey*, 174.

ABJURATION. Anciently, if a perſon had committed a felony, and did fly to a church or churchyard before he was apprehended, he could not be taken from thence to be tried for his crime; but on confeſſion thereof before the coroner, he was admitted to his oath to abjure the realm. But by the 21 *J. c.* 28. all privilege of ſanctuary, and abjuration conſequent thereupon, is utterly aboliſhed. 2 *Inſt.* 628.

But there is one kind of abjuring the realm which yet remains, as not depending on any privilege of ſanctuary; and that is, with reſpect to popiſh recuſants convict, removing from the place of their habitation without licence, and not conforming in three months after notice: in which caſe, they are required by ſtatute 35 *Eliz. c.* 2. to abjure the realm before two juſtices of the peace or the coroner; the form of which abjuration according to the old books, is this: *This hear you, Sir coroner, that I,* A. B. *am a popiſh recuſant, and in contempt of the laws and ſtatutes of* England *I have and do refuſe to come to their church. I do therefore, according to the intent and meaning of the ſtatute made in the* 35*th year of queen* Elizabeth *late queen of this realm of* England, *abjure the realm of* England. *And I ſhall haſte me towards the port of* C. *which you have given and aſſign to me, and that I ſhall not go out of the high-way leading thither, nor return back again; and if I do, I will that I be taken as a felon of the king. And that at* C. *I will diligently ſeek for paſſage, and will tarry there but one flood and ebb, if I can have paſſage; and unleſs I can have it in ſuch place, I will go every day into the ſea up to my knees, aſſaying to paſs over. So help me God and his doom.* Stamf. 116. Offic. Cor. 49.

There is alſo an oath of abjuration, whereby every perſon in any office, truſt, or employment abjures the pretender, and recognizes the right of his majeſty under the act of ſettlement, engaging to ſupport him, and promiſing to diſcloſe all treaſons and traiterous conſpiracies againſt him.

ABSQUE HOC, when the proceedings were in Latin, were words of exception made uſe of in a traverſe; as where the defendant pleads that ſuch a thing was done at ſuch a place, *without this*, that it was done at ſuch other place.

ABUTTALS are the buttings and boundings of lands, ſhewing by what marks they are diſtinguiſhed: the *ſides* of the lands are properly ſaid to be *adjoining*, and the *ends abutting*, to the thing contiguous.

ACCEPT-

ACCEPTANCE is the taking and accepting of any thing, and is as it were a tacit agreement to a preceding act, which might have been defeated and avoided, were it not for such acceptance had. For example: If a bishop before the statute of 1 *Eliz.* leased part of his bishoprick for term of years, reserving rent, and then died; and afterwards another is made bishop, who accepts and receives the rent when due, by this acceptance the lease is made good, which otherwise the new bishop might have avoided. So if *husband and wife*, seised of lands in right of the wife, join and make a lease, reserving rent, and the husband dies, after whose death the wife receives or accepts the rent; by this the lease is confirmed, and it shall bind her. So if *tenant in dower* leases for years, and dies, and the heir accepts the rent. But if a *parson* make a lease for years not warranted by the statute 32 *H.* 8. and which consequently is *void* by his death; acceptance of rent by a new parson or successor will not make it good. 1 *Saund.* 241. And if a *tenant for life* make a lease for years, there no acceptance will make the lease good, because the lease is void by his death. *Dyer*, 46. 239. But if *tenant in tail* makes a lease for years, rendering rent, and dies, and the issue accepts the rent, it shall bind him. But if such tenant in tail makes a lease for years to commence after his death, rendering rent; in such case, acceptance of rent by the issue will not make the lease good to bar him, because the lease did not take effect in the life of his ancestor. *Plowd.* 418. If an *infant* accepts of rent at his full age, it makes the lease good and shall bind him. If a lease is made on condition that the lessee shall do no *waste*, and he commits waste, and afterwards the lessor accepts the rent, he cannot enter for the condition broken; because he thereby affirms the lease to have continuance. 1 *Inst.* 211. If the lessor accepts from his tenant the last rent due to him, and gives the lessee a release for it; all rent in arrear is by law presumed to be satisfied. 1 *Inst.* 373.

Acceptance of a *bill of exchange* by the person on whom it is drawn (so as to charge the drawer with costs) must be in writing, under or on the back of the bill. But if he accepts it, either verbally or in writing, he thereby makes himself liable to pay it. If he refuses to accept it, and it is of the value of 20l. or upwards, and expressed to be for value received, the person to whom it is made payable, or to whom it is indorsed, may protest it for *non-acceptance*; which protest must be made in writing, under a copy of such bill of exchange, by a notary public; or, if no notary public be resident in the place, then by any other substantial inhabitant in the presence of two witnesses: and notice of such protest must, within 14 days after, be given to the drawer. But if the bill be accepted, and afterwards the acceptor fails or refuses to pay it within three days after it becomes due (which three days

are called the days of grace), the ſame muſt for non-payment be proteſted and notified, in like manner as for non-acceptance. And on producing the proteſt, either of non-acceptance or non-payment, the drawer is bound to make good to the payee or indorſee, not only the amount of the bill (which he is bound to do within a reaſonable time after non-payment, without any proteſt, by the rules of the common law), but alſo intereſt and all charges, to be computed from the time of making the proteſt. 2 *Black.* 469.

ACCESSARY. I. *Acceſſary* (quaſi *accedens* ad culpam) is he that is not the chief actor, but one that is concerned in the felony by commandment, aid, or receipt.

In the higheſt capital offence, namely, high treaſon, there are no acceſſaries, neither before nor after; for the conſenters, aiders, abettors, and knowing receivers and comforters of traitors are all principals. 1 *Hale's Hiſt.* 613.

Alſo in caſes that are criminal, but not capital, as in petit larceny and treſpaſs, there are no acceſſaries: for the acceſſaries before are in the ſame degree as principals; and acceſſaries after, by receiving the offenders, cannot be in law under any penalties as acceſſaries, unleſs the acts of parliament that induce thoſe penalties do expreſsly extend to receivers or comforters, as ſome do. *Id.*

Acceſſaries therefore relate only to capital felonies; in which caſes there may be acceſſaries, either by the common law, or by act of parliament.

II. Acceſſary *before* the fact committed, is he that being *abſent* at the time of the felony committed, doth yet procure, counſel, command, or abet another to commit a felony. For if he is *preſent*, although another actually commits the felony, he is a principal offender; as if one preſent moves another to ſtrike, or if one preſent did nothing, but yet came to aſſiſt the party if needful; or if one hold the party while the felon ſtrikes him; or if one preſent deliver his weapon to the other that ſtrikes. *Hale's Pleas*, 216.

So if ſeveral perſons ſet out together, or in ſmall parties, upon one common deſign, be it murder or other felony, or for any other purpoſe unlawful in itſelf, and each takes the part aſſigned him, ſome to commit the fact, others to watch at proper diſtances and ſtations to prevent a ſurpriſe, or to favour (if need be) the eſcape of thoſe who are more immediately engaged: they are all, provided the fact be committed, in the eye of the law *preſent* at it. For it was made a common cauſe with them; each man operated in his ſtation at one and the ſame inſtant towards the ſame common end; and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and

and to insure the success of their common enterprize. *Foſt. Cr. Law*, 350.

III. Accessary *after* the fact is, where a person knowing the felony to be committed, relieves, comforts, or assists the felon. Generally, any assistance whatever given to a felon, to hinder his being apprehended or punished, makes the assister an accessary: as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force and violence to rescue or protect him. So likewise to convey instruments to a felon to enable him to break gaol, or to bribe the gaoler to let him escape, makes a man accessary to the felony. 4 *Black.* 37.

To buy or receive stolen goods, knowing them to be stolen, falls under none of these descriptions: it was therefore at common law a mere misdemeanor, and made not the receiver accessary to the theft, because he received the *goods* only, and not the *felon*. But now by the statutes 5 *An. c.* 31. and 4 *Geo. c.* 11. all such receivers are made accessaries, and may be transported for fourteen years; and, in the case of receiving linen goods stolen from the bleaching grounds, are by the statute 18 *G.* 2. *c.* 27. declared felons without benefit of clergy. *Id.* 38.

IV. If the principal and accessary appear together, and the principal plead the general issue, the accessary shall be put to plead also; and if he likewise plead the general issue, both may be tried by one inquest: but the principal must be first convicted, and the jury shall be charged, that if they find the principal not guilty, they shall find the accessary not guilty. But if the principal plead a plea in bar, or abatement, or a formal acquittal, the accessary shall not be forced to answer till that plea be determined; for if it be found for the principal, the accessary is discharged; if against the principal, yet he shall after plead over to the felony, and may be acquitted. 2 *Haw.* 323. 1 *Hale's Hist.* 624.

In the case of stolen goods, if the principal cannot be taken, the buyer or receiver maybe prosecuted as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment as the court shall think fit, although the principal be not convicted; which shall exempt the offender from being punished as accessary, if the principal be afterwards taken and convicted. 1 *An. st.* 2. *c.* 9. 5 *An. c.* 31.

ACCIDENTS are properly relievable in a court of equity. But are there many accidents which are also supplied in a court of law; as, loss of deeds, mistakes in receipts or accounts, wrong payments, deathswhich make it impossible to perform a condition literally, and a multitude of other contingencies. And there are many which cannot be relieved even in a court of equity; as, if by accident a recovery is ill suffered, a devise ill executed, a contingent

tingent remainder deſtroyed, or a power of leaſing omitted in a family ſettlement. 3 *Black.* 431.

ACCORD is an agreement between the party injuring and the party injured, where one is injured by a treſpaſs or offence done, or on a contract, to ſatisfy him with ſome recompence; which, if executed and performed, ſhall be a good bar in law, if the other party after the accord performed bring any action for the ſame. As if a man contract to build a houſe or to deliver a horſe, and fail in it; this is an injury, for which the ſufferer may have his remedy by action: but if the party injured accepts a ſum of money or other thing as a ſatisfaction, this is a redreſs of that injury, and entirely takes away the action. 3 *Black.* 15.

The accord muſt be executed before the action be commenced; and therefore an accord to do a thing at a day to come is not good. But if it be executed before the action commenced, it is good, although it was executory only at the time of the accord. 1 *Roll's Rep.* 129.

If a man plead an accord, the ſafeſt way is to plead it as a ſatisfaction, and not by way of accord; and therefore he need ſay no more than that the defendant gave ſo much to the plaintiff in ſatisfaction, which the plaintiff received. 9 *Co.* 80.

The defendant muſt plead that the plaintiff accepted the thing agreed upon in full ſatisfaction; and if it be on a bond, it muſt be in ſatisfaction of the money mentioned in the condition, and not of the bond itſelf, for that cannot be diſcharged but by writing under hand and ſeal. *Cro. Ja.* 254.

ACCOUNT is a writ or action, commanding the defendant to render a juſt account to the plaintiff, or ſhew to the court good cauſe to the contrary. In this action, if the plaintiff ſucceeds, there are two judgments; the firſt is, that the defendant do account *(quod computet)* before auditors appointed by the court; and when ſuch account is finiſhed, then the ſecond judgment is, that he pay to the plaintiff ſo much as he is found in arrear. This action, by the old common law, laid only againſt the parties themſelves, and not their executors; becauſe matters of account reſted ſolely in their own knowledge. But this defect was remedied by ſtatute 4 *An. c.* 16. which gives an action of account againſt the executors and adminiſtrators. But however it is found by experience, that the moſt ready and effectual way to ſettle theſe matters of account, is by bill in a court of equity, where a diſcovery may be had on the defendant's oath, without relying merely on the evidence which the plaintiff may be able to produce. Therefore actions of account, to compel a man to bring in and ſettle his accounts, are now very ſeldom uſed; though when an account is once ſtated, nothing is more common than an action upon the implied *aſſumpſit* to pay the balance. 3 *Black.* 162.

A plea

A plea of a ſtated account is bad, unleſs it ſhews the account was in writing, and what the balance was. 2 *Atk.* 399.

A ſtated account is not an extinguiſhment of the original debt; therefore it cannot be pleaded in bar of an action for the debt. *Bur. Manſf.* 9.

AC ETIAM are words or a clauſe in a writ, where, in order to intitle the court to juriſdiction, an additional cauſe of action is alledged; as where, upon the uſual complaint of *treſpaſs*, the defendant is required to be brought in to anſwer the plaintiff of a plea of treſpaſs, and alſo *(ac etiam)* to a bill of debt: or where, to the uſual complaint of breaking the plaintiff's cloſe, a clauſe is added containing the real cauſe of action.

ACOLITE, *acolythus*, in our old Engliſh called a *colet*, was an inferior church ſervant, who, next under the ſubdeacon, *followed* or waited on the prieſts and deacons, and performed the meaner office of lighting the candles, carrying the bread and wine, and paying other ſervile attendance.

ACQUITTAL (Fr. *acquitter*, from the Latin *acquietare*) ſignifies a diſcharge or being at *reſt* from the ſuſpicion of a crime; as he that is upon a trial and judgment given thereon diſcharged of a felony, is ſaid to be acquitted of the felony: and if he be drawn in queſtion again for the ſame felony, he may plead *auterfoits acquit*. For one ſhall not be brought into danger of his life upon the ſame accuſation more than once. 1 *Inſt.* 100. Acquittal is of two kinds; acquittal *in deed*, and acquittal *in law*. Acquittal *in deed* is, when a perſon is cleared by verdict. Acquittal *in law* is, as if two be indicted of felony, the one as principal, and the other as acceſſary, and the jury acquits the principal, in this caſe by law the acceſſary alſo is acquitted. 2 *Inſt.* 384.

AN ACQUITTANCE is a ſort of releaſe, being a diſcharge in writing of a ſum of money or other duty, which ought to be paid or performed. As if one is bound to pay money upon an obligation, or rent reſerved upon a leaſe, and the party to whom it is due, upon receipt thereof, gives a writing under his hand, witneſſing that he is paid. This is ſuch a diſcharge in law, that he cannot demand and recover the ſum or duty again, if the acquittance is produced. *T. L.*

The obligor is not bound to pay money upon a ſingle bond, unleſs the obligee will make him an acquittance. Nor is he bound to pay it before he has the acquittance. And in this caſe the obligor may compel the obligee to make him an acquittance. But otherwiſe it is in caſe of an obligation with a condition; for there one may aver payment. *Wood, b.* ii. *c.* 3.

But an acquittance is only an evidence of payment, and by the common law was not pleadable, becauſe it is no deed. But now, by the ſtatute of 4 *An. c.* 16. where an action of debt ſhall be brought on a ſingle bill or on a judgment, if the defendant hath

hath paid the money due thereupon, ſuch payment may be pleaded in bar of ſuch action: and where an action of debt is brought upon a bond conditioned to be void on payment of a leſſer ſum, at a day and place certain; if the defendant hath paid, before the action brought, the principal and intereſt due by the condition of ſuch bond, though not ſtrictly according to the condition, yet it may be pleaded in bar of the action: and on payment into court of principal, intereſt, and coſts, the ſame ſhall be a full diſcharge of the bond. *ſ.* 12, 13.

An acquittance in full of all *accounts*, ſhall be extended only to accounts. *Wood, b.* ii. *c.* 3.

An acquittance in full of all *demands*, will diſcharge all debts except ſuch as are upon ſpecialty under ſeal: for theſe can only be deſtroyed by ſome other ſpecialty of equal force, as a general releaſe. *Cro. Ja.* 650.

If a rent is behind for a number of years, and the landlord makes an acquittance of the laſt that is due, all the reſt are preſumed to be paid, and the law will admit no proof againſt this preſumption. 1. *Inſt.* 373.

ACRE *(ager)* is commonly underſtood to be a quantity of land, containing in length 40 perches, and in breadth 4 perches; or in proportion thereto, be the length or breadth more or leſs: but by cuſtom it differs in different places. The word anciently meant any open ground or field, as *caſtle-acre*, *weſt-acre*, and the like, and not a determinate quantity of land: ſo there was *acre-fight*, a ſort of duelling in the open field.

ACTIONS are of three kinds; *real*, *perſonal*, and *mixed*:

Action *real* is that which concerns real property only; whereby the plaintiff or demandant claims title to have any lands or tenements, rents, commons, or other hereditaments, in fee ſimple, fee tail, or for term of life. 3 *Black.* 117.

Action *perſonal* is ſuch as one man brings againſt another, on any contract for money or goods, or on account of any offence or treſpaſs. *Id.*

Action *mixed* is an action that lieth as well for the thing demanded, as againſt the perſon that hath it; on which, the thing is recovered, and likewiſe damages for the wrong ſuſtained. *Id.*

ACTON BURNEL, a ſtatute ſo called, made 13 *Ed.* 1. ordaining the *ſtatute merchant*: it was ſo termed from a place named *Acton Burnel*, where it was made; being a caſtle ſometime belonging to the family of *Burnel*, and afterwards of *Lovel*, in *Shropſhire*.

ACT OF PARLIAMENT is a ſtatute, act, or edict, made by the king with the advice and conſent of the lords ſpiritual and temporal and commons in parliament aſſembled. The oldeſt of theſe now extant, and printed in our ſtatute books, is the famous *magna charta*, as confirmed in parliament 9 *Hen.* 3. though doubtleſs there

there were many acts before that time, the records of which are now loſt, and which poſſibly at preſent paſs for parts of the ancient common law. 1 *Black.* 85.

An act of parliament is the exerciſe of the higheſt earthly authority that this kingdom acknowledges. It hath power to bind every ſubject in the land, and the dominions thereunto belonging; nay even the king himſelf, if particularly named therein: and it cannot be altered, amended, diſpenſed with, ſuſpended, or repealed, but by the ſame authority of parliament; for it is a maxim in law, that it requires the ſame ſtrength to diſſolve as to create an obligation. 1 *Black.* 186.

The method of citing acts of parliament is various. Many of the ancient ſtatutes are called after the name of the place where the parliament was held that made them; as the ſtatutes of *Merton*, and *Marleberge*, of *Weſtminſter*, *Glouceſter*, and *Wincheſter*. Others are denominated entirely from their ſubject; as the ſtatutes of *Wales* and *Ireland*, the *Articuli cleri*, and the *Prerogativa regis*. Some are diſtinguiſhed by their initial words, as the ſtatute of *quia emptores terrarum*, and that of *circumſpecte agatis*. But the moſt uſual method of citing them, eſpecially ſince the time of *Ed.* 2. is by naming the year of the king's reign in which the act was made, together with the chapter or particular act according to its numeral order. *Id.* 85.

Statutes are either *general*, or *ſpecial*; *public*, or *private*. A *general* or *public* act is an univerſal rule that regards the whole community; and of this the courts of law are bound to take notice judicially and *ex officio*; without the ſtatute being particularly pleaded, or formally ſet forth by the party who claims an advantage under it. *Special* or *private* acts are rather exceptions than rules, being thoſe which only operate upon particular perſons, and private concerns; and of theſe the judges are not bound to take notice, unleſs they be formally ſhewn and pleaded. *Ibid.*

There are three points to be conſidered in the conſtruction of an act of parliament; the old law, the miſchief, and the remedy: that is, how the common law ſtood at the making of the act, what the miſchief was for which the common law did not provide, and what remedy the parliament hath provided to cure this miſchief. *Id.* 87.

Where the common law and a ſtatute differ, the common law gives place to the ſtatute; and an old ſtatute gives place to a new one. *Id.* 89.

If a ſtatute that repeals another is itſelf repealed afterwards, the firſt ſtatute is thereby revived, without any formal words for that purpoſe. *Id.* 90.

A ſtatute made in the affirmative, without any negative expreſſed or implied, doth not take away the common law; and therefore

fore the party may waive his benefit by ſuch ſtatute, and take his remedy by the common law. 2 *Inſt.* 200.

Regularly, a ſtatute in the affirmative doth not repeal a precedent affirmative ſtatute; but if the latter is contrary to the former it amounts to a repeal of the former. *L. Raym.* 160.

Penal ſtatutes muſt be conſtrued ſtrictly: but ſtatutes againſt frauds are to be conſtrued liberally and beneficially. 1 *Black.* 88.

One part of a ſtatute muſt be ſo conſtrued by another, that the whole (if poſſible) may ſtand together: but a ſaving totally repugnant to the body of the ſtatute is void. *Id.* 89.

Where things of an inferior degree are firſt mentioned in a ſtatute, thoſe of a higher dignity ſhall not be included under ſubſequent general words; as where a ſtatute ſpeaks of indictments to be taken before juſtices of the peace, or others having power to take indictments, it ſhall be underſtood only of other inferior courts, and not of the king's bench or other courts at *Weſtminſter.* 2 *Co.* 46.

All felonies by the common law have the benefit of clergy; therefore where a ſtatute enacts a felony, and ſays, the offender ſhall ſuffer death, clergy lies notwithſtanding, and is never ouſted without expreſs words. 3 *Inſt.* 73.

Saving of dower in a ſtatute making an offence felony is ſuperfluous; for by the 1 *Ed.* 6. *c.* 12. dower is not loſt by the felony of the huſband.

Where no particular penalty is appointed for diſobedience to an act of parliament, it is puniſhable as a contempt, by fine and impriſonment at the diſcretion of the king's courts of juſtice. 4 *Black.* 122.

ACTOR, the proctor or advocate in the civil law courts. So there was *actor dominicus*, the lord's bailiff or attorney; *actor villæ*, the ſteward or head bailiff of a town or village. *Cowel.*

ACTUARY, the regiſter or clerk that enters the acts of a court.

ADDITION ſignifies a title given to a man, beſides his chriſtian and ſurname, ſetting forth his eſtate or degree, his trade, and the place where he inhabits; and this is, to prevent the inconvenience of miſtaking one perſon for another. Additions of *eſtate or degree* are, yeoman, gentleman, eſquire, knight, and the like. Additions of trade or occupation are thoſe of merchant, clothier, carpenter, taylor, huſbandman, labourer, and all other lawful occupations. Additions of *place* are, of ſuch a town or hamlet, and of ſuch a county. If there be a corporation of one ſole perſon, he may be named by the common law by his chriſtian name without any ſirname, as *Thomas* biſhop of *Exeter.* 2 *Inſt.* 666. So a duke, marquis, earl, viſcount, or baron, might by the common law be named by his chriſtian name, and by the name of his dignity, as *John* duke of *Marlborough. Id.* An addition after an *alias dictus* is ill; for if the party is not ſufficiently named in the firſt part, the *alias dictus* will not

not help it. 3 *Salk.* 20. Where there are ſeveral perſons of different names, and the ſame addition, it is ſafeſt to repeat the addition after each of their names, applying it particularly to every one of them. 2 *Haw.* 187. If a man hath divers trades or occupations, he may be named by any of them; but if a gentleman by birth be a tradeſman, he ſhall not be named by his trade, but by the degree of a gentleman; becauſe it is worthier than the addition of any trade or myſtery: and in general, a man ſhall be named by his worthieſt title of addition. 2 *Inſt.* 668, 9. Where a ſon hath the ſame name and the ſame addition with his father, the addition of *the younger* is neceſſary to be made to the other additions of the ſon; but it is not neceſſary to add *the elder* to the additions of the father. 2 *Haw.* 187. The eldeſt ſons of peers, in the life-time of their fathers, though frequently titular lords, yet are only eſquires. And foreign noblemen in *England* have only the legal title of eſquire. 2 *Haw.* 187. Clerk is a good addition of a clergyman; and if a man hath taken any degree in either of the univerſities, he may be named by that degree. 1 *Black.* 405. Widow, ſingle-woman, ſpinſter, and (as ſome ſay) wife of ſuch an one, are good additions; and the place of the habitation of a wife is ſufficiently ſhewn, by ſhewing that of her huſband. 2 *Haw.* 190. If a man lives in a hamlet of a town, he may be named either of the hamlet or of the town: But the addition of pariſh, if there be two or more towns in it, is not good; but if there be but one town, the addition of pariſh is good. 2 *Inſt.* 669.

ADEMPTION, or taking away, of a legacy, ariſes from a ſuppoſed alteration of the teſtator's intention; as where a man bequeaths money due upon a certain bond, and afterwards calls it in; or bequeaths to the legatee ſuch a horſe, and afterwards ſells the horſe.

ADJOURNMENT, is a putting off until another day, or to another place. The court of parliament is frequently adjourned from time to time, as alſo the courts of law from day to day, and from one term to another.

ADJUDICATION, a giving or pronouncing judgment.

ADMEASUREMENT, *admenſuratio*, is a writ brought for remedy againſt ſuch perſons as uſurp more than their ſhare, to bring them to reaſon. It lies in two caſes; one is, *admeaſurement of dower*, where a man's widow after his deceaſe holds from the heir more land as dower than of right belongs to her; in which caſe, the heir ſhall have this writ againſt the widow, whereby ſhe ſhall be *admeaſured*, and the heir reſtored to the overplus. The other is, *admeaſurement of paſture*, where a man has common appendant or appurtenant to his land, or common in groſs, the quantity of which common hath never yet been aſcertained: in which caſe, as well the lord, as any of the commoners is intitled to the *writ of admeaſurement*; which is one of thoſe writs that are called *vicontiel*, being directed to the ſheriff (*vicecomiti*), and not to be returned to any

any ſuperior court, till finally executed by him. It recites a complaint, that the defendant hath ſurcharged the common; and therefore commands the ſheriff to *admeaſure* and apportion it, that the defendant may not have more than belongs to him, and that the plaintiff may have his rightful ſhare. And upon this ſuit the commoners ſhall be admeaſured, as well thoſe who have not as thoſe who have ſurcharged the common, as well the plaintiff as the defendant. The execution of this writ muſt be by a jury of twelve men, who are upon their oaths to aſcertain, under the ſuperintendance of the ſheriff, what and how many cattle each commoner is intitled to put upon the common. And the rule for this admeaſurement is generally underſtood to be, that the commoner ſhall not turn more cattle upon the common, than are ſufficient to manure and ſtock the land to which his right of common is annexed; or, as our ancient law expreſſed it, ſuch cattle only as are *levant* and *couchant* upon his tenement; which being a thing uncertain before admeaſurement, has frequently, though erroneouſly, occaſioned this unmeaſured right of common to be called a common without ſtint or without number; a thing which, though poſſible in law, doth in fact very rarely exiſt. If, after the admeaſurement has thus aſcertained the right, the ſame defendant ſurcharges the common again, the plaintiff may have a writ of ſecond ſurcharge, *de ſecunda ſuperoneratione*, which is given by the ſtatute 13 *Ed.* 1. *c.* 8. and thereby the ſheriff is directed to inquire by a jury, whether the defendant has in fact again ſurcharged the common, contrary to the tenor of the laſt admeaſurement; and if he has, he ſhall then forfeit to the king the ſupernumerary cattle put in, and ſhall alſo pay damages to the plaintiff. 3 *Black.* 238.

ADMINISTRATION is the management of the goods and chattles of one that died inteſtate, committed unto him by the ordinary. He or ſhe to whom the adminiſtration is committed, is called the adminiſtrator or adminiſtratrix. *Terms of the Law.*

Adminiſtration of the goods and chattels of the wife ſhall be granted to the huſband or his repreſentatives; and of the huſband's effects, to the widow, or next of kin, or to both. Among the kindred, thoſe are to be preferred that are the neareſt in degree to the inteſtate; but, of perſons in equal degree, the ordinary may take which he pleaſes. This nearneſs of degree ſhall be reckoned according to the computation of the civilians, and not of the canoniſts, which the law of *England* adopts in the deſcent of real eſtates; becauſe in the civil computation the inteſtate himſelf is the *terminus* from which the ſeveral degrees are numbered; and not the common anceſtor, according to the rule of the canoniſts. And therefore, in the firſt place, the children, or (on failure of children) the parents of the deceaſed, are intitled to the adminiſtration: both which are indeed in the firſt degree, but with us the children are allowed the preference. Then

Then follow brothers, grandfathers, uncles or nephews (and the females of each claſs reſpectively), and laſtly, couſins. 2 *Black.* 504.

The *half blood* is admitted to the adminiſtration equally with the whole blood; but not ſo in the deſcent of lands, for in that caſe the half blood can never inherit.

If none of the kindred will adminiſter, the ordinary may grant adminiſtration to a creditor, or he may grant letters *ad colligendum bona defuncti*, and thereby take the goods of the deceaſed into his own hands, and therewith pay the debts of the deceaſed; in which reſpect the ordinary becomes liable in law as other adminiſtrators.

If a *baſtard*, or any other who has no kindred, dies inteſtate; the goods belong to the king, and adminiſtration ſhall be committed to the king's grantee.

There are alſo ſeveral other kinds of adminiſtration, which do not ſtrictly follow the rule of the next of kin. As, adminiſtration *durante minori ætate*; which is, where an infant is made executor (for ſo he may be how young ſoever): in which caſe, adminiſtration with the will annexed is granted to another, until the executor ſhall attain the age of ſeventeen years; at which age of the executor the adminiſtration *durante minori ætate* ceaſeth.

So alſo, adminiſtration *durante abſentia*, during abſence out of the kingdom: which is, where the next of kindred is beyond ſea, in which caſe adminiſtration is grantable, leſt the goods periſh or the debts be loſt: and this ſtands upon the ſame reaſon as an adminiſtration during the minority of an executor; namely, that there ſhall be one to manage the eſtate of the teſtator, till the perſon appointed by him is able.

Adminiſtration *pendente lite*, pending a ſuit, is, where a ſuit is commenced in the eccleſiaſtical court concerning the validity of a will; in which caſe the ordinary grants adminiſtration until the ſuit ſhall be determined: otherwiſe there would be no perſon to take care of the eſtate of the deceaſed.

Alſo, if the teſtator makes his will, without naming any executor, or if he names a perſon incapable, or if the executor named refuſes to act; in all theſe caſes, the ordinary muſt grant adminiſtration with the will annexed.

The duty of an adminiſtrator is, to make an inventory, and to pay the debts of the deceaſed: and if there be a deficiency of aſſets, the general order of preference or priority in payment is, firſt, debts of record, as judgments, ſtatutes, and recognizances; next, ſpecialties, as bonds or other writings under ſeal; and laſtly, debts on ſimple contract, as notes unſealed, and verbal promiſes.

If there is a ſurplus, the adminiſtrator muſt diſtribute it amongſt the kindred of the deceaſed, according to the ſtatutes of diſtribution, and in ſome particular places according to the local cuſtoms. The general rules upon the ſtatutes of diſtribution are, that one third

third ſhall go to the widow of the inteſtate, and the reſidue in equal proportions to his children, or, if dead, to their repreſentatives, that is, their lineal deſcendants: if there are no children or legal repreſentatives, then a moiety ſhall go to the widow, and a moiety to the next of kindred in equal degree and their repreſentatives: if no widow, the whole ſhall go to the children: if neither widow nor child, the whole ſhall be diſtributed amongſt the next of kindred in equal degree and their repreſentatives; but no repreſentatives are admitted among collaterals, farther than the children of the inteſtate's brothers and ſiſters. The father ſucceeds to the whole perſonal effects of his children, if they die inteſtate and without iſſue; but if the father be dead, and the mother ſurvives, ſhe ſhall only come in for a ſhare equally with each of the remaining children.

If an adminiſtrator die, his executor or adminiſtrator doth not repreſent the firſt inteſtate, but a new adminiſtration ſhall be granted *de bonis non*, that is, of the goods of the deceaſed not adminiſtered by the former executor or adminiſtrator. And this adminiſtrator *de bonis non* is the only legal repreſentative of the deceaſed in matters of perſonal property.

ADMIRALTY: The word *admiral*, according to lord Coke, comes from the Saxon *aen mere al* (over all the ſea), the *præfectus maris*; and in ancient time the office of the admiralty was called *cuſtodia marinæ Angliæ*, or *maritimæ Angliæ*. 1 *Inſt.* 260.

The court of admiralty is held before the lord high admiral or his deputy, who is called the judge of the admiralty. It was firſt of all erected by king *Ed.* 3. Its proceedings are according to the method of the civil law, and is uſually held at doctors' commons. 3 *Black.* 69.

This court hath power to try and determine all maritime cauſes, or ſuch injuries which, though they are in their nature of common law cognizance, yet being committed on the high ſeas, out of the reach of the ordinary courts of juſtice, are therefore to be remedied in a peculiar court of their own. *Id.* 106.

Beneath the low-water mark, the admiral hath ſole and abſolute juriſdiction: but between the high-water mark and the low-water mark, the common law and the admiral have juriſdiction by turns; one upon the water, the other upon the land. But if the water is within a county, the common law hath the juriſdiction. 5. *Co.* 107.

Wreck of the ſea ſhall be tried and determined by the laws of the land; but this cannot be extended to flotſam, jetſam, or lagan; for they are in or upon the ſea, and therefore cannot be tried and determined by the common law, but are to be determined before the admiral. *Id.* 106.

For convenience of ſeamen, the admiralty hath been allowed to hold plea for mariners' wages; but yet with this limitation, that

if

if there be any ſpecial agreement, by which the mariners are to receive their wages in any other manner than is uſual, or if the agreement be under ſeal, ſo as to be more than a parol agreement, in ſuch caſe they will be prohibited. This indulgence was permitted them, becauſe the remedy in the admiralty is eaſier and better: eaſier, becauſe they muſt ſever at the common law, whereas here they may join; and better, becauſe the ſhip itſelf is anſwerable. 1 *Salk.* 33.

But although pure maritime acquiſitions, which are earned and become due on the high ſeas, are one proper object of the admiralty juriſdiction, even though the contract be made upon land; yet, in general, if there be a contract made in *England*, and to be executed upon the ſeas, as a charter party or covenant that a ſhip ſhall ſail to *Jamaica*, or ſhall be in ſuch a latitude by ſuch a day; or a contract made upon the ſea to be performed in *England*, as a bond made on ſhipboard to pay money in *London*, or the like; theſe kinds of mixed contracts belong not to the admiralty juriſdiction, but to the courts of common law. And it is not unfrequent for the plaintiff to feign that a contract, really made at ſea, was made at ſome inland place, and thereby draw the cognizance of the ſuit from the courts of admiralty to thoſe of Weſtminſter-hall. 3 *Black.* 107.

From the ſentence of an inferior court of admiralty, an appeal lies to the court of the lord high admiral. And from the ſentence of the admiralty judge, an appeal lies to the delegates. But in caſe of prize veſſels taken in time of war, in any part of the world, and condemned in any courts of admiralty as lawful prize, the appeal lies to certain commiſſioners of appeals, conſiſting chiefly of the privy council, and not to judges delegates: and this, by virtue of divers treaties with foreign nations; by which, particular courts are eſtabliſhed in all the maritime countries in *Europe*, for the deciſion of this queſtion, whether lawful prize or not. For this being a queſtion between ſubjects of different ſtates, it belongs entirely to the law of nations, and not to the municipal laws of either country to determine it. 3 *Black.* 69.

And ſentence in a foreign court of admiralty is to be credited here, as ours is to be credited there; and the party may libel here for the execution of a ſentence in a foreign court of admiralty.

The high court of admiralty is alſo a court not only of civil, but of criminal juriſdiction. It hath cognizance of all crimes and offences committed either upon the ſea, or on the coaſts out of the body or extent of any *Engliſh* county. And heretofore they were determinable by the ſole ſentence of the judge of the admiralty; but by the 28th *Hen.* 8. *c.* 15. all felonies committed on the ſea ſhall be tried by commiſſioners nominated by the lord chancellor, viz. the judge of the admiralty and three or four more

(among whom two common-law judges are conſtantly appointed, who in effect try all the priſoners), the indictment being firſt found by a grand jury of 12 men, and afterwards tried by another jury, as at common-law. 4 *Black.* 268.

ADMISSION to a benefice is, when the biſhop upon examination approves of the perſon preſented, as a fit perſon to ſerve the cure of the church to which he is preſented; as inſtitution is that act whereby he commits to him the cure of ſouls.

ADMITTANCE is the giving poſſeſſion of a copyhold eſtate, as livery of ſeiſin is of a freehold. And it is of three kinds: 1. Upon *a voluntary grant by the lord*, where the land hath eſcheated or reverted to him. In this caſe, though he might keep the land in his own hand, or might grant the ſame in fee, and ſo infranchiſe it, yet if he will diſpoſe of it as copyhold, he is bound to grant the uſual eſtate, and reſerve the uſual rent, and obſerve the ancient cuſtom preciſely in every point; otherwiſe it would be to create a new copyhold. 2. Upon *ſurrender by the former tenant*. In this caſe, the lord is not proprietor, but only a neceſſary inſtrument of conveyance; the party claiming his eſtate under him that made the ſurrender. But until his admittance, the tenant hath no eſtate, and therefore cannot ſurrender it again to a ſtranger before admittance. 3. Admittance *by deſcent*; which is, where an heir is tenant immediately on the death of his anceſtor. The lord here is a mere inſtrument; for the heir may enter upon the land, take the profits, bring actions of treſpaſs, and ſurrender to whoſe uſe he pleaſes, before admittance; though, before admittance, he cannot be ſworn of the homage. This admittance of the heir is not to ſtrengthen his eſtate, but to intitle the lord to his fine. And if the heir will not come in and take his admittance, he ſhall forfeit his eſtate, or be ſubject to a penalty, according as the cuſtom of the manor may be. *Wood, b.* ii. *c.* 1.

AD QUOD DAMNUM is a writ, iſſuing out of and returnable into the chancery, directed to the ſheriff, to enquire by a jury, of *what damage* it will be to the king, or any other, to grant a liberty, fair, market, highway, or the like. And according to the ſheriff's return thereof, the grant is iſſued or withheld.

ADVENTURE, a thing ſent to ſea; the *adventure* whereof the perſon ſending it ſtands to out and home. *Lex Mercat.*

ADULTERY is a crime left by our laws to the coercion of the ſpiritual courts; yet conſidered as a civil injury, the law gives a ſatisfaction to the huſband for it by action of treſpaſs *vi et armis* againſt the adulterer, wherein the damages recovered are uſually very large and exemplary. 3. *Black.* 139.

ADVOCATE is the patron of a cauſe, aſſiſting his client with advice, and who pleads for him. It is the ſame, by the civil and eccle-

eccleſiaſtical laws, as a counſellor by the common law. The eccleſiaſtical or church advocate was originally of two ſorts; either an advocate of the cauſes and intereſt of the church, retained as a counſellor and pleader of its rights; or an advocate or patron of the preſentation or advowſon. Both theſe offices at firſt belonged to the founders of churches and convents, and their heirs, who were bound to protect and defend their churches, as well as to nominate or preſent to them.

ADVOW, *advocare*, to juſtify or maintain an act formerly done. As if one takes a diſtreſs for rent, and he that is diſtrained ſues a replevin; in this caſe, the diſtrainer juſtifying or maintaining the act, is ſaid to *advow* or *avow*: and hence come *advowant*, and *advowry*. This word is alſo uſed to ſignify to bring forth any thing: anciently, when goods ſtolen were brought by one, and ſold to another, it was lawful for the right owner to take them wherever they were found; and he, in whoſe poſſeſſion they were found, was bound *advocare*, that is, to call in or produce the ſeller to juſtify the ſale, and ſo on till they found the thief.

ADVOWSON is the right of preſentation to a church or eccleſiaſtical benefice. It ſignifies being *advocate* of the church, or taking it into protection; and therefore is ſynonymous with *patronage*: and he who has the right of advowſon is called the patron of the church. For when lords of manors firſt built churches on their own demeſnes, and endowed them with glebe or other poſſeſſions, every ſuch lord had of common right a power annexed of nominating a miniſter to officiate in that church of which he was the founder, endower, maintainer, or, in one word, the *patron*. 2 *Black.* 21.

Advowſons are either *appendant*, or in *groſs*. Lords of manors being originally the only founders, and of courſe the only patrons of churches, the right of patronage or preſentation, ſo long as it continues annexed to the poſſeſſion of the manor, as ſome have done from the foundation of the church to this day, is called an advowſon *appendant*; and it will paſs or be conveyed, together with the manor, as incident and appendant thereto, by a grant of the manor only, without adding any other words. But where the property of the advowſon hath been once ſeparated from the property of the manor, by legal conveyance, it is called an advowſon *in groſs*, or at large, and never can be appendant any more; but is for the future annexed to the perſon of its owner, and not to his manor or lands. *Id.* 22.

Advowſons are alſo either *preſentative*, *collative*, or *donative*. An advowſon *preſentative* is, where the patron hath a right of preſentation to the biſhop or ordinary, and moreover to demand of him to inſtitute his clerk, if he finds him canonically qualified. An advowſon *collative* is, where the biſhop and patron are one

and the ſame perſon: in which caſe the biſhop cannot preſent to himſelf; but he doth, by the one act of collation or conferring the benefice, the whole that is done in common caſes by both preſentation and inſtitution. An advowſon *donative* is, when the king, or any ſubject by his licence, doth found a church or chapel, and ordains that it ſhall be merely in the gift or diſpoſal of the patron, ſubject to his viſitation only, and not to that of the ordinary; and veſted abſolutely in the clerk by the patron's deed of donation, without preſentation, inſtitution, or induction. *Id.*

An advowſon in fee is aſſets by deſcent, to ſatisfy bond creditors. 3 *Atk.* 465.

AERIE is a proper term for hawks, which for other birds is called a *neſt*. The liberty of keeping aerys of hawks was a privilege granted to great men; and the preſerving the aerys in the king's foreſts, was one ſort of tenure of lands by ſervice.

ÆTATE PROBANDA was a writ that lay to inquire, whether the king's tenant holding *in capite* by knight's ſervice, was of full age to receive his lands into his own hands. It was directed to the eſcheator of the county, but is now diſuſed, ſince wards and liveries were by ſtatute taken away.

AFFERORS (from *affeurer*, to tax) are thoſe in the court leet or court baron that ſettle and moderate the fines and amercements impoſed on ſuch perſons as have committed faults for which no expreſs penalty is preſcribed by ſtatute. The perſons nominated to this office affirm upon their oaths, what penalty they think in conſcience ought to be inflicted upon the offenders.

AFFIANCE is the plighting of troth between a man and a woman upon their agreement of marriage. It is derived from the Latin word *affidare*, and ſignifies as much as *fidem dare*, to pledge one's faith or fidelity. *Litt.* ſect. 39.

AFFIDAVIT ſignifies in law an oath in writing, ſworn before ſome perſon who hath authority to take it. The plaintiff or defendant may make affidavit in a cauſe depending, but it will not be admitted in evidence at the trial, but is only admitted upon motion. Affidavits ought to ſet forth the matter of fact only, which the party intends to prove by his affidavit; and not to declare the merits of the cauſe, of which the court is to judge. An affidavit regularly ought to be before the judges of the court wherein the cauſe is depending: but by the ſtatute 29 *C.* 2. *c.* 5. the judges of the courts of king's bench, common pleas, and exchequer, may grant commiſſions to perſons in the country to take affidavits concerning any matter depending in the reſpective courts, in like manner as may be done by maſters extraordinary of the court of chancery. When an affidavit hath been read in court, it ought to be filed, that the other party may ſee it and take a copy of it.

AF-

AFFIRM signifies to ratify or confirm a former law or judgment.

AFFINITY is relation by marriage, as conſanguinity is relation by blood.

AFFIRMATION is an indulgence allowed by law to the people called *Quakers*, who, in caſes where an oath is required from others, may make a ſolemn affirmation of the truth: and if they make a falſe affirmation, they are ſubject to the penalties of perjury. But their affirmation is not allowed in any criminal cauſe, nor ſhall they by virtue hereof be allowed to ſerve on any juries, or to bear any office or place of profit in the government. 7 & 8 *W. c.* 34. 8 *G. c.* 6. 22 *G.* 2. *c.* 46.

AFFRAY (from *affraier*, to terrify) is the fighting of two or more perſons in ſome public place, to the terror of his majeſty's ſubjects: for, if the fighting be in private, it is no affray, but an aſſault. 4 *Black.* 145.

Affrays may be ſuppreſſed by any private perſon preſent, who is juſtifiable in endeavouring to part the combatants, whatever conſequence may enſue. But more eſpecially the conſtable, or other like officer, is bound to keep the peace; and for that purpoſe may break open doors to ſuppreſs an affray, or apprehend the affrayers; and may carry them either before a juſtice, or impriſon them by his own authority for a convenient time, till the heat be over. *Id.*

It is ſaid, that no quarrelſome or threatening words whatſoever ſhall amount to an affray; and that no one can juſtify laying his hands on thoſe who ſhall barely quarrel with angry words, without coming to blows; yet it ſeemeth that the conſtable may, at the requeſt of the party threatened, carry the perſon who threatens to beat him before a juſtice, in order to find ſureties. 1 *Haw.* 135.

Alſo it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the meſſenger of ſuch a challenge; or even barely to endeavour to provoke another to ſend a challenge or to fight, as by diſperſing letters to that purpoſe, full of reflections, and inſinuating a deſire to fight. *Id.*

All affrays in general are puniſhable by fine and impriſonment. 1 *Haw.* 138.

AGE is particularly uſed in law for thoſe ſpecial times which enable perſons of both ſexes to do certain acts, which before, through want of years and judgment, they are prohibited to do. As for example, a man at twelve years of age ought to take the oath of allegiance to the king; at fourteen, which is his age of diſcretion, he may conſent to marriage, and chuſe his guardian; and at twenty-one he may alienate his lands: a woman at nine years of age is dowable, at twelve ſhe may conſent to marriage,

at fourteen ſhe is of years of diſcretion, and may chuſe a guardian, and at twenty-one ſhe may alienate her lands. The age of twenty-one is the full age of man or woman; which enables them to contract and manage for themſelves, in reſpect of their eſtates: until which time they cannot act with ſecurity to thoſe that deal with them, for their acts are in moſt caſes either void or voidable. 1 *Inſt.* 78.

AGE PRAYER is, where an action is brought againſt a perſon under age, for lands which he hath by deſcent, and he by petition or motion ſhews the matter to the court, and *prays* that the action may ſtay *till his full age.* See *Parol demurrer.*

AGISTMENT is where other men's cattle are taken into any ground, at a certain rate for their feeding: it comes from the *French* word *geyſer (jacere)* to lie down, becauſe the beaſts that feed there are levant and couchant, that is, lying and riſing. In the king's foreſts, there were anciently officers called *agiſters, agitatores,* or *gyſt takers;* who took in cattle to graze in the foreſt, or to be fed upon the pawnage, and who tended and looked after the ſaid cattle agiſted, and collected and received the money paid for the agiſtment. 4 *Inſt.* 293. The tithe of agiſtment of cattle is due of common right, becauſe the graſs which is eaten is *de jure* tithable, and muſt have paid tithe if cut when full grown. And it is to be paid by the occupier of the ground, and not by the owner of the cattle: for if the occupier in ſuch caſe were not liable, it would be greatly inconvenient to ſue every owner of the beaſts, and it might be hard to be known, and infinite. Where there is no ſpecial cuſtom concerning the manner of paying this tithe, it is uſual to pay the tenth part of the money received: but this is only for convenience, for the tenth part of the produce, and not a ſum of money, is due *de jure.* 2 *Inſt.* 651. 1 *Roll's Abr.* 656. *Watſ. c.* 50.

AGNATI are the kindred by the father's ſide, as *cognati* are kindred by the mother. 2 *Black.* 235.

AGNUS DEI is a piece of white wax in a flat oval form, like a ſmall cake, ſtamped with the figure of the lamb, and conſecrated by the pope. By ſtatute 13 *El. c.* 2. to import any *Agnus Dei,* or other ſuperſtitious thing pretended to be hallowed by the biſhop of *Rome,* incurs the penalty of a *præmunire.*

AGREEMENT is of three kinds: 1. An agreement *executed* already at the beginning; as where money is paid for the thing agreed on, or other ſatisfaction made. 2. An agreement after an act done by another; as where one doth ſuch a thing, and another perſon agrees to it afterwards, which is executed alſo. 3. An agreement *executory,* or to be performed in future. This laſt ſort of agreement may be divided into two parts; one certain at the beginning; the other, when, the certainty not appearing at the firſt, the parties agree that the thing ſhall be performed upon the certainty known. *Terms of the Law.*

An

An agreement put in writing only for remembrance, doth not change its nature; but if it be put in writing, ſealed and delivered, it is of greater force. *Hob.* 79.

By the ſtatute of frauds, 29 *C.* 2. *c.* 3. All agreements for lands ſhall be in writing ſigned by the parties, otherwiſe they ſhall only have effect as eſtates at will. And no action ſhall be brought, to charge any perſon upon any ſpecial promiſe to anſwer for the debt of another perſon, or upon any contract of marriage, or upon any agreement not to be performed within a year, unleſs the ſame be put in writing, and ſigned by the party charged therewith.

AIDS were originally made benevolences, granted by the tenant to his lord, in times of difficulty and diſtreſs: but in proceſs of time they grew to be conſidered as a matter of right, and not of diſcretion. Theſe aids were principally three; 1. To ranſom the lord's perſon, if taken priſoner. 2. To make the lord's eldeſt ſon a knight. 3. To marry the lord's eldeſt daughter, by giving her a ſuitable portion. The aids for making the eldeſt ſon a knight, and for marrying the eldeſt daughter, were fixed by act of parliament at 20s. being the ſuppoſed twentieth part of every knight's fee. The aid for ranſoming the lord's perſon was in its nature uncertain and incapable of being aſcertained. 2 *Black.* 64.

AID-PRAYER is a word made uſe of in pleading, for a petition in court to call in help from another perſon that hath an intereſt in the thing conteſted. As tenant for life, being impleaded, may pray in aid him in the reverſion; that is, deſire the court that he may be called by writ, to alledge what he thinks proper for maintenance of the right of the perſon calling him, and of his own. *F. N. B.*

AILE (of the French *aieul*, avus, a grandfather) is a writ that lies, where a man's grandfather, or great grandfather (called *beſaile*), being ſeiſed of lands and tenements in fee ſimple on the day that he died, a ſtranger abateth or entereth the ſame day, and diſpoſſeſſes the heir of his inheritance. *F. N. B.*

ALBA FIRMA, a white rent, paid in ſilver, in diſtinction from rent paid in corn, cattle, or the like.

ALDERMAN, *ealderman*, *elderman*, was anciently a perſon, who from his *age* and experience was appointed to preſide in certain affairs requiring prudence and judgment; but now chiefly reſtricted to towns corporate, where they are aſſociates to the mayor or other chief magiſtrate.

ALE-CONNER, *ale-taſter*, is an officer appointed in the court leet ſworn to look to the aſſize and goodneſs of ale and beer within the precincts of the leet. *Kitch.* 46.

ALEHOUSES:

1. Every inn is not an alehouſe, nor is every alehouſe an inn: but if an inn uſes common ſelling of ale, it is then alſo an alehouſe;

houſe; and if an alehouſe lodges and entertains travellers, it is alſo an inn.

2. By ſeveral ſtatutes, licences to keep inns and alehouſes ſhall be granted yearly at a general meeting of the juſtices of the diviſion, on the firſt day of *September*, or within twenty days after, and at no other time: except in cities and towns corporate. And the perſons licenſed ſhall enter into recognizance to keep good order and rule. And if any perſon ſhall ſell ale without licence, he ſhall forfeit for the firſt offence 40s. for the ſecond offence 4l. for the third and every other offence 6l. 5 *G.* 3. *c.* 46. And by 27 *G.* 3. *c.* 13. ſeveral exciſe duties are impoſed on ale and beer brewed in *Great Britain*, according to a ſchedule ſet forth in the act.

3. 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 caſe at the ſuit of the party grieved, but alſo may be indicted and fined at the ſuit of the king. 1 *Haw.* 225.

4. An innkeeper may detain the perſon of the gueſt who eats, or the horſe which eats, till payment. For it would be hard to oblige him to ſue for every little debt; and a greater hardſhip, that he might not be able to find his gueſt. *Bac. Abr.* Inns.

But an horſe committed to an innkeeper may be detained only for his own meat, and not for the meat of the gueſt, or of any other horſe. Alſo if the innkeeper or alehouſe keeper ſhall refuſe to give in the reckoning in particulars, or ſhall ſell in meaſures unſealed, he ſhall not be permitted to detain for the reckoning, but ſhall be left to his action at law. 11 & 12 *W. c.* 15.

In like manner if the innkeeper gives credit to the party for that time, and lets him go without payment; then he hath waived the benefit of the cuſtom, and muſt rely on his other agreement. 8 *Mod.* 172.

An innkeeper that detains a horſe for his meat cannot uſe him; becauſe he detains him as in cuſtody of the law: and by conſequence, the detention muſt be in the nature of a diſtreſs, which cannot be uſed by the diſtrainer. But by cuſtom in particular places, if the horſe eat out his price, the innkeeper may take him as his own, on the reaſonable appraiſement of ſeveral of his neighbours: but the innkeeper has no power to ſell the horſe, by the general cuſtom of the realm. *Bac. Abr.* Inns.

5. An innkeeper ſhall anſwer for thoſe things which are ſtolen within his inn, though not ſpecially delivered to him to keep; for it ſhall be intended to be through his negligence, or occaſioned by the default of his ſervants. So if he puts a horſe to paſture, without the direction of his gueſt, and the horſe is ſtolen,

ſtolen, he muſt make ſatisfaction: but otherwiſe, if with his direction. 8 *Co. Caley*'s caſe.

6. A gueſt in an inn, ariſing in the night, and carrying goods out of his chamber into another room, and from thence to the ſtable, intending to ride away with them, is guilty of felony, although there was no treſpaſs in taking them (which is generally required in caſes of felony). *Dalt. c.* 40.

ALE SILVER is a rent or tribute annually paid to the lord mayor of *London*, by thoſe that ſell ale within the liberty of the city.

ALESTAKE, a ſtake ſet up at fairs or merry meetings in the country, with a ſign thereon, denoting that ale is ſold there.

ALIAS is a ſecond or further writ, after a former writ hath been ſued out without effect: "We command you as we *formerly* have commanded you," *ſicut alias præcipimus.*

ALIAS DICTUS is uſed in the deſcription of a defendant, where his true name is not certainly known.

ALIEN:

1. Alien is one that is born out of the dominions of the crown of *England.* 1 *Black.* 366.

2. But children of the king's ambaſſadors born abroad have always been held to be natural ſubjects. *Id.* 373.

3. An alien born may purchaſe lands or other eſtates, but not for his own uſe; for the king, upon ſuch purchaſe, is intitled to them. *Id.* 371.

4. But an alien may acquire a property in goods, money, and other perſonal eſtate, or may hire a houſe for his habitation. *Id.* 372.

5. Alſo aliens may trade as freely as other people; only they are ſubject to certain higher duties at the cuſtom-houſe; which is what is now called the alien's duty; to be exempted from which, is one principal cauſe of the frequent applications to parliament for acts of naturalization. *Id.* 316.

6. An alien may bring an action concerning perſonal property, and may make a will and diſpoſe of his perſonal eſtate. *Id.* 372.

7. By ſeveral acts of parliament, all children born out of the king's allegiance, whoſe fathers (or grandfathers by the father's ſide) were natural born ſubjects, are now deemed to be natural born ſubjects themſelves to all intents and purpoſes; unleſs ſuch anceſtors were attainted, or baniſhed beyond ſea for high treaſon: yet ſo as that the grandchildren of ſuch anceſtors ſhall not be privileged in reſpect of the alien's duty, except they be proteſtants, and actually reſide within the realm; nor ſhall be able to claim any intereſt, unleſs the claim be made within five years after the ſame ſhall accrue. *Id.* 373.

8. If

8. If an Engliſhman living beyond ſea marries a wife there, and has a child by her, and dies; this child is born a denizen, and ſhall be heir to him, notwithſtanding that the wife was an alien. *Cro. Cha.* 601.

9. Aliens can have no heirs, becauſe they have not in them any inheritable blood. 2 *Black.* 249.

10. If an alien be made a denizen by the king's letters patent, and then purchaſes lands, his ſon, born before his denization, ſhall not inherit thoſe lands; but a ſon born afterwards may, even though his elder brother be living; for the father, before denization, had no inheritable blood to communicate to his eldeſt ſon; but by denization it requires an hereditary quality, which will be tranſmitted to his ſubſequent poſterity. Yet if he had been naturalized by act of parliament, ſuch eldeſt ſon might then have inherited; for that cancels all defects, and is allowed to have a retroſpective energy, which ſimple denization hath not. 2 *Black.* 249.

11. The neceſſity of trade has mollified the too rigorous rules of the old law, in the reſtraint and diſcouragement of aliens. A *Jew* may bring an action, though heretofore he could not; but commerce has taught the world more humanity. And therefore it is held, that an alien enemy commorant here, by licence of the king, and under his protection, may maintain an action of debt upon a bond, even though he did not come with ſafe conduct. L. *Raym.* 282. 1 *Atk.* 43.

On a bill in chancery, brought for an account againſt the repreſentatives of an *Eaſt India* governor, who pleaded that the plaintiff was an alien born, and an alien infidel, and therefore could have no ſuit here, lord *Hardwicke* ſaid, as the plaintiff's was a mere perſonal demand, it was extremely clear that he might bring a bill in this court, and overruled the defendant's plea, without hearing counſel of either ſide. 1 *Atk.* 51.

An alien enemy, who was the captain of a *French* privateer, took an *Engliſh* ſhip, upon the high ſeas, in time of open war; and ranſomed the ſhip and cargo; and had the mate given to him as an hoſtage; which hoſtage died in priſon. The ranſom bill was ſigned by both captains, and by the hoſtage; and by it the captain obliges himſelf and his owners to pay to the *French* captain the ranſom money within two months. By the court: An action is maintainable by the *French* captain againſt the *Engliſh* captain upon this ranſom bill; notwithſtanding the death of the hoſtage, and notwithſtanding the plaintiff's being an alien enemy. And the like law prevails both in *France* and *Holland.* *Burr. Manſf.* 1741.

12. An alien whoſe ſovereign is in amity with the crown of *England*, reſiding here, and receiving the protection of the law, owes a local allegiance to the crown during the time of his reſidence;

fidence; and if, during that time, he commits an offence, he ſhall be liable to be puniſhed for the ſame, even as a natural born ſubject. For his perſon and perſonal eſtate are as much under the protection of the law, as the natural born ſubject's; and if he is injured in either, he has the ſame remedy at law for ſuch injury. *Foſt.* 185.

So alſo, an alien whoſe ſovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded againſt in like manner; for he oweth a temporary local allegiance. *Id.*

ALIENATION is a transferring the property of any thing from one man to another. It chiefly relates to lands and tenements; as, to aliene land in fee, it is to ſell the fee ſimple thereof; to aliene in mortmain, is to make over lands or tenements to a charitable uſe.

All perſons who have a right to lands may, generally, aliene them to others. But ſome alienations are prohibited; as alienation by tenant for life, tenant for years, tenant in dower: if theſe aliene for a greater eſtate than they have in the lands, it is a forfeiture of their eſtate. 1 *Inſt.* 251.

Conditions in deeds that the purchaſer ſhall not aliene, are void. But one may grant an eſtate in fee, on condition that the grantee ſhall not aliene to a particular perſon. Alſo eſtates in tail, for life, or years, where the whole intereſt is not parted with, may be made with condition not to aliene to others, for preſervation of the reverſion. *Lit.* 361.

By the 12 *C.* 2. *c.* 24. All fines for alienation are taken away, except fines due by particular cuſtoms of particular manors.

ALIMONY is that maintenance, which, after a divorce of huſband and wife, *a menſa et thoro*, the eccleſiaſtical judge allows to the woman out of her huſband's eſtate. But in caſe of elopement, and living with an adulterer, the law allows her no alimony; for as that amounts to a forfeiture of her dower after his death, it is alſo a ſufficient reaſon why ſhe ſhould not be partaker of his eſtate when living. 3 *Black.* 94.

ALLAY is a word uſed for the tempering and mixture of other metals with ſilver or gold. In the mint, a pound weight of gold is coined into 44 guineas and an half, which is equal to 46l. 14s. 6d.: An ounce therefore of ſuch gold coin is worth 3l. 17s. 10½d. in ſilver. A pound weight of ſtandard ſilver bullion is coined into 62s. Therefore an ounce of ſilver bullion is worth 5s. 2d. *Smith's Wealth of Nations*, vol. 1. p. 49, 50.

ALLEGIANCE is the tie, or *ligamen*, which binds the ſubject to the king, in return for that protection which the king affords the ſubject. And it is of two kinds; the one *natural*, the other *local*; the former being alſo perpetual, the latter temporary. *Natural* allegiance is ſuch as is due from all men born within

within the king's dominions immediately upon their birth. *Local* allegiance is that which is due from an alien, or ſtranger born, for ſo long time as he continues within the king's dominions and protection; and it ceaſes, when ſuch ſtranger transfers himſelf from this kingdom to another. 1 *Black.* 366. 370. ——By the common law, every layman, above the age of twelve years, was obliged to take the oath of allegiance at the tourn or leet; and it was a high contempt to refuſe it. 1 *Inſt.* 68.

ALLODIAL, from *all*, and *odh* property, ſignifies intire or abſolute property; in contradiſtinction to *feudal*, *fee-odhall*, which denotes ſtipendiary property, for which the tenant performed certain ſtipulated ſervices. 2 *Black.* 45.

ALLUVION is the *waſhing* of the ſea or of a river; in which caſe the law is, that if land be gained of the ſea by the waſhing up of ſand and earth, by ſmall and imperceptible degrees, ſo as in time to make it *terra firma*, it ſhall go to the owner of the land adjoining; but if the alluvion be ſudden and conſiderable, it belongs to the king by his prerogative: ſo that the quantity of the ground gained, and the time during which it is gaining, are what make it either the king's or the ſubject's property. In the ſame manner, if a river, running between two lordſhips, by degrees gains upon one of them, and leaves the other dry; the owner who loſeth his ground thus imperceptibly has no remedy: but if the courſe of the river be changed by a ſudden and violent flood, or other haſty means, and thereby a man loſeth his ground, he ſhall have what the river has left in another place, as a recompence for this ſudden loſs. 2 *Black.* 262.

ALMANACK is part of the law of *England*, of which the courts muſt take notice in the returns of writs, &c. but the *almanack* to go by, is that annexed to the book of common prayer. *Mod. Caſ.* 41. 81.

And by ſeveral ſtatutes a ſtamp duty is impoſed on almanacks. See *Burn's Juſt.* tit. ALMANACK.

ALNETUM, a place where *alders* grow.

ALTARAGE comprehends not only the offerings made upon the altar, but alſo all the profit which accrues to the prieſt by reaſon of the altar, *obventio altaris*. Out of theſe, the religious aſſigned a portion to the vicar; and ſometimes the whole altarage was given to him by the endowment. In ſome places, the word *altarage* hath been adjudged to extend to ſmall tithes of divers kinds; but this can only be, where there is a ſpecial cuſtom to ſupport it. *Bunb.* 79.

ALTO ET BASSO ſignifies the intire ſubmiſſion (for high and low) of all differences to arbitration.

AM-

AMBASSADOR. By the 7 *An. c.* 12. all writs and proceſſes, whereby the perſon of any ambaſſador or other public miniſter of any foreign prince or ſtate, or of any of his domeſtics or domeſtic ſervants, may be arreſted, or his goods diſtrained, ſhall be void. Provided, that no merchant or other trader, within the deſcription of any of the ſtatutes againſt bankrupts, ſhall have any benefit of this act; nor any ſervant of an ambaſſador, unleſs the name of ſuch ſervant be regiſtered in the office of one of the ſecretaries of ſtate, and by him tranſmitted to the ſheriffs of *London* and *Middleſex*.

Generally, the rights, powers, duties, and privileges of ambaſſadors are determined by the law of nature and nations, and not by any municipal conſtitutions: for, as they repreſent the perſons of their reſpective maſters, who owe no ſubjection to any laws but thoſe of their own country, their actions are not ſubject to the controul of the private law of that ſtate wherein they are appointed to reſide. 1 *Black.* 253.

If an ambaſſador groſsly offends, or makes an ill uſe of his character, he may be ſent home, and accuſed before his maſter; who is bound either to do juſtice upon him, or avow himſelf the accomplice of his crimes: but the general practice throughout *Europe* ſeems now to be, not to puniſh him in the country where he executes the function of ambaſſador. *Id.*

AMENABLE (from the French *main*, a hand) ſignifies tractable, *ad manum*, that may be led or governed. In the modern ſenſe, it ſignifies to be reſponſible, or ſubject to anſwer in a court of juſtice.

AMENDMENT *(amendatio)* is the correction of an error committed in any proceſs which may be amended after judgment; but if there be any error in giving the judgment, the party is driven to his writ of error: though where the fault appears to be in the clerk who writ the record it may be amended. *Terms of the Law.* Formerly ſuitors were much perplexed by writs of error brought upon very ſlight and trivial grounds, as miſ-ſpellings and other miſtakes of the clerks, all which might be amended at the common law, while all the proceedings were in paper, for they were then conſidered only *in fieri*, and therefore ſubject to the controul of the courts. But when once the record was made up, it was formerly held, that by the common law no amendment could be permitted unleſs within the very term in which the judicial act ſo recorded was done; for during the term the record is in the breaſt of the court, but afterwards it admitted of no alteration: but now the courts are become more liberal, and, where juſtice requires it, will allow of amendments at any time while the ſuit is depending, notwithſtanding the record be made up, and the term be paſt; for they, at preſent, conſider the proceedings as

in

in fieri till judgment is given; and therefore, that till then, they have power to permit amendments by the common law, but when judgment is once given and inrolled, no amendment is permitted in any ſubſequent term. Miſtakes are alſo frequently helped by the ſtatutes of amendment and jeofails, ſo called, becauſe when a pleader perceives any ſlip in the form of his proceedings, and acknowledges ſuch error (*jeofaile*, I have failed), he is at liberty by thoſe ſtatutes to amend it; which amendment is ſeldom actually made, but the benefit of the acts is attained by the court's overlooking the exceptions. 3 *Black.* 406.

AMERCEMENT is, to be at the king's mercy with regard to the *quantum* of a fine impoſed. By *magna charta*, *c.* 14. no man ſhall have a larger amercement impoſed upon him than his circumſtances or perſonal eſtate will bear, ſaving to the landowner his land, to the trader his merchandize, and to the huſbandman his team and inſtruments of huſbandry; in order to aſcertain which, the great charter alſo directs, that the amercement, which is always inflicted in general terms, ſhall be ſet or reduced to a certainty by the oath of a jury. In the court-leet and court-baron, this is uſually done by *aſſeerors*, or jurors ſworn to *aſſeere*; that is, to tax and moderate the general amercement according to the particular circumſtances of the offence and the offender. In limitation of which, in courts ſuperior to theſe, the ancient practice was, to inquire by a jury, when a fine was impoſed upon any man, how much he was able to pay by the year, ſaving the maintenance of himſelf, his wife, and children. And ſince the diſuſe of ſuch inqueſt, it is never uſual to aſſeſs a larger fine than a man is able to pay, without touching the implements of his livelihood, but to inflict corporal puniſhment, or a ſtated impriſonment, which is better than an exceſſive fine, for that amounts to impriſonment for life, and by the bill of rights it is particularly declared, that exceſſive fines ought not to be impoſed. 4 *Black.* 372.

AMICUS CURIÆ. If a judge is doubtful or miſtaken in matter of law, a ſtander-by may inform the court as *amicus curiæ*. 2 *Co. Inſt.* 178.

AMNESTY, *amneſtia oblivio*, an act of pardon or oblivion, ſuch as was granted by king *Charles* II. at the Reſtoration. *Cowell.*

AMY (*amicus*), a friend. So *prochein amy* is the *next friend* to be truſted for an infant. And infants may ſue either by *prochein amy*, or guardian; but muſt anſwer by guardian. 3 *Salk.* 196.

ANCESTOR, *anteceſſor*, is one from whom an inheritance is derived. It differs from the word *predeceſſor*; for *anceſtor* is applied to a natural perſon, *predeceſſor* to a body politic or cor-

corporate. 1 *Inſt.* 78. No perſon can be properly ſuch an anceſtor as that an inheritance in lands or tenements can be derived from him, unleſs he hath had actual ſeiſin of ſuch lands, either by his own entry, or by the poſſeſſion of his own or his anceſtor's leſſee for years, or by receiving rent from the leſſee of the freehold; or unleſs he hath had what is equivalent to corporal ſeiſin in hereditaments that are incorporeal; ſuch as the receipt of rent, the preſentation to a church, and ſuch like. 2 *Black.* 209.

ANCESTREL is what relates to one's anceſtors; as homage anceſtrel, a writ anceſtrel, and the like.

ANCIENT DEMESNE are thoſe lands which were either reſerved to the crown at the original diſtribution of landed property, or ſuch as came to it afterwards, by forfeiture or other means. They were anciently very large and extenſive, comprizing divers honors, manors, and lordſhips, but they are now contracted within a narrow compaſs, having been almoſt intirely granted away to divers ſubjects. 1 *Black.* 286.

The king's tenants of thoſe lands were bound to divers ſervices, as to plough the king's lands for ſo many days, to ſupply his court with ſuch a quantity of proviſions, and the like; in conſideration whereof, they had many immunities and privileges granted to them, as to try the right of their property in a peculiar court of their own, called a court of ancient demeſne, by a peculiar proceſs denominated a *writ of right cloſe;* not to pay tolls or taxes, not to contribute to the expences of knights of the ſhire, not to be put on juries, and the like. 2 *Black.* 99.

ANGEL, in money, ſignifies ten ſhillings in Engliſh coin.

ANGILD, Sax. *ane*, *one*, and *gild*, a tribute or fine; was a ſingle compenſation for an offence. So *anhlote anſcot*, was a ſingle payment of ſcot and lot.

ANNO DOMINI, the computation of time from the incarnation of our Saviour. The *Romans* began their *æra* of time from the building of *Rome*; the *Grecians* computed by *Olympaids*; and the *Chriſtians* reckon from the birth of *Jeſus Chriſt.* *Jac. Dict.*

AN ANNUITY is a yearly payment of a certain ſum of money, granted to another in fee, for life or years, charging the perſon of the grantor only. 1 *Inſt.* 144.

An *annuity* is a thing very diſtinct from a *rent charge*, with which it is frequently confounded: a rent charge being a burthen impoſed upon and iſſuing out of *lands;* whereas an annuity is a yearly ſum chargeable only upon the *perſon* of the grantor. Therefore if a man by deed grant to another the ſum of 20*l.* a year, without expreſſing out of what lands it ſhall iſ-

ſue;

ſue; no land at all ſhall be charged with it, but it is a mere perſonal annuity. 2 *Black.* 40.

APPARENT HEIR. See HEIR.

APPARITOR, a meſſenger that ſerves the proceſs of the ſpiritual court. His duty is to cite the offenders to appear; to arreſt them; and to execute the ſentence or decree of the judges, &c. *Jac. Dict.*

APPEAL hath two ſignifications in law; one is, the removing a cauſe from an inferior court, or judge, to a ſuperior; as from one or more juſtices of the peace, to the quarter ſeſſions. The other kind of appeal, is a proſecution againſt a ſuppoſed offender, by the party's own private action; proſecuting alſo for the crown, in reſpect of the offence againſt the public. 2 *Haw.* 155.

In which latter ſenſe, an appeal may be brought in three caſes; 1. By a man for a wrong done to his anceſtor. 2. By a wife for the death of her huſband. 3. For wrong done to the appellants themſelves; as in caſe of robbery, rape, or maihem. *Wood, b.* 4. *c.* 5.

By ſtatute 6 *Ed.* 1. *c.* 9. all appeals of death muſt be ſued within a year and a day after the completion of the felony. And if a man be acquitted on an indictment of murder, or found guilty and pardoned by the king, yet he ought not (in ſtrictneſs) to go at large, but be impriſoned or let to bail till the year and day be paſt, within which time an appeal may be brought. 3 *H.* 7. *c.* 1.

If the appellee is convicted, the ancient uſage was, ſo late as Henry the Fourth's time, that all the relations of the ſlain ſhould drag the appellee to the place of execution. 4 *Black.* 316.

Foraſmuch as an appeal is the ſuit of the party, as well as of the king, hence it is that the king cannot pardon an offender found guily upon an appeal, as he may when found guilty upon an indictment; for in ſuch caſe he can only pardon for himſelf, but not for the party. 2 *Haw.* 155. However the puniſhment of the offender may be remitted and diſcharged by the concurrence of all parties intereſted; and as the king by his pardon may fruſtrate an indictment; ſo the appellant by his releaſe may diſcharge an appeal. 4 *Black.* 316.

If the perſon appealed be acquitted on the appeal, the appellor ſhall be impriſoned for a year, and reſtore damages to the party, and be grievouſly fined to the king, 13 *Ed.* 1. *ſt.* 1. *c.* 12. that is, if the appeal ſhall appear to the court to have been malicious. 2 *Haw.* 198. And being acquitted on the appeal, he cannot afterwards be indicted for the ſame offence. 4 *Black.* 315.

But appeal is now intirely diſuſed, on account of the great nicety required in conducting it, and the charges of proſecution;

cution; and indictment is the only method now taken. 4 *Black.* 313.

APPEARANCE in the law ſignifies the defendant's filing *common* or *ſpecial* bail, when he is arreſted on any proceſs out of the courts at *Weſtminſter*. Anciently, the ſheriff, on execution of the writ, was obliged to take the defendant into cuſtody, in order to produce him in court upon the return, however ſmall and minute the cauſe of action might be. For not having obeyed the original ſummons, he had ſhewn a contempt of the court, and was no longer to be truſted at large. But when the ſummons fell into diſuſe, and the *capias* became, in fact, the firſt proceſs, it was thought hard to impriſon a man for a contempt which was only ſuppoſed; and therefore in common caſes by the gradual indulgence of the courts (at length authoriſed by the ſtatutes 12 *G. c.* 29. and 5 *G.* 2. *c.* 27), the ſheriff or his officer can now only perſonally ſerve the defendant with the copy of the writ or proceſs, and with notice in writing to appear by his attorney in court to defend this action; which in effect reduces it to a mere ſummons. And if the defendant thinks proper to appear upon this notice, his appearance is recorded, and he puts in ſureties for his future attendance and obedience; which ſureties are called *common bail*, being two imaginary perſons, as *John Doe*, and *Richard Roe*; or, if the defendant doth not appear upon the return of the writ, or within four (or in ſome caſes eight) days after, the plaintiff may enter an appearance for him, as if he had really appeared; and may file common bail in the defendant's name, and proceed thereupon as if the defendant had done it himſelf.—But if the plaintiff will make affidavit that the cauſe of action amounts to 10*l.* or upwards, then the defendant upon the arreſt muſt either go to priſon, or put in *ſpecial* bail; which is done by entering into a bond to the ſheriff, with one or more ſureties, (not fictitious perſons, as in the former caſe of common bail, but real, ſubſtantial, reſponſible men), to inſure the defendant's appearance at the return of the writ, which is called the *bail bond*; and on return of the writ, or within four days after, the defendant muſt appear according to the exigency of the writ. Which appearance is effected by putting in bail *to the action*, and is commonly called putting in bail *above*. This bail above, or bail to the action, muſt be put in either in open court, or before one of the judges thereof; or elſe, in the country, before a commiſſioner appointed for that purpoſe by virtue of the ſtatute 4 *W. c.* 4. 3 *Black.* 287. 289. Appearance ſalves error in meſne proceſs. 1 *Vez.* 386.

APPENDANT *(appendens)* is a thing of inheritance belonging to another that is more worthy. As an advowſon may be appendant to a manor, land appendant to an office, a ſeat in a

church appendant to an houſe. 1 *Inſt.* 121. So there is common appendant; which differs from common appurtenant. Common appendant is a right belonging to the owners or occupiers of arable land, to put commonable beaſts upon the lord's waſte, and upon the lands of other perſons within the ſame manor. Common appurtenant ariſes from no connection of tenure, but may be annexed to lands in other lordſhips, or extended to other beaſts beſides ſuch as are generally commonable, as to hogs, goats, and the like. 2 *Black.* 33. If a thing appendant to another be granted by itſelf, without the thing to which it is appendant, the appendancy is deſtroyed, and that which was appendant is become in groſs: as if an advowſon appendant be granted without the manor to which it is appendant; or the manor be granted, ſaving the advowſon.

APPENDITIA, the *appendages* or pertinencies of an eſtate. Hence the word *penthouſe*, for the appendage of an houſe.

APPORTIONMENT ſignifies a diviſion or partition of a rent, a common, or the like; that is, a making of it into parts or *portions*.

If a man hath a *rent charge* to him and his heirs iſſuing out of certain land, if he purchaſe any parcel of this to him and his heirs, all the rent charge is extinct, becauſe the rent is entire, and iſſuing out of every part of the land, and therefore by purchaſe of part, it is extinct in the whole, and cannot be apportioned. *Lit.* 222.

But if a man, which hath a *rent ſervice*, purchaſe parcel of the land out of which the rent is iſſuing, this ſhall not extinguiſh all, but only the parcel. For a rent ſervice in ſuch caſe may be apportioned according to the value of the land. *Id.*

But if one holdeth his land of his lord by the ſervice to render to his lord yearly at ſuch a feaſt a horſe, a ſpear, a roſe, and ſuch like; if in this caſe the lord purchaſe parcel of the land, ſuch ſervice is taken away, becauſe ſuch ſervice cannot be ſevered nor apportioned. *Id.*

If the tenant holdeth by fealty, and a buſhel of wheat, or a pound of cummin, or of pepper, or ſuch like, and the lord purchaſes part of the land, there ſhall be an apportionment, as well as if the rent were in money: and yet, if the rent were by one grain of wheat, or one ſeed of cummin, or one pepper corn; by the purchaſe of part, the whole ſhall be extinct. 1 *Inſt.* 149.

But if an entire ſervice be for the *public good*, as caſtle-guard, cornage, and the like, or if it be for defence of the realm, or to repair a bridge or a way, or to keep a beacon, or for advancement of juſtice and peace, as to attend the ſheriff in the execution of proceſs; though the lord purchaſe part, the ſervice remains. *Id.*

If

If a man hath common of paſture without number in twenty acres of land, and ten of thoſe acres deſcend to another perſon, the common without number is intire and uncertain, and cannot be apportioned, but ſhall remain. But if it had been a common certain (as for ten beaſts), in that caſe the common ſhould be apportioned. And ſo it is of common of eſtovers, turbary, fiſhery, and the like. *Id.*

But apportionment of rent or common is uſually ſettled by covenant or ſpecial agreement.

APPORTUM (from the French *apport*) ſignifies properly the revenue or profit which a thing brings in to the owner. It was commonly uſed for a corody or penſion. It was alſo applied to the payment made by the alien priories here in *England* to the ſuperior houſe abroad; or ſometimes it was what remained over and above the ſuſtenance of ſuch alien priory.

APPOSAL of ſheriffs, is the charging them with money received upon their accounts in the exchequer.

APPRAISEMENT. See INVENTORY.

APPRENTICES (from *apprendre*, to learn) are uſually bound for a term of years, by deed indented, to ſerve their maſters, and be maintained and inſtructed by them. 1 *Black.* 426.

And hereby an infant is bound, though under age. Nevertheleſs they cannot bind themſelves ſo as to intitle the maſter to an action of covenant, or other action for departing the ſervice, or other breaches of the indenture; therefore it is uſual for the father or ſome friend of the apprentice to be bound with him for the faithful diſcharge of his office, according to the terms agreed on. 8 *Mod.* 190.

The churchwardens and overſeers of the poor may bind any ſuch poor children apprentices, whoſe parents they ſhall judge not able to maintain them; till ſuch man-child ſhall attain the age of 21, and ſuch woman-child the age of 21 or marriage. 43 *El. c.* 2. 18 *G.* 3. *c.* 47.

Alſo they may, by the conſent of two juſtices, bind out any boy of the age of 10 years who ſhall be chargeable, or whoſe parents ſhall be chargeable, or who ſhall beg for alms, to be apprentice to the ſea ſervice, till he ſhall attain the age of 21 years. 2 & 3 *An. c.* 6.

A maſter may by law correct his apprentice for negligence or other miſbehaviour, ſo it be done with moderation; though if the maſter or maſter's wife beats any other ſervant of full age, it may be good cauſe of being diſcharged, on complaint to the juſtices. 1 *Black.* 428.

For, generally, diſputes between maſters and apprentices are in moſt caſes determinable before the juſtices of the peace.

Inticing an apprentice to depart from his maſter, is not an offence for which an indictment will lie; but the party's remedy is

by an action on the caſe, which he may well maintain. *Bur. Manſf.* 1306.

An apprentice gains a ſettlement, where he ſerves the laſt forty days of his apprenticeſhip.

An apprenticeſhip being a perſonal truſt, becomes determined by the death of the maſter; unleſs there are ſpecial words in the indenture to the contrary. *Bur. Set. Caſ.* 320.

Perſons having ſerved ſeven years as apprentices to any trade, have an excluſive right to ſet up that trade in any part of *England*, except where they are prohibited by the bye-laws or local privileges of divers corporations. And if a man ſhall in any town exerciſe a trade, without having ſerved an apprenticeſhip for ſeven years, he ſhall forfeit 40*s.* a month.

APPROPRIARE COMMUNIAM is to approve or to appropriate and incloſe part of a common to a man's own ſeparate uſe; and this may be done either by the lord of the manor, or by a tenant with the lord's permiſſion; provided they leave ſufficient common for the reſt of the tenants.

APPROPRIATION is the annexing of a benefice to the proper and perpetual uſe of ſome religious houſe, biſhoprick, college, or *ſpiritual* perſon, to enjoy for ever. To make an appropriation, the king's licence was to be obtained in chancery, and alſo the conſent of the ordinary, patron, and incumbent. And in this manner the religious houſes of old time became poſſeſſed of that vaſt number of advowſons, which they had in this kingdom; when theſe churches, after the diſſolution of the monaſteries, came into lay hands, the church ſo poſſeſſed by a *layman* was called an *impropriation*, and himſelf the *impropriator*. But the words *appropriation* and *impropriation* are often confounded and uſed for each other.

APPROVEMENT, by the ſtatute of *Merton*, 20 *H.* 3. *c.* 4. is where a man hath common in the lord's waſte, and the lord makes an incloſure of part of the waſte for himſelf, leaving ſufficient common with egreſs and regreſs for the commoners. If there be not ſufficient common left for the tenant, he may have a writ of aſſiſe, and by 3 & 4 *Ed.* 6. *c.* 3. ſhall recover treble damages, and a commoner may break down an incloſure, if the lord doth incloſe part of the common, and not leave ſufficient room in the reſidue; but if any, upon juſt title of approvement, do make a hedge or ditch for that purpoſe, which afterwards is thrown down in the night by perſons unknown, the towns adjoining may be diſtrained to make ſuch hedge at their own charges, for which there is a writ *(noctanter)* in the regiſter. 13 *Ed.* 1. *c.* 46.

But in the caſe of *Duberley* v. *Page*. *E.* 28 *G.* 3. it was determined, that the lord has no right under the ſtatute of *Merton* to incloſe and approve the waſtes of a manor, where the tenants of the

the manor have a right to dig gravel on the waſtes, or to take eſtovers there. *Caſ.* by *Durnford* & *Eaſt.* 2 *V.* 391.

APPROVER, *prover, (probator)*, is a perſon indicted of treaſon or felony, and in priſon for the ſame, who, upon his arraignment, before any plea pleaded, doth confeſs the indictment, and takes a corporal oath to reveal all treaſons and felonies that he knoweth of, and therefore prays a coroner, before whom he is to enter his appeal or accuſation, againſt thoſe that are partners in the crime contained in the indictment, and this accuſation of himſelf, and oath, makes the accuſation of another perſon of the ſame crime, to amount to an indictment; and if his partners are convicted he ſhall have his pardon of courſe. But as it is in the diſcretion of the court, whether they will ſuffer one to be an approver, this method is now out of uſe; but in many caſes we have what amounts to the ſame thing by ſtatute, where pardon is aſſured to offenders on diſcovering and convicting their accomplices. 3 *Inſt.* 129.

APPURTENANCES *(pertinentia, appertaining* or belonging to) ſignify things both corporeal and incorporeal appertaining to ſome other thing as principal: as an hamlet to a chief manor, common of paſture to lands, common of eſtovers to an houſe, out-houſes, yards, orchards, gardens are appurtenant to a meſſuage; but lands cannot properly be ſaid to be appurtenant to a meſſuage. 1 *Lil. Abr.* 91. Turbary may be appurtenant to an houſe, but not to lands; a leet may be appurtenant to a manor, but not to an houſe, for the things muſt agree in nature and quality. 1 *Inſt.* 121.

ARBITRATION:

1. Arbitration is, where the parties ſubmit all matters in diſpute, concerning any perſonal chattels or perſonal wrong, to the judgment of one, two, or more arbitrators, who are to decide the controverſy; or if the two do not agree, it is uſual to add, that another perſon be called in as umpire, to whoſe ſole judgment it is then referred. 3 *Black.* 16.

2. Generally all matters of controverſy, either of fact, or of a right in things and actions perſonal and uncertain, may be ſubmitted to arbitration. 9 *Co.* 78.

But matters of freehold, or any right and title to a freehold, cannot be ſubmitted to arbitration; yet if the parties enter into mutual bonds to ſtand to the award relating to lands and tenements, they forfeit their bonds unleſs they obey it. 1 *Roll's Abr.* 242. 244.

Alſo criminal matters, as felonies and other indictable offences, cannot be ſubmitted to arbitration; and although the ſubmiſſion be by bond, yet the obligation is void, and the parties may be puniſhed for entering into ſuch bonds. 1 *Bac. Abr.* Arbitrament.

3. Of ſubmiſſion there are divers kinds:—a ſubmiſſion by *words* is good, and the party in whoſe favour the award is made hath a

remedy to inforce the performance of it. Yet it is not expedient that any ſubmiſſion ſhould be by words only, becauſe the party may revoke it any time before the award made, and that by word likewiſe, beſides that it lays a great foundation for perjury. *Compl. Arbitr.* 21.

Submiſſion may alſo be by *covenant*; but this method is ſeldom uſed; for though it contains the ſame certainty with a bond, yet the method of ſuing on a covenant is different, and more difficult than ſuing upon a bond. *Id.* 7. 46.

There may alſo be a ſubmiſſion *by rule of court*, which is in purſuance of the ſtatute 9 & 10 *W. c.* 15. whereby the parties may agree that their ſubmiſſion be made a rule of ſuch of his majeſty's courts of record as the parties ſhall chuſe, which court will thereupon carry the award into execution in the ſame manner as for contempt of a rule of court.

Or the ſubmiſſion may be by *bond*, which in ſome reſpects is preferable to a ſubmiſſion by rule of court; for an award made in purſuance of bonds of ſubmiſſion may bind the parties executors; but if he who refuſes to perform an award made purſuant to a rule of court ſhall die, the ſtatute directing that the proſecution ſhall be carried on by attachment, the remedy being loſt, the award is loſt alſo. *Compl. Arbitr.* 34.

Or the ſubmiſſion may be both by *bond* and *rule of court*, by adding the parties conſent at the bottom of the condition of the bond, and this ſeemeth to be the beſt way, for then the party may proceed which way he pleaſes; and it is ſaid, he may proceed both ways, that is, both on the bond, and alſo have an attachment for the contempt. 1 *Salk.* 73.

It hath been uſual alſo, of late years, to inſert in the ſubmiſſion a caution that *no bill in equity* ſhall be filed againſt the arbitrators; for it would be a very great hardſhip upon arbitrators if they ſhould be harraſſed with ſuits, and the allowing them to be liable to ſuch ſuits would effectually diſcourage perſons of worth from accepting the office of arbitrators. 2 *Atk.* 395.

4. The award muſt be made according to the ſubmiſſion: upon which ground it hath been diſputed, whether awarding releaſes to the time of the award, and not to the time of the ſubmiſſion, is good; but it ſeems to be now ſettled, that ſuch award is not totally void, but good for ſo much as is within the ſubmiſſion, and void for the reſidue. *Bac. Abr.* Arbitrament.

An award that one ſhall pay for the writings of the award, or the reckoning in the houſe where the award was made, is void; for ſuch things are plainly out of the ſubmiſſion. 1 *Roll's Abr.* 254.

If the ſubmiſſion be, ſo as the award be ready to be delivered to the parties, or to ſuch of them as ſhall deſire the ſame, the parties ſo bound are themſelves obliged to take notice of the award at

at their peril; but if the words of the ſubmiſſion be, ſo that the award be delivered to each party by ſuch a day, then muſt it be delivered to each party accordingly. *Wood, b.* 4. *c.* 3.

The award muſt be beneficial to either party, for an award of one ſide only is not good; for if an award be that one of the parties ſhall go to *Rome*, when it appears that there is no advantage to the other party by his going, it is void. *Id.*

Alſo an award muſt be poſſible and lawful; thus, if an award be that money ſhall be paid to an infant, and that he ſhall make a releaſe, it is void; for the infant's releaſe is not good in law.

So alſo the award muſt be certain and final, upon which account the arbitrators cannot regularly reſerve any thing for their future judgment, when the time allowed is expired. *Cro. Ja.* 585.

Generally, the award ſhall be expounded according to the intent of the arbitrators, and ſhall not be unravelled in a court of equity, unleſs there was corruption in the arbitrators; for the arbitrators being perſons of the parties own chooſing, the law preſumes that they would chooſe perſons whoſe underſtanding and judgment they could rely on. *Bur. Manſf.* 701.

5. Arbitrators cannot proceed on a reference, after they have once named an umpire; for then their authority ceaſeth, though the time for making the award is not yet expired. *Id.*

Form of a Submiſſion by Rule of Court.

'WHEREAS divers diſputes and controverſies have ariſen, 'and are now depending, between *A. B.* of —— in the county 'of —— yeoman, of the one part, and *C. D.* of —— in the 'ſaid county, yeoman, of the other part, touching and con-'cerning —— now for the ending and deciding thereof, it is 'hereby mutually agreed by and between the ſaid parties, that 'all matters in difference between them for, touching, and con-'cerning, the premiſes, ſhall be referred and ſubmitted to the 'arbitrament, final end, and determination of *A. A.* of —— in 'the ſaid county, gentleman, *B. A.* of —— in the ſaid county, 'yeoman, and *C. A.* of —— in the ſaid county, yeoman, or any 'two of them, arbitrators indifferently elected by the ſaid par-'ties, ſo as the ſaid arbitrators, or any two of them, do make 'and publiſh their award in writing ready to be delivered to the 'ſaid parties, or ſuch of them as ſhall deſire the ſame, on or 'before the —— day of ——— next enſuing the date hereof: 'and it is hereby mutually agreed by and between the ſaid 'parties, that this ſubmiſſion ſhall be made a rule of his ma-'jeſty's court of king's bench at *Weſtminſter*. In witneſs where-'of the ſaid parties to theſe preſents have hereunto ſet their 'hands, this —— day of —— in the year of our Lord ——.

Bond

Bond of Arbitration.

'KNOW all men by theſe preſents, that I *A. B.* of ——— 'in the county of —— gentleman, am held and firmly bound 'to *C. D.* of —— in the ſaid county, yeoman, in ——pounds 'of good and lawful money of *Great Britain*, to be paid to the 'ſaid *C. D.* or to his certain attorney, his executors, adminiſ-'trators, or aſſigns, to which payment, well and truly to be 'made, I bind myſelf, my heirs, executors, and adminiſtrators, 'firmly by theſe preſents, ſealed with my ſeal, and dated the '——— day of ——— in the ——— year of the reign of our 'ſovereign lord *George* the Third, of *Great Britain*, *France* and '*Ireland*, king, defender of the faith, and ſo forth, and in the 'year of our Lord ———.

'The condition of this obligation is ſuch, that if the above-'bound *A. B.*, his heirs, executors, and adminiſtrators, and 'every of them, for and on his and their parts and behalfs, do 'and ſhall well and truly ſtand to, obey, abide, perform, ob-'ſerve, and keep the award, order, arbitrament, final end and 'determination of *A. A.* of ——— eſquire, and *B. A.* of —— 'gentleman, arbitrators indifferently named, elected, and choſen, 'as well for and on the part and behalf of the above-bound *A. B.* 'as of the above-named *C. D.* to arbitrate, award, order, ad-'judge, and determine of and concerning all and all manner of 'action and actions, cauſe and cauſes of action and actions, 'ſuits, bills, bonds, ſpecialties, judgments, executions, extents, 'accounts, debts, dues, ſum and ſums of money, quarrels, 'controverſies, treſpaſſes, damages, and demands whatſoever, 'both in law and equity, or otherwiſe howſoever, which at any 'time or times heretofore have been had, made, moved, 'brought, commenced, ſued, proſecuted, committed, omitted, 'done or ſuffered by or between the ſaid parties, ſo as the ſaid 'award be made in writing and ready to be delivered to the 'ſaid parties, on or before the ——— day of ——— now next 'enſuing; [and if the ſaid *A. B.* his heirs, executors, or admi-'niſtrators, or any of them, ſhall not prefer, or cauſe to be 'preferred, any bill in equity againſt the ſaid *A. A.* and *B. A.* 'or either of them, for or concerning their award in the premi-'ſes;] then this obligation to be void, otherwiſe of force.'

If the Parties have a mind to make their ſubmiſſion a Rule of Court, then this may be added:

'And the above-bound *A. B.* doth agree and deſire, that 'this his ſubmiſſion be made a rule of his majeſty's court of 'king's bench at *Weſtminſter*, purſuant to the act of parliament 'in ſuch caſe made and provided.'

Con-

Condition to ſtand to the Award of Arbitrators, with an Umpire.

'THE condition of this obligation is ſuch, that if the above-
'bound *A. B.* his heirs, executors, and adminiſtrators, for and
'on his and their parts and behalfs, ſhall and do well and tru-
'ly ſtand to, obey, abide, obſerve, perform, fulfil, and keep the
'award, order, arbitrament, final end and determination of
'———, or any two of them, arbitrators indifferently elected
'and named, as well by and on the part and behalf of the
'ſaid *A. B.* as by and on the part and behalf of the above-
'named *C. D.* to arbitrate, award, order, judge, and deter-
'mine, of and concerning all and all manner of action and
'actions, cauſe and cauſes of action and actions, ſuits, bills,
'bonds, ſpecialties, covenants, contracts, promiſes, accounts,
'reckonings, ſums of money, judgments, executions, extents,
'quarrels, controverſies, treſpaſſes, damages, and demands
'whatſoever, at any time heretofore had, made, moved, brought,
'commenced, ſued, proſecuted, done, ſuffered, committed, or
'depending by or between the ſaid parties; ſo as the award of
'the ſaid arbitrators, or any two of them, be made and ſet
'down in writing, under their or any two of their hands and
'ſeals, ready to be delivered to the ſaid parties in difference, on
'or before the ——— day of ———, now next enſuing; then
'this obligation to be void, otherwiſe of force.

'And if the ſaid arbitrators ſhall not make ſuch their award
'of and concerning the premiſes, within the time limited as
'aforeſaid, then if the ſaid *A. B.* his heirs, executors, and ad-
'miniſtrators, for and on his and their part and behalf, do and
'ſhall well and truly ſtand to, obſerve, perform, fulfil, and keep
'the award, determination, and umpirage of ſuch perſon as
'the ſaid arbitrators ſhall indifferently chuſe for umpire in and
'concerning the premiſes; ſo as the ſaid umpire do make and
'ſet down his award and umpirage in writing, under his hand
'and ſeal, ready to be delivered to the ſaid parties in difference,
'on or before the ——— day of ———, now next enſuing;
'and if the ſaid *A. B.* his heirs, executors, or adminiſtrators,
'or any of them, ſhall not prefer, or cauſe to be preferred, any
'bill in equity, againſt them the ſaid arbitrators and umpire, or
'any of them, for or concerning the award of them the ſaid
'arbitrators or umpire in the premiſes: Then this obligation to
'be void, otherwiſe of force.

'[And the above-bound *A. B.* doth agree and deſire, that this
'his ſubmiſſion be made a rule of his majeſty's court of king's
'bench at *Weſtminſter*, purſuant to the act of parliament in ſuch
'caſe made and provided.]'

Form

Form of an Award.

'TO all to whom theſe preſents ſhall come, We *A. B.* of '———, and *C. D.* of ———, do ſend greeting:

'Whereas there are ſeveral accounts depending, and divers 'controverſies have ariſen, between ——, of ——, yeoman, of 'the one part, and ——, of ——, yeoman, of the other part: 'and whereas, for the putting an end to the ſaid differences, they 'the ſaid ———, and ——, by their ſeveral bonds or obligati- 'ons bearing date —— laſt paſt, are reciprocally become bound 'each to the other, in the penal ſum of ———, to ſtand to, 'abide, perform, and keep the award, order, and final determi- 'nation of us the ſaid ——, ſo as the ſaid award be made in 'writing, and ready to be delivered to the parties in difference, 'on or before —— next enſuing, as by the ſaid obligations and 'conditions thereof may appear: Now know ye, that we the 'ſaid arbitrators, whoſe names are hereunto ſubſcribed and ſeals 'affixed, taking upon us the burden of the ſaid award, and 'having fully examined and duly conſidered the proofs and alle- 'gations of both the ſaid parties, do make and publiſh this our 'award between the ſaid parties in manner following; that is to 'ſay, Firſt, we do award and order, that all actions, ſuits, 'quarrels, and controverſies whatſoever, had, moved, ariſen, 'and depending between the ſaid parties in law or equity, for 'any manner of cauſe whatſoever touching the ſaid premiſes, to 'the day of the date hereof, ſhall ceaſe and be no farther pro- 'ſecuted; and that each of the ſaid parties ſhall pay and bear his 'own coſts and charges in any wiſe relating to, or concerning, 'the premiſes. And we do alſo award and order, that the 'ſaid —— ſhall deliver, or cauſe to be delivered, to the ſaid '——, at ——, within the ſpace of ——, *&c.* And further, 'we do hereby award and order, that the ſaid —— ſhall, on or 'before ——, pay or cauſe to be paid unto the ſaid ——, the 'ſum of ——. We do alſo award and order, *&c.* And laſt- 'ly, We do award and order, that the ſaid —— and ——, on 'payment of the ſaid ſum of ——, ſhall, in due form of law, 'execute each to the other of them, or to the other's uſe, gene- 'ral releaſes, ſufficient in the law for the releaſing by each to 'the other of them, his heirs, executors, and adminiſtrators, of 'all actions, ſuits, arreſts, quarrels, controverſies, and demands 'whatſoever, touching or concerning the premiſes aforeſaid, or 'any matter or thing thereunto relating, from the beginning 'of the world, until the —— day of —— laſt paſt (viz. *the day 'of the date of the arbitration bonds*). In witneſs whereof we have 'hereunto ſet our hands and ſeals the —— day of ——.

'*Witneſſes hereof*,
'A. B.
'C. D.'

Form

Form of an Umpirage.

[*Recite the Arbitration Bonds as before.*]

'NOW know ye, that I ——, umpire, indifferently choſen 'by ——, having deliberately heard and underſtood the griefs, 'allegations, and proofs, of both the ſaid parties, and willing '(as much as in me lieth) to ſet the ſaid parties at unity and 'good accord, do by theſe preſents arbitrate, award, order, de-'cree, and judge as followeth; That is to ſay, &c.'

ARCHBISHOP:

1. An Archbiſhop is the chief biſhop of the province, who next and immediately under the king hath ſupreme power, authority, and juriſdiction in all cauſes and things eccleſiaſtical; and has the inſpection of all the biſhops of that province. He hath alſo his own dioceſe, where he exerciſes epiſcopal juriſdiction, as in his province he exerciſes archiepiſcopal. As archbiſhop, upon receipt of the king's writ, he calls the biſhops and clergy of his province to meet in convocation: but without the king's writ he cannot aſſemble them. To him all appeals are made from inferior juriſdictions within his province. During the vacancy of any ſee in his province, he is guardian of the ſpiritualities thereof; as the king is of the temporalities; and he executes all eccleſiaſtical juriſdiction therein. If the archiepiſcopal ſee be vacant, the dean and chapter are the ſpiritual guardians. The archbiſhop is entitled to preſent by lapſe to all the eccleſiaſtical livings in the diſpoſal of his dioceſan biſhops, if not filled within ſix months. And he has a cuſtomary prerogative, when a biſhop is conſecrated by him, to have the next preſentation to ſuch dignity or benefice in the biſhop's diſpoſal, as the archbiſhop ſhall chuſe; which is therefore called his *option*. 1 *Black.* 380.

2. If we conſider *Canterbury* as the ſeat of the metropolitan, it hath under it twenty-one biſhops; but if we conſider it as the ſeat of a dioceſan, it comprehends only ſome part of *Kent* (the reſidue being in the dioceſe of *Rocheſter*), together with ſome other pariſhes diſperſedly ſituate in ſeveral dioceſes; it being an ancient privilege of this ſee, that the places where the archbiſhop hath any manors or advowſons, are thereby exempted from the ordinary, and are become peculiars of the dioceſe of *Canterbury*, properly belonging to the juriſdiction of the archbiſhop of *Canterbury*. *Godolph. Report.* 14.

The archbiſhop of *Canterbury* has the privilege, by cuſtom, to crown the kings and queens of this kingdom. And by the ſtatute of 25 *H.* 8. *c.* 21. he has power of granting diſpenſations, where the pope uſed formerly to grant them; which is the foundation of his granting ſpecial licences to marry at any place

place or time, to hold two livings, and the like. 1 *Black.* 381.

The archbiſhop of *Canterbury* is ſtiled primate and metropolitan of *all England*, albeit there is another archiepiſcopal province within this realm; partly becauſe of his ancient legatine power, and partly by his being enabled by the aforeſaid ſtatute to grant faculties and diſpenſations in both the provinces alike.

At general councils abroad, the archbiſhop of *Canterbury* had the precedency of all other archbiſhops. *Godolph.* 21.

At home, he is the firſt peer of the realm, and hath precedency, not only before all the other clergy, but alſo (next and immediately after the blood royal) before all the nobility of the realm, and all the great officers of ſtate. *Id.* 13.

3. The archbiſhop of *York* hath under him only four biſhops, namely, thoſe of *Cheſter*, *Durham*, *Carliſle*, and *Man*: All the reſt are under the archbiſhop of *Canterbury*. But the archbiſhop of *York* anciently claimed and had a metropolitan juriſdiction over all the biſhops of *Scotland*, whence they had their conſecration, and to which they ſwore canonical obedience, until about the year 1466, when the biſhops of *Scotland* withdrew themſelves from their obedience to this ſee; and, in 1470, pope Sixtus the fourth created the biſhop of *St. Andrews* archbiſhop and metropolitan of all *Scotland*. *Id.* 14. 18.

The archbiſhop of *York* has the privilege to crown the queen conſort, and to be her perpetual chaplain; and hath precedency of all dukes not being of the blood royal; and alſo before all the great officers of ſtate, except the lord chancellor. *Id.* 13, 14.

4. The archbiſhops are ſaid to be *inthroned*, when they are veſted in the archbiſhoprick; whereas biſhops are ſaid to be *inſtalled*. *Id.* 22.

They may retain and qualify eight chaplains, whereas a biſhop can only qualify ſix. *Id.* 21.

In ſpeaking and writing to an archbiſhop is given the title of *grace* and *moſt reverend father in God*; whereas biſhops have the title of *lord*, and *right reverend father in God*.

And an archbiſhop writes himſelf *by divine providence*; whereas biſhops only uſe *by divine permiſſion*.

ARCHDEACON, the chief of the deacons, is one that hath eccleſiaſtical dignity and juriſdiction over the clergy and laity, next after the biſhop, throughout the dioceſe, or in ſome part of it only. Generally, the archdeacon hath power, under the biſhop, of the examination of clerks to be ordained; and alſo of induction of clerks inſtituted to a benefice; likewiſe of excommunication, injunction of penance, ſuſpenſion, correction, inſpecting and reforming abuſes in eccleſiaſtical affairs: but his power is different in different dioceſes, and therefore he is to be regulated according to the uſage and cuſtom of his own church and dioceſe.

ARCHES

ARCHES court, *curia de arcubus*, is ſo called, becauſe it was anciently held in the church of *St. Mary-le-Bow*, which church had that appellation from the ſteeple thereof being raiſed at the top with ſtone pillars in the manner of an arch or bow. And the judge thereof, for the like reaſon, is called the *dean of the arches*; whoſe juriſdiction is properly over the thirteen pariſhes only belonging to the archbiſhop of *Canterbury* in *London*: but the office of *dean of the arches* having been for a long time united with that of the archbiſhop's *principal official*, he now, in right of this laſt-mentioned office, receives and determines appeals from the ſentences of all inferior eccleſiaſtical courts within the province. The ſame perſon is likewiſe *judge of the peculiars*, that is, of all thoſe pariſhes, fifty-ſeven in number, which, though lying in other dioceſes, yet are no way ſubject to the biſhop or archdeacon, but to the archbiſhop. From this judge there lies an appeal to the king in chancery, that is, to a court of delegates appointed under the king's great ſeal. The courts of arches and of the peculiars, as alſo the admiralty court, the prerogative court, and the court of delegates (for the moſt part), are now held in the hall belonging to the college of civilians in *London*, commonly called *Doctors Commons*.

ARGENTUM ALBUM, ſilver coin, or pieces of bullion that anciently paſſed for money. So there was *white-maile*, or rent paid in ſilver; in contradiſtinction from *black-maile*, paid in cattle or other proviſions.

ARGENTUM DEI, God's ſilver; money given in earneſt upon the making of any bargain. In ſeveral manors, the acknowledgment paid to the lord on the admitting of a tenant, is called the God's penny.

ARIER BAN the *ban* or proclamation of the king, for the *arraying* of his tenants, or their entering into the army.

ARMIGER, *eſquire*, *eſcuyer*, *ſcutarius*, is a name of dignity, next above the degree of gentleman, and below a knight. Anciently he was one that was attendant on ſuch as had the order of knighthood, *bearing* their *ſhields* and other *armour*, and helping them to horſe, and performing other ſuch like ſervices.

ARMS are enſigns of honour, in latin *inſignia*, which were originally intended to diſtinguiſh the different commanders in war. For being covered with their defenſive armour, they could not be known; and therefore a certain badge was painted on their ſhields, which was called *arms*, but not made hereditary in families till the time of king *Richard* the firſt, on his expedition into the holy land. And beſides ſhields with arms, they had alſo *coats* on which their arms were painted, from whence came the denomination of *coats of arms*.

Arma dare (to preſent one with armour) was anciently a ceremony in conferring the honour of knighthood: whereby ſuch perſon

perſon *adoptabatur in militem*, which the French called *adouber*, and we to *dub* ſuch a perſon a knight.

Arma libera were arms given to a villain when he was manumitted or made free: which arms were uſually a ſword and lance.

Arma reverſata, arms reverſed, was when a man, bearing coat armour, was convicted of treaſon or felony; his arms were thereupon reverſed, and he was degraded from all rank and precedence in title and dignity.

ARPEN, or *arpent*; a meaſure of land, differing in quantity in different places: It ſeems to have been generally leſs than an acre; as in ſome ancient inſtruments the computation is made by ſo many acres and ſo many *arpents*.

ARRAIGNMENT is the calling an offender to the bar of the court, to anſwer the matter charged upon him. In Latin it is *ad rationem ponere*, and in French *ad reſon*, or abbreviated *a reſn*; for as the ancient word *diſrain* or *derayn* imports in Latin *diſrationare*, to diſprove or evince the contrary of any thing that is or may be affirmed, ſo *arraigne* is *ad rationem ponere*, to call to account or anſwer. 2 *H. H.* 216.

The priſoner, on his arraignment, though under an indictment of the higheſt crime, muſt be brought to the bar without irons, and all manner of ſhackles or bonds, unleſs there be a danger of eſcape, and then he may be brought with irons. *Id.* 219.

Alſo there is no neceſſity that a priſoner, at the time of his arraignment, hold up his hand at the bar, or be commanded ſo to do; for this is only a ceremony for making known the perſon of the offender to the court; and if he anſwers that he is the ſame perſon, it is all one. 2 *Haw.* 308.

ARRAY, *arraia*, an old French word ſignifying to rank or ſet in order. In ancient times it was uſual for the king, upon any great emergency, to iſſue commiſſions of array, directed to ſeveral of the principal perſons in the reſpective diſtricts, to muſter and array, or ſet in military order, all the men capable to bear arms. *Array* is alſo applied to a jury, as ſet in order by the ſheriff in his return of the panel. And when a man intends to challenge the whole jury, as on ſuſpicion of partiality, or ſome default in the ſheriff who made the return, it is called *challenge to the array*.

ARREST:

1. *In civil caſes.* Arreſt is the reſtraint of a man's perſon, depriving him of his own will and liberty, and binding him to become obedient to the will of the law: And it may be called the beginning of impriſonment. *Lamb.* 93.

An arreſt muſt be by corporal ſeizing or touching the defendant's body. 3 *Black.* 288.

An officer cannot juſtify the breaking open an outward door or window, in order to execute proceſs. If he doth, he is a treſ-

treſpaſſer. But if he finds the outward door open, and enters that way, or if the doors be opened to him from within, and he entereth, he may break open inward doors if he finds that neceſſary, in order to execute his proceſs. *Foſt.* 319.

For a man's houſe is his caſtle for ſafety and repoſe to himſelf and family; but if a ſtranger, who is not of the family, upon a purſuit takes refuge in the houſe of another, this rule doth not extend to *him*, it is not *his* caſtle, he cannot claim the benefit of ſanctuary therein. *Id.* 320.

Peers of the realm, members of parliament, and corporations, are privileged from arreſt: againſt them the proceſs to compel appearance muſt be by ſummons and diſtreſs infinite. 3 *Black.* 288.

Attorneys and others attending the courts of juſtice are not liable to be arreſted by the ordinary proceſs of the court, but muſt be ſued by bill (uſually called a bill of privilege) as being perſonally *preſent* in court. *Id.* 289.

Clergymen performing divine ſervice, and not merely ſtaying in the church with a fraudulent deſign, are for the time privileged from arreſts; as alſo ſuitors, witneſſes, and other perſons, neceſſarily attending any courts of record upon buſineſs, are not to be arreſted during their actual attendance, which includes their neceſſary going and returning. *Id.*

On a Sunday no arreſt can be made, nor proceſs ſerved; except for treaſon, felony, or breach of the peace. 29 *C.* 2. *c.* 7.

2. *In criminal caſes.* An arreſt in criminal caſes may be, not only by proceſs out of ſome court, or warrant from a magiſtrate, but frequently by a conſtable, watchman, or private perſon, without any warrant or precept. As where any perſons are preſent, when a felony is committed, or a dangerous wound given, they are bound without any warrant to apprehend the offender, on pain of fine and impriſonment for their neglect. 2 *Haw.* 74.

So where an affray is made to the breach of the king's peace, any perſon may, without any warrant from a magiſtrate, reſtrain the offenders, to the end the king's peace may be kept: but after the affray is ended, they cannot be arreſted without an expreſs warrant. 2 *Inſt.* 52.

If a warrant to arreſt a perſon be generally directed to all conſtables, no one can execute it out of his own precinct; for in ſuch caſe it ſhall be taken reſpectively to each of them within their ſeveral diſtricts, and not to one of them to execute it within the diſtrict of another: but if it be directed to a particular conſtable, he may execute it any where within the juriſdiction of the juſtice, but is not compellable to execute it out of his own conſtablewick. 2 *Hawk.* 86.

And in ſuch caſes a man's houſe is no protection. For if a felony hath been committed, or a dangerous wound given, or even

even where a miniſter of juſtice comes armed with proceſs founded on a breach of the peace, the party's own houſe is no ſanctuary for him. In theſe caſes, the juſtice which is due to the public muſt ſupercede every pretence of private inconvenience. *Foſter*, 320.

ARREST OF JUDGMENT is, to ſtay or ſtop judgment on ſufficient cauſe ſhewn. For, in many caſes, though there be a verdict, yet no judgment can be had; as for ſome material defect in pleading, miſbehaviour of the jury, want of notice of trial, or other like cauſe. A motion in arreſt of judgment muſt be ſupported by proper affidavits.

ARSON, from *ardeo*, to burn. See BURNING.

ART AND PART is, where one charged with a crime, in committing the ſame, was both a *contriver* of, and acted his part in it.

ARTICLE, in one ſenſe, ſignifies a complaint exhibited in the eccleſiaſtical court, by way of libel.—*Articles of the peace* are a complaint exhibited in the courts at *Weſtminſter*, in order to compel the defendant to find ſureties of the peace; in which caſe it is uſual for the court, on iſſuing an attachment, to make an indorſement thereon, directing ſome juſtice of the peace in the country to take the ſecurity of the peace there, ſpecifying the particular ſums in which the party and his ſureties ſhall be bound. *Bur. Mansf.* 1040. *Articles of war* are a code of laws made by his majeſty from time to time for the regulation of the land forces, in purſuance of the ſeveral annual acts againſt mutiny and deſertion.—*Articles of the navy* are rules and orders made by ſtatute 31 *G.* 2. *c.* 10. for the government of the royal fleet.—*Articles of religion*, commonly called the 39 articles, are a body of articles drawn up by the convocation in 1562, unto which perſons admitted into eccleſiaſtical offices are to ſubſcribe.—*Articuli cleri*, are ſtatutes containing certain articles relating to the church and clergy, made in the 14 *Ed.* 3.

ARTIFICERS AND LABOURERS:

1. There are ſeveral ſtatutes for rating of wages in almoſt every kind of work, and penalties injoined againſt taking or giving more than the wages ſo rated. But this hath been ſeldom put in practice. And indeed there are great objections. For beſides that this rating puts good and bad work-men upon a level, and thereby deſtroys emulation; the eaſineſs or difficulty of the ſame kind of work in different circumſtances renders a certain limited ſum very inadequate.

2. Diſputes about wages, and almoſt all other kinds of differences between maſters and workmen in the ſeveral kinds of labour and manufacture, are determinable in a ſummary way by juſtices of the peace.

3. All artificers and labourers, hired at a certain price, ſhall, between

between the middle of *March* and the middle of *September*, continue at work from five in the morning till ſeven at night; except half an hour for breakfaſt, an hour for dinner, and half an hour for drinking, and between the middle of *May* and the middle of *Auguſt*, half an hour for ſleep: Between the middle of *September* and the middle of *March*, they ſhall continue at work from the ſpring of day until night; except half an hour for breakfaſt and an hour for dinner: On pain of having deducted out of his wages one penny for every hour's abſence. 5 *El. c.* 4.

4. In the time of hay or corn harveſt, the juſtices of the peace, and alſo the conſtables, may cauſe all artificers and perſons meet to labour, to ſerve by the day in mowing, reaping, and getting of hay and corn; on pain of impriſonment in the ſtocks two days and one night. 5. *El. c.* 4.

5. If any artificer or labourer ſhall leave his work unfiniſhed, except for want of payment of his wages; he ſhall ſuffer impriſonment for a month. *Id.*

6. If any artificer, workman, or labourer, ſhall join in any conſpiracy to raiſe the price of labour, he ſhall forfeit 5l. and if not paid in ſix days, he ſhall be impriſoned for 20 days, and have only bread and water for his ſuſtenance; for a ſecond offence 20l. or ſhall be ſet in the pillory; for the third offence 40l. or be ſet in the pillory, and loſe one of his ears. 2 & 3 *Ed.* 6. *c.* 14.

7. If any perſon ſhall contract with or endeavour to perſuade any artificer to go into any foreign country, not belonging to the crown of Great Britain, he ſhall forfeit 500l. and be impriſoned 12 months: for a ſecond offence, he ſhall forfeit 1000l. and be impriſoned two years. 23 *G.* 2. *c.* 13.

And if any artificer ſhall go, or being there ſhall not return after notice, he ſhall be incapable of any legacy, or of being executor or adminiſtrator, and of taking any lands by deſcent, deviſe, or purchaſe, and ſhall forfeit his lands and goods, and be deemed an alien, and out of the king's protection. 3 *G. c.* 27.

And by the 23 *G.* 2. *c.* 13. 14 *G.* 3. *c.* 71. and 25 *G.* 3. *c.* 76. there are large penalties for carrying out of the kingdom tools or utenſils in various ſorts of manufacture.

ASSART, is land in the foreſt reduced to tillage. *Spelman* derives it from *exertum*, pulled up by the roots, for ſometimes it is written *eſſart*. Others derive it from *exaratum*, ploughed up. *Manwood* ſays, it is an offence committed in the foreſt, by plucking up the wood by the roots that are thickets and coverts for the deer, and making the ground plain as arable land. This is eſteemed the greateſt treſpaſs that can be committed in the foreſt to vert and veniſon, as it contains in it waſte and more;

for whereas waſte of the foreſt is but felling down the coverts which may grow up again, *aſſart* is a pulling them up by the roots, and utterly deſtroying them, ſo that they can never afterwards ſpring up again. But this is no offence if done by licence; for a man may have a licence to aſſart ground in the foreſt, and make it ſeveral for tillage. Aſſart rents are rents paid in ſome places for foreſt lands aſſarted. *Manw.* 171.

ASSAULT is an attempt or offer to beat another, without touching him; as if one lifts up his cane, or his fiſt, in a threatening manner, at another; or ſtrikes at him, but miſſes him; this is an aſſault, *inſultus*: for which, though no actual battery is committed, yet the wrong doer may be indicted at the ſuit of the king, and fined for the offence; and alſo the party injured may have an action of treſpaſs *vi et armis*, wherein he ſhall recover damages as a compenſation for the injury. 3 *Black.* 120.

But on an action of aſſault and battery, where the jury ſhall give leſs than 40s. damages, the plaintiff ſhall have no more coſts than damages, unleſs the judge ſhall certify on the back of the record, that an actual battery (and not an aſſault only) was proved upon the trial. 22 & 23 *C.* 2. *c.* 9.

ASSAY (Fr. *eſſay*), a proof or trial, is the examination of weights or meaſures, by the clerks of markets and others. So the *aſſayer* is an officer appointed for the trial of and marking of plate, or of the gold or ſilver coin in the mint.

ASSEMBLY (unlawful) is, when three perſons or more aſſemble themſelves together, with intent mutually to aſſiſt each other, againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, with force or violence, againſt the peace, or to the terror of the people, whether the act intended was of itſelf lawful or unlawful. If after their meeting, they ſhall move forward towards the execution of any ſuch act, whether they put it in execution or not, it is then a *rout*. And if they execute ſuch a thing in deed, then it is a *riot*. 1 *Haw.* 155

ASSETS (from the French *aſſez*, enough) is of two kinds; the one aſſets *by deſcent*, the other aſſets *in hand*. Aſſets *by deſcent* is, where a man is bound in an obligation, and dies ſeiſed of lands in fee ſimple, which deſcend to his heir, then this land ſhall be called *aſſets*, that is, *enough*, or ſufficient to pay the ſame debt; whether he remains in poſſeſſion of the land, or hath aliened it before action brought; therefore if a man covenants for himſelf and his heirs, to keep my houſe in repair, I can then (and then only) compel his heir to perform this covenant, when he hath an eſtate ſufficient for this purpoſe, or *aſſets*, by deſcent from the covenantor; for though the covenant deſcends to the heir whether he inherits any eſtate or no, it lies dormant, and

is

is not compulsory, until he hath assets by descent. 2 *Black.* 243.

Assets *in hand* is, when a man in like manner indebted makes executors, and leaves them sufficient to pay; or some commodity or profit is come unto them in right of their testator; this is called assets in their hands. *T. L.*

There is also another division of assets, into *legal* and *equitable* assets: *legal* assets are such as are liable to debts and legacies by the course of law; *equitable* assets are such as are only liable by the help of a court of equity.

So also, there are *real* and *personal* assets: *real* assets are such as concern the land; *personal* are such as concern the personal estate only.

An advowson, a mortgage, a lease for years, are assets. So is a reversion expectant upon an estate for life, when it happens. Bonds and other specialties are assets, when the money is received. A debt due from the executor to the testator is assets in equity to pay legacies.

It is a rule in equity, that personal assets must be first applied to satisfy the specialty debt; and, if deficient, the heir shall be charged for the real assets descended to him; and if these are deficient, then the devisee of an estate devised to him by the deceased is liable. 2 *Atk.* 434.

ASSIGNMENT is properly a transfer, or making over to another, of the right one has in any estate; but it is usually applied to an estate for life or years. And it differs from a lease only in this—that by a lease one grants an interest less than his own, reserving to himself a reversion; in assignment he parts with the whole property, and the assignee stands to all intents and purposes in the place of the assignor. 2 *Black.* 326.

There may be an assignment of an annuity, a mortgage, a rent charge, a judgment, a statute: but an authority or trust cannot be assigned over, unless it hath been specially granted to a man and his assigns. Also a cause of action, a right of entry, a title for condition broken, cannot be assigned over. *Wood, b.* 2. *c.* 3.

A thing in action, as a bond, or a just debt, are commonly said to be assignable over: but then one must sue for the same in the name of the assignor; so that, in reality, it amounts to little more than a letter of attorney to sue in his name. *Id.*

By several acts of parliament, the estates of bankrupts may be assigned over by the commissioners, and the assignees may bring actions in their own names: the judge's certificate for prosecuting felons to conviction may be assigned over once: also bills of exchange, and promissory notes, may be assigned; and the

aſſignee may bring an action in his own name to recover the money.

Form of an Aſſignment of a Bond.

'To all to whom theſe preſents ſhall come, greeting: Whereas 'A. B. of ——, in and by one bond or obligation, bearing date 'the ——— day of ——— in the year ——— became bound to 'C. D. of ——— in the penal ſum of ——— conditioned for the 'payment of ——— and intereſt at a day long ſince paſt, as by the 'ſaid bond and condition thereof may appear: and whereas there 'now remains due to the ſaid C. D. for principal and intereſt on 'the ſaid bond the ſum of ——, now know ye, that he the ſaid C. 'D. for and in conſideration of the ſaid ſum of —— of lawful 'Britiſh money to him in hand paid by E. F. of ——, the receipt 'whereof the ſaid C. D. doth hereby acknowledge; hath aſſigned 'and ſet over, and by theſe preſents doth aſſign and ſet over, unto 'the ſaid E. F. the ſaid recited bond or obligation, and the money 'thereupon due and owing, and all his right and intereſt of, in, 'and to the ſame. And the ſaid C. D., for the conſideration afore-'ſaid, hath made, conſtituted, and appointed, and by theſe pre-'ſents doth make, conſtitute, and appoint, the ſaid E. F., his exe-'cutors and adminiſtrators, his true and lawful attorney and at-'tornies irrevocable, for him and in his name, and in the name 'and names of his executors and adminiſtrators, but for the ſole 'and proper uſe and benefit of the ſaid E. F., his executors, admi-'niſtrators, and aſſigns, to aſk, require, demand, and receive of 'the ſaid A. B., his heirs, executors, and adminiſtrators, the mo-'ney due on the ſaid bond; and, on non-payment thereof by the 'ſaid A. B., his heirs, executors, or adminiſtrators, to ſue for and 'recover the ſame; and on payment thereof, to deliver up and 'cancel the ſaid bond and give ſufficient releaſes and diſcharges 'for the ſame; and one or more attorney or attornies under him 'to conſtitute; and whatſoever the ſaid E. F. or his attorney 'or attornies ſhall lawfully do in the premiſes, the ſaid C. D. 'doth hereby allow and affirm. And the ſaid C. D. doth co-'venant with the ſaid E. F. that he the ſaid C. D. hath not 'received, nor will receive, the ſaid money due on the ſaid bond, 'or any part thereof; neither ſhall or will releaſe or diſcharge 'the ſame, or any part thereof; but will own and allow of all 'lawful proceedings for recovery thereof; he the ſaid E. F. 'ſaving the ſaid C. D. harmleſs, of and from any coſts that may 'happen to him thereby. In witneſs, &c.'

ASSISE, *aſſeſſio*, anciently ſignified in general, a court where the judges or aſſeſſors heard and determined cauſes; and more particularly upon *writs of aſſiſe* brought before them, by ſuch as were wrongfully put out of their poſſeſſions. Which writs heretofore were very frequent; but now men's poſſeſſions are more eaſily

eaſily recovered by ejectments. Yet, ſtill the judges in their circuits have a commiſſion of *aſſiſe*, directed to themſelves and the clerk of aſſiſe, to take the aſſiſes, that is, to take the verdict of a peculiar ſpecies of jury called an aſſiſe, and ſummoned for the trial of landed diſputes. Unto which commiſſion of aſſiſe, four other are now ſuperadded: 1. A commiſſion of *general good delivery*, directed to the judges and clerk of aſſiſe aſſociate; which gives them power to try every priſoner in the gaol, and none but priſoners in the gaol. 2. A commiſſion of *oyer* and *terminer*, directed to the judges and many of the gentlemen of the county; by which they are empowered to *hear and determine* treaſons, felonies, or other miſdemeanors, by whomſoever committed, whether the perſons to be tried be in gaol or not in gaol. 3. A commiſſion or writ of *niſi prius* directed to the judges and clerk of aſſiſe, whereby civil cauſes brought to iſſue in the courts above, are tried in the vacation by a jury of twelve men of the county where the cauſe of action ariſes; and on return of the verdict of the jury to the court above, the judges there give judgment. 4. A commiſſion of the *peace* in every county of their circuit.

At the ſaid aſſiſes the ſheriff is required to attend, and to give notice to all juſtices of the peace, mayors, coroners, eſcheators, high conſtables and bailiffs of liberties, that they alſo attend, with their rolls, records, indictments, and other remembrances; and if they make default in appearance, the judges may fine them for their neglect.

Of the ancient writs of aſſiſe there are four kinds: 1. Aſſiſe of *novel diſſeiſin*, which is, where tenant in fee ſimple, fee tail, or for term of life, is put out and diſſeiſed of his lands or tenements, rents, common of paſture, common way, or of an office, toll, or the like. 2. Aſſiſe of *mort de anceſtor*, which lies, where a man's anceſtor, under whom he claims, dies ſeiſed of lands, tenements, rents, or the like, that were held in fee; and after ſuch anceſtor's death, a ſtranger abateth. 3. Aſſiſe of *darrein preſentment*, which is, where a man and his anceſtors have preſented a clerk to a church, and afterwards, the church being void, a ſtranger preſents his clerk to the ſame church, whereby the perſon having right is diſturbed. 4. Aſſiſe *de utrum*, which lies for a parſon againſt a layman, or a layman againſt a parſon, for lands or tenements, doubtful whether they may be lay fee, or free alms, belonging to the church. *T. L.*

There is alſo *aſſiſe of the foreſt*, touching orders to be obſerved therein. The aſſiſe of *bread and beer*, for regulating the weight and quality thereof; and many other ſuch like.

Aſſiſors are thoſe who ſet the aſſiſe, and ſometimes the jury of aſſiſe are ſo denominated. *Aſſiſus*, rented or farmed out for ſuch

an aſſiſed or certain rent; and hence comes the word to *aſſeſs*, or rate, the proportion in taxes and payments by aſſeſſors.

Aſſiſa cadere is to fail in one's ſuit, or to be nonſuited; as when there is ſuch a plain and legal inſufficiency in a ſuit that the complainant can proceed no farther in it.

ASSOCIATION, *aſſociatio*, is a writ or patent ſent by the king, either at his own motion, or at the ſuit of a party-plaintiff, to the juſtices appointed to take aſſizes, or of *oyer* and *terminer*, to have others *aſſociated* unto them. And this is uſual where a juſtice of aſſiſe dies; and a writ is iſſued to the juſtices alive to admit the perſons aſſociated: alſo where a juſtice is diſabled, this is practiſed. *F. N. B.* 185. *Reg. Orig.* 201. 206. 223.

1. AN ASSUMPSIT is a voluntary promiſe made by word or ſuppoſed to be made by word, whereby a perſon, upon valuable conſideration, *aſſumeth* or undertaketh to perform or pay ſomething to another. *T. L.*

An *aſſumpſit* is either *expreſs* or *implied*:

2. *Expreſs*, is by direct agreement either by word, or (which is all one in law) by note in writing without ſeal; as where a perſon aſſumes or promiſes to make a good title of land ſold; or to pay money upon a bargain and ſale; or to deliver goods according to agreement: ſo if a builder aſſumes or promiſes that he will build an houſe within a limited time, and fails to do it; the perſon damnified hath an action of *aſſumpſit* againſt the builder for this breach of his promiſe, and ſhall recover a pecuniary ſatisfaction for the injury ſuſtained by ſuch delay. 3 *Black.* 157.

And herein it differs from an action of debt; for in an action of debt the plaintiff muſt recover the whole debt he claims, or nothing at all: for the debt is one ſingle cauſe of action, fixed and determined. But in an action of *aſſumpſit*, which is not brought to compel a ſpecific performance of the contract, but to recover damages for its non-performance, the implied promiſe, and conſequently the damages for the breach of it, are in their nature indeterminate; and the jury will, according to the nature of the proof, allow either the whole damages laid in the declaration, or any inferior ſum. 3 *Black.* 154.

So in the caſe of a debt by ſimple contract, if the debtor promiſes to pay it and doth not, this breach of promiſe intitles the creditor to his action of *aſſumpſit*, inſtead of being driven to an action of debt. *Id.* 157.

Thus likewiſe a promiſſory note, or note of hand not under ſeal, to pay money at a certain day, is an expreſs *aſſumpſit*; and the perſon to whom it is payable may recover the value of the note in damages, if it remains unpaid. *Id.*

3. *Implied*;

3. *Implied:* As if I employ a perſon to tranſact any buſineſs for me, or perform any work, the law implies, that I undertook or *aſſumed* to pay him ſo much as he reaſonably deſerved. And if I neglect to make him amends, he hath a remedy for this injury, by bringing his action upon this implied *aſſumpſit*; wherein he is at liberty to ſuggeſt, that I promiſed to pay him ſo much as he reaſonably deſerved, and then to aver that his trouble was really worth ſuch a particular ſum, which the defendant has omitted to pay. But this valuation of his trouble is ſubmitted to the determination of a jury; who will aſſeſs ſuch a ſum in damages as they think he really merited. This is called an *aſſumpſit* on a *quantum meruit*. 3 *Black.* 161.

There is alſo an implied *aſſumpſit* on a *quantum valebat*; being where one takes up goods or wares of a tradeſman, without expreſsly agreeing for the price. In this caſe the law concludes, that both parties did intentionally agree, that the real value of the goods ſhould be paid; and an action of *aſſumpſit* may be brought accordingly, if the vendee refuſes to pay that value. *Id.*

So alſo, where one has had and received money of another, without any valuable conſideration given on the receiver's part; as where money has been paid by miſtake, or on a conſideration which happens to fail, or through impoſition, extortion, or oppreſſion, or where undue advantage is taken of the plaintiff's ſituation: for the law conſtrues this to be had and received for the uſe of the owner only, and implies that the perſon ſo receiving, promiſed and undertook to account for it to the true proprietor. *Id.* 162.

So an *aſſumpſit* will lie for money received by a bailiff or ſteward; for money due on an account ſtated upon an *inſimul computaſſet*; or upon a bill of exchange; for if a merchant to whom it is directed ſubſcribes the bill, it is an *aſſumpſit* in law: in all theſe caſes it is implied by the law, that the one agreed to pay to the other, though he made no expreſs promiſe to do it. *Wood, b.* 4. *c.* 4.

4. But by the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. no action ſhall be brought to charge the defendant upon any contract or ſale of lands, or any intereſt concerning the ſame; or upon any agreement that is not to be performed within a year after the making thereof; unleſs the agreement or ſome memorandum or note thereof ſhall be in writing ſigned by the party to be charged therewith, or by ſome other perſon authoriſed by him: and no contract for the ſale of any goods of ten pounds value ſhall be good, except the buyer ſhall accept part of the goods ſo ſold, and actually receive the ſame, or give ſomething in earneſt to bind the bargain, or in part of payment, or except ſome

ſome memorandum or note in writing be made, ſigned by the parties or their agents.

ATTACHMENT, from the French *attacher*, to tie or make faſt, ſignifies the taking of a man's body by commandment of a writ or precept; and is properly grantable in caſes of contempts, againſt which for the moſt part all courts of record generally, but more eſpecially thoſe of *Weſtminſter-hall*, and above all the court of king's bench, may proceed in a ſummary manner according to their diſcretion. 2 *Haw.* 141.

Contempts that are thus puniſhed are either *direct*, which openly inſult or reſiſt the powers of the court or the perſons of the judges; or *conſequential*, which tend to a diſregard of their authority. The principal inſtances of either ſort that have been uſually puniſhed by attachment, are chiefly of the following kinds: 1. Thoſe committed by *inferior judges and magiſtrates*; by acting unjuſtly or oppreſſively in their offices, or by diſobeying the king's writs iſſuing out of the ſuperior courts, by proceeding in a cauſe after it is put a ſtop to or removed by writ of prohibition, certiorari, error, ſuperſedeas, or the like. 2. Thoſe committed by *ſheriffs*, *bailiffs*, *gaolers*, and other officers of the court; by abuſing the proceſs of the law, or by acts of oppreſſion, extortion, or neglect of duty. 3. Thoſe committed by *attornies and ſolicitors*, by groſs inſtances of fraud and corruption, injuſtice to their clients, or other diſhoneſt practice. 4. Thoſe committed by *jurymen*, in making default when ſummoned, refuſing to be ſworn or to give any verdict, eating or drinking without leave of the court, and eſpecially at the coſt of either party, but not in the mere exerciſe of their judicial capacity, as by giving a falſe or erroneous verdict. 5. Thoſe committed by *witneſſes*, in making default when ſummoned, refuſing to be ſworn or examined, or prevaricating in their evidence when ſworn. 6. Thoſe committed by *parties to any proceedings* before the court; as by diſobedience to any rule or order made in the progreſs of a cauſe, by non-payment of coſts awarded by the court, or by non-obſervance of an award duly made by arbitrators after having entered into a rule for ſubmitting to ſuch award. 7. Thoſe committed *in the face of the court*, as by rude and contumelious behaviour, by obſtinacy or prevarication, by breach of the peace or other diſturbance; or *out of the court*, as by diſobeying the king's writ, or treating with diſreſpect the proceſs of the court, or by perverting ſuch proceſs to the purpoſes of malice or injuſtice, or by ſpeaking contemptuouſly of the court acting in their judicial capacity. 4 *Black.* 284.

If the contempt be committed in the face of the court, the offender may be inſtantly apprehended and impriſoned, at the diſcretion of the judges, without any farther proof or examination. But in matters that ariſe elſewhere, if the judges upon affidavit

affidavit ſee ſufficient ground to ſuſpect that a contempt hath been committed, they either make a rule on the ſuſpected party to ſhew cauſe why an attachment ſhould not iſſue againſt him; or, in very flagrant inſtances of contempt, the attachment iſſues in the firſt inſtance; as it alſo does, if no ſufficient cauſe be ſhewn to diſcharge the original rule, and thereupon the court confirms and makes it abſolute. *Id.* 286.

This proceſs of attachment is merely intended to bring the party into court; and when there, he muſt either ſtand committed, or put in bail, in order to anſwer upon oath to ſuch interrogatories as ſhall be adminiſtered to him, for the better information of the court with reſpect to the circumſtances of the contempt. If he can clear himſelf upon oath, he is diſcharged; but, if perjured, he may be proſecuted for the perjury. If he confeſſes the contempt, the court will proceed to correct him by fine, or impriſonment, or both, and ſometimes by a corporal or infamous puniſhment. *Id.*

There is alſo a *foreign attachment*; which is an attachment of the goods of foreigners within a liberty or city, at the ſuit of any within the liberty, to whom the foreigner oweth money, or the like.

Court of attachments, is a foreſt court, to be holden once in every forty days, to inquire of all offenders againſt the king's deer or covert for the ſame; who may be attached by their bodies, if found in the very act of tranſgreſſion; otherwiſe, by their goods. And in this court, the foreſters are to bring in their attachments or preſentments of veſt and veniſon; and the verderors are to receive the ſame, and to inroll them, and to certify them under their ſeals to the court of *juſtice-ſeat* or *ſwain-mote*: for this court can only inquire of, but not convict offenders. 3 *Black.* 71.

ATTAINDER, is where ſentence is pronounced againſt a perſon convicted of treaſon or felony: he is then *attinctus*, tainted, or ſtained; whereby his blood is ſo much corrupted, that by the common law his children or other kindred cannot inherit his eſtate, nor his wife claim her dower; and the ſame cannot be reſtored or ſaved but by act of parliament; and therefore in divers inſtances, there is a ſpecial proviſion by act of parliament, that ſuch or ſuch an attainder ſhall not work corruption of blood, loſs of dower, or diſheriſon of heirs.

ATTAINT is a writ that lies to inquire, whether a jury of twelve men gave a falſe verdict; that ſo the judgment following thereupon may be reverſed. In which caſe, twenty-four of the principal men of the county are to be jurors, who are to hear the ſame evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdict, but no other againſt it. And if theſe twenty-four, who are called

called the grand jury, find it a falſe verdict, then followeth this terrible judgment at the common law upon the petty jury; that the party ſhall be infamous, ſo as never to be received to be a witneſs, or a juror; ſhall forfeit his goods and chattels; and his lands and tenements ſhall be taken into the king's hands; his wife and children caſt out of doors; his houſes proſtrated; his trees rooted up; his meadows ploughed up; and his body impriſoned. And ſeeing all trials of real, perſonal, and mixed actions depend upon the oath of twelve men, prudent antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury. 1 *Inſt.* 294.

But now, by the ſtatute 23 *Hen.* 8. *c.* 3. the ſeverity of this puniſhment is moderated, if the writ of attaint be grounded upon that ſtatute, which inflicts the puniſhment of perpetual infamy, and a forfeiture of 20*l.* by each of the jurors, if the cauſe of action was above 40*l.*; if under that value, then of 5*l.* each. But nevertheleſs, the party grieved may, at his election, either bring his writ of attaint upon that ſtatute, or at the common law. *Tr. per Pais*, 222.

But this proceeding is now entirely diſuſed; and in the place of attaint, motions are uſually made for new trials when a verdict is againſt evidence. 3 *Black.* 390.

ATTORNEY is he that is appointed by another to do any thing in the *turn* or ſtead of that other. 1 *Inſt.* 51.

Attorney is either *public*, in the king's courts of record; or *private*, upon occaſion of any particular buſineſs, which is commonly made by *letter of attorney*.

An attorney in the king's courts, commonly called an attorney at law, muſt be bound apprentice for not leſs time than five years; and during the whole time of ſervice be actually employed in the proper buſineſs of an attorney. 2 *G.* 2. *c.* 23. 22 *G.* 2. *c.* 46.

No attorney or ſolicitor ſhall have more than two clerks at one time. 2 *G.* 2. *c.* 23.

And by the 25 *G.* 3. *c.* 80. every attorney ſhall take out a certificate annually of his admiſſion, inrolment, or regiſter, from the commiſſioners of the ſtamp duties, under the penalty of 50*l.*

If he ſhall willingly delay his client's ſuit, to work his own gain, the party ſhall recover coſts and treble damages againſt him, and he ſhall be diſcharged from his office. 3 *Jac. c.* 7.

If he refuſe a re-delivery of writings intruſted to his peruſal, though ſome of them concern himſelf principally, the court, upon motion, will compel him to re-deliver them, on payment of all due to him in the cauſe for which they were delivered; for, if the writings were delivered for a ſpecial purpoſe, he ſhall not detain them for another demand. *Comyn. Dig.* Attorney.

He ſhall not be intitled to ſue for the recovery of his fees, until

til after one month ſhall be expired from the time of his having delivered to his client his bill ſigned with his own hand. 2 *G.* 2. *c.* 23.

And the client, on ſubmiſſion to pay the whole ſum that on taxation ſhall appear to be due, may have the bill taxed by the proper officer. If the bill taxed be leſs by a ſixth part than the bill delivered, the attorney ſhall pay the coſts of taxation: but if it ſhall not be leſs, the court may charge the attorney or client according to their diſcretion. *Id.*

ATTORNEY GENERAL is a great officer under the king, made by letters patent. It is his place to exhibit informations, and proſecute for the crown, in matters criminal; and to file bills in the exchequer, for any thing concerning the king's inheritance or revenue.

The informations which he exhibits in matters criminal, are properly for ſuch enormous miſdemeanours as peculiarly tend to diſturb his majeſty's government, or to moleſt him in the regular diſcharge of his royal functions. For ſuch heinous offenders the law has given to the crown the power of an immediate proſecution, without waiting for any previous application to any other tribunal. 4 *Black.* 308.

In caſe of *miſapplication of charities*, the attorney general at the relation of ſome informant (who is uſually called the *relator*) files *ex-officio* an information in the court of chancery, to have the charity properly eſtabliſhed. 3 *Black.* 427.

ATTORNMENT (*turning* from one to another) is the agreement of a tenant to the grant of a ſeigniory or a rent, or of the donee in tail or tenant for life or years, to the grant of a remainder or reverſion. 1 *Inſt.* 309.

Attornment may be either by words, or writing: by words as by ſaying, "I attorn to you by force of the ſaid grant," or, "I acknowledge myſelf your tenant." By writing; which may be indorſed on the deed, or ſet down in any other writing, which is the ſafeſt way. And in both caſes, the tenant may moreover deliver to the grantee a ſmall ſum of money by way of acknowledgment, that the witneſſes may better remember it. The form of which ſaid attornment in writing may be this: "I *A. B.* do "hereby agree to attorn and become tenant to *C. D.* of *E.* of "and for the meſſuage and tenement now in my poſſeſſion, that "is to ſay, lying and being in the pariſh of *F.* and county of *G.* "and have given to the ſaid *C. D.* ſixpence in the name of at- "tornment, and in part of rent. Witneſs my hand the —— "day of —— in the year ——."

The title of attornment was anciently a large and difficult title; but now attornments are not ſo much in uſe as formerly: for new expedients are found out by fines to uſes, by bargain and ſale, by leaſe and releaſe, and by deeds indented and inrolled.

ed. And by the 4 *An. c.* 16. all grants or conveyances, by fine or otherwiſe, of any manors or rents, or of the reverſion or remainder of any meſſuages or lands, ſhall be good and effectual without any attornment of the tenants; provided that no ſuch tenant ſhall be prejudiced by payment of rent to the grantor before notice given to him by the grantee.

And by the 11 *G.* 2. *c.* 29. attornment to ſtrangers claiming title to the land ſhall be void; and the poſſeſſion of the landlord ſhall not be altered thereby: provided, that this ſhall not effect any attornment made in purſuance of a judgment at law or decree in equity, or made with conſent of the landlord, or to any mortgagee after the mortgage is become forfeited.

AUDIENCE COURT is a court of the archbiſhop of *Canterbury*, wherein at firſt were diſpatched all ſuch matters, whether of voluntary or contentious juriſdiction, as the archbiſhop thought fit to reſerve for his own *hearing*. They who prepared evidence, and other materials to lay before the archbiſhop in order to his deciſion, were called *auditors*. Afterwards this court was removed from the archbiſhop's palace, and the juriſdiction of it was exerciſed by the maſter or official of the audience, who held his court in the conſiſtory place at St. *Paul*'s. But now the three great officers of official principal of the archbiſhop, dean or judge of the peculiars, and official of the audience, are and have been for a long time paſt united in one perſon, under the general name of dean of the arches, who keeps his court in Doctors Commons hall. The archbiſhop of *York* hath in like manner his court of audience.

AUDITA QUERELA is, where a defendant againſt whom judgment is recovered, and who is therefore in danger of execution, or perhaps actually in execution, may be relieved upon good matter of diſcharge, which hath happened ſince the judgment: as if the plaintiff hath given him a releaſe; or if the defendant hath paid the debt to the plaintiff, without entering ſatisfaction on the record. In theſe and the like caſes, wherein the defendant hath good matter to plead, but hath no opportunity of pleading it, an *audita querela* lies in the nature of a bill in equity, to be relieved againſt the oppreſſion of the plaintiff. It is a writ directed to the court, ſtating that the *complaint* of the defendant hath been *heard (audita querela defendentis)*, and then ſetting out the matter of the complaint, injoins the court to call the parties before them, and, having heard their allegations and proofs, to cauſe juſtice to be done between them. It alſo lies for *bail*, when judgment is obtained againſt them by *ſcire facias* to anſwer the debt of their principal, and it happens afterwards that the original judgment againſt their principal is reverſed: for here the bail, after judgment had againſt them, have no opportunity to plead this ſpecial matter, and therefore they ſhall have redreſs

redreſs by *audita querela*; which is a writ of a moſt remedial nature, and ſeems to have been invented, leſt in any caſe there ſhould be an oppreſſive defect of juſtice, where the party hath a good defence, but by the ordinary forms of law had no opportunity to make it. But the indulgence now ſhewn by the courts in granting a ſummary relief upon motion in caſes of ſuch evident oppreſſion, hath almoſt rendered uſeleſs the writ of *audita querela*, and driven it out of practice. 3 *Black.* 405.

AUDITOR is an officer of the king, or of ſome other great perſon, who examines the accounts of all inferior officers, and makes up a general book, which ſhews the difference between their receipts and charge, and their ſeveral allowances, commonly called *allocations*; as the *auditors of the exchequer* take the accounts of the king's receivers, ſheriffs, eſcheators, collectors, and cuſtomers, and audit and perfect them. *Auditors of the impreſt* take the account of the mint, and of money diſpatched to any one for his majeſty's ſervice. *Auditor of the receipts* is an officer of the exchequer that files the tellers bills; and, having entered them, delivers to the commiſſioners a certificate of the money received the week before: he makes debentures to the tellers, before they pay any money: he alſo keeps the black book of receipts, and ſees every teller's money locked up and ſecured. 4 *Inſt.* 106.

AVENAGE (from the Latin *avena*, oats) was a certain quantity of oats, paid by a tenant to his lord as a rent, or in lieu of ſome other duties. So *avenor* is an officer belonging to the king's ſtables, that provides oats for his horſes.

AVER, AVERIA, cattle. *Spelman* derives the word from the French *ouvre*, work; as principally denoting *working* cattle. Some deduce it from *avoir*, to have or poſſeſs, in a larger ſignification, extending to all cattle in general.—*Avera*, in Domeſday, ſignifies a day's work of a ploughman, valued at 8*d.* (4 *Inſt.* 269.)—*Aver land* ſeems to have been ſuch lands as the tenants did plough and manure *cum averiis ſuis*, for the proper uſe of a monaſtery, or of the lord of the foil.—*Aver corn.* was a rent reſerved in corn; and, according to *Somner*, it ſignifies corn drawn to the lord's granary by the *averia* or working cattle of the tenant. Or perhaps it may denote a particular ſpecies of corn; for, in the northern parts of *England*, the word *haver* is commonly uſed for *oats*, in which ſenſe it may ſignify corn for the lord's horſes.—*Aver-penny* was money paid to be excuſed from ſuch ſervice. So alſo *aver-ſilver*.

AVERAGE is commonly uſed for a contribution that merchants and others make towards their loſſes, who have their goods caſt into the ſea for the ſafeguard of the ſhip, or of the other goods and lives of thoſe perſons that are in the ſhip during a tempeſt. In which caſe it is lawful for the maſter (on conſultation

tion with the mariners) to throw over-board goods, wares, guns, or whatſoever elſe is on board, for the preſervation of the ſhip; and it ſhall be made good by average. But if the maſter takes in more goods than he ought, without leave of the owners and freighters, and a ſtorm ariſes at ſea, and part of the freighters goods are thrown overboard, the remaining goods are not ſubject to average; but the maſter ſhall make good the loſs out of his own eſtate: and if the ſhip's tackle be loſt by ſtorm, the ſame is not within the average. If goods are caſt overboard before *half* the voyage is performed, they are to be eſtimated at the price they coſt: but if they be caſt out after, then at the price as *the* reſt are ſold at the port of arrival. *Leg. Oleron.*

AVERDUPOIS (Fr. *avoir-du-pois*, to have full weight) is a weight of 16 ounces to the pound, whereas the ſtandard weight is but 12 ounces. This averdupois weight is allowed by cuſtom, for all thoſe ſorts of goods wherein there is a refuſe or waſte, by way of allowance for the loſs occaſioned thereby.

AVERMENT, *verificatio*, is to avouch or verify the matter in hand. And it is twofold; *general* and *particular*. A *general* averment, which is the concluſion of every plea to the writ, or in bar of replications and other pleadings, containing matter affirmative, ought to be averred "and this he is ready to verify." *Particular* averments are, as when the life of tenant for life, or tenant in tail, are averred; and there, though this word *verify* be not uſed, but the matter avouched and affirmed, it is upon the matter an averment. 1 *Inſt.* 362.

All pleas in the affirmative ought to be averred; but pleas in the negative ought not to be averred, becauſe a negative cannot be proved. 1 *Inſt.* 303.

Special pleas always advance or affirm ſome new fact not mentioned in the declaration, and then they muſt be averred to be true. But this is not neceſſary in pleas of the general iſſue; for thoſe always containing a total denial of the facts before advanced by the other party, puts him directly upon the proof of them. 3 *Black.* 309.

Where one thing is to be the conſideration of the other, though there be mutual promiſes, performance muſt be averred. As if the agreement be, that the one party ſhall pay ſo much money, on the other transferring ſo much ſtock; if either party would ſue upon this agreement, the one for not paying, or the other for not transferring, the one muſt aver a transfer or a tender, and the other a payment or tender. 1 *Salk.* 112. But the want of this may be helped by a verdict; but not by a judgment by default. *Bur. Manſf.* 900.

In an action of debt by an adminiſtrator, the not averring that the deceaſed died inteſtate is cured by pleading over, though not by verdict. *L. Raym.* 635.

The

The truth of the fact may, in ſome caſes, be averred againſt the fiction of law: as where the true time of ſuing out a *latitat* is material, it may be ſhewn notwithſtanding the teſte. *Bur. Manſf.* 966.

So, the time of ſigning a judgment may be ſhewed, in the caſe of *purchaſers*; becauſe they are bound only from the ſigning. *Id.* 967.

Delivery of a writ or warrant need not be averred, but the contrary muſt come on the other ſide. *L. Raym.* 310.

Any matter out of a deed that alters the caſe cannot be averred. 1 *Salk.* 197.

Nor is any averment to be received againſt the expreſs words of the deed or will. *Id.* 227.

But in debt upon bond for the payment of a ſum of money, an averment that the bond was made upon a corrupt agreement not appearing in the bond itſelf, is admiſſible and good in pleading. 2 *Wilſon*, 347.

By ſtatute 4 *An. c.* 16. no exception or advantage ſhall be taken upon a demurrer, for want of averment, except the ſame be ſpecially ſet down for cauſe of demurrer.

AUGMENTATION, the name of a court erected by king *Hen.* 8. for determining ſuits and controverſies relating to monaſteries and abbey lands. The intent of which court was, that the king might be juſtly dealt with touching the profits of ſuch religious houſes as were given to him by act of parliament. It took its name from the *augmentation* of the revenues of the crown, by the ſuppreſſion of religious houſes. And the office of augmentation, which hath many curious records, remains to this day, though the court hath long ſince been diſſolved.

AUGUSTINE CANONS were a religious ſociety that followed the rule of St. *Auſtin*, and came into *England* in the reign of king *Henry* the firſt. They wore a long black caſſock, with a white rochet over it, and over that a black cloak and hood; from whence they were called *Black canons regular of St. Auſtin*. Of theſe, before the diſſolution, there were about 175 houſes in *England* and *Wales*.

AULA REGIS was a court eſtabliſhed by *William* the Conqueror in his own hall. It was compoſed of the king's great officers of ſtate reſident in his palace, who uſually attended on his perſon, and followed him in all his progreſſes and expeditions. Which being found inconvenient and burthenſome, it was enacted by the great charter, *c.* 11. that common pleas ſhall no longer follow the king's court, but ſhall be holden in ſome certain place, which certain place was eſtabliſhed in *Weſtminſter-hall*, the place where the *aula regis* originally ſat when the king reſided in that city; and there it hath ever ſince

continued

continued. 3 *Black.* 37. *Aula eccleſiæ* was the nave or body of the church, where the temporal courts were frequently holden of ancient time.

AULNEGER (from *ulna*, an ell in length) was an ancient officer appointed by the king, with a ſalary, whoſe buſineſs it was to meaſure all cloth made for ſale, that the king might not be defrauded of his cuſtoms and duties. This office was aboliſhed by the ſtatute 11 & 12 *W. c.* 20.

AUNCEL WEIGHT (quaſi *hand-ſale* weight, or from *anſa*, the handle of a balance) was an ancient manner of weighing, by hanging of ſcales or hooks at each end of a beam or ſtaff, which by lifting up in the middle with one's finger or hand, diſcovered the equality or difference between the weight at one end, and the thing weighed at the other. This weighing being ſubject to great deceit, was prohibited by ſeveral ſtatutes, and the even balance enjoined in its ſtead. But notwithſtanding, it is ſtill uſed in ſome parts of *England*, and what we now call the *ſtilliards* (a ſort of hand weight among butchers), being a ſmall beam with a weight at one end, which ſhews the pounds by certain notches, ſeems to be near the ſame with the *auncel weight*.

AVOIDANCE of an eccleſiaſtical benefice, as oppoſed to *plenarty*, is, where there is a want of a lawful incumbent. And this happens ſeveral ways:

1. The moſt uſual and known means, by which any ſpiritual promotion doth become void is, by the *act of God*, namely, by the *death* of the incumbent thereof. Of this the patron is obliged to take notice at his peril in order to prevent a lapſe, and not to expect an intimation from the ordinary. *Watſ. c.* 1.

2. By *reſignation*, which is the *act of the incumbent*. And this being neceſſary made into the hands of the ordinary, and not valid but as admitted by him; the voidance conſequent upon it is to be notified by the ordinary to the patron. *Gibſ.* 792.

3. By *ceſſion*, or the acceptance of a benefice incompatible, which alſo is the *act of the incumbent*. In which caſe, the benefice, if of 8l. a year or upwards in the king's books, is void by act of parliament; and no notice is needful. *Watſ. c.* 2.

4. By *deprivation*, which is the *act of the ordinary*: which voidance being created by ſentence in the eccleſiaſtical court, muſt be notified to the patron. *Gibſ.* 792.

5. By *act of the law*: As, in caſe of ſimony; not ſubſcribing the articles or declaration; or not reading the articles or the common prayer: all which being voidances by act of parliament, are to be underſtood (with regard to the times of commencement of ſuch voidance, and the notice of them) according to the directions of the reſpective acts. *Id.*

ADVOWRY

AVOWRY is, where one takes a diſtreſs, and the perſon diſtrained ſues a replevin, then he that took the diſtreſs muſt *avow* and juſtify in his plea for what cauſe he took it, if he took it in his own right; and this is called an *avowry*: if he took it in the right of another, then, when he hath ſhewed the cauſe, he muſt make *conuſance* of the taking, as bailiff or ſervant to him, in whoſe right he took it. *T. L.*

AURUM REGINÆ, the queen's gold; an ancient perquiſite belonging to every queen conſort during her marriage with the king, and due from every perſon who hath made a voluntary offering or fine to the king, amounting to ten marks or upwards, for and in conſideration of any privilege, grant, licence, pardon, or other matter of royal favour, conferred upon him by the king; and it is due in the proportion of one-tenth part more, over and above the intire ſum paid to the king. As if 100 marks in ſilver be given to the king to have a fair, market, park, chaſe, or free warren, there, the queen is entitled to ten marks in ſilver, or (what was formerly an equivalent denomination) to one mark in gold, by the name of queen-gold, or *aurum reginæ*. 1 *Black.* 219.

AUSTURCUS, a goſhawk; anciently reſerved in many manors as a rent to the lord.

AUTER DROIT, another's right: where perſons ſue or are ſued, or claim not in their own right, but in the right of another; as executors and adminiſtrators.

AUTERFOITS *acquit*, a former acquittal, is a ſpecial plea in bar of an indictment, when a perſon hath been formerly indicted of the ſame offence, and acquitted; for no man ſhall be brought into jeopardy of his life more than once for the ſame offence. Of the like ſort is the plea of *auterfoits convict*, or a former conviction for the ſame identical crime, though no judgment was given thereupon, as being ſuſpended by the benefit of clergy or other cauſe. *Auterfoits attaint*, a former attainder, either for the ſame or any other felony, is another plea in bar; for the offender having by the attainder forfeited all that he had, it would be abſurd to endeavour to attaint him a ſecond time. 4 *Black.* 335.

AUTER VIE. See PUR AUTER VIE.

AWARD. See ARBITRATION.

AYLE (of the French *aieul*, *avus*, a grandfather) is a writ which lieth where a man's grandfather was ſeized of lands and tenements in fee ſimple the day that he died, and a ſtranger abateth and entereth upon the ſame, and diſpoſſeſſes the heir of his inheritance. 1 *Inſt.* 160.

B A I

BACHELOR, *baccalaureus*, from the French *bachelier*, a learner. In the univerſities, there are bachelors of arts, and the like, being an inferior degree, before they attain to higher dignity. And thoſe that are called bachelors of the company in *London*, are ſuch of each company as are ſpringing towards the eſtate of thoſe that are employed in council, but as yet are inferiors; for every of the 12 companies conſiſts of a *maſter*, two *wardens*, the *livery* and the *bachelors*. There are alſo *knights bachelors*, who are the loweſt order of knighthood, and are commonly termed knights ſingly, whereas others have an honorary addition, as knights of the bath, knights of the garter, and the like.

BACKBEREND is, where the thief is apprehended with the things ſtolen in his poſſeſſion, *bearing* them in a fardel at his *back*; which was alſo called being taken with the *mainour*, as having the goods in his *hand*. 2 *Inſt.* 188. It was one of the four circumſtances wherein a foreſter might arreſt the body of a treſpaſſer in the foreſt; *viz. dog-draw*, that is, drawing after a deer that he has hurt; *ſtable-ſtand*, that is, at his ſtanding, with a knife, gun, bow, or greyhound, ready to ſhoot or courſe; *back-berend*, that is, carrying away upon his back the deer which he had killed; *bloody-hand*, that is, when he hath ſhot or courſed, and is imbrued with blood. 4 *Inſt.* 294.

BACKING a warrant of a juſtice of the peace is, where a warrant having been granted in one juriſdiction, is required to be executed in another; as where a felony hath been committed in one county, and the offender reſides in another county: in which caſe, on proof of the hand writing of the juſtice who granted the warrant, a juſtice in ſuch other county indorſes or writes his name on the back of it, thereby giving authority to execute the warrant in ſuch other county.

BAIL (from the French *bailler*, to deliver) ſignifies the freeing or ſetting at liberty a perſon arreſted or impriſoned upon any action, or ſurety taken for his appearance, at a day and place certain.

Bail is either *common* or *ſpecial*. *Common* bail is a matter of courſe, being nothing but a mere form upon appearance: for after perſonal ſervice of the writ upon the defendant, and notice in writing delivered to him to appear by his attorney in court to defend the action, if the defendant thinks proper to appear upon this notice, his appearance is recorded, and he puts in ſureties for his future attendance, which ſureties are called *common bail*, being only

only two imaginary perſons, as *John Doe* and *Richard Roe*. Or, if the defendant doth not appear on the return of the writ, or within four (or in ſome caſes eight) days after, the plaintiff may enter an appearance for him, as if he had really appeared; and may file common bail in the defendant's name, and proceed thereupon as if the defendant had done it himſelf.—3 *Black.* 287.

But if the plaintiff will make affidavit, or aſſert upon oath, that the cauſe of action amounts to 10l. or upwards, then in order to arreſt the defendant, and make him put in ſubſtantial ſureties for his appearance, called *ſpecial bail*, it is required that the true cauſe of action be expreſſed in the body of the writ or proceſs: and the preciſe ſum ſworn to is marked upon the back of the writ, and the ſheriff or his bailiff is then obliged actually to arreſt or take into cuſtody the body of the defendant, and to certify the ſame with the return of the writ. 3 *Black.* 287, 8.

And in this caſe, the intention of the arreſt being only to compel an appearance in court at the return of the writ, that purpoſe is equally anſwered, whether the ſheriff detains his perſon, or takes ſufficient ſecurity for his appearance: the manner whereof is, that the defendant enters into a bond or obligation to the ſheriff, with one or more ſureties, not fictitious perſons (as in the caſe of common bail) but real and ſubſtantial bondſmen, to inſure the defendant's appearance at the return of the writ; which obligation is called the *bail bond*. The ſheriff, if he pleaſes, may let the defendant go without any ſureties, but then it is at his own peril, for, after once taking him, the ſheriff is bound to keep him ſafely ſo as to be forthcoming in court, otherwiſe an action lies againſt him for an eſcape. *Id.* 290.

The ſheriff ſhall take bail for no other ſum than ſuch as is ſworn to by the plaintiff, and indorſed on the back of the writ. *Id.*

The affidavit muſt be poſitive, and not that the defendant was indebted to the plaintiff in ſuch a ſum, as appears by agreement bearing date ſuch a day, or the like: for the act of parliament, 12 *G. c.* 29. requires poſitive oath of the debt: whereas ſuch affidavits cannot be ſaid to be poſitive oaths of it, being only expreſſed in words of reference to ſomewhat elſe, and not in terms of abſolute aſſertion. *Bur. Manſf.* 1447.

But in the caſe of an aſſignee under a commiſſion of bankruptcy, where the aſſignee ſwore that the defendant was indebted to him in ſuch a ſum, *as appears by the bankrupt's books, and as the plaintiff verily believes*, this was held to be ſufficient, being as certain as the nature of the thing will admit of: ſo, in like manner, when the plaintiff is executor or adminiſtrator. *Id.* 2283.

And where the original demand doth not require ſpecial bail,

the addition of coſts will not alter the caſe; *Str.* 975. that is, according to the practice of the court of king's bench.

Thus in the caſe of *Palmer* and *Needham*, *E.* 3 *G.* 3. *B. R.* the original demand was only 3*l.* 13*s.* 6*d.* The plaintiff brought an action for it, and obtained judgment, with coſts. The debt and coſts amounted to above 10*l.* The plaintiff then brought an action upon this judgment, and held the defendant to ſpecial bail. But the court ordered the ſpecial bail to be diſcharged, and common bail to be accepted; the intention of the law being only, that ſpecial bail ſhould be required where the original debt amounted to 10*l.* or upwards. *Bur. Manſf.* 1389.

And in the caſe of *Belither* and *Gibbs*, *T.* 7 *G.* 3. *B. R.* where the original debt was 3*l.* 9*s.* 6*d.* and by the addition of coſts it was ſwelled up to 14*l.* the court accepted of common bail, and this was ſaid to be the conſtant practice in the court of king's bench, but that the court of common pleas required ſpecial bail. But in order that there ſhould be a uniformity between the two courts, lord *Mansfield* ſaid, that he had laid this matter before all the judges, and that they all thought the practice of the king's bench to be the more reaſonable, and more agreeable to the act of parliament; and that he believed the court of common pleas would alter their practice. *Id.* 2118.

Notwithſtanding which determination, afterwards in the caſe of *Nightingale* and *Nightingdale*, *E.* 19 *G.* 3. in the common pleas on a judgment of nonſuit, the coſts recovered by the defendant amounting to more than 10*l.* he brought an action on the judgment, and held the plaintiff in the original action to bail. On motion to diſcharge the *now* defendant on a common appearance, the caſes of *Palmer* and *Needham*, and *Belither* and *Gibbs*, were cited, and relied on; particularly the latter, and the conference which lord *Mansfield* is reported to have ſaid he had had with all the judges. And it was agreed, that if the defendant was not to be held to bail where part of the 10*l.* aroſe from coſts, *a fortiori* he ought not, where (as in the preſent caſe) the whole demand aroſe from coſts alone.—But by the whole court, no inſtance has been ſhewn where *this* court has refuſed to hold to ſpecial bail, where the whole or part of the demand (upon which the action upon judgment is brought) ariſes from the recovery of coſts; but a multitude of caſes the other way: and we ſee no reaſon to depart from the practice of the court.—Coſts recovered for a groundleſs proſecution are as fair a debt as for any other conſideration. And, by *Gould*, *J.*, the reporter in *Belither* and *Gibbs* muſt have miſtaken lord *Mansfield*, for I was then a judge in this court, and remember no ſuch conference. *Black. Rep.* 1274.

Upon the return of the writ, or within four days after, the defendant muſt appear according as the writ requires. This appearance

pearance is effected by putting in and juſtifying bail to the action, which is commonly called putting in bail *above*. This muſt be done either in open court, or before one of the judges thereof; or elſe, in the country, before a commiſſioner appointed for that purpoſe (not being an attorney or ſolicitor) by the ſtatute of 4 *W. c.* 4. which muſt be tranſmitted to the court. Theſe bail muſt enter into recognizance in court, or before the judge or commiſſioner, whereby they jointly and ſeverally undertake, that if the defendant be condemned in the action, he ſhall pay the coſts and condemnation, or render himſelf a priſoner, or that they will pay it for him: which recognizance is tranſmitted to the court, in a ſlip of parchment intitled a *bail-piece*. And, if required, the bail muſt, before the court, or commiſſioner as aforeſaid, ſwear themſelves houſekeepers, and each of them to be worth double the ſum for which they are bail, after payment of all their debts. 3 *Black.* 290, 1.

Theſe bail muſt be *two* in number: for by the court of C. B. in *Allen* and *Keyt*, *M.* 17 *G.* 3. notice given to juſtify *three* bail is irregular. You may as well give notice of threeſcore, and ſend the plaintiff to inquire after them all over *London*. *Blackſtone's Rep.* 1122.

And to prevent oppreſſions by ſheriffs' officers, the courts will not accept of *them* as bail. 2 *Salk.* 890.

Form of a Bail-Bond to the Sheriff.

'KNOW all men by theſe preſents, that we *A. B.* of ——, 'in the county of ——, gentleman; *C. D.* of ——, in the 'ſaid county, yeoman; and *E. F.* of ——, in the ſaid coun-'ty, carpenter; are held and firmly bound to *G. H.* eſquire, 'ſheriff of the county of ——, in —— pounds (the ſum 'ſworn to) of lawful money of Great Britain, to be paid to the 'ſaid ſheriff, or to his certain attorney, his executors, admi-'niſtrators, or aſſigns: For which payment well and truly to be 'made, we bind ourſelves and each of us by himſelf, for the 'whole, our and every of our heirs, executors, and adminiſtra-'tors, firmly by theſe preſents, ſealed with our ſeals. Dated 'the —— day of ——, in the —— year of the reign of 'our ſovereign lord George the third, by the grace of God, 'king of Great Britain, France, and Ireland, defender of the 'faith, and ſo forth, and in the year of our Lord ——

'The condition of this obligation is ſuch, that if the above-'bound *E. F.* do appear before [* *the juſtices of*] our ſovereign 'lord the king at Weſtminſter, on the morrow of the Holy 'Trinity, to anſwer *J. K.* gentleman, of a plea of debt of '—— pounds (the ſum expreſſed in the body of the writ);

* If in the king's bench, theſe words muſt be omitted.

'then this obligation ſhall be void, or elſe ſhall be and remain 'in full force and virtue.'

Recognizance of Bail before a Commiſſioner.

'YOU *A. B.* do acknowledge to owe unto the plaintiff —— 'pounds, and you *C. D.* and *E. F.* do ſeverally acknowledge 'to owe unto the ſame perſon the ſum of —— pounds a-piece, 'to be levied upon your ſeveral goods and chattels, lands, and 'tenements; upon condition, that if the defendant be condemn-'ed in this action, he ſhall pay the condemnation, or render 'himſelf a priſoner in the Fleet for the ſame; and if he fail 'ſo to do, you *C. D.* and *E. F.* do undertake to do it for 'him.'

The Bail-Piece.

'Trinity Term, 16 Geo. 3.

'Berks, } ON a *teſtatum capias* againſt *A. B.* late of ——, '(to wit.) } in the county of ——, gentleman, returnable on 'the morrow of the Holy Trinity, at the ſuit of *J. K.* of a plea 'of debt of —— pounds:

'The bail are *C. D.* of ——, in the county of ——, yeo-'man, and *E. F.* of ——, in the ſaid county, carpenter.

'*R. P.* attorney } 'for the defendant. }

'The party himſelf in 400l.

'Each of the bail in 200l.

'Taken and acknowledged the —— day of ——, in the year 'of our Lord ———, *de bene eſſe*, before me,

'*R. G.* one of the commiſſioners.'

3 *Black.* Append.

The above may give a general idea of the nature of bail; but as the forms differ not only in the different courts, but according to the ſpecies or cauſe of action in the ſame court, the books of practice muſt be conſulted.

In criminal caſes.—To refuſe or delay to bail any perſon bailable, is an offence againſt the liberty of the ſubject, in any magiſtrate, by the common law, as well as by the ſtatute 3 *Ed.* 1. *c.* 15. and the *habeas corpus* act, 31 *C.* 2. *c.* 2. And leſt the intention of the law ſhould be fruſtrated by requiring bail to a greater amount than the nature of the caſe demands, it is declared by ſtatute 1 *W. ſt.* 2. *c.* 1. that exceſſive bail ought not to be required. On the other hand, if the magiſtrate takes inſufficient bail, he is liable to be fined if the criminal doth not appear. 4 *Black.* 297.

Bail may be taken either in court, or in ſome particular caſes by

by the ſheriff, coroner, or other magiſtrate, but moſt uſually by juſtices of the peace.

By the ancient common law, all felonies were bailable, till murder was excepted by ſtatute; ſo that perſons might be admitted to bail before conviction almoſt in every caſe. But the ſtatute 3 *Ed.* 1. *c.* 15. aforeſaid, takes away the power of bailing in treaſon, and in divers inſtances of felony. The ſtatutes 23 *Hen.* 6. *c.* 9. and 1 *&* 2 *P. & M. c.* 13. gave farther regulations in this matter. And, upon the whole, we may collect, that no juſtices of the peace can bail, 1. Upon an accuſation of treaſon. Nor, 2. Of murder. Nor, 3. In caſe of manſlaughter, if the priſoner be clearly the ſlayer, and not barely ſuſpected to be ſo; or if an indictment be found againſt him. Nor, 4. Such as being committed for felony have broken priſon. 5. Perſons outlawed. 6. Such as have abjured the realm. 7. Approvers; namely, ſuch as having confeſſed the felony undertake to prove another guilty of the ſame crime; and perſons by them accuſed. 8. Perſons taken with the mainour, or in the fact of felony. 9. Perſons charged with houſe-burning. 10. Perſons taken by writ of *excommunicato capiendo.*—Others are of a dubious nature, being in the diſcretion of the juſtices whether bailable or not: As, 1. Thieves openly defamed and known. 2. Perſons charged with other felonies, or manifeſt enormous offences, not being of good fame. 3. Acceſſaries to felony, that labour under the ſame want of reputation.—A third claſs are thoſe that are clearly bailable, upon offering ſufficient ſurety; viz. 1. Perſons of good fame, charged with a bare ſuſpicion of manſlaughter or other inferior homicide. 2. Perſons charged with petit larceny or any felony not before ſpecified. 3. Acceſſaries to felony not being of evil fame, nor under ſtrong preſumptions of guilt.

BAILMENT is properly a delivery of goods in truſt, upon a contract expreſs or implied, that the truſt ſhall be faithfully executed on the part of the bailee. As if cloth be delivered to a taylor to make a ſuit of cloaths, he has it upon an implied contract to render it again when made, and that in a workmanlike manner. If goods be delivered to a common carrier, he is under a contract to carry the goods to the place appointed. If a horſe be delivered to an innkeeper or his ſervants, he is bound to keep him ſafely, and reſtore him when his gueſt leaves the houſe. So if a friend delivers any thing to his friend to keep for him, the receiver is bound to reſtore it on demand: and it was formerly held, that in the mean time he was anſwerable for any damage or loſs it might ſuſtain, whether by accident or otherwiſe, unleſs he expreſsly undertook to keep it only with the ſame care as his own goods, and then he ſhall not be anſwerable for theft or other accident; but now it is ſettled, that he ſhall not be anſwerable

anſwerable for any loſs, except what happens by groſs neglect. 2 *Black.* 452.

But the caſe of a carrier, innkeeper, or the like, is different; for they have their hire, and thereby impliedly undertake the ſafe delivering of the goods intruſted with them; and therefore they ſhall anſwer the value, if the goods are ſtolen from them. *Wood. b.* 4. *c.* 4.

BAILIFF is an old *Saxon* word, and ſignifies a ſafe keeper or protector; as *bail* is ſafe keeping or protection. And thereupon we ſay, when a man upon ſurety is delivered out of priſon, he is delivered into bail, that is, into their ſafe keeping or protection from priſon; and the ſheriff, that hath the cuſtody of the county, is called *ballivus*, and the county *balliva ſua.* 1 *Inſt.* 61.

But this word is moſt commonly applied to the ſheriff's officers, who are either *bailiffs of hundreds*, or *ſpecial bailiffs*. *Bailiffs of hundreds* are officers appointed by the ſheriff over thoſe reſpective diſtricts; to collect fines therein, to ſummon juries, to attend the judges and juſtices at the aſſizes and quarter ſeſſions, and alſo to execute writs and proceſs in the ſeveral hundreds. *Special bailiffs* are uſually joined with the others upon ſpecial occaſions; as for arreſting perſons in caſes of difficulty or danger, or to execute ſome particular writ, and for that time only. 1 *Black.* 345.

Bound bailiffs are alſo ſheriffs' officers, and are uſually bound in a bond to the ſheriff for the due execution of their office, and thence are called *bound-bailiffs*, which the common people have corrupted into a much more homely appellation. 1 *Black.* 345.

BAILIWICK, in the language of the king's writs, ſignifies the ſame as *county:* as where the ſheriff is commanded not to omit, by reaſon of any liberty within his bailiwick, to enter and execute ſuch a writ: ſometimes the word *bailiwick* is uſed to denote ſuch liberty or franchiſe itſelf, which is generally exempted from the ſheriff's juriſdiction, where the lord of the franchiſe exerciſes like authority as the ſheriff within his county.

BAN is a Saxon word, and ſignifies proclamation or public notice. It is moſt eſpecially uſed in the publication of intended marriages; which muſt be done on three ſeveral Sundays previous to the marriage, to the end, that if any can ſhew juſt cauſe againſt ſuch marriage, they may have opportunity to make their objections. But the ſpiritual judge by a licence may diſpenſe with the formality of publication. But if any perſons ſhall be married without either publication of bans or licence, the marriage ſhall be void, and the miniſter officiating ſhall be tranſported. 26 *G.* 2. *c.* 33.

BANISHMENT. By the common law, every *Engliſhman* may claim a right to abide in his own country ſo long as he pleaſes, and

and not to be baniſhed or driven from it but by ſentence of the law. The king, by his royal prerogative, may iſſue out his writ *ne exeat regnum*, and prohibit any of his ſubjects from going into foreign parts without licence; but no power leſs than the authority of parliament can ſend any ſubject out of the land againſt his will, no not even a criminal; for wherever baniſhment or tranſportation is inflicted, it is either by the choice of the criminal himſelf, to eſcape a capital puniſhment, or by the expreſs direction of an act of parliament. By the great charter, *c.* 29. it is declared, that no freeman ſhall be baniſhed, unleſs by the judgment of his peers, or by the law of the land. And by the *habeas corpus* act, 31 *C.* 2. *c.* 2., no ſubject of this realm, who is an inhabitant of *England*, *Wales*, or *Berwick*, ſhall be ſent priſoner into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, or place beyond the ſeas, where they cannot have the benefit and protection of the common law, but all ſuch impriſoment ſhall be illegal. And the law in this reſpect is ſo liberally conſtrued for the benefit of the ſubject, that, though *within* the realm, the king may command the attendance and ſervice of all his liegemen, yet he cannot ſend any man out of the realm, even upon the public ſervice, except ſailors and ſoldiers, the nature of whoſe employment neceſſarily implies an exception: he cannot even conſtitute a man lord deputy, or lieutenant of *Ireland* againſt his will, nor make him a foreign ambaſſador; for this might, in reality, be no more than an honourable exile. 1 *Black.* 137.

BANK (*bancus*, Lat. *banque* Fr.), is ſometimes uſed to denote the *bench* or ſeat of judgment, as *bank le roy*, the king's bench; *bank le common pleas*, the bench of common pleas, or the common bench; called alſo in Latin *bancus regis*, and *bancus communium placitorum*.—There is another ſort of *bank*, which ſignifies a place, where a great ſum of money is let out to uſe, returned by exchange, or otherwiſe diſpoſed of to profit: and the *bank of England*, emphatically ſo called, eſtabliſhed by act of parliament, under the management of a governor and directors, with funds for maintenance thereof, appropriated to ſuch perſons as are intitled to a ſhare of the ſubſcription money. There are alſo *private bankers*, in whoſe hands money is lodged and depoſited for ſafety; to be drawn out again as the owners ſhall call for it.

BANKS DESTROYING. By the 9 *G.* *c.* 22. if any perſon ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed; or break down or cut down the bank of any river, or any ſea bank, whereby any lands ſhall be overflowed or damaged; he ſhall be guilty of felony without benefit of clergy.

BANKRUPT: by ſeveral acts of parliament, every perſon uſing the trade of merchandize, by way of bargaining, exchange, bartery, cheviſance, or otherwiſe, in groſs, or by retail, or ſeeking

ing his trade of living by buying and ſelling, or that ſhall uſe the trade or profeſſion of a ſcrivener, receiving other men's monies or eſtates into his truſt or cuſtody, who ſhall (1) depart the realm; or (2) begin to keep his houſe, or otherwiſe to abſent himſelf; or (3) take ſanctuary; or (4) ſuffer himſelf willingly to be arreſted for any debt or other thing not grown or due for money delivered, wares ſold, or any other juſt or lawful cauſe or good conſideration or purpoſes; or (5) ſhall ſuffer himſelf to be outlawed; or (6) yield himſelf to priſon; or (7) willingly or fraudulently ſhall procure himſelf to be arreſted, or his goods to be attached or ſequeſtered; or (8) depart from his dwelling houſe; or (9) make any fraudulent grant or conveyance of his lands or goods, to the intent or whereby his creditors ſhall and may be defeated or delayed for the recovery of their juſt debts; or (10) ſhall obtain any protection, other than ſuch perſon as ſhall be lawfully protected by privilege of parliament; or (11) ſhall prefer to any court any petition or bill againſt any of his creditors, thereby endeavouring to inforce them to accept leſs than their juſt debts, or to procure time or longer days of payment than was given at the time of their original contract; or (12) being arreſted for debt, ſhall lie in priſon two months; or (13) being arreſted for 100l. or more, ſhall eſcape out of priſon—ſhall be adjudged a bankrupt (and in the ſaid caſes of arreſt, or lying in priſon, from the time of his firſt arreſt).

But no commiſſion of bankruptcy ſhall be iſſued on the petition of one or more creditors, unleſs the ſingle debt of ſuch creditor, or of two or more being partners, amount to 100l.; or of two ſuch creditors petitioning amount to 150l.; or of three or more to 200l.

On ſuch petition the Lord Chancellor may by commiſſion under the great ſeal appoint ſuch perſons as he thinks fit to be commiſſioners; which commiſſioners ſhall cauſe notice to be given in the Gazette of the commiſſion being iſſued, and notice thereof alſo to be given to the bankrupt.

In which notice they ſhall appoint a time and place of meeting of the commiſſioners; which ſhall be at three ſeveral times within forty-two days, the laſt of which, ſhall be on the forty-ſecond-day: within which time the bankrupt ſhall ſurrender himſelf and diſcover his effects.—But the Lord Chancellor, if he ſee cauſe, may enlarge the time of ſurrender from the end of the ſaid forty-two days for any further time not exceeding fifty days.

At the ſaid firſt meeting, the creditors ſhall be admitted before the commiſſioners to prove their debts; and the major part in value of the creditors (each of whoſe debt amounts to 10l. or upwards) ſhall chooſe aſſignees of the bankrupt's eſtate and effects.

And

And the bankrupt ſhall deliver to the aſſignees, upon oath, an account of his effects; and for that purpoſe they ſhall have liberty to inſpect his books and papers: and if he ſhall refuſe to anſwer, or not anſwer fully all lawful queſtions of the commiſſioners, they may by their warrant commit him to priſon till he ſhall ſubmit to them and full anſwer make.

And in caſe he ſhall not ſurrender within the time limited, and alſo ſubmit to be examined, and in all things conform and fully diſcover all his eſtate, and how diſpoſed of, except what hath been *bona fide* diſpoſed of in the way of his trade and dealing, or in the ordinary expence of his family, and alſo deliver up all his effects (except the neceſſary wearing apparel of himſelf and wife and children); he ſhall be guilty of felony without benefit of clergy.

And the commiſſioners ſhall have power by ſale to diſpoſe of all his lands, as well copy or cuſtomary hold as freehold; and all his goods, chattles, wares, merchandize, and other perſonal effects: and alſo his eſtate tail which he might cut off by common recovery. And they may break open doors, trunks, and cheſts, where any of the goods are reputed to be. And they may ſtate accounts between the bankrupt and his debtors or creditors, and the balance only ſhall be paid on either ſide. And, with conſent of the major part in value of the creditors, they may ſubmit diſputes to arbitration, and compound for debts owing unto him.

A landlord may diſtrain for his rent upon the bankrupt's goods, either before or after the aſſignment; but if he neglects to do it, and ſuffers them to be removed, he can only come in upon an average with the reſt of the creditors. But if the goods remain on the premiſes, he may diſtrain them, even after ſale by the aſſignees. And he is not reſtricted to one year only as in the caſe of executions, but may diſtrain for his whole arrear. (1 *Atk.* 102.)

The aſſignees ſhall, after four months, and within twelve months after iſſuing the commiſſion, cauſe twenty-one days notice to be given in the Gazette of a dividend to be made. And in eighteen months they ſhall in like manner make a ſecond dividend.

And the bankrupt, if he has conformed in due manner, ſhall be allowed 5l. *per cent.* if his eſtate will pay 10s. in the pound; ſo as the ſaid 5*l. per cent.* amount not to above 200l. And if his eſtate will pay 12s. 6d. in the pound, he ſhall be allowed 7l. 10s. *per cent.* ſo as it amount not to above 250l. And if his eſtate will pay 15s. in the pound, he ſhall be allowed 10l. *per cent.* ſo as it amount not to above 300l. If his eſtate will not pay 10s. in the pound, he ſhall be allowed ſo much as the commiſſioners and aſſignees ſhall think fit, not exceeding 3l. *per cent.*

But he ſhall not be entitled to this allowance, unleſs the commiſſioners

miſſioners ſhall certify to the Lord Chancellor that he hath duly conformed; and unleſs four parts in five in number and value of the creditors, who ſhall be creditors for not leſs than 20l. each, ſhall ſign the ſaid certificate, and teſtify their conſent to the ſaid allowance.

And moreover he ſhall not be intitled to the ſaid allowance, if he hath upon marriage of any child given above 100l., unleſs he prove by his books or upon his oath that he had remaining at the time ſufficient to pay his debts; or if he hath loſt in one day the value of 5l. or in the whole the value of 100l. in twelve months next before his becoming bankrupt at any ſort of gaming, or 100l. in ſtock jobbing.

Finally, if the bankrupt's eſtate will pay 15s. in the pound, he ſhall be diſcharged from all the debts by him owing at the time he became a bankrupt: otherwiſe, if it will not pay 15s. in the pound, his body only ſhall be free from arreſt, but his future eſtate ſhall be liable, except the tools of his trade, neceſſary houſehold goods and furniture, and wearing apparel of himſelf and family.

BANNERET is a knight created by the king in perſon in the field, under the royal banner, in time of open war: and, being ſo created, he ranks next after the degree of nobility.

BANNITUS, an outlaw, or *baniſhed* man. So, *bannitus fortis* was a ſtout deſperado, called in our ancient vagrant acts a *valiant beggar*, the ſame as is ſtigmatized by our preſent vagrant act with the appellation of *incorrigible rogue*.

BAR, in a legal ſenſe, is a plea or peremptory exception of a defendant, ſufficient to deſtroy the plaintiff's action.

In *real* actions, a general releaſe, or a fine, may be pleaded to bar the plaintiff's title. In *perſonal* actions, an accord, arbitration, conditions performed, non-age of the defendant, may be pleaded in bar. So the ſtatute of limitation may be pleaded in bar, or the time limited by law, beyond which no plaintiff can lay his cauſe of action. 3 *Black.* 306.

In *criminal* caſes, there are eſpecially four pleas in bar, which go to the merits of the indictment, and give a reaſon why the priſoner ought not to anſwer it at all, nor put himſelf upon his trial for the crime alledged. And theſe are, 1. A former *acquittal*, grounded on this univerſal maxim of the common law, that no man ſhall be brought into jeopardy of his life more than once for the ſame offence. 2. A former *conviction*; though no judgment was given, nor perhaps will be given; and this depends on the ſame principle as the former, that no man ought to be twice brought in danger of his life for one and the ſame crime. 3. A former *attainder*; for being dead in law by ſuch firſt attainder, he hath forfeited all he had, and it would be ſuperfluous to attaint him a ſecond time. 4. A *pardon*; which at once deſtroys the end and purpoſe of the indictment,

dictment, by remitting that puniſhment, which the proſecution is calculated to inflict. 4 *Black.* 329.

BARGAIN AND SALE of *lands* is a kind of real contract, whereby the ſeller, for ſome pecuniary conſideration, bargains and ſells, that is, contracts to convey, the land to the purchaſer, and becomes by ſuch bargain a truſtee for, or ſeiſed to the uſe of the purchaſer; that is to ſay, the bargain firſt veſts the uſe, and then the ſtatute of uſes veſts the poſſeſſion. But as conveyances, thus made, want all thoſe benefits of notoriety, which the old common law aſſurances were calculated to give, therefore to prevent clandeſtine conveyances of freehold, it is enacted by the 27 *H.* 8. *c.* 16. that ſuch bargains and ſales ſhall not enure to paſs a freehold, unleſs the ſame be made by indenture, and inrolled within ſix months in one of the courts at *Weſtminſter*, or with the *cuſtos rotulorum*, or two juſtices of the peace, and the clerk of the peace of the county where the lands lie. 2 *Black.* 338.

But now the moſt common ſpecies of conveyance is by leaſe and releaſe; wherein the leaſe, without any inrollment, makes the ſeller ſtand ſeiſed to the uſe of the purchaſer, and veſts in the purchaſer the uſe of the term, and then the ſtatute of uſes immediately annexes the poſſeſſion, and thereby renders him capable of receiving a releaſe. And this is held to ſupply the place of livery of ſeiſin; and ſo a conveyance by leaſe and releaſe is ſaid to amount to a feoffment. *Id.*

BARGAIN AND SALE of *goods*. See CONTRACT.

BARON is of the loweſt order of nobility, but in point of antiquity the higheſt. Barons originally ſeem to have been the ſame as our preſent lords of manors; to which the name of *court baron* (which is the lord's court, and incident to every manor) gives ſome countenance. It may be collected from king *John*'s *magna charta*, that originally all lords of manors, or barons, that held of the king *in capite*, had ſeats in the great council or parliament; till about the reign of that prince the conflux of them became ſo large and inconvenient, that the king was obliged to divide them, and ſummon only the greater barons in perſon; leaving the ſmall ones to be ſummoned by the ſheriff, and (as it is ſaid) to ſit by repreſentation in another houſe; which gave riſe to the ſeparation of the two houſes of parliament. By degrees the title came to be confined to the greater barons, or lords of parliament only; and there were no other barons among the peerage but ſuch as were ſummoned by writ, in reſpect of the tenure of their lands or baronies, till *Richard* the Second firſt made it a mere title of honour, by conferring it on divers perſons by letters patent. 1 *Black.* 399.

BARON-COURT is a Court which every lord of a manor (anciently called a *baron*) hath within the precinct of that manor. It

It is not a court of record: and therefore county-courts, hundred-courts, and the like, are not of record, becauſe they are but courts-baron. A court-baron is an inſeparable incident to a real manor; not to a nominal manor, where the real manor hath been once deſtroyed by granting away the demeſnes or ſervices. A court-*leet* is not incident to a manor; but he that hath ſuch a manor may alſo have a court-leet, to be holden within his manor, by preſcription or grant from the king.

A court-baron muſt be holden on ſome part of the manor. For if it is holden out of the manor, it is void; unleſs there is a cuſtom to hold courts at one manor for all, where the lord hath ſeveral manors.

This court is of two natures: 1. By *common law*, which is the freeholders court, or the court-baron that is incident to every manor, of which the freeholders being ſuitors are the judges, and the ſteward only regiſter. It cannot be a court-baron without two ſuitors at leaſt. This court may be kept from three weeks to three weeks. 2. By *cuſtom*, which is called the cuſtomary-court, though it is kept but very ſeldom. This concerns cuſtomary tenants and copyholders, whereof the lord or his ſteward is judge.

The *freeholders* court conſiſts in hearing plaints of copyhold tenants for debt under 40s. The proceſs is the ſame as in the county-court, by diſtreſs infinite. Cauſes may be removed by the plaintiff out of this court by *tolt* to the county-court, and from thence by *pone* into the common pleas: or they may be removed by the defendant by *recordare* into the king's bench or common pleas. Executions are only by diſtreſs and impounding till the party is ſatisfied. There is no power to ſell, or to deliver the diſtreſs to the party; neither is the body to be taken in execution.—A common recovery may be had in this court.

The *copyholders* or *cuſtomary*-court is for grants and admittances upon ſurrenders and deſcents, on the preſentment of the homage or jury. The homage may inquire of all perſons that owe ſuit to this court and make default, and preſent their names. It may inquire of the death of tenants after the laſt court, and who is next heir; of fraudulent alienations of land to defeat the lord of his profits; of incroachments on any of the lands of the lord without licence; of cutting down trees by the copyholder without cuſtom or licence; of the copyholder's ſuffering his houſes to decay and not repairing them; of ſuit not performed at the lord's will by reaſon of tenure; of ſurcharge of common with commonable beaſts, or putting beaſts upon the common that are not commonable; of treſpaſs in the common or waſte of the lord by digging, building, or incloſure; of reſcous and pound breach; of removing mere ſtones or land-marks; of by-laws or orders not obſerved. The method of puniſhment is by amerciament; and

and after the amerciament hath been affeered or moderated by three ſworn affeerors, the lord may have an action of debt in his court-baron for the amerciament affeered. *Wood, b.* 4. *c.* 1.

BARON AND FEME, in our law French, are uſed for huſband and wife. And foraſmuch as the wife is under the protection and influence of her *baron*, lord, or huſband, ſhe is therefore ſtiled a *feme-covert*, and her ſtate of marriage is called her *coverture*. See HUSBAND and WIFE.

BARONET is a dignity or degree of honour, next after barons, having precedency of all knights, except knights bannerets created by the king under the royal ſtandard. Baronets were firſt inſtituted by king *James* the firſt, in order to raiſe a competent ſum for the reduction of the province of *Ulſter* in *Ireland:* for which reaſon all baronets have the arms of *Ulſter* ſuperadded to their family coat. They are created by letters patent, and the dignity uſually deſcends to the iſſue male.

BARONY, *baronia*, is that honor and territory which gives title to a baron; comprehending not only the fees and lands of *temporal* barons, but of *biſhops* alſo, who have two eſtates, one as they are ſpiritual perſons, by reaſon of their ſpiritual revenues and promotions, the other grew from the bounty of our kings, whereby they have baronies and lands added to their ſpiritual livings and preferments. *Bracton* ſays, a barony is a right indiviſible; and therefore, if an inheritance be to be divided among coparceners, though ſome capital meſſuages may be divided, yet if a capital meſſuage be the head of a barony, it may not be parcelled.

BARRATRY is a word which we have received from the Danes, or Normans, or both; for *baratta* in the Daniſh, and *baret* in the Norman, do equally ſignify a quarrel or contention. And a barrator, in legal acceptation, ſignifies a common mover, exciter, or maintainer of ſuits or quarrels between his majeſty's ſubjects, either at law or otherwiſe.

An indictment of barratry is good, without alledging the offence at any certain place; becauſe, from the nature of the thing, conſiſting in the repetition of ſeveral acts, it muſt be intended to have happened in ſeveral places. 1 *Haw.* 244.

The puniſhment for this offence, in a common perſon, is fine and impriſonment: but if the offender belongs to the profeſſion of the law, he ought to be diſabled from practiſing for the future. And by the ſtatute 12 *G. c.* 29. if any man, who hath been convicted of common barratry, ſhall practiſe as an attorney or ſolicitor in any ſuit, the court, upon complaint, ſhall examine it in a ſummary way; and, if proved, ſhall direct the offender to be tranſported for ſeven years.

BAR-

BARRISTER is a counſellor learned in the law, admitted to plead at the *bar*. In our old law books, barriſters are ſtiled *apprentices*, *apprentitii ad legem*, being looked upon as learners, and not qualified until after a conſiderable tending in the inns of court to be called to the degree of ſerjeant.

BARROW, from the Saxon *beorg*, an hill, an heap of earth, is a large hillock or mount, raiſed or caſt up in many parts of *England*, called by the Romans *tumulus*, being the repoſitory of the remains or aſhes of the dead.

BARTON lands are in ſome places uſed to denote the demeſne lands of a manor.

BAS, low, or inferior. So *bas chevalier* is an inferior knight, as diſtinguiſhed from bannerets or knights ſuperior. *Bas court*, an inferior court, ſuch as is not of record, as the court baron of a manor. So *baſe tenure* was a holding by villenage, or other cuſtomary ſervice, oppoſed to *alta tenura*, the higher tenure *in capite* or by military ſervice. So the *baſs tenants* were ſuch as had no relation to the wars, but ſuch only as were employed in inferior occupations, as in ploughing the lord's land, making his hedges, carrying his dung, and the like. 2 *Black.* 61.

BASILLARD, a ſhort ſword or dagger.

BASSINET, *baſnetum*, an helmet or other defenſive covering for the head.

BASTARD:

1. Baſtard, generally, is one that is born out of lawful matrimony. But, in ſome circumſtances, children born in wedlock may be baſtards: As if the huſband be out of the kingdom, ſo that no acceſs to his wife can be preſumed, her iſſue during that period ſhall be baſtards. 1 *Black.* 457.

So alſo, if there is an apparent impoſſibility of procreation on the part of the huſband, as if he be only eight years old, or the like, there the iſſue of the wife ſhall be baſtard. But if the iſſue be born within a month, or a day, after marriage, between parties of full lawful age, the child is legitimate. 1 *Inſt.* 244.

So where a wife is ſeparated from her huſband by a divorce *a menſa et thoro*, the children ſhe has during the ſeparation are baſtards; for a due obedience to the ſentence ſhall be intended, unleſs the contrary be ſhewed: but if a huſband and wife, without ſentence, do part and live ſeparate, the children ſhall be taken to be legitimate, and ſo deemed till the contrary be proved; for acceſs ſhall be intended. 1 *Salk.* 123.

Likewiſe, in caſe of divorce in the ſpiritual court *a vinculo matrimonii*, all the iſſue born during the coverture are baſtards; becauſe ſuch divorce is always upon ſome cauſe that rendered

rendered the marriage unlawful and null from the beginning. 1. *Inſt.* 235.

2. The law hath appointed no exact certain time for the birth of a legitimate child by the widow after the death of her huſband. For as a child may be born before the uſual time of delivery, ſo alſo may the birth of the child, by infirmity of the mother, or other accident, be delayed as long after the uſual time. And this gives occaſion to a proceeding at common law, where a widow is ſuſpected to feign herſelf with child, in order to produce a ſuppoſitious heir to the eſtate; in which caſe, the preſumptive heir may have a writ *de ventre inſpiciendo*, to examine whether or no ſhe be with child; and, if ſhe be, to keep her under proper reſtraint till ſhe be delivered: but if, upon due examination, ſhe be found not pregnant, the preſumptive heir ſhall be admitted to the inheritance, though liable to loſe it again, on the birth of a child within 40 weeks from the death of her huſband. 1 *Black.* 456.

3. But if a man dies, and his widow ſoon after marries again, and a child is born within ſuch a time, as that by the courſe of nature it might have been the child of either huſband; in this caſe he is ſaid to be more than ordinarily legitimate; for he may, when he arrives to years of diſcretion, chuſe which of the fathers he pleaſes. *Id.*

4. Baſtardy is either *general* or *ſpecial*: *General*, where the queſtion is, whether the father and mother were ever married: *Special*, where the queſtion is, whether the child was born before or after the marriage of the father and mother; for by the ancient law of the church, if the child was born before marriage, yet if they married afterwards the child ſhould be legitimate. And therefore the temporal courts would not allow the ordinary to try *ſpecial* baſtardy, but this ſhall be determined by a jury. But *general* baſtardy ſhall be tried in the eccleſiaſtical court, on the king's writ iſſued to the ordinary for that purpoſe.

5. The two next juſtices, ſhall take order for the maintenance of a baſtard child, by charging the mother or reputed father with payment of money weekly, or other ſuſtentation. 18 *Eliz. c.* 3.

6. And if any ſingle woman ſhall be delivered of a baſtard child, or ſhall declare herſelf to be with child, a juſtice, on application by the pariſh officers, may take order for apprehending the reputed father, and may compel him to give ſecurity to indemnify the pariſh, or elſe bind him to appear at the next ſeſſions, and alſo to abide ſuch order as ſhall be made by the ſtatute of the 18 *Eliz.* for the maintenance of ſuch child.—But no woman ſhall be compelled to go before

a juſtice before the birth of the child, nor till one month after. 6 *G.* 2. *c.* 31.

7. If the putative father or mother run away, the pariſh officers may, under direction of the juſtices, ſeize the goods and chattels, and the rents of the lands of ſuch perſon, towards the diſcharge of the pariſh. 13 & 14 *C.* 2. *c.* 1.

8. The juſtices ſhall alſo take order for the puniſhment of the mother and reputed father of a baſtard who ſhall be chargeable; and may commit the mother to the houſe of correction for a year. 18 *El. c.* 3 7 *Ja. c.* 4.

9. Generally, the lawful ſettlement of a baſtard is the place of its birth, unleſs there be ſome fraud or colluſion. Alſo this rule doth not hold, where a baſtard is born whilſt a legal order is under execution for removal of the mother to her proper ſettlement; nor where the child is born in a ſtate of vagrancy, provided the pariſh officers take care to have the mother apprehended and puniſhed; nor where the child is born in priſon, or in a licenſed lying-in hoſpital.

10. A baſtard can have no name of reputation as ſoon as he is born; but after he is born, and hath gained by time a name of reputation, he may purchaſe by his reputed name, to him and his heirs; though he can have no heirs but of his body. 6 *Co.* 65.

11. If the iſſue of a man who is a baſtard purchaſe land, and die without iſſue, though the land cannot deſcend to any heir on the part of the father, yet to the heir on the part of the mother (being no baſtard) it may; for the heir on the part of the mother makes not any conveyance by the baſtard. *Noy.* 159.

12. If a baſtard dies inteſtate, without wife or iſſue, the king is intitled to the perſonalty; and the ordinary of courſe grants adminiſtration to the patentee or grantee of the crown. 3 *P. Will.* 33. 2 *Black.* 505.

13. If any woman be delivered of a child, which if born alive ſhould by law be a baſtard, and endeavours privately to conceal its birth, by burying the child, or the like, ſhe ſhall ſuffer death as in caſe of murder, unleſs ſhe can prove by one witneſs at leaſt that the child was born dead. 21 *Ja. c* 27.

But of late years it hath been uſual, upon trials for this offence, to require ſome ſort of preſumptive evidence that the child was born alive. 4 *Black.* 198.

Baſtard eigné is a ſon born *before* marriage, whoſe parents afterwards intermarry, and by the civil law he is *mulier*, or lawful iſſue; but not by the common law. 2 *Inſt.* 99. and the ſon born *after* the marriage, (who is diſtinguiſhed by the addition of *mulier puiſné*,) ſhall be heir to his father.

All

All the biſhops intreated the lords that they would conſent that all ſuch as were born afore matrimony, ſhould be legitimate, as well as they that be born within matrimony, as to the ſucceſſion of inheritance, for ſo much as the church accepteth them for legitimate. And all the earls and barons with one voice anſwered, that they would not change the laws of the realm which hitherto have been uſed and approved. *St.* 23 *H.* 3. *c.* 9.

BASTON (Fr.) a ſtaff or club.

BATH, knights of, are an order of knights inſtituted by king *Hen.* 4. and revived by king *Geo.* 1. They were ſo called from the ceremony of *bathing*, the night before their creation.

BATTEL (from the Saxon *batte*, a club; or *beatan*, to *beat*) ſignifies a trial by combat, where the defendant in an appeal of murder or felony may fight with the appellant, and make proof thereby whether he be guilty or innocent of the crime. Which ſpecies of trial is of great antiquity in our laws, but now diſuſed; there having been no inſtance of it ſince the year 1638; though ſtill in force, if the parties chuſe to abide by it.

When an appellee chuſes to wage battel, the manner is this: He pleads not guilty, and that he is ready to defend the ſame by his body, and then flings down his glove; and if the appellant will join battel, he replies, that he is ready to make good his appeal by his body upon the body of the appellee, and takes up the glove: And then the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and ſwears thus: *Hear this, thou who calleſt thyſelf* John *by the name of baptiſm, whom I hold by the hand, that falſely upon me thou haſt lied; and for this thou lieſt, that I who call myſelf* Thomas *by the name of baptiſm, did not felonioufly murder thy father* W. *by name: So help me God.* And then he kiſſes the book, and ſays, *And this I will defend againſt thee by my body, as this court ſhall award.* Then the appellant lays his right hand on the book, and with his left hand takes the appellee by the right, and ſwears thus: *Hear this, thou who calleſt thyſelf* Thomas *by the name of baptiſm, that thou didſt felonioufly murder my father* W. *by name: So help me God.* And then he kiſſes the book, and ſays, *And this I will prove againſt thee by my body, as this court ſhall award.*

On the day appointed, both parties ſhall be brought into the field before the juſtices of the court where the appeal is depending, at the riſing of the ſun, batcheaded and barelegged from the knee downward, and with bare arms to the elbows, armed only with batons or ſtaves, of an ell long, and a four-cornered leathern target; and before they engage, they take the following oath: *Hear this, ye juſtices, that I have this*

day neither eat, drank, nor have upon me, neither bone, ſtone, nor graſs; nor any inchantment, ſorcery, or witchcraft, whereby the law of God may be abaſed, or the law of the devil exalted: So help me God and his ſaints.

Then, after proclamation for ſilence, they ſhall begin the combat, wherein if the appellee be ſo far vanquiſhed, that he cannot or will not fight any longer, he may be adjudged to be hanged immediately; but if he kills the appellant, or can maintain the fight till the ſtars appear, he ſhall have judgment to be quit of the appeal: And if the appellant becomes recreant or a crying coward, the appellee ſhall recover his damages, and may plead his acquittal in bar of a ſubſequent indictment or appeal; and the appellant for his perjury ſhall loſe his *liberam legem*, and become infamous.

This trial by battel is at the defendant's choice, but if the plaintiff be under an apparent diſability of fighting, as being an infant, or of the age of ſixty, or lame, or blind, he may counterplead the wager of battel, and compel the defendant to put himſelf upon his country.

Alſo peers of the realm bringing an appeal ſhall not be challenged to wage battel, on account of the dignity of their perſons. So likewiſe if the crime be notorious; as if the thief be taken with the mainour, or the murderer in the room with a bloody knife, the appellant may refuſe the tender of battel from the appellee; for it is unreaſonable that an innocent man ſhould ſtake his life againſt one who is already half convicted.

This mode of trial was uſed not only in criminal caſes on appeals of murder or felony, but alſo in one civil caſe, namely, upon an iſſue joined in a writ of right. And herein the form of proceeding was not much different from that on appeals of murder or felony. Only the parties did not fight in perſon, but by their champions: and the reaſon was, that if either of the parties ſhould be killed, the ſuit would abate, and no judgment could be given. But as the writ of right itſelf is now diſuſed, this courſe of trial is only matter of ſpeculation; although, in the caſe of a writ of right, the defendant hath it at this day in his election to demand it. 3 *Black.* 337. 4 *Black.* 346.

BATTERY (from the Saxon *batte*, a club: or *beatan*, to beat; from whence cometh alſo the word *battle*) is, when any injury whatſoever, be it never ſo ſmall, is actually done to the perſon of a man, in an angry, or revengeful, or rude, or inſolent manner; as by ſpitting in his face, or any way touching him in anger, or violently juſtling him out of the way, and the like. 1 *Haw.* 134.

But battery is, in ſome caſes, juſtifiable or lawful; as where one, who hath authority, a parent or maſter, gives moderate correction to his child, his ſcholar, or his apprentice. So alſo on

on the principle of ſelf-defence; for if one ſtrikes me firſt, or even only aſſaults me, I may ſtrike in my own defence. So likewiſe in defence of my goods or poſſeſſions, if a man endeavours to deprive me of them, I may juſtify laying hands upon him to prevent him; and, in caſe he perſiſts with violence, I may proceed to beat him away. Thus alſo in the exerciſe of an office, as that of churchwarden, a man may gently lay hands on another to turn him out of the church, thereby to prevent his diſturbing the congregation. 3 *Black.* 120.

BAWDY-HOUSE is a houſe of ill-fame, kept for the reſort and commerce of lewd people of both ſexes. The keeping of a bawdy-houſe comes under the cognizance of the temporal law, as a common nuiſance, not only in reſpect of its endangering the public peace, by drawing together diſſolute and debauched perſons, and promoting quarrels, but alſo in reſpect of its tendency to corrupt the manners of the people. 1 *Haw.* 196.

Thoſe who keep bawdy-houſes are puniſhable by fine and impriſonment, and alſo ſuch infamous puniſhment as to the court in diſcretion ſhall ſeem proper. *Id.*

It ſeems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy-houſes with women of bad fame, as alſo for keeping bad women in his own houſe. 1 *Haw.* 132.

And a wife may be indicted together with her huſband, and condemned to the pillory with him, for keeping a bawdy-houſe; for this is an offence as to the government of the houſe, in which the wife hath a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2.

But if a perſon is indicted for frequenting a bawdy-houſe, it muſt appear that he knew it to be ſuch a houſe; and it muſt be expreſsly alledged that it is a bawdy-houſe, and not that it is ſuſpected to be ſo. *Wood, b.* 3. *c.* 3.

It is ſaid, a woman cannot be indicted for being a bawd generally, for that the bare ſolicitation of chaſtity is not indictable. 1 *Haw.* 196.

BEACON is derived of the Saxon word *becn*, a ſignal, and *bech an*, to give notice or intelligence; as we uſe the word *beckon* in a like ſignification to this day. It was a ſignal erected as a ſea mark for the uſe of mariners, or to give warning of the approach of an enemy. Before the reign of *Edward* the third, there were only ſtacks of wood ſet upon high places, which were fired when the coming of enemies was deſcried; but in his reign pitch-boxes were ſet up inſtead of thoſe ſtacks of wood. There was an ancient payment, and yet is in ſome places called *beaconage*, for the maintenance of beacons and lighthouſes. In the borders between *England* and *Scotland*, attending at the beacon

was a perſonal ſervice, to which the inhabitants in their turns were liable; who, on their deſcrying the approach of the enemy, were immediately to ſet fire to their combuſtibles, whereby they could communicate intelligence in a few minutes to other beacons, and thoſe to others again to a very great diſtance.

BEAD, or *beade* (Sax.), a prayer. So *beadeſman* is one who ſays prayers for his patron, or other. So *beadroll* was a liſt of thoſe who uſed to be prayed for in the church, and from thence transferred to ſignify any long tedious liſt, or confuſed reckoning up of many things together.

BEES are animals *feræ naturæ*; but when hived and reclaimed, a man may have a qualified property in them. It is the ſeizing, hiving, or incloſing them, which gives the property. For though a ſwarm lights upon my tree, I have no more property in them till I have hived them, than I have in the birds that make their neſts therein; and therefore if another hives them, he ſhall be their proprietor: but a ſwarm, which fly from and out of my hive, are mine ſo long as I can keep them in ſight, and have power to purſue them; and in theſe circumſtances, no one elſe is intitled to take them.—But it hath been alſo ſaid, that the only owner-ſhip in bees is *ratione ſoli*; and the *charta de foreſta*, which allows every freeman to be intitled to the honey found within his own woods, affords great countenance to this doctrine, that a qualified property may be had in bees, in conſideration of the property of the ſoil whereon they are found. 2 *Black.* 392.

BEHAVIOUR. See GOOD BEHAVIOUR.

BENEFICE is generally taken for all eccleſiaſtical preferments and dignities; but, in a more reſtrained ſenſe, it is applied only to rectories and vicarages. We have received the word from the old Romans, who being wont to diſtribute part of the lands they had conquered on the frontiers of the empire to their ſoldiers, thoſe who enjoyed ſuch rewards were called *beneficiarii*, and the lands themſelves *beneficia*. Hence, doubtleſs, came the word *benefice* to be applied to church livings; for beſides that the eccleſiaſtics held for life, like the ſoldiers, the riches of the church aroſe from the benefice of princes. And theſe *beneficia* were not given by the Romans merely as a recompence for what was paſt, but alſo as an encouragement for future ſervice.

BENEFIT OF CLERGY. See CLERGY.

BENERETH, an ancient ſervice which the tenant rendered to his lord with his plough and cart. *Co. Lit.* 86.

BENEVOLENCE was an aid given by the ſubjects to the king, as a voluntary gratuity; but, in truth and reality, it was an extortion and impoſition: and therefore this hath been carefully guarded and provided againſt by ſeveral ſtatutes. By 25 *Ed.* 1. *c.* 5, 6. it is enacted, that the king ſhall not take any aids or taſks, but by the common aſſent of the realm. And what that common

common assent is, is more fully explained by 34 *Ed.* 1. *st.* 4. *c.* 1. which enacts, that no talliage or aid shall be taken without the assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. And again, by 14 *Ed.* 3. *st.* 2. *c.* 1. none shall be charged to make any aid, but by the common assent of the great men and commons in parliament. And as this fundamental law was shamefully evaded under many succeeding princes, by compulsive loans and benevolences, extorted without a real and voluntary consent; it was made an article in the petition of right, 3 *Charles*, that no man shall be compelled to yield any gift, loan, or benevolence, tax, or such like charge, it whout common consent by act of parliament. And, lastly, by the declaration of rights, 1 *W.* *st.* 2. *c.* 2. it is insisted, that levying money for or to the use of the crown, by pretence of prerogative without grant of parliament, or for longer time, or in other manner than the same is or shall be granted, is illegal.

BENT, or *Star*, is a rush or shrub growing on the north-west coast of the kingdom; and by the 15 *G.* 2. *c.* 33. several provisions are made for the preservation thereof.

BERCARIA, *bercary*, in Domesday *Berquarium*, (Fr. *Bergerie*,) a sheep-fold, or other inclosure for keeping of sheep. It is said to be abbreviated from *berbicaria*, a sheep-heath, or ground whereon to feed sheep. So *berbiage* seems to have been a rent paid for the depasturing of sheep. And the whole perhaps from the Latin *vervex*, a wether sheep. Hence have been framed *berbicus*, a ram; *berbica*, an ewe; *cara berbicina*, mutton; *bercarius*, a shepherd. 2 *Inst.* 476. *Cowel.*

BERRA, *beria*, *berry*, a plain open field or heath. Such cities and towns in *England* which end with that word, are built in plain and open places, and derive their names from thence.

BERWICK was originally part of *Scotland*, and, as such, was for a time reduced by king *Edward* the first into the possession of the crown of *England*; and, during such its subjection, it received from that prince a charter, which (after its subsequent cession by *Edward Baliol* to be for ever united to the crown and realm of *England*) was confirmed by king *Edward* the third, with some additions; particularly, that it should be governed by the laws and usages which it enjoyed during the time of king *Alexander*, that is, before its reduction by *Edward* the first. Its constitution was afterwards new modelled, and put upon an *English* footing by a charter of king *James* the first; and all its liberties, franchises, and customs were confirmed in parliament by the statute 2 *Ja.* *c.* 28. Though therefore it hath some local peculiarities, derived from the ancient laws of *Scotland*, yet it is part of the realm of *England*, being represented by burgesses in

in the houſe of commons, and bound by all acts of the Britiſh parliament, whether ſpecially named or not. And by way of corroborotion, it is enacted by 20 *G.* 2. *c.* 42. that where *England* only is mentioned in any act of parliament, the ſame ſhall be deemed to comprehend the dominion of *Wales* and town of *Berwick* upon Tweed. 1 *Black.* 98.

BESAYLE is a writ directed to the ſheriff, in caſe of an abatement or diſſeiſin, to ſummon a jury to view the land in queſtion, and to recognize whether the great grandfather (*beſayle*) of the demandant died ſeized of the premiſes, and whether the demandant be his next heir. If the abatement was in the time of the grandfather, then the writ was a writ of *ayle* (*de avo*): if in the time of a nearer anceſtor, then the remedy was by a writ of *mort d'anceſtor.* 3 *Black.* 185.

BIDALE, the *bidding* or inviting of friends to drink at the houſe of ſome poor man, in order to raiſe a charitable contribution for his relief.

BIDDING OF THE BEADS, from the Saxon *biddan*, to deſire, and *bede*, a prayer, was anciently a charge or warning given by the pariſh miniſter to his pariſhioners at ſome ſpecial times to come to prayers, either for the ſoul of ſome friend departed, or upon ſome other particular occaſion, and, at this day, the giving notice on the *Sunday* before of an holiday to be obſerved in that week is called *bidding* the holiday.

BIGAMY is commonly applied to perſons that have two huſbands or two wives at one and the ſame time; and herein it is confounded with *polygamy*: whereas *bigamy*, in its proper acceptation, ſignifies the having two huſbands or two wives ſucceſſively.

BILL OF EXCEPTIONS. If the counſel of either party, in the hearing and determining of a cauſe, apprehend that the judge, either in his directions or deciſions, miſtates the law, they may require him to ſeal a *bill of exceptions*, ſtating the point wherein he is ſuppoſed to err.— 3 *Black.* 372. 2 *Inſt.* 426.

Which bill of exceptions is in the nature of an appeal; examinable, not in the court out of which the record iſſues for the trial at niſi prius, but in the next immediate ſuperior court, upon a writ of error, after judgment given in the court below. 3 *Black.* 372.

The exception ſhould be inſiſted on at the trial, and the party ſhall not reſort back to it after a verdict againſt him, when perhaps, if he ſtood upon the exception, the oppoſite party had other evidence, and needed not to have put the cauſe upon this point. The exception ſhould be reduced to writing when taken and diſallowed, like a ſpecial verdict, or a demurrer to evidence; not that it need be drawn up in form,

form, but the ſubſtance muſt be reduced to writing whilſt the thing is tranſacting, becauſe it is to become a record. 1 *Salk.* 288.

This bill of exceptions is given by the ſtatute of 13 *Ed.* 1. *c.* 31. which ſtatute extends to civil caſes only, and not to criminal: otherwiſe there would be no trials of that nature ever diſpatched in any reaſonable time, if every frivolous exception which a priſoner would make ſhould be drawn up into a bill of exceptions: beſides, the court is always ſo far of counſel with the priſoner, as to ſee that he hath right; and if they find any thing doubtful, they of themſelves will take time to adviſe. *Kelyng.* 15.

Alſo a bill of exceptions will not lie to ſummary proceedings before juſtices of the peace; for it would introduce into them much delay and expence, which are the two evils meant to be avoided by the inſtitution of ſummary proceedings. *Bur. Settlem. Caſ.* 77.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. *Of bills of exchange and promiſſory notes in general.*
2. *Statutes concerning bills of exchange and promiſſory notes.*
3. *Indorſement thereof.*
4. *Demand.*
5. *Acceptance.*
6. *Proteſt on non-acceptance.*
7. *Proteſt on non-payment after acceptance.*
8. *Remedy over againſt the drawer or indorſer.*
9. *Caſe of bills loſt or forged.*

1. *Of Bills of Exchange and Promiſſory Notes in general.*

A BILL OF EXCHANGE is a ſecurity, originally invented among merchants in different countries, for the more eaſy remittance of money from the one to the other which hath ſince ſpread itſelf into almoſt all pecuniary tranſactions. 2 *Black.* 466.

It is an open letter of requeſt from one man to another, deſiring him to pay a ſum named therein, to a third perſon on his account; by which means, a man, at the moſt diſtant part of the world, may have money remitted to him from any trading country. *Ibid.*

In common ſpeech ſuch a bill is called a *draught*, but a *bill of exchange* is the more legal as well as mercantile expreſſion. *Ibid.*

The perſon however who writes the letter is called in law the *drawer*; and he to whom it is written, the *drawee*; and the third perſon, or negotiator, to whom it is payable, (whether

ther ſpecially named, or the *bearer* generally,) is called the *payee*. *Ibid.*

It is commonly drawn either payable at ſight, or in ſo many days, weeks, or months, or at one or two *uſances*: and the ſpace of one month from the date of the bill is called uſance, and two or three months double or treble uſance.

Theſe bills are either *foreign* or *inland*: *foreign*, when drawn by a merchant reſiding abroad upon his correſpondent in *England*, or *vice verſa*; and *inland*, when both the drawer and the drawee reſide within the kingdom. 2 *Black. ibid.*

Formerly, foreign bills of exchange were much more regarded in the eye of the law than inland ones, as being thought of more public concern in the advancement of trade and commerce. But now by two ſtatutes, the one 9 & 10 *W. c.* 17. the other 3 & 4 *An. c.* 9. (hereafter following) inland bills of exchange are put upon the ſame footing as foreign ones; what was the law and cuſtom of merchants with regard to the one, and taken notice of merely as ſuch, being by thoſe ſtatutes expreſsly enacted with regard to the other. So that there is now in law no manner of difference between them. *Ibid.*

Promissory Notes, or notes of hand, are a plain and direct engagement in writing, to pay a ſum ſpecified, at the time therein limited, to a perſon therein named, or ſometimes to his *order*, or often to the *bearer* at large. Theſe alſo, by the ſtatute of the 3 & 4 *An. c.* 9. are made aſſignable and indorſible, in like manner as bills of exchange. But by 15 *G.* 3. *c.* 51. all promiſſory notes negotiable being for any ſum leſs than 20s. ſhall be void. And by 17 *G.* 3. *c.* 30. all ſuch notes for 20s. or above, and under 5l. ſhall be alſo void, unleſs they ſpecify the names and places of abode of the perſons to whom made payable, and bear date at the time of drawing, and payable in twenty-one days after, and the indorſements thereon be made before the expiration of the ſaid term.

2. *Statutes concerning Bills of Exchange and Promiſſory Notes.*

By the 9 & 10 *W. c.* 17. "Whereas great damages and "other inconveniencies do frequently happen in the courſe "of trade and commerce, by reaſon of delays of payment "and other neglects on *inland bills of exchange* in this king-"dom, it is enacted, that every bill of exchange drawn in "or dated at and from any trading city or town, or any "other place within this kingdom, upon any perſon in Lon-"don, or any other trading city, town, or place (in which "ſaid bill ſhall be acknowledged and expreſſed the ſaid "value

" value to be received), and drawn payable at a certain num-
" ber of days, weeks, or months after date thereof, that
" from and after preſentation and *acceptance* of the ſaid bill
" (which acceptance ſhall be by the under-writing the ſame
" under the party's hand ſo accepting), and after the expi-
" ration of three days after the ſaid bill ſhall become due,
" the party to whom the bill is made payable, his ſervant,
" agent, or aſſigns, may cauſe the ſaid bill to be proteſted by
" a notary public, and in default of ſuch notary public, by any
" other ſubſtantial perſon of the city, town, or place, in the
" preſence of two witneſſes, refuſal or neglect being firſt made of
" due payment of the ſame. *S.* 1.

" Which proteſt ſhall be made and written under a fair
" written copy of the bill, in the words or form following:
" *Know all men, that I A. B. on the* ——— *day of* ———, *at*
" *the uſual place of abode of the ſaid* ———, *have demanded*
" *payment of the bill of which the above is the copy, which*
" *the ſaid* ——— *did not pay; wherefore I the ſaid* ——— *do*
" *hereby proteſt the ſaid bill. Dated at* ———, *this* ——— *day*
" *of* ———. *S.* 1.

" Which proteſt, ſo made, ſhall within fourteen days be ſent,
" or otherwiſe due notice given thereof, to the party from whom
" the ſaid bill was received; who is, on producing ſuch proteſt,
" to repay the bill, together with all intereſt and charges from
" the day the bill was proteſted; for which proteſt ſhall be paid
" a ſum not exceeding 6d. *S.* 2.

" And in default or neglect of ſuch proteſt made and ſent, or
" due notice given, within the days before limited, the perſon ſo
" failing or neglecting ſhall be liable to all coſts, damages, and
" intereſt, which ſhall accrue thereby. *S.* 2."

And by the 3 & 4 An. c. 9. " Whereas, by there being
" no proviſion made in the foregoing act for proteſting ſuch
" bills in caſe the party on whom they are drawn refuſe to
" *accept* the ſame, by underwriting the ſame under his hand,
" all merchants and others refuſe to underwrite ſuch bills
" or make any other than a promiſſory acceptance, whereby
" the good intent of the ſaid act is wholly evaded; it is
" therefore enacted, that in caſe, upon preſenting any ſuch
" bill of exchange, the party on whom the ſame ſhall be
" drawn ſhall refuſe to accept the ſame by underwriting it as
" aforeſaid, the party to whom it is made payable, his ſer-
" vant, agent, or aſſigns, may cauſe the bill to be proteſted
" for *non acceptance*, as in caſe of foreign bills of exchange:
" for which proteſt ſhall be paid 2s. and no more. *S.* 4.

" Provided, that no acceptance of any ſuch inland bill
" of exchange ſhall be ſufficient to charge any perſon, unleſs
" the

" the ſame be underwritten or indorſed; nor ſhall the " drawer be liable to any coſts, damages, or intereſt, unleſs " ſuch proteſt be made for non-acceptance thereof, and " within fourteen days after be ſent, or otherwiſe notice " thereof be given, to the party from whom ſuch bill was " received, or left in writing at his uſual place of abode: " And if ſuch bill be accepted, and not paid before the ex- " piration of three days after the ſame ſhall become due; " then no drawer of ſuch bill ſhall be liable to any coſts, da- " mages, or intereſt, unleſs a proteſt be made and ſent, or " notice given thereof as aforeſaid. *S.* 5.

" Provided, that no proteſt ſhall be neceſſary for non- " payment of any inland bill of exchange, unleſs the *value* " be acknowledged in the bill to be received, and unleſs ſuch " bill be drawn for *twenty pounds* or upwards. *S.* 6.

" And if any perſon accept any ſuch bill of exchange in " ſatisfaction of any former debt or money due unto him, " it ſhall be deemed a full payment, if the perſon accepting " do not take his due courſe to obtain payment, by endea- " vouring to get the ſame accepted and paid, and make his " proteſt either for non-acceptance or non-payment. *S.* 7.

" Provided, that nothing herein ſhall extend to diſcharge " any remedy that any perſon may have againſt the drawer, " acceptor, or indorſor. *S.* 8."

And by the ſame act of 3 & 4 An. c. 9. " PROMISSORY NOTES " may be aſſigned or indorſed, and action maintained thereon, in " every reſpect, as on inland bills of exchange. *S.* 1."

Note——By ſeveral acts of parliament, ſtamp duties are impoſed upon bills of exchange and promiſſory notes, and upon *proteſts* and other *notarial acts*; for which and the exemptions, ſee *Burn's Juſtice*, title STAMPS.

3. *Indorſement thereof.*

THE perſon to whom either a bill of exchange or promiſſory note is made payable, hath clearly a property veſted in him (not indeed in poſſeſſion, but in action), by the *expreſs* contract of the drawer in the caſe of a promiſſory note, and by his *implied* contract in the caſe of a bill of exchange, namely, that provided the perſon on whom the bill is drawn do not pay it, the drawer will: for which reaſon it is uſual, in bills of exchange, to expreſs that the *value* thereof hath been *received* by the drawer; in order to ſhew the conſideration, upon which the implied contract of repayment ariſes. And this property, ſo veſted, may be transferred and aſſigned from the payee to any other man; contrary to the general rule of the common law, that no *choſe in action* is aſſignable: which aſſignment is the life of paper credit. 2 *Black.* 468.

The

The payee therefore, or perſon to whom or to whoſe *order* ſuch bill of exchange or promiſſory note is payable, may, by indorſement or writing his name *in dorſo*, or on the back of it, aſſign over his whole property to the *bearer*, or elſe to another perſon *by name*, either of whom is then called the *indorſee*; and and he may aſſign the ſame to another, and ſo on *in infinitum*. And a promiſſory note, payable to one or *bearer*, is negotiable without any indorſement, and payment thereof may be demanded by any bearer of it. *Ibid.*

4. *Demand.*

THE perſon to whom the bill is made payable, or to whom it is indorſed, (whether it be a general or particular indorſement,) is to go to the perſon on whom it is drawn, and offer his bill for acceptance. 2 *Black. ibid.*

For if, after the bill is payable, he makes no demand, ſo that he might have been paid if he had been diligent enough; then, if the party on whom the bill is drawn ſhall fail, it is at the peril of him who keeps the bill. *Mod. Caſ.* 147.

5. *Acceptance.*

THE acceptance, ſo as to charge the drawer with coſts, muſt be in writing, under, or on the back, of the bill, as is required by the aforeſaid ſtatutes.

But a parol acceptance is ſufficient to charge the acceptor for the *principal* ſum, as it was before at common law. And there is a proviſo in the act, that the ſame ſhall not extend to diſcharge any (other) remedy, that any perſon might have againſt the acceptor. *Str.* 1000.

Therefore after the drawee hath accepted the bill, either verbally or in writing, he thereby renders himſelf liable to pay it: for it is now a contract on his ſide, grounded on an acknowledgment that the drawer hath effects in his hands, or at leaſt credit ſufficient to warrant the payment. 2 *Black. ibid.*

6. *Proteſt or Non-Acceptance.*

IF the drawee refuſes to accept the bill, and it be *of the value of* 20*l.* or upwards, and expreſſed to be for *value received*, according to the ſtatute aforeſaid, the payee or indorſee may proteſt it for non-acceptance; which proteſt muſt be made in writing, under a copy of ſuch bill, by ſome notary public, as aforeſaid; or, if no ſuch notary be reſident in the place, then by any other ſubſtantial inhabitant, in the preſence of two witneſſes; and notice of ſuch proteſt muſt, within fourteen days after, be given to the drawer. 2 *Black. ibid.*

And

And the drawer, on producing ſuch proteſt, is bound to make good to the payee or indorſee, not only the amount of the ſaid bill (which he is bound to do, within a reaſonable time after non-payment, without any proteſt, by the rules of the common law); but alſo intereſt and all charges, to be computed from the time of making ſuch proteſt: But if no proteſt be made or notified to the drawer, and any damage acerues by ſuch neglect, it ſhall fall on the holder of the bill. *Ibid.*

7. *Proteſt for Non-Payment after Acceptance.*

If the bill be accepted by the perſon on whom it is drawn, and after the acceptance he fails or refuſes to pay it within three days after it becomes due (which three days are called *days of grace*), the payee or indorſee is then to get it proteſted for non-payment, in the ſame manner, and by the ſame perſons, who are to proteſt it in caſe of non-acceptance: and ſuch proteſt muſt alſo be notified, within fourteen days after, to the drawer. And the drawer, on producing ſuch proteſt, is bound to make good the ſame, in like manner as when the bill is proteſted for non-acceptance. 2 *Black. ibid.*

And in the ſaid days of grace, no allowance is made for Sundays and holidays. 1 *Salk.* 128.

If the perſon, upon whom a bill is drawn, abſconds before the day of payment, he to whom it is payable may proteſt it, in order to have better ſecurity for the payment, and to give notice to the drawer of the abſconding: and after the time of payment is incurred, then it ought to be proteſted for non-payment, the ſame day of payment or after it. But no proteſt for non-payment can be before the day that it is payable. *L. Raym.* 743.

8. *Remedy over againſt the Drawer or Indorſor.*

If the bill be an indorſed bill, and the indorſee cannot get the perſon upon whom it is drawn to diſcharge it; he may call upon either the drawer or indorſor, or if the bill hath been negotiated through many hands, upon any of the indorſors: for each indorſor is a warrantor for the payment of the bill, which is frequently taken in payment as much (or more) upon the credit of the indorſor, as of the drawer. And if ſuch indorſor, ſo called upon, has the names of one or more indorſors prior to his own, to each of whom he is propery an indorſee; he alſo is at liberty to call upon any of them to make him ſatisfaction; and ſo upwards. But the firſt indorſor hath nobody to reſort to, but the drawer only. 2 *Black. ibid.*

And

And what hath been ſaid of bills of exchange, is applicable alſo to promiſſory notes that are indorſed over, and negotiated from one hand to another: only that, in this caſe, as there is no drawee, there can be no proteſt for non-acceptance; or rather, the law conſiders a promiſſory note in the light of a bill drawn by a man upon himſelf, and accepted at the time of drawing. And, in caſe of non-payment by the drawer, the ſeveral indorſees of a promiſſory note have the ſame remedy, as upon bills of exchange, againſt the prior indorſors. *Ibid.*

To intitle an indorſee of an inland *bill of exchange* to bring an action againſt the *indorſor*, on failure of payment by the perſon upon whom the bill is drawn; it is not neceſſary to make any demand of, or inquiry after, the firſt *drawer*. And the caſe is exactly the ſame upon *promiſſory notes*, when the reſemblance between them is rightly underſtood. While a promiſſory note continues in its original ſhape of a promiſe from one man to pay to another, it bears no ſimilitude to a bill of exchange. When it is *indorſed*, the reſemblance begins. For then, it is an order by the *indorſor*, upon the maker of the note, (his debtor, by the note,) to pay to the indorſee. The indorſor is the drawer; the maker of the note is the acceptor; and the indorſee is the perſon to whom it is made payable. The indorſor only undertakes, in caſe the maker of the note doth not pay. The indorſee is bound to apply to the maker of the note. He takes it upon that condition, and therefore muſt, in all caſes, know who he is, and where he lives; and, if after the note becomes payable, he is guilty of a neglect, and the maker becomes inſolvent, he loſes the money, and cannot come upon the indorſor.——*Bur. Manſf.* 676.

Therefore, before the indorſee of a promiſſory note brings an action againſt the indorſor, he muſt ſhew a demand or due diligence to get the money from the *maker* of the note; juſt as the perſon, to whom a bill of exchange is made payable, muſt ſhew a demand or due diligence to get the money from the *acceptor*, before he brings an action againſt the *drawer;* that is, in both caſes, application muſt be made to the perſon from whom the money is ſuppoſed to be due. *Ibid.*

And therefore, in all caſes, in actions upon inland bills of exchange, by an indorſee againſt an indorſor, the plaintiff muſt prove a demand of, or due diligence to get the money from the *drawee* or *acceptor*, but need not prove any demand on the *drawer*. And in actions upon promiſſory notes, by an indorſee againſt the indorſor, the plaintiff muſt prove a demand of, or due diligence to get the money from the maker of the note. *Bur. Manſf.* 678.

When a bill of exchange is indorſed by the perſon to whom it was made payable, as between the indorſor and indorſee, it is

is a new bill of exchange, and the indorſor ſtands in the place of the drawer. The indorſee doth not truſt to the credit of the original drawer, he perhaps may not know whether ſuch a perſon exiſts, or where he lives, or whether his name may have been forged. The indorſor is his drawer, and the perſon in whom he truſted if the drawee ſhould not pay the money. And there is no difference, in this reſpect, between *foreign* and *inland* bills of exchange. *Id.* 674.

9. *Caſes of Bills loſt or forged.*

In the aforeſaid act of 9 & 10 *W. c.* 17. there is a proviſo, that if any inland bill of exchange ſhall be *loſt* or miſcarried, within the time limited for payment thereof, the drawer ſhall be obliged to give another bill of the ſame tenor: the perſon to whom it ſhall have been delivered, giving ſecurity (if demanded) to the drawer, to indemnify him againſt all perſons whatſoever, in caſe the ſaid bill ſo alleged to be loſt or miſcarried ſhall be found again.

If a *bank bill* be loſt, an action of trover may be brought againſt the finder, becauſe he hath no title; though payment to him would indemnify the bank: but if the finder transfers it over for a valuable conſideration, an action ſhall not be brought againſt him to whom it is transferred, by reaſon of the courſe of trade, which creates a property in the aſſignee or bearer. 1 *Salk.* 126.

If the mail be *robbed* of a bank note, and afterwards the note is received in payment; the true owner is not intitled to recover it, againſt the perſon who came lawfully by it, for a valuable conſideration, or in the common courſe of trade. *Burr. Manſf.* 452.

If a bill is accepted by the perſon upon whom it is drawn, and the money paid by him to an indorſee, and the bill afterwards appears to have been *forged*; the indorſee ſhall not pay back the money to the acceptor: for he ſhould have inquired and ſatisfied himſelf whether the bill was genuine or not; or ſuppoſing no neglect to be in him, yet there is no reaſon to throw off the loſs from one innocent man upon another innocent man. *Burr. Manſf.* 1357.

BILL OF SALE is a ſolemn contract under ſeal, whereby a man paſſes the right or intereſt that he hath in goods and chattels. For if a man promiſes to give any chattels without valuable conſideration, or without delivering poſſeſſion, this doth not alter the property, becauſe it is *nudum pactum*, whereon ariſes no action. But if a man ſells goods by deed under ſeal duly executed, this alters the property between the parties, though there be no conſideration, or no delivering of poſſeſſion, becauſe a man is eſtopped to deny his own deed, or affirm any thing contrary to the

the manifeſt ſolemnity of contracting.—But by ſtatute 13 *Eliz. c.* 5. all conveyances of lands, goods and chattles, to avoid the debt or duty of another, ſhall, as againſt the party whoſe debt or duty is ſo endeavoured to be avoided, be utterly void; except grants made *bona fide*, and on *good* (which is conſtrued a *valuable*) conſideration.

If a man makes a bill of ſale of all his goods, in conſideration of blood and *natural affection* to his ſon or one of his relations, it is a void conveyance in reſpect of creditors; for the conſideration of blood and natural affection, which are made the motives to this gift, are eſteemed in their nature inferior to valuable conſiderations, which are neceſſarily required in ſuch ſales.

If a man, being indebted to two perſons, makes a ſecret conveyance to one of them of all his goods and chattles, in ſatisfaction of his debt; but notwithſtanding continues in poſſeſſion of them, and ſells ſome of them, and ſets his mark (as of ſheep) on others of them, this is fraudulent, and ſhall not prevent the other creditor of his execution for his juſt debt. For though ſuch ſale, hath one of the qualifications required for a good conveyance, being made to a creditor for a real debt, and conſequently on a valuable conſideration, yet it wants another eſſential conſideration, for the owner's continuing in poſſeſſion is a fixed and undoubted character of a fraudulent conveyance, becauſe the poſſeſſion is the only *indicium* of the property of a chattel, and therefore this ſale was not made *bona fide*.

And as the owner's continuing in poſſeſſion is an undoubted badge of a fraudulent conveyance, ſo there are other marks and characters of fraud; as a general conveyance of them all without any exception: for it is hardly to be preſumed, that a man will ſtrip himſelf intirely of all his perſonal property, not excepting his bedding and wearing apparel, unleſs there was ſome ſecret agreement for a private occupancy of all or ſome part of the goods for his ſupport: as alſo a ſecret manner of tranſacting ſuch bill of ſale and unuſual 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 dreſs and appearance give a ſuſpicion and jealouſy of ſome defect varniſhed over with it. 3 *Co.* 80.

BIRTHS. By the 23 *G.* 3. *c.* 67. a ſtamp-duty is impoſed upon the regiſtering of every birth or chriſtening. And by the 25 *G.* 3. *c.* 75. the ſame ſhall extend to all Proteſtant Diſſenters.

BISANTIUM, *beſant*, a coin firſt coined by the weſtren emperors at *Bizantium* or *Conſtantinople*. It was of two ſorts, gold and ſilver; both of which were current in *England*.

BISHOP, from the Saxon *biſcop* (epiſcopus), ſignifies an overſeer or ſuperintendant; the biſhop being ſo called, from that

watchfulneſs, care, charge, and faithfulneſs, which by his place and dignity he hath and oweth to the church.

Biſhops in this kingdom at firſt were elective by the clergy and people; but theſe popular elections being found to be inconvenient, they were afterwards appointed by the king, by delivery of a ring and paſtoral ſtaff, the *ring* as a token that the biſhop was wedded to the church, and the *paſtoral ſtaff* as ſignifying that he was now become a ſhepherd of *Chriſt*'s flock.

But the pope, who in proceſs of time got himſelf advanced to be head of the church, diſliked that the biſhops ſhould have any dependence upon princes, and therefore brought it about that the canons in cathedral churches ſhould have the election of their biſhops; which elections were uſually confirmed at *Rome*.

Afterwards, in the reign of king *Hen.* 8. they were made elective by the deans and chapters (without the pope) by the king's nomination. Which having in effect only the appearance of an election, in the reign of king *Ed.* 6. they were made donative by the king's letters patent without election: but afterwards, in the reign of queen *Mary*, this was again altered, and reduced to the ſtandard of king *Hen.* 8. by election of the dean and chapter; which method ſtill continues. In order whereunto, when a biſhop dies or is tranſlated, the dean and chapter certify the king thereof in chancery; upon which the king iſſues a licence to them to proceed to an election; which licence is called a *conge d'eſlire*, which in *French* ſignifies *leave to elect*. And with the licence he ſends a *letter miſſive*, containing the name of the perſon whom they ſhall elect; which if they ſhall refuſe to do, they incur the penalty of a *præmunire*.

BISSEXTILE, leap year, ſo called becauſe the *ſixth* day before the calends of *March* (*viz. Feb.* 24.) is *twice* reckoned; ſo that the biſſextile year hath one day more than the others, and happens every fourth year. This intercalation of a day was firſt contrived by *Julius Cæſar*, to make the year agree better with the courſe of the ſun.

BLACK ACT is an act of parliament made in the 9 *G.* 2. occaſioned by the outrages committed by perſons with their faces blacked or otherwiſe diſguiſed, who appeared in *Epping* foreſt near *Waltham* in *Eſſex*, and deſtroyed the deer there, and committed divers other enormities; by which it is enacted, that if any perſons armed with ſwords, fire arms, or other offenſive weapons, and having their faces blacked or otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or ground incloſed where deer have been uſually kept; or in any warren or place where hares or conies have been uſually kept, or in any high road, open heath, common, or down; or ſhall hunt, wound, or kill any red or fallow deer; or rob any warren or place where hares or conies are uſually kept; or ſhall ſteal any fiſh out of any river or pond; they ſhall be guilty of felony without benefit of clergy.

BLACK

BLACK GAME. See MOOR GAME.

BLACK LEAD: Forcibly entering into any mine or wad hole of black cawke or lead, or ſtealing any ore from thence, is by ſtatute 25 *G.* 2. *c.* 10. made felony and tranſportation.

BLACKMAIL. *Maile*, in French, is a ſmall piece of money, and in 9 *Hen.* 5. ſilver halfpence here were termed *mailes*. In a large acceptation, the word *maile* ſignifies a rent in general paid either in money, corn, cattle or other goods, as geeſe maile, cow maile, and the like; and in *Scotland*, maile is ſtill the common word for rent. White maile, white rents, vulgarly called quit rents, were rents paid in ſilver, and thereby diſtinguiſhed from work day rents, cummin rents, corn rents and the like. Blackmaile, or black rents, ſeem properly to have been rents paid in cattle, otherwiſe called neat-geld; but more largely taken, it ſignifies all rents not paid in ſilver, by way of diſtinction from the *redditus albi*, blanck farms or white rents.—Extorting blackmaile in the northern counties, under pretence of protection againſt robbers and ſpoil takers, is by the 43 *Eliz.* *c.* 13. made felony without benefit of clergy.

BLANCK FARM was anciently a rent paid in ſilver, other wiſe called *white rent;* in contradiſtinction from rent paid in cattle, corn, or the like. 2 *Inſt.* 19.

BLANK BAR is the ſame with what is called a common bar, and is the name of a plea in bar, which in an action of treſpaſs is put in to oblige the plaintiff to aſſign the certain place where the treſpaſs was committed. *Cro. Ja.* 594.

BLASPHEMY. See PROPHANENESS.

BLOOD CORRUPTED. See CORRUPTION OF BLOOD.

BLOODWITE, an amercement for bloodſhed: a grant from bloodwite in ancient charters is an exemption from amercements of that kind.

BLOODY HAND, is one of the four kinds of circumſtances by which an offender is ſuppoſed to have killed deer in the king's foreſt. And it is where a treſpaſſer is apprehended in the foreſt, with his *hands* or other parts bloody, though he be not found chaſing or hunting the deer. *Manw.*

BOIS, *Fr.* wood; *Subbois*, underwood.

BONA FIDE, is that which is done with good *faith*, honeſtly, without any fraud or deceit.

BONA NOTABILIA. Where a perſon dies, having at the time of his death goods in any other dioceſe, beſides his goods in the dioceſe where he dieth, amounting to the value of 5*l.* in the whole, he is ſaid to have *bona notabilia;* in which caſe proof of his will, or granting adminiſtration, belongs to the archbiſhop of the province. 1 *Roll's Abr.* 908.

But where by compoſition or cuſtom in any county, *bona notabilia* are rated at a greater ſum, the ſame is to continue un-

altered: as in the dioceſe of *London* it is 10*l.* by compoſition. 4 *Inſt.* 335.

If a perſon happens to die, in another dioceſe than that wherein he liv es on a journey; what he has about him ſhall not be *bona notabilia*. *Swin.* 438.

Debts owing to the deceaſed are *bona notabilia*, as well as goods in poſſeſſion; and they ſhall be *bona notabilia* in that dioceſe where the bonds or other ſpecialties are, and not where the debtor inhabits. But bills of exchange, or other debts by ſimple contract ſhall be *bona notabilia* in that place where the debtor is. 1 *Roll's Abr.* 909.

Where a man dies poſſeſſed of *bona notabilia*, both in the province of *Canterbury*, and in the province of *York*, the will muſt be proved either before both metropolitans, if within each of their juriſdictions there be *bona notabilia* in divers dioceſes; or elſe, if there be not ſo in any of the places, then before the particular biſhops in thoſe ſeveral dioceſes where the goods are. *Wentw.* 46.

1. A BOND, or obligation, is a deed whereby one doth bind himſelf, his heirs, executors, and adminiſtrators, to pay a certain ſum of money, or do ſome other act; and there is generally a condition added, that if he doth perform ſuch act, the obligation ſhall be void, or elſe remain in full force; as performance of covenants, ſtanding to an award, payment of rent, or re-payment of a principal ſum of money, with intereſt, which principal ſum is uſually half of the penal ſum ſpecified in the bond. 2 *Black.* 340.

He that enters into the obligation or bond is the *obligor*, he to whom it is made is the *obligee*.

2. If the condition of a bond be impoſſible at the time of making it, or be to do a thing contrary to ſome rule of law that is merely poſitive, or be uncertain, or unintelligible, the condition alone is void, and the bond ſhall ſtand ſingle and unconditional; for it is the folly of the obligor to enter into ſuch an obligation, from which he can never be releaſed. 2 *Black.* 340.

3. If it be to do a thing that is *malum in ſe*, as to invade a man's private property, the obligation itſelf is void; for the whole is an unlawful contract, and the obligee ſhall take no advantage from ſuch a tranſaction. *Ibid.*

So a bond to a woman, as the price of her proſtitution, is void; and ſhe ſhall recover nothing. *Burr. Manſf.* 1568.

4. If the condition, in its own nature, is impoſſible, as if a man is bound in an obligation, with condition that if the obligor do go from *London* to *Rome* in three hours, that then the obligation ſhall be void; this condition is void and impoſſible, but the obligation ſtandeth good. 1 *Inſt* 206.

5. But if the condition be poſſible at the time of making it, and afterward

afterward becomes impoſſible by the act of God, the act of law, or the act of the obligee himſelf; there the penalty of the obligation is ſaved: for no prudence or foreſight of the obligor could guard againſt ſuch a contingency. As if a man be bound with condition that he ſhall appear the next term in ſuch a court, and before the day the obligor dieth, the obligation is ſaved. 1 *Inſt.* 206.

6. But it is commonly holden, that if the condition of a bond be againſt law, the bond itſelf is void. But herein the law diſtinguiſheth between a condition againſt law for the doing of any act that is *malum in ſe*, and a condition againſt law that concerns not any thing that is *malum in ſe*; but therefore is againſt law becauſe it is either repugnant to the tenor or againſt ſome maxim or rule of the law; and therefore in this caſe the condition is void, but the bond is abſolute. 1 *Inſt.* 206.

So if a man be bound, with a condition to make a deed of feoffment to his wife; the condition is void, becauſe it is againſt a maxim in law: but the bond is good. 1 *Inſt.* 206.

7. A voluntary bond, without conſideration, if there be no fraud in obtaining it, is obligatory, and ſhall operate as a gift; but it ſhall not be paid in a courſe of adminiſtration, ſo as to take place of real debts, even by ſimple contract: yet it ſhall be paid before legacies. 1 *Cha. Ca.* 157. 1 *Atk.* 294.

8. If a bond has no date, or a falſe date, if it be ſealed and delivered it is good; and ſhall bear date from the time of the delivery. 5 *Mod.* 282.

A bond dated on the ſame day on which a releaſe is made of all things *until the day of the date*, is not thereby diſcharged: but otherwiſe it is, if *until the date*. 2 *Roll's Rep.* 255.

If the condition for payment of money be made impoſſible, as to make payment on the 30th of *February*; it ſhall be paid preſently. *Wood, b.* 2. *c.* 3.

9. If the words in a bond, at the end of the condition, *then this obligation to be void*, are omitted, the condition will be void, but not the obligation: but if the words *or elſe ſhall ſtand in force* be left out, it has no effect to hurt either the condition or obligation.

10. If a man bind himſelf, his executors or adminiſtrators are bound though they be not named; but ſo it is not of the heir. 1 *Inſt.* 209.

For an heir is not bound, unleſs he be named expreſsly in the bond. *Dyer*, 14. 271.

If a man binds (as is uſual) himſelf, his heirs, executors, and adminiſtrators, after the death of the obligor, the obligation deſcends upon his heir, who (on defect of perſonal aſſets) is bound to diſcharge it, provided he hath real aſſets by deſcent as a recompence. 2 *Black.* 340.

In equity indeed, in favour of the heir at law, the perſonal eſtate is often directed to be applied firſt in diſcharge of the bond; but at law there is no ſuch diſtinction, but the creditor may proceed againſt the heir if he pleaſes, and he hath no remedy in a court of law. 2 *Atk.* 426.

11. If the condition is not performed, the bond becomes forfeited or abſolute at law; but in ſuch caſes the courts of equity have relieved: and by the 4 *An. c.* 16. *ſ.* 13. in an action at law, on the defendant's bringing into court the principal, intereſt, and coſts, he ſhall be diſcharged.

12. Where a bond is conditioned for payment of money, and no time is limited, in this caſe the money is to be paid preſently, that is, in convenient time. 1 *Inſt.* 208.

And yet there is a diverſity between the condition of a bond, which concerns the doing of a tranſitory act without limitation of any time, as payment of money, delivery of writings, or the like, for there the condition is to be performed preſently, that is, in convenient time; and when by the condition of the obligation the act that is to be done to the obligee is of its own nature local, for there the obligor (no time being limited) hath time during his life to perform it, as to make a feoffment, or the like, if the obligee doth not haſten the ſame by requeſt. 1 *Inſt.* 208.

In caſe where the condition of the obligation is local, there is alſo a diverſity, when the concurrence of the obligor and the obligee is requiſite (as in the ſaid caſe of a feoffment), and when the obligor may perform it in the abſence of the obligee, as to acknowledge ſatisfaction in the court of king's bench, although the acknowledgment of ſatisfaction is local, yet becauſe he may do it in the abſence of the obligee, he muſt do it in convenient time, and hath not time during his life. *Id.*

But where the concurrence of both parties is requiſite, and no place is mentioned for performance of the condition, the obligor is bound to find out the perſon of the obligee, if he be in *England*, and tender the money; otherwiſe the bond will be forfeited: but when a place is appointed, he need ſeek no further. 1 *Inſt.* 210.

13. If ſeveral days are mentioned for payment of money upon a bond, the obligation is not forfeited, nor can be ſued, until all the days are paſt. 1 *Inſt.* 292.

14. In a bond where ſeveral are bound ſeverally, the obligee is not at his election to ſue all the obligors together, or all of them apart, and have ſeveral judgments and executions; but he ſhall have ſatisfaction only once; for if it be of one only, that ſhall diſcharge the reſt. *Dyer*, 19. 310.

But he ſhall not ſue ſeveral of them jointly, omitting the reſt. As if three bind themſelves jointly and ſeverally, any one of them may

may be ſued alone; but two of them cannot be ſued, but eithe all or one. 1 *Roll's Abr.* 148.

A releaſe to one obligor is a releaſe to all, both in law and equity. 1 *Atk.* 294.

15. If a bond of 100*l.* be made with condition for the payment of 50*l.* at a day, and at the day the obligor tender the money, and the obligee refuſes the ſame; yet in an action of debt upon the obligation, if the defendant plead the tender and refuſal, he muſt alſo plead that he is yet ready to pay the money, and tender the ſame in court. 1 *Inſt.* 207.

16. After aſſignment of a bond, the money in equity is the aſſignee's; and payment to the obligor, after notice of the aſſignment, is not good. 2 *Vern.* 540.

17. It is ſaid, that if a bond be of 20 years ſtanding, and no demand be proved thereon, or good cauſe of ſo long forbearance ſhewed to the court, it ſhall be intended paid. 2 *Atk.* 144.

But in the caſe of *K.* v. *Stephens*, *M.* 31 *G.* 2. Lord *Mansfield* ſaid, that there is no direct and expreſs limitation of time when a bond ſhall be ſuppoſed to have been ſatisfied: the general time indeed is commonly taken to be about 20 years, but he had known lord *Raymond* leave it to a jury upon 18 years. *Burrow. Mansf.* 434.

The indorſement of intereſt being paid within 20 years, may be given in evidence, though under the hand of the obligee, the obligee being dead, and no circumſtances appearing that the indorſement was fraudulently made to take away the preſumption from length of time. *Str.* 826.

BOOK-LAND was ſo called becauſe it was held by *deed* or *writing* under certain rents and ſervices, and in effect differed in nothing from free ſocage land: and from hence have ariſen all the freehold tenants which hold of particular manors, and owe ſuit and ſervice to the ſame. It was ſo denominated in contradiſtinction to *folk-land*, which was held by no aſſurance in writing, but diſtributed among the common *folk* or people at the pleaſure of the lord, and reſumed at his diſcretion; and was no other than villenage. 2 *Black.* 90.

BOOKS. No perſon ſhall import for ſale, or ſhall ſell or expoſe to ſale, any book firſt printed in this kingdom, and reprinted elſewhere; on pain of forfeiting the ſame, and alſo 5*l.* and double the value of every ſuch book. 12 *G.* 2. *c.* 36.

In the caſe of *Millar* and *Taylor*, in the king's bench, *E.* 9 *G.* 3. it was determined, that an excluſive copyright in authors ſubſiſted by the common law. But afterwards, in the caſe of *Donaldſon* and *Becket*, before the houſe of lords, 22d *February* 1774, it was determined by the lords, that no copyright ſubſiſts in authors, after the expiration of the ſeveral terms created by

by the ſtatute 8 *An. c.* 19. which enacts, that the author of any book, and his aſſigns, ſhall have the ſole liberty of printing and re-printing the ſame for fourteen years, to commence from the day of the firſt publication thereof, and no longer; except that if the author be living at the expiration of the ſaid term, the ſole copyright ſhall return to him for other fourteen years: and if any other perſon ſhall print or import, or ſhall ſell or expoſe to ſale any ſuch book without the conſent of the proprietor, he ſhall forfeit the ſame, and alſo one penny for every ſheet thereof which ſhall be found in his poſſeſſion.—But this ſhall not expoſe any perſon to the ſaid forfeitures, unleſs the title thereof before publication be entered in the regiſter book of the Company of Stationers.

And nine copies of each book, on the beſt paper, ſhall before publication, be delivered to the warehouſe-keeper of the Company of Stationers, for the uſe of the Royal Library, the libraries of the two Univerſities in *England*, the four univerſities in *Scotland*, the library of *Sion* college, and of the faculty of advocates at *Edinburgh*; on pain of forfeiting the value thereof, and alſo 5*l.*

BORD-HALFPENNY, a ſmall toll, by cuſtom paid to the lord of the town for ſetting up *boards*, tables, or booths, in a fair or market.

BORGH-BRECHE, a breach of the peace within the borgh or pledge, for the preſervation of which peace the members of the decennary or frank pledge were ſureties for each other. Upon breach of the peace, their bond or aſſurance was forfeited: from which forfeiture ſeveral ancient charters granted, to particular perſons or bodies corporate, an immunity to be free from *borgh-breche*.

BOROUGH (*burg*, Saxon) ſignified originally a walled town or other fortified place, perhaps from the Greek word πυργος. But now it is uſed to denote any town corporate which is not a city.

BOROUGH ENGLISH; ſo named in contradiſtinction as it were to the *Norman* cuſtoms, is a cuſtom in divers ancient boroughs, of the youngeſt ſon ſucceeding to the burgage tenement on the death of his father. 2 *Black.* 83.

BOROUGH-HOLDERS. See BORSHOLDER.

BORROWING, or *hiring*, are contracts, the ſame in law whereby the poſſeſſion and a tranſient property is transferred for a particular time or uſe, and to be returned as ſoon as the time is expired, or the uſe performed. If a thing lent for uſe, be uſed to any other end or purpoſe than that for which it was borrowed, the party may bring his action for it, though it be no worſe: and if what is borrowed be loſt, although not by any negligence of the borrower, as if he be robbed of it, or where the

the thing is impaired or deſtroyed by his neglect, admitting it to be put to no more ſervice than that for which borrowed, he muſt make it good; ſo where I borrow a horſe and put him in an old rotten houſe likely to fall, and it does fall and kills him, I muſt anſwer for the horſe; but if the goods borrowed periſh by the act of God in the right uſe of them; as where I put the horſe in a ſtrong houſe, and it fall and kill him, or he dies by diſeaſe, or by default of the owner, I ſhall not be chargeable. *Co. Lit.* 89. 2 *Black.* 453.

BORSHOLDER contains within it the meaning of tithing-man, borowhead, headborow, third-borow, and chief pledge; and is made up of the *Saxon borge*, *borrow*, or *borhoe*, a pledge, and *ealder*, the elder, chief, or head; and *borſholder* in one word is the chief or head of the ſureties or pledges. For after the kingdom was divided into hundreds, and thoſe hundreds again into tithings, conſiſting each of ten men with their families, each of whom was to be ſurety or pledge for the other, thoſe ten men choſe one of their number to ſpeak and to do in the name of them all, he was therefore in ſome places called the tithing-man, in other places the *boroes elder* (whom we now call *borſholder*), in other places the borohead or headborrow, and in other places the chief pledge. *Lamb. Conſt.*

BOSCAGE is that food which wood and trees yield to cattle, as of leaves and croppings; and herein differs from *pannage*, which conſiſts of the fruit of ſuch trees, as acorns, crabs, or maſt. It ſeems alſo to have ſignified a duty paid for the privilege of dead or windfall wood in the foreſt; and a grant to be quit of *boſcage* is, to be diſcharged from the payment of ſuch duty.

BOSARIA, wood houſes, ſheds (or ſhades) for cattle.

BOTE, *Sax.* ſignifies a recompence, ſatisfaction, or amends, or from *baten*, *Dutch*, profit or advantage. Hence came the old word *manbote*, denoting a compenſation for a man ſlain. There are alſo *houſe-bote*, *cart-bote*, *hedge-bote*, *plough-bote*, ſignifying privileges of tenants in cutting wood for thoſe uſes: and theſe the tenant or leſſee may take from off the land let or demiſed to him, without waiting for any leave, aſſignment, or appointment of the leſſor, unleſs he be reſtrained by ſpecial covenant to the contrary. 2 *Black.* 35.

BOTELESS, or *bootleſs*, without recompence, reward, or ſatisfaction made, or uſeleſs, unprofitable, or without ſucceſs.

BOTTOMRY is in the nature of a mortgage of a ſhip; when the owner takes up money to enable him to carry on his voyage, and pledges the keel or *bottom* of the ſhip as a ſecurity for repayment. In which caſe it is underſtood, that if the ſhip be loſt, the lender loſes alſo his whole money; but if it returns in ſafety,

then

then he ſhall receive back his principal, and alſo the premium or intereſt agreed upon, however it may exceed the legal rate of intereſt. And this is allowed to be a valid contract in all trading nations, for the benefit of commerce, and by reaſon of the extraordinary hazard run by the lender. And in this caſe the ſhip and tackle, if brought home, are anſwerable (as well as the perſon of the borrower) for the money lent.—But if the loan is not upon the veſſel, but upon the the goods and merchandize, which muſt neceſſarily be ſold or exchanged in the courſe of the voyage: then only the borrower, perſonally, is bound to anſwer the contract; who, therefore, in this caſe is ſaid to take up money at *reſpondentia* (for which himſelf only is reſponſible). 2 *Black.* 458.

BOVATA TERRÆ, an oxgang, being as much land as one yoke of oxen can plough in a year.

BOUCHE OF COURT (from *bouche*, a mouth) was a certain allowance of proviſion from the king, to his knights and ſervants that attended him in any military expedition.

BOWBEARER, an under officer of the foreſt, whoſe office it is to overſee and make inquiry of all treſpaſſes done either to the vert or veniſon.

BRACETUS, *Fr. brachet*, a hound, chiefly of the larger kind; as *bracelet* was of a ſmaller kind, a *beagle*. So *bracenarius* was the huntſman or maſter of the hounds.

BRASIUM, *malt*. So *braciator* (from the Fr. *braſſeur*) is a maltſter or malt-maker. But in ſome of the ancient ſtatutes, *braciator* is taken for a brewer; and *braciatrix* was the woman who ſold ale, againſt whom, if ſhe offended againſt the aſſiſe of ale, the puniſhment of the tumbrel was ordained by the ſtatute 51 *H.* 3. *c.* 6. In ſome manors the tenants were bound by their tenure to dry the lord's malt at his kiln, on his finding them wood for that purpoſe.

BREACH ſignifies where a perſon commits any breach of the condition of a bond, or of his covenant entered into; in which caſe, upon an action brought, the plaintiff muſt aſſign the breach, otherwiſe he will have no cauſe of action. 1 *Saund.* 102. And when a breach is aſſigned, it muſt not be general, but muſt be particular; as in an action of covenant for not repairing of houſes, the breach ought to be aſſigned particularly, what is the want of reparation. But on mutual promiſe, for one to do an act, and in conſideration thereof another to do ſome act, as to ſell goods for ſo much money, a general breach that the defendant hath not performed his part is well aſſigned. 3 *Lev.* 319.

In caſe of a bond for performance of an award, if the defendant pleads any matter by which he admits a non-performance, and excuſes it; the plaintiff in his replication muſt ſhew the

the award, and assign the breach, that the court may see an award was made, and judge whether it was good or not; for if it should be of a void part thereof, it need not be performed. 1 *Salk.* 138.

Where a thing is to be done by a person or his assigns, the breach must be alleged that it was done neither by the one nor the other. 5 *Mod.* 133.

If several breaches are assigned, and the defendant demurs upon the whole declaration; the plaintiff shall have judgment for all that are well assigned, for they are as several actions. *Cro. Ja.* 557.

In actions on bonds, or any penal sum for non-performance of covenants, the plaintiff may assign as many breaches as he shall think fit, and the jury may assess damages for such of the breaches as the plaintiff upon the trial shall prove to have been broken. 8 & 9 *W. c.* 11.

BREDWITE, a fine or penalty imposed for defaults in the assise of bread.

BREHON law, in *Ireland*, was so called from the *Irish* name of judges, who were denominated *brehons*. At the time of the conquest of *Ireland* by king *Henry* the Second the *Irish* were governed by this law. But by several kings of *England*, successively, this law was injoined to be abolished, and the laws of *England* to be received in the place of it. But many of the *Irish* still adhered to their *brehon* law; and so late as the reign of queen *Elizabeth*, the wild natives still kept and preserved this their ancient law, which is described to have been "a rule of right unwritten, but delivered by tradition from one to another, in which oftentimes there appeared great shew of equity in determining the right between party and party, but in many things repugnant both to God's law and man's law." *Spencer's State of Ireland*, 1513. 1 *Black.* 100.

BREVE is any *writ* by which a person is summoned or attached to answer an action, or whereby any thing is commanded to be done in the king's courts. It is called *breve*, for the *brevity* of it; and is directed to the sheriff or other officer.

BRIBERY, in a strict sense, is taken for a great misprision of one in a judicial place, taking any thing whatsoever, except meat and drink of small value, of any one who hath to do before him any way, for doing his office, or by colour of his office, but of the king only; and is punishable at the common law, by fine and imprisonment. 1 *Haw.* 158.

BRICKS and TILES. By 7 *G.* 3. *c.* 42. 24 *G.* 3. *c.* 24. & 25. *G.* 3. *c.* 66. several regulations are made concerning the true making of bricks and tiles. And by the 27 *G.* 3. *c.* 13.

c. 13. a duty is laid upon all bricks and tiles made in *Great-Britain*, which are to be under the management of the officers of excise.

BRIDGES. Every parish, by the ancient common law, was bound to the repair of the public bridges therein. From this burden no man was exempt, whatever other immunities he might enjoy, this being part of the *trinoda necessitas*, to which every man's estate was subject, viz. castles, bridges, and expeditions. 1 *Black.* 357.

But now the statute of 22 *Hen.* 8. *c.* 5. hath laid this charge upon the county.

None can be compelled to make new bridges, where never any were before, but by act of parliament. 2 *Inst.* 701. But if a man builds a bridge, which afterwards becomes of public use, the county is obliged to repair it. *Bur. Mansf.* 2594.

Any inhabitant may be made defendant to an indictment for not repairing a bridge, and be liable to pay the whole fine for default of repairs, and shall be put to his remedy for a contribution; for bridges being of absolute necessity, are not to lie unrepaired till suits shall be determined. 1 *Haw.* 221.

BRIEF, *brevis*, an abridgment of the client's case made use of for instruction of counsel on trial at law, wherein the case of the party is to be briefly but fully stated.

BRIEF for collecting charity.—The undertaker of the briefs shall cause all the copies thereof to be marked with the name of one trustee (or more) written with his own hand, with the time of signing; and shall also cause them to be stamped with a stamp kept for that purpose by the register of the court of chancery. Then he shall deliver them to the churchwardens, chapelwardens, teachers and preachers of every separate congregation, who shall indorse the time of receipt, and set their names. And they again shall deliver them to the ministers, who also shall indorse and sign the same in like manner. And the briefs shall be publicly read within two months after receipt; and the sum collected shall be indorsed in words at length, and signed by the minister and churchwardens, or by the teacher and two elders. Which sums they shall, within six months after the time of the delivery of the briefs, pay over to the undertaker, taking his receipt for the same in a book to be kept for that purpose. And any person making default in the premises shall forfeit 20*l.* And a register shall be kept by the minister of all monies collected, when, and on what occasion. And the undertaker, in two months, shall account before a master in chancery.——If any person shall purchase or farm charity money on briefs, he shall forfeit 500*l.* to the use of the sufferers. 4 *An. c.* 14.

BRIGANDINE, a coat of mail or ancient armour, consisting of

of many jointed and ſcale-like plates, very pliant and eaſy for the body.

BRIGBOTE, a fine or amercement for not repairing of bridges. A grant of freedom from *brigbote*, is to be free from the payment of ſuch fine.

BROCAGE, the wage or hire of a *broker*.

BROCHA (Fr. *broche*) a *broach* or ſpindle not yet out of uſe. The tapering ſpire of a ſteeple is in ſome places called a *broach*. A *ſpit*, in ſome parts of *England*, is called a *broach*. And hence comes the expreſſion of piercing or *broaching* a barrel.

BROKERS (*broccatores*, *broccarii*) are thoſe that contrive, make, and conclude bargains and contracts between merchants and tradeſmen, in matters of money and merchandize, for which they have a fee or reward.

The ſtatute 1 *Ja.* *c.* 21. recites, that, of ancient ſtanding, there have been brokers within the city of *London*, being freemen of the ſaid city, appointed by the lord mayor and aldermen, and ſworn by them to demean themſelves uprightly between merchants and tradeſmen, in making bargains and contracts. And by 8 & 9 *W.* *c.* 20. they are to carry about them a ſilver medal, having the king's arms and the arms of the city, and pay 40*s.* yearly to the chamber of the city. By 7 *G.* 2. *c.* 8. contracts for transferring ſtock, whereof the party contracting to transfer the ſame ſhall not be then in actual poſſeſſion, ſhall be void; and the perſon offending herein ſhall forfeit 100*l.*; and if any broker ſhall negotiate ſuch contract, he alſo ſhall forfeit 100*l.*

There are, beſides theſe, certain perſons called *pawn-brokers*, who commonly keep ſhops, and let out money to poor neceſſitous people upon pawns: but theſe are not of that antiquity or credit as the former; nor do the ſtatutes allow them to be brokers, though now commonly ſo called. Several late ſtatutes have made divers regulations in their trade, and ſubjected them to annual licences and divers penalties on trading without ſuch licences, as contrary to the directions of the ſtatutes; for which ſee 30 *G.* 2. *c.* 24. 25 *G.* 3. *c.* 48. and 29 *G.* 3. *c.* 57. or *Burn's J.* title PAWNING.

BROTHEL HOUSES are lewd places, being the common habitations of proſtitutes. They were formerly allowed in certain places, and eſpecially on the Bank Side in *Southwark*, where they had ſigns before their doors in like manner as inns and alehouſes. By the ſtatute 14 *Ric.* 2. it was enacted, that no eſtews or brothel houſes ſhould be kept in *Southwark*, but in the common places therefore appointed. Of theſe, before the reign of king *Henry* the ſeventh, there were eighteen allowed; but that king for a long time forbad them. Afterwards twelve, and no more, were permitted. But finally, king *Henry* the eighth, by proclamation, in the 37th year of his reign, ſuppreſſed them all.

And

And ſo odious were they become, that men in making leaſes of their houſes did add an expreſs condition, that the leſſees ſhould not ſuffer, harbour, or keep any lewd women within the ſaid houſes. 3 *Inſt.* 205, 6.

BRUERE, *brueria* (Sax. *brær*, briar), heath ground, or uncultivated, over-run with brambles or bruſh-wood.

BUCKSTALL, a *ſtation* to watch the deer in hunting; the attending whereof was a ſervice performed by the tenants to the lord within the foreſt.

BUGGERY (from the Italian *bugarone*, this vice being ſaid to have been brought into *England* out of *Italy* by the *Lombards*) is a deteſtable and abominable ſin, among chriſtians not to be named, committed by carnal knowledge againſt the ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beaſt, or by womankind with brute beaſt. 3 *Inſt.* 58.

By ſtatute 25 *H.* 8. *c.* 6. this offence is made felony without benefit of clergy.

If the party buggered be within the age of diſcretion (which is generally reckoned the age of fourteen) it is no felony in him, but in the agent only. But if buggery be committed upon a man of the age of diſcretion, it is felony in them both. 3 *Inſt.* 59.

BUILDING erected ſo near a man's houſe, that it ſtops up his lights, is not a nuſance for which an action will lie, unleſs the houſe is an ancient houſe, and the lights ancient lights. 2 *Salk.* 459.

But if the houſe new built exceeds the ancient foundation, and thereby is the cauſe of hindering the lights of another houſe, an action lies againſt him who cauſed it to be erected. *Hob.* 131.

BULL, *bulla*, was a brief or mandate of the pope or biſhop of *Rome*, ſo called from the ſeal of lead, or ſometimes of gold, affixed to it. To procure, publiſh, or put in uſe any of theſe, is by act of parliament made high treaſon.

BULL AND BOAR: By cuſtom, in ſome pariſhes, the parſon is obliged to keep a bull and boar, for the common uſe of the pariſhioners, for the increaſe of calves and pigs; in which caſe, every inhabitant prejudiced by his not keeping the ſame may have an action on the caſe againſt him. *Cro. Eliz.* 469.

BULTEL is the coarſer part of flour when dreſſed by the baker. The word is mentioned in the ſtatute of the aſſize of bread and beer, 51 *Hen.* 3. Hence comes *bulted* or *boulted* bread.

BURG, perhaps from the Greek πυργος, a tower, ſignified in ancient times a walled town, or other fortified place.

BURGAGE, a dwelling-houſe within a borough town.

BURGAGE TENURE is, where houſes, or lands which were formerly the ſite of houſes, in an ancient borough, are held

held of the king or ſome other lord in common ſocage, by a certain eſtabliſhed rent. 2 *Black.* 82.

Many of ſuch boroughs have divers cuſtoms and uſages, which are not had in other places. For ſome boroughs have a cuſtom, that if a man hath iſſue many ſons, and dieth, the youngeſt ſon ſhall inherit all the tenements which were his father's within the ſame borough, as heir to his father, by force of the cuſtom; which cuſtom is called *Borough Engliſh.* Alſo in ſome boroughs, by cuſtom, the wife ſhall have for her dower all the tenements which were her huſband's. *Litt.* 165, 6.

Theſe ancient boroughs ſeem to have withſtood the ſhock of the Norman incroachments, principally on account of their inſignificancy, which made it not worth while to compel them to an alteration of tenure, as an hundred of them put together would ſcarce have amounted to a knight's fee. Beſides, the owners of them, being chiefly artificers and perſons engaged in trade, could not with any tolerable propriety be put on ſuch a military eſtabliſhment as the tenure in chivalry was. 2 *Black.* 82.

BURG-BOTE, a compenſation, boot, or contribution, for the building and repairing of caſtles or walls of a borough or city: from which ſervice divers perſons or bodies politic had exemptions by grant from our ancient kings, that they ſhould be free from *burg-bote.*

BURG-BRECHE, a fine impoſed on the community of a town, for breach of the peace. See BORG BRECHE.

BURGESSES, *burgenſes*, in general, are the inhabitants of a borough town. Sometimes the word is reſtricted to the magiſtrates or other principal inhabitants. And ſometimes to the repreſentatives of ſuch borough in parliament.

BURGLARY (from the Saxon *burg*, a houſe, and *larron*, a thief, probably from the Latin, *latro, latronis*) is a felony at common law, in breaking and entering the manſion-houſe of another, in the night, with intent to commit ſome felony within the ſame, whether the felonious intention be executed or not. *Hale's Pl. C.* 79.

The manſion-houſe includes not only the dwelling-houſe, but alſo the outhouſes that are parcel thereof; as a barn, ſtable, cow-houſe, dairy-houſe, if they are parcel of the meſſuage, though they be not under the ſame roof, or joining contiguous to it: but if it be remote from the dwelling-houſe, as if it ſtand a bow-ſhot off from the houſe, and not within or near the curtilage of the chief houſe, then the breaking is not burglary. 1 *H. H.* 558.

If a perſon ſhall enter without breaking the houſe, with intent to commit felony, or being in the houſe, ſhall commit any felony, and ſhall in the night-time break the houſe to get out, he ſhall be guilty of burglary. 12 *An. c.* 7.

If a window of the houſe be open, and the thief with a hook or engine

engine draweth out ſome of the goods of the owner, this is no burglary, becauſe there is not an actual breaking. But if the thief breaketh the glaſs of the window, and with a hook or other engine draweth out ſome of the goods of the owner, this is burglary, for there was an actual breaking of the houſe. 3 *Inſt.* 64.

And as there muſt be a breaking, ſo there muſt be an actual entry; but it is ſufficient if the thief breaks the houſe, and his body, or any part thereof, as his foot, or his arm, is within any part of the houſe, or if he put a gun into the window which he hath broken with intent to murder or kill: but if he doth barely break the houſe without any ſuch entry at all, this is no burglary. *Id.*

If divers come in the night to commit a burglary, and one of them breaks and enters, the reſt of them ſtanding to watch at a diſtance, this is burglary in them all. *Id.*

Every perſon, who ſhall apprehend and proſecute to conviction any perſon guilty of burglary, ſhall have a certificate from the judge, which ſhall exempt him from all pariſh and ward offices within the pariſh and ward where the felony was committed; which certificate may be aſſigned once over. 10 & 11 *W. c.* 23. And moreover ſuch perſon, as a further reward, ſhall be entitled to the ſum of 40*l.* And if any perſon, being out of priſon, ſhall commit any burglary, and afterwards diſcover two or more accomplices, ſo as they be convicted; he ſhall have a pardon, and the like ſum of 40*l.* 5 *An. c.* 31.

BURGH-MOTE, a borough court.

BURIAL: By the cuſtom of *England*, any perſon may be buried in the churchyard of the pariſh where he dies without paying any thing for breaking the ſoil. *Degge. P.* 1. *c.* 12.

For the encouragement of the woollen manufacture, no corpſe of any perſon ſhall be buried in any ſhroud or other thing, but what is made of ſheep's wool only. 30 *C.* 2. *ſt.* 1. *c.* 3.

Neceſſary funeral expences are allowed, previous to all other debts and charges. But if an executor or adminiſtrator be extravagant, it is a devaſtation or waſte of the ſubſtance of the deceaſed, and ſhall only be prejudicial to himſelf, and not to the creditors or legatees of the deceaſed. 2 *Black.* 508.

A perſon who voluntarily kills himſelf is denied chriſtian burial; and to ſhew the abhorrence in which this crime is holden in the eye of the law, he ſhall be buried ignominiouſly in the highway with a ſtake driven through his body. 4 *Black.* 190. And by the 23 *G.* 3. *c.* 67. a ſtamp duty is impoſed upon all burials.

BURNING the houſe of another wilfully and maliciouſly, by night or by day, is felony at the common law. And by particular ſtatutes divers kinds of burning are made felony, and others have other penalties annexed to them. By 37 *H.* 8. *c.* 6. burning any

any wain or cart, laden with coals or other goods, or any heap of wood prepared for making coals or billets, is subject to treble damages, and a fine of 10*l.* By 43 *El. c.* 13. for preventing rapine on the northern borders, to burn any barn or ſtack of corn or grain, is felony without benefit of clergy. By 22 & 23 *C.* 2. *c.* 7. burning in the night-time any ricks or ſtacks of corn, hay, or grain, barns, houſes, buildings, or kilns, is felony; but the offender may make his election to be tranſported for ſeven years. By 5 *W. c.* 23. to burn on any waſte, between *Candlemas* and *Michaelmas*, any grig, ling, heath, goſs, or fern, is puniſhable with whipping and confinement in the houſe of correction. By 1 *An. ſt.* 2. *c.* 9. captains and mariners belonging to ſhips, burning or deſtroying the ſame, are guilty of felony without benefit of clergy. By 6 *An. c.* 31. ſervants negligently firing houſes ſhall forfeit 100*l.*; and if not able to pay, ſhall be impriſoned in the houſe of correction eighteen months. By 1 *G. ſt.* 2. *c.* 48. & 6 *G. c.* 16. ſetting on fire any wood, ſprings of wood, or coppice, is felony (but within clergy). By 9 *G. c.* 22. ſetting fire to any houſe, barn, or outhouſe, or to an hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood, is felony without benefit of clergy; and the hundred ſhall anſwer damages. By 10 *G.* 2. *c.* 32. the like penalty for ſetting fire to any mine, pit, or delph of coal or cannel coal. By 28 *G.* 2. *c.* 19. ſetting fire to any goſs, furze, or fern, in any foreſt or chaſe, is ſubject to a penalty of 5*l.* By 9 *G.* 3. *c.* 29. burning or ſetting fire to any kind of mill, is felony without benefit of clergy: and burning or ſetting fire to any machine or engine belonging to any mine, is felony and tranſportation for ſeven years. By 12 *G.* 3. *c.* 24. burning or ſetting fire to any of his majeſty's ſhips of war, or any arſenal, magazine, dock yard, rope yard, victualling office, or any military or naval ſtores or ammunition, is felony without benefit of clergy.

BUTLERAGE is an ancient hereditary duty belonging to the crown, much older than the cuſtoms; which was a right of taking two tons of wine from every ſhip importing into *England* twenty tons or more; which by king *Edward* the firſt was exchanged into a duty of 2*s.* for every ton imported by merchant ſtrangers, and called *butlerage*, becauſe paid to the king's butler. 1 *Black.* 314.

BUTTS, the place where archers meet with their bows and arrows to ſhoot at a mark, which is called ſhooting at the *butts*.

BUYING OF TITLES. At the common law, it is an high offence to buy or ſell any doubtful title to lands known to be diſputed, to the intent that the buyer may carry on the ſuit, which the ſeller is not able, or doth not think it worth his while to do, and on that conſideration ſells his pretenſions at an under-rate; and it ſeems not to be material whether the title ſo ſold be good

or bad, or whether the ſeller were in poſſeſſion or not, unleſs his poſſeſſion was lawful and unconteſted. 1 *Haw.* 261. And by ſtatute 32 *H.* 8. *c.* 9. none ſhall buy any pretenced right in any land, unleſs the ſeller hath been in poſſeſſion of the ſame, or of the reverſion or remainder thereof, or taken the rents or profits thereof, for one year next before; on pain that the ſeller ſhall forfeit the land, and the buyer the value thereof.

BY-LAWS are orders made *by the bye*, in particular caſes whereunto the public law doth not extend. In *Scotland*, theſe laws are called laws of *birlaw*, which are made by neighbours elected by common conſent in the *birlaw* courts, wherein knowledge is taken of complaints betwixt neighbour and neighbour; which men ſo choſen are judges and arbitrators, and ſtyled *birlaw-men*.

Every corporation lawfully erected hath power to make by-laws or private ſtatutes for the better government of the corporation; which are binding upon themſelves, unleſs contrary to the laws of the land, and then they are void. 1 *Black.* 475.

The inhabitants of a town may make by-laws for the reparation of the church, highway, or any thing which is for the general good of the public, without alleging a cuſtom; for they are for ſuch like purpoſes incorporated as it were by the common law: and the greater part of the inhabitants ſhall bind the reſt. But if the by-law is for their own private profit, as for the well ordering of the common, or the like; there without cuſtom, they cannot make by-laws. 5 *Co.* 63.

So the freeholders in a leet may make by-laws relating to the public good, for matters within the leet; and they ſhall bind every one if they are for the public good: otherwiſe, if they are for a private intereſt, they bind thoſe only that agree to them. *Wood, b.* 4. *c.* 1.

Alſo a court baron may make by-laws by cuſtom and add a penalty upon the breach thereof, which cannot be affeered, for a penalty differs from an amercement. *Id.*

A corporation by charter cannot make by-laws inconſiſtent with the intention of their charter. *Bur. Monſf.* 2207.

A by-law in reſtraint of trade is not good, without ſetting forth a particular cuſtom to ſupport it. *Id.* 17.

A forfeiture impoſed by the by-laws and private ordinances of a corporation, upon any that belong to the body, creates a debt in the eye of the law; and if unpaid may be recovered by action of debt. 3 *Black.* 159.

C A L

CALLING the plaintiff is, where, upon the trial, the plaintiff perceives that he has not given evidence ſufficient to maintain his iſſue, he thereupon withdraws himſelf, or becomes voluntarily nonſuited. Whereupon the crier is ordered to *call* the plaintiff, and if he appears not, the action is at an end, and the defendant ſhall recover his coſts. And the reaſon of this practice is, that a nonſuit is more eligible for the plaintiff, than a verdict againſt him: for after a nonſuit he may commence the ſame ſuit again for the ſame cauſe of action; but after a verdict and judgment thereupon, he is for ever barred from attacking the defendant upon the ſame ground of complaint. 3 *Black.* 376.

CANDLES. By the 24 *G.* 3. *c.* 41. every maker of candles for ſale, and alſo every perſon trading in, or ſelling candles, ſhall take out a licence annually from the officers of exciſe. But no perſon licenſed as a maker of candles, need be licenſed as a ſeller alſo.

But by the 25 *G.* 3. *c.* 74. no perſon reſiding within the limits of the head office in *London*, ſhall be permitted to make candles, unleſs he occupy a tenement of 10*l.* a year, for which he ſhall be aſſeſſed, in his own name; and ſhall alſo pay to the pariſh rates elſewhere, unleſs he be aſſeſſed, and pay to church and poor.

And by the 27 *G.* 3. *c.* 13. a duty is impoſed on all candles made in *Great Britain*, and drawbacks allowed on the exportation thereof, as ſpecified in a ſchedule annexed to the act.

And by the above ſtatutes, and alſo by ſeveral others, regulations are made for the making of candles, which are to be under the inſpection of the officers of exciſe.

CANONS, from κανων, *regula*, were originally an order of religious perſons that lived under certain *rules* which they preſcribed to themſelves and were divided into two ſorts, *ſecular* and *regular*. The ſecular were ſo called, becauſe they converſed *in ſeculo*, abroad in the world, and performed ſpiritual offices to the laity, in the ſame manner as the canons and prebendaries in cathedral and collegiate churches at this day. *Regular* canons were ſuch as lived together under one roof, and were obliged to obſerve the rules of their order.

CANON LAW is a body of *Roman* eccleſiaſtical conſtitutions made from time to time for the regulation of matters relating to the church; and compiled chiefly from the writings of the holy fathers, the decrees of general councils, and the decretal epiſtles and bulles of the pope. More particularly, of the canon law, there are two principal parts, the *Decrees*, and the *Decretals*.

The *Decrees* are eccleſiaſtical conſtitutions, made by the pope and cardinals, at no man's ſuit. Theſe were firſt collected by

Ivo, in the year 1114; and afterwards poliſhed and perfected by *Gratian*, a monk of *Bononia*, in the year 1149.

The *Decretals* are canonical epiſtles written by the popes alone, or by the popes and cardinals, at the inſtance or ſuit of ſome one or more, for the ordering and determining of ſome matter in controverſy. Of theſe there are three volumes: The firſt, collected by order of *Gregory* the ninth, about the year 1231. The ſecond, by *Boniface* the eighth about the year 1298. The third, made by pope *Clement* the fifth, and from him called the Clementines, and publiſhed by him about the year 1308.

To theſe may be added the *Extravagants* of pope *John* the twenty-ſecond, and of ſome of his ſucceſſors.

And beſides this foreign canon law, we have in this kingdom our *legatine* and *provincial* conſtitutions.

The *legatine* conſtitutions were enacted in *national* ſynods held under the cardinals *Otho* and *Othobon*, legates from pope *Gregory* the ninth and pope *Clement* the fourth, in the reign of king *Henry* the third, about the year 1220 and 1268.

The *provincial* conſtitutions are principally the decrees of provincial ſynods held under divers archbiſhops of *Canterbury*, from *Stephen Langton*, in the reign of king *Hen.* 3. to *Henry Chicheley*, in the reign of king *Hen.* 5. and adopted alſo by the province of *York*, in the reign of *Hen.* 6.

At the dawn of the reformation, in the reign of *Hen.* 8. it was enacted in parliament, that a review ſhould be made of the canon law; and till ſuch review ſhould be had, the ſaid canon law, being then already made, and not repugnant to the law of the land or the king's prerogative, ſhould be ſtill uſed and executed. And as no ſuch review hath yet been perfected, upon this ſtatute depends the authority of the canon law in *England*.

The canons made by the clergy in 1603, in the reign of *James* the firſt, not having been confirmed in parliament, are not allowed to be in force ſo as to bind the laity, further than they are declaratory of the ancient canon law.

CAPE is a writ judicial touching plea of lands or tenements; ſo termed as moſt writs are, of that word in it, which carries the chief intention or end thereof. And this writ is divided into *Cape Magnum* and *Cape Parvum*, both of which take hold of things immoveable. *Cape Magnum*, or the *Grand Cape*, is a writ that lies before appearance, to ſummon the tenant to anſwer the default, and alſo to anſwer over to the demandant: and this is, where a man hath brought a *Præcipe quod reddat* of a thing touching plea of land, and the tenant makes default at the day to him given in the original writ, then this writ ſhall go for the king, to take the land into his hands; and if the tenant come not at the day given him thereby, he loſeth his land. *Cape Parvum*, or *Petit Cape*, is, where the tenant is ſummoned in plea of land, and comes on the

the ſummons, and his appearance is recorded; if at the day given him he prays the view, and having it granted makes default, then ſhall iſſue this writ for the king. The difference between the *Grand Cape* and *Petit Cape* is, that the *Grand Cape* is awarded upon the tenant's not appearing or demanding the view in ſuch real actions, where the original writ doth not mention the particular demand: and the *Petit Cape* is after appearance or view granted. And whereas the *Grand Cape* ſummons the tenant to anſwer for the default, and likewiſe over to the demandant; *Petit Cape* ſummons the tenant to anſwer the default only. *Regiſters*, 1, 2.

CAPIAS AD AUDIENDUM. In caſe of a miſdemeanor, after the defendant hath appeared and is found guilty, and is not preſent in court upon his conviction, a *Capias* is awarded *ad audiendum judicium*, that is, to bring him in to receive judgment; and if he abſconds, he may be proſecuted even to outlawry. 4 *Black.* 368.

A CAPIAS PRO FINE is where one who is fined to the king for ſome offence committed againſt a ſtatute, doth not diſcharge the fine according to the judgment; whereupon his body is to be taken by this writ, and committed to priſon until he pay the fine.

It is alſo uſed in ſome civil actions; but by 5 *W.* & *M. c.* 12. capiatur fines are taken away in ſeveral caſes.

A CAPIAS AD RESPONDENDUM is a writ commanding the ſheriff to take the body of the defendant, and him ſafely to keep, ſo that he may have him in court on the day of the return, to anſwer to the plaintiff of a plea of debt, or treſpaſs, or the like, as the caſe may be. 3 *Black.* 282.

And if the ſheriff returns that he cannot be found, then there iſſues another writ called an *Alias capias*; and, after that, another called a *Pluries capias*; and if upon none of theſe he can be found, then he may be proceeded againſt unto outlawry. *Id.*

But all this being only to compel an appearance, after the defendant hath appeared, the effect of theſe writs is taken off, and the defendant ſhall be put to anſwer; unleſs it is in caſes where ſpecial bail is required, and there the defendant is actually to be taken into cuſtody. *Id.*

CAPIAS AD SATISFACIENDUM is a writ directed to the ſheriff, commanding him to take the body of the defendant, to make the plaintiff ſatisfaction for his demand; otherwiſe he is to remain in cuſtody till he does. 3 *Black.* 415.

This is a writ of the higheſt nature, as it deprives a man of his liberty, till he makes the ſatisfaction awarded: and therefore, when a man is once taken in execution upon this writ, no other proceſs can be ſued out againſt his lands or goods. *Id.*

But if the defendant dies, whilſt he is charged in execution

upon this writ, the plaintiff may, after his death, ſue out new executions againſt his lands, goods, or chattles. 3 *Black.* 415

A CAPIAS UTLAGATUM is a writ that lies againſt a perſon that is outlawed in any action, whereby the ſheriff is commanded to apprehend the party outlawed, and keep him in ſafe cuſtody till the day of the return of the writ, and then have his body there to be ordered for his contempt. But this being only for want of appearance, if he ſhall afterwards appear, the outlawry moſt commonly is reverſed. 3 *Black.* 284.

If a perſon is outlawed on a criminal proſecution, any one may take him, either by a writ of *Capias Utlagatum*, or without: if it is for treaſon or felony, the outlawry, in ſtrictneſs, is a conviction of the offender; but in ſuch caſes the outlawry is frequently reverſed, and the party admitted to plead and defend himſelf againſt the indictment. 4 *Black.* 315.

A CAPIAS IN WITHERNAM (from *wyther*, in Saxon *other*; and *naam*, a taking or diſtreſs;) is a writ directed to the ſheriff, in caſe where a diſtreſs is carried out of the county or concealed by the diſtrainer, ſo that the ſheriff cannot make deliverance of the goods upon a replevin; commanding him to take ſo many of the diſtrainer's own goods by way of repriſal, inſtead of the other that are ſo concealed. 2 *Inſt.* 140, 1. *F. N. B.* 68, 69. 13 *Ed.* 1. *c.* 2.

CAPITE. Tenants *in capite*, or in chief, were thoſe that held of the king as the *head* or fountain of tenure. And it might be either by knights ſervice, or in ſocage. But now tenure *in capite* is aboliſhed by the 12 *C.* 2. *c.* 24. and turned into free and common ſocage.

CAPTION (from *capio*, to take) ſignifies a *taking* in general. Caption of an indictment is the preamble to the indictment, ſetting forth when and before what court, the indictment was *taken*. So upon the execution of any commiſſion, as of taking fines of lands, taking anſwers in chancery, or depoſitions of witneſſes; the captors, or perſons who executed the commiſſion, ſpecify, in their return, the time and place of the *taking* thereof.

CAPTIVE is a priſoner taken in war, in whom the taker has a ſort of qualified property, at leaſt until his ranſom be paid. In the borders of *England* and *Scotland*, before the union, the ſkirmiſhing parties in both kingdoms made incurſions upon each other, not with an intention of ſlaughter, but of taking priſoners, who were to continue with the taker till payment of the ranſom agreed on. There is a writ in the Regiſter for breaking the plaintiff's houſe, and ſetting at large one *B.* a Scotchman, whom the plaintiff had taken in war as his priſoner, and detained until he ſhould pay to the plaintiff 100*l.* being the price agreed on for his redemption and ſaving of his life. 2 *Black.* 402.

CAPTURE

CAPTURE ſignifies properly the goods, and ſhips, or veſſels, of an enemy taken at ſea in time of war. Theſe belonged originally to the captor. And anciently it was holden, that if an enemy take the goods of an Engliſhman, which are afterwards retaken by another ſubject of this kingdom, the former owner ſhall loſe his property therein as ſoon as the goods have been the property of the captor for the ſpace of twenty-four hours: but the more modern authorities require, that before the property can be changed, the goods muſt have been brought into port, and have continued one night (intra præſidia) in a place of ſafe cuſtody, ſo that all hope of recovering them was loſt. 2 *Black.* 401.

CARDS. By ſeveral acts of parliament a duty is impoſed on every pack of playing-cards. See *Burn's J.* tit. CARDS and DICE.

CARRIER is one that carries goods for others for hire; under which denomination are included maſters and owners of ſhips, lightermen, ſtage coachmen, and all others who undertake the carriage of goods for a reward.

2. By ſtatute 3 *W. c.* 12. the juſtices of peace have power to rate the prices of all land carriage of goods to be brought *into* any place within their juriſdiction. And by 21 *G.* 2. *c.* 28. the ſame prices were to be paid for the carriage of goods *to London*, as the juſtices had fixed for the carriage *from London*. But this latter act is repealed by 7 *G.* 3. *c.* 40. & 13 *G.* 3. *c.* 84.

A carrier ſhall not evade the law, by refuſing to carry goods at the prices limited. For if a common carrier, who is offered his hire, and who hath convenience, refuſes to carry goods, he is liable to an action in the ſame manner as an innkeeper who refuſes to entertain a gueſt, or a ſmith who refuſes to ſhoe a horſe. 1 *Bac. Abr.* 334.

3. A perſon, to whom goods are delivered to be kept, is only obliged to keep them as he would keep his own; but a common carrier, in reſpect of the reward, muſt make good the loſs, although he himſelf may not be in fault. *Bur. Manſf.* 2298.

And the reward ought to bear proportion to the riſque: therefore he ought to have more for carrying money or jewels than for common ordinary goods. *Id.*

4. For he may refuſe to contract in extraordinary caſes, without extraordinary terms. He may accept ſpecially. He ſhall be anſwerable for no more than he is told of, and not for what is concealed from him, and whereby he is deceived. And therefore, if money or jewels are ſent by him, and it be denied or concealed that it is money or jewels, he is not anſwerable for the loſs of them. *Id.*

5. Where goods are delivered to a carrier, and he is robbed of them, yet he ſhall be charged and anſwer for them by reaſon of

of the hire: and this was at the common law, before the hundred was anſwerable over to him; becauſe ſuch robbery might be, by conſent and combination, carried on in ſuch a manner that no proof could be had of it. And although it may be thought a hard caſe, that an innocent carrier who is robbed on the road, ſhould be anſwerable for all the goods he takes, yet the inconvenience would be far more intolerable if he were not ſo: for it would be in his power to pretend a robbery or ſome other accident, without a poſſibility of remedy to the party; the law will not expoſe him to ſo great a temptation, but he muſt be honeſt at his peril. 1 *Salk.* 143. 12 *Mod.* 482.

6. And, generally, if a man delivers goods to a common carrier, to carry to a certain place, if he loſes or damages them, an action upon the caſe lies againſt him: for by the cuſtom of the realm, he ought to carry them ſafely. 1 *Bac. Abr.* 343.

And if a perſon who is not a common carrier, takes upon himſelf to carry my goods, though I promiſe him no reward, yet if my goods are loſt or damaged by his default, I ſhall have an action againſt him: for the very taking of the goods is a general conſideration, and renders him liable. *Id.*

7. A delivery to the carrier's ſervant is a delivery to the carrier; and if the goods are loſt, an action will lie againſt the carrier.

CARTS. See WAGGONS.

CART-BOTE, an allowance to the tenant of wood ſufficient for carts and other inſtruments of huſbandry.

CARTHUSIAN monks were a branch of the benedictine order, and had their name from *Chartreux (Carthuſia)* in France, where they were firſt inſtituted. They were brought into England by king Henry the ſecond, and had their firſt houſe at Witham, in Somerſetſhire, and had, in the whole, nine houſes in this kingdom. Their houſes were called *Chartreux* houſes, which by corruption have degenerated into *Charter* houſes. Their rule was the moſt ſtrict of any of the religious orders: for they were never to eat fleſh; and were obliged to feed on bread, water, and ſalt, one day in every week. They wore a hair ſhirt next their ſkins; and were allowed to walk only once a week about their grounds.

CARUCATE (from *caruca*, a plough); as much land as can reaſonably be tilled in a year by one plough.

CASE (action upon). *Action upon the caſe* is an univerſal remedy given for all perſonal wrongs and injuries with force; ſo called, becauſe the plaintiff's whole *caſe* or cauſe of complaint is ſet forth at length in the original writ. For it is not brought (as in other actions) upon a writ formed in the Regiſter; but the writ varies according to the variety of the caſe. 3 *Black.* 122.

For

For although in general there are methods preſcribed and forms of action previouſly ſettled for redreſſing thoſe wrongs which moſt uſually occur, and in which the very act itſelf is immediately prejudicial or injurious to the plaintiff's perſon or property, as battery, non-payment of debts, detaining one's goods, or the like; yet where any ſpecial conſequential damage ariſes, which could not be foreſeen and provided for in the ordinary courſe of juſtice, the party injured is allowed to bring a ſpecial action on his caſe, by a writ formed according to the peculiar circumſtances of his own particular grievance. *Id.*

For wherever the law gives a right, or prohibits an injury, it alſo gives a remedy by action; and, therefore, wherever a new injury is done, a new method of remedy muſt be purſued. 3 *Black.* 123.

And it is a ſettled diſtinction, that where an act is done, which is in itſelf an *immediate* injury to another's perſon or property, there the remedy is uſually by an action of treſpaſs with force and arms; but where there is no act done, but only a culpable omiſſion, or where the act is not immediately injurious, but only by conſequence and collaterally, there no action of treſpaſs with force and arms will lie, but an action on the ſpecial caſe, for the damages conſequent on ſuch omiſſion or act. *Id.*

Generally, in all caſes where a man hath a temporal loſs or damage by the wrong of another, he may have an action upon the caſe to be repaid in damages. As if the pariſhioners of ſuch a pariſh have a right to paſs a ferry toll free, and are hindered of that right by the owner of the ferry; every pariſhioner ſhall have an action upon the caſe againſt him, to aſſert that right. 1 *Comyns. Dig.* 140.

If a man, being intruſted in his profeſſion, deceives him who intruſted him; as if a man retained of counſel, become afterwards of counſel with the other party in the ſame cauſe; or diſcover the evidence or ſecrets of his client; or, being retained to attend in court at ſuch a day, doth not come, whereby the cauſe is loſt; — this action lies. *Id.* 177.

So, if a man, by a falſe affirmation of a thing within his knowledge, deceive in the ſale of goods; as if a taverner ſell wine for ſound and good, which he knows to be corrupt. *Id.* 178.

So, if he ſell land, affirming the rent to be ſo much, when it is not, for the rent is certain, and lies within his own knowledge. *Id.* 179.

If a man lends an horſe or other thing for hire, and the borrower miſuſeth it, an action upon the caſe lies againſt him. *Id.* 220.

If a man warrants an horſe to be ſound before ſale, upon which another buys him, an action lies, for the warranting was the cauſe of

of buying; or, if he ſo warrants him before payment of the money, for that completes the bargain. *Id.* 181.

If a ſervant or apprentice, upon a ſale of goods for his maſter, warrants them, it is a void warranty, for it is the ſale of the maſter; and the warranty muſt be made by him that ſells. *Id.* 180.

If a man bound by preſcription to repair fences againſt another, doth not do it, whereby the cattle of the other are damnified, or whereby cattle enter and do damage; — this action lies. *Id.* 225.

So, if a man be bound to the repair of a bridge, by the neglect whereof another hath a ſpecial damage; or bound to repair a bank, doth it not, whereby the land of another is overflowed. *Id.*

So, if a man neglect to do that which he hath undertaken to do, an action upon the caſe lies: as if a man deliver goods to a carrier, to carry them to a certain place, and the carrier loſes them, action of the caſe lies againſt him: for by the common cuſtom of the realm, he ought to carry them ſafely. Or if any one, who is not a common carrier, undertakes to carry goods and to deliver them at ſuch a place, if he doth not carry them, an action lies; and this, although the plaintiff doth not agree for a price certain, but ſays he will content him. *Id.*

Alſo this action lies for words ſpoken to or concerning another whereby one is defamed and damnified. All ſcandalous words are actionable which may affect one's life or limb, his liberty, office or place of truſt, trade, or preferment; or which diſparage his title to his eſtate, or where the words tend to one's diſheriſon as by calling one baſtard that is an heir to land; or where they tend to one's particular damage, and he is actually damaged thereby.——4 *Co.* 15.

So, it lies for a nuiſance to the habitation or eſtate of another; as if a man build an houſe hanging over the houſe of another, whereby the rain falls upon it: ſo if he ſtops the ancient lights of another houſe. 1 *Com. Dig.* 231.

But an action upon the caſe doth not lie for a common nuiſance, for there the remedy can only be by indictment. Otherwiſe it is, where there is a ſpecial damage; as if a man make a ditch in the highway, and my horſe falls into it; or if my ſervant falls in, and maims himſelf, whereby I loſe his ſervice; ſo if he lay logs in the highway, whereby my horſe falls with me: in all theſe and the like caſes, an action will lie to be ſatisfied in damages. *Id.* 234.

CASTELLAIN, the governor of a *caſtle* or fortified place. *Caſtellarium* is the precinct or juriſdiction of ſuch caſtle. And *caſtellorum operatio* is caſtle work, or ſervice of the tenants for building and upholding of caſtles: which was one of the three neceſſary charges (the *trinoda neceſſitas*) to which all lands among our Saxon anceſtors were charged. Immunities from this charge were

were ſometimes granted by the lords, *ut ſint quieti de caſtellorum operibus*. *Caſtleward* was the ſervice of guarding or watching at ſuch caſtle.

CASTIGATORY (from *caſtigo*, to chaſtiſe) is the ducking ſtool provided for the puniſhment of ſcolding women, wherein they are plunged or ſouſed over head in the water.

CASUAL EJECTOR, anciently, in the trial of right to lands by ejectment, was a perſon, ſuppoſed *caſually* or by *accident* to come upon the land, and turn out the lawful poſſeſſor. For, originally, in order to the trying the right by ejectment, ſeveral things were neceſſary to be made out before the court: Firſt, a *title* to the land in queſtion; upon which he was to make a formal entry: and, being ſo in poſſeſſion, he executed a *leaſe* to ſome third perſon or leſſee, leaving him in poſſeſſion: then the prior tenant, or ſome other perſon (either by accident or by agreement beforehand), came upon the land and turned him out: and for this *ouſter* or turning out, the action was brought. But now all theſe formalities are diſpenſed with, except the mere trial of the title. 3 *Black.* 202.

CASU CONSIMILI is a writ of entry, granted where tenant by the curteſy, or tenant for life aliens in fee, or in tail, or for another's life. And it is brought by him in reverſion againſt the party to whom ſuch tenant ſo aliens to his prejudice, and in the tenant's life-time. It takes its name from this; that the clerks of the chancery did, by their common aſſent, frame it to the *likeneſs* of the writ called *In caſu proviſo*, according to the authority given them by the ſtatute of *Weſtminſter* 2. *c.* 24. which ſtatute, as often as there happens a new caſe in chancery ſomething like the former, yet not ſpecially fitted by any writ, authoriſes them to frame a new form anſwerable to the new caſe, and as like the former as may be. 7 *Co.* 4. *F. N. B.* 206.

CASU PROVISO is a writ of entry given by the ſtatute of *Glouceſter*, *c.* 7. where a tenant in dower aliens in fee, or for life; and it lies for him in reverſion againſt the alienee. This writ, and the writ of *caſu conſimili*, ſuppoſe the tenant to have aliened in fee, though it be for life only; and a *caſu proviſo* may be without making any title in it, where a leaſe is made by the demandant himſelf to the tenant that doth alien. But if an anceſtor leaſe for life, and the tenant alien in fee, the heir in reverſion muſt have this writ with the title included therein. *F. N. B.* 205, 6.

CATCHPOLE, one of the ſheriff's bailiffs, ſo called becauſe he *catches* by the *poll* or head the party arreſted.

CATHEDRAL. After the eſtabliſhment of Chriſtianity, the emperors and other great men gave large demeſnes and other poſſeſſions for the maintenance of the clergy, whereon were built the firſt places of publick worſhip, which were called *cathedræ*, *cathedrals*,

cathedrals, *ſees*, or *ſeats*; from the clergy's reſidence thereon. And when churches were built in the country, the clergy were ſent out from the cathedrals to officiate in thoſe churches, the cathedral or head ſeat remaining to the biſhop, with ſome of the chief of the clergy as his aſſiſtants.

CATHEDRATICUM. In honour of the *cathedral* church, and in token of ſubjection to it, every parochial miniſter within the dioceſe pays to the biſhop an annual penſion, called *cathedraticum*; but, from its being uſually paid at the biſhop's *ſynod* or viſitation, it commonly goes under the name of *ſynodals*.

CATTLE, from *Ireland*, by ſeveral acts of parliament, are prohibited to be imported: but of late years theſe reſtrictions are taken off by temporary acts, and all ſorts of cattle permitted to be imported from Ireland duty free.

By the articles of the Union, *Scotch* cattle in *England* ſhall be liable to no other duties than *Engliſh* cattle. 5 *An. c.* 8.

And by 5 *G.* 3. *c.* 43. cattle may be freely imported from the iſle of *Man*.

By 3 & 4 *Ed.* 6. *c.* 19. no perſon ſhall *buy any cattle and ſell the ſame again* in the ſame market or fair, on pain of forfeiting double. And this act continues in force, although the other acts againſt foreſtalling, ingroſſing, and regrating, are repealed by 12 *G.* 3. *c.* 71.

Killing cattle in the *night-time* is felony and tranſportation; and wounding any cattle in the night-time incurs a forfeiture of treble damages. 22 & 23 *C.* 2. *c.* 7.

Stealing any cattle or ſheep, or killing the ſame with intent to ſteal the whole carcaſe or any part thereof, is felony without benefit of clergy. And 10*l.* reward is given for convicting an offender. 14 *G.* 2. *c.* 6. 15 *G.* 2. *c.* 34.

By the *black act*, 9 *G. c.* 22. killing or wounding any cattle is made felony without benefit of clergy: and the hundred ſhall anſwer damages.

To prevent ſpreading of the *diſtemper* amongſt the horned cattle, the king by his proclamation may prohibit the importation of hides or ſkins, or any other part of any cattle or beaſt, under ſuch regulations as he ſhall think fit. 9 *G.* 3. *c.* 39.

CAVEAT is a caution entered in the ſpiritual court, to ſtop probates, adminiſtrations, licences, diſpenſations, faculties, inſtitutions, and ſuch like, from being granted without the knowledge of the party that enters it.

And a *caveat* is of ſuch validity by the eccleſiaſtical law, that if an inſtitution, adminiſtration, or the like, be granted pending ſuch *caveat*, the ſame is void: but this the temporal courts pay no regard to. 3 *Black.* 246.

CERTIFICATE is a writing made in any court, to give notice to another court of any thing done therein, which is uſually by

by way of tranſcript. And ſometimes it is made by an officer of the ſame court, where matters are referred to him, or a rule of court is obtained for it, containing the tenor and effect of what is done.

Sometimes where a queſtion of law ariſes in the court of chancery, the lord chancellor refers it to the judges of the court of king's bench or common pleas, upon a caſe ſtated for that purpoſe; who thereupon, having heard the counſel on both ſides, *certify* their opinion to the chancellor. 3 *Black.* 453.

So there is a *certificate* of a judge upon trial of a cauſe at niſi prius: as where it is enacted by ſeveral ſtatutes, that if the jury in an action of treſpaſs give leſs damages than 40*s.* the plaintiff ſhall have no more coſts than damages, unleſs the judge ſhall *certify* under his hand that the treſpaſs was wilful and malicious. There is alſo a certificate of a judge certifying the conviction of a felon, to entitle the proſecutor to an exemption from pariſh offices, and to a pecuniary reward for ſuch conviction. 3 *Black.* 214.

Sometimes a *certificate* from a proper officer is admitted, without finding the matter by verdict of a jury; as the cuſtom of the city of *London* with reſpect to the diſtribution of the effects of freemen deceaſed, is certified by the mouth of the recorder. 3 *Black.* 334.

Certificate of *aſſize of novel diſſeiſin* is a writ granted for the re-examining of a matter paſſed by aſſize before the king's juſtices, directed to the ſheriff, commanding him to call the parties before the juſtices on ſuch a day, that the matter may be further examined. *F. N. B.* 181.

Certificate *de recognitione ſtapulæ* is a writ commanding the mayor of the ſtaple to certify to the lord chancellor a ſtatute ſtaple taken before him, where the party himſelf detains it, and refuſes to bring in the ſame. *Reg. Orig.* 152. There is a like writ to certify a ſtatute merchant, and in divers other caſes. *Id.* 148. 151.

On certificate to the lord chancellor by four parts in five of a *bankrupt's* creditors, that the bankrupt hath made an honeſt diſcovery of his effects, and conformed to the directions of the law, the bankrupt ſhall be intitled to a ratable allowance out of his effects.

So there is a certificate of the ſettlement of a poor perſon, by the churchwardens and overſeers, to entitle the party obtaining the certificate to reſide in another pariſh without moleſtation, ſo long as he ſhall not become chargeable to ſuch other pariſh.

CERTIORARI is an original writ, iſſuing out of the court of chancery or of the king's bench, directed in the king's name to the judges or officers of inferior courts, commanding them to *certify* or to return the records of a cauſe depending before them, to

to the end the party may have the more ſure and ſpeedy juſtice, before the king or ſuch juſtices as he ſhall aſſign to determine the cauſe. 1 *Bac. Abr.* Certiorari.

A certiorari lies in all judicial proceedings, in which a writ of error doth not lie; and it is a conſequence of all inferior juriſdictions erected by act of parliament, to have their proceedings returnable in the king's bench. *L. Raym.* 469.

But it ſeems agreed, that a certiorari ſhall not be granted to remove an indictment after a conviction, unleſs for ſome ſpecial cauſe, as where the judge below is doubtful what judgment to give. 2 *Haw.* 288.

Alſo it ſeems a good objection againſt the granting it, that iſſue is joined in the court below, and a *venire* awarded for the trial of it. *Id.*

After a certiorari is allowed by the inferior court, it makes all the ſubſequent proceedings on the record removed by it errroneous. *Id.* 293.

But it has been adjudged, that if a certiorari for the removal of an indictment before juſtices of the peace be not delivered before the jury be ſworn for the trial of it, the juſtices may proceed. 2 *Haw.* 294.

And the juſtices may ſet a fine to complete their judgment, after a certiorari delivered. *L. Raym.* 1515.

Every return of a certiorari ought to be under ſeal. And if the perſon, to whom it is directed, do not make a return, then an *alias*, that is, a ſecond writ, then a *pluries*, that is, a third writ, ſhall be awarded, and then an attachment. *Crompt.* 116.

CESSAVIT is a writ that lieth in divers caſes, upon this general ground, that he againſt whom it is brought hath for two years *ceaſed* or neglected to perform ſuch ſervice or to pay ſuch a rent as he is bound to by his tenure, and hath not upon his lands or tenements ſufficient goods or chattels to be diſtrained. And if a tenant for years of land at certain rent ſuffers the rent to be behind two years, and there is no ſuch diſtreſs to be had upon the land; then the landlord ſhall recover the land: but if the tenant come into court before judgment given, and tender the arrearages and damages, and find ſecurity that he ſhall *ceaſe* no more in payment of the rent, then the tenant ſhall not loſe his land. *F. N. B.*

CESSION, *ceſſio*, ſignifies a *ceaſing*, yielding up, or giving over; and is, when an eccleſiaſtical perſon having a benefice with cure of ſouls, takes another benefice incompatible.—For by the ſtatute of 21 *H.* 8. *c.* 13. if any one having a benefice with cure of ſouls of 8*l.* a year or upwards in the king's books, accepts any other without a diſpenſation, the firſt ſhall be adjudged void, and the patron may preſent as if the incumbent had died or reſigned.

And

And a vacancy thus made for want of a diſpenſation is called ceſſion. 1 *Black.* 392.

But the avoidance of the former benefice doth not take place as to lapſe, till induction to the ſecond: for though the patron hath ſix months from the induction to preſent to ſave the incurring of a lapſe, yet he may, if he pleaſes, preſent before the induction. *Bur. Manſf.* 1512.

Ceſſion is not made by taking a deanry, archdeaconry, prebend, or rectory, where there is a vicarage endowed; becauſe the ſtatute only extends to benefices *with cure of ſouls.*

But where an eccleſiaſtical perſon is made biſhop, his former benefices become void by ceſſion, and the king ſhall preſent to the benefices ſo vacated; for the avoidance made by promotion to a biſhoprick is only changing one life for another, and therefore is no prejudice to the patron; for which reaſon, the law allows the king to preſent for that turn. But the king, if he pleaſes, may grant to the biſhop a diſpenſation to retain his former preferment, which diſpenſation is called a *commendam retinere.*

CESTUY QUE TRUST is he who hath a truſt in lands and tenements committed to him for the benefit of another. If the perſon intruſted doth not perform his truſt, he is compellable thereto in a court of equity.

CESTUY QUE VIE is he for whoſe life land is holden by another perſon, which other perſon is therefore called tenant *pur auter vie*, or tenant for another's life.

CESTUY QUE USE is he to whoſe uſe land is granted to another perſon, which other perſon is called the *terretenant*, having in himſelf the legal property and poſſeſſion, yet not to his own uſe, but to diſpoſe thereof according to the intention of the *ceſtuy que uſe*, and to ſuffer him to take the profits.

CHAIRS. See COACHES.

CHAISES. See COACHES.

CHALLENGE, of jurors, is of two kinds; either to the *array*, by which is meant the whole jury as it ſtands *arrayed* in the *panel* or little ſquare *pane* of parchment on which the jurors names are written: or to the *polls*; by which are meant the ſeveral particular perſons or *heads* in the array. 1 *Inſt.* 156. 158.

Challenge to the *array* is in reſpect of the partiality or default of the ſheriff, coroner, or other officer that made the return: and it is two-fold: 1. *Principal* challenge to the array, which, if it is made good, is a ſufficient cauſe of exception, without leaving any thing to the judgment of the triers. As if the ſheriff is of kindred to either party; or if any of the jurors be returned at the denomination of either of the parties. 2. Challenge to the array *for favour*; which being no principal challenge, muſt be left to the diſcretion and conſcience of the triers. This is, where either of

of the parties ſuſpects that the juror is inclined to favour the oppoſite party. *Id.*

Challenge to the *polls* is three-fold: 1. *Peremptory*, where a man challenges upon his own diſlike of the juror, without ſhewing any cauſe. 2. *Principal* challenge to the polls; where cauſe is ſhewed, but which, if found true, ſtands ſufficient of itſelf, without leaving any thing to the triers. 3. Challenge to the polls *for favour*; which is, when either party cannot take any principal challenge, but ſheweth cauſes of favour, which muſt be left to the triers, upon hearing the evidence, to find the juror favourable or not favourable.—Cauſes of challenge to the polls are infinite. *Id.*

CHALLENGE TO FIGHT. See DUEL.

CHAMPETRY, *campi partitio*, is the unlawful maintenance of a ſuit, in conſideration of ſome bargain to have part of the lands or thing in diſpute, or part of the gains. By the ſtatute 33 *Ed.* 1. *ſt.* 3. both the champertor, and he who conſents thereunto, ſhall be impriſoned three years, and make fine at the king's pleaſure. And by 1 *R.* 2. *c.* 9. feoffments of lands and gifts of goods for maintenance ſhall be void, and the perſon diſſeiſed ſhall recover the lands with double damages.

CHANCEL of a church, *cancellus*, is ſo called a *cancellis*, from the lattice-work partition between the quire and the body of the church, ſo framed as to ſeparate the one from the other, but not to intercept the ſight.

Generally, the rector or parſon is bound to the repair of the chancel; but where the cuſtom hath been for the pariſh, or for the vicar, or for the owner of a particular eſtate, to repair the chancel, that cuſtom is good. *Gibſ.* 199. And the repairing of the chancel is *prima facie* a diſcharge from contributing to the repairs of the church. *Id.*

It hath been ſaid, that the parſon, or rector impropriate, is intitled to the chief ſeat in the chancel; but by preſcription another pariſhioner may have it. *Noy*, 153. But where there is no preſcriptive right, it ſeems that the biſhop hath the ſame power of diſpoſing of the ſeats in the chancel, as he hath in the body of the church. *Gibſ.* 200.

CHANCELLOR OF A DIOCESE is an eccleſiaſtical officer under the biſhop, whoſe office includes in it the power both of an *official principal* and *vicar general*. The proper work of an *official* is, to hear cauſes between party and party, concerning wills, legacies, mortuaries, and other like temporal matters. The office of *vicar general* is, the exerciſe and adminiſtration of juriſdiction purely ſpiritual, as viſitation, correction of manners, granting inſtitutions, and the like, with a general inſpection of men and things, in order to the preſerving of diſcipline and good government in the church.

CHANCELLOR, Lord. See CHANCERY.

CHANCE-

CHANCEMEDLEY signifies a casual meddling or contention, and, in common speech, is applied to any manner of homicide by misadventure, whereas in strictness and propriety it is only applicable to such killing as happens in self defence upon a sudden rencounter, when the slayer hath no other possible means of escaping from the assailant. As where the slayer, either having not begun to fight, or (having begun) endeavours to decline any farther struggle, and afterwards being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide by chance-medley. 4 *Black.* 184.

CHANCERY, in matters of civil property, is the highest and most important of the king's superior and original courts of justice. It hath its name of *chancery*, *cancell..ria*, from the judge who presides therein, the lord *chancellor* or *cancellarius*, which name and office, under the Roman emperors, signified a chief scribe or secretary. And when the modern kingdoms of *Europe* were established upon the ruins of the empire, almost every state preserved its chancellor, who had the supervision of all charters, letters, and other public instruments of the crown, and *cancelled* or authenticated them as circumstances might require. 3 *Black.* 46.

And when seals came in use, he had always the custody of the king's great seal. So that the office of chancellor or lord keeper of the great seal (whose authority with us is one and the same) is created by the mere delivery of the king's great seal into his custody; whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord. He is a privy counsellor by his office, and prolocutor of the House of Lords by prescription. To him belongs the appointment of all justices of the peace throughout the kingdom; he is visitor, in right of the king, of all hospitals and colleges of the king's foundation; and patron of all the king's livings under the value of 20*l.* a-year in the king's books. He is general guardian of all infants, idiots, and lunatics; and has the general superintendence of all charitable uses in the kingdom. And all this, over and above the vast and extensive jurisdiction which he exerciseth in his judicial capacity in the court of chancery. 3 *Black.* 46.

In the chancery are two courts; one ordinary being a court of *common law*; the other extraordinary being a court of *equity*. The ordinary or *common law* court is a court of record. Its jurisdiction is to hold plea upon a *scire facias* to repeal and cancel the king's letters patent, when made against law, or upon untrue suggestions; and to hold plea on all personal actions, where any officer of this court is a party; and of executions on statutes, or of recognizances in nature of statutes; and by several acts of parliament, of divers other offences and causes; but this court cannot try a cause by a jury, but the record is to be delivered by the lord chancellor

into the king's bench to be tried there, and judgment given thereon. And when judgment is given in this common law part of chancery upon demurrer, or the like, a writ of error lies returnable into the king's bench; but this hath not been practiſed for many years. From this court alſo proceed all original writs, commiſſions of charitable uſes, bankrupts, ſewers, idiots, lunatics, and the like: and for theſe ends this court is always open. 3 *Black.* 47. *Wood, b.* 4. *c.* 1.

The extraordinary court is a court of *equity*, and proceeds by the rules of equity and good conſcience. This equity conſiſts in abating the rigour of the common law, and giving a remedy in caſes where no proviſion, or not ſufficient proviſion, hath been made by the ordinary courſe of law. The juriſdiction of this court is of vaſt extent. Almoſt all cauſes of weight and moment, firſt or laſt, have their determination here. In this court relief is given in the caſe of infants, married women, and others not capable of acting for themſelves. All frauds, for which there is no remedy at law, are cognizable here; as alſo all breaches of truſt, and unreaſonable or unconſcionable engagements. It will compel men to perform their agreements; will relieve mortgagors and obligors againſt penalties and forfeitures, on payment of principal, intereſt, and coſts; will rectify miſtakes in conveyances; will grant injunctions to ſtay waſte; and reſtrain the proceedings of inferior courts, that they exceed not their authority and juriſdiction. *Id.*

The method of proceeding in equity is, firſt, to file the *bill* of complaint, ſetting forth the injury done, and praying relief. After the bill is filed, proceſs of *ſubpœna* iſſues to compel the defendant to appear. On his appearance, if there is no cauſe of plea in bar, he puts in his *anſwer*. Then the plaintiff brings his *replication*, unleſs he files *exceptions* againſt the anſwer as inſufficient. The ſeveral pleadings being ſettled, and the parties come to iſſue, *witneſſes* are examined upon interrogatories, either in court, or by commiſſion in the country. And when the plaintiff and defendant have examined their witneſſes, *publication* is to be made of the depoſitions, and the cauſe ſet down for hearing. After which follows the *decree*; which decree being ſerved on the party under the ſeal of the court, and not obeyed, all the proceſſes of contempt will iſſue out againſt him for his *impriſonment* till he yields obedience to it; or there may be an *injunction* granted for the poſſeſſion of land, where the decree is for land, and the party remains obſtinate after his impriſonment. From this court an appeal lies to the Houſe of Lords, the laſt reſort of temporal juriſdiction in this kingdom.

CHAPELS, *capellæ*, are of divers kinds:

1. *Private chapels*; ſuch as noblemen and other religious and worthy perſons have, at their own private charge, built in or near their own houſes, for them and their families wherein to perform religious

religious duties. Theſe, and the ornaments belonging to the ſame, are maintained at thoſe perſons charge to whom they belong, and chaplains provided for them by themſelves. *Degge. Part.* 1. *c.* 12.

2. *Free chapels*, ſo called from their freedom or exemption from all ordinary juriſdiction. All free chapels, together with the chantries, were given to the king in the firſt year of the reign of *Edward* the Sixth, except ſome few that are excepted in the acts of parliament by which the others were given; and except ſuch as have been founded by the king, or by his licence, ſince the diſſolution. And the king himſelf viſits his free chapels, and not the ordinary; which office of viſitation is executed for the king, by the lord high chancellor. *Godolph.* 145.

3. *Chapels of eaſe* under the mother church, built for the eaſe of the pariſhioners eſpecially in larger pariſhes. Some of theſe chapels of eaſe have parochial rites granted to them by the ordinary, of baptiſm and ſepulture: others have only the privilege of prayers and preaching. At the foundation of theſe chapels it is generally provided that they ſhall be no prejudice to the mother church, either in revenues or in exemption from ſubordination and dependence.

CHAPTER of a cathedral church conſiſts of perſons eccleſiaſtical, dean, and canons or prebendaries, whereof the dean is the head; all ſubordinate to the biſhop, to whom they are as aſſiſtants in matters relating to the church, for the better ordering and diſpoſing the things thereof, and the confirmation of ſuch leaſes of the temporalities and offices relating to the biſhoprick, as the biſhop ſhall make from time to time. And they are termed *capitulum*, as a kind of head, inſtituted not only to aſſiſt the biſhop in manner aforeſaid, but alſo anciently to rule and govern the dioceſe in the time of vacation.

CHARITIES: the king has the general ſuperintendence of all charities; which he exerciſes by the lord chancellor. And by the ſtatute 43 *Eliz. c.* 4. authority is given to the lord chancellor to grant commiſſions to inquire into any abuſes of charitable donations, and rectify the ſame by decree.

But by the 9 *G.* 2. *c.* 36. no lands, or money to be laid out in lands, ſhall be given to any charitable uſe, unleſs by deed indented, executed twelve months before the death of the donor, and enrolled in chancery within ſix months after execution, and unleſs made to take effect immediately, and be without power of revocation.

Concerning the collecting of charity money on *briefs*. See BRIEF.

CHARTER, *charta*, a written paper or parchment, is of divers kinds, and diſtinguiſhed into charters of the *king*, and charters of *private* perſons. Charters of the *king* are thoſe whereby the king

passeth any grant to any person or body politic, as charters of exemption, of privilege, of pardon; the *great* charter of liberties is called by way of pre-eminence, *magna charta*. Charters of *private* persons are deeds and instruments for conveyance of lands.

CHARTER HOUSE is a corruption of *Chartreux (Carthusia)* the name of a town in *France*, where an order of monks was instituted, from thence called *Carthusians*.

CHARTER LAND was land held by writing, otherwise called *bookland*; as opposed to *folkland*, which was an inferior kind of tenure, without writing, held merely at the will of the lord.

CHARTER PARTY, *charta partita*, is a deed or writing *divided*, or pair of indentures, among merchants or seafaring men, containing the covenants and agreements made between them, touching their merchandize and maritime affairs.

A charter party of *affreightment* settles agreements, as to the cargo of ships, and binds the master to deliver the cargo in good condition, at the place of discharge, according to agreement: and sometimes the master obliges himself, ship, tackle, and furniture for performance.

CHASE is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature between a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not inclosed; yet it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Manw.* 49.

Beasts of chase are the buck, doe, fox, martern and roe. *Id.* 44.

A forest is governed by the forest law, but a chase is governed by the common law. *Id.* 52.

CHATTELS is a *French* word, and signifies *goods*, comprehending all goods, moveable and immoveable; except such as are in nature of freehold, or parcel of it. And chattels are either *personal* or *real*: *Personal* are such as belong immediately to the person of a man; and for which, if they be any way injuriously withheld from him, he hath no other remedy but by personal action: chattels *real* are such as either appertain not immediately to the person, but to some other thing by way of dependency, as a box with writings of land; or such as are issuing out of some immovable thing, as a lease, or rent for term of years; and they concern the realty, lands and tenements, interest in advowsons, in statutes merchant, and the like. 1 *Inst.* 118.

CHAUNTRIES, *cantariæ*, in the times of popery, were endowments of land or other revenues, for maintenance of one or more priests, to celebrate daily mass for the souls of the founder and

and his kindred, and of their other benefactors; ſometimes at a particular altar, and oftentimes in little chapels added to cathedral and parochial churches for that purpoſe.

CHEATS, puniſhable by fine and impriſonment, at the common law, may in general be deſcribed to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of ſome artful device, contrary to the plain rules of common honeſty; as by playing with falſe dice; by cauſing an illiterate perſon to execute a deed to his prejudice; reading it over to him in words different from thoſe in which it was written; and ſuch like. 1 *Haw.* 188.

Alſo the perſon injured by ſuch fraud may have an action upon the caſe for damages; as where a perſon ſells one commodity for another, or ſells by falſe weights and meaſures: in which, and the like caſes, an action will lie upon the contract, becauſe the law always implies that every tranſaction is fair and honeſt. In buying and ſelling, it is always underſtood, that the ſeller undertakes that the commodity he ſells is his own; and if it proves otherwiſe, an action on the caſe lies againſt him, to exact damages for this deceit. In contracts for proviſions, it is always implied that they are wholeſome; and if they be not, the ſame remedy may be had. Alſo if he that ſells any thing, doth upon the ſale warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not ſo, he ſhall make compenſation to the buyer; otherwiſe it is an injury to good faith, for which an action on the caſe will lie to recover damages. 3 *Black.* 164.

As there are ſome frauds which may be relieved civilly, and not puniſhed criminally, (with the complaints whereof the courts of equity commonly abound;) ſo there are other frauds which may not be helped civilly, and yet ſhall be puniſhed criminally: thus, if a man goes about, and pretends to be of age and defrauds many perſons by taking credit for conſiderable quantities of goods, and then inſiſts on his non-age; the perſons injured cannot recover the value of their goods, but they may indict and puniſh him for a common cheat.

And the diſtinction in all caſes of the like kind is this: that, in ſuch impoſitions or deceits where common prudence may guard perſons againſt their ſuffering from them, the offence is not indictable, but the party is left to his civil remedy for the redreſs of the injury that has been done to him; but where falſe weights or meaſures are uſed, or falſe tokens produced, or ſuch methods taken to cheat and deceive, as people cannot by any ordinary care or prudence be guarded againſt, there it is an offence indictable. *Bur. Manſf.* 1125.

By ſtature 33 *H.* 8. *c.* 1. if any perſon ſhall falſely and deceitfully obtain any money or other goods, by colour and means of any falſe privy token, or counterfeit letter made in another

man's name; he shall have such punishment by imprisonment, pillory, or other corporal pain (except death), as the court shall award.

By 30 *G.* 2, *c.* 24. all persons who by false pretences shall obtain any money, goods, or merchandize, with intent to defraud any person of the same, shall be fined and imprisoned, or put in the pillory, or publicly whipped, or transported for seven years, at the discretion of the court.

By 9 *An. c.* 14. if any person shall, by cheating in any kind of gaming, win any money or other thing, he shall forfeit five times the value, and suffer as in case of perjury.

CHEVISANCE (from the French, *achever* or *chevir*, to complete or come to the *(chief)* head, or end) signifies an agreement or composition made, and in our statutes is used for a bargain or contract in general; and not, as some have thought, as denoting particularly an unlawful or indirect agreement only; for, in the instances produced, it is used to signify the same as the words *bargain* or *contract*; and is still retained in all commissions of bankrupt, in which the bankrupt is stated to use and exercise the trade and merchandize, by way of bargaining, exchange, bartering, and *chevisance*.

CHIEF, tenure in, was the most honourable species of holding lands and tenements, and belonged only to those who held immediately of the king in right of his crown and dignity, who were called the king's tenants in *chief*, or *in capite*. But by the 12 *C.* 2. *c.* 24. all these kinds of tenure are abolished, and turned into free and common socage.

CHILD. See PARENTS AND CHILDREN.

CHIMINAGE (*Fr. chimin*, a way), a toll due by custom for having a way through a forest: if it was a footway only, it was called *pedage*.

CHIMNEY-SWEEPERS. By 28 *G.* 3. *c.* 48. several regulations are made respecting chimney-sweepers and their apprentices; and all differences and disputes between them are to be determined by one justice of the peace.

CHIPPING, when it is part of the name of a place, denotes such place to be a market town: as *Chippenham*, *Chipping Norton*, from the Saxon *cypan*, *ceapan*, to buy; whence cheapen. So *chipping-gavel*, a toll for buying and selling.

CHIROGRAPH (from χειρ, a hand, and γραφω, to write) signifies a deed, or other public instrument in writing, which anciently were attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealment, they made their deeds of mutual covenant in a *script* and *rescript*, or in a *part* or *counterpart*, and in the middle between the two copies they drew the capital letters of the alphabet, and then tallied or cut asunder, in an *indented* manner, the sheet or skin of parchment; which, being

being delivered to the two parties concerned, were proved authentic by matching with and anſwering to one another. Deeds thus made were denominated *ſyngrapha* by the canoniſts, and with us *chirographa*, or handwritings. 2 *Black.* 296.

Chirograph was alſo uſed for a fine; the manner of ingroſſing whereof, and cutting the parchment in two pieces, is ſtill obſerved in the *chirographer's* office. *Id.*

CHIVALRY, court of, was anciently held before the lord high conſtable and earl marſhal of *England* jointly, and afterwards before the earl marſhal only. This court hath cognizance of contracts and other matters touching deeds of arms and war, as well out of the realm as within it. It is now grown intirely out of uſe, on account of the feebleneſs of its juriſdiction, and want of power to inforce its judgments; as it can neither fine nor impriſon, not being a court of record. 3 *Black.* 68.

CHIVALRY, tenure in. See KNIGHTS SERVICE.

CHOCOLATE. See COFFEE.

CHOSE is a French word, and ſignifies *thing*; and a *choſe in action* is a thing of which a man hath not the poſſeſſion or actual enjoyment, but hath a right to demand the ſame by action. For property in things perſonal is of two kinds, either in *poſſeſſion*, where a man has not only the right to enjoy, but alſo the actual enjoyment of the thing; or elſe it is in *action*, where a man hath only a bare right, without any occupation or enjoyment. The poſſeſſion whereof, however, may be recovered by a ſuit or action at law: from whence the thing ſo recoverable is called a thing or *choſe in action.* 2 *Black.* 389. 397.

Thus money due on a bond is a *choſe in action*; for a property in the debt veſts at the time of forfeiture mentioned in the obligation, but there is no poſſeſſion till recovered by courſe of law. *Id.* 397.

If a man promiſes or covenants with me to do any act, and fails in it, whereby I ſuffer damage, the recompence for this damage is a *choſe in action*: for though a right to ſome recompence veſts in me, at the time of the damage done, yet what and how large ſuch recompence ſhall be, can only be aſcertained by verdict; and the poſſeſſion can only be given to me by legal judgment and execution. *Id.*

CHURCH:

1. The letters *ch* were anciently pronounced hard, as the letter *k*. In the northern parts of *England*, as alſo in *Scotland*, the ancient pronunciation is ſtill retained in the word *kirk* or *kurk*; being as it were κυριον οικος, the Lord's houſe, or κυριακον, belonging to the Lord.

2. By the common law and general cuſtom of the realm, it was lawful for earls, barons, and others of the laity, to build churches; but they could not erect a ſpiritual body politic to continue in ſucceſſion,

ſucceſſion, and capable of endowment, without the king's licence; and, before the law ſhall take knowledge of them as ſuch, they muſt alſo have the biſhop's leave and conſent, and be conſecrated or dedicated by him. 3 *Inſt.* 203.

3. And after a new church is erected, it may not be conſecrated without a competent endowment: which endowment was commonly made by an allotment of manſe and glebe by the lord of the manor, or other, who thereby became patron of the church. Other perſons alſo, at the time of dedication, often contributed ſmall portions of ground; which is the reaſon, why, in many pariſhes, the glebe is not only diſtant from the church, but lies in ſcattered divided parcels. *Ken. Par. Ant.* 222.

4. As to the form of conſecration:—In the year 1661, a form for this purpoſe was drawn up by the convocation, but was not authorized by authority; and now every biſhop as to this matter is left to his own judgment and diſcretion. But that form, as drawn up by the convocation, ſeems to be generally followed.

5. The anniverſary feaſt on the day of dedication of the church continued a long time, and is ſtill kept up in many places; and this, drawing together a large reſort of people, was the original of fairs on that day. And from thence in ſuch places may probably be conjectured to what ſaint the church was dedicated. *Ken. Par. Ant.* 609.

6. Of common right, the *repair* of the church is in the pariſhioners, at leaſt of the body of the church; and ſometimes of the chancel, as particularly in *London*, in many churches there. But, generally, the parſon, or lay impropriator, is bound to repair the chancel: ſometimes the vicar is bound, but this muſt be by ſpecial cuſtom. An ile in a church, belonging to a particular family, is commonly repaired by thoſe to whom it belongs. If two churches be united, the repairs of the ſeveral churches ſhall be made as before their union. *Degge, Part* 1. *c.* 12.

7. Before the age of the reformation, no *ſeats* were allowed, nor any diſtinct apartment in a church aſſigned to diſtinct inhabitants, except for ſome very great perſons. The ſeats that were, were moveable, and the property of the incumbent, and ſo in all reſpects at his diſpoſal. And, generally, the ſeats in churches are to be built and repaired as the church is to be, at the general charge of the pariſhioners, unleſs any particular perſon be chargeable to do the ſame by preſcription. *Id.*

And although the freehold of the body of the church be in the incumbent thereof, and the ſeats therein be fixed to the freehold, yet the uſe of them is common to all the people that pay to the repair thereof. But the authority of appointing what perſons ſhall ſit in each ſeat is in the ordinary. But, by cuſtom, the churchwardens may have the ordering of the ſeats, as in *London*.

dm; which, by the like cuſtom, may be in other places. *Watſ.* c. 39.

If a man preſcribe, that he and his anceſtors, and all they whoſe eſtate he hath in a certain meſſuage, have uſed to ſit in a certain ſeat in the church time out of mind, in conſideration that they have uſed time out of mind to repair the ſaid ſeat, it is a good preſcription: but if he preſcribe to have a ſeat generally, without the ſaid conſideration of repairing the ſeat, the ordinary may diſplace him. 2 *Roll's Abr.* 288.

A ſeat may not be granted by the ordinary to a perſon and his heirs abſolutely. For the ſeat doth not belong to the perſon, but to the inhabitant; otherwiſe, if he and his heirs go away, and dwell in another pariſh, they might yet retain the ſeat, which would be unreaſonable. *Gibſ.* 197.

The title to a ſeat, on the foundation of preſcription, is properly liable at common law. But for a diſturbance in a ſeat, a man may ſue in the ſpiritual court; and the defendant, if he will, may admit the preſcription to be tried there; as a defendant doth a modus, or a penſion, by preſcription. 2 *Salk.* 551.

In an action for diſturbing the plaintiff in his pew, the plaintiff need not prove that he repaired it againſt a ſtranger; for this being a poſſeſſory action againſt a ſtranger, and a mere wrong doer, the plaintiff is not obliged to prove any repairs done by himſelf or others whoſe eſtate he hath; for it is a rule in law, that one in poſſeſſion need not ſhew any title or conſideration for ſuch poſſeſſion againſt a wrong doer. But it is otherwiſe where one claims a pew or an ile in a church againſt the ordinary, who has *prima facie* the diſpoſal of all the ſeats in the church; and againſt him a title or conſideration muſt be ſhewn in the declaration, and proved upon the trial. 1 *Wilſ.* 326.

8. *Rates* for reparation of the church are to be made by the churchwardens together with the pariſhioners aſſembled upon public notice given in the church. And the major part of them that appear ſhall bind the pariſh; or if none appear, the churchwardens alone may make the rate. 1 *Bac. Abr.* 373.

The rate is not chargeable upon the land, but upon the perſon in reſpect of the land. And houſes, as well as lands, are chargeable; and, in ſome places, houſes only: as in cities, and large towns where there are only houſes, and no lands to be charged. *Hetl.* 130.

It hath been holden, that there ought to be two rates, one for the fabric, and another for the goods and ornaments, of the church: for that a rate for the reparation of the fabric is real, charging the land, and not the perſon, but a rate for ornaments is perſonal, upon the goods, and not upon the land. 2 *Roll's Abr.* 291. But by reaſon of the trouble and inconvenience attending ſuch ſeparate aſſeſſments, the practice hath now univerſally

verſally obtained to make one aſſeſſment for all. *Degge, Part* 1. *c.* 12.

If any perſon find himſelf aggrieved at the inequality of any ſuch aſſeſſment, his appeal muſt be to the eccleſiaſtical judge. *Id.*

9. If any perſon ſhall, by words only, *brawl* in any church or church-yard, he ſhall be ſuſpended from the entrance of the church: if he *ſmite* or lays violent hands on another, he ſhall be *ipſo facto* excommunicate: if he ſhall therein ſtrike with any *weapon*, or draw any weapon to ſtrike, he ſhall have one of his ears cut off, and if he have no ears, he ſhall be burned in the cheek with the letter F, whereby he may be known to be a fray-maker and fighter. 5 & 6 *Ed.* 6. *c.* 4.

13. The *way* to a church may be claimed and maintained by libel in the ſpiritual court. *Gibſ.* 293.

CHURCHWARDENS:

1. Perſons exempted from the office of churchwarden are, all peers of the realm, by reaſon of their dignity; clergymen, by reaſon of their order; members of parliament, by reaſon of their privilege; attorneys, by reaſon of their attendance in the king's courts; apothecaries, having ſerved ſeven years apprenticeſhip; perſons having proſecuted a felon to conviction; diſſenting teachers; and other diſſenters, provided they find a ſufficient deputy. And by 26 *G.* 3. *c.* 107. *c.* 130. all ſerjeants, corporals, and drummers of the militia; and alſo all private men from the time of their enrolment, until they are diſcharged; ſhall not be liable to ſerve as churchwardens.

2. By *Can.* 118. churchwardens ſhall be choſen yearly in Eaſter week, or ſome week following, as the ordinary ſhall direct.

3. And they ſhall be choſen by the joint conſent of the miniſter and pariſhioners, if it may be; if not, the miniſter ſhall chuſe one, and the pariſhioners another. *Can.* 89.

But this is to be underſtood, where there is not a cuſtom for the pariſhioners to chuſe both. *L. Rym.* 137.

In ſome places, the lord of the manor preſcribes for the appointment of churchwardens; and this ſhall not be tried in the eccleſiaſtical court, although it be a preſcription of what appertains to a ſpiritual thing. *God.* 153.

4. A perſon elected churchwarden, and refuſing to take the oath according to law, may be excommunicated for ſuch refuſal and no prohibition will lie. *Gibſ.* 216.

5. If the party choſen offer himſelf, and the eccleſiaſtical judge refuſe to tender the oath to him, a mandamus from the temporal court will be granted. For the eccleſiaſtical judge is not to determine concerning the fitneſs or unfitneſs: and a churchwarden is a temporal officer, and hath the property and cuſtody of the goods of the pariſh. And as it is at the peril of the pariſhioners, ſo they may chuſe and truſt whom they think fit; and the ſpiritual judge hath no power to elect, or controul their election. 1 *Salk.* 166.

6. The

6. The churchwardens are ſo far incorporated by law, as to ſue for the goods of the church, and to bring an action of treſpaſs for them; alſo to purchaſe goods for the uſe of the pariſh; but they are not a corporation in ſuch ſort as to purchaſe lands, or to take by grant, except in *London*, where they are a corporation for thoſe purpoſes alſo. *Gibſ.* 215.

Every churchwarden is an overſeer of the poor, by the ſtatute 43 *Eliz. c.* 2.

They have power to manage the revenues of the church during a vacancy. In which caſe, having firſt taken out a ſequeſtration under the ſeal of the office, they are to take care that the glebe land be ſeaſonably tilled and ſown, to gather in tithes, threſh, and ſell out corn, repair houſes and fences, and what other things are neceſſary; and to provide for the ſupply of the cure. And when a ſucceſſor is inſtituted and inducted, they are to account to him for the profits received by them, deducting their reaſonable expences: and if they cannot agree, the ſame ſhall be ſettled by the ordinary. *Watſ. c.* 30.

The releaſe of one churchwarden is in no caſe a bar to the action of the other; for what they have is to the uſe of the pariſh. *Cro. Ja.* 34.

7. All churchwardens, at the end of their year, or within a month after, ſhall, before the miniſter and pariſhioners, give up a juſt account of ſuch money as they have received, and alſo what particularly they have beſtowed in reparations and otherwiſe for the uſe of the church. And they ſhall deliver up to the pariſhioners whatſoever money, or other things, of right belonging to the church or pariſh, which remain in their hands, that it may be delivered over by them to the next churchwardens *Canon* 89.

If the churchwardens have laid out the pariſh money imprudently, yet if it be truly and honeſtly laid out, they muſt be reimburſed; and the pariſhioners can have no remedy herein, unleſs ſome fraud be proved againſt them, becauſe the pariſh have made them their truſtees. *Gibſ.* 196.

CHURL, *ceorl*, *carl*, was, in the Saxon times, a tenant at will, who held lands on condition of certain rents and ſervile duties. Hence many villages bear the name of *Carleton*, being the place where thoſe earls inhabited. *Carl*, in *German*, is ſtrong, and the word is ſtill uſed in *Scotland*, to denote a ruſtic, countryman, or labourer.

CINQUE PORTS *(quinque ports)* are the five moſt important havens, as they formerly were eſteemed, in the kingdom, lying towards *France*, viz. *Dover*, *Sandwich*, *Romney*, *Haſtings*, *Hythe*; to which *Winchelſea* and *Rye* have ſince been added. They have a ſpecial governor or keeper of their own, called by his office lord warden of the cinque ports, who hath alſo juriſdiction

diction of admiralty, and is exempt from the admiralty of *England*. He is alſo conſtable of *Dover coſtle*. 4 *Inſt*. 223.

They have had ſeveral privileges granted to them, and an excluſive juriſdiction, before the mayor and jurats of the ports, in which the king's ordinary writ doth not run. But a writ of error lies from the mayor and jurats of each port to the lord warden of the cinque ports in his court of *Shepway*; and from the court of *Shepway* to the king's bench. And all prerogative writs, as thoſe of *habeas corpus*, *prohibition*, *certiorari*, and *mandamus*, may iſſue to all theſe exempt juriſdictions; becauſe the privilege, that the king's writ runs not, muſt be intended between party and party, for there can be no ſuch privilege againſt the king. 3 *Black*. 79.

CIRCUMSPECTE AGATIS, is the title of a ſtatute made in the 13 *Ed*. 1. relating to prohibitions, preſcribing certain caſes wherein the king's prohibition doth not lie.

CIRCUMSTANTIAL EVIDENCE is, where the fact cannot be poſitively and demonſtratively proved, and therefore *circumſtances* are applied in order to ſtrengthen the evidence; which circumſtances, as they are more or leſs ſtrong, induce either a *violent* preſumption, which is equivalent to full proof; or *probable* preſumption, which alſo hath its due weight; or *light* preſumption, which hath little or no weight or validity.

CISTERTIAN monks were an order inſtituted at *Ciſteaux* in *France*, who came into *England* about the year 1128, and had their firſt houſe at *Waverley* in *Surry*. Before the diſſolution they had 85 houſes in this kingdom, which were generally founded in ſolitary and uncultivated places: and all dedicated to the Bleſſed Virgin.

CITATION is a ſummons to appear, being a proceſs particularly applied to the eccleſiaſtical courts. The party to whom it is directed ſhall diligently ſeek the perſon to be cited; and when he hath found him, he is to ſhew to the perſon cited, the citation under ſeal, and by virtue thereof cite him to appear at the time and place appointed. And it is uſual alſo to leave a note with him, expreſſing the contents thereof. 1 *Ought*. 44, 45.

But if it be returned upon the citation that the defendant cannot be found, then the plaintiff's proctor petitions that the defendant may be cited perſonally (if he can), to appear and anſwer the contents of the former citation; and if not perſonally, then by any other ways and means, ſo as the party to be cited may come to the knowledge thereof, and this is that which is called a citation *viis et modis*, or a public citation, ſeeing it is executed either by public edict, a copy thereof being affixed to the doors of the houſe where the defendant dwells; or the doors of the pariſh church where he inhabits, for the ſpace of half an hour in the time of divine ſervice; or, as it hath been ſaid,

ſaid, by the tolling of a bell, or the ſounding of a trumpet, or the erecting of a banner: this being done, a certificate muſt be made of the premiſes, and the citation brought into court; and if the party cited appear not, the plaintiff's proctor accuſeth his contumacy (he being firſt three times called by the crier of the court), and in penalty of ſuch his contumacy, requeſts that he may be excommunicated. 1 *Ought.* 49.

But the citation muſt be ſerved at the door or outſide of a man's houſe; for the houſe may not be entered in ſuch caſe without his conſent. *Lindw.* 87.

CITY, *civitas*, is a town incorporated, which is or hath been the ſee of a biſhop: and though the biſhoprick be diſſolved, as at *Weſtminſter*, yet ſtill it remaineth a city. 1 *Inſt.* 109.

But in ancient time, the word city is uſed promiſcuouſly with burgh or town; as in the charter of *Leiceſter*, it is called both *civitas* and *burgus*; which ſhows, that though the word *city* generally ſignifies ſuch a town corporate as hath a biſhop and cathedral church, yet there are ſome exceptions.

CIVIL LAW is the law of the ancient *Romans*, collected in the books called the *Code*, the *Digeſt*, the *Inſtitute*, and the *Novels*. It was heretofore much in uſe in this kingdom; and is ſtill admitted in a conſiderable degree in the eccleſiaſtical courts, the courts of equity and of the admiralty, and in the courts of the two univerſities.

CLAIM is a challenge of intereſt in any thing that is in the poſſeſſion of another; or at leaſt out of a man's own poſſeſſion; and may be either *verbal*, where one doth by words claim and challenge the thing that is ſo out of his poſſeſſion, or by *action* brought. Where any thing is wrongfully detained from any perſon, this claim is to be made; and the party making it may thereby avoid deſcents of lands or diſſeiſins, and preſerve his title, which otherwiſe would be in danger of being loſt. 1 *Inſt.* 250. See CONTINUAL CLAIM.

CLARENDON, conſtitutions of, were certain conſtitutions made in the reign of king *Henry* the Second, in a parliament holden at *Clarendon*; whereby the king checked the power of the pope and his clergy. 4 *Black.* 415.

CLARETUM, a liquor made of wine and honey, *clarified* or made clear by decoction, which the *Germans*, *French*, and *Engliſh* called *hippocras*: and it was from this, that the red wines of France were called *claret*. *Whart. Ang. Sax. Part* 2. *p.* 480.

CLAUSUM FREGIT ſignifies in law the ſame as an action of treſpaſs, and is a writ ſo called becauſe the defendant is ſummoned thereby to ſhew cauſe *quare clauſum fregit*, that is, why he *broke the cloſe* of the plaintiff. For every man's land is, in the eye of the law, incloſed and ſet apart from his neighbour's;

bour's; and that, either by a viſible and material fence, as one field is divided from another by a hedge; or by an ideal boundary exiſting only in contemplation of law, as when one man's land adjoins to another's in the ſame field. And every ſuch entry or breach of a man's cloſe carries neceſſarily along with it ſome damage or other; for, if no other ſpecial loſs can be aſſigned, yet ſtill the words of the writ itſelf ſpecify one general damage, namely, the treading down and bruiſing his herbage. 3 *Black.* 209.

CLERGY are of two ſorts, *regular* and *ſecular*. *Regular* are thoſe that live under certain *rules*, being of ſome religious order, as abbots, priors, monks, or the like. The *ſecular* are thoſe that live not under any certain rules of the religious orders, as biſhops, deans, parſons, vicars.

The clergy being a body of men ſeparate and ſet apart from the reſt of the people, in order to attend to the divine offices, have thereupon had large privileges allowed them by our municipal laws; ſeveral of which have been loſt by diſuſe, others aboliſhed by act of parliament, but ſome do yet remain. Particularly, a clergyman cannot be compelled to ſerve on a jury; nor to appear at a court leet or frankpledge, which almoſt every other perſon is obliged to do. Neither can he be compelled to ſerve in any temporal office. During his attendance on divine ſervice, he is privileged from arreſts in civil cauſes. And in caſes of felony, he may have the benefit of his clergy, without being burnt in the hand. But the clergy are not exempt from the temporal burthens of repairing the highways, paying to the poor rate, and the like; and it ſeems to be now generally ſettled, that they are liable to all public charges impoſed by act of parliament, where they are not ſpecially excepted.

Benefit of clergy.—Anciently, princes and ſtates, converted to chriſtianity, in favour of the clergy, and for their encouragement in their offices and employments, and that they might not be ſo much intangled in ſuits, did grant to the clergy very bountiful privileges and exemptions; and particularly, an exemption of their perſons from criminal proceedings, in ſome capital caſes before ſecular judges; which was the true original of the benefit of clergy. Afterwards, the clergy increaſing in wealth, power, honour, number, and intereſt, began to ſet up for themſelves; and that which they obtained by the favour of princes and ſtates at firſt, they now claimed as their right, and a right of the higheſt nature, namely, by the law of God; and by their canons and conſtitutions endeavoured, and in ſome places obtained, vaſt extenſions of theſe exemptions, both with regard to the perſons concerned, to wit, not only to perſons in holy orders, but alſo to all that had any kind of ſubordinate miniſtration relative to the church; and likewiſe in reſpect of the cauſes, exempting as far as they could

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all cauſes of clergymen, as well civil as criminal, from the juriſdiction of the ſecular power, and wholly ſubordinating them immediately and only to the eccleſiaſtical juriſdiction, which they ſuppoſed to be lodged firſt in the pope by divine right and inveſtiture from *Chriſt*, and from the pope ſhed abroad into all ſubordinate and eccleſiaſtical juriſdiction. And by this means they endeavoured, and in ſome kingdoms and for ſome ages obtained, that there was a double ſupreme power in every kingdom; the one eccleſiaſtical, abſolute, and independent upon any but the pope, over eccleſiaſtical men and cauſes; and the other ſecular, of the king, or civil magiſtrate. But this claim of exemption, although it obtained much in this kingdom, yet grew ſo burthenſome, that it was from time to time qualified and abridged by the civil power, ſometimes by acts of parliament taking it away in ſome caſes, ſometimes by the interpretation and conſtruction of the judges, and ſometimes by the contrary uſage of the kingdom; for eccleſiaſtical canons never bound in *England* farther than they were received, and ſo had not their authority from their own ſtrength and obligation, but from the uſages and cuſtoms of the kingdom that admitted them, and only ſo far forth as they were ſo admitted. And therefore if they were indicted in caſes criminal, but not capital, nor wherein they were to loſe life or limb, there the privilege of clergy was not allowed; and therefore not in indictments of treſpaſs or petit larceny. Alſo it was not allowed them in high treaſon. But, at the common law, in all caſes of felony or petit treaſon, clergy was allowable, excepting two, lying in wait, and burning of houſes (which were looked upon as hoſtile acts, and the authors of them therefore not intitled to the common privileges of ſubjects). 2 *Hale's Hiſt.* 323. 330.

And by the ſtatute 25 *Ed.* 3. *ſt.* 3. *c.* 4. all manner of clerks, who ſhall be convicted before the ſecular judges, for any treaſons or felonies, touching other perſons than the king himſelf, ſhall have the privilege of the holy church. By which ſtatute, clergy is allowed in all treaſons and felonies, except treaſon againſt the king; ſo that after this ſtatute, the benefit of clergy might be pleaded and allowed in all other treaſons and felonies. Conſequently, wherever clergy is not allowable in any other caſes, it is taken away by ſome ſubſequent act of parliament. Conſequently, where a new felony is made by an act of parliament, clergy is to be allowed, unleſs expreſsly taken away by ſuch ſtatute. And if it maketh a new felony, and takes away clergy not generally, but in ſuch or ſuch caſes, regularly in other caſes clergy is allowable. But if the ſtatute enacts generally, that it ſhall be felony without benefit of clergy, or that he ſhall ſuffer as in caſe of felony without benefit

benefit of clergy, this excludes it in all circumſtances, and to all intents. *Id.*

By a favourable interpretation of the ſtatutes relating to the benefit of clergy, not only thoſe actually admitted into ſome inferior order of the clergy, but alſo thoſe who were never qualified to be admitted into orders (which was formerly tried by putting them to read a verſe) have been taken to have a right to this privilege, as much as perſons in holy orders. 2 *Haw.* 338.

Perſons admitted to the benefit of clergy [illegible] to be burned in the brawn of the left thumb, and, as a farther puniſhment, may be continued in priſon for a year. Or, inſtead of being burnt in the hand, they may be tranſported for ſeven years. 18 *El. c.* 7. 4 *G. c.* 11.

A perſon admitted to his clergy forfeits all his goods that he hath at the time of the conviction. But preſently upon his burning in the hand, he ought to be reſtored to the poſſeſſion of his lands, and from thenceforth to enjoy the profits thereof. Alſo, it reſtores him to his credit; and conſequently enables him to be a good witneſs. And it is holden, that after a man is admitted to his clergy, it is actionable to call him felon; becauſe his offence being pardoned by the ſtatute, all the infamy and other conſequences of it are diſcharged. 2 *H. H.* 388. 2. *Haw.* 364.

CLERK, in its ſpiritual ſenſe, denotes a perſon in holy orders: in its temporal acceptation, it ſignifies one who practiſes with his pen in any court, or otherwiſe.

CLERK OF ASSISE is he that writes all things judicially done by the juſtices of aſſize in their circuits. *Cromp. Juriſd.* 227.

CLERK OF THE MARKET is an officer incident to every fair and market, to puniſh miſdemeanors therein; as a court of *pie poudre* is to determine all diſputes relating to private or civil property. The object of his juriſdiction is principally the cogniſance of weights and meaſures, to try whether they be according to the true ſtandard; and if they be not, beſides the puniſhment of the party by fine, the weights and meaſures themſelves are to be burnt or otherwiſe deſtroyed.

CLERK OF THE PEACE is an officer attending upon the juſtices of the peace in ſeſſions, appointed by the *cuſtos rotulorum.* In the ſeſſions where he is clerk of the peace, he ſhall not act as attorney or ſolicitor. 22 *G.* 2. *c.* 46. He ſhall certify into the kings-bench the names of all perſons outlawed, attainted, or convicted of felony. 34 & 35 *H.* 8. *c.* 14. He ſhall deliver to the ſheriff, within twenty days after *September* 29, yearly, a ſchedule of all fines and other forfeitures in ſeſſions; and on or before the ſecond *Monday* after the morrow of *All Souls* ſhall deliver

deliver a duplicate thereof upon oath, into the court of exchequer. 22 & 23 C. 2. *c.* 22. 4 & 5 *W.* *c.* 24. If he misbehaves in his office, the justices in sessions may suspend or discharge him. 1 *W.* *c.* 21.

CLOSE, breaking of; words used in an action of trespass: for which see CLAUSUM FREGIT.

CLOSE ROLLS, or *close writs*; grants from the crown, to particular persons, and for particular purposes, and therefore not being intended for public inspection, are *closed* up and sealed on the outside, and thereupon called *writs close* in contradistinction from grants relating to the public in general, which are therefore left open and not sealed up, and are called *literæ patentes*, or *letters patent*. 2 *Black.* 346.

CLOSH was an unlawful game forbidden by some ancient statutes. It is said to have been the same as the modern nine-pins. In the statute 33 *H.* 8. *c.* 9. it is called *closh-cayles*, which seems to intend throwing at the kittles or nine-pins; as to this day in some parts of *England*, the throwing at cocks on *Shrove Tuesday* is called *cailing* of the cocks; so the children throwing at eggs about *Easter* is called *cailing* of eggs.

CLOUGH, a valley or hollow place between two mountains; a word not yet intirely out of use.

CLUNIAC monks were a reformed order of St. *Benedict*, who had their name from *Cluni* in *France*, where they settled about the year 912. They were brought into *England* in the time of *William* the Conqueror, and had their first house at *Lewes* in *Sussex*; and, at the time of the dissolution, they had twenty-seven houses here belonging to their order.

COACHES AND COACHMAKERS. By the 25 *G.* 3. *c.* 47. and the 29 *G.* 3. *c.* 49. several duties are imposed on persons keeping coaches and such like carriages, which are to be under the management of the commissioners of the window duties. And by the 25 *G.* 3. *c.* 49. every *coachmaker* shall take out a licence annually from the commissioners of excise: and by 27 *G.* 3. *c.* 13. a duty is also imposed on all *new coaches* and such like carriages made in *Great Britain*; for which see the acts and *Burn's Just.* title *Coaches*.

COALS:

1. By the 30 *C.* 2. *c.* 8. commissioners shall be appointed for the measuring and marking boats, wains, and carts, in the port of *Newcastle*, and the members thereof; which shall be by the bowl-tub of *Newcastle*, containing twenty-two gallons and a pottle *Winchester* measure, and being of twenty-seven inches diameter upon the top, and allowing twenty-one bowls of coals by heap measure to each chalder. And every wain shall be seven bowls, cart three bowls and a bushel heaped measure; and three wains or six carts shall be allowed for a chalder; which said

admeaſurement, by the 6 & 7 *W.* *c.* 10. ſhall be by a dead weight of lead or iron (or otherwiſe), allowing fifty-three hundred weight to a chaldron. The weight of a wain load ſeventeen hundred weight and an half, cart load eight hundred weight and three quarters. And no keel or boat ſhall contain more than ten chaldrons.

2. By 16 & 17 *C.* 2. *c.* 2. ſea-coal brought into the *Thames* ſhall be ſold by the chaldron containing thirty-ſix buſhels heaped up. All other coals, from *Scotland* or elſewhere, ſold by weight, ſhall be ſold after the proportion of 112 pounds to the hundred.

And the lord mayor and aldermen in *London* ſhall ſet the prices of coals to be ſold by retail. And elſewhere, three juſtices ſhall ſet the rates of all ſea-coal ſold by retail in any part of *England*, allowing a competent profit to the retailers; and if the retailers refuſe to ſell accordingly, the juſtices may appoint perſons to enter and ſell the ſaid coals at ſuch rates as ſo ſet and aſcertained. 32 *G.* 2. *c.* 27.

3. Any coal factor receiving, or coal owner giving, any gratuity, for buying or ſelling any particular ſort of coals, or ſelling one ſort of coals for and as a ſort which they really are not, ſhall forfeit 500*l.* 3 *G.* 2. *c.* 26.

4. For the admeaſurement of ſea-coals in the port of *London*, the coal buſhel ſhall be made round, with a plain and even bottom, and ſhall be nineteen inches and an half from outſide to outſide, and ſhall contain one *Winchester* buſhel and one quar of water; and all ſea-coals ſold by the ſaid *Winchester* meaſure, ſhall be ſold by the chalder containing thirty-ſix of ſuch buſhels heaped up. 12 *An.* *ſt.* 2. *c.* 17.

5. Coals within the bills ſhall be carried in linen ſacks ſealed by the proper officer, which ſhall be at leaſt four feet and four inches in length, and twenty-ſix inches in breadth: and ſellers of coals by the chaldron or leſſer quantity ſhall put three buſhels of coals in each ſack. 3 *G.* 2. *c.* 26. 32 *G.* 2. *c.* 27.

6. Wilfully and maliciouſly ſetting on fire any mine, pit, or delph of coal or cannel coal, is felony without benefit of clergy. 10 *G.* 2. *c.* 32.

7. If any perſon ſhall convey water into any coal work, with deſign to deſtroy or damage the ſame, he ſhall forfeit treble damages with coſts. 13 *G.* 2. *c.* 21.

8. Setting fire to, demoliſhing, or otherwiſe damaging, any engine for draining water from coal mines, or for drawing coals out of the ſame; or any bridge, waggon way, or trunk, erected for conveying coals from any coal mine, or ſtaith for depoſiting the ſame, is felony and tranſportation for ſeven years. 9 *G.* 3. *c.* 29.

COATS

COATS of arms were not in use till about the reign of king *Richard* the First, who brought them from the croisade in the Holy Land; where they were first invented and painted on the shields of the knights, to distinguish the variety of persons of every christian nation who resorted thither, and who could not, when clad in complete steel, be otherwise known or ascertained. 2 *Black.* 306.

COCKET, a seal belonging to the king's custom-house; or rather, a scroll of parchment sealed, and delivered by the officers of the customs to merchants, as a warrant that their merchandises are customed or have paid the king's duty.

COCOA NUTS. See COFFEE.

CODICIL, *codicillus*, a little book or writing, is a supplement to a will, or an addition made by the testator, and annexed to, and to be taken as part of a testament: being for its explanation, or alteration, or to make some addition to, or else some substraction from, the former disposition of the testator. 2 *Black.* 500.

In case of a real estate, a codicil cannot operate, unless it be executed according to the statute of frauds and perjuries. 1 *Atk.* 426.

But it is not necessary that the codicil be annexed to the will; it may be in a separate instrument; yet the will and codicil make both but one will. 1 *Ves.* 442.

COFFEE, TEA, CHOCOLATE, AND COCOA-NUTS. By several statutes, regulations are made respecting the importation and management thereof, which are to be under the inspection of the officers of the customs and excise.

And by the 27 *G.* 3. *c.* 13. all former duties of customs and excise thereon, are repealed, and new duties imposed in lieu thereof, as set forth in schedules annexed to the said act.

COGNISANCE, or *cognizance* (Fr. *connusance*; Lat. *cognitio*) is used diversly in our law. Sometimes it is an acknowledgment of a fine, or confession of a thing done. So there is a cognizance of taking a distress. Sometimes it is the hearing of a matter judicially, as to take cognizance of a cause. And sometimes it is a jurisdiction, as cognizance of pleas is a power to call a cause or plea out of another court. This cognizance of pleas is a privilege granted by the king to a city or town, to hold pleas within the same; and when any one is impleaded in the courts at *Westminster*, the owner of the franchise may demand cognizance of the plea; but if the courts at *Westminster* be possessed of the plea before cognizance be demanded, it is then too late. *Terms of the Law.*

There are three sorts of inferior jurisdictions: one thereof is to *hold pleas*, and this is the lowest sort; for it is only a concurrent jurisdiction, and the party may sue there, or in the king's courts, if he will. The second, is a *cognizance of pleas*, and by this a right is vested in the lord of the franchise to hold the plea,

and he is the only perſon that can take advantage of it; for the defendant cannot plead this to the juriſdiction of the court, but the lord muſt come in and claim his franchiſe. The third ſort is an *exempt juriſdiction*; as where the king grants to a great city, that the inhabitants thereof ſhall be ſued within their city, and not elſewhere, this grant may be pleaded to the juriſdiction of the king's court, if there be a court within that city which can hold plea of the cauſe; and no perſon can take advantage of this plea but the defendant. 3 *Salk.* 79.

But cognizance muſt be demanded before full defence is made, or imparlance prayed: for theſe are a ſubmiſſion to the juriſdiction of the ſuperior court. And it will not be allowed if it occaſions a failure of juſtice, or if an action be brought againſt the perſon himſelf who claims the franchiſe, unleſs he hath a power in ſuch caſe to make another judge. 3 *Black.* 298.

Cognizance of a diſtreſs is, where a perſon hath taken a diſtreſs, and is impleaded for the ſame; whereupon, if he took the diſtreſs in his own right, he avows the taking of it, as for rent in arrear or other cauſe, and this is called an *avowry*: but if he juſtifies in the right of another, as his bailiff or ſervant, he is then ſaid to make *cognizance*, that is, he *acknowledges* the taking, but inſiſts that ſuch taking was legal, as he acted by the command of one who had a right to diſtrain. 3 *Black.* 149.

Cognizance ſignifies alſo the *badge* of a waterman or ſervant, which is uſually the giver's creſt, whereby he is known to belong to this or that nobleman or gentleman.

COIF, a title given to ſerjeants at law, who are called ſerjeants of the coif, from the lawn coif they wear on their heads under their caps, when they are created. The uſe of it was anciently to cover the clerical tonſure, otherwiſe called *corona clericalis*; becauſe the crown of the head was cloſe ſhaved, and a border of hair left round the lower part, which made it look like a crown.

COIN:

1. Coin, in *French*, ſignifies a *corner*, and from thence hath its name (according to lord *Coke*) becauſe in ancient times money was ſquare, with corners, as it is in ſome countries to this day. 1 *Inſt.* 207.

2. By various ſtatutes, there are many offences relating to the coin; which may be reduced into the following order:

Counterfeiting the king's money, or bringing falſe money into the realm counterfeit to the money of *England*; clipping, waſhing, rounding, filing, impairing, diminiſhing, falſifying, ſealing, lightening, edging, colouring, gilding, making, mending, or having in one's poſſeſſion, any puncheon, counterpuncheon, matrix, ſtamp, dye, pattern, mould, edger, or cutting engine: all theſe incur the penalty of high treaſon.

And

And if any perſon ſhall counterfeit any ſuch kind of coin of gold or ſilver, as are not the proper coin of this realm, but current therein by the king's conſent, he ſhall be guilty of high treaſon.

And if any perſon ſhall tender in payment any counterfeit coin, he ſhall, for the firſt offence, be impriſoned ſix months; for the ſecond offence, two years; and for the third offence ſhall be guilty of felony without benefit of clergy.

Blanching copper or other baſe metal, or buying or ſelling the ſame; and receiving or paying money at a lower rate than its denomination doth import; and alſo the offence of counterfeiting copper halfpence and farthings; incur the penalty of felony, but within clergy.

Counterfeiting coin, not the proper coin of this realm, nor permitted to be current therein, is miſpriſion of treaſon.

A perſon buying, or ſelling, or having in his poſſeſſion clippings or filings, ſhall forfeit 500*l.* and be branded in the cheek with the letter R.

Any perſon having in his poſſeſſion a coining preſs, or caſting bars or ingots of ſilver in imitation of *Spaniſh* bars or ingots, ſhall forfeit 500*l.*

Buying or ſelling bullion or molten ſilver, by any but a goldſmith or refiner, is ſix months impriſonment.

3. Any perſon to whom any money ſhall be tendered, any piece whereof ſhall be diminiſhed otherwiſe than by reaſonable wearing, or that he ſhall ſuſpect to be counterfeit, may cut or deface the ſame: and if it ſhall appear ſo to be diminiſhed or counterfeit, the perſon tendering the ſame ſhall bear the loſs: if otherwiſe, he who cut or defaced the ſame ſhall receive it at the rate it was coined for. And if any queſtion ſhall ariſe concerning it, the ſame ſhall be determined by the mayor or other head officer in a corporation, and elſewhere by a neighbouring juſtice. 9 & 10 *W. c.* 21. 13 *G.* 3. *c.* 77.

4. A reward of 40*l.* is given for convicting a counterfeiter of the gold or ſilver coin; and 10*l.* for a counterfeiter of the copper coin. 6 & 7 *W. c.* 17. 15 & 16 *G.* 2, *c.* 28.

5. No perſon can be inforced to take in payment any money but of gold or ſilver; except for ſums under 6*d.* 2 *Inſt.* 577.

COLLATERAL, from the Latin *laterale*, ſideways, or that which hangeth by the ſide, not direct. As collateral *aſſurance* is that which is made over and above the deed itſelf; collateral *ſecurity* is where a deed is made of other lands beſides thoſe granted by the deed of mortgage. If a man covenants with another and enters into bond for performance of his covenant, the bond is collateral to the covenant, becauſe it is external, and without the nature and eſſence of the covenant. If a man hath liberty to pitch booths, or ſtandings in a fair or market in another man's

ground, it is collateral to the ground. The private woods of a common perſon, within a foreſt, may not be cut down without the king's licence; it being a prerogative collateral to the ſoil. And to be ſubject to the feeding of the king's deer is collateral to the herbage of the foreſt. *Crompt. Juriſd.* 185. *Manw.* 66.

Collateral *warranty*, is where the heir's title to the land is not derived from the warranting anceſtor; as where a younger brother releaſes to a diſſeiſor his father's land with warranty, this is collateral to the elder brother. 2 *Black.* 301.

Collateral *iſſue*, is where a criminal attainted pleads ſome collateral matter in bar of execution, as the king's pardon, an act of grace, or diverſity of perſon; namely, that he is not the ſame perſon that was attainted; which laſt is only, when ſome conſiderable time hath intervened between the attainder and the award of execution, in which a jury ſhall be impanelled to try this collateral iſſue; namely, the identity of his perſon; and not whether guilty or innocent, for that has been decided before. 4 *Bla k.* 396.

Collateral *kindred*, are ſuch as lineally ſpring from one and the ſame anceſtor, but differ in this that they do not deſcend one from the other. As if a man hath two ſons, who have each a numerous iſſue; both theſe iſſues are lineally deſcended from the ſame grandfather as their common anceſtor, and are collateral kindred to each other, all having a portion of the blood of their common anceſtor, and are therefore denominated *conſanguinei.* 2 *Black.* 204.

Collateral *deſcent*, is derived from the ſide of the *lineal*, as grandfather's brother, father's brother, and the like. As if a man purchaſe lands in fee ſimple, and dies without iſſue; for default of a lineal heir, he who is next of kin in the collateral line of the whole blood, though never ſo remote, comes in by deſcent as heir to him. 1 *Inſt.* 10.

COLLATIO BONORUM is, where a portion, or money advanced by the father in his life-time to a ſon or daughter, is brought into hotchpot, in order to have an equal diſtribution of the perſonal eſtate in caſe of his dying inteſtate. And this is in purſuance of the ſtatute 22 & 23 *C.* 2. *c.* 10.

COLLATION to a benefice is, where the biſhop and patron are one and the ſame perſon; in which caſe the biſhop cannot preſent to himſelf, but he doth, by the one act of *collation* or *conferring* the benefice, the whole that is done in common caſes by both preſentation and inſtitution.

COLLEGES in the univerſities are generally lay corporations, although the members of the college may be all eccleſiaſtical. 2 *Salk.* 672.

And in the government thereof, the king's courts cannot interfere, where a viſitor is ſpecially appointed: for from him, and him

him only, the party grieved ought to have redreſs; the founder having repoſed in him ſo intire a confidence, that he will adminiſter juſtice impartially, that his determinations are final, and examinable in no other court whatſoever. 1 *Black.* 483.

But where the viſitor is under a temporary diſability, there the court of king's bench will interpoſe, to prevent a defect of juſtice. *Id.* 484.

The two univerſities, in excluſion of the king's courts, enjoy the ſole juriſdiction over all civil actions and ſuits; except in ſuch caſes where the right of freehold is concerned. 3 *Black.* 83.

Their proceedings are in a ſummary way, according to the practice of the civil law. *Wood. b.* 4. *c.* 2.

An appeal lies from the chancellor's court to the congregation, thence to the convocation, and from thence to the delegates. *Id.*

But they have no juriſdiction unleſs the plaintiff or defendant is a ſcholar, or ſervant of the univerſity, or of ſome college; but if either of them is a ſcholar, it is then a matter within their juriſdiction; but yet, if either of them is entered into a college by colluſion, to avoid a ſuit in the king's courts, or to excuſe himſelf from town offices, his privilege ſhall not be allowed.

And in order to be entitled to this privilege, it muſt appear, that the perſon claiming it is reſident in the univerſity at that time.

Alſo they have juriſdiction in criminal offences or miſdemeanors, under the degree of treaſon, felony, or maim.

COMBAT, was a formal trial between two champions, of a doubtful cauſe or quarrel. See BATTEL.

COMBINATIONS amongſt victuallers or artificers to raiſe the price of proviſions, or any commodities, or the rate of labour, are in many caſes ſeverely puniſhed by particular ſtatutes; and in general, by the 2 & 3 *Ed.* 6. *c.* 15. with the forfeiture of 10*l.* or twenty days impriſonment, with an allowance only of bread and water, for the firſt offence; 20*l.*, or the pillory, for the ſecond; and 40*l.* for the third, or elſe the pillory, loſs of an ear, and perpetual infamy.

COMBUSTIO DOMORUM, burning of houſes, anciently called *arſon*, was by the common law denied the benefit of clergy, when all other felonies were entitled to it, except *inſidiatio viarum*, or lying in wait for one on the highway, and *depopulatio agrorum*, or deſtroying and ravaging a country; which three offences were excluded from the benefit of clergy, as they were a kind of hoſtile acts, and in ſome degree bordered upon treaſon. 4. *Black.* 372.

COMBUSTIO PECUNIÆ was the ancient way of trying mixed and corrupt money, by melting it down, upon payments into the exchequer. In the time of king *Wm.* 2. a conſtitution

was

was made called the trial by combuſtion, the practice whereof differed little or nothing from the preſent method of aſſaying ſilver. *Lowndes on coin*, 5.

COMMAND. A wife ſhall not be excuſed the committing of any crime by the command of her huſband; nor ſhall a ſervant be excuſed the committing a crime by the command of his maſter. 1 *Haw.* 3.

At the command of the conſtable, all perſons of ability within his conſtablewick are bound to aſſiſt him in ſuppreſſing a riot or an affray, and in keeping the king's peace: and if they diſobey his command, they are puniſhable by fine and impriſonment. 1 *Haw.* 137.

COMMANDRIES were manors or eſtates belonging to the Knights Hoſpitalers, otherwiſe called the knights of *St. John of Jeruſalem*, where, erecting churches for the ſervice of *God*, and convenient houſes, they placed ſome of their fraternity under the government of a *commander*, who were allowed proper maintenance out of the revenues under their care, and accounted for the remainder to the grand prior at *London*: ſo *New Eagle* in *Lincolnſhire*, is ſtill called the *commandry* of *Eagle*. Where ſuch eſtates belonged to the Knights Templars, the perſon who preſided over them was uſually one of thoſe who had by the grand maſter been created *præceptores templi*, from whence thoſe eſtates were ſtyled *præceptories*. They were only cells to the principal houſe at *London*.

COMMENDAM, is a benefice or eccleſiaſtical living, which being void, or to prevent its becoming void, *commendatur*, is *committed*, to the charge and care of ſome ſufficient clerk, to be ſupplied until it may conveniently be provided of a paſtor. Thus when a parſon of a pariſh is made the biſhop of a dioceſe, there is a ceſſion of his benefice by the promotion: but if the king gives him power to retain his benefice, he ſhall continue parſon thereof, and ſhall be ſaid to hold it *in commendam*. A *commendam* may be temporary, for one, two, or three years; or perpetual, by a kind of diſpenſation to avoid a vacancy of the living, and is called a *commendam retinere*. There is alſo a *commendam capere*, which is to take a benefice *de novo*, in the biſhop's own gift, or the gift of ſome other patron conſenting to the ſame; and this is the ſame to him, as inſtitution and induction are to another clerk. 1 *Black.* 393.

COMMISSARY, is he that is limited by the biſhop to ſome certain part of the dioceſe; and in moſt caſes has the authority of official principal and vicar general within his limits.

COMMISSION, is taken for the warrant or appointment whereby one or more perſons have the charge of any matter committed to them. The *judges* by their commiſſion have power to hear and determine cauſes. And moſt of the great officers, judicial

cial and miniſterial, of this realm are made by commiſſion. Anciently there was a commiſſion of *anticipation*, to collect a tax or ſubſidy before the day. Commiſſion of *array* was to muſter and array, or ſet in order, all the men able to bear arms in ſuch a diſtrict. Commiſſion of *aſſociation*, is to aſſociate certain learned perſons with the judges in their circuits. Commiſſion of *bankruptcy*, is a commiſſion iſſued out of chancery to certain commiſſioners appointed to take order with the bankrupt's eſtate for the ſatisfaction of his creditors. Commiſſion of *charitable uſes*, iſſues out of chancery to divers perſons, where lands given to charitable uſes are miſemployed, or there is any fraud or abuſe of the charity, in order to rectify ſuch abuſe. Commiſſion of *delegates*, is granted in caſe of appeal to the king in chancery, directed to certain perſons ſkilled in the eccleſiaſtical and temporal laws, to determine the matter in iſſue. Commiſſion of *lunacy*, is a commiſſion out of chancery to inquire whether a perſon repreſented to be lunatic, be ſo or not; that if ſo, the king may commit the care of him and of his eſtate to ſome friend, who in ſuch caſe is called the committee. Commiſſion of *rebellion*, otherwiſe called a *writ* of rebellion, iſſues, where a man, after proclamation made by the ſheriff upon a proceſs out of chancery to preſent himſelf to the court by a day aſſigned, makes default in appearance; and this is directed to certain perſons to apprehend the party as a *rebel* and contemner of the laws, and bring him to the court on a day therein aſſigned. It iſſues after an attachment and a *non inventus* returned thereon. Commiſſion of *ſewers*, is directed to certain perſons to cauſe drains and ditches to be well kept and maintained in marſhy and fenny grounds, for the better conveyance of the water, and preſervation of the land.

COMMISSIONER, is he that hath a commiſſion, or other lawful warrant, to examine any matters, or to execute any public office. Commiſſioners muſt purſue the authority of their commiſſion, otherwiſe their acts will be void. For their office is to do what they are commanded, and herein it is neceſſarily implied, that they may do that alſo without which what is commanded cannot be done. If their authority is appointed by any ſtatute law, they muſt execute it as the ſtatute preſcribes. If a commiſſion is given to commiſſioners to execute a thing againſt law, they are bound not to accept or obey it.—Beſides commiſſioners relating to judicial proceedings, there are commiſſioners of the treaſury, of the navy, of the cuſtoms, of the exciſe, and many others.

COMMITMENT, is ſending of a perſon to priſon, by warrant or order, who is charged with any crime. And it may be, by the judges, juſtices of the peace, or other magiſtrates, who have authority for the ſame by the laws and ſtatutes of this realm.

It muſt be in *writing*, either in the name of the king, and only

only tested by the person who makes it; or it may be made by such person in his own name, expressing his office or authority, and must be directed to the gaoler, or keeper of the prison. 2 *Haw.* 119.

It should contain the *name* of the party committed, if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, or the like, and to add that he refuseth to tell his name. 1 *H. H.* 577.

It ought to contain the *cause*, and the certainty thereof; as if it be for felony, it must contain the special nature of the felony, as felony for the death of such a man; if for burglary, then to say for burglary in breaking the house of such a one: and, therefore, a commitment to answer such things as shall be objected against him, is utterly against law. 2 *Inst.* 591.

It must have an apt *conclusion*; as, where a man is committed as a criminal, it must be until he be discharged by due course of law; if for contumacy, then until he comply and perform the thing required. 2 *Haw.* 120.

It must be under *seal*; unless it be by some court of record, for there the record itself, or a memorial thereof, are a sufficient warrant without any warrant under seal. 1 *H. H.* 584.

COMMON:

1. *Common, what.*
2. *Origin of the right of common.*
3. *Of common appendant.*
4. *Common appurtenant.*
5. *Common by reason of vicinage.*
6. *Common in gross.*
7. *Common of estovers.*
8. *Common of fishery.*
9. *Common of turbary, and other digging the soil.*
10. *Disturbance of common by one who has no right.*
11. *Disturbance of common by uncommonable goods.*
12. *Disturbance of common by surcharging.*
13. *Disturbance by inclosure, or other obstruction.*
14. *Of the lord's right to inclose the surplus.*

1. *Common, what.*

COMMON, is a profit which a man hath in the lands of another. And it is called *common*, because it is common to many. 1 *Inst.* 122.

2. *Origin of the right of Common.*

When a lord of a manor (wherein was great waste ground) did infeoff others of some parcels of arable land, it was necessary that the feoffee should have common in the wastes, or otherwise, as incident to the feoffment. And this was permitted, not only for the

the encouragement of agriculture, but from the neceſſityof the thing. For a man could not plow or manure his grounds without beaſts; and they could not be ſuſtained without paſture; and paſture could not be had but in the lord's waſtes, and in the uninclofed fallow grounds of himſelf and the other tenants. The lord therefore annexed this right of common, as inſeparably incident to the grant of the lands. 2 *Inſt.* 85, 6. 2 *Black.* 33.

3. *Of Common Apendant.*

COMMON APPENDANT, is a right, belonging to the owners or occupiers of arable land, to put commonable beaſts upon the lord's waſte, and upon the lands of other perſons within the ſame manor. Commonable beaſts are either beaſts of the plough, or ſuch as manure the ground. And for this a man need not preſcribe, becauſe he hath it of common right. 1 *Inſt.* 122.

But he ſhall not uſe the land with hogs, goats, geeſe, or the like; for theſe are not neceſſary to plow the land or to manure it. 1 *Roll's Abr.* 397.

Common appendant ought to be appendant to *arable* land, that is, which is capable of being made arable; and not to any land not arable, nor to an houſe. *Ibid.*

A *cottager* may preſcribe to have common for all beaſts levant and couchant as appendant to his cottage. For a cottage contains a curtilage at leaſt; and a cottage by the ſtatute ought to have four acres of land to it. And it hath been holden, that foddering cattle in the yard is an evidence of levancy and couchancy. 1 *Salk.* 169.

If common appendant be claimed to a *manor*, yet in reality it is appendant to the *demeſnes*, and not to the *ſervices*; and therefore, if a tenancy *eſcheat*, the lord ſhall not increaſe his common by reaſon thereof. 1 *Inſt.* 122.

If the lord *infranchiſes* a copyholder's eſtate, the right of common which he had before as a cuſtomary tenant is gone, and cannot be reſtored but by ſpecial words in the infranchiſement, and not by the common words *with the appurtenances*. But a grant of *all commons* uſually occupied with the tenement, will paſs ſuch common as the firſt was. *Cro. Ja.* 253. *Mo.* 467.

He that hath common appendant, can keep but a number of cattle proportionable to his land; for he can common with no more than the lands to which his common belongs are able to maintain. 3 *Salk.* 93.

And, generally, ſo many cattle as the land to which the common is appendant, can maintain in the winter, ſo many ſhall be ſaid levant and couchant. *Noy*, 30. 2 *Brownl.* 101.

Generally, the commoner cannot uſe the common but with his own proper cattle; but if he hath not any cattle to manure the land, he may borrow other cattle to manure it, and may uſe

uſe the common with them; for by the loan, they are in a manner made his own cattle for the time. 1 *Roll's Abr.* 398. Alſo the *lord* may licenſe a ſtranger to put in his cattle, if he leaves ſufficient room for the commoners beſides. 1 *Roll's Abr.* 396.

He who has common appendant to one acre of land, ſhall not uſe this common but with beaſts that are levant and couchant upon the ſame acre. *Br.* Common, *pl.* 8.

Common appendant may be, to common after the corn is ſerved till it is ſown again. So it may be to common in the meadow ground after the hay is carried off till Candlemaſs. So it may be to common from the feaſt of *St. Auguſtine* to *All Saints*, and the like. 1 *Roll's Abr.* 397.

If all the inhabitants of a town preſcribe to have common in ſuch a field after harveſt, and one particular man, who hath land within the ſaid field ſowed, will not within convenient time gather in his corn, but ſuffer the ſame to continue there on purpoſe to bar the inhabitants of their common; they may put in their cattle, and if they eat his corn he hath no remedy. 2 *Leon.* 202.

Where the inhabitants of one pariſh have common appendant in certain waſte grounds in another pariſh, they ſhall pay taxes where the eſtate lies; for it is to be conſidered as part of the eſtate, and the eſtate to be taxed higher upon that account. 1 *Salk.* 169.

4. *Common Appurtenant.*

COMMON APPURTENANT is, where the owner of land hath a right to put in other goods beſides ſuch as are generally commonable, as hogs, goats, geeſe, and the like. This, not ariſing from the neceſſity of the thing, like common appendant, is therefore not of common right, but can only be claimed by immemoiral uſage and preſcription, which the law eſteems ſufficient proof of a ſpecial grant or agreement for this purpoſe. 2 *Black.* 33.

If a man purchaſe part of the land wherein common appendant is to be had, the common ſhall be apportioned, becauſe it is of common right; but not ſo of common *appurtenant*, or of any other common of what nature ſoever. But both common appendant and appurtenant ſhall be apportioned by alienation of part of the land to which common is appendant or appurtenant. 1 *Inſt.* 122.

Common appurtenant may be to a houſe, meadow, paſture, as well as to arable land, and ought to be preſcribed for by ſpecial words, as being againſt common right, and it may be ſevered from the land to which it is appurtenant. *Wood. b.* 2. *c.* 2. *ſ.* 6.

If a man grants common appurtenant to ſuch a cloſe, it is good,

good, and ſhall paſs by grant of the cloſe; for common appurtenant may be created at this day. 2 *Sid.* 87.

Burgagers in a borough may have common appurtenant to their burgages by preſcription. 2 *Sid.* 462.

5. *Common by reaſon of Vicinage.*

Common becauſe of VICINAGE, or neighbourhood, is where the inhabitants of two townſhips, which lie contiguous to each other, have uſually intercommoned with one another, the beaſts of the one ſtraying mutually into the other's grounds, without any moleſtation from either. This is, indeed, only a permiſſive right, intended to excuſe what in ſtrictneſs is a treſpaſs in both, and to prevent a multiplicity of ſuits; and therefore either townſhip may incloſe and bar out the other, though they have intercommoned time out of mind. Neither hath any perſon of one townſhip a right to put his beaſts originally into the other's common, for then they are diſtrainable; but if the eſcape, and ſtray thither of themſelves, the law winks at the treſpaſs. 2 *Black.* 33.

And the inhabitants of one vill ſhall not put in more beaſts, but having regard to the eſtates of the inhabitants of the other vill. *Br.* Common, *pl.* 55.

6. *Common in Groſs.*

Common IN GROSS, or at large, is ſuch as is neither appendant nor appurtenant to land, but is annexed to a man's perſon, being granted to him and his heirs by deed; or it may be claimed by preſcriptive right, as by the parſon of a church, or the like corporation ſole. This is a ſeparate inheritance, intirely diſtinct from any landed property, and may be veſted in one who hath not a foot of ground in the manor. 2 *Black.* 34.

Of common appendant, appurtenant, and in groſs, ſome are certain, that is, for a certain number of beaſts; ſome certain by conſequence; namely, for ſuch as are levant and couchant upon the land; and ſome are more uncertain, as common without number in groſs; and yet the tenant of the land muſt common or feed there alſo. 1 *Inſt.* 122.

If a man preſcribes for common appurtenant for a certain number of cattle, it is not neceſſary, nor material, to ſhew that they were levant and couchant, becauſe it is no prejudice to the owner of the ſoil, for that the number is aſcertained. *L. Raym.* 726. 1015.

7. *Common of Eſtovers.*

Common of ESTOVERS (from the French *eſtoffer*, to furniſh) is a liberty of taking neceſſary wood for the uſe or furniture of a houſe or farm, from off another's eſtate. The Saxon word

bote

bote is of the ſame ſignification with the French *eſtovers*, and therefore *houſebote* is a ſufficient allowance of wood, to repair or to burn in the houſe, which latter is ſometimes called *firebote*; *ploughbote* and *cartbote* are wood to be employed in making and repairing all inſtruments of huſbandry; and *haybote* or *hedgebote* is wood for repairing of hays, hedges, or fences. Theſe botes or eſtovers muſt be reaſonable; and ſuch, any tenant for life or for years may take from off the land let or demiſed to him, as incident to his eſtate, without waiting for any leave, aſſignment, or appointment of the leſſor, unleſs he be reſtrained by ſpecial covenant to the contrary. 1 *Inſt.* 41. 2 *Black.* 35.

8. *Common of Fiſhery.*

Common of FISHERY is, a liberty of fiſhing in another man's water. 2 *Black.* 34.

If a man claim by preſcription any manner of common in another man's land, and that the owner of the land ſhall be excluded from having paſture, eſtovers, or the like; this is a preſcription or cuſtom againſt law, to exclude the owner of the ſoil; for it is againſt the nature of the word *common*, and it was implied in the firſt grant that the owner of the ſoil ſhould take his reaſonable profit there. But a man may preſcribe or allege a cuſtom to have and enjoy the ſole feeding of the land from ſuch a day till ſuch a day, and hereby the owner of the ſoil ſhall be excluded to paſture or feed there; and ſo he may preſcribe to have *ſeparate* paſture, and exclude the owner of the ſoil from feeding there. So a man may preſcribe to have a *ſeparate* fiſhery in ſuch a water, and the owner of the ſoil ſhall not fiſh there; but if he claim to have *common* of fiſhery, or a *free* fiſhery, the owner of the ſoil ſhall fiſh there. 1 *Inſt.* 122.

9. *Common of Turbary, and other digging the Soil.*

Common of TURBARY is a liberty of digging turf upon another man's ground. There is alſo a common of digging *ſtones*, *coals*, *minerals*, and ſuch like. 2 *Black.* 34.

Common of turbary cannot be appendant to land, but only to an houſe. 1 *Roll's Abr.* 397.

If on an action of treſpaſs the defendant juſtifies, that he and his anceſtors, and all whoſe eſtate he hath in a certain houſe, have uſed time out of mind to have common of turbary to dig and ſell at their pleaſure, as belonging to the houſe; this plea is bad, and repugnant in itſelf; for turbary, appertaining to an houſe, ought to be ſpent in the houſe, and not ſold abroad. *Noy*, 145.

New erected *cottages*, though they have four acres of ground laid to them, ought not to have common of turbary in the waſte. 2 *Inſt.* 740.

Where

Where turf is taken away from the common, the lord only can bring his action; but, it is ſaid, the commoners may have an action for the treſpaſs by entering on the common, whereby their herbage is made worſe. 1 *Roll's Abr.* 89. 398.

10. *Diſturbance of Common, by one who has no right.*

Where one, who hath no right of common, puts his cattle into the land, and thereby deprives the cattle of the commoners of their reſpective ſhares of the paſture, the lord, or any of the commoners, may diſtrain them damage feaſant; or, a commoner may bring an action upon the caſe to recover damages, provided the injury done be any thing conſiderable, ſo as that he may lay his action that thereby he was deprived of his common. But for a trivial treſpaſs, the commoner hath no action; but the lord of the ſoil only, for the entry and treſpaſs committed. 3 *Black.* 237.

If a man, that has no right, comes and cuts fern upon the common, and by burning the ſame converts it to his own uſe, a commoner cannot juſtify diſperſing the aſhes, but may bring his action. *Str.* 777.

11. *Diſturbance of Common by Uncommonable Goods.*

Where one, who hath a right of common, puts in cattle that are not commonable, as hogs and goats, the lord or any of the commoners, as is aforeſaid, may diſtrain them damage feaſant, or (if the damages be conſiderable) a commoner may bring his action. But the lord of the ſoil, by cuſtom or preſcription, but not without, may put uncommonable cattle upon the common. 3 *Black.* 237.

12. *Diſturbance of Common by ſurcharging.*

Diſturbance of common by ſurcharging is, where more cattle are put on the common than the paſture or herbage will ſuſtain, or the party hath a right to do. This injury by ſurcharging can, properly ſpeaking, only happen when the common is appendant or appurtenant, and of courſe limited by law; or where, when in groſs, it is expreſly limited and certain: for where a man hath common in groſs, without number or without ſtint, he cannot be a ſurcharger. However, even where a man is ſaid to have common without ſtint, ſtill there muſt be left ſufficient for the lord's own beaſts; for the law will not ſuppoſe that, at the original grant of the common, the lord meant to exclude himſelf. 3 *Black.* 237.

The uſual remedies for ſurcharging the common, are either by diſtraining ſo many of the beaſts as are above the number allowed, or elſe by an action of treſpaſs; both which may be had by the lord; or by a ſpecial action on the caſe for damages, in which any

any commoner may be plaintiff. But the ancient and moſt effectual method of proceeding is, by *writ of admeaſurement of paſture*; which is executed by a jury, who upon their oaths are to aſcertain, under the ſuperintendence of the ſheriff, what and how many cattle each commoner is intitled to feed. And the rule for this admeaſurement is generally underſtood to be, that the commoner ſhall not turn more cattle upon the common, than are ſufficient to manure and ſtock the land to which his right of common is annexed. And if, after this admeaſurement, the ſame defendant ſurcharges the common again, the plaintiff may have a writ of ſecond ſurcharge; and if it is found that he hath again ſurcharged, he ſhall forfeit to the king the ſupernumerary cattle put in, and ſhall alſo pay damages to the plaintiff. 3 *Black.* 238.

If the *lord* ſurcharges the common, a commoner may not drive his cattle off the common, or diſtrain them damage feaſant, as he may the cattle of a ſtranger; but the remedy againſt the lord is either an aſſize, or an action on the caſe. *F. N. B.* 125. *Burr. Manſf.* 2426.

A cuſtom of a manor, for the reeve to make a drift of the cattle at any time by the appointment of the ſteward, is good, and is more reaſonable than a cuſtom to drive the common at a certain time; becauſe, if that were the cuſtom, the commoners would ſurcharge the common all the reſt of the year, except at thoſe times. *L. Raym.* 1186.

13. *Diſturbance by Incloſure, or other Obſtruction.*

Diſturbance of common by incloſure or other obſtruction is, when the owner of the land, or other perſon, ſo incloſes or otherwiſe obſtructs it, that the commoner is precluded from enjoying the benefit to which he is by law intitled. This may be done, either by erecting fences, or by driving the cattle off the land, or by plowing up the ſoil of the common or it may be done by erecting a warren therein, and ſtocking it with rabbits in ſuch quantities, that they devour the whole herbage, and thereby deſtroy the common. For in ſuch caſe, though the commoner may not deſtroy the rabbits, yet the law looks upon this as an injurious diſturbance of his right, and hath given him his remedy by action againſt the owner. 3 *Black.* 240.

A commoner, without a ſpecial cuſtom, may not cut buſhes, dig trenches, or get clay upon the common, for this deſtroys the graſs, and carrying it away doth damage to the ground, ſo that the other commoners cannot enjoy the common in as ample manner as they ought to do. *Godb.* 334.

14. *Of the Lord's Right to incloſe the Surplus.*

If any commoner incloſes, or builds on the common, every commoner may have an action for the damage. 1 *Roll's Abr* 398.

And

And if the lord incloſes on the common, and leaves not common ſufficient, the commoners may not only break down the incloſure, but may put in their cattle, although the lord plows and ſows the land. 2 *Inſt.* 88.

But by the ſtatute of *Merton*, 20 *H.* 3. *c.* 4. the lord may *approve* (which is an old word, and ſignifies the ſame as *improve*) that is, may incloſe and convert to the uſes of huſbandry any waſte grounds, in which his tenants have common appendant, provided he leaves ſufficient common to his tenants, according to the proportion of their land. And the ſtatute of 13 *Ed.* 1. *c.* 46. extends this liberty of approving, in like manner, againſt all others that have common appurtenant or in groſs.

Which ſaid ſtatute of 20 *H.* 3. *c.* 4. is as follows, 'Becauſe 'many great men, which have infeoffed knights and their free-'holders of ſmall tenements in their great manors, have com-'plained that they cannot make their profit of the reſidue of their 'manors, as of waſtes, woods, and paſtures, whereas the ſame 'feoffees have ſufficient paſture, as much as belongeth to their 'tenements, it is provided, that whenſoever ſuch feoffees do 'bring an aſſize of novel diſſeiſin for their common of paſture, 'and it is knowledged before the juſtices that they have as 'much paſture as ſufficeth to their tenements, and that they 'have free egreſs and regreſs from their tenement unto the paſ-'ture, then let them be contented therewith; and they on 'whom it was complained ſhall go quit of as much as they have 'made their profit of their lands, waſtes, woods, and paſtures: 'but if they allege, that they have not ſufficient paſture, or ſuffi-'cient ingreſs and egreſs according to their hold, then let the 'truth be inquired of by aſſize; and if it be found by the aſſize, 'that the ſame deforceors have diſturbed them of their ingreſs 'and egreſs, or that they had not ſufficient paſture as aforeſaid, 'then they ſhall recover their ſeiſin by view of the inqueſt; ſo 'that by their diſcretion and oath, the plaintiffs ſhall have ſuf-'ficient paſture, and ſufficient ingreſs and egreſs in form afore-'ſaid, and the diſſeiſors ſhall be amerced and ſhall yield damages.'

The approvement muſt be made and divided by ſome incloſure or defence; for it is lawful for the tenant to put his cattle into the reſidue of the common, and if they ſtray into that part whereof the approvement is made, in default of incloſure, he is no treſpaſſer. 2 *Inſt.* 87.

And if the lord doth incloſe part, and leave not ſufficient common in the reſidue, the commoner may break down the whole incloſure, becauſe it ſtandeth upon the ground which is his common. 2 *Inſt.* 88.

If the lord make a feoffment of certain acres, the feoffee may incloſe, becauſe the feoffment is an approvement in its nature. 2 *Inſt.* 87.

If a man incloſes where by law he may, he is bound to leave a good way, and alſo to keep it in repair continually at his own charge. *Jo.* 296. 8. *Car.* Henn's *caſe.*

COMMON, *tenants in.*

TENANTS IN COMMON, are they that have lands or tenements in fee ſimple, fee tail, or for term of years, or any other fixed eſtate, and they have ſuch lands or tenements by ſeveral titles, and not by joint title, and none of them knoweth of this his ſeveral, but they ought not by the law to occupy theſe lands or tenements in common, and *proindiviſo*, to take the profits in common. *Litt.* ſect. 292.

And becauſe they come to ſuch lands or tenements by ſeveral titles, and not by one joint title, and their occupation and poſſeſſion ſhall be by law between them in common, they are therefore called tenants in common. *Ibid.*

Parceners are only by deſcent, jointenants are only by purchaſe, and tenants in common are by deſcent, purchaſe, or preſcription. 1 *Inſt.* 188.

An eſtate given to two perſons *equally to be divided* between them, though in *deeds* it hath been ſaid to be a joint tenancy, yet in *wills* it is a tenancy in common. This nicety in the wording of grants makes it the moſt uſual, as well as the ſafeſt way, when a tenancy in common is meant to be created, to add expreſs words of excluſion as well as deſcription, and limit the eſtate to hold as tenants in common, and not as jointenants. 2 *Black.* 193.

As they take by diſtinct moieties, and have no intirety of intereſt, therefore there is no ſurvivorſhip between tenants in common. 2 *Black.* 194.

If tenants in common be diſſeiſed, they muſt have ſeveral actions, and not one joint action; and the reaſon is, for that they were ſeiſed by ſeveral titles. But otherwiſe it is of jointenants; for if there be twenty jointenants, and they be diſſeiſed, they ſhall have in all their names but one action, becauſe they have only one joint title. *Litt.* ſect. 311.

But as to actions perſonal, tenants in common may have ſuch actions perſonal jointly in all their names, as of treſpaſs, or of offences which concern their tenements in common, as for breaking their houſes, breaking their cloſes, feeding, waſting, and deſtroying their graſs, cutting their woods, fiſhing in their piſcary, and ſuch like. In this caſe, they ſhall have one action jointly, and ſhall recover jointly their damages, becauſe the action is in the perſonalty, and not in the reality. *Litt.* ſect. 315.

Tenants in common, like as jointenants, are compellable to make partition. 2 *Black.* 194.

COMMON LAW is ſo called, as it is the common municipal law, or rule of juſtice, throughout the kingdom. For although there are divers particular laws, ſome by cuſtom applied to particular

ticular places, and ſome to particular cauſes, yet that law, which is common to the generality of perſons, things, and cauſes, and hath a ſuperintendency over thoſe particular laws that are admitted in relation to particular places or matters, is the common law of *England*.

It is diſtinguiſhed from the *ſtatute* law, or acts of parliament, as having been the law of the land, before any acts of parliament that are now extant were made, though poſſibly a conſiderable part of it might have been acts of parliament in ancient time, which are now loſt: for there are no acts of parliament now ancienter than the reign of king *Henry* the third.

This common law is delivered down to us in the writings of divers learned men, ſuch as *Glanvil*, *Bracton*, *Briton*, the author of *Fleta*, and above all Sir *Edward Coke*, whoſe works may juſtly be ſtiled the grand repoſitory of the common law.

COMMON PLEAS is one of the king's courts of record at *Weſtminſter*, frequently termed in law the *common bench*. By the ancient Saxon conſtitution, there was only one ſuperior court of juſtice in the kingdom, and that had cognizance both of civil and ſpiritual cauſes; namely, the *wittena gemot*, or general council, which aſſembled annually or oftener, and attended the king wherever he reſided, as well to do private juſtice, as to conſult upon public buſineſs. At the conqueſt, the eccleſiaſtical juriſdiction was ſeparated from the temporal; and of the temporal judges, the Conqueror ſeparated their deliberative power as counſellors to the crown, from their miniſterial power as judges. Of thoſe who conſtantly attended him as judges, he eſtabliſhed a regular court in his own hall, thence called by ancient authors *aula regia*, or *aula regis*. And theſe were bound to follow the king's houſehold in all his progreſſes and expeditions; which being found very inconvenient to the ſubject, it was afterwards eſtabliſhed by *magna charta*, that common pleas ſhould not follow the king's court, but be holden in ſome place certain. Which place certain was appointed to be in *Weſtminſter-hall*, the place where the *aula regis* originally ſat, when the king reſided in that city; and there it hath ever ſince continued. And this juriſdiction became afterwards ſubdivided and broken into ſeveral diſtinct courts of judicature, and the diſtribution of juſtice was thrown into ſo provident an order, that the judicial officers were made to form a cheque upon each other; the court of chancery iſſuing all original writs under the great ſeal to the other courts; the common pleas being allowed to determine all cauſes between private ſubjects; the exchequer managing the king's revenue; and the court of king's bench retaining all the juriſdiction which was not cantoned out to the other courts, and particularly the ſuperintendence of all the reſt by way of appeal; and the ſole cognizance of pleas of the crown or criminal cauſes. For pleas or ſuits are

regularly divided into two ſorts: *pleas of the crown*, which comprehend all crimes and miſdemeanors wherein the king (on behalf of the public) is plaintiff; and *common pleas*, which include all civil actions depending between ſubject and ſubject. The former of theſe were the proper object of the court of king's bench, the latter of the court of common pleas: and in this court only can *real* actions, that is, actions which concern the right of freehold or the *realty*, be originally brought; and in this court alſo, all other, or *perſonal*, pleas between man and man, are determined; but in ſome of theſe the king's bench hath a concurrent authority. But a writ of error, in the nature of an appeal, lies from the court of common pleas to the court of king's bench. 3 *Black.* 37.

This court can hear and determine cauſes removed out of inferior courts by *pone*, *recordare*, or other like writs. They can alſo grant prohibitions to keep other courts, as well eccleſiaſtical as temporal, within due bounds.

COMPOSITION REAL, for tithes, is, where the incumbent of any church, together with the patron and ordinary, do agree by deed under their hands and ſeals, or by fine in the king's court, that certain lands ſhall be freed and diſcharged of the payment of tithes for ever, paying ſome annual payment, or doing ſome other thing, to the benefit of the parſon or vicar to whom the tithes did belong. And from theſe real compoſitions it is preſumed, that all preſcriptions *de modo decimandi* took their firſt riſe and beginning; but it is more probable, that moſt of them at this day have grown from the negligence and careleſſneſs of the clergy themſelves. *Degge*, *p.* 2. *c.* 20.

COMPURGATOR, was one who made oath, together with the defendant, of the defendant's innocence with reſpect to the matter charged againſt him. This practice was frequent in the eccleſiaſtical courts; and in the temporal courts it is ſtill eſſential in what is called waging of law; in which caſe the defendant makes oath of the truth of his allegation, and brings a certain number of others who avow, upon their oaths, that they believe what he ſaid is true.

CONCORD, is a ſuppoſed *agreement* between the parties in levying a fine of lands, in which the deforciant (or he who keeps the other out of poſſeſſion) acknowledges that the lands in queſtion are the right of the complainant; which acknowledgment is made before one of the judges of the court, or before commiſſioners in the country, and is entered is this form: "And the agreement is ſuch, to wit, that the aforeſaid *A. B.* "hath acknowledged the aforeſaid tenements, with the appur- "tenances, to be the right of him the ſaid *C. D.* as thoſe which "the ſaid *C. D.* hath of the gift of the ſaid *A. B.* and thoſe he "hath

" hath remiſed and quitted claim from him and his heirs " to the aforeſaid *C. D.* and his heirs for ever." 2 *Black.* 350.

CONDITION:

ESTATES which men have in lands or tenements upon CONDITION, are of two ſorts; either upon Condition *in deed*, or upon Condition *in law*.

Condition *in deed* is, as if a man, by deed indented, enfeoffs another in fee ſimple, reſerving to him and his heirs yearly a certain rent payable at one feaſt or divers feaſts, on condition, that if the rent be behind, it ſhall be lawful for the feoffor and his heirs to enter into the ſame lands or tenements; or if it happen the rent be behind by a week, or a month, or half a year, after any day of payment of it, that then it ſhall be lawful to the feoffor and his heirs to enter: in theſe caſes, if the rent be not paid at ſuch time, or before ſuch time limited and ſpecified within the condition comprized in the indenture, then may the feoffor or his heirs enter into ſuch lands or tenements, and ouſt the feoffee thereof quite, and have and hold the ſame in his former eſtate. And it is called an eſtate *upon condition*, becauſe that the eſtate of the feoffee is defeaſible, if the condition be not performed. In the ſame manner it is, if lands be given in tail, or let for term of life or years upon condition. *Litt.* 325, 326.

But where a feoffment is made of certain lands, reſerving a certain rent, upon ſuch condition, that if the rent be behind, it ſhall be lawful for the feffor and his heirs to enter, and to hold the land until he be ſatisfied of the rent behind; in this caſe, if the rent be behind, and the feoffor or his heirs enter, the feoffee is not altogether excluded from this, but the feoffor ſhall have and hold the land, and thereof take the profits, until he be ſatisfied of the rent behind, and when he is ſatisfied, then may the feoffee re-enter into the ſame land, and hold it as he held it before. *Litt.* 327.

There are divers words (amongſt others) which of themſelves make eſtates upon condition; one is the word *condition*, as if A. infeoff B. of certain land, to have and to hold to the ſaid B. and his heirs, *upon condition* that the ſaid B. and his heirs do pay or cauſe to be paid to the aforeſaid A. and his heirs yearly ſuch a rent; in this caſe, without any more ſaying, the feoffee hath an eſtate upon condition. *Litt.* 328.

Alſo, if the words were ſuch, *provided always*, that the aforeſaid *B.* do pay or cauſe to be paid to the aforeſaid *A.* ſuch a rent; or theſe, *ſo that* the ſaid *B.* do pay or cauſe to be paid to the ſaid *A.* ſuch a rent: in theſe caſes, without more ſaying, the feoffee hath but an eſtate upon condition; ſo as if he doth not perform the condition, the feoffor and his heirs may enter. *Litt.* 329.

Alſo there are other words in a deed which cauſe the tenements to be conditional; as if upon ſuch feoffment a rent be reſerved to the feoffor and his heirs, and afterward theſe words are put into the deed, that if it happen the aforeſaid rent be behind in part or in whole, it ſhall then be lawful for the feoffor and his heirs to enter; this is a deed upon condition. *Litt.* 330.

Eſtates which men have upon condition *in law*, are ſuch eſtates which have a condition by the law to them annexed, although it be not ſpecified in writing. As if a man grant by his deed to another the office of parkerſhip of a park, to have and occupy the ſame office for term of his life; the eſtate which he hath in the office is upon condition in law, namely, that the parker ſhall well and lawfully keep the park, and ſhall do that which to ſuch office belongeth; or otherwiſe it ſhall be lawful to the grantor and his heirs to ouſt him, and to grant it to another if he will. And ſuch condition as is intended by the law to be annexed to any thing, is as ſtrong as if the condition were put in writing. *Litt.* 378.

Alſo eſtates of lands or tenements may be made upon condition in law, although upon the eſtate made there was not any mention or rehearſal made of this condition. As if a leaſe be made to the huſband and wife, to have and to hold to them during the coverture between them; in this caſe they have an eſtate for term of their lives upon condition in law; that is, if any of them die, or that there be a divorce between them, then it ſhall be lawful for the leſſor and his heirs to enter. *Litt.* 380.

If the condition of a bond be, to pay money by inſtalments, the bond becomes forfeited on failure of the firſt payment: for in this caſe there is a difference between an *action of debt* upon a bond, and an *action on a contract* for paying ſeveral ſums at ſeveral times. 1 *Wilſon*, 80. 1 *Inſt.* 292.

CONFEDERACY, is when two or more combine together to do any damage or injury to another, or to do any unlawful act. And in ſome caſes it is puniſhable, though nothing be put in execution. But to render it puniſhable before it is executed, it ought to have theſe incidents: 1. It muſt be declared by ſome matter of proſecution, as by making of bonds or promiſes one to another. 2. It ſhould be malicious, as for unjuſt revenge. 3. It ought to be falſe, againſt an innocent perſon. 4. It is to be out of court voluntarily. *Terms of the law.*

CONFESSION is, where a priſoner being arraigned for an offence, and being aſked whether he is guilty or not guilty, confeſſes the crime with which he is charged; which is the higheſt conviction that can be. But it is uſual for the court, eſpecially if it be for a capital offence, to adviſe the party to plead, and put himſelf upon his trial, and not preſently to record his confeſſion, but to admit him to plead. 2 *H. H.* 225.

Beſides

Beſides the *expreſs* confeſſion, there is alſo an *implied* confeſſion, in inferior offences that do not amount to felony, whereby the party doth not directly own himſelf guilty, but in a manner admits it by yielding to the king's mercy, and deſiring to ſubmit to a ſmall fine; which ſubmiſſion the court may accept of if they think fit, without putting him to a direct confeſſion. 2 *Haw.* 333.

There is alſo another ſpecies of confeſſion, which is called an *approvement*. And that is, when a perſon indicted of treaſon or felony, and arraigned for the ſame, doth confeſs the fact before any plea pleaded; and accuſeth others his accomplices of the ſame crime, in order to obtain his pardon. But this courſe hath been long diſuſed. And in many caſes, by ſeveral acts of parliament, encouragement is given to accomplices, for the convicting of offenders, by offering to the ſaid accomplices a pardon. 4 *Black.* 330.

Confeſſion of the defendant taken upon an examination before juſtices of the peace, or in diſcourſe with private perſons, may be given in evidence againſt the party confeſſing, but not againſt others. But wherever a man's confeſſion is made uſe of againſt him, it muſt be all taken together, and not by parcels. 2 *Haw.* 429.

Sometimes there is a confeſſion in a civil action; but not uſually of the whole complaint, for then the defendant would probably end the matter ſooner, or not plead at all, but ſuffer judgment to go by default: but, ſometimes, after tender and refuſal of debt, if the creditor haraſſes his debtor with an action, it then becomes neceſſary for the defendant to confeſs the debt and plead the tender; for a tender by the debtor, and refuſal by the creditor, will in all caſes diſcharge the coſts. 4 *Black.* 303.

So, in order to ſtrengthen the creditor's ſecurity, it is uſual for the debtor to execute a warrant of attorney to confeſs judgment in an action to be brought by ſuch creditor; which judgment, when confeſſed, is complete and binding. 3 *Black.* 397.

CONFIRMATION of lands, is of a nature nearly allied to a releaſe. Lord *Coke* defines it to be, a conveyance of an eſtate or right *in eſſe*, whereby a voidable eſtate is made ſure and unavoidable, or whereby a particular eſtate is increaſed. It is a ſtrengthening of an eſtate formerly made, which is voidable, though not preſently void: as for example; a biſhop granteth his chancellorſhip by patent, for term of the patentee's life: this is not a void grant, but voidable by the biſhop's death, except it be ſtrengthened by the confirmation of the dean and chapter. 2 *Black.* 325.

If tenant for life leaſes for forty years, and dies during that term, the leaſe for years is voidable by him in reverſion; yet if he hath confirmed the eſtate of the leſſee for years, before the death

death of the tenant for life, it is no longer voidable, but ſure. *Id.*

Confirmation is either *expreſs* or *implied*. *Expreſs*, as by the words "ratify, approve, and confirm." *Implied*, as by the words "have given and granted," "have demiſed," or the like; which in ſome caſes ſhall enure to the ſame intent as the words "have confirmed." *Wood. b.* 2. *c.* 3.

Every confirmation is *perfecting*, *increaſing*, or *diminiſhing*. *Perfecting*; as when one makes an eſtate abſolute that was conditional. *Increaſing*; as when an eſtate at will is increaſed to an eſtate for years. *Diminiſhing*; as where a landlord confirms the eſtate of his tenant to hold by leſſer rent, or the like. *Id.*

CONFISCATION, from the Latin, *fiſcus*, which ſignified the emperor's treaſury, is a forfeiture of lands or goods to the king for certain crimes or miſdemeanors. Theſe are by our lawyers termed *forisfacta* (forfeited); that is, ſuch whereof the property is gone away or departed from the owner. Every offence is deemed an injury againſt the public; and hence in every offence of an atrocious kind, the law hath exacted a total confiſcation of the *goods*, and in ſome caſes a temporary, in other caſes a perpetual, confiſcation of the *lands* of the offender to the king as repreſentative of the public. 1 *Black.* 299.

CONGEABLE, from the French *conge*, leave or permiſſion, ſignifies in our law as much as *lawful*, or lawfully done with permiſſion; as entry congeable, or the like.

CONGE D'ESLIRE, *leave to chuſe*, is the king's writ or licence to the dean and chapter to chuſe a biſhop, in the time of vacancy of the ſee.

CONIES: killing conies in the day time, in a lawful warren, incloſed or unincloſed, incurs a forfeiture of treble damages, and three months impriſonment, by 22 & 23 *C.* 2. *c.* 25: if it is in the night time, the penalty is tranſportation for ſeven years; or leſſer puniſhment by whipping, fine, or impriſonment, as the court ſhall award, by 5 *G.* 3. *c.* 14. But by the Black Act, 9 *G. c.* 22. if the offender be armed and diſguiſed when he commits ſuch offence, he ſhall be guilty of felony without benefit of clergy.

If conies are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his graſs and corn; but no action lies againſt the owner of the warren. 5 *Co.* 104.

Conies in a warren go to the heir, and not to the executor. 1 *Inſt.* 8.

CONJURATION. No proſecution ſhall be commenced or carried on againſt any perſon for witchcraft, ſorcery, inchantment or conjuration: but if any perſon ſhall pretend to exerciſe any of theſe, he ſhall be impriſoned for a year, and ſet on the pil-

lory

lory once in every quarter of that year, and be further bound to the good behaviour at the diſcretion of the court. 9 *G.* 2. *c.* 5.

CONSANGUINITY, or kindred, is the connexion or relation of perſons deſcended from the ſame ſtock or common anceſtor: and is either *lineal*, or *collateral*. *Lineal* conſanguinity, is that which ſubſiſts between perſons, of whom one is deſcended in a direct line from the other; as grandfather, father and ſon. *Collateral* conſanguinity, is that which ſubſiſts between perſons deſcended from the ſame common anceſtor, but not one from another; as brothers, uncles, and nephews. 2 *Black.* 204.

CONSCIENCE, court of. So early as the reign of king *Hen.* 8. a court of conſcience was eſtabliſhed in *London*, for the recovery of ſmall debts, but not confirmed by act of parliament till the reign of king *James* the firſt, which hath ſince been explained and amended by the ſtatute 14 *G.* 2. *c.* 10. The conſtitution thereof is this: two aldermen and four commoners, ſit twice a week, to hear all cauſes of debt, not exceeding the value of 40*s.*; which they examine in a ſummary way, by the oath of the parties, or other witneſſes, and take ſuch order therein as is conſonant to equity and good conſcience. Which method hath been found ſo convenient, that divers trading towns, and other diſtricts, have obtained acts of parliament upon nearly the ſame plan.

But this bearing hard againſt the courſe of the common law, and diſpenſing with the conſtitutional eſtabliſhment of trial by jury, another plan had been recommended, which hath been adopted by the county of *Middleſex*, and carried into execution by the ſtatute 23 *G.* 2. *c.* 33. the ſubſtance of which is, 1. That a ſpecial county court ſhall be holden, at leaſt once a month, in every hundred, by the county clerk. 2. That twelve freeholders of that hundred, qualified to ſerve as juries, and ſtruck by the ſheriff, ſhall be ſummoned to appear at ſuch court by rotation, ſo as none ſhall be ſummoned oftener than once a year. 3. That in all cauſes, not exceeding the value of 40*s.* the county clerk and twelve ſuitors ſhall proceed in a ſummary way, examining the parties and witneſſes upon oath, and make ſuch order therein as they ſhall judge agreeable to conſcience. 4. That no plaint ſhall be removed out of this court, but the determination therein ſhall be final. 5. That if any action be brought in any of the ſuperior courts againſt the perſon reſident in *Middleſex*, for a debt or contract, upon the trial whereof the jury ſhall find leſs than 40*s.* damages, the plaintiff ſhall recover no coſts, but ſhall pay to the defendant double coſts; unleſs upon ſome ſpecial circumſtances to be certified by the judge who tried it. 6. A very moderate table of fees is preſcribed and ſet down in

in the act, which are not to be exceeded upon any account whatsoever. 3 *Black.* 81.

CONSERVATOR, is a protector, or *preserver*, in general: as, anciently, a conservator of truce and safe conduct, a conservator of the privileges of the Templars and Hospitallers, conservators of the levels of the fens. But there was more especially one kind of conservator of which the law took particular notice, and which is of some regard to this day; and that is, a conservator of the peace. Before the institution of the office of justices of the peace, the peace was kept by conservators of the peace in every county, chosen in pursuance of the king's writ by the freeholders in the county court.

And besides these conservators of the peace, properly so called, there were and are other conservators of the peace by virtue of certain offices. As, for instance, the lord chancellor, and every judge of the court of king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the surety of the peace, and to take recognizances for it. Also every court of record, as such, hath power to keep the peace within its own precinct. Also every justice of the peace is a conservator ofthe peace. So is also the sheriff, coroner, and every high and petty constable; who have power to preserve the peace in danger of being broken in their presence, but they have not power to punish the breach of it.

There were also other conservators of the peace by *tenure*, who held lands of the king for that service; others by *prescription*, claiming that power by immemorial usage in themselves, and those whose estate they have in certain lands.

The general authority which such conservators of the peace, whether by election, or tenure, or prescription, is, to employ their own, and command the help of others, to arrest and pacify all such who in their presence, and within their jurisdiction and limits by word or deed, shall go about to break the peace. 2 *Haw.* 32.

CONSIDERATION, is the material cause of any agreement or contract, without which it will not be effectual or binding.

A deed of lands must be founded on good and sufficient consideration. Not upon an usurious contract; nor upon fraud or collusion, either to deceive *bona fide* purchasers, or just and lawful creditors; any of which bad considerations will vacate the deed. 2 *Black.* 296.

A deed, or other grant, made without any consideration, is, as it were, of no effect; for it is construed to enure, or to be effectual, only to the use of the grantor himself. *Id.*

The consideration may be either a *good* or a *valuable* one. A *good* consideration is such as that of blood, or of natural love and affection, when a man grants an estate to a near relation: a

valuable

valuable consideration is such as money, marriage, or the like; which the law esteems an equivalent given for the grant. Deeds made upon *good* consideration only, are considered as merely voluntary; and are frequently set aside in favor of creditors, and *bona fide* purchasers. *Id.* 297.

Consideration in *contracts*, is something given in exchange, something that is mutual and reciprocal; as money given for goods sold, work performed for wages. And a consideration of some sort or other is so absolutely necessary to the forming a contract, that a *nudum pactum*, or agreement, to do or pay any thing on one side, without any compensation on the other, is totally void in law; and a man cannot be compelled to perform it. As if a man promises to give another 100*l.* here is nothing contracted for or given on the one side, and therefore there is nothing on the other. But if such promise is authentically proved by written documents, as if a man enters into a voluntary bond, or gives a promissory note, he shall not be allowed to aver the want of a consideration in order to evade the payment; for every bond, from the solemnity of the instrument, and every note, from the subscription of the drawer, carries with it an internal evidence of a good consideration. Courts of justice will therefore support them both, as against the contractor himself, but not to the prejudice of creditors, or strangers to the contract. 2 *Black.* 445. *Burr. Mansf.* 1671.

Consideration is either *express*, as when a man bargains to give so much for a thing bought, or to sell his land for so much, or grants it in exchange for other lands, or where a man promises to give a sum of money for work to be done by him; or it is *implied*, when the law itself inforces a consideration; as where a man comes to an inn, and, there staying, eats and drinks and lodges, the law presumes he shall pay for the same, though there be no express contract for it.

CONSIMILI CASU, is a writ of entry for the reversioner after alienation by tenant for life. It was given by the statute of 13 *Ed.* 1. *c.* 24. which ordains, that where a *like case* happens to that of alienation by tenant in dower, for which a writ is given by 6 *Ed.* 1. *c.* 7. the chancery shall make out a writ accordingly. 3 *Black.* 183.

CONSISTORY, is the court christian or spiritual court, held formerly in the nave of the cathedral church, or in some chapel, ile, or portico, belonging to it; in which the bishop presided, and had some of his clergy for his assessors and assistants. But this court is now held by the bishop's chancellor or commissary, and by archdeacons and their officials, either in the cathedral church or other convenient place of the diocese, for the hearing and determining of matters and causes of ecclesiastical cognizance happening within that diocese. From the bishop's court the appeal

peal is to the archbiſhop, from the archbiſhop's court to the delegates.

CONSPIRACY. By act of parliament 33 *Ed.* 1. *ſt.* 2. conſpirators are defined to be thoſe that confederate or bind themſelves by oath, covenant, or other alliance, that every of them ſhall aid and bear the other falſely and maliciouſly to indict or cauſe to be indicted, or falſely to move or maintain pleas. From which definition it ſeems clearly to follow, that not only thoſe who actually cauſe an innocent man to be indicted, and alſo to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conſpirators, but that thoſe alſo are guilty of this offence, who baſely conſpire to indict a man falſely and maliciouſly, whether they do any act in proſecution of ſuch confederacy or not. 1 *Hawk.* 189.

For this offence, the conſpirators (for there muſt be at leaſt two to form a conſpiracy) may be indicted at the ſuit of the king, and were by the ancient common law to receive what is called the villenous judgment; namely, to loſe their freedom of the law, whereby they are diſcredited and diſabled as jurors or witneſſes; to forfeit their goods and chattels, and their lands, during life; to have their lands waſted, their houſes raſed, their trees rooted up, and their bodies committed to priſon. But this villenous judgment is by long diſuſe become obſolete; it not having been pronounced for ſome ages; but, inſtead thereof, the delinquents are uſually ſentenced to fine, impriſonment, and pillory. 4 *Black.* 136.

Or an action of conſpiracy may be brought, to obtain a recompence in damages, for the danger to which the party hath been expoſed: but in order to this, it is neceſſary that the plaintiff ſhould obtain a copy of the record of his indictment and acquittal; but in proſecutions for felony, it is uſual to deny a copy of the indictment, where there is any, the leaſt, probable cauſe to found ſuch proſecution upon. For it would be a very great diſcouragement to the public juſtice of the kingdom, if proſecutors, who had a tolerable ground of ſuſpicion, were liable to be ſued at law whenever their indictments miſcarried. But the more uſual way is, to bring a ſpecial action on the caſe, for a falſe and malicious proſecution; which may be brought againſt one only, and although there hath been no acquittal upon the indictment; for the action may be brought on ſuch an indictment whereon no acquittal can be; as if it be rejected by the grand jury, or be *coram non judice*, or be inſufficiently drawn. 3 *Black.* 126.

CONSTABLES are of two ſorts: high conſtables, and petty conſtables. High conſtables are commonly choſen and ſworn by the juſtices of the peace in ſeſſions; and their juriſdiction extends through the ſeveral hundreds reſpectively. Petty conſta-

bles

bles are chosen and sworn in the leet, and in defect thereof most commonly by the justices. The general duty of both high and petty constables is, to keep the king's peace in their several districts: and they have both of them abundance of particulars committed to their charge, as well by the common law, as by sundry acts of parliament.

CONSULTATION, is a writ whereby a cause being formerly removed by prohibition out of an inferior court into some of the king's courts at *Westminster*, is returned thither again. For if the judges of the superior court, comparing the proceedings with the suggestion of the party, find the suggestion false, or not proved, and therefore the cause to be wrongfully called from the inferior court, then, upon *consultation* or deliberation thereof, they decree it to be returned again; whereupon the writ in this case obtained is called a *consultation*. T. L.

CONTEMPT, is an high misdemeanor, by doing what one is forbidden, or not doing what he is commanded. If the sheriff, being required to return a writ directed to him, doth not return it; or if a person, required by such writ to do something, doth not perform it; this is a contempt, punishable by fine and imprisonment. So disobedience to an act of parliament, where no particular penalty is assigned, is a contempt of the statute, and punishable by fine and imprisonment at the discretion of the court. For a contempt of the king's superior courts of justice, the offender is liable to an attachment.

CONTENEMENT, (*contenementum,*) is said to signify a man's *countenance* or credit, which he hath together with and by reason of his freehold. But it seems more properly to be restricted to the estate which he holds in land; as where the *magna charta*, *c.* 14. says, a freeman shall not be amerced for a small fault, but after the manner of the fault, and for a great fault after the greatness thereof, saving to him his contenement (*salvo contenemento suo*): that is, that he shall not be fined above what he is able to bear, and leaving to him the means of his future support: so the statute goes on—a merchant shall not be fined, but saving to him his merchandize; and a villein, saving to him his wainage.

CONTENTIOUS JURISDICTION, in ecclesiastical causes, is where there is an action or judicial process, and it consists in hearing and determining the matter between party and party; in contradistinction to *voluntary* jurisdiction, which is exercised in matters that require no judicial proceeding, as in granting institution, probate of wills, letters of administration, sequestration of vacant benefices, and such like.

CONTINGENT LEGACY, is a legacy which may happen or not happen, according to the circumstances of a future event. If a legacy be left to one *when* he shall attain, or *if* he shall attain, the age of twenty-one years, this is a contingent legacy; and

and if the legatee dies before that time, the legacy ſhall not veſt. But a legacy to one, *to be paid* when he attains the age of twenty-one years, is a veſted legacy; an intereſt which commences *in præſenti*, although it be *ſolvendum in futuro*: and if the legatee dies before that age, his repreſentatives ſhall receive it out of the teſtator's perſonal eſtate, at the ſame time that it would have become payable in caſe the legatee had lived. But if ſuch legacy be charged upon a real eſtate, the temporal courts will not ſuffer it to be raiſed, but it ſhall lapſe for the benefit of the heir at law. 2 *Black.* 513.

CONTINGENT REMAINDER, is where no preſent intereſt paſſes, but the eſtate is limited to take effect, either to a dubious and uncertain *perſon*, or upon a dubious and uncertain *event*; ſo that the particular eſtate may chance to be determined, and the remainder never take effect. As if a tenant for life, with remainder to *B.*'s eldeſt ſon (then unborn) in tail, this is a contingent remainder, with reſpect to the *perſon*, for it is uncertain whether *B.* will have a ſon or no; but the inſtant that a ſon is born, the remainder is no longer contingent, but veſted: though, if *A.* had died before the contingency happened, that is, before *B.*'s ſon was born, the remainder would have been abſolutely gone; for the particular eſtate was determined before the remainder could veſt. So, where the *perſon* to whom the remainder is limited is fixed and certain, it may be contingent with reſpect to the *event*, where that event is vague and uncertain. As where land is given to *A.* for life, and in caſe *B.* ſurvives him, then with remainder to *B.* in fee; here *B.* is a certain perſon; but the remainder to him is a contingent remainder depending upon a dubious event, the uncertainty of his ſurviving *A.* During the joint lives of *A.* and *B.* it is contingent; and if *B.* dies firſt, it never can veſt in his heirs, but it is gone for ever; but if *A.* dies firſt, the remainder to *B.* becomes veſted. A contingent remainder is *executory*, and a veſted remainder is *executed*. 2 *Black.* 169.

CONTINGENT USE, is a uſe limited in a deed of lands, which may or may not happen to veſt, according to the contingency expreſſed in the limitation of ſuch uſe: and a uſe in contingency is ſuch as by poſſibility may happen in poſſeſſion, reverſion, or remainder. 1 *Co.* 121.

CONTINUAL CLAIM, is a claim made from time to time, within every year and day, to land or other thing, which in ſome reſpect a man cannot obtain without danger: as if a man be diſſeiſed of land, into which, though he hath a right of entry, he dares not enter for fear of death, or of maiming or beating, it behoves him to hold on his right of entry at his beſt opportunity, by approaching as near as he dares, once a year, as long as he lives, and to ſave the right of entry to his heir. And in ſuch caſe,

caſe, although the diſſeiſor dieth ſeiſed in fee, and the land deſcend to his heir, yet may he who is diſſeiſed enter upon the poſſeſſion of the heir, notwithſtanding the deſcent; for by ſuch claim he hath preſently a poſſeſſion or ſeiſin in the lands, as well as if he had entered in deed, although he never had poſſeſſion or ſeiſin of the ſame lands or tenements before the ſaid claim. *Litt. ſ.* 414. 419.

Alſo, if land be let to a man for term of his life, remainder to another for term of life, remainder to a third in fee, if tenant for life alien to another in fee, and he in remainder for life maketh continual claim to the land before the dying ſeiſed of the alienee, and after the alienee dieth ſeiſed, and after he in remainder for life die before any entry made by him; in this caſe, he in the remainder in fee may enter upon the heir of the alienee, by reaſon of the continual claim made by him who had the remainder for life, becauſe that ſuch right as he had of entry ſhall go and remain to him in the remainder after him, inſomuch as he in the remainder in fee could not enter upon alienee in fee during the life of him in the remainder for life, and for that he could not then make continual claim. For none can make continual claim but when he hath title to enter. *Litt. ſ.* 416.

But every doubt or fear in ſuch caſe is not ſufficient, for it muſt concern the ſafety of the perſon of a man, and not his houſes or goods; for if he fear the burning of his houſes, or the taking away or ſpoiling of his goods, this is not ſufficient, becauſe he may recover the ſame, or damages to the value, without any corporal hurt. 1 *Inſt.* 253.

And if the fear do concern the perſon, yet it muſt not be a vain fear, but ſuch as may befal a conſtant man; as if the adverſe party lie in wait in the way with weapons, or by words menace to beat, maim, or kill him that would enter; and ſo, in pleading, he muſt ſhew ſome juſt cauſe of fear, for fear of itſelf is internal and ſecret. *Id.*

CONTINUANCE, is the continuing of a cauſe in court, by an entry upon the record there for that purpoſe. For during the whole courſe of proceeding in an action, it is neceſſary that both the parties be kept or *continued* in court from day to day till the final determination of the ſuit. For the court can determine nothing unleſs in the preſence of both the parties, in perſon, or by their attorneys, or upon default of one of them, after his original appearance, and a time prefixed for his appearance in court again. And in the courſe of proceeding, a day is continually given and entered upon the record, for the parties to appear on from time to time, as the exigency of the caſe may require. And the giving of this day is called the *continuance*, becauſe thereby the proceedings are continued without interruption from one adjournment to another. And if theſe continuances are omitted, the cauſe is thereby

by ſaid to be *diſcontinued*, and the whole muſt begin *de novo*. 3 *Black*. 315.

CONTINUANDO, is a word uſed in a ſpecial declaration of treſpaſs, when the plaintiff would recover damages for ſeveral treſpaſſes in the ſame action; and to avoid multiplicity of ſuits, a man may in one action of treſpaſs recover damages for many treſpaſſes, laying the firſt to be done with a *continuando* to the whole time in which the reſt of the treſpaſs was done. As where the herbage is ſpoiled or conſumed by the defendant's cattle, the declaration may alledge the injury to have been committed by continuation from one given day to another (which is called laying the action with a *continuando*), and the plaintiff ſhall not be compelled to bring ſeparate actions for every day's ſeparate offence. 3 *Black*. 212.

CONTRABAND GOODS (from *contra*, againſt, and *ban*, an edict or proclamation) are thoſe which are prohibited by act of parliament, or the king's proclamation, to be imported or exported.

CONTRACT, is a covenant or agreement between two or more perſons, with a lawful conſideration or cauſe. And it is twofold; either *expreſs*, or *implied*. *Expreſs* contracts are, where the terms of the agreement are openly uttered and avowed at the time of the making; as to deliver an ox, or a load of timber, or to pay a ſtated price for certain goods. *Implied*, are ſuch as reaſon and juſtice dictate, and which, therefore, the law preſumes that every man undertakes to perform: as, if I employ a perſon to do any buſineſs for me, or perform any work, the law implies that I undertook, or contracted, to pay him as much as his labour deſerves: if I take up wares from a tradeſman, without any agreement of price, the law concludes that I contracted to pay their real value. 2 *Black*. 443.

When a ſeller ſays to a buyer, he will ſell his horſe for ſo much, and the buyer ſays he will give it; if he preſently tell out the money, it is a contract; but if he do not, it is no contract. *Noy*, *Max*. 87. *Hob*. 41.

The property of any thing ſold is in the buyer immediately by the contract; though regularly it muſt be delivered to the buyer, before the ſeller can bring his action for the money. *Noy*, 88.

If one contract to buy a horſe or other thing of me, and no money is paid, or earneſt given, nor day ſet for payment thereof, nor the thing delivered; in theſe caſes no action will lie for the money or the thing ſold, but it may be ſold to another. *Plowd*. 128. 309.

All contracts are to be certain, perfect, and complete: for an agreement to give ſo much for a thing as it ſhall be reaſonably worth, is void for uncertainty; ſo a promiſe to pay money in a ſhort time, or to give ſo much if he likes the thing when he ſees it.

it. *Dyer.* 91. 1 *Bulſtr.* 92. But if I contract with another, to give him 10*l.* for ſuch a thing, if I like it on ſeeing the ſame, this bargain is ſaid to be perfect at my pleaſure. Yet I may not take the thing before I have paid the money; if I do, the ſeller may have treſpaſs againſt me; and if he ſell it to another, I may bring an action upon the caſe againſt him. *Noy*, 104.

By the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. no contract for the ſale of goods, to the value of 10*l.* or more, ſhall be valid, unleſs the buyer actually receive part of the goods ſold, by way of earneſt on his part; or unleſs he gives part of the price to the vendor by way of earneſt to bind the bargain, or in part of payment; or unleſs ſome note in writing be made and ſigned by the party or his agent, who is to be charged with the contract. And with regard to goods under the value of 10*l.* no contract or agreement for the ſale of them ſhall be valid, unleſs the goods are to be delivered within one year, or unleſs the contract be made in writing, and ſigned by the party who is to be charged therewith.

CONTRAFACTION, counterfeiting.

CONTRAMANDATIO, a countermand.

CONTRIBUTION is, where every one pays his ſhare, or *contributes* his part to any thing. One parcener ſhall have contribution againſt another; one heir, againſt another heir, in equal degree; and one purchaſer ſhall have contribution againſt another. So where goods are caſt into the ſea for the ſafeguard of the ſhip, there is a contribution amongſt the merchants, towards the loſs of the owners of the goods.

CONTROLLER, *(contra rotulator,)* is an overſeer or officer relating to the public accounts. There are divers officers of that denomination; as controller of the *king's houſehold*; of the *navy*; of the *cuſtoms*; of the *exciſe*; of the *mint*; and many others.

CONVENT, *conventus*, ſignifies the fraternity of a religious houſe; as of an abbey, or priory. So a *conventual church*, is a church that conſiſts of regular clerks, profeſſing ſome of the religious orders. In the conventual cathedrals, the biſhop was in the place of the abbot or prior.

CONVENTICLE, a private aſſembly or meeting for the exerciſe of religion.

CONVENTIO, in the ancient law proceedings, ſignifies a *covenant*, or agreement.

CONVENTION PARLIAMENT, was a parliament that *convened* or aſſembled on the abdication of king *James* the ſecond, and ſettled the crown on king *William* and queen *Mary*.

CONVERSION is, where a man hath applied (converted) the goods of another to his own uſe. In every action of *trover*, it is neceſſary to prove a *converſion*. For a man may come lawfully into the poſſeſſion of another man's goods, but the injury lies in the

converſion. Evidence of a converſion is, if a man ſells the goods, or uſes them without the owner's conſent, or refuſes to deliver them when demanded; for refuſal alone is *prima facie* ſufficient evidence of a converſion. 3 *Black.* 152.

CONVEYANCE, is a writing ſealed and delivered, whereby the property of lands and tenements is *conveyed* from one perſon to another. Of conveyances, ſome are called *original* or *primary* conveyances, which are thoſe by means whereof the eſtate is created, or firſt ariſes; namely, feoffment, gift, grant, leaſe, exchange, partition: others are *derivative* or *ſecondary*, whereby the eſtate, originally created, is enlarged, reſtrained, transferred, or extinguiſhed; and theſe are, releaſe, confirmation, ſurrender, aſſignment, defeazance. 2 *Black.* 309.

CONVICTION is, when the party upon his trial is found guilty of the charge laid againſt him; and this may be two ways, either by confeſſing the offence, or being found guilty upon evidence.

CONVOCATION, is a word that is moſt commonly applied to aſſemblies of the clergy, *called together*, originally by mandate from the archbiſhop, and afterwards by the king's writ. Their aſſembly by virtue of the archbiſhop's mandate, was to tranſact affairs relating to the order and government of the church. The king called them together, chiefly to grant aids and ſubſidies for the ſupport of government; and in the reign of king *Hen.* 8. they were reſtrained from proceeding in eccleſiaſtical matters without the king's licence. Afterwards, in the reign of king *Charles* the ſecond, by a ſort of tacit agreement, the clergy waved their privilege of taxing themſelves, and were included with the temporality in the money bills prepared by the houſe of commons, and were admitted to vote in the election of members of that houſe; and from that time have become only a ſhadow of an eccleſiaſtical aſſembly, and have never paſſed any ſynodical act.

COPARCENARY. An eſtate held in coparcenary is, where lands of inheritance deſcend from the anceſtor to two or more perſons. It ariſes either by *common law*, or *particular cuſtom*. By *common law*; as where a perſon ſeiſed in fee ſimple or fee tail dies, and his next heirs are two or more females, his daughters, ſiſters, aunts, couſins, or their repreſentatives; in this caſe, they ſhall all inherit. And theſe coheirs are then called *coparceners*; or, for brevity ſake, *parceners* only. Parceners by *particular cuſtom* are, where lands deſcend, as in gavel-kind, to all the males in equal degree, as ſons, brothers, uncles, or other kindred; and, in either of theſe caſes, all the parceners put together make but one heir, and have but one eſtate among them. 2 *Black.* 187.

Coparceners always claim by deſcent, whereas jointenants always claim by purchaſe or acquiſition. Therefore, if two ſiſters purchaſe

purchaſe lands, to hold to them and their heirs, they are not parceners, but jointenants. 2 *Black.* 188.

By the death of any of the coparceners, the coparcenary is not ſevered or divided; for if one die, her part ſhall deſcend to her iſſue. 1 *Inſt.* 164.

And ſometimes the deſcent is *in ſtirpes*, to the ſtocks or roots; and ſometimes *in capita*, to the heads: as if a man hath iſſue two daughters, and dieth, that deſcent is *in capita*, viz. that every one ſhall inherit alike. But if a man hath iſſue two daughters, and the elder daughter hath iſſue three daughters, and the younger one daughter, all theſe four ſhall inherit: but the daughter of the younger ſhall have as much as the three daughters of the elder, by reaſon of the roots, and not by reaſon of the heads; for in judgment of law every daughter hath a ſeveral ſtock or root. 1 *Inſt.* 164.

Alſo, if a man hath iſſue two daughters, and the elder hath iſſue divers ſons and divers daughters, and the younger hath iſſue divers daughters; the eldeſt ſon of the elder daughter ſhall only inherit, for this deſcent is not *in capita*; but all the daughters of the younger ſhall inherit, and the eldeſt ſon is coparcener with the daughters of the younger, and ſhall have one moiety; namely, his mother's part. So that man deſcending of daughters may be coparceners, as well as women, and ſhall jointly implead, and be impleaded. 1 *Inſt.* 164.

If they cannot agree about a partition, the compulſory method is, for one or more to ſue out a writ of partition againſt the others; whereupon the ſheriff ſhall go to the lands, and make partition thereof by the verdict of a jury there impanelled, and aſſign to each of the parceners her part in ſeveralty. For the eaſier proceeding wherein, the ſtatute of 8 & 9 *W. c.* 31. hath given particular directions.

But there are ſome things that are in their nature impartible. The manſion houſe, common of eſtovers, common of piſcary uncertain, or any other common without ſtint, ſhall not be divided; but the eldeſt ſiſter, if ſhe pleaſes, ſhall have them, and make the others a reaſonable ſatisfaction in other parts of the inheritance; or, if that cannot be, then they ſhall have the profits of the things by turns. 2 *Black.* 189.

In the caſe of an advowſon, if they cannot agree in the preſentation, the eldeſt and her iſſue, or even her huſband or her aſſigns, ſhall preſent alone before the younger. *Ibid.*

COPPER COIN, counterfeiting it, by ſtatute 15 & 16 *G.* 2. *c.* 28. incurs the penalty of two years impriſonment, and binding to the good behaviour for two years more. And by 11 *G.* 3. *c.* 40. the ſaid offence, as alſo the buying, ſelling,

receiving, or putting off, any counterfeited copper money at leſs value than it imports to be of, is made felony (but within clergy).

COPY *(copia)*, is in a legal ſenſe the tranſcript of an original writing; as the copy of a patent, of a charter, of a deed, and the like.

Where a deed is inrolled, a copy thereof may be given in evidence. 3 *Lev.* 387. So the copy of a record is admitted as evidence, becauſe the party cannot have the record itſelf. 10 *Co.* 92.

Where writings have been loſt by burning of houſes, by rebellion, or when robbers have deſtroyed them, or the like, copies of them, in ſuch caſes of neceſſity, have been allowed as evidence. *Jenk.* 19.

The copy of the probate of a will is good evidence, where the will itſelf is of chattels; for there the probate is an original, taken by authority, and of a public nature: otherwiſe where the will is of things in the realty, for as to theſe the probate is of no force or validity. 3 *Salk.* 154.

So the copy of a court roll of a manor is good evidence, as alſo the copy of a pariſh regiſter, the copies of town books, and the like; for where the original itſelf is good evidence, the immediate copy thereof is alſo good evidence. *L. Raym.* 154.

And, generally, wherever an original is of a public nature, and would be evidence if produced, an immediate ſworn copy thereof will be evidence, as a copy of a bargain and ſale, of a deed inrolled, and the like; but where an original is of a private nature, a copy is not evidence, unleſs the original is loſt or deſtroyed. 3 *Salk.* 154.

A copy of an indictment and acquittal of felony is neceſſary, in order to intitle the perſon acquitted to bring his action againſt the proſecutor of the indictment: but ſuch copy is ſeldom granted, if there is any the leaſt probable cauſe upon which to found ſuch proſecution. For it would be a great diſcouragement to the public juſtice of the kingdom, if proſecutors, who had a tolerable ground of ſuſpicion, were liable to be ſued at law, whenever their indictments miſcarried. *L. Raym.* 253. 3 *Black.* 126.

COPYHOLD:

1. *Origin of copyhold.*
2. *Of courts baron.*
3. *Copyhold, how transferable.*
4. *Surrender.*
5. *Preſentment.*
6. *Admittance.*
7. *Fine.*
8. *Waſte.*

8. *Waſte.*
9. *Forfeiture and eſcheat.*
10. *In what caſes equity will relieve.*
11. *Heir of the copyholder.*
12. *Tenant in dower and by curteſy.*

1. *Origin of Copyhold.*

A MANOR, manerium, *a manendo*, becauſe the uſual reſidence of the owner, was a diſtrict of ground holden by lords or other great men; who kept in their own hands ſo much as was neceſſary for the uſe of their families, which were called *terræ dominicales*, or demeſne lands; others they diſtributed among their tenants; and the reſidue, being uncultivated, was termed the lord's waſte, and ſerved for common of paſture to the lord and his tenants. 2 *Black.* 90.

Before the ſtatute of *quia emptores terrarum*, 18 *Ed.* 1. the king's greater barons, who had a large extent of territory holden under the crown, granted out frequently ſmaller manors to inferior perſons to be holden of themſelves; which, therefore, now continue to be holden under a ſuperior lord, who is called in ſuch caſes the lord *paramount* over all thoſe manors; and his ſeigniory is frequently termed an *honour*, not a manor, eſpecially if it hath belonged to an ancient feudal baron, or hath been at any time in the hands of the crown. 2 *Black.* 91.

In imitation whereof, theſe inferior lords began to carve out and grant to others ſtill more minute eſtates, to be holden as of themſelves, and were ſo proceeding downwards *in infinitum*, till the ſuperior lords obſerved, that by this method of ſubinfeudation, they loſt all their feudal profits, of wardſhips, marriages, and eſcheats, which fell into the hands of theſe meſne or middle lords, who were the immediate ſuperiors of terre-tenant, or him who occupied the land. *Ibid.*

This occaſioned the ſtatute of *quia emptores terrarum* to be made; which directs, that upon all ſales or feoffments of land, the feoffee ſhall hold the ſame, not of his immediate feoffor, but of the chief lord of the fee, of whom ſuch feoffor himſelf held it. And from hence it is holden, that all manors exiſting at this day, muſt have exiſted by immemorial preſcription, or at leaſt ever ſince the 18 *Ed.* 1. when the ſtatute of *quia emptores terrarum* was made. *Ibid.*

The tenants to whom theſe lands were granted, were of two different kinds: to wit, ſuch as had the honour to attend the lord in his wars, and were therefore termed free tenants; and ſuch as were to perform the drudgery or viler offices, and were thereupon ſtyled *villeins*, and their tenure *villenage*, or *baſe* tenure.

These villeins were in a ſtate of downright ſervitude, and belonging, both they, their children, and effects, to the lord of the ſoil, like the reſt of the cattle or ſtock upon it. 2 *Black.* 92.

They were either villeins *regardant*, that is annexed to the manor or land; or elſe they were *in groſs*, or at large; that is annexed to the perſon of the lord, and transferrable by deed from one owner to another. They held indeed ſmall portions of land by way of ſuſtaining themſelves and families; but it was at the mere will of the lord, who might diſpoſſeſs them whenever he pleaſed. 2 *Black.* 93.

The *cuſtoms* of manors differ as much as the humour and temper of the reſpective ancient lords: ſo a copyholder by cuſtom may be tenant in fee ſimple, in fee tail, for life, by the curteſy, in dower, for years, at ſufferance, or on condition; ſubject, however, to be deprived of theſe eſtates upon the concurrence of thoſe circumſtances, which the will of the lord, promulged by immemorial cuſtom, hath declared to be a forfeiture or abſolute determination of thoſe intereſts; as in ſome manors the want of iſſue, in others the want of iſſue male, in others the cutting down timber, in others the non-payment of rent or fine. Yet none of theſe intereſts amount to freehold; for the freehold of the whole manor abideth always in the lord only, who hath granted out the uſe of occupation, but not the corporal ſeiſin, or true poſſeſſion, of certain parts or parcels thereof, to theſe his cuſtomary tenants at will. 2 *Black.* 148.

And, in general, every thing ſtill remaineth in the lord, that cuſtom hath not taken out of him. *Bur. Manſf.* 1277.

Originally, the copyholder had in judgment of law only an eſtate at will; but, in proceſs of time, cuſtom hath ſo eſtabliſhed and fixed his eſtate, that, by the cuſtom of the manor, it is deſcendible, and his heir ſhall inherit it; and therefore his eſtate is not merely at the will of the lord, but at the will of the lord *according to the cuſtom of the manor*. So that cuſtom is the life and ſoul of copyhold eſtates; for without cuſtom, or if the copyholders have broken their cuſtom, they are ſubject to the will of the lord. And by cuſtom a copyholder may as well inherit according to the cuſtom, as a freeholder may inherit at the common law. 4 *Co.* 21, 22.

And when cuſtom hath created ſuch inheritances that they ſhall be deſcendible, then the law will direct the deſcent according to the maxims and rules of the common law, as incident to every eſtate deſcendible; as when uſes had gained the reputation of inheritances deſcendible, the common law directed the deſcent thereof, as of other inheritances at common

common law. But ſuch cuſtomary inheritances ſhall not have by law any other collateral qualities which concern not the deſcent of the inheritance, which other inheritances at the common law have; and therefore ſuch cuſtomary inheritance ſhall not be *aſſets* to charge the heir in an action of debt upon an obligation made by his anceſtor, although he bound himſelf and his heirs; nor ſhall the widow of ſuch cuſtomary tenant have *dower*; nor the huſband be tenant by the *curteſy*; nor ſhall a deſcent of ſuch eſtate take away the *entry* of him who hath a cuſtomary right thereto. For, if without cuſtom ſuch eſtate at will cannot be deſcendible, ſo without cuſtom it cannot have any collateral quality incident to inheritances at common law. 4 *Co.* 22.

But by ſpecial cuſtom it may have any or all theſe qualities; and by the ſtatute of the 13 *El. c.* 7. the copyhold or other cuſtomary eſtate of a bankrupt is made liable to the payment of his debts.

If the cuſtom be, that copyhold land may be granted in fee ſimple, a grant to one and the heirs of his body is alſo within the cuſtom; ſo alſo it may be granted for life, or for years, by the ſame cuſtom; for an eſtate in fee ſimple includes the whole; and it is a maxim in law, that he who can do the greater, can impliedly do the leſs. 4 *Co.* 23.

They are called tenants by copy, becauſe they have no other evidence concerning their tenements, than the copies of the rolls of the court. 4 *Co.* 25.

2. *Of Courts Baron.*

A court baron is an inſeparable incident to a manor, and muſt be held by preſcription; for it cannot be created at this day.

It muſt be holden within the manor; for if it be holden out of the manor, it is void; unleſs a lord, being ſeiſed of two or three manors, hath uſually time out of mind kept at one of his manors courts for all the ſaid manors, then by cuſtom ſuch courts are ſufficient in law, although they be not holden within the ſeveral manors. 1 *Inſt.* 58.

This court is of two natures:

1. By common law, which is the baron's or freeholders' court, or the court baron that is incident to every manor; of which the freeholders being ſuitors are the judges, and the ſteward is only the regiſter. It was formerly held every three weeks, and its moſt important buſineſs is to determine, by writ of right, all controverſies relating to the right of land within the manor. It may alſo hold plea of any perſonal actions, of debt, treſpaſs on the caſe, or the like, where the debt or damages do not amount to 40*s.* But the proceedings on a writ of right may be removed into the county court by a precept from the ſheriff; and the proceedings

ceedings in all other actions may be removed into the ſuperior courts by the king's writs. 3 *Black.* 33.

2. The copyholders' or cuſtomary court; which is for grants and admittances upon ſurrenders and deſcents, on the preſentment of the homage or jury. They may inquire of all perſons that owe ſuit to this court, and make default, and preſent their names. They may inquire of the death of tenants ſince the laſt court, and who is the next heir: of fraudulent alienations of lands to defeat the lord of his profits: of rent, cuſtom, or ſervice withdrawn: of eſcheats and forfeitures: of incroachments, cutting down trees, ſuffering houſes to decay, or other like waſtes: of ſuits not performed at the lord's will by reaſon of tenure: of ſurcharging or putting uncommonable beaſts upon the common: of treſpaſs in the common by digging, building, or incloſing: of removing mere-ſtones or land-marks: of by-laws not obſerved, and other violations of the cuſtom.——The puniſhment is by amerciament: but the ſteward cannot amerce without affeerors, ſworn to affeer or moderate the amerciament; and then the lord may have an action in his court for the amerciament affeered. *Wood. b.* 4. *c.* 1. *f.* 17.

3. *Copyhold, how transferable.*

Copyholds are not transferable by matter of record, even in the king's courts; but only in the court baron of the lord, by ſurrender and admittance. 2 *Black.* 366.

If one would *exchange* a copyhold with another, both muſt ſurrender to each other's uſe, and the lord admit accordingly. *Co. Copyh. f.* 36. 39.

If a man will *deviſe* his copyhold eſtate, he cannot do it by his will, but he muſt ſurrender to the uſe of his will, and in his will declare his intent. *Id.*

But when the legal eſtate is in *truſtees*, a man cannot in that caſe ſurrender the copyhold lands to the uſe of his will; but they will paſs by his will only. 2 *Atk.* 38. 1 *Vez.* 489.

So a *mortgagor* may diſpoſe of the equity of redemption by will, without ſurrender; for he hath at that time no eſtate in the land whereof to make a ſurrender. *Prec. Cha.* 322. 520.

A deviſe of a copyhold to the *heir* is void; for where two titles meet, the worthier is to be preferred. *Str.* 489.

A copyhold may be *intailed* by ſpecial cuſtom, and the intail cut off by *recovery* or *ſurrender* in the lord's court.

But a *recovery* in the lord's court, without cuſtom to warrant it, will not be a bar to an intail; but a *ſurrender* in that caſe will bar it. 2 *Vez.* 603.

But where there are two cuſtoms to bar eſtates tail, one by *recovery*, the other by *ſurrender*, either of them may be purſued. *Str.* 1197.

Recovery

Recovery in the lord's court differs in nothing that is material from recoveries of freehold land in the king's courts; but the method of ſurrender is eaſier and cheaper. 2 *Black.* 365. *Str.* 1197.

A copyhold is not barred by *fine* and five years non-claim. *Noy*, 23.

4. *Surrender.*

Surrender, is the yielding up of the eſtate by the tenant into the hands of the lord, for ſuch purpoſes as in the ſurrender are expreſſed. 3 *Black.* 365.

A ſteward of a manor may take a ſurrender out of the manor, but cannot admit out of the manor. 4 *Co.* 26.

The proceſs in moſt manors is, that the tenant comes to the ſteward, either in court (or, if the cuſtom permits, out of court), or to two cuſtomary tenants of the ſame manor (provided that alſo have a cuſtom to warrant it); and there, by delivering up a rod, or glove, or other ſymbol, as the cuſtom directs, reſigns into the hands of the lord, by the hands and acceptance of his ſteward, or of the ſaid two tenants, all his intereſt and title to the eſtate; in truſt to be again granted out by the lord, to ſuch perſons and to ſuch uſes as the cuſtom of the manor will warrant. 2 *Black.* 366.

A feme-covert is to be ſecretly examined by the ſteward, on her ſurrendering her eſtate. 1 *Inſt.* 59.

5. *Preſentment.*

If the ſurrender be made out of court, then, at the next or ſome ſubſequent court, the jury or homage muſt preſent and find it upon their oaths: which preſentment is an information to the lord or his ſteward, of what had been tranſacted out of court. 2 *Black.* 366.

It is the general cuſtom of copyholds, that the ſurrenderee muſt come and have the ſurrender preſented at the next court, otherwiſe it is void, and a new ſurrender muſt be taken; but there are ſeveral copyholds and other cuſtomary eſtates, where the tenant need not come under three courts. 2 *Vez.* 302.

So a cuſtom that the mortgagee need not to preſent his mortgage deed at the firſt court, nor until the third court, is a good cuſtom. *Id.*

And if the ſurrenderor die before the next court, yet the ſurrenderee may come and be admitted afterwards; the death of the ſurrenderor in the mean time making no difference. *Id.*

So if the ſurrenderee dies before preſentment, yet, upon preſentment made after his death, his heir ſhall be admitted. So alſo if thoſe, into whoſe hands the ſurrender is made, die before preſentment; for, on proof in court that ſuch ſurrender was made,

made, the lord may be compelled to admit accordingly. 2 *Black.* 369.

6. *Admittance.*

Immediately upon ſuch ſurrender out of court, or upon preſentment of a ſurrender made out of court, the lord by his ſteward grants the ſame land again to the ſurrenderee or *ceſtuy que uſe*, to hold by the ancient rents and cuſtomary ſervices, and thereupon admits him tenant to the copyhold, according to the form and effect of the ſurrender. And this is done by delivering up to the new tenant the rod or glove, or the like, in the name, and as the ſymbol, of corporal ſeiſin. 2 *Black.* 366.

The lord himſelf may admit out of the manor at what place he pleaſes; but the ſteward cannot admit at any court out of the manor. 4 *Co.* 26.

But where by cuſtom, as is aforeſaid, a court is holden out of the manor, as where a court is holden in one manor for the ſame and divers other manors, admittances made there will be ſufficient. 1 *Inſt.* 58.

Admittance of tenant for life is an admittance of him in remainder, but not to prejudice the lord of his fine which was due by cuſtom. 4 *Co.* 23.

Where a grant or admittance is made by one who hath a lawful eſtate or intereſt, the copyholder is in by the cuſtom, without any regard to the condition or perſon of the grantor; and therefore ſuch admittance made by huſband and wife ſhall bind the wife, notwithſtanding the coverture: ſo alſo of a grant made by one *non compos mentis*, or an infant, or by a biſhop, prebendary, parſon, or the like, this ſhall bind for ever. 4 *Co.* 23.

Until admittance of the ſurrenderee, the ſurrenderor continues tenant, and ſhall receive the profits, and diſcharge all ſervices due to the lord; but he cannot revoke his ſurrender, except in the caſe of a ſurrender to the uſe of his will, which is always revocable. And if the lord will not admit the ſurrenderee, he may be compelled to it by a bill in chancery, or a mandamus. 2 *Black.* 368.

And this method of conveyance, by ſurrender and admittance, is ſo eſſential to the nature of a copyhold eſtate, that it cannot poſſibly be transferred by any other aſſurance. No feoffment, fine, or recovery, in the king's courts has any operation upon it. *Ibid.*

7. *Fine.*

Upon admittance, the tenant pays a fine to the lord, according to the cuſtom of the manor, and takes the oath of fealty. 2 *Black.* 366.

And no fine is due to the lord, either upon ſurrender or de-

ſcent,

ſcent, until admittance, for the admittance is the cauſe of the fine. 4 *Co.* 28.

Of fines, ſome are by the change or alteration of the lord, and ſome by the change or alteration of the tenant. The change of the lord ought to be by the act of God, otherwiſe no fine can be due; but by the change of the tenant, either by the act of God, or by the act of the party, a fine may be due. For if the lord do allege a cuſtom within his manor, to have a fine of every of his copyholders of the ſaid manor, at the alteration or change of the lord of the manor, be it by alienation, demiſe, death, or otherwiſe, this is a cuſtom againſt law, as to the alteration or change of the lord of the manor by the act of the party, for by that means the copyholders may be oppreſſed by multitude of fines by the act of the lord. But when the change groweth by the act of God, there the cuſtom is good, as by the death of the lord. 1 *Inſt.* 59.

Again, of fines ſome are *certain* by cuſtom, and ſome are *uncertain*; but that fine though it be uncertain, yet muſt be reaſonable; and if the court, where the cauſe dependeth, adjudges the fine exacted to be unreaſonable, then is not the copyholder compellable to pay it; for all exceſſiveneſs is abhorred in law. 1 *Inſt.* 59.

Even where the fines are *arbitrary*, the courts of law have tied them down to be reaſonable in their extent, otherwiſe they might amount to a diſheriſon of the eſtate. No fine therefore is allowed to be taken upon deſcents or alienations (unleſs in particular circumſtances) of more than two years improved value of the eſtate. 2 *Black.* 98.

If the lord, where the fines are *uncertain*, aſſeſs a reaſonable fine, and require the copyholder to pay it, the copyholder is not bound to pay this immediately, becauſe he could not know what fine the lord would aſſeſs, and therefore he could not provide any certain ſum, and for this cauſe he ſhall have a convenient time to pay it in, if the lord himſelf limit no certain day for the payment thereof; but otherwiſe it is of fines certain. 4 *Co.* 27, 28.

If the fines of infants and femes covert are not paid in three months after demand, the lord may enter and receive the profits till he is ſatisfied. And if the guardians or huſbands pay the fine, they or their executors or adminiſtrators may enter and repay themſelves out of the rents and profits. 9 *G. c.* 29.

But by the cuſtom of divers manors, if an infant comes in by deſcent, the fine is not payable until he is of full age.

8. *Waſte.*

The copyholder, by the cuſtom in ſome places, ought to repair and uphold the houſes: for what a copyholder may or ought to do or

or not do, the cuſtom of the manor muſt direct: but if there be no cuſtom to the contrary, *waſte*, either permiſſive or voluntary, of a copyholder is a forfeiture of his copyhold. 1 *Inſt.* 63.

A copyholder by the common law may cut off the under boughs, which cannot cauſe any waſte, but the amputation of the top boughs will cauſe the putrefaction of the whole tree, wherefore it is waſte as well as the decapitation thereof. *Cro. El.* 361.

9. *Forfeiture and Eſcheat.*

If the copyholder doth not pay the ſervices due to the lord, or refuſes to attend at the lord's court, or to be of the homage, or to pay his fine for admittance, or to do ſuit to the lord's mill, or the like, it is in law a forfeiture. 1 *Roll's Abr.* 509.

If there be tenant for life, remainder in fee, and the tenant for life commits a forfeiture, by which the eſtate of the tenant for life is forfeited, and the lord enters for the forfeiture, yet this ſhall not bind him in remainder, but only the tenant for life. 1 *Roll's Abr.* 509.

If a copyholder commits felony or treaſon, he forfeits his copyhold to the lord, without any particular cuſtom; only the king ſhall firſt have thereof the year, day, and waſte. *Gilb. Ten.* 226.

If a copyhold eſcheats, the lord may grant it out again with what improved fine he will. *Het.* 6.

10. *In what Caſes Equity will relieve.*

In caſe of non-payment of rent or fine, the chancery may relieve a copyhold tenant; for the eſtate in ſuch caſes is but in nature of a ſecurity for thoſe ſums, and the lord may be recompenſed in damages. *Ch. Prec.* 572.

And it is a rule in equity to relieve againſt forfeitures, where a complete ſatisfaction can be made for the injury which is the cauſe of the forfeiture. *Str.* 449.

But equity will not ſupply the defect of a ſurrender to the uſe of a will in diſfavour of the heir at law, unleſs it be in behalf of a ſon or a daughter, and not then neither, if it be to diſinherit the eldeſt ſon, unleſs he be otherwiſe provided for. 1 *Salk.* 187.

But a defect of ſurrender will be ſupplied for creditors, where there is a general deviſe of real eſtate, and no other real eſtate, to pay debts. 2 *Vez.* 582.

11. *Heir of a Copyholder.*

Where a cuſtomary eſtate of inheritance is deſcendible to the heir, he may before admittance enter and take the profits, and may ſurrender to the lord to the uſe of another perſon, but not to prejudice the lord of the fine due to him by the cuſtom of the manor upon deſcent. And in this caſe he is tenant by copy of court roll, the copy made to his anceſtor appertaining unto

unto him, even as the admittance of a tenant for life is the admittance of him in remainder, to veſt the eſtate in him, but not to bar the lord of his fine which he ought to have by the cuſtom. 4 *Co.* 22.

Infants and femes covert may be admitted by guardian or attorney; and on non-payment of the fine, the lord may enter and hold it till he is reimburſed. 9 *G. c.* 29.

12. *Tenant in Dower, or the Curteſy.*

A wife ſhall not have dower of a copyhold, unleſs by ſpecial cuſtom. 4 *Co.* 30.

But by cuſtom ſhe ſhall have dower; as in ſome places ſhe hath one-third of the copyhold, in others one half, in others the whole, according as the cuſtom hath been. *Litt. ſ.* 37.

Alſo by cuſtom the huſband ſhall be entitled by the curteſy; and whether any or what fines, or proportion thereof, he or the widow ſhall pay, or whether they ſhall be admitted, or the heir, depends upon the cuſtom of the reſpective manors.

The widow's title doth not commence till after the death of the huſband, and not immediately upon the marriage, as in freehold lands; and therefore the huſband in his lifetime may defeat her title by alienation, and ſhe ſhall only have her widow's eſtate out of the lands whereof her huſband died poſſeſſed. 4 *Mod.* 452.

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CORBEL, is a nich in the wall of a church or other ſtructure, in which an image was placed; and *corbel-ſtones* were ſmooth poliſhed ſtones for the front or outſide of the corbels or niches; ſome of which images ſtill remain in ſeveral churches; but moſt of them have been demoliſhed. And the word is ſtill retained in the North.

CORD of wood, is a quantity of wood eight foot long, four foot broad, and four feet high.

CORDAGE FOR SHIPPING. By 25 *G.* 3. *c.* 56. ſeveral regulations are made concerning the making and uſing thereof.

CORDINER, from the French *cordouannier*, a ſhoemaker, vulgarly called a *cordwainer*.

CORIUM, a hide or ſkin: *corium forisfacere*, to forfeit his ſkin, was, when a perſon was condemned to be whipped: ſo alſo *corium perdere*. And *redimere corium* was when the party compounded for a whipping.

CORNAGE, according to *Littleton*, was a ſpecies of grand ſerjeanty, in the North parts of *England*, by blowing a horn to give notice when the enemy was approaching. But it ſeems rather to have been a payment in money to find ſcouts and horners in general. In *Weſtmorland* it ſtill exiſts, and was granted in the reign

reign of king *John*, together with the ſheriffwick, by the name of the *rent* of the county of *Weſtmorland*; and is now paid by the name of *neatgeld*.

CORODY, is an allowance of meat, drink, money, cloathing, lodging, and ſuch like neceſſaries for ſuſtenance. The king, by the ancient law, is intitled to a corody, out of every biſhoprick; that is, to ſend one of his chaplains to be maintained by the biſhop, or to have a penſion allowed him, till the biſhop promotes him to a benefice. This is in the nature of an acknowledgment to the king, as founder of the ſee; ſince he had formerly the ſame corody or penſion from every abbey or priory of royal foundation. But theſe corodies are now totally fallen into diſuſe. 1 *Black.* 283.

CORONATUS, was anciently the deſignation of a clergyman; properly ſuch an one as had received the firſt tonſure, as preparatory to ſuperior orders; which tonſure was in the form of a *corona* or crown of thorns.

CORONERS, are ancient officers by the common law, ſo called, becauſe they deal principally with the pleas of the crown, and were of old time the principal conſervators of the peace. 2 *Haw.* 42.

On a vacancy of the office of coroner, a writ iſſues out of chancery, called a writ *de coronatore eligendo*, directed to the ſheriff to call together the freeholders of the county, for the choice of another coroner; and to certify into the chancery both the election, and the name of the party elected, and to adminiſter to him his oath duly to execute his office. In ſome places, lords of franchiſes or others have by charter power to appoint coroners.

Commonly there are four coroners in every county, except in *Wales* and *Cheſhire*, where there are but two. 4 *Inſt.* 271. And in *Weſtmorland* there are but two.

The coroner's power is chiefly in taking inquiſition, when any perſon comes to an unnatural death. In which caſe, he muſt ſummon a jury to attend at the place, unto whom he ſhall adminiſter an oath to enquire, upon view of the body, how the party came by his death. He ſhall alſo inquire of the murderer's lands or goods, and whether he fled; and ſhall alſo inquire of deodands; and where any is found culpable, he ſhall certify the inquiſition, and bind over the witneſſes to the next aſſizes. He is alſo to enquire of treaſure trove; and execute proceſs in caſe there be any juſt exception to the ſheriff; and muſt pronounce judgment of outlawry in the county court.

For his fees, he ſhall have 20*s.*; and alſo 9*d.* for every mile he ſhall travel from home to take the inquiſition, 25 *G.* 2. *c.* 29.

He is choſen for life; but he may be removed by the king's writ *de coronatore exonerando*, for a cauſe to be therein aſſigned;

as

as that he is incapacitated by years, or ſickneſs, or abſence; or if he ſhall be convicted of extortion, or neglect of duty, or miſdemeanor; in ſuch caſe the court, before whom he ſhall be convicted, may adjudge him to be removed from his office.

CORPORATION:

1. A *corporation* is a perſon or perſons in a *political* capacity, created by the law, and ſtyled a *body politic*; that is, framed by *policy* or fiction of law, to endure in perpetual ſucceſſion, with capacity to take and grant, ſue and be ſued. *Wood. b.* 1. *c.* 8.

For in judgment of law, a corporation never dies; and therefore the predeceſſors who lived many ages ago, and their ſucceſſors now in being, are one and the ſame body corporate. So that a gift to ſuch a corporation, either of lands or of chattels, without naming their ſucceſſors, veſts an abſolute property in them, ſo long as the corporation ſubſiſts. 2 *Black.* 430.

2. Corporations are either *aggregate* or *ſole*. A corporation *aggregate* conſiſts of many perſons united together in one ſociety; of which kind are, the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church. 1 *Black.* 469.

3. A corporation *ſole* conſiſts of one perſon only and his ſucceſſors, in ſome particular ſtation, who are incorporated by law, in order to give them ſome legal capacities and advantages, particularly that of perpetuity, which in their natural perſons they could not have had. In which ſenſe the king is a ſole corporation, ſo is a biſhop, ſo are ſome deans and prebendaries, diſtinct from their ſeveral chapters, and ſo is every parſon and vicar. *Id.*

4. Another diviſion of corporations, whether aggregate or ſole, is into *eccleſiaſtical* and *lay*. *Eccleſiaſtical* corporations are, where the members that compoſe the ſame are intirely ſpiritual perſons; ſuch as biſhops, deans, and chapters, certain deans and prebendaries in their ſole capacity, all archdeacons, parſons, and vicars. *Id.*

5. *Lay* corporations are erected for a variety of *temporal* purpoſes. The king, for inſtance, is made a corporation to prevent in general the poſſibility of an interregnum or vacancy of the throne, and to preſerve the poſſeſſions of the crown intire; for immediately upon the demiſe of one king, his ſucceſſor is in full poſſeſſion of the regal rights and dignity. Other lay corporations are erected for the good government of a town or particular diſtrict; as a mayor and commonalty, bailiff and burgeſſes, or the like: ſome, for the advancement and regulation of manufactures and commerce; as the trading companies of London and other towns: and ſome for the better carrying on of divers ſpecial purpoſes, as church wardens, for conſervation of the goods of the parish; the college of phyſicians and company of ſurgeons in *London*,

London, for the improvement of medical ſcience; the royal ſociety, for the advancement of natural knowledge. *Id.* 470.

6. Of theſe lay corporations ſome are ſtiled *eleemoſynary*, being ſuch as are conſtituted for the perpetual diſtribution of the free alms or bounty of the founder of them, to ſuch perſons as he hath directed. Of this kind are all hoſpitals for maintenance of the poor, ſick, and impotent; and all colleges, both in and out of the univerſities, as at *Mancheſter*, *Wincheſter*, and *Eaton*. And all theſe eleemoſynary corporations are, ſtrictly ſpeaking, lay and not eccleſiaſtical, even though compoſed of eccleſiaſtical perſons, and although in ſome things they partake of the nature, privileges, and reſtrictions of eccleſiaſtical bodies. *Id.* 471.

7. A corporation or body politic may commence or be made by the common law, by the king's charter or letters patent, by act of parliament, or by preſcription. 1. By the common law, as the king, biſhops, ſome deans, archdeacons, prebendaries, parſons, vicars, churchwardens, to ſome purpoſes. 2. By the king's charter or letters patent; to which purpoſe he may alſo communicate his authority to others. 3. By act of parliament; ſo the college of phyſicians in *London* was made a corporation. 4. By preſcription; as that which hath been and continued a corporation time out of mind, though the charter by length of time or other accident hath been loſt. *Wood. b.* 1. *c.* 8.

8. When a corporation is erected, a *name* muſt be given to it; and by that name alone it muſt ſue and be ſued, and do all other legal acts. 1 *Black.* 474.

9. To every corporation there are ſeveral eſſential incidents: As, 1. To have perpetual ſucceſſion, for this is the very end of the incorporation, as there cannot be a ſucceſſion for ever without incorporation. 2. To ſue or be ſued, to grant or receive, by its corporate name, and do all other acts as natural perſons may. 3. To purchaſe lands, and hold them, for the benefit of themſelves and ſucceſſors; but under ſeveral reſtrictions impoſed by act of parliament. 4. To have a common ſeal; for though the particular members may expreſs their private conſents to any act by words or ſigning their names, yet this doth not bind the corporation; it is the fixing of the ſeal, and that only, which unites the ſeveral aſſents of the individuals. 5. To make by-laws, or private ſtatutes, for the better government of the corporation; which are binding upon themſelves, unleſs contrary to the laws of the land. But theſe two laſt are not applicable to ſole corporations. 1 *Black.* 475.

10. In eccleſiaſtical and eleemoſynary foundations, the king or the founder may give them rules and *ſtatutes*, which they are bound to obſerve; but corporations merely lay, conſtituted for civil purpoſes, are ſubject to no particular ſtatutes but to the common law, and to their own by-laws. *Id.* 477.

11. Of

11. Of all *eccleſiaſtical* corporations, in order to inquire into and correct irregularities, the ordinary is *viſitor*: ſo the king, as ſupreme ordinary, is viſitor of the archbiſhop; the archbiſhop, of the biſhops; the biſhops in their ſeveral dioceſes are viſitors of deans and chapters, of perſons and vicars, and of all other ſpiritual corporations. With reſpect to *eleemoſynary* corporations, the founder and his heirs, or ſuch other as the founder hath appointed, are viſitors. Of *civil* corporations, the king is viſitor in his court of king's bench. *Id.* 480.

12. In aggregate corporations, the act of the *major part* is the act of the whole. *Id.* 478.

But where the head of a corporation dies, nothing can be done during the vacancy. 1 *Inſt.* 263, 4.

13. If an aſſembly of a corporation be not holden on a charter day or a general day of meeting, there muſt be previous *notice* to every member, that he may come prepared, and have an opportunity to give his reaſons. *Burr. Manſf.* 735.

Where notice is given for one particular buſineſs only, the body cannot go on to other buſineſs, unleſs the whole body is met, and it is done by conſent. 1 *Barnard.* 80.

When the electors are aſſembled, to chuſe one to fill up a vacancy, thoſe who do not vote, do thereby acquieſce in the election made by thoſe who do: as where there were eleven voters, five voted, and ſix refuſed, the court held, that the ſix virtually conſented. *Burr. Manſf.* 1021.

To make a man an *inhabitant* in a corporation, to qualify him to do ſeveral corporate acts, it is not ſufficient that he barely live in the town, but he ought to be a houſeholder, and alſo to pay ſcot and lot. 2 *Barnard.* 408.

No perſon can be obliged to be a member of a corporation, without his conſent. *Burr. Manſf.* 2199.

An election by one ſingle elector only, being the only remaining one, is good, though the power of election be given to the *reſidue*, or the greater number of them. *Id.* 541.

14. Any particular member may be *diſfranchiſed*, or loſe his place in the corporation, by acting contrary to the laws of the ſociety, or the laws of the land, or by having come in by a void election, or the like. 1 *Black.* 484.

But after twenty years unimpeached poſſeſſion of a corporate franchiſe, no rule will be granted to ſhew by what right the poſſeſſor holds it: under twenty years, every caſe muſt depend upon its own particular circumſtances. *Burr. Manſf.* 1962.

Alſo a man may reſign his place in the corporation, if he pleaſes, by his own voluntary act. 1 *Black.* 484.

15. The corporation itſelf may be diſſolved ſeveral ways: As, 1. By act of parliament. 2. By the natural death of all its mem-

bers without others elected in their places, in case of an aggregate corporation. 3. By surrender of its franchises into the hands of the king. 4. By forfeiture of its charter through negligence or abuse of its franchises: and in this case, the regular course is, to bring an information in the nature of a writ of *quo warranto*, to inquire by what warrant the members now exercise their corporate power, having forfeited it by such and such proceedings. *Id.* 485.

And by the common law, corporations were dissolved, in case the mayor or other head officer was not duly elected on the day appointed by charter or established by prescription: but by the 11 *G. c.* 4. this is remedied, and ample directions given for appointing another.

16. If the corporation, by any of the aforesaid means, comes to be dissolved, the donor or his heirs shall have the land again in reversion, and not the lord by escheat: for the law doth tacitly annex a condition to every such gift or grant, that if the corporation be dissolved, the donor or grantor shall re-enter; for the cause of the gift or grant faileth. 2 *Black.* 256.

CORPORATION ACT, is an act of parliament, 13 *C.* 2. *st.* 2. *c.* 1. for preventing dissenters from being appointed to offices in towns corporate; whereby it is enacted, that no person shall be elected to any office relating to the government of any city or corporation, unless within a year before he hath received the sacrament of the lord's supper according to the rites of the church of *England*; and he is also enjoined to take the oaths of allegiance and supremacy at the same time that he takes the oath of office; in default of either of which requisites, the election shall be void.

CORPSE, stealing out of a grave, though it is a matter of great indecency, yet is not felony; but if the shroud or other apparel be stolen with it, this is felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. And the parson, who has the freehold of the soil, may bring an action of trespass for breaking the ground. 2 *Black.* 429.

CORPUS CHRISTI day, is a feast instituted in the year 1264, in honour of the blessed sacrament. The anniversary thereof is the 25th of May.

CORPUS CUM CAUSA, is a writ issuing to bring the body of a prisoner into court, together with the cause for which he is committed.

CORRECTION, house of, is to be built, fitted up, and furnished with tools and implements both for labour and punishment of offenders, at the expence of the county, by the statute 17 *G.* 2. *c.* 5. 22 *G.* 3. *c.* 64. & 24 *G.* 3. *c.* 55.

CORRUPTION OF BLOOD, is where a person is attainted of treason or felony, in which case his blood is so far stained or corrupted,

corrupted, that the party loſes all the nobility or gentility he might have had before, and becomes ignoble, and he can neither inherit lands as heir to an anceſtor, nor have an heir; but his lands ſhall eſcheat to the lord of the fee, ſubject to the king's year, day, and waſte: and the perſon attainted ſhall alſo obſtruct all deſcents to his poſterity, wherever they are obliged to derive a title through him to a remoter anceſtor. But the king's pardon, though it doth not reſtore the blood, yet as to iſſues born after, has the effect of a reſtitution, ſo as to render them capable to inherit. But reſtitution of blood, in its true nature and extent, can only be by act of parliament. 2 *Haw.* 456. 4 *Black.* 388.

CORSELET *(corpuſculum)*, was armour covering the *body* or *trunk* of a man, heretofore uſed by pikemen, for the better reſiſtance of the aſſaults of the enemy.

CORSE PRESENT, is ſaid by ſome to be the ſame as a *mortuary*, but others diſtinguiſh the ſame from the mortuary, in that the mortuary was a right ſettled on the church upon a perſon's deceaſe; and that a corſe preſent was a voluntary oblation uſually made at funerals. 1 *Still.* 172.

CORSNED bread, *panis conjuratus*, the morſel of execration. This was a kind of ſuperſtitious trial among our *Saxon* anceſtors, to purge themſelves of any accuſation, by taking a piece of bread of about an ounce weight, which was conſecrated by a ſort of exorciſm, praying of the Almighty that it might cauſe convulſions, and find no paſſage, if what they affirmed or denied were not true. The form of execration was thus: *We beſeech thee, O Lord, that when he who is guilty of this theft hath the exorciſed bread offered to him in order to diſcover the truth, his jaws may be ſhut, his throat ſo narrow that he may not ſwallow, and that he may caſt it out of his mouth, and not eat it.* Du Cange. The old form, or *Exorciſmus panis hordeacei ad probationem veri*, is extant in *Lindenbrogius*, p. 107. And in the laws of king *Canute*, *cap.* 6. *Si quis alteri miniſtrantium accuſetur, et amicis deſtitutus ſit, cum* ſacramentales *non habeat, vadat ad judicium quod Anglice dicitur* corſned, *et fiat ſicut Deus velit, niſi ſuper ſanctum corpus Dei permittatur ut ſe purget.* From whence it may ſeem that the purgation was originally by the very ſacramental bread itſelf, received with ſolemn abjuration and devout expectance that it would prove mortal to thoſe who dared to ſwallow it in falſehood, till at length the biſhops and clergy were not willing to proſtitute the communion bread to ſuch like purpoſes, but they allowed the people to practice the ſame judicial rite, in eating ſome other morſels of bread conſecrated to the like uſes. This mode of trial ſeems to have been an imitationof the trial of jealouſy, by the *bitter water that cauſed the curſe* under the Moſaic law. *Num.* v. It is recorded of the perfidious *Godwin*, earl of *Kent*, in the time of king *Edward*

the Confeſſor, that, on his abjuring the murder of the king's brother, by this way of trial, as a juſt judgment for his ſolemn perjury, the bread ſtuck in his throat and choaked him. *Cum* Godwinus *comes in menſa regis de nece ſui fratris impeteretur, ille poſt multa ſacramenta tandem per buccellam deglutiendam abjuravit, et buccella guſtata continuo ſuffocatus interiit. Ingulph.* This, with other barbarous ways of purgation, was by degrees aboliſhed: though we have ſtill ſome remembrance of this ſuperſtitious cuſtom in our uſual phraſes of abjuration; as, I will take the ſacrament upon it—May this bread be my poiſon—May this bit be my laſt, and ſuch like.

COSTARD, an apple: whence *coſtard-monger*, a ſeller of apples.

COSTS. The common law did not profeſſedly allow any *coſts*; though in reality coſts were always conſidered and included in the quantum of damages, in ſuch actions where damages are given; and now, in moſt caſes, coſts are given by ſeveral ſtatutes. 3 *Black.* 399.

But the king, or any perſon ſuing to his uſe, alſo executors or adminiſtrators ſuing in the right of the deceaſed, and perſons ſuing *in forma pauperis*, ſhall not pay coſts: and for ſlanderous words ſpoken, for aſſault and battery, and for treſpaſs, where the jury ſhall give leſs damages than 40*s.* the plaintiff ſhall have no more coſts than damages, unleſs, in caſe of aſſault and battery, the judge ſhall certify on the back of the record, that an actual battery was proved; and, in caſe of treſpaſs, that the freehold or title of the land came in queſtion. *Id.* 400.

But if it be in an action wherein there can be no ſuch certifying, as debt, aſſumpſit, trover, treſpaſs for taking his goods, treſpaſs for ſpoiling his goods, treſpaſs for beating his ſervant, whereby he loſt his ſervice, it is out of the ſtatute, and the plaintiff may have full coſts. 1 *Salk.* 208.

Where a ſtatute gives a penalty or ſum certain to the *party grieved*, he ſhall in conſequence have coſts, becauſe he had a right of action antecedent to bringing the action: but where a ſum certain is given to a ſtranger, as where it is to a *common informer*, or him that ſhall proſecute, he ſhall not have his coſts; for till he commenced his action he had no right of action in him. 1 *Salk.* 206.

If any perſon ſues in any court any action wherein the plaintiff might have coſts, if judgment ſhould be given for him, the defendant ſhall have coſts againſt the plaintiff, if the plaintiff be nonſuit, or a verdict paſs againſt him. *Bur. Manſf.* 1724.

Where double damages are given by any act of parliament, the coſts ſhall be doubled alſo; for damages include coſts. *Str.* 1048.

Where coſts are allowed, it is not neceſſary that the jury ſhould give

give the coſts, but they may leave it to the court to do it, who are beſt able to judge of what coſts are ſitting to be given. It is the courſe of the court of king's bench, to refer the taxation of the coſts to the proper officer of the court, and not to make any ſpecial rules for ſuch matters, except it be in extraordinary caſes. 1 *Lill. Abr.* 338.

If coſts are refuſed to be paid, an attachment lies. 1 *Nelſ. Abr.* 550.

The matter of coſts in *equity* is not held to be a point of right, but merely diſcretionary, according to the circumſtances of the caſe, as they appear more or leſs favourable to the party vanquiſhed. 3 *Black.* 451.

COTGARE, a kind of refuſe wool, *cotted* or clung together, ſo as it is difficult to rend it aſunder.

COTTAGE (Sax. *cote*), is a little houſe for habitation, without any land belonging to it. By ſtatute 31 *Eliz. c.* 7. cottages were prohibited to be built for habitation, without laying at leaſt four acres of land to the ſame, and divers other reſtrictions were thereby enjoined; but the ſame was repealed by 15 *G.* 3. *c.* 32. ſetting forth, that the ſaid ſtatute of 31 *El.* had laid the induſtrious poor under great difficulties to procure habitations, and tended very much to leſſen population, and in divers other reſpects was inconvenient to the labouring part of the nation in general.

COVENABLE, Fr. convenient or ſuitable.

A COVENANT, is the conſent and agreement of two or more perſons, to do or not to do ſome act or thing contracted between them. *Wood. b.* 2. *c.* 3.

The words of covenanting are, "do covenant, grant, pro-"miſe, and agree:" though there needs no great exactneſs in the words to make a covenant. For if words of *condition*, and words of *covenant*, are coupled together in the ſame ſentence, as *provided always*, and *it is covenanted*—in ſuch caſe the words may be conſtrued to make a *condition* and a *covenant* alſo. *Id.* 1 *Inſt.* 203.

A covenant is generally either *in fact* or *in law*. In *fact*, is that which is expreſsly agreed between the parties, and inſerted in the deed. In *law*, is that covenant which the law intends and implies, though it be not expreſſed in words, as if a leſſor demiſe and grant to his leſſee an houſe or lands for a certain term, the law will intend a covenant on the leſſor's part, that the leſſee ſhall, during the term, quietly enjoy the ſame againſt all incumbrances. 1 *Inſt.* 384.

There is alſo a covenant *real*, and covenant *perſonal*: A *real* covenant is that, whereby a man binds himſelf to paſs a thing real, as lands or tenements, or to levy a fine of lands; and covenant *perſonal* is, where the ſame is annexed to the perſon, and merely perſonal, as if a man covenant with another by deed to build him

anhouſe, or to be his ſervant for ſuch a time, or the like. *F. N. B.*

If the covenantor covenants for himſelf and his *heirs*, it is then a covenant *real*, and deſcends upon his heirs, who are bound to perform it, provided they have aſſets by deſcent, but not otherwiſe: if he covenants alſo for his *executors* and *adminiſtrators*, his *perſonal* aſſets, as well as his *real*, are likewiſe pledged for the performance of the covenant, which makes ſuch covenants a better ſecurity than any warranty, and it has therefore in modern practice totally ſuperſeded the other. 2 *Black.* 304.

If a man binds himſelf by expreſs covenant *in deed*, to repair an houſe, and it is burned down by lightning, or any other accident, yet he ought to repair it; for it was in his power to have provided againſt it by contract: But he is not ſo bound by covenant *in law*, for where houſes are blown down by tempeſt, or the like, the law excuſes the leſſee in an action of waſte. 1 *Lill. Abr.* 349.

If a covenant is unlawful in the ſubſtance thereof, or impoſſible, it is void. *Wood. b.* 2. *c.* 3.

A covenant for the leſſee to enjoy againſt all men, extends not to wrongful acts and entries, for which the leſſee hath his proper remedy againſt the aggreſſors: but if it be to ſave harmleſs againſt a certain perſon, there the covenantor muſt ſave the covenantee harmleſs againſt the entry of that perſon, be it by wrong or rightful title. *Cro. Eliz.* 213.

A covenant is to be taken moſt ſtrongly againſt the covenantor, and moſt to the advantage of the covenantee. *Wood.* ibid.

A covenant to pay a rent-charge clear of all taxes, doth not extend to taxes that did not exiſt at the time of making the covenant; for theſe were not then in contemplation. *L. Raym.* 319.

If no time is covenanted for doing of a thing, it muſt be done in reaſonable time. *Wood.* ibid.

The remedy for breach of covenant is by *writ of covenant*, which directs the ſheriff to command the defendant generally to keep his covenant with the plaintiff (without ſpecifying the nature of the covenant), or ſhew good cauſe to the contrary; and if he continues refractory, or the covenant is already ſo broken that it cannot now be ſpecifically performed, then the ſubſequent proceedings ſet forth with preciſion the covenant, the breach, and the loſs which hath happened thereby, whereupon the jury will give damages, in proportion to the injury ſuſtained by the plaintiff, and occaſioned by ſuch breach of the defendant's contract. 3 *Black.* 155.

If a man leaſe for years, reſerving a rent, an action of covenant lies for non-payment of the rent; for this is an agreement for

for payment of the rent, which will make a covenant. 1 *Roll's Abr.* 519.

On a covenant to pay money at ſeveral days, after the firſt default an action of covenant lies; otherwiſe it is of debt upon a bond or obligation. 1 *Inſt.* 292.

COVENANT TO STAND SEISED TO USES, is, when a man that hath a wife, children, brother, ſiſter, or kindred, doth by covenant in writing under hand and ſeal agree, that for their or any of their proviſion or preferment, he and his heirs will ſtand ſeiſed of lands to their uſe, either in fee ſimple, fee tail, or for life. The uſe being created by the ſtatute 27 *H.* 8. *c.* 10. which conveys the eſtate as the uſes are directed, this covenant to ſtand ſeiſed is become a conveyance of the land ſince the ſaid ſtatute. The conſiderations of theſe deeds are, natural affection, or marriage. And the law allows theſe conſiderations to raiſe uſes, as well as money or other valuable conſideration. *Plowd.* 302. So much of the uſe, as the owner doth not diſpoſe of, remains ſtill in him. And where an uſe is raiſed by way of covenant, the covenantor continues in poſſeſſion; and there the uſes limited, if they are according to law, ſhall riſe and draw the poſſeſſion out of him: but if they are not, the poſſeſſion ſhall remain in him, until a lawful uſe ariſe. 1 *Leon.* 197. 1 *Mod.* 159.

COVERT BARON, a wife ſo called, from her being under the cover or protection of her huſband, *baron*, or lord.

COVERTURE, is applied particularly to the ſtate and condition of a married woman, or *feme covert*.

COVIN, *covina*, cometh of the French word *convine*, and is a ſecret aſſent determined in the hearts of two or more, to the defrauding and prejudice of another. 1 *Inſt.* 657.

It is commonly converſant in and about conveyances of lands to defeat purchaſors, or of goods and chattels to defraud creditors. It may alſo be in ſuits of law, and judgment had therein; but wherever covin is, it ſhall never be intended, unleſs it appears and be particularly found: for covin and fraud, though proved, yet muſt be found by the jury, otherwiſe it ſhall paſs for nothing. *Brownl.* 188. *Bridgm.* 112.

If goods are ſold in market overt by covin, on purpoſe to bar him that hath right, this ſhall not bar him thereof. 2 *Inſt.* 713.

COUNSEL FOR PRISONERS. By the common law, no counſel ſhall be allowed a priſoner, upon his trial upon the general iſſue, in any capital crime, unleſs ſome point of law ſhall ariſe proper to be debated, it being underſtood, that the judge ſhall be counſel for the priſoner; that is, ſhall ſee that the proceedings againſt him are legal and ſtrictly regular. But now the judges never ſcruple to allow a priſoner counſel to inſtruct him what queſtions to aſk, or even to aſk queſtions for him; with reſpect to

to matters of fact, for as to matters of law, arising on the trial, they are *entitled* to the assistance of counsel. 4 *Black.* 355.

COUNSELLOR, is a person retained by a client to plead his cause in a court of judicature. A *counsellor at law* hath a privilege to inforce any thing which is informed him by his client, if pertinent to the matter, and is not to examine whether it be true or false; for it is at the peril of him who informs him. *Cro. Jac.* 90.

COUNT, was a person of eminence, so called anciently from his *accompanying* or attending upon the king. The *earls* or governors of the shires had for some time this appellation given them; hence the earl is in Latin styled *comes*, the sheriff *vice comes*, and the shire to this day retains the name of *county*.

Count signifies, in another sense, the original declaration of complaint in a real action. As *declaration* is applied to *personal*, so *count* is applicable to *real* causes. But *count* and *declaration* are oftentimes confounded, and made to signify the same thing. *F. N. B.* And in modern and common acceptation, every separate charge in a declaration or indictment is called a *count*; so that a declaration or indictment may, and very frequently does, contain several counts.

COUNTERFEIT. See CHEAT.

COUNTERPART. Heretofore, where there were several parties to an indenture, each party executed a separate deed; and that part or copy which is executed by the grantor is called the *original*, and the rest are *counterparts*. But of late, it is most frequent for all the parties to execute every part, and this makes them all originals. 2 *Black.* 296. If an original deed is in being, or may be had, the counterpart cannot be produced as evidence; otherwise, if the original cannot by any means be procured. *Wood. b.* 4. *c.* 4.

COUNTERPLEA, is, when the tenant in any real action, tenant by the curtesy, or tenant in dower, in his answer and plea, vouches any one to warrant his title, or prays in aid of another who hath a larger estate, as of him in remainder or reversion; or, where one that is a stranger to the action, comes and prays to be received to save his estate; then, that which the demandant alledgeth against it, why it should not be admitted, is called a *counterplea*. *T. L.*

COUNTIES PALATINE, are those of *Chester*, *Durham*, and *Lancaster*. The two former are such by prescription or immemorial custom; or at least as old as the Norman conquest: the other was created by king *Edward* the third, in favour of *Henry Plantagenet*, duke of *Lancaster*, whose heiress was married to *John of Gaunt*, the king's son. 1 *Black.* 116.

Counties palatine are so called *a palatio*, because the owners thereof, the earl of *Chester*, the bishop of *Durham*, and the duke of

of *Lancaſter*, had in thoſe counties *jura regalia*, as fully as the king hath in his *palace*. They might pardon treaſons, murders, and felonies; they appointed all judges and juſtices of the peace; all writs and indictments ran in their names, as in other counties in the king's; and all offences were ſaid to be done againſt their peace, and not, as in other places, againſt the peace of our lord the king. Theſe palatine privileges were in all probability originally granted to theſe counties becauſe they bordered upon the enemies countries, *Wales* and *Scotland*; in order that the owners, being encouraged by ſo large an authority, might be the more watchful in its defence; and that the inhabitants, having juſtice adminiſtered at home, might not be obliged to go out of the county, and leave it open to hoſtile incurſions. And upon this account alſo, there were formerly two other counties palatine, *Pembrokeſhire* and *Hexhamſhire*. But theſe were aboliſhed by parliament, in the reigns of king *Hen.* 8. and queen *Eliz.* And the powers of the owners of the other counties palatine much abridged; though ſtill all writs are witneſſed in their names, and all forfeitures for treaſon by the common law accrue to them. *Id.* 117.

Of theſe three, the county of *Durham* is now the only one remaining in the hands of a ſubject; for the earldom of *Cheſter* was united to the crown by king *Hen.* 3. and hath ever ſince given title to the king's eldeſt ſon. And the county palatine or duchy of *Lancaſter*, in the reign of king *Ed.* 4. was by act of parliament veſted in the king and his heirs kings of *England* for ever. *Id.* 118.

The iſle of *Ely* is not a county palatine, though ſometimes erroneouſly ſo called, but only a royal franchiſe; the biſhop having, by grant of king *Hen.* 1. *jura regalia* within the iſle of *Ely*, whereby he exerciſeth a juriſdiction over all cauſes, as well criminal as civil. *Id.* 119.

In all theſe, the king's ordinary writs, iſſuing under the great ſeal out of chancery, do not run, that is, they are of no force. For, as originally all *jura regalia* were granted to the lords of theſe counties palatine, they had of courſe the ſole adminiſtration of juſtice, by their own judges appointed by themſelves, and not by the crown. It would, therefore, be incongruous for the king to ſend his writ to direct the judge of another's court in what manner to adminiſter juſtice between the ſuitors. And the judges of aſſize, who ſit within theſe franchiſes, do ſit by virtue of a ſpecial commiſſion from the owners of the ſeveral franchiſes, and under the ſeal thereof, and not by the uſual commiſſion under the great ſeal of *England*. 3 *Black.* 79.

In the county palatine of *Lancaſter*, there is alſo another ſpecial juriſdiction, called the court of the duchy chamber of *Lancaſter*, held before the chancellor of the duchy or his deputy concerning

concerning all matters of equity relating to lands holden of the king in right of the duchy of *Lancaſter*; which is a thing very diſtinct from the county palatine (which hath alſo its ſeparate chancery for ſealing of writs, and the like), and compriſes much territory which lies at a vaſt diſtance from it; as particularly a very large diſtrict ſurrounded by the city of *Weſtminſter*. *Id.* 78.

A writ of error lies from all theſe juriſdictions to the court of king's bench. And all prerogative writs, as thoſe of habeas corpus, prohibition, certiorari, and mandamus, may iſſue to all theſe exempt juriſdictions; becauſe the privilege, that the king's writ runs not, muſt be intended between party and party, for there can be no ſuch privilege againſt the king. *Id.* 79.

COUNTY, *comitatus*, is derived from *comes*, the *count*, who by the *Saxons* was called the *earl*, or *alderman*, of the ſhire, to whom the government of it was intruſted. This he uſually exerciſed by his deputy, ſtill called in Latin *vice-comes*, and in Engliſh the *ſheriff*, or *ſhire-reeve*, ſignifying the officer of the ſhire; upon whom, by proceſs of time, the civil adminiſtration of it is now totally devolved. In ſome counties there is an intermediate diviſion, between the ſhire and the hundreds; as *lathes* in *Kent*, and *rapes* in *Suſſex*, each of them containing about three or four hundreds a piece. Theſe had formerly their *lathe-reeves*, and *rape-reeves*, acting in ſubordination to the *ſhire-reeve*. Where a county is divided into three of theſe intermediate juriſdictions, they are called *trithings*, which were anciently governed by a *trithing-reeve*. Theſe trithings ſtill ſubſiſt in the large county of *York*, where, by an eaſy corruption, they are denominated *ridings*. The number of counties in *England* and *Wales* hath been different at different times: at preſent there are forty in *England* and twelve in *Wales*. 1 *Blck* 116.

COUNTY COURT, is a court held every month or oftener by the ſheriff, in what part of the county he pleaſes: but for the election of knights of the ſhire, it muſt be held at the moſt uſual place. 1 *Black.* 178.

The jury in this court ought to be freeholders; but the *quantum* of their eſtate is not material.

This court is not a court of record; but it may hold plea of debt or damages under the value of 40*s*. It may alſo hold plea of many real actions, and of all perſonal actions to any amount, by virtue of a ſpecial writ called a *juſticies*, which is a writ impowering the ſheriff, for the ſake of diſpatch, to do the ſame *juſtice* in his county court, as might otherwiſe be had in the courts at *Weſtminſter*. 3 *Black.* 35.

But it cannot hold plea of freehold; as where a defendant avoweth for damage feaſant, and the plaintiff juſtifies by reaſon of common of paſture; in which caſe the cauſe muſt be removed. *Wood. l.* 4. *c.* 1.

After

After judgment given for the plaintiff, the defendant's goods may be taken, appraiſed, and ſold, to ſatisfy the plaintiff; but if the defendant hath no goods, the plaintiff remains without remedy in this court; for being no court of record, no *capias* lies to arreſt the body of the debtor. *Greenw.* 22.

This court was anciently a court of great dignity and ſplendor, the biſhop and the earl, with the principal gentlemen of the ſhire, ſitting therein to adminiſter juſtice both in lay and eccleſiaſtical cauſes. But its dignity was much impaired, when the biſhop was prohibited, and the earl neglected to attend it. And in modern times, as the proceedings are removeable from hence into the king's ſuperior courts, by writ of *pone.* or *recordare*, this hath occaſioned the buſineſs of the county court in a great meaſure to decline.

COURT, is a place where juſtice is judicially adminiſtered. 1 *Inſt.* 58.

Of courts, ſome are *of record*, others *not of record*. A court *of record*, is that where the acts and judicial proceedings are inrolled in parchment, for a perpetual memorial and teſtimony; which rolls are called the *records* of the court, and are of ſuch high and ſupereminent authority, that their truth is not to be called in queſtion. For it is a ſettled rule, that nothing ſhall be averred againſt a record, nor ſhall any plea or even proof be admitted to the contrary. And if the exiſtence of a record be denied, it ſhall be tried by nothing but itſelf; that is, upon bare inſpection whether there be any ſuch record or no, elſe there would be no end to diſputes. All courts of record are the king's courts, in right of his crown and royal dignity; and therefore no other court hath authority to fine and impriſon; ſo that the very erection of a new juriſdiction, with power of fine and impriſonment, makes it inſtantly a court of record. 3 *Black.* 24.

A court *not of record* is the court of a private perſon, whom the law will not intruſt with any diſcretionary power over the fortune or liberty of his fellow ſubjects. Such are the courts baron incident to every manor, and other inferior juriſdictions; where the proceedings are not inrolled or recorded; but as well their exiſtence as the truth of the matters therein contained ſhall, if diſputed, be *tried* and determined by a jury. Theſe courts can hold no plea of matters cognizable by the common law, unleſs under the value of 40*s.* nor of any forcible injury whatſoever, not having any proceſs to arreſt the perſon of the defendant. *Id.* 25.

COURT BARON, is a court which every lord of a manor (anciently called a *baron*) hath within the precinct of that manor; for redreſſing miſdemeanors and nuiſances within the manor, and for ſettling diſputes of property among the tenants. This court is an inſeparable ingredient of every manor; and if the number of ſuitors ſhould ſo fail, as not to leave ſufficient to make a jury

or

or homage, that is, two tenants at the leaſt, the manor itſelf is loſt. 2 *Black.* 90.

The court baron is of two natures; the one is a cuſtomary court, appertaining intirely to the copyholders or other cuſtomary tenants; and of this the lord or his ſteward is the judge; the other is a court of common law, and is before the freeholders who owe ſuit and ſervice to the manor, the ſteward being rather regiſter than judge. Theſe courts, though in their nature diſtinct, are frequently confounded together, although one of them may be without the other.

This court muſt be holden on ſome part of the manor; for if it be holden out of the manor it is void: unleſs a lord, being ſeiſed of two or three manors, hath uſually time out of mind kept at one of his manors courts for all the ſaid manors; then by cuſtom ſuch courts are ſufficient in law, although they be not holden within the ſeveral manors. 1 *Inſt.* 58.

The copyholders or cuſtomary court is for grants and admittances upon ſurrenders and deſcents, on preſentment of the homage or jury. The homage may inquire of the death of tenants after the laſt court, and who is the next heir; of fraudulent alienation of lands to defeat the lord of his profits; of rent or ſervice withdrawn; of eſcheats and forfeitures; of cutting down trees without licence or conſent; of ſuit not performed at the lord's mill; of waſte by tenant for life; of ſurcharge of common; of treſpaſs in corn, graſs, meadow, woods, hedges; of reſcous and pound breach; of removing mere-ſtones or landmarks; of by-laws not obſerved; and ſuch like. The method of puniſhment is by amerciament: but the ſteward cannot amerce without three aſſeerers ſworn to aſſeer or moderate the amercement, and then the lord may have an action of debt in his court baron for amercements aſſeered; for the ſuitors are judges there, and not the lord. *Wood. b.* 4. *c.* 1.

The freeholders court was formerly holden every three weeks; and its moſt important buſineſs is to determine, by writ of right, all controverſies relating to the right of lands within the manor. It may alſo hold plea of any perſonal actions, of debt, treſpaſs on the caſe, or the like, where the debt or damages do not amount to 40*s*. *Id.*

Alſo a common recovery may be had in this court. *Id.*

But the proceeding on a writ of right may be removed into the county court by a precept from the ſheriff called a *tolt* (becauſe it takes, *tollit*, the cauſe out of the lord's court). And the proceedings in all other actions may be removed into the ſuperior courts by the king's writs of *pone*, or *accedas ad curiam*, according to the nature of the ſuit. After judgment given, a writ alſo of *falſe judgment* lies to the courts at *Weſtminſter* to rehear and review the

the cauſe and not a *writ of error*; for this is not a court of record. 3 *Black.* 33.

On recovery of debt in this court, they have not power to make execution, but are to diſtrain the defendant's goods, and retain them till ſatisfaction ſhall be made. *Wood. b.* 4. *c.* 1.

COURT CHRISTIAN, is an eccleſiaſtical judicature oppoſed to the civil court, or lay tribunal; and is ſo called, as handling matters eſpecially concerning the laws of *Chriſt.* 2 *Inſt.* 488.

COURT OF DELEGATES. See DELEGATES.

COURT LEET. See LEET. So alſo of the other courts; as of *Marſhalſea*, *Star-chamber*, and many others. See the reſpective titles.

CRANAGE, is a tool for drawing merchandize out of veſſels to the wharf, ſo called becauſe the inſtrument is in the form of a *crane.* 8 *Co.* 46.

CRAVEN was a word of obloquy, where, in the ancient trial by battle, the victory was proclaimed, and the vanquiſhed acknowledged his fault in the audience of the people, or pronounced the horrible word *craven*, in the name of recreantiſſe, or cowardlineſs; after which, judgment was to be given, that after this the recreant ſhould loſe his *liberam legem*, that is, he ſhould become infamous, and not be accounted in that reſpect *liber et legalis homo*; and therefore could not be of any jury, nor give teſtimony as a witneſs in any cauſe. The word, according to ſome, is derived of the Greek word Κραυγη, a vociferation; others derive it from *craving* and crying for mercy and forgiveneſs. 2 *Inſt.* 247. 3 *Inſt.* 221. In the caſe of an *appeal*, if the *appellant* cries *craven*, he in like manner ſhall loſe his *liberam legem*; but if the *appellee* cries craven, he ſhall have judgment to be hanged. 3 *Inſt.* 221.

CREDITORS. By ſtatute 30 *C.* 2. *c.* 7. creditors ſhall recover their debts againſt executors or adminiſtrators who have waſted or converted the goods to their own uſe, as they might have done againſt the teſtator or inteſtate if he had been living.

And by 3 *W. c.* 14. wills and deviſes of lands, as to creditors on bonds or other ſpecialties, ſhall be void; and the creditors may have actions of debt againſt the heir at law and deviſee.

But an heir that hath lands by deſcent, ſhall not be liable for the debt of his anceſtor, further than to the value of the lands deſcended. *Str.* 665.

And if an heir is ſued upon a bond debt of his anceſtor, and he pays the money, the executor ſhall reimburſe him as far as there are perſonal aſſets of the teſtator come to the hands of the executor. 1 *Cha. Ca.* 74.

A creditor by mortgage may come either upon the mortgaged land or upon the perſonal eſtate; for a mortgage is a charge upon the perſonal eſtate as well as upon the land; and the perſonal

ſonal eſtate is primarily liable; for a mortgage is a general debt, and the land is only as a ſecurity. 1 *Atk.* 487.

And the general rule is, that the perſonalty ſhall be firſt charged with payment of debts, and the teſtator cannot exempt it from being liable, as againſt creditors; but as between heir and executor, he may charge them upon any other fund which is not primarily liable, and thereby diſcharge the perſonal eſtate. 1 *Wilſon*, 24.

CROSIER, the paſtoral ſtaff, or enſign of the epiſcopal office; ſo denominated from its reſembling the form of a *croſs*. So *croſſes* were pilgrims that wore the ſign of the croſs upon their garments.

CROSS BILL, is when the defendant in chancery hath any relief to pray againſt the plaintiff; in which caſe he muſt do it by an original bill of his own, which is called a *croſs bill*; unto which the plaintiff will be required to put in his anſwer.

CROWN OFFICE. The court of king's bench is divided into the *plea* ſide, and the *crown* ſide. In the *plea* ſide, it takes cognizance of *civil* cauſes, in the *crown* ſide it takes cognizance of *criminal* cauſes, and is thereupon called the *crown office*. In the crown office are exhibited informations in the name of the king, of which there are two kinds: 1. Thoſe which are truly and properly the king's own ſuits, and filed *ex officio* by his own immediate officer, the attorney general. 2. Thoſe in which, though the king is the nominal proſecutor, yet it is at the relation of ſome private perſon or common informer; and theſe are filled by the king's coroner and attorney, uſually called the maſter of the crown office.

The objects of the king's own proſecutions, filed *ex officio* by the attorney-general, are properly ſuch enormities as peculiarly tend to diſturb or indanger his government, or to moleſt him in the regular diſcharge of his royal functions. For offences ſo high and dangerous, in the puniſhment or prevention whereof a moment's delay might be fatal, the law has given to the crown the power of an immediate proſecution, without waiting for any previous application to any other tribunal. The objects of the other ſpecies of informations, filed by the maſter of the crown office upon the complaint or relation of a private ſubject, are any groſs and notorious miſdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly tending to diſturb the government (for thoſe are left to the care of the attorney-general), but which on account of their magnitude or pernicious example, deſerve the moſt public animadverſion.

And when an information is filed either thus, or *ex officio*, it muſt be tried by a petty jury of the county where the offence

offence ariſes; after which, if the defendant be found guilty, he muſt reſort to the court for his puniſhment. 4 *Black.* 308.

CUCKING STOOL (called in ancient time a *tumbrel*, and ſometimes a *trebucket*), ſignifies, in *Saxon*, the ſcolding ſtool; and is an engine of correction for a ſcolding woman after conviction upon an indictment for ſuch offence, in which ſhe is placed and plunged in the water: From whence it is alſo called the *ducking ſtool*, which perhaps is the original word, being more expreſſive of the thing ſignified.

CUI IN VITA, is a writ of entry, which a widow hath againſt him to whom her huſband alienated her lands or tenements in his life time; which muſt contain in it, that during his life (*cui in vita*) ſhe could not withſtand it. *F. N. B.*

CULPRIT, is not (as is vulgarly imagained) an opprobrious name given to the priſoner before he is found guilty, but it is the reply of the clerk of arraigns to the priſoner after he hath pleaded not guilty; which plea was anciently entered upon the minutes in an abbreviated form, *non cul'*; upon which, the clerk of arraigns, on behalf of the crown, replies that the priſoner is guilty, and that he is ready to prove him ſo; which is done by a like kind of abrevation, *cul'prit*, ſignifying that the king is ready to prove him guilty (from *cul'*, that is, *culpabilis*, guilty; & *prit*, *præſto ſum*, I am ready to verify it). 4 *Black.* 339.

CURATE. Of curates there are three kinds: 1. Such as are employed under the ſpiritual rector or vicar, either as aſſiſtant to him in the ſame church, or executing the office in his abſence in his pariſh church. 2. Such as officiate in chapels of eaſe under the mother church. 3. Perpetual curates; which are, where there is in a pariſh neither ſpiritual rector nor vicar, but a clerk is employed to officiate there by the impropriator.

CURFEU (from the Fr. *couvre*, to cover, and *feu*, fire), was an inſtitution of *William* the Conqueror, who required, by ringing of a bell at eight of the clock every evening, that all companies ſhould immediately diſperſe, and fire and candle be extinguiſhed. It is remarkable that this ringing of the bell at that hour ſtill continues in many places, though the original inſtitution hath been long ſince forgotten.

CURRIER. By the 24 *G.* 3. *c.* 41. every currier or dreſſer of hides in oil, ſhall take out a licence annually from the commiſſioners or officers of exciſe.

CURTESY, *tenant by.*

TENANT BY THE CURTESY OF ENGLAND, *is, where a man taketh a wife ſeiſed in fee ſimple, or in fee tail general, or ſeiſed as heir in ſpecial tail, and hath iſſue by the ſame wife, male or female, born alive, albeit the iſſue afterwards dieth or liveth, yet if the wife*

wife dies, the husband shall hold the land during his life, by the curtesy of England. Litt. sect. 35.

By the curtesy of England. Littleton says, it is so called, because it is used within the realm of *England* only. But it appears to have been the law of *Scotland* also, wherein it was called *curialitas;* so that probably our word *curtesy* was understood to signify, that the husband during his life, should be inrolled and do suit and service in the lord's *court*, for the lands of which his wife died seised, rather than to denote any peculiar favour belonging to this island. 2 *Black.* 126. And indeed there seems to be no great *courtesy* in the matter, that the legislators, who were all, or most of them, married men (especially during the times that the law of wardship and marriage existed), should make a law for their own advantage, to disinherit the heir of the wife's estate, during the life-time of her surviving husband. This curtesy of *England* is in the Latin called *lex Angliæ*, the *law* of *England.*

Taketh a wife seised. There is a seisin *in deed*, where one hath made entry, and is in actual possession; and a seisin *in law*, where a person hath right, but hath not actually made entry. It is the former of these that is here intended, namely a seisin *in deed*, if it may be attained unto. 1 *Inst.* 29.

As if a man dieth seised of lands in fee simple, or fee tail general, and these lands descend to his daughter, and she taketh a husband and hath issue, and dieth before any entry, the husband shall not be tenant by the curtesy; and yet in this case she had a seisin *in law;* but if she or her husband had during her life entered, he would have been tenant by the curtesy. 1 *Inst.* 29.

But if a man seised of an advowson, or rent in fee, hath issue a daughter, who is married, and hath issue, and dieth seised, and the wife before the rent became due or the church became void dieth; she had but a seisin *in law*, yet her husband shall be tenant by the curtesy, because he could by no industry attain to any other seisin. *Ibid.*

So in the case where lands, on which there were leases for years existing, and a rent incurred, descended on a wife as tenant in tail general, who survived three months after the rent day incurred; though she made no entry, nor received any rent, during her life, yet this was such a possession in the wife, as made the husband tenant by the curtesy: for the possession of the lessee was the possession of the wife, and there could be no other without making the husband a trespassor. 3 *Atk.* 469.

But a man shall not be tenant by the curtesy of a bare right, title, use, or of a reversion or remainder expectant upon any estate or freehold, unless the particular estate be determined or ended during the coverture. 1 *Inst.* 29.

In fee simple, or in fee tail general, or seised as heir in special tail. That is, of any estate of inheritance. 2 *Black.* 126.

If

If a woman ſeiſed in fee of a freehold eſtate, *mortgages* it, and afterwards marries, and dies leaving a ſon, the mortgage having not been redeemed during the coverture, this is ſuch a ſeiſin in the wife, as intitles the huſband to be tenant by the curteſy of the mortgaged premiſes; for, in equity, the land is conſidered only as a pledge or ſecurity for the money, and doth not alter the poſſeſſion of the mortgagor. 1 *Atk.* 603.

An *equity of redemption* hath been always conſidered as an eſtate in the land; for it may be deviſed, granted, or intailed, with remainders: and the perſon intitled to the equity of redemption is conſidered as the owner of the land, and is ſuch an eſtate whereof there may be a ſeiſin. 1 *Atk.* 605.

In the caſe of a *truſt eſtate* for payment of debts, a huſband may be tenant by the curteſy. 1 *Atk.* 609.

But where a deviſe was to truſtees, and they to apply the rents and profits to the deviſor's daughter and heir, who was a feme covert, for her own ſeparate uſe, and to ſuffer her to diſpoſe of the eſtate by will, notwithſtanding her coverture; in this caſe it was held, that the whole legal eſtate was in the truſtees; and although a huſband may be tenant by the curteſy of a truſt, yet, in order to make a tenant by the curteſy, the wife muſt have the inheritance, and there muſt be likewiſe a ſeiſin in deed in the wife during the coverture; and although in this caſe the wife had the inheritance, becauſe it deſcended till the execution of the power, yet the father, whoſe eſtate it was, made the daughter a feme ſole in this reſpect, and gave the profits to her ſeparate uſe; therefore the huſband could have no ſeiſin during the coverture; he could neither come at the poſſeſſion, nor the profits. 3 *Atk.* 716.

Where the wife hath an eſtate *for life* only, there the huſband ſhall not be tenant by the curteſy. 1 *Atk.* 607.

There is no tenancy by the curteſy of *copyhold* lands, except it be by the ſpecial cuſtom of the manor. *Plowd.* 263.

And hath iſſue, male or female. If lands be given in tail to a woman and to the heirs *male* of her body, and ſhe taketh a huſband, and hath iſſue a *daughter*, and dieth; in this caſe, the huſband ſhall not be tenant by the curteſy; becauſe the daughter by no poſſibility could inherit the the mother's eſtate in the land; and therefore where it is ſaid, *iſſue by his wife male or female*, it is to be underſtood, which by poſſibility may inherit as heir to her mother of ſuch eſtate. 1 *Inſt.* 29.

If a man, ſeiſed of lands in fee, hath iſſue a daughter, who taketh huſband, and hath iſſue to her ſaid huſband, the father dieth, and the huſband entereth; he ſhall be tenant by the curteſy, although the iſſue was had before the wife was ſeiſed. And ſo it is, although the iſſue had died in the life time of her

father before any deſcent of the land, yet ſhall he be tenant by the curteſy. *Ibid.*

For the time when the iſſue is born is immaterial, provided it were during the coverture; for, whether it were born before or after the wife's ſeiſin of the lands, whether it be living or dead at the time of the ſeiſin, or at the time of the wife's deceaſe, the huſband ſhall be tenant by the curteſy. The huſband, by the birth of the child, becomes tenant by the curteſy initiate, and may do many acts to charge the lands; but his eſtate is not conſummate till the death of the wife. 2 *Black.* 127.

Born alive. If a woman ſeiſed of lands in fee taketh huſband, and by him is big with child, and in her travail dieth, and afterwards the child is ripped out of her body alive; yet he ſhall not be tenant by the curteſy, becauſe the child was not born during the marriage, nor in the life-time of the wife, but in the mean time the land deſcended; and in pleading he muſt allege, that he had iſſue during the marriage. 1 *Inſt.* 29.

If the child be born alive, it is ſufficient though it be not heard to cry; for though crying is the ſtrongeſt evidence of its being born alive, yet it is not the only evidence. *Ibid.*

The huſband ſhall hold the lands during his life. Subject to the ſame incidents as other life eſtates. He ſhall have reaſonable eſtovers of houſebote, ploughbote, and haybote; but ſhall not cut down timber, or commit other waſte. And if he ſows the land, and dies before harveſt, his executors ſhall have the crop. 2 *Black.* 122.

If there is a mortgage upon the eſtate, the heir at law may oblige the tenant by curteſy to keep down the intereſt; and if the principal ſhall be diſcharged, the tenant by curteſy ſhall contribute one third, and the heir at law two thirds. 1 *Atk.* 606. 3 *Atk.* 201.

CURTILAGE (from the Saxon, *court*, and *leagh*, locus), a court yard, backſide, or piece of ground, lying near and belonging to an houſe.

CUSTOM time out of mind is, where no perſon living hath heard or known any proof to the contrary.

There is a difference between *cuſtom* and *preſcription*: *cuſtom*, is properly *local* uſage, and not annexed to any *perſon*; ſuch as a cuſtom in a manor, that lands ſhall deſcend to the youngeſt ſon: *preſcription*, is merely a *perſonal* uſage; as, that ſuch a one and his anceſtors, or thoſe whoſe eſtate he hath, have uſed time out of mind to have ſuch an advantage or privilege; as to have common of paſture in ſuch a cloſe, or the like; for this is an uſage annexed to the *perſon* of the owner of the eſtate. 2 *Black.* 263.

To make a cuſtom good, the following are neceſſary requiſites:

1. That it have been uſed ſo long, that the memory of man runneth not to the contrary. So that if any one can ſhew the beginning

thing of it, it is no good cuſtom. For which reaſon, no cuſtom can prevail againſt an act of parliament; ſince the act itſelf is a proof of a time when ſuch a cuſtom did not exiſt. 1 *Black.* 76.

2. It muſt have been continued. Any interruption would cauſe a temporary ceaſing; the revival gives it a new beginning, which will be what the law calls within time of memory: Now time of memory hath been long ago aſcertained by the law, to commence from the reign of King *Richard* the firſt; and any cuſtom may be deſtroyed by evidence of its non-exiſtence in any part of that long period from his days to the preſent. 2 *Black.* 31.

3. It muſt have been peaceable, and acquieſced in; not ſubject to contention and diſpute. For as cuſtoms owe their original to common conſent, their being immemorially diſputed, either at law or otherwiſe, is a proof that ſuch conſent was wanting. 1 *Black.* 77.

4. It muſt not be unreaſonable. Thus a cuſtom in a pariſh that no man ſhall put his beaſts into the common till ſuch a day, is good; but a cuſtom that no cattle ſhall be put in till the lord of the manor hath firſt put in his, is bad, becauſe unreaſonable: for poſſibly the lord may never put in his, and thereby the tenants will loſe all the profits. *Id.*

5. It muſt be certain. A cuſtom that lands ſhall deſcend to the moſt worthy of the owner's blood, is void; for how ſhall this worth be determined? But a cuſtom to deſcend to the next male of the blood, excluſive of females, is certain, and therefore good. *Id.* 78.

6. Cuſtoms muſt be conſiſtent with each other; for one cuſtom cannot be ſet up in oppoſition to another. So if one man preſcribes that by cuſtom he hath a right to have windows looking into another's garden, the other cannot claim a right by cuſtom to ſtop up or obſtruct thoſe windows; for theſe two contradictory cuſtoms cannot both be good, nor both ſtand together. He ought rather to deny the exiſtence of the former cuſtom. *Id.*

7. Cuſtoms, in derogation of the common law, muſt be conſtrued ſtrictly. Thus by the cuſtom of gavelkind, an infant of fifteen years may by a deed of feoffment convey his lands in fee ſimple or for ever: but this cuſtom doth not impower him to uſe any other conveyance, or even to leaſe them for a term of years; for the cuſtom muſt be ſtrictly purſued. 1 *Black.* 79.

A jury ſhall try whether there is a particular cuſtom or no, and not the judges; unleſs the cuſtom in queſtion is of record in the ſame court.

If witneſſes can depoſe that they heard their fathers ſay it was a cuſtom all their time, and that their fathers had heard their grandfathers ſay it was ſo alſo in their time, this is evidence of a cuſtom: but proof of a time when this cuſtom did not exiſt, deſtroys all this kind of evidence.

CUSTOMS, are the duties, toll, or tribute, payable on merchandize exported or imported.

The word *cuſtoms* ſeems to be derived from the *French* word *couſtum*, which ſignifies toll or tribute, and owes its own etymology to the word *couſt*, which ſignifies price, damage, or, as we have adopted it in Engliſh, *coſt*. 1 *Black*. 314.

The ancient duties on wool, ſkins, and leather, were ſtyled the *ſtaple* commodities of the kingdom, becauſe they were obliged to be brought to thoſe parts where the king's ſtaple was eſtabliſhed, in order to be there firſt rated, and then exported. And they were called *cuſtoma antiqua ſive magna*; and were payable by every merchant as well native as ſtranger; with this difference, that merchant ſtrangers paid an additional toll, namely, half as much again as was paid by natives. *Id.*

The *cuſtoma parva et nova*, was an impoſt of 3*d*. in the pound, due from merchant ſtrangers only, for all commodities as well imported as exported; which was uſually called the aliens duty. *Id.*

Tonnage is a duty on wines imported, at ſo much a *tun*; *poundage*, a duty *ad valorem*, on all other merchandize at ſo much a pound. *Id.* 315.

CUSTOS ROTULORUM, is he that hath the cuſtody of the rolls or records of the ſeſſions of the peace. He is the principal juſtice of the peace within his county, and is uſually ſome perſon of fortune or quality. He is appointed by the king under his ſign manual, and hath power to appoint the clerk of the peace.

CYDER AND PERRY. By the 27 *G*. 3. *c*. 13. certain exciſe duties are impoſed on all cyder and perry made and ſold in *Great Britain*, according to a ſchedule annexed to the act.

And by the annual malt act, a further duty is to be paid for all cyder and perry made in *Great Britain*, and ſold by retail, the amount of both which duties is aſcertained and limited by 29 *G*. 3. c. 10.

D A M

DAMAGE FEASANT (doing damage), is where the beaſts of another come upon a man's land, and do there feed, tread, or ſpoil, his corn or graſs there growing; in which caſe, the owner of the ground may diſtrain and impound them till ſatisfaction be made. *Wood*. *b*. 4. *c*. 4.

But the owner may tender amends before the cattle are impounded; and then the detainer is unlawful. Alſo if, when impounded,

pounded, the pound door is unlocked, the owner may take them out. *Wood. b.* 2. *c.* 2.

If ten head of cattle be doing damage, a man cannot take one of them and keep it till he is ſatisfied for the whole damage. 12 *Mod.* 600.

If a man come to diſtrain, and ſee the beaſts in his ground, and the owner chaſe them out, of purpoſe, before the diſtreſs taken: yet the owner of the ſoil cannot diſtrain them, and if he doth, the owner of the cattle may reſcue them; for the beaſts muſt be damage feaſant at the time of the diſtreſs. 1 *Inſt.* 161.

For diſtreſs damage feaſant is the ſtricteſt diſtreſs that is; and the thing diſtrained muſt be taken in the very act; for if the goods are once off, though on freſh purſuit, the owner of the ground cannot take them. 12 *Mod.* 661.

For a rent or ſervice, a man cannot diſtrain but in the day time; but for damage feaſant, one may diſtrain in the night; otherwiſe the beaſts may be gone before he can take them. 1 *Inſt.* 142.

DAMAGES are the recompence that is given to a man, by a jury, as a ſatisfaction for ſome injury ſuſtained; as for a battery, impriſonment, ſlander, or treſpaſs. 2 *Black.* 438.

In actions upon the caſe, the jury may find leſs damages than the plaintiff lays in his declaration, though they cannot find more; but coſts may be increaſed beyond the ſum mentioned in the declaration for damages; for coſts are given in reſpect of the plaintiff's ſuit to recover his damages, which may be ſometimes greater than the damage. 10 *Co.* 115.

When a ſtatute doth increaſe damages to the double or treble value, where damages were given before, there the plaintiff ſhall recover thoſe damages only, and no coſts. For example, in an action upon the ſtatute of forcible entry, 8. *Hen.* 6. which gives treble damages; in this caſe, the plaintiff ſhall recover his damages and his coſts to the treble, becauſe he ſhould have recovered ſingle damages at the common law, and the ſtatute increaſes them to treble: but upon the ſtatute of 1 & 2 *P.* & *M.* for chaſing diſtreſſes out of the hundred, whereby treble damages are given, the plaintiff ſhall recover no coſts, becauſe this action and penalty are newly given, and were not at the common law. 2 *Inſt.* 289. 10. *Co.* 115.

So in an action upon the caſe, on the 2 *W, ſeſſ.* 1. *c.* 5. for a reſcous of diſtreſs, the plaintiff ſhall recover treble coſts as well as treble damages; for the damages are not given by the ſtatute, but increaſed, an action upon the caſe lying for a reſcous at common law. 1 *Salk.* 205.

Sometimes, in order to ſave charges, the defendant ſuffers judgment to go againſt him by default; and in this caſe, unleſs he will confeſs the whole damages laid in the declaration, a jury muſt be called in to aſſeſs them. Whereupon the ſheriff is commanded to

ſummon a jury to inquire of the ſaid damages, and return their inquiſition when taken into court. This proceſs is called a *writ of inquiry*, in the execution whereof the ſheriff preſides as judge, and tries by the jury, in like manner as a trial at niſi prius, what damages the plaintiff hath really ſuſtained. And when this is returned with the inquiſition, judgment is thereupon entered. 3 *Black.* 397.

DANEGELT, a tax or tribute impoſed when the *Danes* got footing in this land. Some ſay it was impoſed by the *Danes* in ſupport of their authority; others ſay, that it was a tax levied to keep them out: and perhaps, at different times, it might be levied in both thoſe reſpects.

DANE-LAGE, the *Daniſh law*, was brought into *England* upon the eruption of the *Danes*, and prevailed in thoſe parts where the *Danes* had obtained a ſettlement, eſpecially in ſeveral of the midland counties, and on the eaſtern coaſt, being that part which was moſt expoſed to the viſits of that piratical people. 1 *Black.* 65.

DAPIFER (from *dapes ferendo*), a purveyor, or ſteward, of the houſhold.

DARREIN PRESENTMENT (the *laſt preſentment*), is a writ which lies, where a man or his anceſtor hath preſented a clerk to a church, and afterwards (the church becoming void by the death of the ſaid clerk or otherwiſe) a ſtranger preſenteth his clerk to the ſame church, in diſturbance of him who had laſt, or whoſe anceſtor had laſt, preſented. *T. L.*

But now this kind of writ is totally diſuſed; the remedy by *quare impedit* being much more effectual, for a *darrein preſentment* lies only where a man hath an advowſon by deſcent from his anceſtors; but the writ of *quare impedit* is equally remedial whether a man claims title by deſcent or by purchaſe. 3 *Black.* 246.

DATE *(datum)*, of a deed, denotes the time of the deed being *given* or executed, either expreſsly, or by reference to ſome day and year mentioned in the deed before. 2 *Black.* 304.

Yet a deed is good, although it mention no date, or hath a falſe date, or even if it hath an impoſſible date, as the 30th of *February*, provided the real day of its being dated or given, that is, *delivered*, can be proved. *Id.*

Every deed ſhall be intended to be delivered on the ſame day that it bears date, unleſs the contrary be proved. 2 *Inſt.* 674.

If a leaſe be made by indenture, bearing date the 26th of *May*, to have and to hold for 21 years *from the date*, or *from the day of the date*, it ſhall begin on the 27th. 1 *Inſt.* 46.

If the leaſe bear date the 26th of *May*, to have and to hold *from the making thereof*, or *from thenceforth*, it ſhall begin on the day on which it is delivered, for until delivery it hath no effect; but

but if it be *from the day of the making thereof*, then it ſhall begin on the next day after the delivery. *Id.*

If in the date of a deed the year of our Lord is right, though the year of the king's reign be miſtaken, this ſhall not vitiate the deed. *Cro. Ja.* 261.

On an action of covenant, the plaintiff declared on a deed bearing date the 30th of *March in the year of our Lord* 1701, and in the 13th year *of the reign of* the king; whereas, on producing the deed, it appeared to be only dated thus, *the 30th of March* 1701 (wanting the words *in the year of our Lord*); and likewiſe, *in the 13th year of the king* (wanting the words *of the reign*): On demurrer, the court held this to be no variance, for that it was in the deed implicitly. 2 *Salk.* 658.

If a deed is dated at four o'clock in the afternoon of ſuch a day, the whole day is to be taken in: for the law in this computation rejects all fractions and diviſions of a day, for the uncertainty. 5 *Co.* 1.

DAY, is either *natural*, or artificial. The *natural* day conſiſts of 24 hours, and contains the day ſolar, and the night, being that ſpace in which the ſun is ſuppoſed to go from eaſt to weſt, and from the weſt again to the eaſt. The *artificial* or ſolar day begins at ſunriſing and ends at the ſunſetting.

In order to avoid diſputes, the law generally rejects all fractions of a day. Therefore if I am bound to pay money on any certain day, I diſcharge the obligation if I pay it before 12 o'clock at night; after which the following day commences. 2 *Black.* 141.

If an offence be committed in the night, the indictment muſt ſet forth that it was done in the night of the ſame day.

Day in legal proceedings is the day of appearance of the parties, or continuance of a ſuit, where a day is given. And when the party is finally diſmiſſed the court, he is ſaid to be put without day.

In caſe of notice to be given ſuch a determinate number of days beforehand, as for inſtance 14 days, the uſual way of computing is not to include nor exclude both the firſt and laſt of thoſe days, but one of them only: ſo in the caſe of returns to writs of *mandamus* and *ſcire facias*, where the rule is, that there muſt be 15 days between the teſte and return, theſe in practice are only 14, one of the firſt or laſt being always included. *Burr. Manſf.* 2525.

But the courts vary a little in practice; for all days wherein rules to plead, reply, &c. are given, are excluſive in the *king's bench*, and incluſive in the *common pleas*, unleſs by order of court or judge.

DAYS IN BANK, are days of appearance in the court of common pleas, called uſually *bancum*, or *commune bancum*, to diſtinguiſh

diſtinguiſh it from *bancum regis* or the court of king's bench. They are generally at the diſtance of about a week from each other, and regulated by ſome feſtival of the church. On ſome of theſe days in bank, all original writs muſt be made returnable, and therefore they are generally called the *returns* of that term. 3 *Black.* 277.

DAYWERE of land, perhaps by miſtake for *daywere* (day's work), as much arable land as can be ploughed up in one day's work, or one *journey* (as the farmers ſtill call it). Hence an artificer, who aſſiſts a maſter workmen in daily labour, is called a *journeyman.*

DEACON. By the canons of the church, none ſhall be ordained deacon unleſs he is twenty-three years of age. Anciently, his office was to officiate under the miniſter in making reſponſes, and repeating the confeſſion, the creed, and the Lord's prayer after him, and ſuch other duties as now properly belong to our pariſh clerks: but now it ſeemeth that he may perform any of the divine offices which a prieſt may do, except only pronouncing the abſolution and conſecrating the ſacrament of the Lord's ſupper.

DEADLY FEUD, in *Scotland*, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood, till a perſon is revenged even by the death of his adverſary.

DEAN, is an eccleſiaſtical governor ſecular over the prebendaries and canons in the cathedral church, who were originally the council of the biſhop, to aſſiſt him with their advice in affairs of religion; and alſo in the temporal concerns of his ſee. When the reſt of the clergy were ſettled in the ſeveral pariſhes of each dioceſe, theſe were reſerved for the celebration of divine ſervice in the biſhop's own cathedral; and the chief of them, who preſided over the reſt, obtained the name of *decanus* or *dean*, being probably at firſt appointed to ſuperintend ten canons or prebendaries. 1 *Black.* 382.

The deans of the old foundation (which are thoſe that were eſtabliſhed before the reign of king *Henry* the eighth) are elected by the chapter, by *conge d'eſlire* of the king, and letters miſſive of recommendation, in the ſame manner as biſhops: but deans of the new foundation, that is, in thoſe chapters which were founded by king *Henry* the eighth out of the ſpoils of the diſſolved monaſteries, the deanry is donative, and the inſtallation merely by the king's letters patent. The *chapter*, conſiſting of canons or prebendaries, are in ſome places appointed by the king, in others by the biſhop; and in ſome places they are elected by each other. *Id.*

Beſides the cathedral deans, who preſide at the head of the chapter, there are three other ſorts of deans: Firſt, a dean *without a chapter*, and yet he is *preſentative*, and hath cure of ſouls; he hath a peculiar, and a court wherein he holds eccleſiaſtical juriſdiction;

riſdiction; and is not ſubject to the viſitation of the ordinary; ſuch is the deanry of *Battel* in *Suſſex*, which deanry was founded by *William* the conqueror in memory of his conqueſt. Secondly, a dean, not preſentative, but *donative*, and who hath not the cure of ſouls; he alſo hath a court and a peculiar, which often extends over many pariſhes; ſuch is the dean of the *Arches*, the dean of *Bocking* in *Eſſex*, and many more. Thirdly, the *dean rural*; having no abſolute judicial power in himſelf, but he is to order the eccleſiaſtical affairs within his deanry and precinct, by direction of the biſhop or archdeacon: but this office is now almoſt totally laid aſide.

DEATH OF PERSONS. There is a *natural* death of a man, and a *civil* death; natural, when nature itſelf expires and extinguiſhes; and civil, is where a man is not actually dead, but is adjudged ſo by law; as where he enters into religion, &c. If any perſon for whoſe life any eſtate hath been granted, remain beyond ſea, or is otherwiſe abſent *ſeven* years, and no proof made of his being alive, ſuch perſon ſhall be accounted naturally dead; though if, afterwards proved to be living at the time of eviction of any perſon, then the tenant, &c. may re-enter, and recover the profits. 19 *C.* 2. *c.* 6.

DEATH's PART, or *deadman's part*, is that portion of his perſonal eſtate which remained after his wife and children had received thereout their reſpective reaſonable parts: which was, if he had both a wife and a child, or children, one third part; if a wife and no child, or a child or children and no wife, one half; if neither wife nor child, he had the whole to diſpoſe of by his laſt will and teſtament; and if he made no will, the ſame was to go to his adminiſtrator. And within the city of *London*, and throughout the province of *York*, at this day, in caſe of inteſtacy, the wife and children are intitled to their ſaid reaſonable parts, and the reſidue only is diſtributable by the ſtatute of diſtribution.

DE BENE ESSE. To take or do any thing *de bene eſſe* is in law ſignification to accept or allow it as *well* done for the preſent; as where witneſſes are aged, or ſick, or going beyond ſea, whereby the party thinks he is in danger of loſing their teſtimony, a court of equity, upon motion, will order them to be examined *de bene eſſe*; ſo as to be valid if the party hath not an opportunity of examining them afterwards: but if they are alive, and well, or return, theſe depoſitions are not to be of force, but the witneſſes muſt be examined again. 3 *Black.* 383.

So alſo at common law, the judges frequently take bail, and declarations are frequently delivered *de bene eſſe* (or conditionally); for which ſee the books of practice.

DEBET ET DETINET: In an action of debt, the form of the writ is ſometimes in the *debet* and *detinet*, and ſometimes in the *detinet* only; that is, the writ ſtates, either that the defendant owes,

owes, and unjuſtly *detains*, the debt or thing in queſtion, or only that he unjuſtly *detains* it It is brought in the *debet* as well as *detinet*, when ſued by one of the original contracting parties who perſonally gave the credit, againſt the other who perſonally incurred the debt; as by the obligee againſt the obligor, the landlord againſt the tenant, or the like. But if it be brought by or againſt an executor for a duty to or from the teſtator, this, not being his own debt, ſhall be ſued for in the *detinet* only. So alſo if the action be for goods, for corn, or an horſe, the writ ſhall be in the *detinet* only; for it cannot properly be ſaid that the defendant *owes* to the plaintiff an horſe, but only that he *detains* him. 3 *Black.* 155.

DEBET ET SOLET are formal words made uſe of in writs, ſometimes one only, and ſometimes both. Thus if a man ſues to recover any right, whereof his anceſtor was diſſeiſed by the defendant or his anceſtor, there he uſeth the word *debet* alone in his writ, becauſe his anceſtor only was diſſeiſed, and the eſtate diſcontinued: but if he ſue for any thing that is now firſt of all denied him, then he uſeth *debet et ſolet*, by reaſon that his anceſtor before him, and he himſelf, *uſually* enjoyed the thing ſued for, until the preſent refuſal of the defendant. So the writ of ſuit to a mill, is a writ of right in the *debet* and *ſolet*. F. N. B.

DEBT, *action of*, in a legal acceptation, is a ſum of money due by certain and expreſs agreement. As by a bond for a determinate ſum; a bill or note; a ſpecial bargain; or a rent reſerved on a leaſe: where the quantity is fixed and unalterable, and dot not depend upon any after calculation to ſettle it. 3 *Black.* 153.

The non-payment of theſe is an injury, for which the proper remedy is by *action of debt*, to compel the performance of the contract, and recover the ſpecial ſum due. *Id.*

And this is the ſhorteſt and ſureſt remedy; particularly where the debt ariſes upon a ſpecialty; that is, upon a deed, or inſtrument under ſeal. So alſo, if I verbally agree to pay a man a certain price for a certain parcel of goods, and fail in the performance, an action of debt lies againſt me; for this is alſo a determinate contract; but if I agree for no ſettled price, I am not liable to an action of debt, but a ſpecial action on the caſe, according to the nature of the contract. 3 *Black.* 154.

And, indeed, actions of debt are now ſeldom brought but upon ſpecial contracts under ſeal; wherein the ſum due is clearly and preciſely expreſſed: for in caſe of ſuch an action upon a ſimple contract, the plaintiff labours under two difficulties; firſt, the defendant has here the ſame advantage as in an action of detinue, that of waging his law, namely, purging himſelf of the debt by oath, if he thinks proper; ſecondly, in an action of debt, the plaintiff muſt recover the whole debt he claims, or nothing

nothing at all. For the debt is one ſingle cauſe of action, fixed and determined; but in an action upon the caſe, on what is called an *indebitatus aſſumpſit*, which not is brought to compel a ſpecific performance of the contract, but to recover damages for its non-performance; theſe damages are in their nature indeterminate, and will therefore adapt and proportion themſelves to the truth of the caſe, which ſhall be proved, without being confined to the preciſe demand ſtated in the declaration. *Id.*

DEBTS, priority of. See PRIORITY.

DECEM TALES, is when a full jury doth not appear on a trial at bar, then a writ goes to the ſheriff to return *ten ſuch* as the other jurors; out of whom to ſupply the number wanted.

DECENNARY (from *decem*, ten), was originally a diſtrict of ten men with their families. King *Alfred*, for the better preſervation of the peace, divided the kingdom into counties, the counties into hundreds, and the hundreds into tythings or decennaries; the inhabitants whereof, living together, were ſureties or pledges for each other's good behaviour. One of the principal of which number preſided over the reſt, and was called the chief pledge, borſholder, borow's elder, or tythingman; all which appellations in proceſs of time were changed into that of conſtable.

DECLARATION, is a ſetting forth in writing the demand or complaint of the demandant or plaintiff againſt the tenant or defendant, who is ſuppoſed to have done the wrong. The original *writ*, according to its name *breve*, is brief and ſhort; but the *declaration*, or count, which the demandant or plaintiff maketh, is more narrative, ſpacious, and certain, both in matter and in circumſtance of time and place, to the end the defendant may be compelled to make a more direct anſwer. 1 *Inſt.* 17.

It is uſual in actions upon the caſe to ſet forth ſeveral caſes, by different counts in the ſame declaration; ſo that if the plaintiff fails in the proof of one, he may ſucceed in another. As in an action upon an *aſſumpſit* for goods ſold and delivered, the plaintiff uſually counts or declares, firſt, upon a ſettled and agreed price between him and the defendant, as that they bargained for 20*l.*; and leſt he ſhould fail in the proof of this, he counts likewiſe upon a *quantum valebant*, that the defendant bought other goods, and agreed to pay him ſo much as they were reaſonably worth, and then avers that they were worth other 20*l.*; and ſo on, in three or four different ſhapes; and at laſt concludes with declaring that the defendant had refuſed to fulfil any of theſe agreements; whereby he is endamaged to ſuch a value. And if he proves the caſe laid in any one of his counts, though he fail in the reſt, he ſhall recover proportionable damages. 3 *Black.* 295.

DECREE, is the judgment of a court of equity, on any bill preferred.

preferred. It is either *interlocutory*, or *final*. It ſeldom happens that the firſt decree can be final; for if any matter of fact ariſe which is ſtrongly controverted, the court uſually directs the ſame to be tried at law by a jury, as in caſe of the validity of a will, or the exiſtence of a modus in lieu of tithes. So if a queſtion of law ariſes, as whether by the words of a will an eſtate for life or in tail is created, it is uſual to refer this to the opinion of the judges of the court of king's bench or common pleas. So likewiſe there are often long accounts to be ſettled, incumbrances and debts to be inquired into, and many other facts to be cleared up, before a final decree can be made; and theſe are uſually referred to be ſettled by a maſter in chancery. After all which, then the cauſe is again brought to hearing upon the matter of equity reſerved, whereupon a *final* decree is then pronounced. 3 *Black.* 452.

DEDIMUS POTESTATEM, is a writ to commiſſion private perſons to do ſome act in the place of a judge; as to adminiſter the oath of office to a juſtice of the peace, to take a perſonal anſwer to a bill in chancery, to examine witneſſes, to levy a fine, to take a recovery, and ſuch like. *F. N. B.*

A DEED, is an inſtrument in writing, comprehending a bargain or contract between party and party. 1 *Inſt.* 171.

The writing muſt be on *paper* or *parchment*; and not upon wood, leather, cloth, or the like; becauſe upon theſe it is more liable to be altered or corrupted. 1 *Inſt.* 35.

If it be made by more parties than one, there ought to be regularly as many copies of it as there are parties; and each ſhould be cut and indented, to tally and correſpond with the other; which deed, ſo made, is called an *indenture*. 2 *Blackſt.* 295.

A deed made by one party only is not indented, but polled or ſhaved quite even; and is therefore called a *deed poll*, or ſingle deed. *Ibid.*

A deed *indented* is executed by, and binds the ſeveral parties; a *deed poll* is executed by one party, and only binds him who made it. *Litt. ſect.* 370.

If a deed beginneth, *This indenture*, and in truth the parchment or paper is not indented, this is no indenture; becauſe words cannot make it indented: but if the deed be actually indented, and there be no words of indenture in the deed, yet it is an indenture in law; for it may be an indenture without words, but not by words without indenting. 1 *Inſt.* 229.

In every deed there muſt be a *conſideration*. For a deed or other grant, made without any conſideration, is conſtrued to enure only to the uſe of the grantor himſelf. 2 *Blackſt.* 296.

Conſideration may be either a *good*, or a *valuable*, conſideration; a *good* conſideration is ſuch as that of blood or natural affection: when a man grants an eſtate to a near kinſman: 2 *valuable* conſideration

ſideration is ſuch as money, marriage, or the like; which the law deems an equivalent given for the grant. *Ibid.*

Where any conſideration is mentioned in a deed, as of *love and affection* only, if it is not alſo *for other conſiderations*, a man cannot enter into the proof of any other: the reaſon is, becauſe it would be contrary to the deed; for when the deed ſays, it is in conſideration of ſuch a particular thing, that imports the whole conſideration, and is negative of any other. 1 *Vez.* 128.

The *habendum* in a deed is to expreſs the certainty of the eſtate which the party is to have, for what time, and to what uſe. It cannot leſſen the eſtate granted in the premiſſes, but may enlarge it; as if a man grant lands to one and his heirs, to have and to hold to him and the heirs of his body, the habendum is void; for the larger and more beneficial eſtate is veſted in him, before the habendum comes. 2 *Black.* 298.

The *tenendum* is now of little uſe, and is only kept in by cuſtom. It was ſometimes formerly uſed to ſignify the tenure, by which the eſtate granted was to be holden, as to hold by knight's ſervice, in burgage, in free ſocage, and the like. But all theſe being now reduced to free and common ſocage, the tenure is never ſpecified. Before the ſtatute of *quia emptores terrarum*, it was ſometimes uſed to denote the lord of whom the land ſhould be holden; but that ſtatute directing all future purchaſers to hold, not of the immediate grantor, but of the chief lord of the fee, this uſe of the tenendum hath alſo been antiquated; though for a long time after, we find it mentioned in ancient charters, that the tenements ſhall be holden of the chief lords of the fee; but as this expreſſed nothing more than the ſtatute had already provided for, it gradually grew out of uſe. *Ibid.*

The *reddendum*, or render, in a deed, is a reſervation whereby the grantor doth create or reſerve ſomething to himſelf, out of what he had before granted. But if it be of ancient ſervices, or the like, annexed to the land, then the reſervation may be to the lord of the fee. 2 *Black.* 299.

When a feoffor conveys away all his eſtate in the land abſolutely, and is not bound to warrant the land, or defend the title, but the feoffee is to defend the land at his peril; the feoffee ſhall have all the *title deeds* and evidences as incident to the land, although they be not granted by expreſs words; for the feoffor cannot reap any benefit by them; but if the feoffor warrants the land, there, without expreſs grant, the feoffee ſhall not have any deeds which do comprehend warranty, but the feoffor ſhall have all the evidences which are requiſite to defend the title of the land; and the feoffee muſt truſt to his warranty. But otherwiſe it is, where there is an expreſs grant of the deeds and evidences. 1 *Co.* 1, 2. 1 *Inſt.* 6.

A deed is void by *raſure*, or *interlining*, in any material part, unleſs

unleſs a memorandum be made thereof at the time of execution and atteſtation; and anciently, the judges determined this upon their own view; but of later time, they have left that to the jurors, to try whether the raſing or interlining were before delivery. 1 *Inſt.* 225. 2 *Black.* 308.

Our *Saxon* anceſtors, as many of them as could write, *ſigned* their names; and whether they could write or not, affixed the ſign of the croſs. The *Normans* that ſucceeded, few of whom could write, uſed the practice of *ſealing* only, without writing their names. And this practice of *ſealing*, without *ſigning*, continued very long, and was held ſufficient to authenticate a deed; and ſo the common form of atteſting deeds "ſealed and delivered" continues to this day; although the ſtatute of 29 *C.* 2. *c.* 3. expreſsly requires *ſigning* in all grants of lands and many other ſpecies of deeds; in which therefore now *ſigning* ſeems as neceſſary as ſealing. 2 *Black.* 306.

But on an iſſue directed out of chancery, whether there was a deviſe or not, *Raymond* chief juſtice ruled, that *ſealing* a will is a *ſigning* within the ſtatute. *Str.* 764. *B. E. L.* 522.

The *date* of a deed was of ancient time frequently omitted; and the reaſon was, for that the limitation of preſcription, or time of memory, did often in proceſs of time vary: and the law was then holden, that a deed, bearing date before the limited time of preſcription, was not pleadable, and therefore they made their deeds without date, to the end they might allege them within the time of preſcription. And the date of the deeds was commonly added in the reign of *Ed.* 2. & *Ed.* 3. and ſo ever ſince. 1 *Inſt.* 6.

But a deed is good although it mention no date, or hath a falſe date, or even if it hath an impoſſible date, as the 30th of February; provided the real date of its being dated or *given*, that is, *delivered*, can be proved. 2 *Black.* 304.

For the day of the *delivery* of a deed is the day of the date, though there be no date ſet forth: and if a deed bears date one day, and is delivered on another day, the day of delivery is the day of the date. 1 *Salk.* 76.

The words "from the *day* of the date" exclude the day of the date; but "from the date" is from the act done; and ſo commences the ſame day that it is dated or delivered. *L. Raym.* 480.

A deed *loſt* may be proved by circumſtances; firſt ſhewing that it once exiſted; and next, that it was loſt, or cannot be come at. 1 *Vez.* 389.

The loſs of a deed is not always a ground to go into a court of equity for relief; for courts of law admit evidence of the loſs of a deed, proving the exiſtence of it, and the contents, juſt as a court of equity does. Otherwiſe it is of a *bond*; for

of that, a profert muſt be made in court. 1 *Vez.* 392. 3 *Atk.* 214.

DEED-POLL, is a deed *polled* or ſhaved quite even, in contradiſtinction from an *indenture*, which is cut unevenly, and anſwerable to another writing that comprehends the ſame words. A *deed-poll* is properly ſingle, and but of one part, and is intended for the uſe of the feoffee, grantee, or leſſee; an *indenture* always conſiſts of two or more parts and parties. Every deed that is pleaded ſhall be intended to be a *deed-poll*, unleſs it is alleged to be indented. It commonly begins thus: *To all people to whom theſe preſents ſhall come*: or, *Know all men by theſe preſents.* 1 *Inſt.* 229.

DEEMSTERS (Sax. *deem*, *doom*, judgment), is the name for judges in the Iſle of Man.

DEER. By the 16 *G.* 3. *c.* 30. hunting or attempting to hunt, any deer incurs a forfeiture of 20*l.* and actually killing the ſame incurs the forfeiture of 30*l.*; and in either caſe, the penalty for a ſecond offence is tranſportation for ſeven years. But by the *Black Act*, 9 *G. c.* 22. deer-ſtealing, in certain caſes, is made felony without benefit of clergy.

DEER HAY, an engine or great net made of ſtrong cords, wherein to take deer.

DE FACTO, ſignifies a thing actually done. A king *de facto* is underſtood to be one that is in actual poſſeſſion of the crown, and hath no lawful title to it; in which ſenſe it is oppoſed to a king *de jure*, who hath right to the crown, but is out of poſſeſſion. 3 *Inſt.* 7.

DEFAMATION. See SLANDER.

DEFAULT, is commonly taken for non-appearance in court at a day aſſigned; though it extends to any omiſſion of that which we ought to do. 1 *Inſt.* 259.

Where the defendant makes default at niſi prius, he is out of court to all purpoſes but this, *viz.* that judgment may be given againſt him; therefore no repleader can be awarded. 1 *Salk.* 216.

In an action of debt upon bond; if the defendant pleads a releaſe, and iſſue is thereupon joined, if at the trial the defendant makes default, the plaintiff may pray judgment by default; becauſe by the plea the duty is confeſſed, and therefore no inqueſt need be taken by default: but if the defendant plead *non eſt factum*, by that plea the duty is denied; and therefore if he makes default, inqueſt muſt be taken by default. *Id.*

Before a verdict is taken by default the crier of the court calls the defendant three times, to ſhew if he hath any challenge to the jurors; and if he doth not appear upon the cryer's calling, then the *capiatur* by default is indorſed on the back of the panel. 1 *Lill. Abr.* 425.

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In criminal caſes, if an offender being indicted appears at the *capias*, and pleads to iſſue, and is let to bail to attend his trial, and then makes default; here the inqueſt in caſe of felony, ſhall never be taken by default, but a *capias ad audiendam juratam* ſhall iſſue; and if the party is not taken, an *exigent*. And if he appeared on that writ, and then made default, a new *exigent* may be granted.

If jurors make default in their appearance for trying of cauſes, they ſhall forfeit their iſſues, unleſs reaſonable cauſe be proved to the ſatisfaction of the court.

DEFEAZANCE, from the French *defaire*, to undo, or *defeat*, is a collateral deed, made at the ſame time with a feoffment or other conveyance, containing certain conditions, upon the performance of which, the eſtate then created may be defeated or totally undone. And in this manner mortgages were in former times uſually made; the mortgagor enfeoffing the mortgagee, and he at the ſame time executing a deed of defeazance, whereby the feoffment was rendered void, on repayment of the money at a certain day. 2 *Black.* 327.

In like manner there is a defeazance of a bond, or recognizance, or judgment recovered; which is a condition that, when performed, defeats or undoes it, in the ſame manner as a defeazance of an eſtate. *Id.* 342.

The difference between a condition and a defeazance is, that the condition is inſerted in the deed, and a defeazance is uſually a deed by itſelf, relating to another deed. *Wood. b.* 2. *c.* 3.

There is a diverſity between inheritances *executed*, and inheritances *executory*: as lands *executed* by livery cannot by indenture of defeazance be defeated afterwards; and ſo if a diſſeiſee releaſe a diſſeiſor, it cannot be defeated by indentures of defeazance made afterwards: but at the time of the releaſe or feoffment, the ſame may be defeated by indentures of defeazance. But rents, annuities, conditions, warranties, and ſuch like, that are inheritances *executory*, may be defeated by defeazances made either at that time, or at any time after: and ſo the law is, of ſtatutes, recognizances, obligations, and other things *executory*. 1 *Inſt.* 236.

DEFENCE, in legal underſtanding, doth not ſignify a juſtification, protection, or guard, which is its popular ſignification, but merely an *oppoſing* or *denial* (from the French verb *defender*) of the truth or validity of the declaration. It is the *conteſtatio litis* of the civilians; a general aſſertion that the plaintiff hath no ground of action; which aſſertion is afterwards extended and maintained in his plea. The courts were formerly very nice and curious with reſpect to the nature of the defence; ſo that if no defence was made, though a ſufficient plea was pleaded, the plaintiff ſhould recover judgment. And to every kind of count they had a ſeveral kind of defence. For a general defence

or

or denial was not prudent in every ſituation, ſince thereby the propriety of the writ, the competency of the plaintiff, and the cognizance of the court, were allowed. By defending the force and injury, the defendant waved all pleas of miſnomer; by defending the damages, all exceptions to the perſon of the plaintiff; and by defending either one or the other *when and where* it ſhould behove him, he acknowledged the juriſdiction of the court. But of late years theſe niceties have been very deſervedly diſcountenanced; though they ſtill ſeem to be law, if inſiſted on. 3 *Black.* 296.

DEFENDANT, is the party that is ſued in a *perſonal* action; as *tenant* is he that is ſued in an action *real.*

DEFENDER OF THE FAITH, a title given by the pope to king *Henry* the eighth, for writing againſt *Luther*; which title our kings have retained ever ſince.

DEFENSA, *defenſum*, was anciently an incloſed parcel of land, ſet apart for the *defence* and ſeparate feeding of deer or other cattle, as alſo for the ſecurity of hay or corn growing, or of ſprings of wood. 3 *Dudg. Mon.* 306.

So that *fence-month* in foreſts, is the month in which the deer fawn; during which time they are to be *defended* from diſturbance.

DEFORCEMENT, is the withholding lands or tenements from the right owner; in which caſe, the entry of the right owner is taken away, and he is thereby driven to his action. Anciently, it was only ſaid to be deforcement when the land was withheld by violence and force; but now it is extended generally to all kind of wrongful withholding of lands or tenements from the lawful owner. *Deforciant* is he who ſo withholds ſuch lands or tenements, 1 *Inſt.* 331. and in fines the cognizor or party levying or acknowledging the fine is ſtyled the deforciant.

DEGRADATION, is an eccleſiaſtical cenſure, whereby a clergyman is deprived of his holy orders, which formerly he had, as of prieſt or deacon. And this, by the canon law, might be done two ways, either ſummarily, as by word only; or ſolemnly, by deveſting the party degraded of thoſe ornaments which were the enſigns of his order or degree; which was done in this manner: The offender was brought in having on his ſacred robes and having in his hands a book, veſſel, or other inſtrument or ornament appertaining to his order, as if he were about to officiate in his function: then the biſhop publicly took away from him one by one, the ſaid inſtruments and ornaments, ſaying to this effect, "This and this we take from thee, and do deprive thee of the honour of prieſthood;" and, finally, in taking away the laſt ſacerdotal veſtment, ſaying thus, "By the authority of *God* Almighty, the Father, the Son, and the Holy Ghoſt, and of us, we do take from thee the clerical habit, and do depoſe,

degrade, deſpoil, and deprive thee of all order, benefit, and privilege of the clergy." *Gibſ.* 1066.

There was a like ceremony in temporal matters, as in the degradation of a knight; he was ſtripped of his robes and enſigns of knighthood, his ſword broken over his head, and his gilt ſpurs hacked off from his heels.

DEHORS (Fr.), without; a word uſed in ancient pleading, when a thing is *without* the point in queſtion, foreign to the matter in hand, and not appearing upon the face of the record.

DELEGATES, court of, is ſo called, becauſe the judges thereof are *delegated* by the king's commiſſion under the great ſeal, to hear and determine appeals in the three following caſes: 1. When a ſentence is given in any eccleſiaſtical cauſe by the archbiſhop or his official. 2. When any ſentence is given in any eccleſiaſtical cauſe in places exempt. 3. When a ſentence is given in the admiral's court, in ſuits civil and marine, by the order of the civil law. This commiſſion is uſually filled with lords ſpiritual and temporal, judges of the courts at *Weſtminſter*, and doctors of the civil law. 4 *Inſt.* 339.

The manner of obtaining a commiſſion of delegates is thus: The proctor of the appellant draws a petition to the lord chancellor, ſetting forth the cauſe, and what his client inſiſted on, and what the judge decreed; and that thereupon his client, thinking himſelf aggrieved, hath appealed from the ſaid decree to the king's majeſty in his high court of chancery; wherefore his client humbly requeſts of the lord chancellor, that a commiſſion of appeal be made out and iſſued under the great ſeal, directed to certain judges delegate to be named at his pleaſure, to hear and determine the ſaid cauſe. Whereupon the lord chancellor ſets down the names of ſuch perſons as he thinks proper; and afterwards a commiſſion is drawn and executed in due form, by virtue whereof the commiſſioners proceed to hear and determine the matter of the appeal. 1 *Oughton*, 437.

DELIVERY, of a deed, is an eſſential requiſite to the completion of it. For although it be ſigned and ſealed, yet it is of no force if it is not delivered by the party himſelf or his ſpecial attorney, to the party to whom it is made, or to ſome other to his uſe. And it takes effect only from the delivery; for if the date be falſe or impoſſible, the delivery aſcertains the time of it. And if another perſon ſeals the deed, yet if the party delivers it himſelf, he thereby adopts the ſealing, and by a parity of reaſon the ſigning alſo, and makes them both his own. 2 *Black.* 306.

A delivery may be either *abſolute*, that is, to the party or grantee himſelf; or *conditional*, to a third perſon, to hold till ſome conditions be performed on the part of the grantee; in which

which laſt caſe, it is not delivered as a deed, but as an *eſcrow*, that is, as a *ſcrowl*, or writing, which is not to take effect as a deed till the conditions be performed, and then it is a deed abſolute. *Id.*

When a deed is delivered, words are not neceſſary, for then a dumb man could not deliver a deed: and as it may be delivered without words, ſo may it be delivered by words without any act of delivery; as if the writing lies upon the table, and the feoffor ſaith to the feoffee, "Take that as my deed," it is a ſufficient delivery. So the deed of a corporation needs no delivery, the common ſeal being ſufficient without it. *Wood. b.* 2. *c.* 3.

DEMAND, is a word of art; and in the underſtanding of the common law is of ſo large an extent, as no other word in the law is, unleſs it be the word *claim*. 1 *Inſt.* 291.

There are two kinds of demand; a demand in *deed*, and a demand in *law*; or, an *expreſs* and an *involied* demand. *Id.*

In a real action, he that bringeth his action maketh his *demand*, and therefore is properly called a *demandant*; and he that defendeth is called *tenant*, becauſe he is tenant of the freehold of the land. *Id.*

If a man releaſe to another all manner of demands, this is the beſt releaſe to him to whom it is made, that he can have, and ſhall enure moſt to his advantage. *Litt. ſect.* 508.

A releaſe of *ſuits* is more large and beneficial than a releaſe of *quarrels* or of *actions*; but a releaſe of *demands* is more large and beneficial than either of them; for this is a releaſe of all that the other are releaſes of, and more: for by a releaſe of all *demands*, all freeholds and inheritances executory are releaſed, as rents and the like; ſo alſo all executions, actions, entries, and ſeiſures. So by a releaſe of all demands to a diſſeiſor, the right of entry to the land is releaſed. 8 *Co.* 154.

If a man leaſes land by indenture for years, reſerving a rent payable at certain days, and the leſſee covenants to pay the ſaid rent at the days limited, the leſſor is intitled to his rent, without demand; for the leſſee is obliged to pay it at the days by force of his covenant. 2 *Danv. Abr.* 101.

But if a leſſor makes a leaſe rendering rent, and the leſſee covenants to pay the rent, *being lawfully demanded*, the leſſee is not bound to pay the rent without a demand. *Id.* 102.

But a diſtreſs for rent is a demand in itſelf. 1 *Roll's Abr.* 426. 428.

In an action of debt upon a bill of 70*l.* to be paid upon demand, it was inſiſted that a demand was requiſite, ſo that a demand in law by bringing the action will not ſerve the turn: but adjudged

well enough; for it is a duty presently, and so needs no demand. *Cro. Eliz.* 548. 548

DEMANDANT, is he who claims or *demands* his right in an action respecting the *realty*, as a *plaintiff* is he who *complains* of the injury in an action respecting the *personalty*. So there is *tenant*, who *holds* the land in an action *real*, and *defendant*, who *defends* the cause in an action *personal* or *mixed*. 1 *Inst.* 127.

DEMESNE, *domain*, *dominicum*, is that part of the lands of a manor, which the lord hath not granted out in tenancy, but which is reserved for his own use and occupation.

DEMISE, *dimissio*, is applied to the convevance of an estate, either in fee, or for term of life, or years. 2 *Inst.* 483.

A DEMURRER, cometh of the Latin word *demorari* to abide; and therefore he which demurreth in law is said to be one that abideth in law, *moratur*, or *demoratur in lege*. Whensoever the counsel of the party is of opinion, that the declaration or the plea of the adverse party is insufficient in law, then he demurreth or abideth upon the point in question, and referreth the same to the judgment of the court. 1 *Inst.* 71

But if the plea be sufficient in *law*, and the matter of *fact* be false, then the adverse party taketh issue thereupon, and that is tried by a jury; for matters in law are decided by the judges, and matters of fact by juries. *Id.*

He that demurreth in law confesses the facts to be true, as stated by the opposite party, but denies that by the law arising upon those facts any injury is done to the plaintiff, or that the defendant has made out a lawful excuse. As if the matter of the plaintiff's declaration be insufficient in law, then the defendant demurs to the declaration; if, on the other hand, the defendant's excuse or plea be invalid, the plaintiff demurs in law to the plea; and so in every other part of the proceedings, where either side perceives any material objection in point of law, upon which he may rest his case. 3 *Black.* 314.

The form of such demurrer is by averring the declaration or plea, the replication or rejoinder, to be insufficient in law to maintain the action or the defence; and therefore praying judgment for want of sufficient *matter* alleged. *Id.*

Sometimes demurrers are merely for want of sufficient *form* in the writ or declaration. But in case of exceptions to the form or manner of pleading, the party demurring must set forth the causes of his demurrer, or wherein he apprehends the deficiency to consist. *Id.*

And upon either a *general*, or such a *special*, demurrer, the opposite party avers it to be sufficient, which is called a *joinder in demurrer*, and then the parties are at issue in point of law: which issue in law, or demurrer, is argued by counsel on both sides; and if the points be difficult, then it is argued openly by the

the judges of the court, and if they, or the greater part, concur in opinion, accordingly judgment is given: but if the court be equally divided, or conceive great doubt of the caſe, then may they adjourn it into the exchequer chamber, where the caſe ſhall be argued by all the jud ges. 1 *Inſt.* 71

And the court ſhall give judgment according to the very right of the cauſe, and matter of law, that ſhall appear, without regarding any want of form in any writ, return, plaint, declaration, or other pleading, proceſs, or courſe of proceeding, except thoſe only which the party demurring ſhall ſpecially and particularly ſet down and expreſs in his demurrer. *Id.*

And as there is a demurrer upon *pleading*, ſo there is a demurrer upon evidence; as if the plaintiff ſhew in evidence any matter of record, or deeds, or writings, or other matter of evidence by teſtimony of witneſſes, whereupon doubt in law ariſes, and the defendant offer to demur in law thereupon, the plaintiff cannot refuſe to join in demurrer, no more than in a demurrer upon a declaration, replication, or the like. And ſo, on the contrary, may the plaintiff demur in law upon the evidence of the defendant. 1 *Inſt.*. 72.

A demurrer in *equity* is nearly of the ſame nature as a demurrer in law, being an appeal to the judgment of the court, whether the defendant ſhall be bound to anſwer the plaintiff's bill; as, for want of ſufficient matter of equity therein contained; or where the plaintiff, on his own ſhewing, appears to have no right; or where the bill ſeeks a diſcovery of a thing which may cauſe a forfeiture of any kind, or may convict a man of any criminal miſbehaviour: for any of theſe cauſes, a defendant may demur to the bill. And if, on demurrer, the defendant prevails, the plaintiff's bill ſhall be diſmiſſed; if the demurrer is over-ruled, the defendant is ordered to anſwer. 3 *Black.* 446.

DENIZEN (Fr. *donaiſon*), is an alien infranchiſed by the king's letters patent, and is called *donaiſon*, becauſe his legitimation proceeds *ex donatione regis*. He is in a kind of middle ſtate, between an alien and a natural born ſubject, and partakes of both of them. He may take lands by purchaſe or deviſe, which an alien may not, but cannot take by inheritance; for his parent, through whom he muſt claim, being an alien, had no inheritable blood, and therefore could convey none to the ſon. And upon a like defect of hereditary blood, the iſſue of a denizen, born *before* denization, cannot inherit to him; but his iſſue born *after*, may. And no denizen can be of the privy council, or either houſe of parliament, or have any office of truſt, civil or military, or be capable of any grant of lands from the crown. 1 *Black.* 374.

DEODAND, is where any moveable thing inanimate, or beaſt animate, doth move to or cauſe the untimely death of any rea-

ſonable creature, by miſchance, without the will or fault of himſelf, or of any perſon. 3 *Inſt.* 57.

This, although it be not properly homicide, nor puniſhable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raiſe an abhorrence of murder; and the unhappy inſtrument or occaſion of ſuch death is called a deodand (*Deo dandum*, to be given to *God*), and was anciently paid into the hands of the king's almoner, to be applied to pious uſes for the ſoul of the deceaſed. Alſo all ſuch weapons, whereby one man kills another, are forfeited. And therefore, in all indictments for homicide, the inſtrument of death, and the value, are preſented and found by the grand jury (as, that the ſtroke was given by a certain penknife, value ſixpence), that the king or his grantee may claim the deodand; for it is no deodand, unleſs it be preſented as ſuch by a jury of 12 men. 3 *Inſt.* 57. 1 *Haw.* 66.

It was heretofore holden, that things fixed to the freehold, as the wheel of a mill, or a bell hanging in the ſteeple, may be deodands; but by the later reſolutions they cannot, unleſs they were ſevered before the accident happened. 1 *Haw.* 66.

Where a thing, not in motion, is the occaſion of a man's death, that part only which is the immediate cauſe is forfeited; as if a man be climbing up the wheel of a cart, and is killed by falling from it, the wheel alone is a deodand: but wherever the thing is in motion, not only that part which immediately gives the wound (as the wheel, which runs over his body), but all things which move with it and help to make the wound more dangerous (as the cart and loading, which increaſe the preſſure of the wheel) are forfeited. *Id.*

After all, as this forfeiture ſeemeth to have been originally founded, rather in the ſuperſtition of an age of ignorance, than in the principles of ſound reaſon and policy, it hath not of late years met with much countenance in *Weſtminſter-hall.* And when juries have taken upon them to uſe a judgment of diſcretion, not ſtrictly within their province, for reducing the quantum of the forfeiture, the court of king's bench hath generally refuſed to interfere on behalf of the lord of the franchiſe, to aſſiſt ſo odious a claim. *Foſt.* 266.

DEPARTURE, is a word in our law properly applicable to a *defendant*, who firſt pleading one thing in bar of an action, and being replied unto, doth in his rejoinder quit that, and ſhew another matter, contrary to or not purſuing his firſt plea, which is called a *departure* from his plea. Alſo where a *plaintiff* in his declaration ſets forth one thing, and after the defendant hath pleaded, the plaintiff in his replication ſhews new matter different from his declaration, this is a departure. This departure the law will not allow of, becauſe it would occaſion endleſs altercation.

cation. Therefore the replication muſt ſupport the declaration, and the rejoinder muſt ſupport the plea, without departing out of it. As in the caſe of pleading, no award made in conſequence of a bond of arbitration, to which the plaintiff replies ſetting forth an actual award; now the defendant cannot rejoin that he hath performed this award, for ſuch rejoinder would be an entire departure from his original plea, which alleged that no ſuch award was made; therefore he hath now no other choice, but to traverſe the fact of the replication, or elſe to demur upon the law of it. 3 *Black.* 310.

DEPOPULATION, is a waſting or deſtruction; a deſolation or *unpeopling* of any place by peſtilence, fire, ſword, or other violence. 12 *Co.* 30.

DEPOPULATORES AGRORUM, were great offenders by the ancient common law; ſo called, becauſe, by proſtrating and ruining of houſes of habitation of the king's people, they, as it were, depopulated towns and villages, leaving them without inhabitants. 3 *Inſt.* 204.

DEPOSITION, is the teſtimony of a witneſs, otherwiſe called a *deponent*, put down in writing by way of anſwer to interrogatories exhibited for that purpoſe.

Depoſitions of witneſſes may be read when the witneſs is dead, but not when the witneſs is living; for whilſt the witneſs is living, they are not the beſt evidence the nature of the thing is capable of. *Theory of Evid.* 30.

Yet they may be read when a witneſs is ſought and cannot be found; for then he is in the ſame circumſtances, as to the party that is to uſe him, as if he were dead. *Id.*

So if it is proved that a witneſs was ſubpœnaed, and fell ſick by the way; for in this caſe likewiſe, the depoſition is the beſt evidence that can be had; and that anſwers what the law requires. *Id.*

But a depoſition cannot be given in evidence againſt any perſon that was not party to the ſuit; and the reaſon is, becauſe he had not liberty to croſs-examine the witneſs; and it is againſt natural juſtice, that a man ſhould be concluded by proofs in a cauſe to which he was not a party. For this reaſon, depoſitions in chancery ſhall not be read for or againſt the defendant upon an information or indictment, for the king was no way party to the ſuit. *Id.*

Yet this rule admits of ſome exceptions; as, particularly, in all caſes where hearſay and reputation are evidence; for undoubtedly what a witneſs, who is dead, hath ſworn in a court of juſtice, is of more credit than what another perſon ſwears he heard him ſay. So a depoſition taken in a cauſe between other parties will be admitted to be read, to contradict what the ſame witneſs ſwears at a trial. *Id.* 30, 31.

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It is a general rule, that depoſitions taken in a court not of record, ſhall not be allowed in evidence elſewhere. So it hath been holden with regard to depoſitions in the eccleſiaſtical court, though the witneſſes were dead. So where there cannot be a croſs-examination, as depoſitions taken before commiſſioners of bankrupts, they ſhall not be read in evidence. *Id.* 33, 34.

But the examination of an informer taken upon oath, and ſubſcribed by him, either before a coroner upon an inquiſition of death, or before juſtices of the peace in purſuance of the ſtatutes of *Ph.* & *M.* upon a bailment or commitment for any felony, may be given in evidence at the trial, if it be made out by oath to the ſatisfaction of the court, that ſuch informer is dead, or unable to travel, or kept away by the means or procurement of the priſoner, and that the examination offered in evidence is the very ſame that was ſworn to before the coroner or juſtice, without any alteration whatſoever. 2 *Haw.* 429.

Where witneſſes in a cauſe are going to ſea, or on a long journey, the court will give leave to examine them on interrogatories, at a judge's chamber, in the preſence of the attornies on both ſides; which depoſitions in ſuch caſe will be admitted as evidence. *Pract. Att.* 234.

DEPRIVATION, is an eccleſiaſtical cenſure, whereby a clergyman is deprived of his parſonage, vicarage, or other eccleſiaſtical promotion or dignity.

In all cauſes of deprivation, theſe things muſt concur: 1. A monition or citation of the party to appear. 2. A charge given him, to which he is to anſwer, called a libel. 3. A competent time aſſigned for the proofs and anſwers. 4. A liberty for counſel to defend his cauſe, and to except againſt the proofs and witneſſes. 5. A ſolemn ſentence, after hearing all the proofs and anſwers. If theſe be not obſerved, the party hath cauſe of appeal, and may have remedy by a ſuperior court. 1 *Still.* 323.

But beſides deprivation by canonical cenſures, there are divers penal ſtatutes which for ſome crime or neglect declare the benefice to be void, without a formal ſentence of deprivation; as, for ſimony, for maintaining any doctrine in derogation of the king's ſupremacy, or of the thirty-nine articles, or of the book of common prayer; for neglecting, after inſtitution, to read the liturgy and articles in the church, or to make the declarations againſt popery, or to take the oath of abjuration; in all which, and other like caſes, the benefice is *ipſo facto* void, without any formal declaratory ſentence. 1 *Black.* 393.

DEPUTY, is one that exerciſeth an office in another man's right, whoſe forfeiture or miſdemeanor ſhall cauſe him, whoſe deputy he is, to loſe his office. The common law takes notice of deputies in many caſes, but not of under deputies; for a de-

puty

puty is generally but a perſon authoriſed who cannot authoriſe another. 1 *Lill. Abr.* 446.

There is a difference between a *deputy* and an *aſſignee* of an office. For an aſſignee hath an eſtate or intereſt in the office itſelf; and doth all things in his own name; for whom the grantor of the office ſhall not anſwer, except in ſpecial caſes. And when an officer hath power to make an aſſignee, he may of courſe make a deputy. Alſo when an office deſcendeth to an infant, idiot, or the like, he may of courſe make a deputy. But the ſuperior officers muſt anſwer for their deputies in civil actions, if they are not ſufficient to anſwer damages: in criminal caſes, deputies muſt anſwer for themſelves. *Wood. b.* 2. *c.* 2.

A *ſheriff* may make a deputy, except in ſome particular things which are to be done by the ſheriff himſelf; as if a writ ſaith, that the ſheriff ſhall go *in perſon*. The ſheriff, and not the king, hath power to appoint this deputy, although there is no particular power given in his patent to make a deputy; for it is an incident to the ſheriff's office, and it would be inconvenient, if the ſheriff ſhould be reſponſible for his deputy that is choſen by another. 9 *Co.* 49.

A *coroner* cannot make a deputy, for he is a judicial officer, and therefore ought to execute his office in perſon. *Wood. b.* 1. *c.* 7.

But a *conſtable*, inaſmuch as his office is wholly miniſterial, and not judicial, may make a deputy. *Bur. Manſf.* 1259.

DERAIGN (Fr.), *diſrationare*; to confound and diſorder, or to turn out of courſe, or diſplace.

DERELICT, is any thing forſaken or left. Derelict lands, left by the ſea, belong to the king; but if the ſea ſhrinks back by degrees below the uſual water mark, the land gained ſhall go to the owner of the land adjoining. 2 *Black.* 262.

DESCENDER. Writ of *formedon in deſcender* lies where a gift in tail is made, and the tenant in tail aliens the lands intailed, or is diſſeiſed of them, and dies; the heir in tail, in order to recover the ſame, ſhall have this writ againſt him who is then the actual tenant of the freehold. 3 *Black.* 192.

DESCENT, or hereditary ſucceſſion, is the title by which a man, on the death of his anceſtor, acquires his eſtate by right of repreſentation, as his heir at law. And an eſtate ſo deſcending to the heir, is in law called the inheritance. 2 *Black.* 201.

Deſcent is of three kinds; by *common law*, by *cuſtom*, or by *ſtatute*. By *common law*, as where one hath land of inheritance in fee ſimple, and dieth without diſpoſing thereof in his life-time, and the land goes to the eldeſt ſon and heir of courſe, being caſt upon him by the law. Deſcent of fee ſimple by *cuſtom*, is ſometimes to all the ſons, or to all the brothers (where one brother dieth without iſſue), as in gavel-kind; ſometimes to the youngeſt ſon, as in Borough Engliſh; and ſometimes to the eldeſt daughter,

ter, or the youngeſt, according to the cuſtoms of particular places. Deſcent by *ſtatute* is of fee tail, as directed by the ſtatute of *Weſtm.* 2. *de donis.*

Deſcent at common law is either *lineal* or *collateral*: *lineal* is a deſcent downwards in a right line, from the grandfather to the father, the father to the ſon, the ſon to the grandſon: *collateral* is a deſcent which ſprings out from the *ſide* of the whole, as another branch thereof; ſuch as a grandfather's brother, the father's brother, and ſo downward.

Inheritances ſhall lineally deſcend to the iſſue of the perſon laſt actually ſeiſed, *in infinitum*; but ſhall never lineally aſcend. 3 *Black.* 208.

The male iſſue ſhall be admitted before the female; and where there are two or more males in equal degree, the eldeſt only ſhall inherit (except where there are particular local cuſtoms to the contrary): but the females ſhall inherit all together, except in caſe of ſucceſſion to the crown which is inviſible; and of ſucceſſion to dignities and titles of honour: yet where a man holds an earldom to him and the heirs of his body, and dies, his eldeſt daughter ſhall not ſucceed of courſe to the title of counteſs, but the dignity is in ſuſpence or abeyance till the king ſhall declare which of the daughters ſhall have that title. 2 *Black.* 216.

If lands come by deſcent from the mother, the heir on the part of the father ſhall never inherit; nor, if the lands come by deſcent from the father, ſhall the heirs on the part of the mother inherit: but if it be not known from what ſide the inheritance deſcended, or where the perſon from whom the land is claimed by deſcent was himſelf the firſt purchaſer; there the heir on the part of the father, however diſtant, ſhall be admitted; and if no heir on the part of the father can be found, then the heir on the part of the mother ſhall be admitted. 2 *Black.* 222.

But if a man ſeiſed of land as heir on the part of his mother, makes a feoffment, and takes back an eſtate to him and his heirs; this, as a purchaſe, alters the deſcent, and if he die without iſſue, the heir on the part of the father ſhall inherit it. 1 *Inſt.* 12.

If a man die without iſſue, the inheritance ſhall deſcend to his next collateral kinſman of the *whole blood*, either perſonally or by repreſentation; but the *half blood* can never inherit. 2 *Black.* 227. But in deſcent of eſtates tail, half blood is no hindrance, becauſe the iſſue are in *per formam doni*.

If one die ſeiſed of lands, in which another hath a right to enter, and it deſcends to his heir, ſuch deſcent ſhall take away the other's right of entry, and put him to his action for recovery thereof.

DESCRIPTION, *deſcriptio*. In deeds and grants there muſt be a *certain* deſcription of the lands granted, the *places* where the lands lie, and of the *perſons* to whom granted, *&c.* to make them good.

good. But wills are more favoured than grants as to thoſe deſcriptions; a wrong deſcription of the perſon will not make a deviſe void, if there be otherwiſe a ſufficient certainty what perſon was intended by the teſtator. 1 *Nelſ. Abr.* 647.

DETINUE, is a writ which lieth where any man comes to goods either by delivery, or by finding. It is called *a detinendo*, becauſe *detinet* is the principal word in the writ; and it lies only for the *detaining*, when the taking was lawful. 1 *Inſt.* 286.

So if I lend a man a horſe, and he afterwards refuſes to reſtore it, this injury conſiſts in the detaining, and not in the original taking; and the regular method for me to recover poſſeſſion is by this action of detinue. 3 *Black.* 151.

In this writ, the plaintiff ſhall recover the thing detained; and therefore it muſt be ſo certain, as that it may be ſpecifically known. Therefore it cannot be brought for money, corn, or the like, for that cannot be known from other money or corn, unleſs it be in a bag or a ſack, for then it may be diſtinguiſhably marked. *Id.*

In order therefore to ground an action of detinue, which is only for the detaining, theſe points are neceſſary: 1. That the defendant came lawfully by the goods, as either by delivery to him, or finding them. 2. That the plaintiff have a property. 3. That the goods themſelves be of ſome value. And, 4. That they be aſcertained in point of identity. Upon this, the jury, if they find for the plaintiff, aſſeſs the reſpective values of the ſeveral parcels detained, and alſo damages for the detention. And the judgment is conditional, that the plaintiff recover the ſaid goods, or (if they cannot be had) their reſpective values, and alſo the damages for detaining them. *Id.*

But there is one diſadvantage which attends this action; namely, that the defendant is herein permitted to wage his law; that is, to exculpate himſelf by oath, and thereby defeat the plaintiff of his remedy. For which reaſon this action is of late much diſuſed, and hath given place to the action of trover. *Id.*

A man may have an action of *detinue of charters* which concern the inheritance of his land, if he know the certainty of them, and what land they concern; or if they be in a bag ſealed, or cheſt locked, though he knows not the certainty of them; and it is good policy (if poſſibly he can) in that caſe to declare of one charter in ſpecial, and then the defendant ſhall not wage his law. 1 *Inſt.* 286.

DEVASTAVIT, is a writ that lies againſt executors or adminiſtrators, for paying debts upon ſimple contract before debts on bonds and ſpecialties, or the like; for in this caſe they are as liable to action as if they had ſquandered away the goods of the deceaſed, or converted them to their own uſe; and are compel-

lable

lable to pay ſuch debts by ſpecialty out of their own goods, to the value of what they ſo paid illegally. *Dyer*, 232.

But if an executor pays debts upon ſimple contract, before he hath any notice of bonds, it is not a *devaſtavit*; otherwiſe it might be in the power of the obligee to ruin the executor, by keeping up his bond, until the executor ſhall have paid away all the aſſets in diſcharging ſimple contract debts. But of debts upon record, the executor ought to take notice at his peril. 2 *Bac. Abr.* 434.

Where an executor pays legacies before debts, and hath not ſufficient to pay both, it is a *devaſtavit*. Alſo where an executor ſells the teſtator's goods at an under value, it is a *devaſtavit*; but this is to be underſtood where the ſale is fraudulent, for if more money could not be had, it is not a *devaſtavit*. *Kelw.* 59. 1 *Nelſ. Abr.* 649.

DEVISE, is the diſpoſition of lands and tenements by will; as *teſtame t* is the diſpoſition in like manner of goods and chattels: but the words are often uſed promiſcuouſly the one for the other. See WILL.

DICE. By ſeveral ſtatutes, duties are impoſed upon every pair of dice made in *Great Britain*, which are to be under the management of the commiſſioners of the ſtamp duties.

DIEM CLAUSIT EXTREMUM, is a writ ſo called from thoſe ſpecial words in the writ, iſſued to the eſcheator of the county, upon the death of any of the king's tenants *in capite*, to take the lands into the king's hands, and to inquire by a jury how much land ſuch tenant held of the king *in capite*, what was the yearly value thereof, who was his heir, and of what age. And the heir, if of age, or when he came of age, was to have the lands delivered back to him, which was called *livery* of the lands; the tenant having firſt paid to the king his relief or fine for the ſame.

DIES DATUS, is a day or time of reſpite given by the court to the defendant in a ſuit.

DIEU ET MON DROIT, *God and my right*; the motto of the royal arms; intimating that the king of *England* holds his empire of none but *God*. It was firſt aſſumed by king *Richard* the firſt.

DIGNITY, ſignifies honour and authority. It may be divided into ſuperior and inferior; as the titles of duke, earl, baron, are of the higher ſort of dignities; ſo baronet, knight, eſquire, are of the lower order. And there are eccleſiaſtical dignities, as thoſe of biſhop, dean, archdeacon, prebendary; and the poſſeſſor of thoſe dignities is called *dignitary*.

DILAPIDATION, is a kind of eccleſiaſtical waſte, either voluntary, by pulling down, or permiſſive, by ſuffering the chancel, parſonage-houſe, and other buildings, or fences, to decay for want of neceſſary reparation. In which caſe an action lies either

either in the ſpiritual court by the canon law, or in the courts of common law: and may be brought by the ſucceſſor againſt the predeceſſor, if living, or, if dead, againſt his executors. It is alſo ſaid to be good cauſe of deprivation, if a biſhop, parſon, vicar, or other eccleſiaſtical perſon, diſapidates the buildings, or cuts down timber growing on the patrimony of the church, unleſs for neceſſary repairs; and that a writ of prohibition will alſo lie againſt him in the courts of common law. By the ſtatute 13 *Eliz. c.* 10. if any ſpiritual perſon makes over or alienates his goods with intent to defeat his ſucceſſors of their remedy for diſapidations, the ſucceſſor ſhall have ſuch remedy againſt the alienee, in the eccleſiaſtical court, as if he were the executor of his predeceſſor. And by 14 *Eliz. c.* 11. all money recovered for diſapidations ſhall, within two years, be employed upon the buildings, in reſpect whereof it was recovered, on pain of forfeiting double value to the crown. 3 *Black.* 91.

DILATORY pleas are of three kinds: 1. To the *juriſdiction* of the court, alleging, that it ought not to hold plea of the matter in hand, as belonging to ſome other court. 2. To the *diſability* of the plaintiff, by reaſon whereof he is incapable to commence or continue the ſuit, as that he is outlawed, attainted, an infant, or the like. 3. In *abatement*, as for ſome defect in the writ, as a miſnomer of the defendant, or other want of form in any material reſpect. Theſe pleas were formerly uſed as merely dilatory, without any foundation of truth, and calculated only for delay; but now by the ſtatute 4 & 5 *An. c.* 16. no dilatory plea ſhall be admitted, without affidavit made of the truth thereof, or ſome probable matter ſhewn to the court, to induce them to believe it true. 3 *Black.* 301.

DIMISSORY LETTERS, are ſuch as are uſed where a candidate for holy orders hath a title in one dioceſe, and is to be ordained in another; the proper dioceſan ſends his letters dimiſſory directed to ſome other ordaining biſhop, giving leave that the bearer may be ordained, and have ſuch a cure within his diſtrict.

DIOCESE (from the Greek διοικεω, *ſeorſim habito*), ſignifies the circuit of a biſhop's juriſdiction. For this realm hath two ſorts of diviſions, one into ſhires or counties in reſpect of the temporal ſtate, and another into provinces in regard to the eccleſiaſtical ſtate. Which provinces are ſubdivided into dioceſes. The provinces are two; thoſe of *Canterbury* and *York*, whereof *Canterbury* includes twenty-one dioceſes or ſees of ſuffragan biſhops; and *York* three, beſides the biſhoprick of the *Iſle* of *Man*, which was annexed to the province of *York* by king *Henry* the eighth. 1 *Inſt.* 94.

DISABILITY is, where a man is diſabled, or made incapable to inherit any lands, or take that benefit which otherwiſe he might

might have done. Which may happen four ways; by the act of an anceſtor; or of the party himſelf; by the act of *God*: or of the law. 1. Diſability by the act of the *anceſtor*; this is, where the anceſtor is attainted of treaſon or felony, which corrupts the blood of his children, ſo that they may not inherit his eſtate. 2. Diſability by the act of the *party*: which is, where a man binds himſelf by obligation, that upon ſurrender of a leaſe, he will grant a new eſtate to the leſſee, and afterwards he grants over the reverſion to another, which puts it out of his power to perform it. 3. Diſability by the act of *God*: where a perſon is of *non-ſane* memory, whereby he is incapable to make any grant; ſo that if he paſſeth any eſtate out of him, it may after his death be made void; but it is a maxim in law, that a man of full age ſhall not be received to diſable his own perſon. 4. Diſability by act of the *law*: this is where a man by the ſole act of the law, without any thing by him done, is rendered incapable of the benefit of the law; as an alien born, or the like. *Terms of the Law.*

There are alſo other diſabilities by ſtatute in many caſes; as papiſts are diſabled to preſent to church benefices; officers not taking the oaths are diſabled to hold their offices; foreigners, though naturalized, to bear offices in the government; and many other ſuch like.

DISCLAIMER is, where a tenant, who holds of the lord of the fee, neglects to render him the due ſervices, and, upon an action brought to recover them, *diſclaims* to hold of his lord; which diſclaimer of tenure in any court of record is a forfeiture of the lands to the lord. And ſo likewiſe if, in any court of record, the tenant doth any act which amounts to a virtual diſclaimer; if he claims any greater eſtate than was granted him at the firſt infeudation, or takes upon himſelf thoſe rights which belong only to tenants of a ſuperior claſs; if he affirms the reverſion to be in a ſtranger, by accepting his fine, attorning as his tenant, colluſive pleading, and the like; ſuch behaviour amounts to a forfeiture of his eſtate. 2 *Black.* 275.

DISCONTINUANCE, *of an action*, is where the plaintiff leaves a chaſm in the proceedings of his cauſe, as by not continuing the proceſs regularly from time to time; in which caſe he muſt begin again, and uſually pays coſts to the defendant. 3 *Black.* 296.

Diſcontinuance of an eſtate is, when he who hath an eſtate tail, makes a larger eſtate of the land than by law he is intitled to do: in which caſe the eſtate is good ſo far as his power extends, but no farther: as if tenant in tail makes a feoffment in fee ſimple, or for the life of the feoffee, or in tail, all which are beyond his power to make; for that, by the common law, extends no farther than to make a leaſe for his own life; here the entry of the feoffee is lawful during the life of the feoffor: but if he retains

retains the poſſeſſion after the death of the feoffor, it is an injury, which is termed a diſcontinuance of the eſtate, by which he who hath right is driven to his action. 3 *Black.* 171.

DISCRETION, *diſcretio*, when a thing is left to any perſon to be done according to his *diſcretion*, the law intends it muſt be done with ſound *diſcretion*, and according to law: and the court of king's bench hath a power to redreſs things that are otherwiſe done, notwithſtanding they are left to the *diſcretion* of thoſe that do them. 1 *Lill. Abr.* 477.

DISFRANCHISEMENT, is the taking away a man's freedom or privilege. Corporations generally have power by their charter or preſcription to disfranchiſe a member for doing any thing againſt the duty of his office as citizen or burgeſs, and to the prejudice of the weal public of the city or borough, and againſt his oath which he took when he was ſworn a freeman of the city or borough. But words of contempt, or againſt good manners, although they may be cauſed to bind him to the good behaviour, yet they are not a ſufficient cauſe to disfranchiſe him. So if he intend or endeavour of himſelf, or conſpire with others, to do a thing againſt the duty or truſt of his freedom, and to the prejudice of the corporation, but doth not execute that thing, it may be cauſe to puniſh him for the ſame, but not to disfranchiſe him. For when a man is a freeman of a city or borough, he hath a freehold for life in his freedom, and with others in their politic capacity hath inheritance in the lands of the corporation, and intereſt in their goods, and perhaps it concerns his trade and means of living; and therefore the matter which ſhall be cauſe of his disfranchiſement ought to be an act or deed, and not an endeavour or enterprize whereof he may repent before the execution thereof, and whereof no prejudice doth enſue. 11 *Co.* 98.

DISMES, *decimæ*. See TITHES.

DISPENSATION. Notwithſtanding the ſtatute of proviſors, and divers other ſtatutes againſt the papal incroachments upon the eccleſiaſtical juriſdiction in this realm, the pope's power ſtill prevailed againſt all theſe ſtatutes; and particularly in the matter of diſpenſations, which was one great branch of the revenue of the apoſtolic ſee. But by the ſtatute of 25 *H.* 8. *c.* 21. this power was taken from the pope, and veſted in the archbiſhop of *Canterbury*, ſo far forth as ſuch diſpenſations may be lawfully granted without offending the laws of *God*, and that in all greater matters the king's conſent in chancery be obtained.

DISPENSING POWER OF THE CROWN, by a *non-obſtante* to an act of parliament, was carried ſo far in the reign of king *James* the ſecond, as to render the execution of the laws intirely dependant on the pleaſure of the king; therefore by the 1 *W. ſeſſ.* 2. *c.* 2. it is declared and enacted, that the pretended power

power of ſuſpending laws, or the execution or laws, by regal authority, without conſent of parliament, is illegal.

DISSEISIN, is a wrongful putting out of him that is ſeiſed of the freehold. Which may be effected either in *corporeal* inheritances, or *incorporeal*. Diſſeiſin of things *corporeal*, as of houſes and lands, muſt be by entry and actual diſpoſſeſſion of the freehold; as if a man enters either by force or fraud into the houſe of another, and turns, or at leaſt keeps him and his ſervants out of poſſeſſion. Diſſeiſin of *incorporeal* hereditaments cannot be an actual diſpoſſeſſion; for the ſubject itſelf is neither capable of actual bodily poſſeſſion or diſpoſſeſſion; but it depends on their reſpective natures and various kinds; being in general nothing more than a diſturbance of the owner in the means of coming at or enjoying them. But the diſſeiſin of *incorporeal* hereditaments is only at the election and choice of the party injured, if, for the ſake of more eaſily trying the right, he is pleaſed to ſuppoſe himſelf diſſeiſed. And ſo alſo even in *corporeal* hereditaments, a man may frequently ſuppoſe himſelf to be diſſeiſed, when he is not ſo in fact, for the ſake of intitling himſelf to the more eaſy and commodious remedy of an aſſize of *novel diſſeiſin*, inſtead of being driven to the more tedious proceſs of a writ of *entry*. 3 *Black.* 169.

DISSENTERS. By the 1 *W. ſt.* 1. *c.* 18. commonly called the act of toleration, it is enacted, that none of the acts made againſt perſons diſſenting from the church of *England* (except the teſt acts 25 *C.* 2. *c.* 2. and 30 *C.* 2. *ſt.* 2. *c.* 1.) ſhall extend to any diſſenters, other than papiſts, and ſuch as deny the Trinity: provided, 1. That they take the oaths of allegiance and ſupremacy (or, being quakers, make an affirmation to the like purpoſe) and ſubſcribe the declaration againſt popery. 2. That they repair to ſome congregation certified to and regiſtered in the court of the biſhop or of the quarter ſeſſions. 3. That the doors of ſuch meeting-houſe ſhall not be locked, barred, or bolted. Diſſenting teachers alſo, by the 19 *G.* 3. *c.* 44. ſhall ſubſcribe a declaration that they are chriſtians and proteſtants, and as ſuch, believe the ſcriptures of the old and new teſtament. And if any perſon ſhall wilfully diſturb any congregation aſſembled in any diſſenting meeting-houſe, or miſuſe any teacher or preacher there, he ſhall be bound over to the ſeſſions of the peace, and on conviction there ſhall forfeit 20*l.*

By the 1 *G. ſt.* 2. *c.* 5. if any perſons, riotouſly and tumultuouſly aſſembled, ſhall demoliſh or pull down, or begin to demoliſh or pull down, any building for religious worſhip, duly regiſtered and certified according to the ſaid act 1 *W.* they ſhall be adjudged guilty of felony without benefit of clergy.

If a diſſenter be choſen conſtable, churchwarden, overſeer of the poor, or to any parochial or ward office, he may execute the ſame

ſame by a ſufficient deputy; and diſſenting teachers and preachers ſhall be exempted from the ſaid offices, and alſo from ſerving upon juries. 1 *W. ſt.* 1. *c.* 18. (And from ſerving in the militia. 19 *G.* 3. *c.* 44.)

DISTRESS, is the taking of a perſonal chattel out of the poſſeſſion of the wrong-doer, into the cuſtody of the party injured, to procure a ſatisfaction for the wrong committed; and is of two kinds, either for cattle treſpaſſing and doing damage, or for non-payment of rent or other duties.

Diſtreſs for rent muſt be for rent in arrear; therefore it may not be made on the ſame day on which the rent becomes due, as on the laſt day of the term of the leaſe. And therefore ſome uſe to reſerve the laſt half year's rent at ſome time before the leaſe expires, ſo as if the rent be not then paid, he may diſtrain before the leaſe expires. 1 *Inſt.* 47.

Generally, whatever goods and chattels the landlord finds upon the premiſes, whether they in fact belong to the tenant or a ſtranger, are diſtrainable by him for rent: otherwiſe a door would be open to infinite frauds. 3 *Black.* 8.

Diſtreſs for rent muſt be of a thing whereof a valuable property is in ſomebody; and therefore thoſe things which are *feræ naturæ* cannot be diſtrained. 1 *Inſt.* 47.

Whatever is in the perſonal uſe or occupation of a man, is for the time privileged from diſtreſs; as an ax with which a man is cutting wood, or a horſe whilſt a man is riding upon him. *Id.*

So things for maintenance of trades; as a horſe in a ſmith's ſhop, materials in a weaver's ſhop for making of cloth, ſacks of corn in a mill, and ſuch like. *Id.*

On a verbal leaſe, where the *quantum* of the rent appears, the landlord may diſtrain; but if there is no proof of the *quantum*, the landlord can only recover a *quantum meruit* by action on the caſe.

Diſtreſs muſt be in the day time; except for damage-feaſant, which may be in the night; otherwiſe the goods may be gone before he can take them. 1 *Inſt.* 142.

Generally, diſtreſs muſt be made on the premiſes: but if the goods be fraudulently carried off, they may within thirty days be diſtrained at any other place. 11 *G.* 2. *c.* 19.

Doors, gates, or incloſures, may not be broken open for making diſtreſs, unleſs where the goods are clandeſtinely removed; in which caſe, upon a warrant from a juſtice of the peace, they may be broken open. *Id.*

Diſtreſs may be impounded on any part of the premiſes. *Id.*

And no diſtreſs ſhall be driven out of the hundred, unleſs to an open pound in the ſame ſhire, and within three miles of the place where the diſtreſs was taken. 1 & 2 *P.* & *M.*

c. 12. Note, a pound is ſaid to be either *overt*, or open; as in a pinfold made for ſuch purpoſes, or in a man's own cloſe, or in the cloſe of another by his conſent; and it is therefore called open, becauſe the owner may give his cattle meat and drink, without treſpaſs to any other; and then the cattle muſt be ſuſtained at the peril of the owner: or it is a pound *covert*, or cloſe; as to impound the cattle in ſome part of his houſe; and then the cattle muſt be ſuſtained at the peril of him that diſtraineth, and he ſhall not have any ſatisfaction for the ſame. But if the diſtreſs be of utenſils of houſehold, or ſuch like dead goods, which may take harm by wet or weather, or be ſtolen away; there he muſt impound them in a houſe or other pound covert; for if he impound them in a pound overt, he muſt anſwer for them. 1 *Inſt.* 47.

Cattle diſtrained may not be worked or uſed, much leſs abuſed or hurt. *Cro. Ja.* 148.

If a man break the pound, he is by the common law indictable for the ſame, as an offence againſt the peace: or by the ſtatute 2 *W. c.* 5. the diſtrainor may, upon an action on the caſe, recover treble damages and coſts.

In caſe of diſtreſs for rent, if the tenant do not, within five days after the diſtreſs taken, and notice of the cauſe thereof given to him, replevy the goods, the diſtrainor, with the ſheriff or conſtable, ſhall cauſe the ſame to be appraiſed by two ſworn appraiſers, and ſell the ſame towards ſatisfaction of the debt and charges, rendering the overplus, if any, to the owner.

In caſe of diſtreſs by warrant of a juſtice of the peace for a penalty or forfeiture, the juſtice ſhall order the diſtreſs to be ſold within a certain time limited in the warrant, ſo as ſuch time be not leſs than four days, nor more than eight. 27 *G.* 2. *c.* 20.

DISTRESS INFINITE, is a proceſs commanding the ſheriff to diſtrain a perſon from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of ſomething due from the party diſtrained upon. Generally, it is provided that diſtreſſes ſhall be reaſonable and moderate; but in caſe of diſtreſs for ſuit of court, or for defect of appearance, in ſeveral caſes, where this is the only method of enforcing compliance, no diſtreſs can be immoderate; becauſe, be it of what value it will, it cannot be ſold, but ſhall be immediately reſtored on ſatisfaction made. 3 *Black.* 231.

DISTRIBUTION of inteſtate's effects, after payment of the debts of the deceaſed, is to be made according to the ſtatute of 22 & 23 *C.* 2. *c.* 10. in manner following. One third ſhall go to the widow of the inteſtate, and the reſidue in equal proportions to his children; or, if dead, to their repreſentatives;

ſentatives; that is, their lineal deſcendants: if there are no children, or legal repreſentatives, then a moiety ſhall go to the widow, and a moiety to the next of kindred in equal degree, or their repreſentatives: if no widow, the whole ſhall go to the children: if neither widow nor child, the whole ſhall be diſtributed amongſt the next of kindred in equal degree, and their repreſentatives: but no repreſentatives are admitted among collaterals, farther than the children of the inteſtate's brothers and ſiſters. The father ſucceeds to the whole perſonal effects of his children, if they die inteſtate and without iſſue; but if the father be dead, and the mother ſurvives, ſhe ſhall only come in for a ſhare equally with each of the remaining children.

There are ſome local cuſtoms excepted out of the act, in which the proportions of the diſtribution vary in different places.

DISTRINGAS, is a writ directed to the ſheriff, commanding him to *diſtrain* one by his goods and chattels, to enforce his compliance with what is required of him, as for his appearance in court on ſuch a day. *F. N. B.*

DISTURBANCE, is uſually a wrong done to ſome incorporeal hereditament, by hindering or diſquieting the owners in their regular and lawful enjoyment of it. Of this there are divers kinds: As, 1. Diſturbance of *franchiſes*; which is, when a man has the franchiſe of holding a court leet, of keeping a fair or market, of free warren, of taking toll, of ſeiſing waifs or eſtrays, or the like, and he is diſturbed or incommoded in the lawful exerciſe thereof. 2. Diſturbance of *common*; as where one who has no right of common puts his cattle into the land; or who, having a right of common, ſurcharges the common, by putting in more cattle than he hath a right to do, or puts in any cattle that are not commonable. 3. Diſturbance of *ways*; as where a man, who hath right to a way over another man's ground, is obſtructed by incloſures or other obſtacles. 4. Diſturbance of *patronage*; which is an hindrance or obſtruction of a patron to preſent his clerk to a benefice. 3 *Black.* 236.

DIVORCE, is a ſeparation of a man and a woman who have been *de facto* married together: and it is of two kinds; the one, that diſſolveth the marriage, *a vinculo matrimonii*; and the other, *a menſâ et thoro*, which diſſolveth not the marriage, for that the offence is after a juſt and lawful marriage. 3. *Inſt.* 88.

Cauſes for ſeparation *a vinculo*, are conſanguinity or affinity within the degrees prohibited, alſo impuberty or frigidity, where the marriage itſelf was merely void *ab initio*, and the ſentence of divorce only declaratory of its being ſo. And the effects of this original voidance and nullity are, that the wife is barred of dower, and the iſſue are illegitimate, and that the perſons ſo divorced may marry any others. *Gibſ.* 446.

But if either of the parties be dead before ſentence given, the ſpiritual court cannot proceed to declare the marriage void, and baſtardize the iſſue. *Id.*

Divorce *a menſâ et thoro* is, when the uſe of matrimony, as the cohabitation of the married perſons, or their mutual converſation, is prohibited for a time, or without limitation of time; in which the marriage, having been originally good, is not diſſolved, nor affected as to the *vinculum* or bond. Nor doth this bar the wife of dower, nor baſtardize the iſſue; but intitles her to alimony, which the eccleſiaſtical court aſſigns, in proportion to the circumſtances and condition of the huſband. *Id.* 335.

DOCKET or DOGGET. By ſtatute 4 & 5 *W. c.* 20. the proper officers reſpectively in the courts at *Weſtminſter* ſhall enter and put into an alphabetical dogget by the defendants names, a particular of all judgments for debt entered in the reſpective courts. And no judgment not dogetted and entered as aforeſaid ſhall affect any lands or tenements as to purchaſers or mortgagees, or have any preference againſt heirs, executors, or adminiſtrators.

DOCTORS COMMONS, is the college of civilians in *London*, which was purchaſed by Dr. *Harvey*, dean of the arches, for the profeſſors of the civil law. Here commonly reſide the dean of the arches, the judge of the admiralty, the judge of the prerogative court of *Canterbury*, with divers other eminent civilians; who there living (for diet and lodging) in a collegiate manner, and commoning together, it is known by the name of *doctors commons*. It was burned down in the fire of *London*, and rebuilt at the charge of the profeſſion. *Chamb. preſent State.*

DOG, not being an animal fit for food, the law doth not ſet ſuch an intrinſic value on it, as to make the ſtealing thereof to be felony; but the owner may maintain an action for the loſs of it. And by ſtatute 10 *G.* 3. *c.* 18. if any perſon ſhall ſteal any dog, or keep any dog knowing the ſame to be ſtolen, or ſhall knowingly have in his houſe the ſkin of any dog ſtolen, he ſhall forfeit for the firſt offence not exceeding 30*l.* nor leſs than 20*l.* for the ſecond offence not exceeding 50*l.* nor leſs than 30*l.*

A maſtiff going at large in the ſtreet unmuzzled, from the ferocity of his nature being dangerous and cauſe of terror to his majeſty's ſubjects, ſeems to be a common nuiſance, and conſequently the owner may be indicted for ſuffering him to go at large.

If a man hath a dog that kills ſheep, this is not a public nuiſance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of ſuch quality, he ſhall not be

be punished for this killing: and in an action upon the case for such killing, the plaintiff shall be required to prove in evidence that the dog had used to kill sheep. *Dyer*, 25. *Het.* 171.

And in order to maintain an action for *biting* by the defendant's dog, it must be proved also that he knew his dog to have this property; but one instance is sufficient in that case. 12 *Mod.* 555.

DOIT, *doitkin*, was a base coin of small value, prohibited by the statute 3 *H.* 5. *c.* 1. We still retain the word in common speech, when (in order to undervalue a man) we say that he is not worth a *doit*.

DOM-BEC (Sax. *doom-book*, liber judicialis), was a book wherein *Alfred* the Great, after his uniting of the Saxon heptarchy, collected the various customs that he found dispersed throughout the kingdom, and reduced and digested them into one uniform system and code of laws. 4 *Black.* 411.

DOMESDAY (*liber judicialis vel censualis Angliæ*), is an ancient record made in the time of *William* the Conqueror, which is still fair and legible; consisting of two volumes, a greater and a less: the greater containing a survey of all the lands in *England*, except the counties of *Northumberland*, *Cumberland*, *Westmorland*, *Durham*, and part of *Lancaster*, which it is said, were never surveyed; and, excepting *Essex*, *Suffolk*, and *Norfolk*, which three last are comprehended in the lesser volume. There is also a third book, which differs from the others in form more than matter, made by the command of the same king. And there is a fourth book kept in the exchequer, which is called *domesday*; and though a very large volume, is only an abridgment of the others. Likewise, a fifth book is kept in the remembrancer's office in the exchequer, which has the name of *domesday*, and is the same with the fourth before mentioned.

Our ancestors had many *domesday* books. King *Alfred* had a roll which he called *domesday*, which referred to the time of king *Ethelred*; as that made by *William* the Conqueror did refer to the time of *Edward* the Confessor.

It is generally known, that the question whether lands are ancient demesne or not is to be decided by the *domesday* book of *William* the Conqueror; from whence there is no appeal. And it is a book of that authority, that even the Conqueror himself submitted some cases wherein he was concerned to be determined by it.

The addition of *day* to this *doom* book was not made with any allusion to the final day of judgment, as many persons have conceited; but was to strengthen and confirm it, and signifies the judicial decisive record or book of dooming judgment and justice. *Hammond's Annot.*

The dean and chapter of *York* have a register styled *domesday*;

ſo has the biſhop of *Worceſter*; and there is an ancient roll in *Cheſter* caſtle called *domeſday* roll. *Blount.*

DONATIO CAUSA MORTIS, or a gift in proſpect of death, is, when a perſon in his laſt ſickneſs delivers, or cauſes to be delivered, to another the poſſeſſion of any perſonal goods (under which have been included bonds, and bills drawn by the deceaſed upon his banker), to be his in caſe the giver die; but if he lives, he is to have it again. But this is not good againſt creditors.

DONATIVE, is a ſpiritual preferment, be it church, chapel, or vicarage, which is in the free gift or collation of the patron, without making any preſentation to the biſhop; and without admiſſion, inſtitution, or induction, by any mandate from the biſhop or other; but the donee may, by the patron, or by any other authoriſed by the patron, be put into poſſeſſion. *Degge, Part* 1. *c.* 13.

If the patron of a donative do not nominate a clerk, there can be no lapſe thereof; but the biſhop may compel him to do it by ſpiritual cenſures. 1 *Inſt.* 344.

But if it hath been augmented by the governors of queen *Anne*'s bounty, it will lapſe in like manner as preſentative livings.

A donative is free from the viſitation of the ordinary; but the patron muſt viſit the ſame by commiſſioners to be appointed by him. 1 *Inſt.* 344.

But although the ordinary hath not power as to the place, ſo as to regulate ſeats in that church, or the like; yet he hath power as to the parſon, if he commits any miſdemeanor, to proceed againſt him by ſpiritual cenſures. *L. Raym.* 1205.

So in the caſe of churchwardens, if they refuſe to take upon them the office, or the like; the ordinary may compel them: for although there is a difference as to the incumbent, yet as to the pariſh officers there is none; for they are the officers of the pariſh, and not of the patron of the donative. *Str.* 715.

DOUBLE PLEA, is where the defendant allegeth for himſelf two ſeveral matters in bar of the plaintiff's action, when one of them is ſufficient, which ſhall not be admitted; as if a man plead ſeveral things, the one not depending on the other, the plea is accounted double: but if they mutually depend on each other, and the party may not have the laſt plea without the firſt, then it ſhall be received. *Kitch.* 223. Alſo by ſtatute 4 & 5 *Ann. c.* 16. a man with leave of the court may plead two or more diſtinct matters or ſingle pleas; as in an action of aſſault and battery, he may plead theſe three, not guilty, ſon aſſault demeſne, and the ſtatute of limitations. 3 *Black.* 308.

DOUBLE QUARREL (*duplex querela*, double *querela* or complaint, called improperly *double quarrel*), is a complaint made by any clerk or other to the archbiſhop againſt any inferior ordinary,

nary, for delaying juſtice in any cauſe eccleſiaſtical, as to give ſentence, to inſtitute a clerk preſented, or the like. The effect of which is, that the archbiſhop, taking knowledge of ſuch delay directs his letters under his authentical ſeal, to all and ſingular clerks of his province, thereby commanding them to admoniſh the ſaid ordinary within a certain time to do the juſtice required; or otherwiſe to cite him to appear before the ſaid archbiſhop or his official at a day in the ſaid letters prefixed, and there to allege the cauſe of his delay; and, laſtly, to intimate to the ſaid ordinary, that if he performs not the thing enjoined, nor appears at the day aſſigned, he will proceed to do juſtice in the premiſes. And it ſeems to be called a *double querele*, becauſe it is moſt commonly made both againſt the judge, and againſt the party at whoſe requeſt juſtice is delayed by the ſaid judge. *Clarke's Prax.* tit. 84, 5, 6.

DOWER:

TENANT *in* DOWER, *is, where a man is ſeiſed of certain lands or tenements in fee ſimple, fee tail general, or as heir in ſpecial tail, and taketh a wife, and dieth; the wife, after the deceaſe of her huſband, ſhall be endowed of the third part of ſuch lands and tenements as were her huſband's at any time during the coverture; to hold to the ſame wife in ſeveralty by metes and bounds.* Litt. *ſect.* 36.

Seiſed. This word *ſeiſed* extendeth as well to a ſeiſin *in law*, as to a ſeiſin *in deed*; as where lands deſcend to the huſband, before entry he hath but a ſeiſin in law and yet the wife ſhall be endowed, although it be not reduced to an actual poſſeſſion; for it lieth not in the power of the wife to bring it to be an actual ſeiſin, as the huſband may do of his wife's land, when he is to be tenant by curteſy. 1 *Inſt.* 31.

And yet of every ſeiſin in law, or actual ſeiſin, of lands or tenements, a woman may not be endowed. For example, if there be grandfather, father, and ſon; and the grandfather is ſeiſed of three acres of land in fee, and taketh wife, and dieth, whereupon the wife becomes endowed of one of thoſe acres; the inheritance deſcends to the father, who dieth either before or after entry, in this caſe the wife of the father ſhall be endowed only of the two acres reſidue; for the dower of the grandmother is paramount the title of the wife of the father; and the ſeiſin of the father which deſcended to him (be it in law or in deed), is defeated; and upon the matter the father had but a reverſion expectant upon a freehold, and in that caſe dower ought not to be demanded of dower, although the wife of the grandfather dieth, living the father's wife. 1 *Inſt.* 31.

Of certain lands or tenements. *Copyhold* lands are not liable to dower, being only eſtates at the will of the lord; unleſs by eſpecial cuſtom of the manor: in which caſe it is uſually called the widow's free bench. 2 *Black.* 132.

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It is now ſettled, that of a *truſt* eſtate a wife is now dowable. 2 *Atk.* 526.

Of lands which the huſband holdeth *jointly* with another, the wife ſhall not be endowed; but where he holdeth in common, it is otherwiſe. *Litt.* ſect. 45.

In the caſe of *Broughton* and *Randal*, T. 38 *Eliz.* the father and ſon were joint-tenants, to hold to them and the heirs of the ſon: they were both hanged out of the ſame cart at the ſame time; but becauſe the ſon (as was depoſed by witneſſes) ſurvived, as appeared by ſome tokens; namely, his ſhaking his legs; his widow thereupon demanded dower, and it was adjudged to her. *Cro. Eliz.* 503.

Of *common certain*, a wife ſhall be endowed; but of a common *without number* in groſs, ſhe ſhall not be endowed; for as the heir would then have one portion of this common, and the widow another, and both without ſtint, the common would be doubly charged. 1 *Inſt.* 32.

The wife after the deceaſe of her huſband ſhall be endowed. By the ſtatute of *magna charta*, *c.* 7. the widow ſhall remain in her huſband's capital manſion-houſe for forty days after his death, during which time her dower ſhall be aſſigned. Theſe forty days are called the widow's quarantine.

But where the certainty appeareth what lands or tenements the wife ſhall have for her dower, as was heretofore the caſe of dower *ad oſtium eccleſiæ*, which was aſſigned to the woman at the church door at the time of her marriage; there the wife may enter after the death of her huſband, without aſſignment of any. But where the certainty appears not, as to be endowed of the third part to have in ſeveralty, or the moiety according to cuſtom to hold in ſeveralty; in ſuch caſes, the particular lands to be held in dower muſt be aſſigned by the heir of the huſband, or his guardian; not only for the ſake of notoriety, but alſo to intitle the lord of the fee to demand his ſervices of the heir, in reſpect of the lands ſo held. If the heir, or his guardian, do not aſſign her dower within the term of quarantine, or do aſſign it unfairly, ſhe hath her remedy at law, and the ſheriff is appointed to aſſign it. 2 *Black.* 136.

This great diſadvantage the wife hath, that ſhe cannot enter into her dower by the common law, but is driven to her writ of dower to recover the ſame; wherein ſometimes great delays are uſed; and therefore the well adviſed friends of the wife will provide for a jointure to be made to her. 1 *Inſt.* 32.

Upon which account, on preconcerted marriages, and in eſtates of conſiderable conſequence, tenancy in dower now very ſeldom happens; for the claim of the wife to her dower at the common law, diffuſing itſelf ſo extenſively, it became a great clog to alienations, and was otherwiſe inconvenient to families. Where-

fore,

fore, ſince the diſuſe of dower *ad oſtium eccleſiæ*, jointures have commonly been introduced in their ſtead, as a bar to the claim at common law. 2 *Black.* 136.

Of ſuch lands or tenements as were her huſband's at any time during the coverture. Unto dower three things do belong; viz. marriage, ſeiſin, and the death of the huſband. Concerning the ſeiſin, it is not neceſſary that the ſame ſhould continue during the coverture; for although the huſband alieneth the lands, yet his widow ſhall be endowed. But it is neceſſary that the marriage do continue, for if it be diſſolved, the dower ceaſeth: but this is to be underſtood where the huſband and wife are divorced *a vinculo matrimonii*, as for conſanguinity or affinity; and not *a menſâ et thoro*, as for adultery. 1 *Inſt.* 32.

If the wife elope from her huſband, and goeth away, and tarrieth with her adulterer, ſhe ſhall loſe her dower, unleſs the huſband be reconciled to her, and permit her to cohabit with him. *Ibid.*

The ſeiſin of the huſband for a tranſitory inſtant only, when the ſame act which gives him the eſtate conveys it alſo out of him again, (as where by a fine land is granted to a man, and he immediately renders it back by the ſame fine,) ſuch a ſeiſin will not intitle the wife to dower; for the land was merely *in tranſitu*, and never reſted in the huſband: but if the land abides in him for a ſingle moment, it ſeems that the wife ſhall be endowed thereof. 2 *Black.* 131.

As to *exchanges*, the wife ſhall not be endowed both of the land given in exchange, and of the land taken in exchange, although the huſband was ſeiſed of both; but ſhe may have her election to be endowed of which ſhe will. 1 *Inſt.* 31.

To hold to the wife in ſeveralty by metes and bounds. But of inheritances that are intire, and of which no diviſion can be made, ſhe ſhall be endowed in a ſpecial manner. As of a mill, ſhe ſhall not be endowed by metes and bounds, nor in common with the heir; but ſhe may be endowed of the third toll diſh, or of the mill, every third month. So ſhe ſhall be endowed of the third part of the profit of ſtallage, of the third part of the profits of a fair, of an office, of a dove cote, of a fiſhery, that is, every third fiſh, or every third caſt of the net; ſo of the third preſentation to an advowſon; of the third part of the profits of courts, fines, heriots, and other ſervices; ſo alſo of tithes; and the ſureſt endowment of tithes is of the third ſheaf; for what land ſhall be ſown is uncertain. 1 *Inſt.* 32.

And to her eſtate in dower there are the like incidents as to other life eſtates. She ſhall have eſtovers of houſebote, plough-bote, and haybote; but ſhall not be allowed to commit waſte. If ſhe ſows the land, and dies before harveſt, her executor ſhall have the crop. But if ſhe determine the eſtate by her own act,

as

as by marrying again, ſhe ſhall not be intitled to receive the crop. But if ſhe leaſes the eſtate to an under-tenant, who ſows the land, and ſhe marries before the corn is out, this ſhall not deprive the under-tenant of the crop, becauſe it was not in his power to prevent her marrying. 2 *Black.* 123.

DRAWLATCHES, thieves, drawing the *latch* of the door; that is, entering privately to rob the houſe.

DRENGAGE, was a ſervile tenure, and not freehold (as ſuppoſed by Sir *H. Spelman*); for in *Weſtmorland*, in the reign of king *Hen.* 2. Sir *Hugh Morvil* changed the ſervice from *drengage* to *free* ſervice; which implies that it was not free before. In ſome parts of the ſaid county, the tenants gave one half of their lands, to have the other half made free from that ſervice. It ſeems to have been pure villenage. *Drenges* where the tenants who held by that ſervice.

DROIT, right, is the higheſt writ of all other real writs whatſoever, and has the greateſt reſpect, and the moſt aſſured and final judgment; and therefore, is called a writ of right; and in the old books *droit.* 1 Inſt. 158. *Droit, droit,* are words that ſignify a double right; both of property, and of poſſeſſion. *Id.* 266.

DRUNKENNESS. By ſeveral ſtatutes in the reign of king *James* the firſt, every perſon convicted of drunkenneſs ſhall forfeit 5*s.* and for want of diſtreſs, ſhall be committed to the ſtocks for ſix hours: if he ſhall be again convicted of the like offence, he ſhall be bound in a recognizance of 10*l.* with condition, to be from thenceforth of good behaviour. And an alehouſe-keeper, convicted of drunkenneſs, ſhall, beſides the other penalties, be diſabled to keep any ſuch alehouſe for three years.

Drunkenneſs excuſeth no crime; but he who is guilty of any crime whatever, through his voluntary drunkenneſs, ſhall be puniſhed for it as much as if he had been ſober; for the law, conſidering how eaſy it is to counterfeit his excuſe, and how weak an excuſe it is, (though real,) will not ſuffer any man thus to privilege one crime by another. 1 *Hawk.* 2. 4 *Black.* 26.

DUCES TECUM, is a writ out of chancery, commanding a perſon to apppear at a certain day in court, and to *bring with him* ſome writings, evidences, or other things, to be inſpected and examined in court. *Regiſt.*

DUCKING STOOL. See CUCKING STOOL.

DUELLING, or ſingle combat, between any of the king's ſubjects, of their own heads, and for private malice or diſpleaſure, is prohibited by the laws of this realm; for in a ſettled ſtate, governed by law, no man, for any injury whatſoever, ought to uſe private revenge. 3 *Inſt.* 157.

It is alſo againſt the law of nature, and of nations, for a man

to

to be judge in his own cauſe; eſpecially, where fury, wrath, malice, and revenge, are the rulers of the judgment. *Id.*

And although upon the ſingle combat no death enſue, nor blood be drawn, yet the very combat for revenge is an affray, and a great breach of the king's peace; an affright and terror to the king's ſubjects; and is to be puniſhed by fine and impriſonment, and to find ſureties for the good behaviour; for it is with force and arms, and againſt the peace of our lord the king; and in reſpect of incroachment upon royal authority for revenge, it is againſt his crown and dignity. *Id.* 158.

And where one party kills the other, it comes within the notion of murder, as being committed by malice afore-thought; where the parties meet avowedly with an intent to murder, thinking it their duty, as gentlemen, and claiming it as their right, to wanton with their own lives, and the lives of others, without any warrant for it, either human or divine; and therefore the law hath juſtly fixed on them the crime and puniſhment of murder. 4 *Black.* 199.

But if two perſons fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them goeth to fetch his weapon, and they go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled: but if there were deliberation, as that they meet the next day, nay, though it were the ſame day, if there were ſuch a competent diſtance of time, that in common preſumption they had time of deliberation, then it is murder. 3 *Inſt.* 51. 1 *Hale's Hiſt.* 453.

And the law ſo far abhors all duelling in cold blood, that not only the principal, who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 1 *Haw.* 82.

DUKE, is a name of dignity, and takes place next after the royal family. Among the *Saxons*, the name of *dukes (duces)* was frequent, and ſignified, as among the *Romans*, the *leaders* or commanders of their armies: but after the *Norman* conqueſt, our kings themſelves continuing for many generations *dukes* of *Normandy*, they would not honour any ſubjects with that title, till the time of *Edward* the third; who, claiming to be king of *France*, and thereby loſing the ducal in the regal dignity, created his ſon *Edward* the Black Prince, duke of *Cornwall*; and many, of the royal family eſpecially, were afterwards raiſed to the ſame honour. In the reign of queen *Elizabeth*, the whole order became extinct; but it was revived by her ſucceſſor king *James* the firſt, in the perſon of *George Villiers*, duke of *Buckingham*; and in

in the ſucceeding reigns, many of the nobility have been advanced to that dignity. 1 *Black.* 397.

DUM FUIT INFRA ÆTATEM, is a writ which lies for a perſon of full age, after having, when under age, aliened his lands.

DUM FUIT NON COMPOS MENTIS, is a writ which lies for one who hath recovered his underſtanding, after having, when *non compos*, aliened his lands; or for the heir of ſuch alienor.

DUN, *down*, which termination had varied into *don*, ſignifying a mountain, or high open place. So that the names of thoſe towns which end in *don*, were either built on hills, or near them, in open places.

DUPLEX QUERELA, an eccleſiaſtical proceſs. See DOUBLE QUARREL.

DUPLICITY, in pleading. See DOUBLE PLEA.

DURESS, is where one is wrongfully impriſoned, or reſtrained of his liberty contrary to law, till he executes a bond or other deed to another; or is threatened to be killed or maimed, if he do it not: and a deed ſo obtained is void in law. It is called *dureſs*, from the Latin *durities*; of which there are two ſorts, dureſs of *impriſonment*, where a man actually loſes his liberty; and dureſs *per minas*, where the hardſhip is only *threatened* and impending. Dureſs *per minas*, or by threatening, is either for fear of the loſs of life, or elſe for fear of mayhem, or loſs of limb; and this fear muſt be upon ſufficient reaſon, and ſuch as may fall upon a conſtant man. A fear of battery, or being beaten, is not dureſs; neither is the fear of having one's houſe burned, or one's goods taken away, or deſtroyed; becauſe, in theſe caſes, a man may have ſatisfaction in damages; but no ſuitable atonement can be made for the loſs of life or limb. 1 *Black.* 130.

DYRGE, or *dirge*, a mournful ſong over the dead; from the Teutonic *dyrke*, laudare, to praiſe and extol; whence it is a laudatory ſong. *Cowel.*

DYTENUM, a *ditty* or ſong; as, *venire cum pleno dyteno*, was to ſing harveſt home. *Ken. Par. Ant.* 320.

E A

EA, *Sax.* the water or river. Hence this appellation is joined to the proper names of places, as *Eaton*, *Winchelſea*, *Swanſea*, and other ſuch like. And in ſome parts of the North, the mouth of a river on the ſhore, between the high and low water mark, ſtill is called the *ea*.

EALDERMAN,

EALDERMAN, *elderman*, was a man choſen to a place of ſuperiority, on account of his age and experience: as the *ſenators* were among the *Romans*. Hence the word *alderman* in corporations; and hence the word *earl*, which is only a contraction of *ealderman*.

EARL, is a title of nobility, above a viſcount, and next below a marquis. He was anciently called *ſhireman*, becauſe the earls had each of them the civil government of a ſeveral diviſion or ſhire.

In *Latin* they are called *comites* (a title firſt uſed in the empire), becauſe they *accompanied* or attended the king. And after the *Norman* conqueſt, they were for ſome time called *counts*, from whence the ſhires are ſtyled *counties* to this day.

It is now become a mere title, they having nothing to do with the government of the county; which is now intirely devolved on the ſheriff, the earl's deputy, or *vice-comes*.

Anciently, there was no earl but who had a ſhire or county for his earldom. But of later times, the number of earls greatly increaſing, they have ſometimes for their title ſome particular part of a county, town, village, or place of reſidence. Alſo, beſides theſe *local* earls, there are ſome perſonal and *honorary*, as *earl marſhal of England*; and others *nominal*, who derive their titles from the names of their families.

In writs, and commiſſions, and other formal inſtruments, the king, when he mentions any peer, of the degree of an earl, uſually ſtyles him *truſty and well beloved couſin*; an appellation as ancient as the reign of *Hen.* 4. who being either by his wife, his mother, or his ſiſters, actually related or allied to every earl in the kingdom, artfully and conſtantly acknowledged that connexion in all his letters, and other public acts; from whence the uſage has deſcended to his ſucceſſors, though the reaſon has long ago ceaſed. 1 *Black.* 398.

EARNEST, called by the civilians *arrha*, is part of the price paid down on a contract made. If neither the money be paid, nor the goods delivered, nor tender made, it is no contract, and the owner may diſpoſe of the goods as he pleaſes; but if any part of the price be paid down, or any portion of the goods be delivered by way of earneſt, the property of the goods is bound by it. 2 *Black.* 30.

EASEMENT, is defined to be a ſervice or convenience which one neighbour hath of another, by charter or preſcription, without profit; as a way through his land, a ſink, a watercourſe, a waſhing place, or ſuch like. *Kitch.* 105. But a multitude of perſons cannot *preſcribe* for an eaſement, but for this they may plead *cuſtom*. Cro. Ja. 170.

EAVES-DROPPERS, are perſons that liſten under windows, or eves or droppings of houſes, to liſten after diſcourſe, and thereupon

thereupon frame ſlanderous and miſchievous tales. They are a common nuiſance, and preſentable at the court leet; or are indictable at the ſeſſions, and puniſhable by fine, and finding ſureties for their good behaviour. 4 *Black.* 168.

ECCLESIASTICAL COURT, is that which is holden by the king's authority as ſupreme governor of the church, in matters which chiefly concern religion. *Wood. b.* 4. *c.* 1.

The juriſdiction of the eccleſiaſtical court is either *voluntary* or *contentious*. 1. *Voluntary* is, where there is no oppoſition, which conſiſts in viſiting churches, the clergy, and churchwardens of the ſeveral pariſhes and diſtricts; in granting ſequeſtrations, inſtitution and induction to vacant benefices, licences, diſpenſations, probates of wills, adminiſtrations of inteſtates effects, and the like. 2. *Contentious*; which is, where there is plaintiff and defendant, in cauſes of various kinds; as, profanation of the Lord's day, neglect of duty in miniſters, diſturbance of divine ſervice, providing books and ornaments for the church, jactitation of marriage, divorce, alimony, defamation, payment of tithes, mortuaries, ſynodals, procurations, dilapidations, reparation of churches, ſeats in churches, church rates, wills and adminiſtrations when conteſted, and many other ſuch like. *Id.*

The proceedings in the eccleſiaſtical court are regulated according to the practice of the civil and canon laws, or rather according to a mixture of both, corrected and new modelled by their own particular uſages, and the interpoſition of the courts of common law. For if the proceedings in the ſpiritual court be ever ſo regularly conſonant to the rules of the *Roman* law, yet if they be manifeſtly repugnant to the fundamental maxims of the municipal law of this realm; as (for inſtance) if they require two witneſſes to prove a fact where one will ſuffice at common law, in ſuch caſes a prohibition will be awarded againſt them. 3 *Black.* 100.

Their ordinary courſe of proceeding is, firſt, by *citation*, to call the party injuring before them. Then by *libel*, or articles drawn out in a formal allegation, to ſet forth the plaintiff's ground of complaint. To this ſucceeds the defendant's *anſwer* upon oath. If he denies or extenuates the charge, then they proceed to *proofs* by witneſſes examined, and their depoſitions taken down in writing, by an officer of the court. If the defendant hath any circumſtances to offer in his defence, he muſt alſo propound them in what is called his *defenſive allegation*, to which he is intitled in his turn to the *plaintiff's anſwer* upon oath, and may from thence proceed to *proofs* as well as his antagoniſt. But a man is not obliged to anſwer upon oath to any matter which may charge himſelf with a criminal offence. When all the pleadings and proofs are concluded, they are referred to the conſideration, not of a jury, but of the judge, who takes information by

by hearing advocates on both ſides, and thereupon forms his *interlocutory decree*, or *definitive ſentence*, at his own diſcretion; from which there generally lies an *appeal*, in the ſeveral ſtages and gradations, from the archdeacon to the biſhop, from the biſhop to the archbiſhop, and from the archbiſhop to the delegates. But by the ſtatute 25 *Hen.* 8. *c.* 19. if the decree be not appealed from in fifteen days, it is final. *Id.*

EGYPTIANS. See GYPSIES.

AN EJECTMENT, properly ſpeaking, lieth, where lands or tenements are let for a term of years, and afterwards the leſſor, reverſioner, remainder man, or any ſtranger, doth eject or ouſt the leſſee of his term: in this caſe, he ſhall have this writ of ejectment, to call the defendant to anſwer for entering on the lands ſo demiſed to the plaintiff for a term that is not yet expired, and ejecting him. And by this writ the plaintiff ſhall recover back his term, or the remainder of it, with damages. 3 *Black.* 199.

Since the diſuſe of real actions, this manner of proceeding is become the common method of trying the title to lands or tenements. *Id.* 200.

In ſtrictneſs, in order to maintain the action, the plaintiff muſt make out four points before the court, viz. *title*, *leaſe*, *entry*, and *ouſter*. Firſt, he muſt ſhew a good *title* in the leſſor, which brings the matter of right intirely before the court; then, that the leſſor, being ſeiſed by virtue of ſuch title, did make him the *leaſe* for the preſent term; thirdly, that he, the leſſee or plaintiff, did *enter* or take poſſeſſion in conſequence of ſuch leaſe; and then, laſtly, that the defendant *ouſted* or ejected him. Whereupon he ſhall have judgment to recover his term and damages; and ſhall, in conſequence, have a writ of poſſeſſion, which the ſheriff is to execute, by delivering him the undiſturbed and peaceable poſſeſſion of his term. *Id.* 202.

But as much trouble and formality were found to attend the actual making of the *leaſe*, *entry*, and *ouſter*, a new and more eaſy method of trying titles by writ of ejectment was invented, which depends intirely upon a ſtring of legal fictions; no actual *leaſe* is made, no actual *entry* by the plaintiff, no actual *ouſter* by the defendant; but all are merely ideal, for the ſole purpoſe of trying the title. *Id.*

To this end, on application to the court by the tenant in poſſeſſion to be made defendant in the action, it is allowed to him upon this condition, that he enter into a rule to confeſs, at the trial of the cauſe, three of the four requiſites for the maintenance of the plaintiff's action, viz. the *leaſe*, *entry*, and *ouſter*; which requiſites, as they are wholly fictitious, ſhould the defendant put the plaintiff to prove, he muſt of courſe be nonſuited for want of evidence; but by ſuch ſtipulated confeſſion of leaſe, entry, and

and ouſter, the trial will now ſtand upon the merits of the title only. *Id.* 203, 4.

The damages recovered in theſe actions, though formerly their only intent, are now uſually (ſince the title has been conſidered as the principal queſtion) very ſmall and inadequate, amounting commonly to one ſhilling or ſome other trivial ſum. In order therefore to complete the remedy, when the poſſeſſion has been long detained from him that has right, an action of treſpaſs alſo lies, after a recovery in ejectment, to recover the meſne profits which the tenant in poſſeſſion hath wrongfully received; which action may be brought in the name of either the nominal plaintiff in the ejectment, or his leſſor, againſt the tenant in poſſeſſion, whether he be made party to the ejectment, or ſuffers judgment to go by default. *Id.* 205.

Such is the modern way, of obliquely bringing in queſtion the title to lands and tenements, in order to try it in this collateral manner; a method which is now univerſally adopted in almoſt every caſe. It is founded on the ſame principle as the ancient writs of aſſize, being calculated to try the mere *poſſeſſory* title to an eſtate, and hath ſucceeded to thoſe real actions, as being infinitely more convenient for attaining the end of juſtice; becauſe, the form of the proceeding being intirely fictitious, it is wholly in the power of the court to direct the application of that fiction ſo as to prevent fraud and chicane, and to diſcover the real truth of the title: the writ of ejectment and its nominal parties are judicially to be conſidered as the fictitious form of an action really brought by the leſſor of the plaintiff againſt the tenant in poſſeſſion; invented, under the control and power of the court, for the advancement of juſtice in many reſpects; and to force the parties to go to trial on the merits, without being intangled in the nicety of pleadings on either ſide. 3 *Black.* 205. *Burr. Manſf.* 668.

But a writ of ejectment is not an adequate means to try the title of all eſtates. For where the entry is taken away by diſſeiſin, deſcents, fines, and recoveries, and non-claim, no ejectment lies. So it doth not lie of an advowſon, a rent, a common, or other incorporeal hereditament (except for tithes, by virtue of the ſtatute of 32 *H.* 8. *c.* 7.); for on ſuch things whereon an entry cannot in fact be made, no entry ſhall be ſuppoſed by any fiction of the parties. Nor will an ejectment lie, where the defendant has been twenty years in poſſeſſion, by the ſtatute of limitations. For an ejectment is a poſſeſſory remedy, and only competent where the leſſor of the plaintiff may enter. Therefore it is always neceſſary for the plaintiff to ſhew, that his leſſor had a right to enter, by proving a poſſeſſion within twenty years, or accounting for the want of it, under ſome of the exceptions allowed by the ſtatute. Twenty years adverſe poſſeſſion

on is a positive title to the defendant. It is not a bar only to the action or remedy of the plaintiff, but rather takes away his right of poſſeſſion, and in that caſe the plaintiff will be driven to his writ of right. 3 *Black.* 206. *Burr. Manſf.* 119.

The uſual courſe in practice is, to draw a declaration, and therein to feign a leaſe to a leſſee, or to him that would try the title; and to feign a caſual ejector or defendant in the ſaid declaration; and then to deliver the declaration to the ejector named therein, who ſends or delivers it to the tenant in poſſeſſion, and gives him notice in writing at the bottom, or on the back thereof, to appear and defend his title; otherwiſe that he the feigned defendant will ſuffer judgment by default, whereby he the true tenant will be turned out of poſſeſſion. To this declaration the true tenant may appear by his attorney, and conſent to a rule to make him defendant in the place of the caſual ejector or feigned defendant, and to confeſs a leaſe, entry, and ouſter, and at the trial to ſtand upon the title only. *Wood. b.* 4. *c.* 4.

Where the perſon himſelf cannot be come at, leaving a copy at his houſe with ſome perſon there, or if no one can be met with, affixing a true copy of it on the door, ſhall be deemed a good ſervice. *Burr. Manſf.* 1116. 1181.

EIGNE, Fr. *eldeſt*, or firſt-born; as *baſtard eigne* and *mulier puiſne*, are words uſed in our law, for the elder a baſtard, and the younger legitimate.

EIRE, Fr. *(iter,)* was the court of juſtices itinerant, who were ſent once in ſeven years with a general commiſſion into divers counties, to hear and determine ſuch cauſes as were termed pleas of the crown.

The *eire of the foreſt*, is the ſame as the court called the *juſtice ſeat*, which was held once in three years by the juſtices itinerant of the foreſt.

ELECTION, is when a man is left to his own free will to take or to do one thing or another, which he pleaſes.

In all caſes, where ſeveral remedies are given, the law which gives the remedies to the party, gives him withal election to take which of the remedies he will. 1 *Inſt.* 145.

If a man grant by his deed a rent-charge to another, and the rent is behind, the grantee may chuſe whether he will ſue a writ of annuity for this againſt the grantor, or diſtrain for the rent behind, but he cannot do both. *Litt.* ſect. 219.

Where election is given to ſeveral perſons, the firſt election made by any of them ſhall ſtand. 1 *Inſt.* 145.

If a man grant a manor, except one cloſe called *N.* and there are two cloſes called by that name, one containing nine acres, and the other only three acres, the grantee ſhall not in this caſe chuſe which of the ſaid cloſes he will have, but the grantor ſhall have election which cloſe ſhall paſs. 1 *Leon.* 268.

But if one grants an acre of land out of a waſte or common, and doth not ſay in what part, or how to be bounded, the grantee may make his election where he will. 1 *Leon.* 30.

If a man hath an election to do one of two things, and one of them becomes impoſſible, he muſt at his peril do the other. 1 *Lill. Abr.* 506.

A perſon who hath brought a civil action for an injury, ſhall not be ſuffered to proceed criminally by way of information at the ſame time, but ſhall make his election in which method he will proceed, before the court will enter into the criminal complaint. *Burr. Manſf.* 720.

If a bill in equity be brought, whilſt an action at law is carrying on upon the ſame account, the lord chancellor will oblige the plaintiff to make his election in which way he will proceed. 2 *Atk.* 166.

But where a creditor ſues an executor at law, and at the ſame time files his bill againſt him in equity, the court will not require him to make his election, in caſe the executor is attempting to prefer other creditors before him, by confeſſing judgments to them. *Barn. Cha. Ca.* 278.

ELEGIT, is a writ of execution, which is given by the ſtatute 13 *Ed.* 1. *c.* 18. either upon a judgment for debt or damages, or upon the forfeiture of a recognizance taken in the king's court. 1 *Inſt.* 289.

By the common law, a man could only have ſatisfaction of goods, chattels, and the preſent profits of lands, by the writs of *fieri facias* or *levari facias*; but not the poſſeſſion of the lands themſelves: ſo that if the defendant aliened his lands, the plaintiff was ouſted of his remedy. The ſtatute therefore granted this writ, which is called an *elegit*, becauſe it is in the *election* of the plaintiff whether he will ſue out this writ or one of the former. 3 *Black.* 418.

By this writ the ſheriff ſhall deliver to the plaintiff all the goods and chattels of the debtor (except oxen and beaſts of the plough), and a moiety of his lands: and this muſt be done by an inqueſt to be taken by the ſheriff. 1 *Inſt.* 289.

The other moiety of the lands was originally reſerved for the lord to diſtrain for his ſervices. And hence it is, that to this day copyhold and other like cuſtomary lands are not liable to be taken in execution upon a judgment. 3 *Black.* 418, 9.

This execution, or ſeiſing, of lands by *elegit*, is of ſo high a nature, that after it the body of the defendant cannot be taken. But if execution can only be had of the goods, becauſe there are no lands, and ſuch goods are not ſufficient to pay the debt, a writ may be had to take the body of the defendant. *Id.* 419.

During

During the time that the plaintiff holds the lands ſo delivered to him, he is called tenant by *elegit*. Yet he hath only a chattel intereſt therein; and therefore it ſhall not go to his heir, but to his executor, who is intitled to the debt, for the payment whereof this land is a remedy or ſecurity. 2 *Black.* 161.

ELISORS *(electors)*, are two perſons appointed by the court to return a jury, when the ſheriff and the coroners have been challenged as incompetent. In this caſe, the eliſors return the writ of *venire* directed to them, with a panel of the jurors names. And their return is final, no challenge being allowed to their array. 3 *Black.* 354.

ELOIGNE (Fr. *eſloigne*, *elongata*), is when the ſheriff, to a writ of replevy, returns that the goods are *elongata*, carried a long way off, to places to him unknown; in which caſe, the party replevying ſhall have a writ of *capias in withernam*, a term which ſignifies another or reciprocal diſtreſs of the goods of the diſtrainor, in lieu of the diſtreſs formerly taken by him, and eloigned or withheld from the owner: ſo that here is now diſtreſs againſt diſtreſs, one being taken to anſwer the other, by way of repriſal, and as a puniſhment for the illegal behaviour of the original diſtrainor. For which reaſon, goods taken in *withernam* cannot be replevied, till the original diſtreſs is forthcoming. 3 *Black.* 148.

ELOPEMENT, is where a married woman, of her own accord, goes away and departs from her huſband, and lives with an adulterer. A woman thus leaving her huſband is ſaid to *elope*; and in this caſe her huſband is not obliged to allow her any alimony out of his eſtate, nor ſhall he be chargeable for neceſſaries for her; and, where the ſame is notorious, whoever gives her credit doth it at his peril.

EMBARGO, is a prohibition upon ſhipping not to go out of any port. This the king can enjoin in time of war by virtue of his prerogative; but, in time of peace, this may not be done without an act of parliament. 1 *Black.* 271.

EMBLEMENTS, ſignify properly the profit of land ſown; but the word is ſometimes uſed more largely, for any products that ariſe naturally from the ground, as corn, fruit, and the like.

If the leſſee, being tenant *at will*, ſow the land, and the leſſor after it is ſown, and before the corn is ripe, put him out; yet the leſſee ſhall have the corn, becauſe he knew not at what time the leſſor would enter upon him. Otherwiſe it is, if tenant *for years*, who knows the end of his term, ſows the land, and his term ends before the corn is ripe; in this caſe the leſſor or he in reverſion ſhall have the corn, becauſe the leſſee knew the certainty of his term, and when it would end. *Litt.* 68.

And the reaſon why the tenant at will ſhall have the corn is, becauſe his eſtate is uncertain; and therefore, leſt the ground ſhould be unmanured, which would be hurtful to the public, he ſhall reap the crop which he ſowed in peace, although the leſſor determine his will before it be ripe. And ſo it is if he ſet roots, or ſow hemp, or flax, or any other annual profit; if, after the ſame be planted, the leſſor ouſt the leſſee, or if the leſſee die, yet he or his executors ſhall have that year's crop. But if he plant young fruit trees, or young oaks, aſhes, elms, or the like, or ſow the ground with acorns, there the leſſor may put him out notwithſtanding, becauſe they will yield no annual profit.

So if tenant *for life* ſows the ground, and dies, his executors ſhall have the corn, becauſe his eſtate was uncertain, and determined by the act of *God*.

But if a woman that holds land *during her widowhood* ſows the ground and taketh huſband, the leſſor ſhall have the corn, becauſe the determination of her eſtate grew by her own act.

If a man ſeiſed of lands in fee hath iſſue a daughter, and dieth, leaving his wife enſient with a ſon, the daughter ſows the ground, the ſon is born, yet the daughter ſhall have the corn, becauſe her eſtate was lawful, and defeated by the act of *God*.

Where there is a right to emblements, ingreſs, egreſs, and regreſs, are allowed by law to enter, cut, and carry them away, when the eſtate is determined. 1 *Inſt.* 55. 2 *Inſt.* 81. 1 *Roll's Abr.* 727.

EMBRACERY, is an attempt to corrupt or influence a jury, or any way incline them to be more favourable to the one ſide than the other, by money, promiſes, letters, threats, or perſuaſions; whether the juror on whom ſuch attempt is made give any verdict or not, or whether the verdict given be true or falſe. 1 *Haw.* 259.

The puniſhment of an embraceor is by fine and impriſonment; and for the juror ſo embraced, if it be by taking money, the puniſhment is (by divers ſtatutes) perpetual infamy, impriſonment for a year, and forfeiture of tenfold the value. 4 *Black.* 140.

EMBRING DAYS (from *embers*, aſhes), are certain extraordinary days of faſting, wherein, by way of greater humiliation, the people ſate in aſhes; who being at the ſame time habited in the coarſer kind of cloth, are repreſented as repenting in ſackcloth and aſhes.

ENDOWMENT (Lat. *dos*, *dower*), is the widow's portion; being a third part of all the freehold lands and tenements of which her huſband was ſeiſed at any time during the coverture. Of lands, not freehold, her portion varies according to the cuſtom in different places. Sometimes the word *endowment* is uſed metaphorically for an aſſignment of a proviſion for a clergyman on

on erecting a church or chapel; and more particularly it was a portion of tithes set out for a vicar towards his perpetual maintenance when the benefice was appropriated to some of the religious houses.

ENGLESCHIRE, was anciently an amercement on the murder of a *Dane* by an *Englishman*. It was introduced by king *Canute*, to prevent his countrymen, the *Danes*, from being privily murdered by the *English*; and was afterwards continued by *William* the Conqueror, for the like security to his *Normans*. And, therefore, if, upon inquisition had, it appeared that the person found slain was an *Englishman*, the country was excused from this burden. But this was abolished by the statute 14 *Ed.* 3. *c.* 4. which enacts, that because many mischiefs have happened in divers counties, which had no knowledge of presentment of *Englescbire*, whereby the commons of the counties were often amerced before the justices in eyre; therefore no justice errant from henceforth shall put in any article of presentment of *Englescbire*, against the commons of the counties or any of them, but the *Englescbire* and presentment of the same be wholly out and void for ever, so that no person by this cause may be henceforth impeached.

According to some authors, *Englescbire* was the proof that the party slain was an *Englishman*. Bract. *lib.* 3. *tr.* 2. *c.* 15. Fleta, *l.* 1. *c.* 30.

ENGLISH TONGUE. By the 4 *G.* 2. *c.* 26. & 6 *G.* 2. *c.* 14. all law proceedings (except technical words) shall be in the *English* language, and written in a common legible hand and character, and not in any hand commonly called *court hand*, on pain of 50*l.* to him who shall sue for the same.

ENTRY into lands is, where the legal owner takes possession against another who hath entered without any right at all. In this case, the party intitled, without the formality of bringing his action, may enter peaceably upon the land, declaring that thereby he takes possession; or he may enter on any part of the land in the same county, declaring it to be in the name of the whole; but if it lie in different counties, he must make different entries. 3 *Black.* 174.

If the claimant be deterred from entering by menaces or bodily fear, he may make *claim* as near to the estate as he can, with the like forms and solemnities: which claim is in force for a year and a day only. And therefore this claim, if it be repeated once in the space of every year and day (which is called *continual claim*,) has the same effect with, and in all respects amounts to, a legal entry. *Id.* 175.

But if the disseisor die, and the lands descend to his issue, this takes away the entry of the right owner, because the law casts the lands upon the issue by force of the descent: and therefore

as the iſſue comes to the lands by courſe of law, and not by his own act, the law ſo far protects his title, that it will not ſuffer his poſſeſſion to be deveſted, till the claimant hath proved a better right. *Id.* 176.

ENTRY, writ of, is a writ directed to the ſheriff, requiring him to *command* the tenant of the land, that he *render* to the demandant the premiſſes in queſtion, or appear in court on ſuch a day, and ſhew why he hath not done it. And this is what is called, from the emphatical words in the writ *præcipe quod reddat.* Of this writ there are four kinds: 1. A writ of entry *ſur diſſeiſin*, that lieth for the diſſeiſee againſt the diſſeiſor, upon a diſſeiſin done by himſelf; and this is called a writ of entry in the nature of an aſſize. 2. A writ of entry *ſur diſſeiſin in the per*, for the heir by deſcent, who is ſaid to be in the *per*, as he comes in *by* his anceſtor. 3. A writ of entry *ſur diſſeiſin in the per and cui*, where the feoffee of a diſſeiſor maketh a feoffment over to another; and then the form of a writ is, that the tenant had no title to enter, but *by* a prior alienee, *to whom* the intruder demiſed it. 4. A writ of entry *ſur diſſeiſin in the poſt*, which lies when *after* a diſſeiſin the land is removed from hand to hand in caſe of a more remote ſeiſin, whereunto the other three degrees do not extend. 1 *Inſt.* 238.

But all theſe writs are now entirely out of uſe; only the forms of them are preſerved in the practice of common recoveries. But the title of lands is now uſually tried upon actions of ejectment or treſpaſs.

EQUES AURATUS, is a knight ſo called from the gilt ſpurs that he wore. Hence in ancient charters, by way of a quit-rent, the tenant was bound to render to the lord yearly a pair of gilt ſpurs.

EQUITY, is a conſtruction made by the judges, that caſes out of the letter of a ſtatute, yet being within the ſame miſchief or cauſe of making of the ſame, ſhall be within the ſame remedy that the ſtatute provideth. And the reaſon hereof is, for that the law maker could not poſſibly ſet down all caſes in expreſs terms. 1 *Inſt.* 24. For example: The ſtatute of *Glouceſter* gives action of waſte againſt him that holds lands for life or years; and by the equity thereof a man ſhall have action of waſte againſt a tenant that holds but for one year or half a year, which is without the words of the act, but within the meaning of it; and the words that enact the one do by equity enact the other. *T. L.* 303. In like manner, a caſe out of the miſchief is out of the meaning of the law, though it be within the letter of it. 2 *Inſt.* 106.

EQUITY OF REDEMPTION. In ſtrictneſs of law, if money lent upon a mortgaged eſtate be not paid at the day, the eſtate becomes abſolutely forfeited. But herein the courts of equity

equity have interpoſed: and if the eſtate be of greater value than the ſum lent thereon, they will allow the mortgagor at any reaſonable time to re-call or redeem his eſtate, paying to the mortgagee his principal, intereſt, and coſts. Which advantage, allowed to mortgagees, is called the *equity of redemption*. But, on the other hand, the mortgagee may either compel the ſale of the eſtate, in order to get the whole of the money immediately, or elſe call upon the mortgagor to redeem his eſtate preſently; or in default thereof, to be for ever *foreclоſed* from redeeming the ſame; that is, to loſe the equity of redemption without poſſibility of recall. Alſo, in ſome caſes of fraudulent mortgages, the fraudulent mortgagor forfeits all equity of redemption whatſoever. 2 *Black.* 158, 9.

ERROR, writ of, lies for ſome ſuppoſed miſtake in the proceedings of a court of record; for to amend errors in an inferior court not of record, a writ of falſe judgment lies. A writ of error lies only upon matter of *law* ariſing upon the face of the proceedings, ſo that no *evidence* is required to ſubſtantiate or ſupport it; and there is no method of reverſing an error in the determination of *facts*, but an *attaint* (which is now out of uſe), or by a *new trial*, which is now the common practice. This writ lies from the inferior courts of record in *England* into the king's bench, and from the king's bench in *Ireland* to the king's bench in *England*. It may likewiſe be brought from the common pleas at *Weſtminſter* to the king's bench, and then from the king's bench the cauſe is removeable to the houſe of lords. From proceedings on the law ſide of the exchequer, a writ of error lies into the court of exchequer chamber before the lord chancellor, lord treaſurer, and the judges of the courts of king's bench and common pleas, and from thence to the houſe of lords. From proceedings in the king's bench in debt, detinue, covenant, account, caſe, ejectment, or treſpaſs, originally begun there by bill (except where the king is party), it lies to the exchequer chamber, before the juſtices of common pleas and barons of the exchequer, and from thence alſo to the houſe of lords: but where the proceedings in the king's bench do not firſt commence therein by bill, but by original writ ſued out of chancery, the writ of error then lies, without any intermediate ſtage of appeal, directly to the houſe of lords, the final reſort for the deciſion of every civil action. 3 *Black.* 406.

ESCAPE:

1. An *eſcape* is, where one that is arreſted gaineth his liberty, before he is delivered by courſe of law. *T. L.*

2. Eſcapes are either in *civil* or *criminal* caſes; and in both reſpects, eſcapes may be diſtinguiſhed into *voluntary* and *negligent*: *voluntary*, where it is with conſent of the keeper; *negligent*, where it is for want of due care in the keeper.

3. In

3. In *civil* caſes: After the priſoner hath been ſuffered voluntarily to eſcape, the ſheriff can never after retake him, but the ſheriff muſt anſwer for the debt: but the plaintiff may retake him at any time. In the caſe of a negligent eſcape, the ſheriff, upon freſh purſuit, may retake the priſoner; and the ſheriff ſhall be excuſed, if he hath him again before any action brought againſt himſelf for the eſcape.

When a defendant is once in cuſtody in execution, upon a *capias ad ſatisfaciendum*, he is to be kept in cloſe and ſafe cuſtody; and if he be afterwards ſeen at large, it is an eſcape; and the plaintiff may have an action thereupon for his whole debt: for though upon arreſts, and what is called *meſne proceſs*, being ſuch as intervenes between the commencement and end of a ſuit, the ſheriff, till the ſtatute 8 & 9 *W. c.* 27. might have indulged the defendant as he pleaſed, ſo as he produced him in court to anſwer the plaintiff at the return of the writ; yet upon a taking in execution, he could never give any indulgence; for in that caſe confinement is the whole of the debtors puniſhment, and of the ſatisfaction made to the creditor. 3 *Black.* 415, 6.

A reſcue of a priſoner in execution, either going to gaol or in gaol, or a breach of priſon, will not excuſe the ſheriff from being guilty of and anſwering for the eſcape; for he ought to have ſufficient force to keep him, ſeeing he may command the power of the county. *Id.* 416.

4. In *criminal* caſes: An eſcape of a perſon arreſted, by eluding the vigilance of his keeper before he is put in hold, is an offence againſt public juſtice, and the party himſelf is puniſhable by fine and impriſonment: but the officer permitting ſuch eſcape, either by negligence or connivance, is much more culpable than the priſoner, who has the natural deſire of liberty to plead in his behalf. Officers therefore, who after arreſt *negligently* permit a felon to eſcape, are alſo puniſhable by fine: but *voluntary* eſcapes amount to the ſame kind of offence, and are puniſhable in the ſame degree, as the offence of which the priſoner is guilty, and for which he is in cuſtody, whether treaſon, felony, or treſpaſs; and this, whether he were actually committed to goal, or only under a bare arreſt. But the officer cannot be thus puniſhed, till the original delinquent is actually found guilty or convicted by verdict, confeſſion, or outlawry, otherwiſe it might happen that the officer ſhould be puniſhed for treaſon or felony, and the party eſcaping, turn out to be an innocent man. But before the conviction of the principal party, the officer thus neglecting his duty may be fined and impriſoned for a miſdemeanor. 4 *Black.* 129.

By the ſtatute 16 *G.* 2. *c.* 31. to convey to any perſon in cuſtody for *treaſon* or *felony* any arms, inſtrument of eſcape, or diſguiſe,

gaole, without the knowledge of the gaoler, though no eſcape be attempted; or any way to aſſiſt ſuch priſoner to attempt an eſcape, though no eſcape be actually made, is felony and tranſportation for ſeven years: or if the priſoner be in cuſtody for *petit larceny*, or other *inferior offence*, or charged with a debt of 100*l.* it is then a miſdemeanor, puniſhable by fine and impriſonment

ESCAPE WARRANT, is where a perſon committed or charged in cuſtody in the king's bench or Fleet priſon, in execution, or on meſne proceſs, goes at large; then an oath thereof made before a judge of the court where the action was brought, a warrant ſhall be iſſued, directed to all the ſheriffs and other officers throughout *England*, to retake the priſoner, and commit him to gaol where taken, there to remain till the debt ſhall be ſatisfied.

ESCHEAT, from the French *eſchoir*, to happen, ſignifies chance or accident, and in our law denotes an obſtruction of the courſe of deſcent, and a conſequent determination of the tenure, by ſome unforeſeen contingency; in which caſe, the land naturally reſults back, by a kind of reverſion, to the original grantor, or lord of the fee. 2 *Black.* 244.

Eſcheat happens either for *want of heirs* of the perſon laſt ſeiſed, or by his *attainder* for a crime by him committed; in which latter caſe, the blood is tainted, ſtained, or corrupted, and the inheritable quality of it is thereby extinguiſhed.

Eſcheat whereby the deſcent is impeded for want of heirs is, where the tenant dies without any relations on the part of any of his anceſtors, or where he dies without any relations of thoſe anceſtors, paternal or maternal, from whom his eſtate deſcended; or where he dies without any relations of the whole blood. Baſtards alſo are incapable of inheritance; and therefore if there be no other claimant than ſuch illegitimate children, the land ſhall eſcheat to the lord: and, as baſtards cannot be heirs themſelves, ſo neither can they have any heirs but thoſe of their own bodies; and therefore if a baſtard purchaſe lands, and dies ſeiſed thereof without iſſue and inteſtate, the land ſhall eſcheat to the lord of the fee. Aliens alſo, that is, perſons born out of the king's allegiance, are incapable of taking by deſcent; and, unleſs naturalized, are alſo incapable of taking by purchaſe; and therefore, if there be no natural-born ſubject to claim, ſuch lands in like manner ſhall eſcheat.

By attainder for treaſon or other felony, the blood of the perſon attainted is ſo far corrupted, as to be rendered no longer inheritable. But in this caſe a difference is to be noted, between *forfeiture* of lands to the king, and *eſcheat* to the lord of the fee. Before the introduction of feuds, part of the puniſhment for ſuch offence was forfeiture of lands to the crown; afterwards, eſcheats being

being introduced in conſequence of the feudal tenure, they operated in ſubordination, as it were, to this more ancient and ſuperior law of forfeiture.

The doctrine of eſcheat upon attainder is properly this; that the blood of the tenant, by the commiſſion of any felony (under which denomination all treaſons were formerly comprized), is corrupted and ſtained, and the original donation of the feud is thereby determined, it being always granted to the vaſal on the implied condition of his well demeaning himſelf. In conſequence of which corruption and extinction of hereditary blood, the land of all felons would immediately reveſt in the lord, but that the ſuperior law of forfeiture intervenes, and intercepts it in its paſſage; in caſe of treaſon, for ever; in caſe of other felony, for only a year and a day; after which time it goes to the lord in a regular courſe of eſcheat.

As a conſequence of this doctrine of eſcheats, all lands of inheritance immediately reveſting in the lord, the wife of the felon was liable to loſe her dower, till the ſtatute 1 *Ed.* 6. *c.* 12. enacted, that albeit any perſon be attainted of miſpriſion of treaſon, murder, or felony, yet his wife ſhall enjoy her dower. But ſhe has not this indulgence where the ancient law of forfeiture operates; for it is provided by the ſtatute 5 & 6 *Ed.* 6. *c.* 11. that the wife of one attainted of high treaſon ſhall not be endowed at all. 2 *Black. c.* 15.

ESCHEATOR, was an officer appointed in every county, whoſe employment was, in caſe of the death of any of the king's tenants *in capite*, to take the lands into the king's hands, and to inquire by a jury, how much land ſuch tenant held, what was the yearly value thereof, who was his heir, and of what age, that the king might be anſwered of the wardſhip and marriage of ſuch tenant, if he or ſhe were within the age appointed by law.

ESCROW, is a deed delivered, not to the grantee, but to a third perſon, to hold till ſome conditions be performed on the part of the grantee; in which caſe, it is not delivered as a deed, but as an eſcrow; that is, as a *ſcrowl* or *writing*, which is not to take effect as a deed, till the conditions be performed; and then it is a deed to all intents and purpoſes. 2 *Black.* 307.

ESCUAGE, *ſcutagium*, ſervice of the ſhield, was where a man holding lands by knights ſervice, was obliged to attend the king perſonally in his wars; and was afterwards changed into a pecuniary compenſation. 1 *Inſt.* 68.

ESPLEES (*expletiæ*, from *expleo*), are the products which ground or land yield, as the hay of the meadow, the herbage of the paſture, corn of the arable, rents and ſervices. So of an advowſon, the taking of tithes in groſs by the parſon; of wood, the felling of wood; of an orchard, the fruits growing there; of a mill,

mill, the taking of toll: these, and such like issues are termed *esplees*. In a writ of right of land, of an advowson, or the like, the demandant ought to allege in his count, that he or his ancestor took the esplees of the thing in demand; otherwise the pleading will not be good. *T. L.*

ESQUIRE, *escuyer*, *scutarius*, called by the Saxons *schilt knaben* (*shield-knave*, the word *knave* having anciently signified *servant*), is a name of dignity, next above the common title of *gentleman*, and below a *knight*. Heretofore it signified one that was attendant, and had his employment as a servant, waiting on such as had the order of knighthood, bearing their shields, and helping them to horse, and such like. And this title is of that nature with us now, that to whomsoever either by blood, or place in the state, or other eminency, we conceive some higher attribute should be given than the sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire, in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Honour.*

Mr. *Camden* reckons up four species of esquires, particularly regarded by the heralds: 1. The eldest sons of knights, and their eldest sons, in perpetual succession. 2. The eldest sons of younger sons of peers, and their eldest sons, in like perpetual succession. Both of which species are esquires by *birth*. 3. Esquires created by the king's *letters patent*, or other investiture, and their eldest sons. 4. Esquires by virtue of their *office*, as justices of the peace, and others who bear any office of trust under the crown.

Those which were created by patent or investiture, were called *esquires of the king*, and wore a collar of SS. and had a pair of silver spurs (by way of distinction from the knights, who had gilt spurs), and they attended upon the king in war, and carried his shield before him.

Unto these may be added all *Irish* and foreign peers, and also the eldest sons of peers of *Great Britain*; for all these are only esquires in our law, and must be so named in all legal proceedings. 1 *Black.* 406.

ESSOIN, *essonium*, is derived of the French *essonier*, or *exonier*, which signifies to excuse; so as an *essoin*, in legal understanding, is an excuse of a default by reason of some impediment or disturbance, and is as well for the plaintiff as for the defendant, and is all one with that which the civilians call *excusatio*: It is a craving of further time. Of essoins there have been five kinds: 1. De servitio regis. 2. In terram sanctam. 3. Ultra mare. 4. De malo lecti. 5. De malo veniendi; and this is the common essoin. 2 *Inst.* 125. The essoin day in court is regularly the first day of the term, but the fourth day after is allowed of favour. *Wood. b.* 4. *c.* 1.

ESTATE,

ESTATE, in lands, tenements, and hereditaments, ſignifies ſuch intereſt as the tenant has therein; ſo that if a man grant *all his eſtate* to ſuch an one and his heirs, every thing that he can poſſibly grant ſhall paſs thereby. It is called in Latin *ſtatus*, ſignifying the condition or circumſtance in which the owner ſtands with regard to his property. 2 *Black.* 103.

ESTOPPEL, is ſo called becauſe thereby a man is *ſtopped* or concluded from ſaying any thing againſt his own act. Of eſtoppels there are three kinds; by matter of record; by matter in writing; and by matter without writing. 1. By matter of record; as by letters patent, fine, recovery, pleading, taking of continuance, confeſſion, imparlance, warrant of attorney, admittance. 2. By matter in writing; as by deed indented, by making of an acquittance by deed indented or deed poll, by defeaſance by deed indented or deed poll. 3. By matter without writing; as by livery, by entry, by acceptance of rent, by partition. 1 *Inſt.* 352.

Every eſtoppel ought to be reciprocal; that is, to bind both parties: and this is the reaſon that regularly a ſtranger ſhall neither take advantage nor be bound by eſtoppel. Privies in blood as the heir, privies in eſtate as the feoffee or leſſee, privies in law as the lord by eſcheat, tenant by the curteſy, tenant in dower, the incumbent of a benefice, and others that come under by act in law, or in the poſt, ſhall be bound by and take advantage of eſtoppels. *Id.*

If a man is bound in an obligation by a wrong name, and afterwards is ſued by that name on the obligation, he ſhall not be received to ſay in abatement that he is miſnamed, but ſhall anſwer according to the obligation, though it be wrong: and foraſmuch as he is the ſame perſon that was bound, he is eſtopped and forbidden in law to ſay contrary to his own deed; otherwiſe he might take advantage of his own wrong, which the law will not ſuffer. *T. L.*

ESTOVERS, (from *eſtoffer*, to furniſh), is a liberty of taking neceſſary wood for the uſe or furniture of a houſe or farm. And this any tenant may take from off the land let or demiſed to him, without waiting for any leave, aſſignment, or appointment of the leſſor, unleſs he be reſtrained by ſpecial covenant to the contrary. 2 *Black.* 35.

Alſo in a divorce between huſband and wife, where the law allows unto her alimony out of her huſband's eſtate, this is ſometimes called her *eſtovers*: for which, if he refuſes payment, there is (beſides the ordinary proceſs of excommunication) a writ at common law *de eſtoveriis habendis*, in order to recover it. 1 *Black.* 441.

ESTRAYS, are ſuch goods as are found in any manor or lordſhip, and no man knows the owner of them; in which caſe they belong

belong to the king, or to the lord of the manor by ſpecial grant from the crown. 1 *Black.* 297.

But in order to veſt an abſolute property in the king, or his grantee, they muſt be proclaimed in the church and two market towns next adjoining to the place where they are found; and then, if no man claim them within a year and day after ſuch proclamation, the owner hath loſt all further property therein: but if they be not proclaimed, the owner may take them again at any time. *Id.*

Any animal may be eſtray, that is by nature tame or reclaimable, and in which there is a valuable property, ſo as that the ſame may be a ſufficient pledge for the expence of the lord of the franchiſe in keeping them the year and day. For he that takes an eſtray is bound, ſo long as he keeps it, to feed it and keep it from damage, and may not uſe it by way of labour, as to ride an horſe or the like, but is liable to an action for ſo doing. Yet he may milk a cow, or do any thing which tends to the preſervation, and is for the benefit of the animal. *Id.* 298.

An eſtray ought to be put in ſome ſeveral ground in ſome open place, and not in any covert of wood, that the owner may have a view of it; for if it be in covert, the property is not changed, though it be there a year and a day. *Kitch.* 23.

The owner, if it be within the year and day, may take it without telling any marks, or making proof of property; but this may be done upon the trial, if conteſted. 2 *Salk.* 686.

And the lord ought to make a demand of what the amends ſhould be; and then if the owner thinks the demand unreaſonable, he may tender ſufficient amends; and if the lord ſhall not accept it, this ſhall be ſettled by the jury upon trial. But it is enough in this caſe to tender amends *generally*, without expreſſing any certain ſum. For this differs from the tender of amends for treſpaſs, where, if a man pleads a tender, he muſt ſhew what he tendered, and the law puts this difficulty upon him, becauſe he is the wrong doer: but the owner of the ſtray is no wrong doer; and he cannot know how long his beaſt hath been in the lord's cuſtody, nor how much will make a proper ſatisfaction. *Id.*

If the eſtray within the year ſtray out of the manor, the lord may chaſe it back, unleſs it be ſeiſed by another lord who hath eſtrays; but if it be ſeiſed by ſuch other lord, the firſt hath no poſſibility of recovering it, for until the year and day be paſt, he hath no property therein; and the ſecond muſt proclaim it again. *Kitch.* 81.

ESTREAT, *extractum*, is uſed for a true copy or note of ſome original writing or record, and eſpecially of fines and amerciements impoſed in the rolls of a court, and *extracted* or drawn out from thence, and certified into the court of exchequer; whereupon

upon proceſs is awarded to the ſheriff to levy the ſame. And all clerks of the peace and town-clerks ſhall, within twenty days after *Sept.* 29, yearly, deliver to the ſheriff a true eſtreat of all fines and forfeitures in their reſpective courts; and ſhall, before the ſecond *Monday* after the morrow of *All Souls*, yearly deliver into the exchequer a duplicate thereof, and ſhall then make oath of the truth of the ſame. 22 & 23 *C.* 2. *c.* 22. 4 & 5 *W.* *c.* 24.

ESTREPEMENT, is an old French word, and ſignifies waſte or *extirpation.* It is a writ which lay at the common law to prevent the committing of waſte; but now the moſt uſual way of preventing waſte is by injunction out of a court of equity. 3 *Black.* 227.

EVIDENCE:

1. EVIDENCE, *what.* Evidence, in legal underſtanding, doth not only contain matters of record, as letters patent, fines, recoveries, inrollments, and the like; and writings under ſeal, as charters and deeds; and other writings without ſeal, as court rolls, accounts, and ſuch like; but in a larger ſenſe it containeth alſo the teſtimony of witneſſes, and other proofs to be produced and given for the finding of any iſſue joined between the parties. And it is called *evidence*, becauſe thereby the point in iſſue is to be made evident to the jury. 1 *Inſt.* 283.

2. *The beſt evidence is required.* One general rule that runs through the whole doctrine of evidence is this, that the beſt evidence that can be had ſhall be required. Thus, in order to prove a leaſe for years, nothing leſs ſhall be admitted but the very deed of leaſe itſelf, if in being; but if it be poſitively proved to be burned or deſtroyed (not relying on any looſe negative, as that it cannot be found, or the like), then an atteſted copy may be produced, or parol evidence given of its contents. 3 *Black.* 368.

3. *Written evidence.* Evidence is of two kinds, written evidence, and the evidence of witneſſes. Written evidence is various: ſuch as *acts of parliament*; which, if public acts, are to be taken notice of by the court, without being proved; but private acts muſt be proved by copies thereof compared with the parliament roll. *Theory of Evid.* 2. 8.

Records of the king's courts prove themſelves. But if copies of them are produced, they muſt be proved by witneſſes to be true copies. 10 *Co.* 92. So alſo of public matters which are *not of record*, as the court rolls of a manor; for they are the public rolls by which the inheritance of every tenant is preſerved. *Theory of Evid.* 22, 3.

Depoſitions of witneſſes taken in a court of record may be read, when the witneſs is dead, but not when the witneſs is living; for then they are not the beſt evidence that the nature of the thing is capable of; unleſs it ſhall appear that the witneſs hath been ſought, and cannot be found. *Id.* 30.

A *verdict* ſhall not be given in evidence, but between ſuch who were

were parties or privies to it: neither ſhall it be admitted without producing a copy of the judgment founded upon it; becauſe it might be that the judgment was arreſted. *Id.* 18, 19, 21.

A *decree* in equity may be given in evidence between the ſame parties or all claiming under them. *Id.* 36.

In caſes where deeds have been *deſtroyed* by burning of houſes by rebellion, by robbers; or where the defendant himſelf has the deed which concerns the land in queſtion, and will not produce it, a copy of it hath been admitted, or an abſtract, or even parol evidence of the contents. *Id.* 54.

The *confeſſion* of the defendant taken before juſtices of the peace is allowed to be given in evidence againſt the party confeſſing, but not againſt others. 2 *Haw.* 429.

A copy of the *probate of a will* is good evidence, where the will itſelf is of chattels; for there the probate is an original taken by authority, and of a public nature: otherwiſe, where the will is of things in the reality; becauſe in ſuch caſe the eccleſiaſtical courts have no authority to take probates; therefore ſuch probate is but a copy, and the copy of it is no more than the copy of a copy. 3 *Salk.* 154. So the copy of a *church regiſter*, of *town books*, and the like, are good evidence. *L. Raym.* 154.

A *ſhop book* ſhall not be allowed in evidence on an action for money due for wares delivered above a year before the action brought. 7 *Ja. c.* 12.

A man's *book of accounts* is no evidence for the owner of the book, but for the adverſe party; for his book cannot be of better credit than his oath, which would not ſerve in his own caſe. *Tr. per Pais.* 348.

Similitude of hands is no evidence; but ſaying that he was well acquainted with his writing, and knew it to be his writing, is evidence: and in ſome circumſtances this is not neceſſary; as where the handwriting to be proved is of a perſon reſiding abroad, one who hath frequently received letters from him in a courſe of correſpondence, hath been admitted to prove it, though he had never ſeen him write. *Theory of Evid.* 25.

4. *Evidence of witneſſes.* An *infant* of the age of fourteen years may be ſworn, for that is by law limited to be the age of diſcretion. And in ſome caſes an infant of tender years may be examined, which poſſibly, being fortified with concurrent evidences, may be of ſome weight; eſpecially in caſes of rape, buggery, and ſuch crimes as are practiſed upon children: but in no caſe ſhall an infant be admitted as evidence without oath. *Str.* 700. 1 *Atk.* 29.

If a *juror* is a witneſs in a cauſe, he ought to be ſworn openly in court, where he may be croſs-examined, and not report the matter privately to his companions. *Bac. Abr.* Evid.

An *attainder* of felony, perjury, or forgery, or a judgment for any

any heinous crime, are good cauſes of exception againſt a witneſs. But no ſuch conviction or judgment can be made uſe of to this purpoſe, unleſs the record be produced in court. And it is a general rule, that a witneſs ſhall not be aſked any queſtion, the anſwering to which might oblige him to accuſe himſelf of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs of particular crimes, whereof he never was convicted. 2 *Haw.* 433.

It is an unconteſted rule, that it is a good exception againſt a witneſs, that he is either to be a *gainer* or *loſer* by the event of a cauſe, whether ſuch advantage be direct and immediate, or conſequential only. Except in criminal caſes, where, from the neceſſity of the thing, intereſted perſons are allowed as witneſſes, otherwiſe in many caſes it would be impoſſible to convict offenders; as particularly in the caſe of robbery. 1 *Haw.* 433.

A *truſtee* may be a witneſs if he hath releaſed his truſt, but not if he hath conveyed it over. *Sid.* 315.

An *heir at law* may be a witneſs concerning the title to the land, but the *remainder man* cannot, for he hath a preſent intereſt, but the heirſhip is a mere contingency. 1 *Salk.* 283.

If a man hath been examined on interrogatories, being at that time diſintereſted, and *afterwards* becomes intereſted, his depoſition may be given in evidence; becauſe his evidence muſt be taken as it ſtood at the time of his examination. So if a witneſs to a bond becomes afterwards the repreſentative of the obligee, his hand muſt be proved as if he were dead. 2 *Atk.* 615.

Ancient deeds of *thirty years* ſtanding prove themſelves; and need not witneſſes to prove the handwriting. 3 *Black.* 367.

No evidence of a diſcourſe with another will be admitted, but the man himſelf muſt be produced; yet in ſome caſes (as in proof of any general cuſtoms, or matters of common tradition or repute) the courts admit of *hearſay* evidence, or an account of what perſons deceaſed have declared in their life-time: but ſuch evidence will not be received of any particular fact. *Id* 368. For, generally, no evidence ought to be admitted but what is upon oath; and if the firſt ſpeech was without oath, another oath that there was ſuch ſpeech makes it no more than a bare ſpeaking, and ſo of no value in a court of juſtice; and beſides, the adverſe party had no opportunity of a croſs-examination; and if the witneſs is living, what he has been heard to ſay is not the beſt evidence that the nature of the thing will admit. *Theory of Evid.* 111.

In the caſe of *Doe* on the ſeveral demiſes of *Church* and *Phillips* v. *Perkins* and others, *T.* 30 *G.* 3. it was adjudged, that a witneſs may refreſh his memory by *any* book or paper, provided he can afterwards

afterwards ſwear to the fact from his own recollection; but if he cannot ſwear to the fact from recollection any further than as finding it entered in a book or paper, then the *original* book or paper muſt be produced, for he ſhall not be allowed to give evidence from a copy or extract from it. *Caſ.* by *Durnf.* and *Eaſt.* 3 *V.* 749.

5. *Proceſs to cauſe witneſſes to appear.* Proceſs to cauſe witneſſes to appear (in civil caſes) is by writ of *ſubpœna ad teſtificandum*: which commands them, laying aſide all pretences and excuſes, to appear at the trial, on pain of 100*l.* to be forfeited to the king; to which the ſtatute 5 *El. c.* 9. hath added a penalty of 10*l.* to the party grieved, and damages equivalent to the loſs ſuſtained by want of his evidence. But no witneſs, unleſs his reaſonable expences be tendered him, is bound to appear at all; nor, if he appears, is he bound to give evidence till ſuch charges are actually paid him; unleſs it be within the bills of mortality. 3 *Black.* 369.

In criminal caſes, if a witneſs hath been bound over, and do not appear, he ſhall forfeit his recognizance.

6. *Manner of giving evidence.* He who affirms the matter in iſſue, whether plaintiff or defendant, ought to begin to give evidence; for a negative regularly cannot be proved: And therefore it is ſufficient to deny what is affirmed, until it be proved. But when the affirmative is proved, the other ſide may conteſt it with oppoſite proofs; for this is not properly proving a negative, but the proof of ſomething totally inconſiſtent with what is affirmed: as if the defendant be charged with a treſpaſs, he need only make a general denial of the fact, and if the fact be proved, then he may prove a propoſition inconſiſtent with the charge, as, that he was at another place at the time. *Theo. of Evid.* 116.

The counſel of that party which begins to maintain the iſſue, ought to conclude. *Tr. per Pais.* 220.

EWAGE (from the French *eau*, water), is toll paid for water carriage.

EXACTION, is a wrong done by an officer, or one in pretended authority, by taking a reward or fee for that which the law allows not. And the difference between exaction and extortion, is this: Extortion is, where an officer extorts more than his due, when ſomething is due to him: Exaction is, when he wreſts a fee or reward where none is due. For which the offender may be indicted, fined, and impriſoned.

EXAMINATION. If a felony is committed, and one is brought before a juſtice upon ſuſpicion thereof, and the juſtice finds, upon examination, that the priſoner is not guilty, yet the juſtice ſhall not diſcharge him, he muſt either be

bailed or committed: for it is not fit that a man once arrested, and charged with felony, or ſuſpicion thereof, ſhould be delivered upon any man's diſcretion, without farther trial. In order to which, the examination and information of the parties muſt be taken; which muſt be certified to the next gaol delivery. But this examination of the perſon accuſed, ought not to be upon oath; but if, upon his examination, he ſhall voluntarily confeſs the matter, it may be proper that he ſet his hand to it; which being afterwards ſworn to by the juſtice or his clerk, may be given in evidence againſt the party confeſſing, but not againſt others. *Dalt. c.* 164.

EXCEPTION, is a ſtop or ſtay to an action; and is divided into dilatory, and peremptory. In law proceedings, it is a denial of a matter alleged in bar to the action. And in chancery, it is what is alleged againſt the ſufficiency of an anſwer, or the like. The counſel in a cauſe are to take all their exceptions to the record at one time, and before the court hath delivered any opinion therein. 1 *Lill. Abr.* 559.

Exception *in deeds and writings* keeps the things from paſſing thereby, being a ſaving out of the deed, as if the ſame had not been granted; but it muſt be a particular thing out of a general one, as a room out of an houſe, a parcel of ground out of a manor, timber-trees out of land. There is a diverſity between an *exception* (which is always part of the thing granted, and a thing *in eſſe*), and a *reſervation*, which is always a thing not *in eſſe*, but newly created or reſerved out of the land or tenement demiſed; as for inſtance, a rent to be paid to the leſſor by the leſſee. 1 *Inſt.* 47.

Exception to *evidence.* See BILL OF EXCEPTIONS.

AN EXCHANGE is a mutual grant of equal intereſts, the one in conſideration of the other. 2 *Black.* 323.

An exchange may be made of things that lie either in grant or in livery. But no livery of ſeiſin, even in exchanges of freehold, is neceſſary to perfect the conveyance: for each party ſtands in the place of the other, and occupies his right, and each of them hath already had corporal poſſeſſion of his own land. But entry muſt be made on both ſides; for if either party die before the entry, exchange is void, for want of ſufficient notoriety. *Ibid.*

Anciently, exchanges of lands lying in the ſame county, were good without deed; but if the lands were in ſeveral counties, or if it were of things that lie in grant, as advowſons, rents, commons, and the like, an exchange of them, although they were in one and the ſame county, was not good without deed. 1 *Inſt.* 50. But now, by the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. a deed ſeemeth generally to be required, though the lands lie in the ſame county: For thereby it is enacted, that

no

no eſtate or intereſt, either of freehold or term of years, or any uncertain intereſt, not being copyhold, or cuſtomary intereſt, of any lands, tenements, or hereditaments, ſhall be aſſigned, granted, or ſurrendered, unleſs it be by deed, or note in writing, ſigned by the party or his agent, lawfully authoriſed in writing, or by act and operation of law.

In exchanges, it behoveth, that the eſtate which both parties have in the lands exchanged, be equal; for if the one granteth that the other ſhall have his land in fee tail, for the land which he hath of the grant of the other in fee ſimple, although the other agree to this, yet this exchange is void, becauſe the eſtates are not equal: In like manner it is, where it is agreed between them, that the one ſhall have in the one land fee tail, and the other in the other land but for term of life; or if the one ſhall have in the one land fee tail general, and the other in the other land fee tail ſpecial. So that always it behoveth, that in exchange the eſtates of both parties be equal; that is, if the one hath a fee ſimple in the one land, the other ſhall have like eſtate in the other land; and if the one hath fee tail in the one land, the other ought to have the like eſtate in the other land; and ſo of other eſtates. But it is not material in the exchange, that the lands be of equal value, but only that they be equal in kind and manner of the eſtate given and taken. 1 *Inſt.* 51.

And there are two things further particularly neceſſary to the perfection of an exchange. Firſt, that the word *exchange* be uſed; which is ſo eſſential, that it cannot be ſupplied by any other word, or deſcribed by any circumlocution. Secondly, that there be an execution by entry or claim in the life of the parties. 1 *Inſt.* 51.

For the parties have no freehold in deed or in law in them, before they execute the ſame by entry; and therefore if one of the parties die before the exchange be executed by entry, the exchange is void. 1 *Inſt.* 50.

So if two parſons, by conſent of patron and ordinary, exchange their preferments; and the one is preſented, inſtituted, and inducted, and the other is preſented, and inſtituted, but dies before induction; the former ſhall not keep his new benefice, becauſe the exchange was not completed; and therefore he ſhall return back to his own. 2 *Black.* 323.

So if, after an exchange of lands or other hereditaments, either party be evicted of thoſe which were taken by him in exchange, through defect of the other's title; he ſhall return back to the poſſeſſion of his own, by virtue of the implied warranty contained in all exchanges. *Ibid.*

If an *infant* exchange lands, and after his full age occupy the lands taken in exchange, the exchange is become per-

fect: for the exchange at firſt was not void but voidable. 1 *Inſt.* 51.

As concerning *dower*; the wife ſhall not be endowed both of the land given in exchange, and of the land taken in exchange, although the huſband was ſeiſed of both; but ſhe may have her election to be endowed of which ſhe will. *Ibid.*

EXCHEQUER, is an ancient court of record, ſet up by *William* the Conqueror, as part of the *aula regia*, though regulated and reduced to its preſent order by king *Edward* the firſt; and intended, principally, to order the revenues of the crown, and to recover the king's debts and duties. It is called the *exchequer*, *ſcaccharium*, from the chequed cloth, reſembling a cheſs board, which covers the table there. 3 *Black.* 43.

It conſiſts of two diviſions: the receipt of the exchequer, which manages the royal revenue; and the court, or judicial part of it, which is again divided into a court of *equity*, and a court of *common law*. *Id.* 44.

The court of *equity* is held in the exchequer-chamber, before the lord treaſurer, the chancellor of the exchequer, the chief baron, and the three inferior barons. The primary and original buſineſs of this court is to call the king's debtors to account, by bill filed by the attorney general; and to recover any lands, tenements, or hereditaments; any goods, chattels, or other profits or benefits, belonging to the crown. But by fiction of law, all kinds of perſonal actions may be now proſecuted in the court of exchequer. *Id.*

And this gives original to the *common law* part of their juriſdiction, which was at firſt eſtabliſhed merely for the benefit of the king's accountants, and is exerciſed by the barons only of the exchequer, and not the treaſurer, or chancellor. The writ upon which all proceedings here are grounded, is called a *quo minus*; in which the plaintiff ſuggeſts that he is the king's farmer, or debtor, and that the defendant hath done him the injury or damage complained of; *quo minus ſufficiens exiſtit*, by which he is the leſs able to pay to the king his debt or rent. The ſurmiſe of being debtor to the king, is become matter of form, and mere words of courſe; and the court is open to all the nation equally. And the ſame holds with regard to the *equity* ſide of the court: for there any perſon may file a bill againſt another, upon a bare ſuggeſtion that he is the king's accountant; but whether he is ſo or not, is never controverted. *Id.* 45.

An appeal from the *equity* ſide of this court lies immediately to the houſe of lords; but from the *common law* ſide, a writ of error muſt be firſt brought in the court of exchequer chamber,

chamber, and from thence a writ of error lies to the houſe of lords. *Id.* 46

EXCHEQUER CHAMBER, is a court which was firſt erected by the ſtatute 31 *Ed.* 3. *c.* 12. to determine cauſes upon writs of error from the common law ſide of the court of exchequer. And to that end, it conſiſts of the lord treaſurer and lord chancellor, with the juſtices of the king's bench and common pleas. In imitation of which, a ſecond court of exchequer chamber was erected by the ſtatute 27 *El. c.* 8. conſiſting of the juſtices of the common pleas, and the barons of the exchequer; before whom, writs of error may be brought to reverſe judgments in certain ſuits originally begun in the court of king's bench. Into the court alſo of exchequer chamber (which then conſiſts of all the judges of the three ſuperior courts, and now and then the lord chancellor alſo), are ſometimes adjourned from the other courts, ſuch cauſes as the judges, upon argument, find to be of great weight and difficulty; before any judgment is given upon them in the court below. From this court a writ of error lies to the houſe of lords, the laſt reſort for the ultimate deciſion of every civil action. 3 *Black.* 55.

EXCISE. For the purpoſe of levying the revenue of exciſe, the kingdom of *England* and *Wales* (excluſive of the bills of mortality) is divided into forty-nine *collections*; ſome called by the names of particular counties; others by the names of great towns, where one county is divided into ſeveral collections, or where a collection comprehends the contiguous parts of ſeveral counties: every collection is ſubdivided into *diſtricts*, within each of which there is a *ſupervisor*; and each diſtrict is parcelled into *out-rides*, and *foot-walks*, within each of which there is a *gager*, or ſurveying officer.

And the commiſſioners and ſubcommiſſioners of exciſe ſhall conſtitute, under their hands and ſeals, ſuch and ſo many *gagers* as they ſhall find needful.

In order to which, he who would be made a gager muſt procure a certificate that he is above 21, and under 30 years of age; that he underſtands the four firſt rules of arithmetic; that he is of the communion of the church of *England*; how he has been employed, or what buſineſs he hath followed; that he is not encumbered with debts; whether ſingle or married; and if married, how many children he has; for if he has above two, he cannot (by the rules of the office) be admitted.

He muſt alſo nominate two perſons to be his ſureties, and it muſt be certified that they are of ſufficient ability; and that the ſaid certificate is of his own hand-writing: ſuch certificate, written by him, muſt be ſigned by the ſupervisor where the party applying lives; and at the bottom of the certificate muſt be, his affidavit, that neither he, nor any elſe to his knowledge, hath

directly or indirectly given or promiſed to give any treat, fee, gratuity, or reward, for his obtaining, or endeavouring to obtain, an order for his being inſtructed.

When an order for inſtruction is granted, it is directed to an experienced officer, who receives ſuch perſon as his pupil; and the like books as officers have, being delivered to ſuch pupil, he goes with and attends the officer who inſtructs him, and takes ſurveys, and in his own books makes the like entries as if he was an officer, until the inſtructor certifies that he is fully inſtructed.

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens.

But no perſon ſhall be capable of intermeddling with any office relating to the exciſe, until he ſhall, before two juſtices in the county where his employment ſhall be, or before a baron of the exchequer, take the oaths of allegiance and ſupremacy, together with this oath following: *You ſhall ſwear, to execute the office of truly and faithfully, without favour or affection, and ſhall from time to time true account make and deliver to ſuch perſon or perſons as his majeſty ſhall appoint to receive the ſame; and ſhall take no fee or reward for the execution of the ſaid office, from any other perſon than from his majeſty, or thoſe whom his majeſty ſhall appoint in that behalf.* And the juſtices ſhall certify the taking of ſuch oath, to the next quarter ſeſſions, there to be recorded: and the officer ſhall alſo enter a certificate thereof with the auditor of the exciſe.

And he ſhall, after his admiſſion, receive the ſacrament, and produce a certificate thereof, and take the oaths, and ſubſcribe the declaration againſt tranſubſtantiation, at the ſeſſions of the peace, as other perſons admitted to offices.

The general buſineſs of the *ſuperviſor*, is to be continually ſurveying the houſes and places of the perſons within his diſtrict liable to duties; and to obſerve and ſee whether the officers duly make their ſurveys, and make due entries thereof in their books and in their ſpecimen papers; and every ſuperviſor is in his own book to enter what himſelf does, each day and part thereof; and alſo, ſet down the behaviour, good or bad, the diligence or negligence of the ſeveral officers of his diſtrict; and at the end of every ſix weeks, to draw out a diary of every day's buſineſs, and of the remarks made each day of the ſeveral officers in his diſtrict; and to tranſmit ſuch diary at the end of every ſix weeks to the chief office.

And each commiſſioner takes and peruſes a proportion of theſe diaries, and when he meets with any remarkable complaint againſt any officer, he communicates it to the reſt; who thereupon come to an agreement, either to *admoniſh*, *reprimand*, *reduce*, or *diſcharge*. For ſmall faults, officers are admoniſhed; for great ones, reprimanded; for greater, reduced; but for the greateſt they

they are discharged. The commissioner who peruses the diary, writes in the margin, admonish, reprimand, or as the case is.

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender word thereof. Which reprimand book is resorted to, upon discovering new faults; and if it is there found, that the officer has before been admonished and reprimanded so often that there are no hopes of his amending, he is then discharged. The said book is likewise resorted to, when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded.

The *collector*'s business is every six weeks to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before the justices; he is also to peruse the supervisors diaries, and where he finds an officer complained of, is to examine him and the supervisor, and having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection.

For faults, gagers are reduced, either to be only assistants, or from foot-walks to out-rides; supervisors are reduced to be again only gagers; and collectors are reduced to be supervisors.

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored unless one of the discharges appears to have been occasioned by a misrepresentation of the case.

EXCLUSA, a sluice for carrying off water. So *excluſagium* is a payment to the lord for the benefit of such sluice.

EXCOMMUNICATION, is an ecclesiastical censure, whereby the person against whom it is pronounced, is for the time cast out of the communion of the church.

It is of two kinds: the *lesser*, and the *greater*. The *lesser* excommunication is, the depriving the offender of the use of the sacraments and divine worship; and this sentence is passed by judges ecclesiastical on such persons as are guilty of obstinacy or disobedience, in not appearing upon a citation, or not submitting to the injunctions of the court. The *greater* excommunication is, that whereby men are deprived not only of the sacraments and the benefit of the divine offices, but of the society and conversation of all christians.

In the ancient church, the sentences of the greater excommunication

nication were solemnly promulged four times in the year, with candles lighted, bells tolling, the cross, and other solemnities. And by latter canons, excommunicate persons shall be publicly denounced in the church every six months; and the church-wardens shall especially take care to keep excommunicate persons out of the church.

The law in many cases inflicts the censure of excommunication *ipso facto* upon offenders; which nevertheless is not intended so as to condemn any person without a lawful trial for his offence; but he must first be found guilty in the proper court, and then the law gives that judgment.

An excommunicate person may make a testament, unless he be excommunicated by the greater excommunication. *Swin.* 109.

But an excommunicate person is disabled to bring an action; and this, whether it be by the greater or lesser excommunication. 1 *Inst.* 134.

So also he cannot serve upon juries, nor can be a witness in any court. And by the rubric in the book of common prayer, the burial office shall not be used for any that die excommunicate.

After a person hath remained forty days under sentence of excommunication, he may, on certificate of the diocesan to the court of chancery, be imprisoned by a writ of *excommunicatio capiendo*, until he submits and is absolved; which again being certified by the bishop, another writ, called an *excommunicatio deliberando*, issues to the sheriff to discharge him. 2 *Inst.* 189.

But if after a person is excommunicate, there comes a general act of pardon, which pardons all contempts, it seems that the offence is taken away without any formal absolution. 2 *Bac. Abr.* 326.

EXCOMMUNICATO CAPIENDO, is a writ to the sheriff for apprehending him who stands obstinately excommunicated forty days; for the contempt of such person being certified into the chancery, this writ issues for the imprisoning him without bail until he conforms. *F. N. B.*

EXCOMMUNICATO DELIBERANDO, is a writ to the sheriff for delivery of an excommunicate person out of prison, upon certificate from the bishop of his conformity to the jurisdiction ecclesiastical. *F. N. B.*

EXECUTION (in civil cases), signifies the obtaining of actual possession of any thing acquired by judgment of law. 1 *Inst.* 154.

If the plaintiff recovers in an action wherein the seisin or possession of LANDS is awarded to him, a writ issues to the sheriff commanding him to give possession to the plaintiff of the land so recovered. And this writ is that which is called *habere facias seisinam*, if the land recovered is a freehold; or, if it is a chattel

chattel intereſt, and not a freehold, then the writ is entitled *habere facias poſſeſſionem*. In the execution whereof, the ſheriff may take with him the power of the county, and may juſtify breaking open doors, if the poſſeſſion be not quietly delivered: but if it be peaceably yielded up, the delivery of a twig, a turf, or the ring of the door, in the name of ſeiſin, is ſufficient. 3 *Black.* 412.

In other actions, where the judgment is, that ſomething in ſpecial be done or rendered by the defendant; then in order to compel him ſo to do, and to ſee the judgment executed, a ſpecial writ of execution iſſues to the ſheriff, according to the nature of the caſe. 3 *Black.* 413.

Executions in actions where MONEY is recovered, as a debt or damages, are of five ſorts: either againſt the *body* of the defendant; or againſt his *goods*; or againſt his *goods* and the *profits* of his lands; or againſt his *goods* and the *poſſeſſion* of his lands; or againſt all three, his *body*, *lands*, and *goods*. *Id.* 414.

I.

THE firſt of theſe ſpecies of execution, is by a writ to take the *body* of the defendant, called a *capias ad ſatisfaciendum*: the intent whereof is, to impriſon the body of the debtor, till ſatisfaction be made for the debt, coſts, and damages. And this is an execution of the higheſt nature, inaſmuch as it deprives a man of his liberty till he makes the ſatisfaction awarded; and therefore, when a man is once taken in execution upon this writ, no other proceſs can be ſued out againſt his lands or goods. 3 *Black.* 414, 5.

But if the defendant dies, whilſt he is charged in execution upon this writ, the plaintiff may, after his deceaſe, ſue out new executions againſt his lands, goods, or chattels. *Id.* 415.

And this writ may be ſued out, as may all other executory proceſs for *coſts*, againſt a plaintiff as well as a defendant, when judgment is had againſt him. *Id.*

Upon this writ the ſheriff may not break open any outer door to execute it, but muſt enter peaceably, and may then break open any inner door belonging to the defendant, in order to take the goods. *Id.* 417.

When a defendant is once in cuſtody upon this proceſs, he is to be kept in ſafe and cloſe cuſtody; and if he be afterwards ſeen at large, it is an eſcape; and the plaintiff may have an action thereupon againſt the ſheriff for his whole debt: for although upon arreſts, and what is called *meſne proceſs*, being ſuch as intervenes between the commencement and end of a ſuit, the ſheriff, before the ſtatute 8 & 9 *W. c.* 27. might have indulged the defendant as he pleaſed, ſo as he produced him in court to anſwer the plaintiff at the return of the writ; yet upon a taking in execution, he could

could never give any indulgence, for, in that caſe, confinement is the whole of the debtor's puniſhment, and of the ſatisfaction made to the creditor. *Id.* 415.

Even a reſcue of a priſoner in execution, either going to gaol, or in gaol, or a breach of priſon, will not excuſe the ſheriff from being guilty of and anſwering for the eſcape; for he ought to have ſufficient force to keep him, ſeeing he may command the power of the county. *Id.* 416.

If the ſheriff returns that the defendant cannot be found, the plaintiff may ſue out a proceſs againſt the bail (if any were given); in order to which, a writ of *ſcire facias* may be ſued out againſt the bail, commanding them to ſhew cauſe why the plaintiff ſhould not have execution againſt them for his debt and damages. And if they ſhew no ſufficient cauſe, or the defendant doth not ſurrender himſelf, the plaintiff may have judgment againſt the bail, and take out a proceſs of execution againſt them. *Id.*

II.

THE next ſpecies of execution is againſt the *goods and chattels* of the defendant, and is called a writ of *fieri facias*, commanding the ſheriff to *cauſe to be made* of the goods and chattels of the defendant the ſum or debt recovered. In this caſe the law is the ſame about breaking open doors in order to come at the goods, as in the former caſe to come at the perſon. The ſheriff may ſell the goods and chattels (even an eſtate for years, which is a chattel real) of the defendant, till he hath raiſed enough to ſatisfy the judgment and coſts; firſt paying to the landlord of the premiſes, upon which the goods are found, the arrears of rent then due, not exceeding one year's rent in the whole. If part only of the debt be levied, the plaintiff may have execution againſt the body for the reſidue. 3 *Black.* 417.

The old ſheriff to whom the writ was delivered, is bound and compellable to proceed in the execution; for the ſame perſon that begins an execution ſhall end it. 1 *Salk.* 323.

If two writs of *fieri facias* come to the ſheriff in one day, he ought to execute that firſt which came to hand firſt; otherwiſe he makes himſelf liable, and muſt anſwer it to the party that brought the firſt writ, who may bring an action againſt him; but the execution nevertheleſs ſhall ſtand good. 1 *Salk.* 320.

If a man recovers jointly againſt two in an action of debt, the execution ought to be joint againſt both, and not againſt one only. 1 *Roll's Abr.* 888.

But if two become bail, and judgment is given againſt the bail; the execution may be againſt one of them, without naming the other; for every one of the bail is bound ſeverally. *Id.*

If a man recover damages againſt a corporation, he ſhall not have

have execution of the goods of the particular perſons in their natural capacity, but of the goods of the corporation. *Id.* 901.

If, after delivery of the writ, and before execution executed, the defendant becomes bankrupt; that will hinder the execution. 3 *Salk.* 159.

Nothing can be taken in execution that cannot be ſold, as deeds and writings; ſo alſo, bank notes cannot be taken in execution, for though they are aſſignable over, yet notwithſtanding they remain in ſome meaſure *choſes in action*, and the ſheriff or his bargainee cannot bring an action on them without aſſignment. *Caſ. Hardw.* 53.

The goods of a ſtranger, in the poſſeſſion of the defendant, cannot be taken in execution; for the ſheriff, at his peril, muſt take notice whoſe goods they are: but if the ſheriff inquires by a jury, where the property is lodged, and it is found that they are the defendant's goods, when they are not, this will indemnify the ſheriff. *Dalt. Sher.* 60. *Wood. b.* 4. *c.* 4.

But if the beaſts of a ſtranger be levant and couchant upon the land, they may be taken by the ſheriff in execution, for a debt to the king; for they are the iſſues of the land, and the land is debtor: and if the law were otherwiſe, a man might defeat the king by agiſting the land. 1 *Salk.* 395.

The ſale of goods for a valuable conſideration, after judgment, and before execution awarded, is good: and if judgment be given againſt a leſſee for years, and afterwards he ſelleth the term before execution, the term aſſigned *bona fide*, is not liable. For till execution is lodged in the ſheriff's hands, a man is owner of his goods, and may diſpoſe of them as he thinks fit, and they are not bound by the judgment. *Prec. Cha.* 286.

But where a man generally keeps poſſeſſion of his goods after ſale, the ſale will be void againſt others, by the ſtatute of frauds. *Id.*

A ſeizure of part of the goods in an houſe, in the name of the whole, is a good ſeizure of all. *L. Raym.* 724.

If the ſheriff ſells the goods at an under rate, the ſale is good, and the defendant can have no remedy: but where there appears any covin between the ſheriff and the purchaſer, the owner may have an action againſt the ſheriff. *Kelw.* 64.

Where a *fieri facias* is delivered to the ſheriff to levy 20*l.*, and he takes an entire thing in execution, as an horſe worth 30*l.*, and ſelleth it for ſo much, and returns that he levied the 20*l.*; he may retain the other 10*l.* till the defendant demands it, for the ſheriff is not bound to ſeek him. 3 *Salk.* 159.

The ſale ſhall take effect, though the judgment ſhall be afterwards reverſed, otherwiſe none would purchaſe: but the value of the goods muſt be reſtored. *Wood. b.* 4. *c.* 4.

If part only of the debt be levied, the plaintiff may, on return of

of the writ, have a writ of execution againſt the body of the defendant for the reſidue. 3 *Black.* 417.

The execution is not abated by the plaintiff's death; but the ſheriff, notwithſtanding that, ſhall proceed in it; for the ſheriff hath nothing more to do with the plaintiff, for the writ commands him to levy the money, which the plaintiff's death doth no way hinder. 1 *Salk.* 322.

If on a *fieri facias* all the money is not levied, the writ muſt be returned before a ſecond execution can be taken out; for that muſt be grounded on the firſt writ; and recite that all the money was not levied upon the firſt: but if upon the firſt all the money be levied, the writ need not to be returned, for no farther proceſs is neceſſary. 1 *Salk.* 318.

III.

A THIRD ſpecies of execution, is by writ of *levari facias*; which affects a man's *goods*, and the *profits* of his lands, by commanding the ſheriff to *levy* the plaintiff's debt on the lands and goods of the defendant; whereby the ſheriff may ſeize all his goods, and receive the rents and profits of his lands, till ſatisfaction be made to the plaintiff. But little uſe is now made of this writ; the remedy by the writ of *elegit*, which takes poſſeſſion of the lands themſelves, being much more effectual.

But of this ſpecies is a writ of execution proper only to eccleſiaſtics; which is given, when the ſheriff, upon a common writ of execution, returns that the defendant is a clerk beneficed, having no lay fee; in which caſe, a writ iſſues to the biſhop, to levy the debt of his eccleſiaſtical goods; who thereupon iſſues a ſequeſtration of the profits of the benefice, directed to the churchwardens, to gather up the ſame, and to pay them over to him that had the judgment, till the full ſum be raiſed. 2 *Inſt.* 472.

IV.

A FOURTH ſpecies of execution, is by the ſaid writ of *elegit*; which was given by the ſtatute of 13 *Ed.* 1. *c.* 18. either upon a judgment for debt or damages, or upon the forfeiture of a recognizance taken in the king's court: by which ſtatute it is enacted, that *when debt is recovered or acknowledged in the king's court, or damages awarded, it ſhall be in the* election *of him that ſueth for ſuch debt or damages, to have a writ that the ſheriff levy the ſame of the lands and goods; or that the ſheriff ſhall deliver to him all the chattels of the debtor, ſaving only his oxen, and beaſts of his plough, and the one half of his lands, until the debt be levied upon a reaſonable price and extent.*

Before this ſtatute, a man could only have ſatisfaction of goods, chattels, and the preſent profits of lands, as by the aforeſaid writs of *fieri facias*, or *levari facias*, but not the poſſeſſion of the lands themſelves.

themſelves. The ſtatute therefore granted this writ (called an *elegit*, becauſe it is in the choice or *election* of the plaintiff, whether he will ſue out this writ, or one of the former); by which writ of *elegit*, the defendant's goods and chattels are not ſold, but only appraiſed; and all of them (except oxen, and beaſts of the plough) are delivered to the plaintiff, at ſuch reaſonable appraiſement and price, in part of ſatisfaction of his debt. If the goods are not ſufficient, then the moiety, or one half of his freehold lands whether held in his own name, or by any in truſt for him, are alſo to be delivered to the plaintiff to hold, till, out of the rents and profits of the ſaid moiety, the debt be levied, or till the defendant's intereſt be expired; as, till the death of the defendant, if he be tenant for life, or in tail. The other moiety of the lands was originally reſerved, for the lord to diſtrain for his ſervices. And hence it is, that, to this day, copyhold, and other like cuſtomary lands, are not liable to be taken in execution upon a judgment. 3 *Black.* 418, 9.

So, if a copyholder, with licence of the lord, makes a leaſe for years of the copyhold; the term is not liable to execution for his debt, becauſe the copyhold lands themſelves are not liable. 10 *Vin. Abr.* 547.

This execution, or ſeizing of lands by *elegit*, is of ſo high a nature, that after it the body of the defendant cannot be taken; but if execution can only be had of the goods, becauſe there are no lands, and ſuch goods are not ſufficient to pay the debt, then execution may be taken againſt the body: ſo that body and goods may be taken in execution, or lands and goods; but not body and land too, upon any judgment between ſubject and ſubject, in the courſe of the common law. 3 *Black.* 418, 9.

It hath been held, that a perſon may have ſeveral *elegits* into ſeveral counties, for the intire ſum recovered; or that he may divide his execution, and have it for part in one county, and part in another. *Mo.* 24.

If a man acknowledges a recognizance of 100*l.*, to be paid at five days; preſently after the firſt day, he may ſue an *elegit* for 20*l.*, and have the moiety of the land delivered to him; and, when the ſecond day is paſt, he may have another *elegit* for that 20*l.*, and have the moiety of the remnant delivered to him; and ſo of the reſt; for they are in effect in nature of ſeveral judgments in law. 2 *Inſt.* 395.

If a perſon hath judgment given againſt him for debt or damages, or be bound in a recognizance, and dieth, and his heir is within age, no execution ſhall be ſued of the lands during the minority. *Id.*

Upon an *elegit*, the appraiſement of goods, and extent of lands, muſt be by inqueſt of twelve men, and ſo returned by the ſheriff. *Id.* 396.

And

And the ſheriff ought to deliver one half of all houſes, lands, meadows, paſtures, rents, reverſions, and hereditaments, wherein the defendant had any eſtate in fee or for life; and if it be ſo that the defendant be jointenant, or tenant in common, then it ought to be ſo ſpecially alleged and contained in the return. *Hutt.* 16.

He that recovers land by judgment, ſhall take it as it is at the time of the execution; that is, if it be ſown with grain, and not ſevered, or graſs growing ready to be cut. *Br.* Judgment.

If there be an execution againſt tenant for years, without impeachment of waſte, though ſuch tenant may cut down and ſell, yet the ſheriff cannot; becauſe the tenant in ſuch caſe hath only a bare power without an intereſt. 1 *Salk.* 368.

But where the tenant has an intereſt as well as a power, as tenant for years hath in ſtanding corn, in ſuch caſe the ſheriff may cut down and ſell. *Id.*

During the time that the plaintiff holds the lands ſo delivered to him, he is called tenant by *elegit*. Yet he hath only a chattel intereſt therein, and therefore it ſhall not go to his heir, but to his executor, who is intitled to the debt; for the payment of which, this land is a remedy or ſecurity. 2 *Black.* 161.

If tenant by *elegit* ſhall commit waſte, he ſhall, on a writ of account, be compelled to deduct the ſame out of the ſum recovered. *T. L.*

Finally, whenever the defendant hath paid and ſatisfied the debt, he may enter upon his land. And ſo it is, when the tenant by *elegit* is ſatisfied by the ordinary extent or valuation, the tenant of the land may enter. 2 *Inſt.* 396.

V.

UPON ſome proſecutions given by ſtatute, as in the caſe of recognizances or debts acknowledged on ſtatutes merchant and of the ſtaple, the body, lands, and goods, may all be taken at once in execution, to compel the payment of the debt. The proceſs hereon is uſually called an *extent*; becauſe the ſheriff is to cauſe the lands and goods to be appraiſed to their full extended value before he delivers them to the plaintiff, that it may be certainly known how ſoon the debt will be ſatisfied. 3 *Black.* 420.

Alſo the king is entitled by law to ſue out execution againſt the body, lands, and goods, of his accountant or debtor: and his debt ſhall, in ſuing out execution, be preferred to that of every other creditor, who hath not obtained judgment before the king commenced his ſuit. *Id.*

The king's judgment alſo affects all lands which the king's debtor hath at or after the time of contracting the debt; whereas judgment between ſubject and ſubject, ſhall not bind the land in

in the hands of a *bona fide* purchaſer, but only from the time of actually ſigning the judgment; nor the goods in the hands of a ſtranger, or a purchaſer, but only from the actual delivery of the writ to the ſheriff. *Id.* 420, 1.

A diſtreſs for rent, by the landlord, may be ſeized for the king's debts, before ſale. 2 *Vez.* 288.

Lands and goods are to be appraiſed and extended by inqueſt of twelve men, and then delivered to the creditor, in order to the ſatisfaction of his debt; for every extent ought to be by inquiſition and a verdict of a jury, and without ſuch inquiſition the ſheriff cannot execute the writ. *Cro. Ja.* 569.

As the lands are to be delivered to the party at a reaſonable yearly value, ſo the goods ſhall be delivered at a reaſonable price; and, on a *ſcire facias* to account, the creditor is to account according to the extended value. *Hardr.* 136.

And when lands are delivered in extent, it is as if the creditor had taken a leaſe thereof for years, until the debt is ſatisfied. 1 *Lutw.* 429.

The plaintiff ſhall be ſatisfied for all his coſts and damages, which, at the time of the *liberate* or delivery of the land to him, he hath ſuſtained. 4 *Co.* 67.

The inquiſition ought to be returned by the ſheriff; otherwiſe it is void, and doth not give any title to the plaintiff, although the ſheriff delivers to him the land upon it. *Jenk.* 318.

EXECUTION OF CRIMINALS, is the completion of human puniſhment; and this, in all caſes, as well capital as otherwiſe, muſt be performed by the legal officer, the ſheriff, or his deputy. In caſes of felony, the uſage is, for the judge to ſign the calendar, or liſt, of all the priſoners names, with their ſeparate judgments in the margin, which is left with the ſheriff. As for a capital felony, it is written oppoſite to the priſoner's name,—"Let him be hanged by the neck;" which, formerly, in the days of Latin and abbreviation, was written in a very conciſe manner, *ſuſ' per coll'*, for *ſuſpendatur per collum.* If, upon judgment to be hanged by the neck till he be dead, the criminal be not thereby killed, but revives, the ſheriff muſt hang him again: for the former hanging was no execution of the ſentence; and if a falſe tenderneſs were to be indulged in ſuch caſes, a multitude of colluſions might enſue. 4 *Black.* 405.

EXECUTOR, is one that is appointed by a perſon's laſt will and teſtament, to have the execution thereof after his deceaſe, and the diſpoſing of all the teſtator's effects, according to the tenor of the will. He is as much as the *hæres deſignatus* or *teſtamentarius* in the civil law, as to the debts, goods, and chattels, of the teſtator. *Terms of the Law.*

All perſons are capable of being executors, that are capable of making wills, and many others beſides, as femes covert, and infants;

infants; nay, even infants unborn, or in *ventre ſa mere*, may be made executors. But no infant can act as ſuch, till the age of ſeventeen years; until which time, adminiſtration muſt be granted to ſome other during his minority. In like manner it may be granted during the abſence of the executor out of the kingdom, or when a ſuit iscommenced in the eccleſiaſtical court touching the validity of thewill. 2 *Black.* 503.

This appointment of an executor is eſſential to the making of a will; and it may be performed either by expreſs words, or ſuch as ſtrongly imply the ſame. But if the teſtator makes his will, without naming any executors, or if he names incapable perſons, or if the executors named, refuſe to act; in any of theſe caſes, the ordinary muſt grant adminiſtration with the will annexed, to ſome other perſon; and the duty of the adminiſtrator in ſuch caſes is very little different from that of an executor. *Id.*

The intereſt veſted in the executor by the will of the deceaſed, may be continued and kept alive by the will of the ſame executor; ſo that the executor of the executor is to all intents and purpoſes the executor and repreſentative of the firſt teſtator; but the adminiſtrator of the executor is not the repreſentative of the teſtator. For the power of an executor is founded upon the ſpecial confidence and actual appointment of the deceaſed; and ſuch executor is therefore allowed to tranſmit that power to another, in whom he has equal confidence; but the adminiſtrator of the executor is merely the officer of the ordinary, preſcribed to him by act of parliament, in whom the deceaſed has repoſed no truſt at all, and his power is only to adminiſter the effects of the inteſtate executor, and not of the original teſtator; in which caſe, therefore, it is neceſſary for the ordinary to commit adminiſtration afreſh *de bonis non;* that is, of the goods of the teſtator not adminiſtered by his executor. *Id.* 506.

The office and duty of an executor is,

1. To *bury* the deceaſed in a manner ſuitable to the eſtate which he leaves behind him. Neceſſary funeral expences are allowed, previous to all other debts and charges; but if he be extravagant, it is a ſpecies of devaſtation or waſte of the ſubſtance of the deceaſed, and ſhall only be prejudicial to himſelf, and not to the creditors or legatees of the deceaſed. 2 *Black.* 508.

2. He muſt *prove the will* of the deceaſed; which is done either in common form, which is generally upon his own *oath* before the ordinary or his ſurrogate; but in the province of *York*, a witneſs hath been uſually alſo ſworn; or in ſolemn form, by all the witneſſes, in caſe the validity of the will be diſputed. When the will is ſo proved, the original muſt be depoſited in the regiſtry of the ordinary; and a copy thereof on parchment is made out under the ſeal of the ordinary, and delivered to the executor,

tor, together with a certificate of its having been proved before him; all which together is usually styled the *probate*. *Id.*

3. He must make an *inventory* of all the goods and chattels, whether in possession or action, of the deceased; which he is to deliver into the ordinary upon oath, if thereunto lawfully required. *Id.*

4. He is to *collect* all the goods and chattels so inventoried; and, to that end, he has very large powers and interests conferred on him by the law; being the representative of the deceased, and having the same property in his goods, as the principal had when living, and the same remedies to recover them. And if there be two or more executors, a sale or release by one of them shall be good against all the rest. *Id.* 510.

5. He must pay the *debts* of the deceased; in the payment whereof, he must observe the rules of priority; otherwise, on deficiency of assets, if he pays those of a lower degree first, he must answer those of a higher out of his own estate And first, he must pay all funeral charges, and the expence of proving the will, and the like. Secondly, debts due to the king by matter of record. Thirdly, such debts as are by particular statutes to be preferred to all others; as forfeitures for not burying in woollen, money due on poor rates, and for letters to the post-office. Fourthly, debts of record; as judgments, statutes, and recognizances. Fifthly, debts due by specialty; as for rent, or upon bonds, covenants, and the like, under seal. Lastly, debts on simple contracts; namely, upon notes unsealed, and verbal promises. *Id.* 511.

Among debts of equal degree, the executor is allowed to pay himself first; by retaining in his hands so much as his debt amounts unto. *Id.*

6. When the debts are all discharged, the *legacies* claim the next regard; which are to be paid by the executor so far as his assets will extend; but he may not give himself the preference herein, as in the case of debts. *Id.* 512.

7. When all the debts and particular legacies were discharged, the *surplus*, or *residuum*, must be paid to the residuary legatee, if any be appointed by the will; and if there be none, it was long a settled notion, that it devolved to the executor's own use by virtue of his executorship: but whatever ground there might have been formerly for this opinion, it seems now to be understood with this restriction, that although where the executor hath no legacy at all, the residuum shall in general be his own; yet wherever there is sufficient on the face of the will (by means of a competent legacy or otherwise) to imply that the testator intended his executor should *not* have the residue, the undevised surplus of the estate shall go to the next of kin; the executor

then ſtanding upon exactly the ſame footing as an adminiſtrator. *Id.* 514.

EXECUTOR DE SON TORT is, where a ſtranger takes upon him to act as executor, without any juſt authority; as by intermeddling with the goods of the deceaſed; in which caſe he is called executor of his own wrong, *de ſon tort*, and is liable to all the trouble of an executorſhip, without any of the profits or advantages. But merely doing acts of neceſſity or humanity, as locking up the goods, or burying the corps of the deceaſed, will not amount to ſuch an intermeddling, as will charge a man as executor of his own wrong. Such a one cannot bring an action himſelf in right of the deceaſed, but actions may be brought againſt him. He is chargeable with the debts of the deceaſed, ſo far as aſſets come to his hands; and, as againſt creditors in general, ſhall be allowed all payments made to any other creditor, in the ſame or a ſuperior degree, himſelf only excepted. And although, as againſt the rightful executor, he cannot plead ſuch payment, yet it ſhall be allowed him in mitigation of damages, unleſs perhaps upon a deficiency of aſſets, whereby the rightful executor may be prevented from ſatisfying his own debt. 2 *Black.* 507.

EXECUTORY is, where an eſtate in fee, created by deed or fine, is to be afterwards executed by entry, livery, writ, or the like. Eſtates *executed* are, when they paſs preſently to the perſon to whom conveyed, without any after act. And an *executory deviſe* is, where a future intereſt is deviſed, that veſts not at the death of the teſtator, but depends on ſome contingency which muſt happen before it can veſt. If a particular eſtate is limited, and the inheritance paſſed out of the donor, this is a *contingent remainder*; but where the fee by a deviſe is veſted in any perſon, and to be veſted in another upon contingency, this is an *executory deviſe*: and in all caſes of executory deviſes, the eſtates deſcend until the contingency happens. So an *executory contract* is, as where two perſons agree to exchange horſes next week; here the right only veſts, and their property in each other's horſe is not in poſſeſſion, but in action. A *contract executed* is, as if they agree to exchange, and do it immediately; in which caſe the poſſeſſion and the right are transferred together. A *contract executory* conveys a thing in action; a *contract executed* conveys a thing in poſſeſſion. 2 *Black.* 443.

EXHIBIT, is a word in law proceedings; as where a deed or other writing is in a ſuit in chancery exhibited to be proved by witneſſes, and the commiſſioners certify on the back of it that the deed or writing was ſhewn to the witneſs and by him ſworn to, this is called an exhibit.

EXIGENT, is a writ requiring the ſheriff to cauſe the defendant to be proclaimed, required, or *exacted*, in five county courts ſucceſſively,

ſucceſſively, to render himſelf, and if he does, then to take him into cuſtody; but if he does not appear, and is returned *quinto exactus*, that is, five times proclaimed, he ſhall then be outlawed by the coroners of the county.

EXILE, a baniſhment, or driving out of a perſon. This exile is either by reſtraint, when the government forbids a man, and makes it penal to return; or voluntary, where he leaves his country upon diſguſt, but may come back at pleaſure. *Lit. Dic.* 2 *Lev.* 191.

EXILIUM, is ſpoken of in our old law books, in reference to tenants or villeins being injurioufly driven out, or *exiled* from their tenements. There was *vaſtum*, *deſtructio*, and *exilium*; *vaſtum* and *deſtructio* were, when the tenants had their houſes, gardens, and woods, waſted or deſtroyed; *exilium*, when the villein having been manumitted, was afterwards unlawfully driven out of his tenement. 1 *Inſt.* 53.

EX OFFICIO, is ſo called from the power which an officer hath, by virtue of his office, to do certain acts, without being particularly applied to; as a juſtice of the peace may not only grant ſurety of the peace at the complaint or requeſt of any perſon, but he may, in ſeveral inſtances, demand and take it *ex officio*. 1 *Haw.* 137.

The king, by his attorney general, may file informations *ex officio*, in the court of king's bench, which is uſually done for ſuch high miſdemeanors as peculiarly tend to diſturb the government. For offences of this kind, not admitting any delay, the law has given to the crown the power of an immediate proſecution, without waiting for any previous application to any other tribunal. 4 *Black.* 309.

EX PARTE, of the one part; as a commiſſion in chancery *ex parte*, is that which is taken out and executed by one ſide or part only, on the other party's neglecting, or refuſing to join.

EXPECTANCY, ſignifies having relation or dependence upon ſomething future. *Eſtates* are of two ſorts, either in *poſſeſſion*, which are ſometimes called eſtates *executed*; or in *expectancy*, which are *executory*: and of *expectancies*, there are two ſorts; one created by the parties, called a *remainder*; the other by act of law, called a *reverſion*.

EXPEDITATE, ſignifies the cutting out the ball of the fore feet of the dogs of perſons living near the foreſt, to prevent them from running after the king's game; but, within the foreſt, no dogs were allowed to be kept but maſtiffs, (theſe only being neceſſary for the keeping a man's houſe); and they were to be lawed, by cutting off the three claws of the fore foot on the right ſide, cloſe by the ſkin.

EX POST FACTO, is a term uſed in the law, ſignifying a thing done after ſomething that had been done before. An eſtate

granted may be made good or avoided by matter *ex poſt facto*, where an election is given to the party to accept, or not accept. 1 *Co.* 146.

EXTENT, is a writ directed to the ſheriff, to ſeize and value lands and goods to the utmoſt *extent*, if one that is bound to the king by ſpecialty, or to others by ſtatute or recognizance, hath forfeited his bond or recognizance; ſo that, by the yearly rent, the creditor may be ſatisfied. *F. N. B.* 131.

Upon this, the creditor may ſue a writ to the ſheriff out of the chancery, to deliver him the lands and goods to the value of the debt; which writ is called a *liberate*. Wood. b. 4. c. 4.

Upon an *extent*, the body, lands, and goods, may all be taken at once in execution, to compel the payment of the debt. 3 *Black.* 420.

The king's debt, on an *extent*, ſhall be preferred to that of every other creditor who hath not obtained judgment before the king commenced his ſuit. *Id.*

The king's judgment, alſo, affects all lands, which the king's debtor hath at or after the time of contracting his debt. Whereas, between ſubject and ſubject, the judgment ſhall not bind the lands in the hands of a *bona fide* purchaſer, but only from the time of actually ſigning the ſame; nor the goods in the hand of a ſtranger, or a purchaſer, but only from the actual delivery of the writ to the ſheriff. *Id.*

The lands and goods are to be appraiſed and extended by inqueſt of twelve men, and then deiivered to the creditor, in order to the ſatisfaction of his debt; for every *extent* ought to be by inquiſition and verdict of a jury; and without ſuch inquiſition, the ſheriff cannot execute the writ. *Cro. Ja.* 569.

EXTINGUISHMENT:

1. *Extinguiſhment, what.*
2. *Extinguiſhment of rent or ſervice.*
3. *Extinguiſhment of copyhold.*
4. *Extinguiſhment of commo .*
5. *Extinguiſhment of a way.*
6. *Extinguiſhment of a franchiſe.*
7. *Extinguiſhment of debt.*

1. *Extinguiſhment, what.*

EXTINGUISHMENT comes of the verb *extinguere*, to deſtroy or put out; as when a rent is deſtroyed or put out, it is ſaid to be extinguiſhed. 1 *Inſt.* 147.

2. *Extinguiſhmeut of rent or ſervice.*

If a man hath a *rent charge* to him and his heirs, iſſuing out of certain land, if he purchaſe any part of this land to him and his heirs,

heirs, all the rent charge is extinct, becauſe a rent charge cannot by ſuch manner he apportioned; for the rent is intire, and of ſuing out of every part of the land, and therefore by purchaſe if part, it is extinct in the whole. But if a man hath a *rent ſervice*, and purchaſeth part of the land out of which the rent ſervice is iſſuing, this ſhall not extinguiſh all, but only for the parcel; for a rent ſervice in ſuch caſe may be apportioned according to the value of the land. 1 *Inſt.* 147.

But if one holdeth his land of his lord, by the ſervice to render to his lord yearly at ſuch a feaſt, a horſe, a ſpear, or the like; if in this caſe the lord purchaſe parcel of the land, ſuch ſervice is taken away, becauſe it cannot be ſevered nor apportioned. *Id.* 148.

If there be lord and tenant by fealty and heriot ſervice, and the lord purchaſe part of the land, the heriot ſervice is extinct, becauſe it is intire. *Id.* 149.

3. *Extinguiſhment of copyhold.*

As to the extinguiſhment of copyhold, it is laid down as a general rule, that any act of the copyholder which denotes his intention to hold no longer of his lord, and amounts to a determination of his will, is an extinguiſhment of his copyhold. *Hutt.* 81. *Cro. Eliz.* 21.

As if a copyholder in fee accepts a leaſe for years of the ſame land from the lord, this determines his copyhold eſtate; or if the lord leaſes the copyhold to another, and the copyholder accepts an aſſignment from the leſſee, his copyhold is extinct. *Moor.* 184. 2 *Co.* 16.

4. *Extinguiſhment of common.*

By purchaſing lands wherein a perſon hath common appendant, the common is extinguiſhed. *Cro. Eliz.* 594.

If a commoner releaſeth his common in one acre, it is an extinguiſhment of the whole common. *Show.* 350.

But if one hath common appendant in a great waſte, belonging to his tenant, and the lord improves part of the waſte, leaving ſufficient; if he after makes a feoffment to a commoner of the land improved, this will be no extinguiſhment. *Dyer.* 339. *Hob.* 172.

A commoner aliens part of his land, to which the common doth belong; the common is not extinct, but ſhall be divided. 2 *Shep. Abr.* 152.

5. *Extinguiſhment of a way.*

Extinguiſhment of ways is, as if a man hath a way as appendant, and after purchaſes the land wherein this way is, the way is extinct. *Terms of the Law.*

6. *Extinguiſhment of a franchiſe.*

Extinguiſhment may be of liberties and franchiſes; as when the king grants any privileges, liberties, or franchiſes, which were in his own hands, as parcel of the rights of the crown, as goods of felons and fugitives, waifs, eſtrays, deodands, and the like; if they come to the crown again, they are drowned and extinct in the crown, and the king is ſeiſed of them *jure coronæ*: but if liberties of fairs, markets, or other franchiſes and juriſdictions, be erected and created by the king, they will not be extinguiſhed, nor their appendances ſevered from the poſſeſſions. 9 *Co.* 25.

7. *Extinguiſhment of debt.*

If a woman obligee takes the obligor to her huſband, it is an extinguiſhment of the debt, becauſe it would be a vain thing for the huſband to pay money to his wife in her own right: but he may pay money to her as executrix, becauſe if ſhe lays the money ſo paid to her by itſelf, the adminiſtrator *de bonis non* of the teſtator (if ſhe dies inteſtate) ſhall have that money, as well as any other goods that were her teſtator's. 1 *Salk.* 306.

So if a debtor makes the debtee his executor, or him and another executors, and they take the executorſhip upon them, or if the debtee makes the debtor his executor, it is an extinguiſhment of the debt. 1 *Salk.* 300.

But where a debtee or debtor executor legally refuſeth, or he and others being made executors they all refuſe, then the debt is revived again. *Plowd.* 185.

Where adminiſtration of the goods of the obligee is committed to the obligor, this is only a ſuſpenſion of the action, and not an extinguiſhment of the debt; and the reaſon is, becauſe the commiſſion of adminiſtration is not the act of the obligee: for all the intereſt of an adminiſtrator is only from the ordinary; but the intereſt of an executor is from the teſtator. 1 *Salk.* 303.

A creditor's accepting a higher ſecurity than he had before, is an extinguiſhment of the firſt debt; as if a creditor by ſimple contract accepts an obligation, this extinguiſhes the ſimple contract debt. 6 *Co.* 44.

So if a man accepts a bond for a legacy, he cannot after ſue for his legacy in the ſpiritual court; for by the deed the legacy is extinguiſhed, and it is become a mere debt at common law. *Yelv.* 38.

So if a bond creditor obtains judgment on the bond, or hath judgment acknowledged to him, he cannot after bring an action on the bond, for the debt is drowned in the judgment, which is a ſecurity of an higher nature than the bond. 6 *Co.* 44.

But the accepting a ſecurity of an inferior nature is not an extinguiſhment

tinguiſhment of the firſt debt, as if a bond be given in ſatisfaction of a judgment. *Cro. Ja.* 650.

Alſo the accepting a ſecurity of equal degree is no extinguiſhment of the firſt debt; as where an obligee hath a ſecond bond given to him; for one deed cannot determine the duty upon another. *Cro. Eliz.* 304.

An account ſtated is no extinguiſhment of the original debt; and therefore it is no plea in bar to a demand of a debt of the ſame degree. Nor can a note of hand be pleaded in bar to an action upon ſimple contract. *Bur. Mansf.* 9.

EXTORTION, is an abuſe of public juſtice, which conſiſts in an officer's unlawfully taking, by colour of his office, from any perſon, any money or thing of value, that is not due to him, or more than is due, or before it is due. The puniſhment is fine and impriſonment, and ſometimes a forfeiture of the office. 4 *Black.* 141.

EXTRAPAROCHIAL, ſignifies to be out of any pariſh Tithes of extraparochial places belong to the king by his prerogative. Extraparochial waſtes and marſh lands, when drained and improved, are by the ſtatute 17 *G.* 2. *c.* 37. to be aſſeſſed to all parochial rates in the pariſh next adjoining.

FAC

FACTOR. A factor is a merchant's agent, reſiding beyond the ſeas, or in any remote parts, conſtituted by letter or power of attorney.

In commiſſions, it is uſual to give the factor power in expreſs words, to diſpoſe of the merchandize, and deal therein as if it were his own; by which the factor's actions will be excuſed, though they occaſion loſs to the principal. *Lex Mercat.* 151.

If a factor buys goods on account of his principal, where he is uſed ſo to do, the contract of the factor ſhall oblige the principal to a performance of the bargain; and he is the proper perſon to be proſecuted on non-performance: but if the factor enters into a charter party of affreightment with a maſter of a ſhip, the contract obliges him only, unleſs he lades aboard generally his principal's goods, when both the principal and lading become liable for the freight, and not the factor. *Goldſb.* 137.

If a factor has not a general, but a limited authority, to purchaſe at a certain particular price, if he exceeds that, his principal is not bound to accept of that contract. 1 *Vez.* 510.

Goods remitted to a factor ought to be carefully preſerved, and he

he is accountable for all lawful goods which ſhall come to his hands; yet if the factor buy goods for his principal, and they receive damage after in his poſſeſſion, through no neglect of his, the principal ſhall bear the loſs; and if a factor be robbed, he ſhall be diſcharged in account againſt his principal. 4 *Co.* 83.

Generally, the cargo is liable to pay the freight, or expence of carrying the goods. 2 *Atk.* 622.

And a factor may detain goods to pay cuſtoms in any place, or for ſalvage. *Id.* 623.

Alſo, a factor, to whom a balance is due, hath a lien upon all the goods of his principal, ſo long as they remain in his poſſeſſion; but if he parts with the goods, he parts with his lien. *Bur. Manſf.* 494.

If a man employs a factor to ſell goods, who ſells them on credit, and before the money is paid dies indebted more than his aſſets will pay, this money ſhall be paid to the principal merchant, and not to the factor's adminiſtrator, but thereout muſt be deducted what was due for commiſſion; for a factor is in nature only of a truſtee for his principal. 2 *Vern.* 638.

FAIRS AND MARKETS:

1. Fairs and markets can only be ſet up by the king's grants, or by long and immemorial uſage and preſcription, which preſuppoſes a grant. 1 *Black.* 274.

And the reaſon why a fair or market cannot be holden without a grant, is not only for the ſake of promoting traffic and commerce, but alſo for the preſervation of order, and prevention of irregular behaviour, where multitudes of people are gathered together. *Burr. Manſf.* 1817.

2. Fairs are commonly annual, and were granted to be held on the day of the dedication of the church, as many of them are ſo holden to this day. And they were firſt held in the churches, afterwards in the church-yard, until reſtrained by authority. *Ken. Par. Ant.* 609.

And from this relation to the church, they were commonly kept on *Sundays*; but by 27 *Hen.* 6. *c.* 5. it was enacted, that no fair or market ſhall be kept upon any *Sunday*, except for neceſſary victual, and on the four harveſt *Sundays* (when people on the week days are otherwiſe fully employed).

3. If I am intitled to hold a fair or market, and another perſon ſets up a fair or market ſo near mine that it doth me a prejudice, it is a nuiſance to the freehold which I have in my market or fair. But in order to make this out to be a nuiſance, it is neceſſary that my market or fair be the elder, otherwiſe I myſelf am guilty of the nuiſance. Alſo it is not a nuiſance, unleſs it be within leſs than ſeven miles diſtant from mine. 3 *Black.* 218.

4. *Toll* is not neceſſarily incident to a fair or market, but the king may grant that toll ſhall be paid, although it be a charge upon

upon the ſubject; becauſe the ſubjects (who in this caſe are as it were the vendees) have benefit and eaſe by ſuch fairs or markets: but the king cannot appoint a burdenſome toll, but it ought to be only a ſmall ſum, to charge the ſubject. 2 *Inſt.* 220.

There is no certain toll limited to be taken; but if that which is taken be not reaſonable, it is puniſhable by the ſtatute of 3 *Ed.* 1. *c.* 31. and what ſhall be deemed in law to be reaſonable, ſhall be judged, all circumſtances conſidered, by the judges of the law, if it come judicially before them. *Id.* 222.

5. By the 2 *Ed.* 3. *c.* 15. every lord, at the beginning of his fair, ſhall there *proclaim* and publiſh how long the fair ſhall endure, that merchants may know the time when it expires.

6. Of common right no toll ſhall be paid for things brought to the fair or market, unleſs they be ſold, and then toll to be taken of the buyer: but in ancient fairs and markets, toll may be paid for the ſtanding in the fair or market, though nothing be ſold. 2 *Inſt.* 220.

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 his own fairs or markets, and of the tolls which, together with any fair or market, have been granted after ſuch grant of diſcharge; but cannot diſcharge tolls formerly due to ſubjects, either by grant or preſcription; for in every grant of a franchiſe, priority ſhall be preferred. 2 *Inſt.* 221.

Tenants in ancient demeſne, for things coming of thoſe lands, ſhall pay no toll, becauſe at the beginning by their tenure they applied themſelves to the manurance and huſbandry of the king's demeſnes; and therefore for thoſe lands ſo holden, and all that came or renewed thereupon, they had the ſame privilege: but if ſuch a tenant be a common merchant for buying and ſelling of wares or merchandizes, that riſe not upon the manurance or huſbandry of thoſe lands, he ſhall not have the privilege for them, becauſe they are out of the reaſon of the privileges of ancient demeſne. *Id.*

The king ſhall not pay toll for any of his goods. *Id.*

7. A court of the *clerk of the market* is incident to every fair and market, to puniſh miſdemeanors therein; as a court of *pie poudre* is to determine all diſputes relating to private or civil property. The object of this juriſdiction is principally the cognizance of weights and meaſures; and if they be found not according to the ſtandard, beſides the puniſhment of the party by fine, the weights and meaſures themſelves ought to be deſtroyed. 4 *Black.* 275.

8. The court of *pie poudre*, *curia pedis pulverizati*, is commonly ſaid to be ſo called from the *duſty feet* of the ſuitors; or according to others (which is the more probable derivation), from the old

old French *pied puldreaux*, a pedlar, being the court of ſuch petty chapmen as reſort to fairs or markets. It is the moſt expeditious court of juſtice known to this kingdom. 3 *Black.* 32.

It is a court of record, whereof the ſteward of him who owns or has the toll of the fair or market is the judge. *Id.*

It hath cognizance of all matters of contract that can poſſibly ariſe within the precinct of the fair or market; and the plaintiff muſt make oath that the cauſe of action aroſe there. *Id.*

9. Goods in a fair or market cannot be diſtrained for rent, for they are brought thither for the good of the public: but if they are driving to market, and by the way are put into a paſture, it is otherwiſe. *Wood. b.* 2. *c.* 2.

10. The true owner of goods doth not loſe his property in them by a ſale made by the poſſeſſor of them, unleſs it was in open market. 3 *Atk.* 49.

But, generally, all ſales and contracts of any thing vendible, in fairs or open markets, ſhall be good not only between the parties, but alſo binding on all thoſe that have any right or property therein. 2 *Black.* 449.

In *London* every day, except *Sunday*, is market day; and every ſhop, in which goods are expoſed publicly to ſale, is open market for ſuch things as the owner profeſſeth to trade in. *Id.*

But if my goods are ſtolen from me, and ſold out of open market, my property is not altered, and I may take them wherever I find them. *Id.*

With regard to a *ſtolen horſe*, the ſale thereof in a fair or market ſhall not alter the property, unleſs the ſame ſhall be ſhewed one hour in the open place of ſuch fair or market, and the ſale entered, and the toll paid (where toll is due); otherwiſe the owner may take his horſe again. But if all theſe circumſtances be complied with, he cannot have his horſe again, without paying the price for which the horſe was ſold in ſuch fair or market. 2 & 3 *P. & M. c.* 7. 31 *Eliz. c.* 12.

11. A fair or market may be *forfeited* by *miſuſer*; as by keeping them otherwiſe than they are granted, as keeping a fair on two days when only one is granted, or keeping a market on the *Monday* when it is granted to be kept on *Wedneſday*, or for extorting a toll where none is due. But a market ſhall not be forfeited for *non-uſer*. *Finch*, 154.

FALSE IMPRISONMENT. By the great charter, no freeman ſhall be taken or impriſoned, but by the lawful judgment of his equals, or by the law of the land. And, by the petition of right, 3 *Cha.* 1. no freeman ſhall be impriſoned or detained without cauſe ſhewn, to which he may make anſwer according to law. And by the 16 *Cha.* 1. *c.* 10. if any perſon be reſtrained of his liberty, he may, upon application by his counſel, have a writ of *habeas corpus*, to bring him before the court of king's bench

bench or common pleas, who shall determine, whether the cause of his commitment be just, and thereupon do as to justice doth appertain.

To make imprisonment lawful, it must either be by process from a court of judicature, or by warrant from some legal officer having authority to commit to prison; which warrant must be in writing, under the hand and seal of the magistrate, and express the cause of commitment. 1 *Black.* 137.

For false imprisonment, the law hath not only decreed a punishment by fine and imprisonment, as a heinous public crime, but hath also given a private reparation to the party by action at law, wherein he shall recover damages for the loss of his time and liberty. 3 *Black.* 127.

FALSE JUDGMENT, is a writ that lies where false judgment is given in the county court, court baron, or other court not of record. It is brought for errors in the proceedings of such inferior courts, or where they proceed not having jurisdiction. *F. N. B.*

FARDEL, of land, *ferlingata terræ*, is the fourth part of a yardland, which differs in quantity in different places. So we read of *farding deal*, or *quadrantata terræ*; so, *obolata*, *solidata*, *librata*, arising (as it seemeth) in proportion of quantity, as a farthing, halfpenny, shilling, and pound.

FARM, or *feorme*, is an old Saxon word, and signifies provisions; and it came to be used instead of *rent*, or render, because anciently the greater part of rents were reserved in provisions, as in corn, poultry, and the like, till the use of money became more frequent. So that a *farmer*, *firmarius*, was one who held his lands upon payment of a rent or feorme; though, at present, by a gradual departure from the original sense, the word *farm* is brought to signify the very estate or lands so held upon farm or rent. The usual words in the operation of the lease are, "Have demised, granted, and to farm let." 2 *Black.* 317.

FARRAND MAN, *Sax.* a person unknown, a stranger.

FAW-GANG; a strolling sort of people, commonly called *gypsies*, whose ancestors were driven out of *Egypt* about the year 1517, and seemed to have obtained the appellation of *Faw-gang*, from *John Faw*, one of their principal leaders. See GYPSIES.

FEALTY. Under the feudal system, every owner of lands held them of some superior or lord, from whom, or from whose ancestors, the tenant had received them; and there was a mutual trust or confidence subsisting between the lord and tenant, that the lord should protect the tenant in the enjoyment of the territory he had granted him; and, on the other hand, that the tenant should be faithful to the lord, and defend him against all his enemies. This obligation, on the part of the tenant, was called his *fidelitas*, or *fealty*; and an oath of fealty was required,

required, by the feudal law, to be taken by all tenants to their lord.

Which oath is in this form: "Know ye this, my lord, that "I will be faithful and true unto you, and faith to you will "bear, for the lands which I claim to hold of you; and that "I will lawfully do to you the cuſtoms and ſervices which I "ought to do, at the terms aſſigned: So help me God." *Litt.* 91.

This oath is now neglected in many places, but it is undoubtedly yet in force. 1 *Black.* 366. 2 *Black.* 86.

FEES, are certain perquiſites allowed to officers who are concerned in the adminiſtration of juſtice, as a recompence for their labour and trouble; and theſe are either aſcertained by act of parliament, or eſtabliſhed by ancient uſage, which gives them an equal ſanction with an act of parliament. 2 *Bac. Abr.* 463.

Attorneys, before they charge their clients with their fees, muſt deliver a bill under their hands; and they ſhall not ſue for the fees until after a month from the time of delivering the bill. And the client, on ſubmiſſion to pay the whole ſum that on taxation ſhall appear due, may have the bill taxed by the proper officer; and no ſuit ſhall be commenced during the taxation. And if it appear on taxation that the attorney hath been overpaid, he ſhall refund; if the bill taxed ſhall be leſs by a ſixth part than the bill delivered, the attorney ſhall pay the coſts of taxation; but if it ſhall not be leſs, the court may charge the attorney or client at their diſcretion. 3 *Ja. c.* 7. 2 *G.* 2. *c.* 23.

The *coroner*'s fee for taking an inquiſition is 20*s.* and 9*d.* for every mile he ſhall be compelled to travel from home. 25 *G.* 2. *c.* 29.

Fees to be taken by clerks to the *juſtices of the peace*, are to be ſettled by the juſtices in ſeſſions, and confirmed by the judges of aſſize; and copies thereof ſhall be by the clerk of the peace kept conſtantly in a conſpicuous part of the room where the ſeſſions are held. 26 *G.* 2. *c.* 14.

The fee for the *clerk of aſſize* or *clerk of the peace* for drawing an indictment of felony is 2*s.* by the 10 & 11 *W. c.* 23.

No *ſheriff*, under-ſheriff, or bailiff of liberty, ſhall take more for ſerving an extent or execution than 12*d.* for every pound above 100*l.* and 6*d.* for every pound levied under 100*l.*; on pain of treble damages to the party, and 40*l.* to the king. 29 *Eliz. c.* 4.

By an ancient ſtatute, the *bailiff*'s fee for an arreſt is 4*d.* 23 *H.* 6. *c.* 10.

Gaolers fees are to be ſettled from time to time by the juſtices in ſeſſions; and tables thereof ſhall be hung up by the clerk of the peace in the court where the ſeſſions are held; and by the goaler ſhall be hung up in every gaol. 32 *G.* 2. *c.* 28.

A goaler muſt not diſobey a writ of *habeas corpus* for want of his

his fees; but the court will not turn the priſoner over till the gaoler be paid all his fees. 2 *Haw.* 151.

By ſtatute 14 *G.* 3. *c.* 20. if a priſoner is acquitted, or diſcharged upon proclamation for want of proſecution, or hath no bill found againſt him, he ſhall pay no fee to the gaoler for his diſcharge: but ſuch fee as hath been uſual, not exceeding 13*s.* 4*d.* ſhall be paid out of the general county rate.

FEE FARM, properly taken, is, when the lord, upon the creation of the tenancy, reſerves to himſelf and his heirs, either the rent for which it was before let to farm, or at leaſt a fourth part of that farm rent. 2 *Inſt.* 44.

It is called a fee farm rent, becauſe a *farm rent* is reſerved upon a grant in *fee*. *Id.*

Fee farm rents of the crown, which remained 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, in purſuance of powers granted by 22 *C.* 2. *c.* 6. and 22 & 23 *C.* 2. *c.* 24. And by the annual land tax acts, the receivers of the ſaid rents yet remaining, or which were purchaſed by virtue of the ſaid acts, ſhall allow a deduction of ſo much in the pound as the land tax is laid at for that year; provided that ſuch deduction do not exceed the ſum aſſeſſed on the whole eſtate out of which ſuch purchaſed fee farm rent iſſues.

FEE SIMPLE. A fee, in general, ſignifies an eſtate of inheritance; and when the term is uſed without any other adjunct, or has the adjunct of *ſimple* annexed to it, (as, a *fee*, or a *fee ſimple*,) it is uſed in contradiſtinction to a fee conditional at the common law, or a fee tail by the ſtatute; importing an abſolute inheritance, clear of any condition, limitation, or reſtriction to particular heirs, but deſcendible to the heirs general. 1 *Inſt.* 1. 2 *Black.* 106.

FEIGNED ISSUE. A feigned iſſue is that whereby an action is feigned to be brought, by conſent of the parties, to determine ſome diſputed right, without the formality of pleading, and thereby to ſave much time and expence in the deciſion of a cauſe. 3 *Black.* 452.

FELO DE SE, *a felon of himſelf*, is a perſon who being of ſound mind, and of the age of diſcretion, voluntarily kills himſelf; for if a perſon is inſane at the time, it is no crime. But this ought not to be extended ſo far as the coroners' juries ſometimes carry it, who ſuppoſe that the very act of ſelf-murder is an evidence of inſanity; as if every man who acts contrary to reaſon, had no reaſon at all; for the ſame argument would prove every other criminal *non compos*, as well as the ſelf-murderer. The law very rationally judges, that every melancholy or hypochondriac fit doth not deprive a man of the capacity of diſcerning right form wrong; which is neceſſary

neceſſary to form a legal excuſe. And the law ſo far diſcourages this offence, as not to allow the ſelf-murderer chriſtian burial; but he ſhall be buried ignominiouſly in the highway, with a ſtake drvien through his body, and his goods and chattels forfeited. 4 *Black.* 189.

FELONY, is ſuppoſed by ſome to come from the Saxon *fell*, which ſignifies fierce or cruel, of which the verb *fell* ſignifies to throw down or demoliſh; and the ſubſtantive of that denomination ſignifies a mountain rough and uncultivated. But the ſame word, with a little variation, runs through moſt of the *European* languages, and ſignifies more generally an offence at large; and the *Saxon* word *fellan* ſignifies to offend, and *fellniſſe* an offence or *failure;* and although felony, as it is now become a technical term, ſignifies in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retains ſomewhat of this larger acceptation; for petit larceny is felony, although it is not capital.

According to *Sir Henry Spelman*, it ſignifies ſuch an offence, for which, during the feudal inſtitution, a man ſhould loſe or forfeit his eſtate; which he derives of two northern words, *fee*, which ſignifies a fief, feud, or beneficiary eſtate, and *lon*, which ſignifies price or value. And hence it is perhaps, that to this day felony incurs a forfeiture of eſtate.

Miſpriſion of felony is the concealing a felony which a man knows, but never conſented to; for if he conſented, he is either a principal or acceſſary in the felony. The puniſhment thereof is fine and impriſonment. If a man will ſave himſelf from the crime of miſpriſion, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Compounding of felony, commonly called *theftbote*, is where a man takes his goods again or other amends, not to proſecute. This was anciently puniſhed as felony, but at this day it is only puniſhable by fine and impriſonment. 1 *Haw.* 125.

By the 3 *Ja. c.* 10. the felon, if able, ſhall pay the charges of his carrying to gaol; and by the 27 *G.* 2. *c.* 3. if he is not able, the ſame ſhall be paid out of the county rate.

By the 14 *G.* 3. *c.* 2. a priſoner againſt whom no bill hath been found, or who ſhall on trial be acquitted, or be diſcharged by proclamation for want of proſecution, ſhall be immediately ſet at large in court, without paying any fee to the ſheriff or gaoler; and ſuch fees as had been uſually paid in reſpect of ſuch diſcharge, not exceeding 13*s.* 4*d.* ſhall, on certificate of the judge, be paid out of the county rate.

By the 25 *G.* 2. *c.* 36. the court, before whom any perſon hath been convicted of grand or petit larceny or other felony, may,

at

at the prayer of the profecutor, order his reaſonable charges of proſecution to be paid out of the county rate.

And by the aforeſaid act of 27 *G.* 2. *c.* 3. when any poor perſon ſhall appear on recognizance to give evidence, the court may order ſuch ſum to be paid to him out of the county rate, as they ſhall think reaſonable, for his time, trouble, and expences.

FEME COVERT, Fr. a married woman; ſo called from her being under the *cover*, protection, and influence of her huſband. So a *feme ſole* is a woman ſingle, or unmarried.

FENCE, is a hedge, ditch, or other incloſure of land, for the better improvement thereof. And where a hedge and ditch join together, in whoſe ground or ſide the hedge is, to the owner of that land belongs the keeping the ſame, and the ditch adjoining to it, on the other ſide, in repair and ſcoured. *Par. Offic.* 188.

FENCE MONTH, in foreſts, is the month in which the deer fawn; during which time they are to be *defended* from the interruptions of fear or danger; and therefore it is unlawful to hunt in foreſts during that time; which begins fifteen days before *Midſummer*, and ends fifteen days after it, being in all thirty days. *Manw.* part 2. ch. 13.

So alſo, by ſeveral acts of parliament, certain rivers are put in *defence* for a limited time, for the protection of the fiſh during the ſpawning ſeaſon.

FEOD, *feud*, *fief*, or *fee*, in the northern languages, ſignifies a conditional ſtipend or reward. The conſtitution of feuds had its original from the northern nations, that in the decline of the *Roman* empire invaded the *Roman* provinces. The conquering generals, in order to ſecure their acquiſitions, allotted large diſtricts or parcels of land to the ſuperior officers, who again dealt out ſmaller parcels or allotments to the inferior officers and ſoldiers. And the condition annexed to them was, that the poſſeſſor ſhould do ſervice faithfully, both at home and in the wars, to him by whom they were given, for which purpoſe he took the oath of fealty; and in caſe of the breach of this condition and oath, by not performing the ſtipulated ſervice, or by deſerting the lord in battle, the lands were again to revert to him who granted them. 2 *Black.* 45.

Theſe at firſt were only eſtates at will, and then they were called *munera*, or gifts; afterwards they were granted for life, and then they were termed *beneficia*; and for the like reaſon the livings of clergymen are called *benefices* to this day; and afterwards they were made hereditary, when they were called *feoda*, and in our law *fee ſimple*. *Rel. Spel.* 9.

FEODARY,

FEODARY, *feudatarius*, was an officer of the court of wards, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give in evidence for the king, as well concerning the value as the tenure. He also received the rents of the lands of the king's wards within his circuit, which he answered to the receiver of the court. This office, together with that court itself, was abolished by the 12*C.* 2. *c.* 24.

FEODUM MILITIS, a knight's estate or fee, was such an estate in value, as required a man to take upon him the order of knighthood; which of old time was estimated at 20*l.* a year.

FEOFFMENT, may be defined to be the gift of any corporeal hereditament to another. He that so gives, or infeoffs, is called the *feoffor*; and the person enfeoffed is denominated the *feoffee*. 2 *Black.* 20.

But, by the mere words of the deed, the feoffment is by no means perfected. There remains a very material ceremony to be performed, called *livery of seisin*; without which, the feoffee hath but a mere estate at will. *Id.*

This conveyance by feoffment was anciently the most common and necessary method of conveyance, both because it is solemn and public, and, therefore, best remembered and proved; and also, because it cleareth all disseisins, abatements, intrusions, and other wrongful and defeasible estates, where the entry of the feoffor is lawful; which neither fine, recovery, nor bargain and sale by deed indented and inrolled, doth. 1 *Inst.* 9.

But now, since the statute of uses, 27 *H.* 8. *c.* 10. the conveyance by lease and release, hath taken place of it, and is become a very common assurance to pass lands and tenements; for it amounts to a feoffment, the use drawing after it the possession without actual entry, and supplying the place of livery of seisin.

FERÆ NATURÆ. Animals *feræ naturæ*, of a wild nature, are those in which a man hath not an absolute, but only a qualified and limited property, which sometimes subsists, and at other times doth not subsist. And this qualified property is obtained either by the art and industry of man, or the impotence of the animals themselves, or by special privilege.

1. A qualified property may subsist in animals, *feræ naturæ*, by the art and industry of man, either by his reclaiming and making them tame, or by so confining them that they cannot escape and use their natural liberty; such as deer in a park, hares or conies in an inclosed warren, doves in a dove-house, pheasants or partridges in a mew, hawks that are fed and commanded by the owner, and fish in a private pond, or in trunks. These are no longer the property of a man, than while they continue

continue in his keeping, or actual poſſeſſion: but if at any time they regain their natural liberty, his property inſtantly ceaſes; unleſs they have *animum revertendi*, which is only to be known by their uſual cuſtom of returning.

2. A qualified property may alſo ſubſiſt in theſe animals, by reaſon of the impotence of the animals themſelves; as when hawks, or other birds build in my trees, or conies or other creatures make their neſts or burrows in my land, and have young ones there, I have a qualified property in thoſe young ones, till ſuch time as they can fly, or run away, and then my property expires.

3. A man may have a qualified property in animals, *feræ naturæ*, by ſpecial privilege; that is, he may have the privilege of hunting, taking, and killing them, in excluſion of other perſons. Under which head may be conſidered, all thoſe animals which come under the denomination of game. Here a man may have a tranſient property in theſe animals, ſo long as they continue with in his liberty, and may reſtrain any ſtranger from taking them therein; but the inſtant they depart into another liberty, this qualified property ceaſes. 2 *Black.* 391.

FERRY, a liberty by preſcription, or the king's grant, to have a boat for paſſage upon a river, for the carriage of horſes and men for reaſonable toll. *T. L.* A ferry is in reſpect of the landing place, and not of the water; the water may be to one, and the ferry to another. And in every ferry, the land on both ſides of the water, ought to belong to the owner of the ferry; otherwiſe, he cannot land on the other part.

FESTINGMAN, from the Saxon *feſt*, to bind; a word not yet out of uſe. To be free of *feſtingman*, ſeems to be diſcharged from bond ſervices. So *feſting penny*, is earneſt given to ſervants on their feſting or binding.

FEUD, in *Scotland*, is a combination of kindred, to revenge injuries or affronts done or offered to any of their blood. So *deadly feud*, is a profeſſion of irreconcilable hatred, till a perſon is revenged even by the death of his adverſary.

FIAT (let it be done), is a ſhort warrant, or order of ſome judge for making out and allowing certain proceſſes, or the like.

FICTION OF LAW is allowed of in ſeveral caſes; but it muſt be framed according to the rules of law, and there ought to be equity and poſſibility in every legal fiction. A common recovery is a fiction of law, a formal act or device by conſent, where a man is deſirous to cut off an intail. 10 *Co.* 42.

But the law ought not to be ſatisfied with fictions, where it may be otherwiſe really ſatisfied; and fictions in law ſhall not be carried farther than the reaſons which introduced them neceſſarily require. 1 *Lill. Abr.* 610.

They

They were invented to avoid inconvenience; and it is a maxim invariably obſerved, that no fiction ſhall extend to work an injury, its proper operation being to prevent a miſchief, or remedy an inconvenience, that might reſult from the general rule of law. 3 *Black.* 43.

FIELD-ALE, a kind of drinking in the field, claimed by the bailiffs of hundreds from the contribution of the inhabitants.

A FIERI FACIAS is a writ of execution, whereby the ſheriff is commanded *quod fieri faciat;* that is, that he cauſe to be made, of the goods and chattles of the defendant, the ſum or debt recovered againſt him. 3 *Black.* 417.

And the ſheriff having, by virtue of this writ, taken the goods and chattels, may ſell the ſame (even an eſtate for years, which is a chattel real), until he hath raiſed enough to ſatisfy the judgment and coſts; firſt paying the landlord of the premiſes upon which the goods are found, the arrears of rent then due, not exceeding one year's rent in the whole. *Id.*

If part only of the debt be levied, the plaintiff may, on return of the writ, have a writ of execution againſt the body of the defendant for the reſidue. *Id.*

FIFTEENTHS were a tribute, or temporary aid, iſſuing out of perſonal property, and granted to the king by parliament; it was a real fifteenth part of every man's perſonal eſtate, according to a reaſonable valuation; for perſonal eſtate, in ancient times, was very inconſiderable, and quite a different thing from what it is at preſent: originally, the amount of the taxation was uncertain, being levied by aſſeſſments new made at every freſh grant of the commons. But in the eighth year of *Ed.* 3. it was reduced to a certainty, when a general taxation was made of every townſhip, borough, and city, in the kingdom; which rate was the fifteenth part of the value of every townſhip, the whole amounting to about 29,000l. 1 *Black.* 308.

FIGURES are not allowed to expreſs numbers in indictments, but numbers muſt be expreſſed in words; 2 *H. H.* 170. *Cr. Cir.* 109. *Andr.* 137. *H.* 11 *G.* 2. *K.* & *Haddock*; or at leaſt in *Roman* numerals; *Str.* 261. *H.* 6 *G. K.* & *Philips.* By 6 *G.* 2. *c.* 14. it is allowed to expreſs numbers by figures in writings, pleadings, rules, orders, indictments, &c. in courts of juſtice, as have been commonly uſed in the ſaid courts, notwithſtanding any thing in the 4 *G.* 2. *c.* 26.

FILE, *filum*, a thread, ſtring, or wire, upon which writs and other exhibits in courts and offices are faſtened or *filed*, for the more ſafe keeping, and ready turning to the ſame. A file is a record of the court, and the filing of the proceſs of a court makes it a record of it. 1 *Lill.* 112.: ſo *filacer*, in the court of common

common pleas, is an officer ſo called from his filing thoſe writs whereon he makes out proceſs.

FILUM AQUÆ, the thread or middle of the ſtream, where a river parts two lordſhips.

FINE OF LANDS.

1. *Fine of lands, what.*
2. *Manner of levying a fine.*
3. *Of the ſeveral kinds of fines of lands.*
4. *Effect of a fine levied.*

1. *Fine of lands, what.*

A FINE is ſometimes ſaid to be a feoffment of record; though it might, with more accuracy, be called, an acknowledgment of a feoffment on record: by which is to be underſtood, that it hath, at leaſt, the ſame force and effect with a feoffment, in the conveying and aſſuring of lands: though it is one of thoſe methods of transferring eſtates of freehold by the common law, in which livery of ſeiſin is not neceſſary to be actually given; the ſuppoſition and acknowledgment thereof, in a court of record, however fictitious, inducing an equal notoriety. But, more particularly, a fine may be deſcribed to be, an amicable compoſition or agreement of a ſuit, either actual or fictitious, by leave of the king or his juſtices; whereby the lands in queſtion become, or are acknowledged to be, the right of one of the parties. In its original, it was founded on an actual ſuit, commenced at law for the recovery of the poſſeſſion of land; and the poſſeſſion thus gained by ſuch compoſition, was found to be ſo ſure and effectual, that fictitious actions were, and continue to be, every day commenced, for the ſake of obtaining the ſame ſecurity. 2 *Black.* 349.

For, anciently, it was a determination of a real controverſy; but now is generally a feigned action, and ſuppoſes a controverſy, where, in reality, there is none, to ſecure the title that a man hath in his eſtate againſt all men; or to cut off intails, and with more certainty to convey the title of lands to whom he pleaſeth, either in fee ſimple, fee tail, or for life or years. *Weſt. Symb. par.* 2. *ſ.* 1.

It is called a *fine*, becauſe it puts an end, not only to the ſuit thus commenced, but alſo to all other ſuits and controverſies concerning the ſame matter. 2 *Black.* 349.

2. *Manner of levying a fine.*

The manner of levying a fine by this kind of fictitious proceeding, is as follows:

1. The party, to whom the land is to be conveyed or aſſured, commenceth an action or ſuit at law againſt the other; generally an action of *covenant*, by ſuing out a writ or *præcipe*, called a

writ of covenant, the foundation of which is a ſuppoſed agreement or covenant, that the one ſhall convey the lands to the other; on the breach of which agreement the action is brought. On this writ there is due to the king a *primer*, or firſt fine, being a noble for every five marks of land, or a tenth part of the yearly value. The ſuit being thus commenced, there follows,

2. The *licentia concordandi*, or licence to agree the ſuit; for as ſoon as the action is brought, the defendant, knowing himſelf to be in the wrong, is ſuppoſed to make overtures of peace and accommodation to the plaintiff, who, accepting them, but having, upon ſuing out the writ, given pledges to proſecute his ſuit, which he indangers if he now deſerts it without licence, he therefore applies to the court for leave to make the matter up. This leave is readily granted; and for it there is another fine due to the king, called the *king's ſilver*, and ſometimes the *poſt fine*, with reſpect to the *primer fine* before mentioned; and it is as much as the primer fine, and half as much more.

3. Next comes the *concord* or agreement itſelf, after leave obtained from the court; which is uſually an acknowledgment from the deforciants (or thoſe who keep the others out of poſſeſſion), that the lands in queſtion are the right of the complainant: and, from this acknowledgment or recognition of the right, the party levying the fine is called the *cognizor* (or acknowledger), and he to whom it is acknowledged is called the *cognizee*. This acknowledgment muſt be made either openly in the court of common pleas, or before one of the judges of that court, or before commiſſioners in the country, by a ſpecial authority called a writ of *dedimus poteſtatem*; which judges and commiſſioners are bound by the ſtatute 18 *Ed.* 1. *ſt.* 4. to take care that the cognizors be of full age, ſound memory, and out of priſon. If there be any feme-covert among the cognizors, ſhe is privately examined, whether ſhe doth it willingly, or by compulſion of her huſband; and alſo, if there be any doubt of her age, ſhe ſhall be examined as to that. 2 *Black.* 349. 2 *Inſt.* 515. And by an order of the court of common pleas, *H.* 17 *G.* 2. in fines taken by commiſſioners, an affidavit on parchment muſt be made by an attorney of one of the courts of law at *Weſtminſter*, of the great ſeſſions in *Wales*, or of the counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, that he knows the cognizors; that the fine was duly ſigned and acknowledged by them before the two commiſſioners taking the ſame; that the cognizors, and two commiſſioners, were, at the time of taking and acknowledging the ſaid fine, all of full age and competent underſtanding; that the femes-covert (if any) were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſaid fine; and that the cognizors, and every of them, knew the ſame to be a fine to paſs his, her, and their eſtate and eſtates; and

(*H.* 26

[*H.* 26 and 27 *G.* 2.] that the ſaid fine was duly ſigned and acknowledged upon the day and year mentioned in the caption; and that the razures or interlineations (if any) in the body or caption of ſuch fine, were made before the parties ſigned the ſaid fine, and before the caption was ſigned by the commiſſioners.

By theſe acts all the eſſential parts of a fine are completed; and if the cognizor dies after the fine is acknowledged, it may yet be carried on in all its remaining parts; provided that the writ be returned before ſuch death of the cognizor. 2 *Black.* 351. 2 *Wilſon*, 115.

4. The next thing is the *note* of the fine; which is only an abſtract of the writ of covenant, and of the concord, naming the parties, the parcels of land, and the agreement. This muſt be inrolled of record in the proper office.

5. The fifth part is the *foot* of the fine, or concluſion of it; which includes the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

And thus the fine is completely levied at common law.

But, by ſeveral acts of parliament, other ſolemnities are ſuperadded; particularly, that the fine, after ingroſſing, ſhall be openly read and *proclaimed* in court, once in the term in which it is made, and once in each of the three ſucceeding; and the chirographer of fines ſhall cauſe a table of all the fines levied in each county to be affixed in ſome open part of the court all the next term; and ſhall alſo deliver the contents thereof to the ſheriff of every county, who ſhall, at the next aſſizes, fix the ſame in ſome open place in the court, for the more public notoriety of the fine.

Lands purchaſed of divers perſons by ſeveral purchaſers, may paſs in one fine; and ſuch joint fines are proper to ſave charges, where the purchaſes are of ſmall value. 2 *Black.* 351.

But before ſuch fine is allowed to paſs, proof muſt be made that the whole purchaſe-monies do not exceed 200*l.*

3. *Of the ſeveral kinds of fines of lands.*

FINES thus levied are of four kinds. 1. What is called a fine *ſur cognizance de droit come ceo que il ad de ſon done*; that is, a fine upon acknowledgment of the right of the cognizee, as that which he hath of the gift of the cognizor. This is the beſt and ſureſt kind of fine, for thereby the deforciant, in order to keep his covenant with the plaintiff of conveying to him the lands in queſtion, and at the ſame time to avoid the formality of an actual feoffment and livery, acknowledges in court a former feoffment, or gift in poſſeſſion, to have been made by him to the plaintiff. This fine is therefore ſaid to be a feoffment of record; the livery, thus acknowledged in court, being equivalent to an actual livery; ſo that this aſſurance is rather a confeſſion of a former conveyance,

than a conveyance now originally made; for the deforciant, or cognizor, acknowledges (*cognoscit*) the right to be in the plaintiff or cognizee, as that which he hath *de son done*, of the proper gift of himself the cognizor. 2. A fine *sur cognizance de droit tantum*, or upon acknowledgment of the right merely, not with the circumstance of a preceding gift from the cognizor. This is commonly used to pass a reversionary interest which is in the cognizor; for of such reversions there can be no feoffment, or donation with livery, supposed; as the possession, during the particular estate, belongs to a third person. 3. A fine *sur concessit*, or upon grant; which is, where the cognizor, in order to make an end of disputes, though he acknowledges no precedent right, yet grants to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition; and this may be done, reserving a rent, or the like; for it operates as a new grant. 4. A fine *sur done, grant, et render*; upon gift, grant, and render; which is a double fine, being in a manner two fines, comprehending the fine *sur cognizance de droit come ceo*, &c. and the fine *sur concessit*; and may be used to create particular limitations of estate. In this species of fine, the cognizee, after the right is acknowledged to be in him, grants back again, or renders to the cognizor, or perhaps to a stranger, some other estate in the premises.———But, in general, the first species of fine, *sur cognizance de droit come ceo*, &c. is most used, as it conveys a clear and absolute freehold, and gives the cognizee a seisin in law, without any actual livery; and is therefore called a fine *executed*, whereas the others are but *executory*. 2 *Black.* 352.

4. *Effect of a fine levied.*

The reason why such solemnity is required in passing a fine is, because the fine is so high a bar, and of so great force, and of a nature so powerful in itself, that it precludes not only those which are parties and privies to the fine, and their heirs, but all other persons whatsoever, who are of full age, out of prison, of sound memory, and within the four seas, on the day of the fine levied; unless they put in their claim within five years after proclamations made.

So that a fine extends both to *parties*, *privies*, and *strangers*; and the *parties* and *privies* are foreclosed by it presently, and the *strangers in futuro*. 2 *Inst.* 516.

The *parties* are either the cognizors or cognizees; and these are immediately concluded by the fine, and barred of any latent right they might have, even though under the legal impediment of coverture. And indeed as this is almost the only act that a feme-covert (or married woman) is permitted by law to do (and that, because she is privately examined as to her voluntary consent, which removes the general suspicion of compulsion by her husband)

hand), it is therefore the uſual, and almoſt the only ſafe method, whereby ſhe can join in the ſale, ſettlement, or incumbrance, of any eſtate. 2 *Black.* 355.

Privies to a fine are ſuch as are any way related to the parties who levy the fine, and claim under them by any right of blood, or other right of repreſentation: ſuch as are the heirs-general of the cognizor, the iſſue in tail, the vendee, the deviſee, and all others who muſt make title by the perſons who levied the fine. *Ibid.*

Strangers to a fine are all other perſons in the world, except only parties and privies; whoſe right is bound unleſs they makeclaim within five years after proclamations made; except femes-covert (not being parties to the fine), infants, priſoners, perſons beyond the ſeas, and ſuch as are not of ſound mind; who have five years allowed to them and their heirs, after ſuch impediment removed. Perſons alſo that have not a preſent, but a future intereſt only, as thoſe in remainder or reverſion, have five years allowed to claim in, from the time that ſuch right accrues. And if within that time they neglect to claim, or (by the ſtatute 4 *An. c.* 16.) if they do not bring an action to try the right within one year after making ſuch claim, and proſecute the ſame with effect, all perſons whatſoever are barred of whatever right they may have, by force of the ſtatute of non-claim. *Ibid.*

And the courts of law will not ſuffer a fine to be impeached (when once levied) on account of any defect of underſtanding, or even lunacy or idiotcy, of the cognizor. 12 *Co.* 124. 2 *Co.* 58. 10 *Co.* 42.

But in order to make a fine of any avail, it is neceſſary that the parties have ſome *intereſt* in the lands to be affected by it; otherwiſe two ſtrangers, by confederacy, might defraud the owners, by levying fines of their lands.

Thus tenant *for years*, *at will*, or *at ſufferance*, cannot by fine deveſt an eſtate, and turn it to a right. 2 *Atk.* 240. 2 *Vez.* 482.

If a fine be levied by *tenant for life*, it immediately operates as a forfeiture of the eſtate of the tenant for life, and the remainderman or reverſioner may enter preſently; but he is not bound ſo to do, for the law gives him five years after the death of the tenant for life; becauſe it is not preſumed that he will look after the determination of the eſtate, ſooner than in the natural way. 2 *Vez.* 482.

If a man levy a fine of my land while I am in *poſſeſſion* of it, this fine will not hurt me; for he that has the eſtate or intereſt in him cannot be put to his action, entry, or claim; becauſe he has that already, which the action, entry, or claim, would give him. *Wood. b.* 2. *c.* 3.

But if I have a fee-ſimple, and am *diſſeiſed*, and the diſſeiſor doth

doth levy a fine with proclamations, and I do not claim within five years after, I and my heirs are barred for ever. *Ibid.*

But a wrong doer, in order to gain a poſſeſſion by diſſeiſin, muſt not only ſtep on the land, and then leave the rightful owner in poſſeſſion; which, though ſufficient to give him a ſeiſin on a feoffment, is not ſufficient to levy a fine. 3 *Atk.* 339.

But evidence of receipt of rent is a ſufficient poſſeſſion to levy a fine. *Ibid.*

A *truſtee* cannot levy a fine to defeat the *ceſtuy que truſt*; for every one in poſſeſſion, with notice of the truſt, is a truſtee; and *ceſtuy que truſt* hath nothing to do with the poſſeſſion. 2 *Vez.* 476. 2 *Atk.* 240.

A fine levied by the *mortgagor*, or *mortgagee* will not bar the equity of redemption. *Hard.* 512. 2 *Vern.* 190.

So a fine by the mortgagor to a ſecond mortgagee, will not bar the firſt mortgagee, though more than five years paſs; the mortgagor continuing in poſſeſſion, and paying the intereſt, being only tenant at will to the firſt mortgagee. *Carth.* 414. (13 *Vin.* 282.)

A fine *ſur cognizance de droit come ceo*, &c. without any conſideration expreſſed, or uſes declared, whether the cognizor be in poſſeſſion, or the fine be of a reverſion, ſhall enure to the old uſe, in whomſoever it was at the time of levying the fine; and, although it paſſes nothing, yet, after five years and non-claim, it will operate as a bar. 2 *Wilſ.* 19.

And if a conſideration appears, yet as it conveys an abſolute eſtate, without any limitations, to the cognizee, this aſſurance could not be made to anſwer the purpoſes of family ſettlements (wherein a variety of uſes is often expedient), unleſs its force were ſubjected to the direction of other more complicated deeds, wherein particular uſes can be more particularly expreſſed. And if ſuch deed is made previous to the fine, it is called a deed to *lead* the uſes of the fine; if made ſubſequent to the fine, it is called a deed to *declare* the uſes. 2 *Black.* 363.

FINE FOR ALIENATION, was an attendant of tenure by knight's ſervice, whenever the tenant had occaſion to make over his land to another. This depended on the nature of the feudal connection, it not being reaſonable that a feudatory ſhould tranſfer his lord's gift to another, without the conſent of the lord, leſt an enemy to the lord ſhould be introduced into the tenure. And if the tenant aliened without licence, it was, in ſtrictneſs, a forfeiture of the lands: but this ſeverity was mitigated by the ſtatute 1 *Ed.* 3. *c.* 12. which ordained, that, in ſuch caſe, the lands ſhould not be forfeited, but a reaſonable fine be paid to the king: upon which ſtatute it was ſettled, that one third of the yearly value ſhould be paid for a licence of alienation; but if the tenant preſumed

ſumed to alien without licence, a full year's value ſhould be paid. 2 *Black.* 71.

But, by 12 *C.* 2. *c.* 24. all fines for alienation, and other incidents of tenure by knight's ſervice, are taken away; except fines for alienation due by particular cuſtoms of particular manors.

Which cuſtomary fines are, in ſome places, arbitrary at the will of the lord; in other places, limited and certain. But, even where they are arbitrary, the courts of law, in favour of the tenant, have tied them down to be reaſonable in their extent; and therefore no fine is allowed to be taken, either upon alienations or deſcents (unleſs in particular circumſtances), of more than two years' improved value of the eſtate. 2 *Black.* 98.

FINE FOR OFFENCES. By the bill of rights, 1 *W. ſt.* 2. *c.* 2. exceſſive fines ought not to be impoſed; and all grants and promiſes of fines and forfeitures of particular perſons, before conviction, are declared to be illegal and void.

The reaſonableneſs of fines in criminal caſes hath been uſually regulated by the determination of *magna charta*, *c.* 14. concerning amercements for miſbehaviour in matters of civil right, which is as follows: *A freeman ſhall not be amerced for a ſmall fault, but after the manner of the fault; and for a great fault, after the greatneſs thereof; ſaving to him his contenement; and a merchant likewiſe, ſaving to him his merchandiſe; and a villein, ſaving his wainage.* Which intends, generally, that no man ſhall have a larger amercement impoſed upon him, than his circumſtances or perſonal eſtate will bear; ſaving to the landholder, his contenement or land; to the trader, his merchandize; and to the countryman, his wainage, or team and inſtruments of huſbandry. In order to aſcertain which, the ſame *magna charta* directs, that the amercement ſhall be ſet, or reduced to a certainty, by a jury. This method of liquidating the amercement to a preciſe ſum, is uſually done in the court-leet and court-baron by affeerers, or jurors ſworn to affeere, tax, and moderate, the general amercement, according to the particular circumſtances of the offence and the offender. In imitation of which, in courts ſuperior to theſe, the ancient practice was, to inquire by a jury what a man was worth by the year, ſaving the maintenance of himſelf, his wife, and children. And ſince the diſuſe of ſuch inqueſt, it is not uſual to aſſeſs a larger fine than a man is able to pay, without touching the implements of his livelihood; but to inflict corporal puniſhment, or a ſtated impriſonment, which is better than an exceſſive fine, for that (when a man is not able to pay) amounts to impriſonment for life. 4 *Black.* 379.

FIRE. See BURNING.

FIREBOTE, a privilege of tenants to take wood for fuel. See ESTOVERS.

FIRE-ORDEAL. See ORDEAL.

FIRMA

FIRMA ALBA, a white farm, or rent, paid in ſilver, and not in cattle or proviſions for the lord's houſe.

FIRST FRUITS was the value of every ſpiritual living by the year, which the pope, claiming the diſpoſition of all eccleſiaſtical livings within Chriſtendom, reſerved out of every living. 12 *Co.* 45.

Theſe, together with the tenths (which were the tenth part of ſuch livings paid annually), the pope 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 anſwered of, that yearly revenue; ſo as the eccleſiaſtical livings chargeable with the tenth (which was called ſpiritual) to the pope, were not chargeable with the temporal tenths or fifteenths granted to the king in parliament: and to render the payment of theſe to the pope more eaſy, the popes ſometimes granted the ſame to our kings for certain terms. 2 *Inſt.* 627, 8.

At the reformation theſe were taken from the pope, and annexed to the crown; and a valuation was then made of all the eccleſiaſtical livings, in the 26 *Hen.* 8.; according to which valuation, the firſt-fruits and tenths ſtill continue to be paid.

Vicarages, according to the ſaid valuation (which is recorded in what are now called the king's books), not exceeding 10*l.* a year, and parſonages not exceeding ten marks, are diſcharged of firſt-fruits. 1 *El. c.* 4. *f.* 29.

And all eccleſiaſtical benefices with cure of ſouls, not exceeding 50*l.* a year according to the improved value, are diſcharged of both firſt-fruits and tenths. 5 *An. c.* 24. *f.* 1.

By the 2 & 3 *An. c.* 11. theſe revenues are appropriated to the augmentation of ſmall livings, and from thence have received the name of *queen's bounty*.

FISHERY. A *free* fiſhery, or excluſive right of fiſhing in a public river, is a royal franchiſe, held by grant or preſcription. It differs from a *ſeveral* fiſhery, becauſe he that has a *ſeveral* fiſhery muſt alſo be the owner of the ſoil, which, in a *free* fiſhery, is not requiſite. It differs alſo from a *common* of fiſhery, in that the *free* fiſhery is an excluſive right, the *common* of fiſhery is not ſo; and therefore in a *free* fiſhery a man hath a property in the fiſh before they are caught; in a *common* of fiſhery, not till afterwards. 2 *Black.* 39.

Fiſhery, in navigable rivers, or arms of the ſea, is common and public; it *prima facie* belongs to the crown, and the preſumption is againſt any excluſive right; yet an excluſive right may be preſcribed for; but the proof lies on the claimer of it. In private rivers, not navigable, it belongs to the lord on each ſide. *Bur. Manſf.* 2164.

FISHPOND,

FISHPOND. Any man may erect a fiſhpond without licence, becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199.

Stealing fiſh out of incloſed private fiſhponds, ſtreams, or other waters, is tranſportation for ſeven years; and attempting to ſteal them is 5l. penalty. 5 *G.* 3. *c.* 14.

If any perſon, armed and diſguiſed, ſhall ſteal any fiſh out of any river or pond; or (whether armed and diſguiſed or not) ſhall break down the head or mound of any fiſhpond, whereby the fiſh ſhall be loſt or deſtroyed; he ſhall be guilty of felony without benefit of clergy. 9 *G. c.* 22.

FLEDWITE, or *flightwite*, a freedom or diſcharge from amercements, forfeited by a perſon having *fled* for an offence.

FLEMENFRITH (from *frid*, peace) ſeems to be an amercement for harbouring an offender, having broken the king's peace, and fled for the ſame.

FLIGHT, is evading the courſe of juſtice, by a man's voluntarily withdrawing himſelf. On an accuſation of treaſon, or felony, or even petit-larceny, if the jury find that the party fled for the ſame, he ſhall forfeit his goods and chattels, although he be acquitted of the offence; for the very flight itſelf is an offence, carrying with it a ſtrong preſumption of guilt, and is at leaſt an endeavour to elude and ſtifle the courſe of juſtice preſcribed by the law. But now the jury very ſeldom find the flight; ſuch forfeiture being looked upon, ſince the vaſt increaſe of perſonal property, as too large a penalty for an offence, to which a man is prompted by the natural love of liberty. 4 *Black.* 387.

FLORIN, a foreign coin, in *Spain* 4s. 4d. in *Germany* 3s. 4d. in *Holland* 2s.

FLOTSAM, is where a ſhip is ſunk, or caſt away, and the goods *float* upon the ſurface of the water.

FOCAGE (from *focus*, a hearth), the privilege of getting fuel: the ſame as *firebote*.

FOLK-LAND was ſuch as was held by no aſſurance in writing, but diſtributed among the common *folk*, or people, at the pleaſure of the lord, and reſumed at his diſcretion; and was no other than villenage. It was ſo called in contradiſtinction to *book-land*, which was held by deed or writing, in which the tenant had a freehold of inheritance.

FOLK-MOTE (from *folk*, and *gemot*, an aſſembly), was a common council of the inhabitants of a city, town, or borough, convened at the *moot* hall or houſe. It ſeems to have been uſed for any kind of public meeting.

FOOTGELD, an amercement for not expeditating, or cutting out the balls of the feet of dogs in the foreſt. To be free from *footgeld*, is a privilege to keep dogs within the foreſt unexpeditated, without puniſhment.

FORCIBLE

FORCIBLE ENTRY AND DETAINER, are the violent taking, and keeping poſſeſſion of lands and tenements, with threats, force, and arms, and without the authority of law. This was formerly allowable to every perſon diſſeiſed or turned out of poſſeſſion, unleſs his entry was taken away or barred by his own neglect, or other circumſtances. But this being found very prejudicial to the public peace, it hath been thought neceſſary by ſeveral ſtatutes to reſtrain all perſons from the uſe of ſuch violent methods, even of doing themſelves juſtice; and much more if they have no juſtice in their claim. So that the entry now allowed by law is a peaceable one; the entry forbidden by law, is ſuch as is ſupported and maintained with force, violence, and unuſual weapons. By the ſtatute 5 *R.* 2. *ſt.* 1. *c.* 8. all forcible entries are puniſhed with impriſonment and ranſom at the king's will. And by the ſeveral ſtatutes, 15 *R.* 2. *c.* 2. 8 *H.* 6. *c.* 9. 31 *El. c.* 11. and 21 *Ja. c.* 15. upon any forcible entry, or forcible detainer after peaceable entry, into any lands or benefices of the church, a juſtice of the peace, taking ſufficient power of the county, may go to the place, and there record the force upon his own view; and, upon ſuch conviction, may commit the offender to gaol till he makes fine and ranſom to the king. And, moreover, the juſtice ſhall have power to ſummon a jury, to try the forcible entry or detainer complained of; and, if the ſame be found by that jury, then, beſides the fine on the offender, the juſtice ſhall make reſtitution, by the ſheriff, of the poſſeſſion, without inquiry into the merits of the title; for the force is the thing to be tried, puniſhed, and remedied, by them; and the ſame may be done at the general ſeſſions. But this doth not extend to thoſe who have had peaceable poſſeſſion for three years next before. 4 *Black.* 148.

FORCIBLE MARRIAGE. By 3 *H.* 7. *c.* 2. if any perſon ſhall take away any woman, having lands or goods, or that is heir-apparent to her anceſtor, by force and againſt her will, and afterwards ſhe be married to him, or to another by his procurement, or defiled; he, and alſo the procurers and receivers of ſuch woman, ſhall be adjudged principal felons. And, by 39 *El. c.* 9. the benefit of clergy is taken away from the principals, procurers, and acceſſaries before.

And, by 4 & 5 *P.* & *M. c.* 8. if any perſon ſhall take or convey away any unmarried woman under the age of ſixteen (though not attended with force), he ſhall be impriſoned two years, or fined at the diſcretion of the court; and if he deflowers her, or contracts matrimony with her without the conſent of her parent or guardian, he ſhall be impriſoned five years, or fined, in like manner. And, by 26 *G.* 2. *c.* 33. the marriage of any perſon under the age of 21, by *licence*, without ſuch conſent, is void.

FORECLOSURE

FORECLOSURE of equity of redemption is, where the mortgagee, in order to prevent the mortgagor from redeeming the eſtate, or to recover his money lent upon the ſecurity thereof, applies to a court of equity to compel the mortgagor either to ſell the eſtate, or to redeem it by payment of the money preſently; or, in default thereof, to be for ever debarred from redeeming the ſame, which is called the *foreclosure of the equity of redemption*.

FOREIGN, *forinſecus*, ſignifies of another country; and, in our law, is diverſified in ſeveral reſpects.

Foreign *attachment*, is an attachment of the goods of foreigners, found in ſome liberty, to ſatisfy their creditors within ſuch liberty.

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 diſtinct from the realm of *England*. As if two of the king's ſubjects fight in a foreign kingdom, and one of them is killed, it cannot be tried here by the common law, but it may be tried by the conſtable and marſhal according to the civil law; or the fact may be examined by the privy council, and tried by commiſſioners appointed by the king in any county in *England*. 3 *Inſt.* 48.

Foreign *plea*, is a plea in objection to a judge, where he is refuſed as incompetent to try the matter in queſtion, becauſe it ariſes out of his juriſdiction. *Kitch.* 75. And if a plea of iſſuable matter is alledged in a different county from that wherein the party is indicted or appealed, ſuch pleas can only be tried by juries returned from the counties wherein they are alledged. 2 *Haw.* 404.

Foreign *ſervice*, is that whereby a meſne lord holds of another, without the limits of his own fee; or that which the tenant performs, either to his own lord or to the lord paramount, out of the fee. *Kitch.* 299. Alſo the payment of extraordinary aid, as oppoſed to *intrinſic ſervice*, which was the common and ordinary duty within the lord's court.

Counterfeiting foreign *coin*, current in *England* by the king's proclamation, or bringing any ſuch counterfeit foreign coin into *England*, with intent to utter the ſame in payment, is high treaſon. 1 *Mar. ſt.* 2. *c.* 6. 1 & 2 *P. & Mar. c.* 11. And counterfeiting foreign coin not current in this kingdom, is miſpriſion of treaſon. 13 *El. c.* 2.

If any of the king's ſubjects ſhall *inliſt* into any foreign ſervice, he ſhall be guilty of felony without benefit of clergy. 9 *G.* 2. *c.* 30. 29 *G.* 2. *c.* 17.

A perſon contracting with, or endeavouring to perſuade, any *artificer* to go into any foreign ſervice, ſhall forfeit 500l. and be impriſoned

impriſoned for 12 months; for the ſecond offence ſhall forfeit 1000l. and be impriſoned two years. And an artificer going out of the kingdom to teach any manufacture to foreigners, ſhall be incapable of a legacy, or of being executor or adminiſtrator, and of taking any lands by deſcent, deviſe, or purchaſe, and ſhall forfeit his lands and goods, and be deemed out of the king's protection. 3 *G. c.* 27. 23 *G.* 2. *c.* 13.

FOREIGN *bill of exchange*, is a bill drawn by a merchant reſiding abroad, upon his correſpondent in *England*; or drawn by a merchant in *England*, on his correſpondent abroad. 2 *Black.* 457.

If a ſtranger of *Holland*, or any foreign country, buys goods at *London*, and gives a note under his hand for payment, and then goes away privately into *Holland*, the ſeller may have a certificate from the lord mayor, on proof of ſale and delivery of the goods; upon which the people of *Holland* will execute a legal proceſs on the party. Alſo, at the inſtance of an ambaſſador or conſul, ſuch a perſon of *England*, or any criminal againſt the laws here, may be ſent from a foreign kingdom hither. Where a bond is given, or contract made, in a foreign kingdom, it may be tried in the king's bench, and laid to be done in any place in *England*. *Hob.* 11. 2 *Bulſtr.* 322.

FOREIGNERS, though made denizens, or naturalized here, are diſabled to bear offices in the government, to be of the privy council, or members of parliament. 12 *W. c.* 2.

FORESTS, are waſte grounds belonging to the king, repleniſhed with all manner of beaſts of chaſe or venary, which are under the king's protection, for the ſake of his royal recreation and delight; and to that end, and for preſervation of the king's game, there are particular laws, privileges, courts, and officers, belonging to the king's foreſts. 1 *Black.* 279.

The foreſt courts are, the court of *attachments*, of *regard*, of *ſwainmote*, and of *juſtice-ſeat*. 1. The court of *attachments*, is to be held before the verderers of the foreſt, once in every forty days, to inquire of all offenders againſt the king's deer, or covert for the ſame, who may be *attached* by their bodies, if found in the very act of tranſgreſſion, otherwiſe by their goods; and, in this court, the foreſters are to bring in their attachments or preſentments of vert and veniſon; and the verderers are to receive the ſame, and to inroll them, and to certify them, under their ſeals, to the court of *juſtice-ſeat* or *ſwainmote*; for this court can only inquire of, but not convict, offenders. 2. The court of *regard*, or ſurvey of dogs, is to be holden every third year, for the lawing or expeditating of maſtiffs; which is done by cutting off the claws of the fore feet, to prevent them from running after deer. No other dogs but maſtiffs were permitted to be kept within the king's foreſts, it being ſuppoſed that the keeping of theſe,

theſe, and theſe only, was neceſſary for the defence of a man's houſe. 3. The court of *ſwainmote*, is to be holden before the verderers as judges, by the ſteward of the ſwainmote, thrice in every year, the ſweins or freeholders within the foreſt compoſing the jury. The juriſdiction of this court is, to inquire into the oppreſſions and grievances committed by the officers of the foreſt, and to receive and try preſentments certified from the court of attachments againſt the offenders in vert and veniſon. And this court may not only inquire, but convict alſo; which conviction ſhall be certified to the court of *juſtice-ſeat*, under the ſeals of the jury; for this court cannot proceed to judgment. But the principal court is, 4. The court of *juſtice-ſeat*, which is held before the chief juſtice in eyre, or chief itinerant judge, *capitalis juſticiarius in itinere*, or his deputy, to hear and determine all treſpaſſes within the foreſt, and all claims of franchiſes, liberties, and privileges, and all pleas and cauſes whatſoever, therein ariſing. It may alſo proceed to try preſentments made in the inferior courts of the foreſt, and to give judgment upon the convictions that have been made in the ſwainmote courts. It may be held every third year. This court may fine and impriſon, it being a court of record. And a writ of error lies to the court of king's bench. 1 *Black.* 289. 2 *Black.* 38. 3 *Black.* 71.

But the foreſt laws have long ago ceaſed to be put in execution. 1 *Black.* 289.

A foreſt, in the hands of a ſubject, is, properly, the ſame with a chaſe, being ſubject to the common law, and not to the foreſt laws. 2 *Black.* 38.

Beaſts of foreſt, are, properly, hart, hind, buck, hare, boar, and wolf; but legally, all wild beaſts of venary or hunting. 1 *Inſt.* 233.

FORESTALLING (*foreſtællan*, or *foreſtallan*), in the Engliſh Saxon, ſignifies, properly, to *market before the public*, or to *prevent the public market*; and, metaphorically, to intercept in general; and ſeemeth derived from *fore* (which is the ſame as *before*), and *ſtall*, a ſtanding-place or department; from whence ſprang the ancient word *ſtallage*, which ſignifies money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market. This offence of foreſtalling was deſcribed by the ſtatute 5 & 6 *Ed.* 6. *c.* 14. to be buying or contracting for any merchandize, or victual, coming in the way to market; or diſſuading perſons from bringing their goods or proviſions there, or perſuading them to enhance the price when there; and was puniſhable by the ſaid ſtatute, according to the degrees of the offence. Which ſtatute being now repealed, by the 12 *G.* 3. *c.* 71. the ſame remains an offence at common law, puniſhable upon indictment by fine and impriſonment.

FORESTER,

FORESTER, is a ſworn officer miniſterial of the foreſt, to watch over the vert and veniſon, and to make attachments and true preſentments of all manner of treſpaſſes done within the foreſt.

FORFANG (from *fang*, to take) was the *taking* of proviſion in a fair or market, *before* the king's purveyors had been ſerved for his majeſty's uſe. A grant to be freed from *forfang*, was an immunity from amercement or forfeiture for the ſaid offence.

FORFEITURE (*forisfactura*, *forfait*, Fr.) is the conſequence of attainder for treaſon, felony, or miſpriſion thereof: and it is of two kinds; either of *lands* or *goods*.

By the common law, all *lands* of inheritance, whereof the offender was ſeiſed in his own right, are forfeited to the king by an attainder of high treaſon; and to the lord of whom they are immediately holden, by an attainder of petty treaſon or felony. But the lord cannot enter into ſuch lands, without a ſpecial grant, until it appear by due proceſs, that the king hath had his prerogative of the year, day, and waſte: concerning which it is enacted by the 17 *Ed.* 2. c. 16. that the land ſhall be forthwith taken into the king's hands, and he ſhall have all the profits thereof for a year and a day; and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all manner of things belonging to the ſame land; and after the king hath had the year, day, and waſte, the land ſhall be reſtored to the chief lord of the fee, unleſs he fine before with the king for the year, day, and waſte. 2 *Haw.* 451.

As to forfeiture of *goods*, all things whatſoever, which are comprehended under the notion of perſonal eſtate, which the party hath or is intitled to in his own right, are liable to forfeiture, upon a conviction of treaſon or felony, or upon an acquittal of a capital felony or petty larceny; or of petty larceny if the party is found to have fled for it. But the jury very ſeldom find the flight; forfeiture being looked upon ſince the vaſt increaſe of perſonal property of late years, as too large a penalty for an offence to which a man is prompted by the natural love of liberty. 2 *Haw.* 441. 4 *Black.* 387.

Although the forfeiture upon an attainder of treaſon or felony, ſhall have relation to the time of the offence, for the avoiding of all ſubſequent alienations of the *land*, yet it ſhall relate to the time of the conviction or flight found only, as to *chattels*; and therefore the offender may *bona fide* ſell any of his chattels, for the ſuſtenance of himſelf and family, between the fact and conviction; for perſonal property is of ſo fluctuating a nature, that it paſſes through many hands in a ſhort time; and no buyer would be ſafe, if he were liable to return the goods which he had fairly bought, provided any of the prior vendors had committed a treaſon or felony. 4 *Black.* 387.

FORGERY,

FORGERY, is an offence at *common law*, and an offence alſo by *ſtatute*. Forgery at the *common law* is an offence in falſely and fraudulently making or altering any manner of record, or any other authentic matter of a public nature; as a pariſh regiſter, or any deed, will, privy ſeal, certificate of holy orders, and the like. As for writings of an inferior nature, ſuch as private letters to friends, the counterfeiting of them is not properly forgery; therefore in ſome caſes it may be more ſafe to proſecute ſuch offenders for a miſdemeanor as cheats. The puniſhment on an indictment of forgery at common law, may be by pillory, fine, and impriſonment. But indictments for this offence are now ſeldom brought at common law, but on ſome of the ſtatutes which generally inflict a more ſevere puniſhment. 1 *Haw.* 184.

The *ſtatutes* which make forgery an offence are numerous. The firſt is that famous one of 5 *El. c.* 14. whereby the forging or making, or knowingly publiſhing or giving in evidence, any forged deed, charter, or writing ſealed, or any court roll, or will, is puniſhable by forfeiture of double coſts and damages to the party grieved, ſtanding upon the pillory, having both his ears cut off, his noſtrils ſlit and ſeared, forfeiture to the king of the profits of his lands during life, and impriſonment during life: and for any forgery relating to a term of years, or annuity, bond, obligation, acquittance, releaſe, or diſcharge of any *perſonal* chattels, the ſame forfeiture is given to the party grieved, and on the offender is inflicted the pillory, loſs of one of his ears, and a year's impriſonment; and, in both caſes, the ſecond offence is made felony without benefit of clergy.

Another general ſtatute is 2 *G.* 2. *c.* 25. whereby the firſt offence is made felony without benefit of clergy, in the caſe of forging or procuring to be forged, or uttering as true, any forged deed, will, bond, writing obligatory, bill of exchange, promiſſory note, indorſement or aſſignment thereof, or any acquittance or receipt for money or goods, with intent to defraud any perſon.

And by many other particular ſtatutes, forgeries of divers kinds are made felony without benefit of clergy. As the forging of bank bills or notes, dividend warrants, exchequer bills, power to transfer ſtocks, lottery tickets, policy of aſſurance, army debentures, ſtamps whereby to defraud the revenue, and many other of the like kind.

FORISFAMILIATED, is where a man ceaſes to become part of his father's family, becoming himſelf the head of another family.

FORM, is required in law proceedings, otherwiſe the law would be no art; but it ought not to be uſed to enſnare or entrap. *Hob.* 232. The formal part of the law, or method of proceeding, cannot be altered but by parliament; for if once

thoſe outworks were demoliſhed, there would be an inlet to all manner of innovation in the body of the law itſelf. 1 *Black.* 142.

FORMA PAUPERIS, is where any perſon is ſo poor, that he cannot bear the uſual charges of ſuing at law or in equity. In this caſe, upon his making oath that he is not worth 5l. and bringing a certificate from a counſellor at law, that he believeth him to have cauſe of ſuit, he ſhall by the 11 *H.* 7. *c.* 12. have original writs and ſubpœnas gratis, and counſel and attorney aſſigned him without fee: and by 23 *H.* 8. *c.* 15. he ſhall, when plaintiff, be excuſed from coſts, but ſhall ſuffer other puniſhment at the diſcretion of the judge. And it was formerly uſual to give ſuch paupers, if nonſuited, their election, either to be whipped, or pay the coſts; though the practice is now diſuſed; and *Holt* chief juſtice ſaid, he had no officer for it, and he never knew it done. 3 *Black.* 400. 2 *Salk.* 506.

And it ſeems agreed, that a pauper may recover coſts, though he pay none; for although the counſel and clerks are bound to give their labour to *him*, yet they are not bound to give it to his antagoniſt. 3 *Black.* 400.

On an *indictment*, the defendant may be admitted to defend in *forma pauperis*; for though it is not within the ſtatute of *Hen.* 7. which relates to civil ſuits only, yet it may be reaſonable to do it on indictments at common law, where the proſecutor (who can have no coſts) is not prejudiced. *Str.* 1041.

And by the ſeveral ſtamp acts, perſons admitted to ſue or defend in *forma pauperis* ſhall not be liable to the duties on ſtamped paper or parchment.

FORMEDON upon an alienation by tenant in tail, whereby the eſtate tail is diſcontinued, and the remainder or reverſion is by failure of the particular eſtate diſplaced, and turned into a mere right, the remedy is by action of (*formedon ſecundum formam doni*), becauſe the writ doth comprehend the *form* of the *gift*; which is in the nature of a writ of right, and is the higheſt action that tenant in tail can have. For he cannot have an abſolute writ of right, which is confined only to ſuch as claim in fee ſimple; and for that reaſon this writ of *formedon* was granted him by the ſtatute of 13 *Ed.* 1. *c.* 1. called the ſtatute *de donis.*

This writ is diſtinguiſhed into three ſpecies; *a formedon* in the *deſcender*, in the *remainder*, and in the *reverter*.

A writ of *formedon in the deſcender* lieth, where a gift in tail is made, and the tenant in tail aliens the lands intailed, or is diſſeiſed of them, and dies; in this caſe the heir in tail ſhall have this writ of *formedon in the deſcender* to recover theſe lands ſo given in tail, againſt him who is then the actual tenant of the freehold.

A *formedon in the remainder* lieth, where one giveth lands to another

another for life or in tail, with remainder to a third perſon in tail or in fee; and he who hath the particular eſtate dieth without iſſue inheritable, and a ſtranger intrudes upon him the remainder, and keeps him out of poſſeſſion; in this caſe, the remainder man ſhall have his writ of *formedon in the remainder*.

A *formedon in the reverter* lieth, where there is a gift in tail, and afterwards by the death of the tenant in tail without iſſue of his body the reverſion falls in upon the donor, his heirs, or aſſigns; in ſuch caſe the reverſioner ſhall have this writ to recover the lands. 3 *Black.* 191.

But theſe writs are now ſeldom brought, except in ſome ſpecial caſes, where it cannot be avoided; and the trial of titles by *ejectment* is now the uſual method, which is done with much leſs trouble and expence.

FORNICATION, is the act of incontinency in ſingle perſons; for if either party is married, it is adultery; the ſpiritual court hath the proper cognizance of this offence: but formerly, the courts leet had power to inquire of and puniſh fornication and adultery; in which courts the king had a fine aſſeſſed on the offenders, as appears by the book of Domeſday. 2 *Inſt.* 488.

FORPRISE, *taken beforehand;* is a word frequently uſed in leaſes and conveyances, implying an exception or reſervation.

FORTIORI, *a fortiori*, or *multo fortiori*, is an argument often uſed by *Littleton*, to this purpoſe; if it be *ſo* in a feoffment paſſing a new right, *much more* is it for the reſtitution of an antient right. *Co. Litt.* 253. 260.

FORTLICE, a fortified place.

FORTUNE-TELLING. If any perſon ſhall pretend to exerciſe any kind of witchcraft, ſorcery, enchantment, or conjuration, or undertake to tell fortunes, he ſhall be impriſoned for a year, and be ſet on the pillory once in every quarter of that year, and further bound to the good behaviour as the court ſhall award. 9 *G.* 2. *c.* 5.

FORTY-DAYS COURT. The court of *attachment* or *wood-mote*, held before the verderers of the foreſt once in every forty days, to inquire concerning all offenders againſt vert or veniſon. 3 *Black.* 71.

FOSSA, a ditch full of water, wherein women committing felony were drowned: it has been likewiſe in antient writings uſed for a grave. *Jacob. Dict.*

FOSSATURA, a work done by tenants in *digging* ditches or trenches.

FOSSEWAY, was antiently one of the four principal highways in *England*, leading through the kingdom, ſuppoſed to be dug and made by the *Romans*, and having a ditch on one ſide. *Cowel.*

FOURCHER, (Fr.) ſignifies a putting off or delaying of an action; which is chiefly when an action is brought againſt two, who, being jointly concerned, are not to anſwer till both appear; and they agree not to appear both in one day; whereupon the appearance of the one excuſing the default of the other, he has day over to appear with the other, and at that day the other appears, but he that appeared before doth not to have another day by the adjournment of the party who then appeared.

By ſtat. of *Weſt.* 2. *c.* 42. coparceners, jointenants, &c. may not *fourch*, by *eſſoign*, to eſſoign ſeverally; but ſhall have only one eſſoign, as one ſole tenant: and 23 *H.* 6. *c.* 2. the defendants ſhall be put to anſwer without *fourching*. 2 *Inſt.* 250.

FRACTION. The law allows of no fraction of a day; as if a thing is to be done on ſuch a day, the law allows all that day to do it in. If an offence be committed, as in caſe of murder, 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.* 163.

FRANCHISE, or liberty, is a royal privilege, or branch of the king's prerogative, ſubſiſting in the hands of a ſubject. 2 *Black.* 37.

Being therefore derived from the crown, it muſt ariſe from the king's grant; or, in ſome caſes, may be held by preſcription, which preſuppoſes a grant. *Ibid.*

The ſame identical franchiſe, that hath before been granted to one, cannot be granted to another; for that would prejudice the former grant, and the priority of grants is to be regarded. *Id.*

To be a county palatine is a franchiſe, veſted in a number of perſons. It is likewiſe a franchiſe for a number of perſons to be incorporated and ſubſiſt as a body politic, with a power to maintain perpetual ſucceſſion, and do other corporate acts. Other franchiſes are, to hold a court leet: to have a manor or lordſhip, or at leaſt a lordſhip paramount: to have waifs, wrecks, eſtrays, treaſure-trove, royal-fiſh, forfeitures, and deodands: to have a court of one's own, or liberty of holding pleas, and trying cauſes: to have the cognizance of pleas (which is ſtill a greater right), ſo that no other court ſhall try cauſes ariſing within that juriſdiction: to have a bailiwick, or liberty, exempt from the ſheriff of the county, wherein the grantee only, and his officers, are to execute all proceſs: to have a fair or market, with the right of taking toll, either there or at any other public places, as at bridges, wharfs, or the like: to have a foreſt, chaſe, park, warren, or fiſhery, endowed with privileges of royalty. *Id.*

All franchiſes or liberties, being derived from the crown, are there-

therefore extinguiſhed if they come to the crown again by eſcheat, forfeiture, or otherwiſe.

Forfeiture may accrue either by *miſuſer*, or *non-uſer*. 1. By *miſuſer*; as by keeping a fair or market otherwiſe than it is granted; as keeping it on two days, when one only is granted; or keeping it upon a *Monday*, when it is granted to be kept on a *Wedneſday*; or for extorting fees, and ſuch like. 2. By *non-uſer*; for if one hath liberties, and doth not uſe them within memory, they are loſt. But non-uſer of a market is no forfeiture. 9 *Co.* 50.

When a man claims or uſes a franchiſe or liberty which he ought not to have, it is ſaid to be an *uſurpation* upon the king; and a writ of *quo warranto*, or a writ in the nature of a *quo warranto*, may be brought for that, as well as upon a miſuſer or non-uſer.

FRANKALMOIGN, free-alms, is a tenure, whereby a religious corporation, aggregate or ſole, holdeth lands of the donor, to them and their ſucceſſors for ever. The ſervice which they were bound to render for theſe lands was not certainly defined; but only in general to pray for the ſouls of the donor, his anceſtors, and ſucceſſors; and therefore they did no fealty (which is incident to all other ſervices but this) becauſe this divine ſervice was of a higher and more exalted nature. This is the tenure by which almoſt all the ancient monaſteries and religious houſes held their lands; and by which the parochial clergy, and very many eccleſiaſtical and eleemoſynary foundations, hold them at this day; the nature of the ſervice being upon the reformation altered, and made conformable to the doctrine of the church of *England*.

So great regard was there ſhewn to religion, and religious men, in ancient times, that the tenants in frankalmoign were diſcharged of all other ſervices, except the *trinoda neceſſitas*, of repairing the highways, building caſtles, and repelling invaſions. And even at preſent, this is a tenure of a nature very diſtinct from all others, being not at all feudal, but merely ſpiritual; for, if the ſervice be neglected, the law gives no remedy, by diſtreſs, or otherwiſe, to the lord of whom the lands are holden, but merely a complaint to the ordinary or viſitor to correct it: wherein it materially differed from what was called tenure by *divine ſervice*, in which the tenants were obliged to do ſome ſpecial divine ſervices in certain, as to ſing ſo many maſſes, to diſtribute ſuch a ſum in alms, and the like; which, being expreſsly defined and preſcribed, could with no kind of propriety be called *frankalmoign*, or *free*-alms. 2 *Black.* 101.

FRANKING LETTERS. The privilege of letters coming free of poſtage to and from members of parliament, was claimed

by the houſe of commons in 1660, when the firſt legal ſettlement of the preſent poſt-office was made; but afterwards dropped, upon a private aſſurance from the crown, that this privilege ſhould be allowed the members; and, accordingly, a warrant was conſtantly iſſued to the poſt-maſter-general, directing the allowance thereof, to the extent of two ounces in weight, till at length it was expreſsly confirmed by ſtatute 4 *G.* 3. *c.* 24. with many new regulations.

And by 24 *G.* 3. *c.* 37. *ſ.* 7. no letters or packets ſhall be exempted from poſtage, except ſuch, not exceeding two ounces weight, as ſhall be ſent during the ſitting of parliament, or within 40 days before or after any ſummons or prorogation, and whereon the whole ſuperſcription ſhall be of the hand-writing of the member directing the ſame; and ſhall have his name indorſed thereon, together with the name of the poſt-town from which the ſame is intended to be ſent; and the day, month, and year, when put into the office (the day of the month to be in words at length); and the ſame ſhall be put into the office on the day of the date thereof.

And no letter to any member of either houſe of parliament ſhall be exempted, unleſs directed to ſuch member at the place where he ſhall actually be at the time of the delivery thereof, or at his uſual place of reſidence in *London*, or at the houſe of parliament, or the lobby of ſuch houſe of which he is a member.

Alſo the ſaid ſtatute of 4 *G.* 3. *c.* 24. exempt from poſtage, printed votes or proceedings in parliament, or printed newſpapers, ſent without covers, or in covers open at the ſides, ſigned on the outſide by any member of parliament, or directed to a member at any place whereof he ſhall have given notice to the poſt-maſter-general.

Alſo clerks in the public offices may continue to frank votes and newſpapers as heretofore, provided they be ſent without covers, or in covers open at the ſides.

FRANK-MARRIAGE, *liberum maritagium*, is where tenements are given by one man to another, together with a wife who is daughter or kinſwoman of the donor, to hold in *frank-marriage*. By which gift, though nothing but the word *frank-marriage* is expreſſed, the donees ſhall have the tenements, to them and the heirs of their two bodies begotten; that is, they are tenants in ſpecial tail. It is called *frank* or *free* marriage, becauſe the donees are liable to no ſervice but fealty. But this is now entirely out of uſe. 2 *Black.* 115.

FRANKPLEDGE, was anciently a certain number of *freemen*, who became *pledges* or ſureties for each other's good behaviour. In order whereunto, by the laws of king Alfred, it was ordained, that all freemen ſhould caſt themſelves into ſeveral companies, by ten in each company, and that every of thoſe ten men

of

of the company ſhould be ſurety and pledge for the forthcoming of his fellows; ſo that if any harm were done by any of thoſe ten againſt the peace, the reſt of the ten ſhould be amerced, if he of their company that did the harm ſhould fly, and were not forthcoming to anſwer to that wherewith he ſhould be charged. And every of thoſe companies, conſiſting of ten men, with their families, was therefore call a *tithing*, and were to meet together once a year, and be viewed, and examined how the peace had been kept; which meeting was called the *view of frankpledge*, and is now no other than what is called the *leet* court. And as ten times ten do make an hundred, ſo it was ordained that ten of thoſe companies, or pledges, ſhould meet together for their matters of greater weight; therefore that general aſſembly was, and yet is, called the *hundred* court. *Lamb. Conſtab.*

FRAUD:

1. *Of fraud in general.*
2. *Of fraudulent alienations to defeat creditors or purchaſers.*
3. *Concerning the ſtatute of frauds and perjuries.*

1. *Of fraud in general.*

Covin and fraud, in many caſes (ſaith lord *Coke*), to do a wrong, doth choke a mere right; and the ill manner doth make a good matter unlawful. 1 *Inſt.* 357.

Where a man takes an unreaſonable advantage againſt a neceſſitous heir, by drawing him into an agreement for a ſmall ſum at preſent, for a large ſum to be paid on the death of his anceſtor, a court of equity will relieve. 2 *Atk.* 135.

But if a perſon will enter into a hard bargain with his eyes open, equity will not relieve him upon this footing only, unleſs he can ſhew fraud, or ſome undue means made uſe of to draw him into ſuch agreement. 2 *Atk.* 251.

But if a bargain be ſuch as no man in his ſenſes would make, a court of law will ſet it aſide. As in the caſe of *Jones* and *Morgan* (1 *Lev.* 111.), an action was brought upon a promiſe to pay for a horſe, one barley corn for the firſt nail, and double every nail further; and averred, that there were 32 nails in the ſhoes of the horſe, which doubling every nail, came to 500 quarters of barley. At the trial at *Hereford* aſſiſes, the judge (*Hide*) directed the jury to give no more than the real value of the horſe in damages, being 8 *l.*, and ſo they did. 1 *Wilſ.* 295.

Where an unconſcionable bargain is made with an infant before he comes of age, and a note of hand is taken from him immediately on his coming of age, equity will order it to be cancelled. 2 *Atk.* 25.

A conſideration of ſome ſort or other, is ſo abſolutely neceſſary to the forming of a contract, that a *nudum pactum*, or agreement

ment to do or pay any thing on one ſide, without any compenſation the on other, is totally void in law; and a man cannot be compelled to perform it: as if one promiſes to give another 100*l.*, in this caſe nothing is contracted for or given on the one ſide, and therefore there is nothing binding on the other. 2 *Black.* 445.

But as this rule was principally eſtabliſhed to avoid the inconvenience that would ariſe from ſetting up mere verbal promiſes, for which no good reaſon could be aſſigned, it therefore doth not hold in ſome caſes, where ſuch promiſe is authentically proved by written documents. For if a man enters into a voluntary bond, or gives a promiſſory note, he ſhall not be allowed to aver the want of a conſideration, in order to evade the payment; and courts of juſtice will ſupport theſe, as againſt the contractor himſelf, but not to the prejudice of creditors, or ſtrangers to the contract. *Ibid.*

And generally, a voluntary conveyance is held fraudulent againſt a ſubſequent purchaſer for a valuable conſideration. 3 *Atk.* 412.

A young man gave a note to a girl in this form, "Then bor- "rowed and received of *A. B.* the ſum of 20*l.*, which I promiſe "never to pay:" It was held by the lord chief juſtice *Parker*, on the northern circuit, that an action for this money did well lie, upon the lending on one ſide and borrowing on the other, notwithſtanding the words in the concluſion. 2 *Atk.* 32.

2. *Fraudulent alienations to defeat creditors or purchaſers.*

By the 13. *El. c.* 5. "All conveyances of lands or goods, "to defraud creditors and others of their juſt debts, damages, "forfeitures, heriots, or mortuaries, ſhall be void as to them: "Provided, that this ſhall not extend to purchaſers *bona fide*, upon "good conſideration, not having notice of the fraud at the time "of the conveyance."

And by the 27 *El. c.* 4. "All conveyances of lands to de- "fraud purchaſers ſhall be void; but with a proviſo as before, "that this ſhall not extend to purchaſers on good conſideration "and *bona fide*. And if lands be conveyed with condition of "revocation or alteration, and afterwards ſold for good con- "ſideration, the former conveyance ſhall, with reſpect to the "firſt vendees, be void."

No deed ſhall be deemed to be made *bona fide*, which is accompanied with any *truſt*; as if a man makes a gift of his goods to one of his creditors in ſatisfaction of his debt, but in truſt that the donee ſhall favour him, or permit him or ſome other to poſſeſs them, and to pay the debt when he is able, this is not *bona fide*. 3 *Co.* 81.

If a man conveys his eſtate to the uſe of himſelf for life, with power to mortgage ſuch part as he think ſhall fit, remainder to truſ-

tees

tees to ſell and pay all his debts, but continues in poſſeſſion and keeps the deed, and afterwards becomes indebted by bond, judgment and ſimple contract; this deed is fraudulent as againſt creditors by bond and judgment, who, having no notice of the ſettlement, ſhall not come in on average only with the ſimple contract creditors. 2 *Vern.* 510.

Every *voluntary* conveyance is not fraudulent, but *prima facie* it is preſumed to be ſo againſt purchaſers, unleſs the contrary be made appear. *Cha. Ca.* 100.

But if a man makes a voluntary conveyance in conſideration of natural affection, and is not at that time indebted to any, nor in treaty with any for the ſale of the lands, ſuch conveyance hath no badge of fraud; but otherwiſe it is, if he be indebted, or in treaty for the ſale of the lands; and there is ſcarcely an inſtance, where the perſon conveying was indebted at the time, that the conveyance hath not been deemed fraudulent againſt creditors. 1 *Atk.* 15. 2 *Vez.* 11.

And where there is a voluntary conveyance made, and afterwards a ſubſequent conveyance for valuable conſideration, though there be no fraud in that voluntary conveyance, nor the perſon making it at all indebted, yet ſuch mere voluntary conveyance is void at law, by the ſubſequent purchaſe for valuable conſideration. 2 *Vez.* 10.

By the 3 *H.* 7. *c.* 4. all deeds of gift of goods and chattles made of truſt, to the uſe of the perſon that made the deed, ſhall be void.

If a man that is a debtor, makes a deed of gift of all his goods, to prevent the taking of them in *execution* for his debts, it is void as againſt creditors; but againſt himſelf, his own executors or adminiſtrators, or any man to whom he ſhall after convey them, it is good. *Bacon's Uſe of the Law*, 62.

But although a man fears an execution againſt his goods, yet he may ſell them outright for money, at any time before the execution ſerved; provided there be no reſervation of truſt, as that on paying the money he ſhall have the goods again, for that truſt proves a fraud to prevent the execution. *Id.*

But after the writ of execution is delivered to the ſheriff, ſuch ſale ſhall not bind the property.

If a man is *indicted*, and gives away his goods to prevent a forfeiture, the king ſhall have them upon an attainder or conviction; otherwiſe, if he ſells them to one for a valuable conſideration who had no notice of the indictment. 3 *Salk.* 174.

Marks or badges of fraud in a gift or grant of goods are, if it be general of *all* his goods without exception of ſome things of neceſſity; if the donor ſtill poſſeſſes and uſes the goods; if the deed be made ſecretly; if it be a truſt between the parties; or if it be made pending the action. And therefore lord *Coke* adviſes, when

when a gift is made in ſatisfaction of a debt by one who is indebted to others alſo, that it be made, 1. In a public manner, before neighbours, and not in private. 2. That the goods be appraiſed by honeſt people to the full value, and the gift made in ſatisfaction of the debt. 3. That immediately after the gift, the donee take poſſeſſion of them; for the continuance of the poſſeſſion is a ſign of a truſt. 3 *Co.* 80.

Courts of equity, and courts of law, have a concurrent juriſdiction to ſuppreſs and relieve againſt fraud. What circumſtances and facts amount to fraud, is properly a queſtion of law. But the interpoſition of equity is often neceſſary for the inveſtigating truth, and to give more complete redreſs. *Bur. Manſf.* 396.

3. *Concerning the ſtatute of frauds and perjuries.*

By the 29 *C.* 2. *c.* 3. " All leaſes, eſtates, intereſts of freehold, or terms of years, or any uncertain intereſt out of lands, made by livery of ſeiſin only or by parol, and not put in writing, and ſigned by the parties or their agents authorized in writing, ſhall have the effect of leaſes or eſtates at will only, any conſideration for making ſuch parol leaſe or eſtate notwithſtanding. *ſ.* 1. Except all leaſes, not exceeding the term of three years from the making thereof, whereupon the rent reſerved to the landlord ſhall amount to two thirds at leaſt of the full improved value of the thing demiſed." *ſ.* 2.

" And no leaſes, eſtates, or intereſts, either of freehold, or terms of years, or any uncertain intereſt, not being copyhold or cuſtomary intereſt, ſhall be granted or ſurrendered, unleſs it be by deed, or note in writing, ſigned by the party or his agent in writing, or by act and operation of law." *ſ.* 3.

" And no action ſhall be brought, (1) whereby to charge any executor or adminiſtrator upon any ſpecial promiſe to anſwer damages out of his own eſtate; or (2) whereby to charge the defendant upon any ſpecial promiſe to anſwer for the debt, default, or miſcarriages of another perſon; or (3) to charge any perſon upon any agreement made upon conſideration of marriage; or (4) upon any contract or ſale of lands, or any intereſt therein; or (5) upon any agreement that is not to be performed within one year from the making thereof; unleſs the agreement, or ſome memorandum or note thereof ſhall be in writing, and ſigned by the party to be charged therewith, or ſome perſon by him lawfully authorized." *ſ.* 4.

" And all deviſes of lands ſhall be in writing, and ſigned by the deviſor, and atteſted and ſubſcribed in his preſence, by three or four credible witneſſes." *ſ.* 5.

" And all declarations or creations of truſts of lands ſhall be in writing, ſigned by the party who is by law enabled to declare

" clare such trust, or by his last will; except such trusts as shall " arise or result, or be transferred or extinguished by act or ope- " ration of law. And all assignments of trusts shall also be in " in writing, signed by the party, or by his last will." *s.* 7, 8, " 9.

" And judgments, as against purchasers, shall be binding " only from the time of signing the same, and not by referring " back to the first day of the term." *s.* 13, 14, 15.

" And writs of execution shall bind the property of goods only " from the time of delivering the writ to the sheriff; who shall, for " the better manifestation of such time, indorse the day and year " when he received it." *s.* 16.

" And no contract for sale of goods for ten pounds or up- " wards, shall be good, except the buyer shall receive part " of the goods, or give something in earnest to bind the bargain, " or in part of payment, or some note or memorandum in " writing be signed by the parties or their agents lawfully autho- " rized." *s.* 17.

All leases, &c. On a parol agreement for a lease for a term of years, the lessee entered and enjoyed for some time; and on a bill brought against him to execute a counterpart, he pleaded the statute of frauds; but not allowed, because the agreement was in part carried into execution. *Str.* 783.

Except all leases not exceeding the term of three years. So that a verbal lease will hold for three years, and in this respect hath the advantage of a written lease; for a written lease for three years, or any other term, unless it be upon stamped paper or parchment, will only have the effect of an estate at will; that is, for one year: for by the several stamp acts, such written lease shall not be given in evidence in any court, until it shall have been stamped, and the stamp duty hath been paid, and also an additional sum of 10*l.* if the lease hath been written upon paper or parchment before it was stamped.

To answer for the debt of another person. If a man promise to a surgeon, that, if he cure such a one of a wound, he will see him paid; this is only a promise to pay, if the other does not: but if he promise to pay the surgeon what he shall deserve for doing it, this is binding upon him without writing. *L. Raym.* 224.

And the distinction is this: where an action will lie against the party himself, there an undertaking by another for performance is within the statute, and is not good unless it be in writing; as if a man say, send goods to such a one, and if he doth not pay you I will: otherwise it is, where an action doth not lie against the party himself; as if a man say, send goods to such a one, and I will pay you. *L. Raym.* 1085, 6.

Upon any agreement made upon consideration of marriage. It is not

necessary

neceſſary that a *promiſe* to marry another be in writing; for the ſtatute extends only to *conſideration* of marriage. *Str.* 34.

Upon any contract or ſale of lands. A *letter* ſetting forth that the party had agreed to ſell an eſtate, is not ſufficient to take it out of the ſtatute, unleſs the letter ſet forth what the agreement was. *Str.* 426.

Truſt reſulting by operation of law. A truſt by operation or conſtruction of law is, where aneſtate is purchaſed in the name of one perſon, and the money is paid by another, this is a reſulting truſt for him who paid the money; or where a truſt is declared only as to part, and nothing is ſaid as to the reſt, what remains undiſpoſed of reſults to the heir at law. 2 *Atk.* 71. 150.

No contract for the ſale of goods. If a man beſpeak goods, and after they are made, refuſes to take them, this is not within the ſtatute, though no note was given for the money, nor any earneſt paid; for the ſtatute only relates to actual contracts for the ſale of goods, where the buyer is immediately anſwerable, and the ſeller is to deliver the goods immediately. *Str.* 506.

FRAXINETUM, a woody ground, where aſhes grow.

FREE BENCH, (a free ſeat,) *frank banc*, is the widow's ſhare of her huſband's copyhold or cuſtomary lands (in the nature of dower), which is variable according to the cuſtoms in particular places. In ſome manors it is one third, ſometimes half, ſometimes the whole, during her widowhood, of all the copyhold or cuſtomary land which her huſband died poſſeſſed of. In ſome places by cuſtom ſhe holds them only during her *chaſte* viduity. In the manors of *Eaſt* and *Weſt Enbourne*, in the county of *Berks*, and the manor of *Torre*, in *Devon*, and other parts of the *Weſt* of *England*, there is a cuſtom, that, when a copyhold tenant dies, his widow ſhall have her free bench in all the cuſtomary lands, while ſhe continues ſole and chaſte; but if ſhe commits incontinency, ſhe forfeits her eſtate: yet, nevertheleſs, on her coming into the court of the manor, riding backwards on a black ram, with his tail in her hand, and ſaying the words following, the ſteward is bound by the cuſtom to re-admit to her free bench. The words are theſe:

Here I am,
Riding upon a black ram,
Like a whore as I am;
And for my crincum crancum
Have loſt my bincum bancum,
And for my tail's game,
Have done this worldly ſhame:
Therefore, I pray, Mr. Steward, let me have my lands again.——— *Cowel.*

It is a kind of penance among jocular tenures and cuſtoms, by way of atoning for the offence committed. 2 *Black.* 122.

FREE

FREE CHAPEL, is ſo called from its being free or exempt from the juriſdiction of the ordinary. Moſt of the free chapels were built upon the manors and ancient demeſnes of the crown, whilſt in the king's hands, for the uſe of himſelf and his retinue when he came to reſide there. And when the crown parted with thoſe eſtates, the chapels went along with them, and retained their firſt freedom. But ſome lords having had free chapels in manors that do not appear to have been ancient demeſne of the crown, ſuch are thought to have bee built and privileged by grants from the crown. *Tanner's Not. Monaſt.* Pref. Theſe chapels are viſitable by the king, and not by the ordinary; which office of viſitation is executed for the king by the lord chancellor.

A **FREEHOLD** may be in *deed* or in *law*: a freehold in *deed* is actual ſeiſin of lands or tenements in fee ſimple, fee tail, or for life. A freehold in *law*, is a right to ſuch lands or tenements before entry or ſeiſure. So there is a *ſeiſin* in *deed*, and a *ſeiſin* in *law*: a ſeiſin in *deed* is, when a corporal poſſeſſion is taken; a ſeiſin in *law* is, where lands deſcend before entry, or when ſomething is done which amounts in law to an actual ſeiſin. 1 *Inſt.* 31. 266.

Tenant in fee ſimple, fee tail, or for life, is ſaid to have a freehold, ſo called becauſe it doth diſtinguiſh it from terms of years, chattels upon uncertain intereſts, lands in villenage, or cuſtomary or copyhold lands. 1 *Inſt.* 43.

A freehold cannot be conveyed to paſs *in futuro*, for then there would be want of a tenant againſt whom to bring a *præcipe*; and, therefore, notwithſtanding ſuch conveyance the freehold continues in the vendor: but if livery of ſeiſin is afterwards given, the freehold from thence paſſeth to the vendee. 2 *Wilſ.* 165.

A man is ſaid to be *ſeiſed* of freehold, but to be *poſſeſſed* of other eſtates, as of copyhold lands, leaſes for years, or goods and chattels.

FREIGHT, Fr. *fret*, ſignifies the money paid for carriage of goods by ſea; or, in a larger ſenſe, it is taken for the cargo or burthen of the ſhip. Ships are freighted either by the ton, or by the great; and, in reſpect of time, the freight is agreed for at ſo much *per* month, or at a certain ſum for the whole voyage. If a ſhip freighted by the great, is caſt away, the freight is loſt; but if a merchant agrees by the ton, or ſo much for every piece of commodities, and the ſhip is caſt away, if part of the goods is ſaved, it is ſaid ſhe ought to be anſwered her freight *pro rata*: and when a ſhip is *inſured*, and ſuch a misfortune happens, the inſured commonly tranſfer their goods over to the aſſurers towards a ſatisfaction of what they make good. *Merchants Compan.* 79.

FRESH FORCE, *friſca fortia*, is a force newly done in any city,

city, borough, or the like: and if a perſon be diſſeiſed of any lands or tenements within ſuch city or borough, he who hath right to the land, by the uſage and cuſtom of ſuch city or borough, may bring his aſſiſe or bill of *freſh force*, within forty days after the force committed, and recover the lands. *F. N. B.* But this is now out of uſe, the poſſeſſion being uſually recovered by ejectment.

FRESH SUIT, or purſuit, is the immediate and unintermitted following an offender, as of a robber in caſe of robbery, of a priſoner in caſe of priſon breaking, or of goods eſcaped or driven off the premiſes in caſe of a diſtreſs. The benefit of the purſuit of a felon is, that the party purſuing may have his goods reſtored to him, which otherwiſe are forfeited tothe king. But if the thief be not apprehended immediately, but it is ſome time before he is apprehended, yet if the party did what in him lay to take the offender, and notwithſtanding that in ſuch caſe he happened to be apprehended by ſome other perſon, it ſhall be adjudged freſh purſuit. This is in the diſcretion of the court, though it ought to be found by the jury; and the judges may, if they think fit, award reſtitution without making any inquiſition concerning the ſame. Where a gaoler immediately purſues a felon, or other priſoner, eſcaping from priſon, it is freſh ſuit, to excuſe the gaoler. And if a lord follow his diſtreſs into another's ground, on its being driven off the premiſes, this is called freſh ſuit. So where a tenant purſues his cattle that eſcape or ſtray into another man's ground. And freſh ſuit may be either within the view or without. 2 *Haw.* 169.

FRIENDLESS MAN, was the old Saxon appellation for him whom we call an *outlaw*; and the reaſon of his being called ſo was, becauſe, being out of the king's protection, he was after a certain number of days denied all help of friends: hence there was a mulct or fine called *friendwite* for a man harbouring an outlaw.

FRIER, *frater*, a brother of ſome religious ſociety.

FRITH, Sax. *peace*. So *frithbrech*, breach of the peace. *Frithgild*, or *frithmote*, the court or place of aſſembly of the freedmen, the moot-hall. *Frithman*, the herdſman who takes care of the ſtint in the paſture, or to keep the paſture *freed* at certain ſeaſons of the year.

FRUIT. By 37 *H.* 8. *c.* 6. *ſ.* 4. every perſon who ſhall bark any fruit tree, ſhall forfeit to the party grieved, treble damages, by action at the common law; and alſo 10*l.* to the king. And by 43 *El. c.* 7. *ſ.* 1. every perſon who ſhall rob any orchard or garden, or dig or pull up any fruit trees, with intent to take the ſame away (the ſame not being felony by the laws of this realm), ſhall, on conviction, before one juſtice, give to the party ſuch ſatisfaction for damages as ſuch juſtice ſhall appoint; and, in default

default of payment, to be whipped. And with reſpect to what ſhall be deemed *felony by the laws of this realm*, the diſtinction ſeems to be, that if they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but treſpaſs only for a man cannot ſteal a part of the freehold; but if they be ſevered from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a treſpaſs only, but felony.

FUGACIA, a chaſe.

FUMAGE, is mentioned in Domeſday, and is that which is vulgarly called *ſmoke farthings*, which were paid by cuſtom to the king for every ſmoke or chimney in the houſe. It is ſometimes uſed to denote *wood for fuel*, as in an old grant—*Et ſint quieti de fumagio et mæremio cariando* (to be free from the carrying of wood either for fuel or timber).

FUNERAL expences are allowed previous to all other debts and charges; but if the executor or adminiſtrator be extravagant, it is a ſpecies of devaſtation or waſte of the ſubſtance of the deceaſed, and ſhall only be prejudicial to himſelf, and not to the creditors or legatees of the deceaſed. 2 *Black.* 508.

But in ſtrictneſs, no funeral expences are allowable againſt a creditor, except for the ſhroud, coffin, ringing the bell, parſon, clerk, grave-digger, and bearers' fees. 1 *Salk.* 196. And in general it is ſaid that no more than forty ſhillings in the whole, for funeral expences, ſhall be allowed againſt creditors. 3 *Atk.* 249.

FURCA, the gallows. In ancient grants to lords of manors and others, there was often the privilege of *furca et foſſa*; that is, of trying and puniſhing felons, the men by hanging, and the women by drowning. 3 *Inſt.* 58. So there was *furca et flagellum*, which was the meaneſt of all ſervile tenures; where the bondman was at the diſpoſal of his lord for life and limb.

FURLONG, is a quantity of ground in length, eight of which furlongs make a mile. It is otherwiſe the eighth part of an acre of land. *Ja. Dict.*

FURNAGE (from *furnus*, an oven), is a ſum paid to the lord by the tenants who are bound by their tenure to bake at the lord's oven, for their liberty to bake elſewhere. Alſo the word is uſed to ſignify the gain or profit taken for baking.

GAINAGE (*wainagium*), the plough and furniture for carrying on the work of tillage. It was applied only to arable land, when they had it in occupation, and had nothing from it for their ſuſtenance but what they raiſed by their own labour, nor any other title but at the lord's will. And *gainer* is uſed by *Bracton* for a *ſokeman* that hath ſuch land in occupation. The word *gain* is mentioned by *Weſt.* where heſys, "land in demeſne, but not in gain." And in the ſtatute 51 *Hen.* 3. there are theſe words, "no man ſhall be diſtrained by the beaſts that *gain* his land." By the *magna charta*, *c.* 14. *gainage* ſignifies no more than the ploughtackle or implements of huſbandry, without any reſpect to gain or profit; where it is ſaid of the knight and freeholder, he ſhall be amerced *ſalvo contenemento ſuo*, the merchant or trader *ſalva merchandiza ſua*, and the villein or countryman *ſalvo wainagio ſuo*. In which caſes it was, that the merchant or huſbandman ſhould not be hindered, to the detriment of the public, or be undone by arbitrary fines; and the villein had his wainage, that the plough ſhould not ſtand ſtill. For which reaſon the huſbandman at this day is allowed a like privilege by law, that his beaſts of the plough are in many caſes not liable to diſtreſs.

GALLIGASKINS, wide hoſe or breeches, having their name from their uſe by the *Gaſcoigns*.

GALLIHALFPENCE, a coin brought into this kingdom by the *Genoeſe* merchants, who trading hither in *galleys*, lived commonly in a lane near *Tower*-ſtreet, and were called *galley-men*, landing their goods at *Galley-key*, and trading with their own ſilver coin called *galley-halfpence*. *Stowe's Survey of London*, 137.

GALLIMAWFRY, a meal of coarſe victuals, given to *galley-ſlaves*.

GALOCHES, a kind of ſhoe, worn by the *Gauls* in dirty weather; mentioned in the ſtatute 14 & 15 *H.* 8. *c.* 9.

GAME. It is a maxim of the common law, that ſuch goods of which no one can claim any property do belong to the king by his prerogative; and hence all thoſe animals *feræ naturæ*, which come under the denomination of game, are ſtyled in our laws, his *majeſty's* game; and that which he hath, he may grant to another; and, conſequently, another may preſcribe to have the ſame, within ſuch a precinct or lordſhip. And hence comes the right of the lords of manors or others, by grant or preſcription, unto the game within their reſpective liberties. 2 *Bac. Abr.* 613.

By

By the ſtatute of 22 & 23 *C.* 2. *c.* 25. every perſon, not having an eſtate of inheritance of 100*l.* a year, or leaſehold for 99 years or upwards of 150*l.* a year (other than the ſon and heir apparent of an eſquire or other perſon of higher degree, and the owners and keepers of foreſts, parks, chaſes, or warrens), is declared to be a perſon not allowed, by the laws of this realm, to have or keep any guns, bows, dogs, ſnares, nets, or other engines, for the taking and killing of game.

The preſervation of the game is provided for by a great variety of acts of parliament, upwards of forty in number.

And duties have lately been impoſed on certificates to be iſſued to perſons who ſhall uſe any dog, gun, net, or other engine for the taking or deſtroying of game; and to game-keepers; for which ſee *Burn's Juſt.* title *Game.*

GAMEKEEPER. All lords of manors or other royalties, not under the degree of an eſquire, may appoint a gamekeeper within their reſpective manors, with power therein to kill game. But there ſhall be only one gamekeeper, with ſuch power, within any one manor; and his name ſhall be entered with the clerk of the peace where ſuch manor lies. And he ſhall alſo be a ſervant of ſuch lord, or immediately employed by him to kill game for the ſole uſe of the lord, and not otherwiſe; that is, unleſs qualified in his own right to kill game.

GAMING is ſaid not to be an offence at common law, but only an offence prohibited by ſtatute: but gaming houſes are held to be nuiſances, as drawing together a number of idle and diſorderly people. 1 *Haw.* 198.

To reſtrain this practice of gaming, many ſtatutes have been enacted. By 33 *H.* 8. *c.* 9. no perſon ſhall keep any common houſe or place of bowling, coyting, cloyſh, cayls, half bowl, tennis, dicing-table, or carding, or any unlawful game, on pain of 40*s.* a day; and every perſon reſorting thither, and playing, ſhall forfeit 6*s.* 8*d.* And artificers, huſbandmen, ſervants, and the like inferior perſons, are prohibited to play at any ſuch like games out of *Chriſtmas*; or in *Chriſtmas*, except only in their maſters' houſes.

By 16 *C.* 2. *c.* 7. if any perſon ſhall loſe above 100*l.* at one time or ſitting, and ſhall not pay the ſame at that time, he ſhall not be obliged to make it good; and the winner ſhall forfeit treble value, half to the king and half to him that ſhall ſue.

By 9 *An.* *c.* 14. if any perſon ſhall at one time or ſitting loſe to the value of 10*l.* and pay down the ſame, he may recover the ſame back again with coſts, on ſuit within three months; and if he ſhall not ſue in that time, any perſon may ſue for and recover the ſame and treble value. And all ſecurities given for money won by playing ſhall be void. And if any perſon ſhall by *fraud*, or other ill practice, win any ſum, he ſhall forfeit five

times the value, and be deemed infamous, and ſuffer corporal puniſhment as in caſe of perjury. And if any perſon ſhall *aſſault*, or challenge to fight, any other perſon, on account of money won by gaming, he ſhall forfeit all his goods and chattels, and be impriſoned for two years.

And by ſeveral ſtatutes in the reign of *Geo.* 2. all private lotteries, by tickets, cards, or dice (and particularly the games of faro, baſſet, ace of hearts, hazard, paſſage, rolly poly, and all other games with dice, except backgammon), are prohibited under the penalty of 200*l.* for him that ſhall erect ſuch lottery; and 50*l.* a time for any that ſhall play.

GANG DAYS, days for peramb'ulation of the boundaries of pariſhes; from the Saxon *gangan*, to go.

GAOL AND GAOLER:

1. The keeping of gaols is incident to the office of ſheriff, and therefore he hath the appointment of the gaoler, for whoſe acts or omiſſions the ſheriff, in many caſes, is anſwerable; and therefore it behoves him to put in ſuch a perſon as is ſufficient.

2. For the ſuſtentation of priſoners in the gaol, the juſtices of the peace in ſeſſions ſhall ſettle an allowance, which ſhall be paid out of the general county rate. 14 *Eliz. c.* 5.

3. By 24 *G.* 2. *c.* 40. no licence ſhall be granted for retailing ſpirituous liquors in any gaol, nor ſhall any ſpirituous liquors be brought into or uſed therein. And by the 24 *G.* 3. *c.* 54. no gaoler, or perſon in truſt for him, ſhall be capable of being licenſed to ſell any wine, ale, or other liquors, or have any beneficial intereſt or concern whatſoever in the ſale or diſpoſal of any liquors of any kind; or in any tap-houſe, tap-room, or tap, on the penalty of 10*l.*

4. Debtors and felons ſhall not be kept or lodged in one room. 22 *C.* 2. *c.* 20.

5. For preſervation of the health of priſoners, the walls and cielings both of the cells and wards ſhall be ſcraped and white-waſhed once a year at leaſt, and the gaol ſhall conſtantly be kept clean, and ſupplied with freſh air by hand ventilators, or otherwiſe. 14 *G.* 3. *c.* 59.

6. If the gaoler *voluntarily* ſuffer a priſoner to eſcape, if it is for a criminal matter, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped, and the ſheriff alſo may be puniſhed by fine and impriſonment; if the gaoler *negligently* ſuffers him to eſcape, the court may charge either the ſheriff or gaoler. If the gaoler ſuffers an eſcape in a *civil* caſe, the ſheriff or gaoler, at the election of the party, ſhall anſwer damages for it to the party injured. 2 *Haw.* 135.

7. If the gaoler ſuffers a debtor, though confined only upon meſne proceſs, to go at large, although the priſoner returns the ſame day, yet the gaoler is liable to an action upon the caſe for damages;

damages; for after the gaoler hath permitted the eſcape, he cannot detain him again for the ſame matter; and if it were otherwiſe, every gaoler would ſuffer his priſoner to go at large, as much as if he had never been arreſted. 2 *Wilſon.* 294.

GAOL DELIVERY. By the law of the land, that men might not be long detained in priſon, but might receive full and ſpeedy juſtice, commiſſions of gaol-delivery are iſſued out, directed to two of the judges, and the clerk of aſſiſe aſſociate; by virtue of which commiſſion they have power to try every priſoner in the gaol, committed for any offence whatſoever. By divers ancient ſtatutes no man was to act as judge in the county where he was born or inhabited; but by the 12 *G.* 2. *c.* 27. he may act in the commiſſion of *gaol delivery*, and of *oyer and terminer* in any county in *England*; but he is ſtill reſtrained in civil cauſes of *aſſiſe* and *niſi prius*. 4 *Black.* 269.

GARBA, (Fr. *garbe,*) ſignifies a ſheaf or bundle of corn, faggots, or the like. Thus *decima garbarum*, is the tithe of the ſheaves of corn, or other grain. *Garba ſagittarum*, is a ſheaf of arrows, containing in number twenty four. *Garb*, in *heraldry*, is a ſheaf of wheat.

GARCIO, Fr. *garçon*, a groom or ſervant.

GARNISHMENT, a warning; as *garniſher le court* is to warn the court, and *reaſonable garniſhment* is where a perſon hath reaſonable warning.

GARNITURE, is a furniſhing or providing: as garniture of arms or implements of war, is a providing of them for the defence of a town or caſtle.

GARSUMA, *gerſuma*, a rent or fine paid by the tenant to the lord of the manor.

GARTER, is the enſign of an order of knights, inſtituted by king *Ed.* 3. The word is alſo underſtood of the principal king at arms, attending upon the knights thereof, created by king *Hen.* 5.

GARTH, a ſmall incloſure; ſo a *fiſhgarth* is a place incloſed for the taking of fiſh.

GAVEL, *gabel.* Sax. a tax or tribute.

GAVELKIND, from the Saxon *gyfe-eal-kyn*, *given to all the kindred*, was a tenure or cuſtom annexed and belonging to lands in *Kent*, *Wales*, and other places, which received not the laws of the Conqueror; whereby the lands of the father were equally divided at his death among all his ſons; and, in more ancient times ſtill, amongſt all the children male and female. But now all, or moſt of theſe lands, both in *Kent* and *Wales*, are by ſeveral acts of parliament diſgavelled, and made deſcendible according to the courſe of the common laws.

Mr. *Selden* was of opinion, that gavelkind, before the *Norman* conqueſt, was the general cuſtom of the realm.

One property of gavelkind was, that it did not eſcheat in caſe of an attainder and execution for felony; their maxim being, "the father to the bough, the ſon to the plough."

GAVELMAN, a tenant liable to tribute; ſo *gavelmed*, a ſervice of mowing the lord's *meadow*.

GELD, *(geldum,)* a fine or compenſation for an offence. Hence in our ancient laws, *weregeld* was uſed for the value or price of a man ſlain, and *orfgeld* of a beaſt. It alſo ſignifies rent, money, or tribute; ſo, in many ancient charters, there are immunities granted from *geld*, and *danegeld*, and *horngeld*, and many ſuch like. So *neatgeld* was a rent paid in cattle; *angeld* was the ſingle value of a thing; *twigeld*, double value; and ſo of the reſt.

GEMOTE, Sax. an aſſembly. So *wittena gemote* was an aſſembly of wiſemen, the parliament.

GENERALE, the ſingle commons, or ordinary proviſion in the religious houſes, being their *general* allowance, diſtinguiſhed from their *pietantiæ*, which were pittances added on extraordinary occaſions.

GENERAL ISSUE, is that which traverſes and denies at once the whole declaration, without offering any *ſpecial matter* whereby to evade it: and it is called the general iſſue, becauſe, by importing an abſolute and general denial of what is alledged in the declaration, it amounts at once to an iſſue; that is, a fact affirmed on one ſide, and denied on the other. 3 *Black.* 305.

GENTLEMAN, according to *Sir Edward Coke*, is one who bears coat armour, the grant of which adds gentility to a man's family. 2 *Inſt.* 667.

But in modern acceptation, the name is not tied up to ſo much ſtrictneſs; and *Sir Thomas Smith*'s deſcription of a gentleman ſeems to come much nearer to the matter; who ſays,—As for gentlemen, they are made good cheap in this kingdom; for whoſoever ſtudies the laws of the realm, who ſtudies in the univerſities, who profeſſeth liberal ſciences, and (to be ſhort) who can live idly and without manual labour, and will bear the port, charge, and countenance of a gentleman, he ſhall be called maſter, and ſhall be taken for a gentleman. 1 *Black.* 406.

GENTLEWOMAN, is a good addition of the ſtate and degree of a woman, as gentleman is for that of a man; and if a gentlewoman be named ſpinſter in any original writ or indictment, ſhe may abate and quaſh the ſame; for ſhe hath as good a right to that addition as baroneſs, viſcounteſs, marchioneſs, or ducheſs, have to theirs. 2 *Inſt.* 667.

A GIFT of chattels perſonal is the act of transferring the right and the poſſeſſion of them; whereby one man renounces, and another immediately acquires, all title and intereſt therein. 2 *Black.* 440.

This

This may be done either in writing, or by word of mouth atteſted by ſufficient evidence, of which the delivery of *poſſeſſion* is the ſtrongeſt and moſt eſſential. *Ibid.*

For a parol gift, without ſome act of delivery, will not alter the property. *Str.* 955.

A free gift is good, without a conſideration; as if a man gives to another 100*l.* or a flock of ſheep, and puts him in poſſeſſion of them immediately, this is a gift executed, and it is not in the donor's power to retract it: but if it doth not take effect by delivery of immediate poſſeſſion, it is not properly a gift, but a contract; and this a man cannot be compelled to perform, but upon good and ſufficient conſideration. 2 *Black.* 441.

A general gift of *all* one's goods, without any exception, even though it be by deed, is liable to ſuſpicion as fraudulent againſt creditors; for by giving all a man's goods, there ſeems to be a ſecret truſt and confidence implied, in favour of the donor. 3 *Co.* 80.

GILD, a fraternity or company. See *guild.*

GIST of the action, from the French *giſt (jacet)*, is the cauſe for which the action *lieth*; the ground and foundation thereof, without which it is not maintainable.

GLASS. By ſeveral ſtatutes regulations are made for the making, importing, and exporting of glaſs, which is to be under the management of the officers of the cuſtoms and exciſe. And by 24 *G.* 3. *c.* 41. every glaſs-maker ſhall take out a licence annually. And by 27 *G.* 3. *c.* 13. and 27 *G.* 3. *c.* 28. ſeveral duties are impoſed on glaſs imported; and alſo on glaſs made in *Great-Britain*, as ſet forth in ſchedules annexed to the act.

GLEANING. It hath been ſaid, that by the common law and cuſtom of *England*, the poor are allowed to enter and glean upon another's ground after the harveſt, without being guilty of treſpaſs; and that this humane proviſion ſeemed borrowed from the *Moſaical* law. 3 *Black.* 212. *Bur. Manſf.* 1925.

But in the caſe of *Steele* v. *Houghton*, *T.* 28 *G.* 3. in the common pleas, it was determined, that no ſuch right exiſts, or can be claimed as part of the general common law of the land. *Blackſtone's Rep.* 51.

GLEBE, is the land which belongs to a church. Glebe lands in the hands of the parſon ſhall not pay tithes to the vicar; nor being in the hands of the vicar ſhall they pay tithes to the parſon; for the church ſhall not pay tithe to the church. *Degge. p.* 2. *c.* 2.

If a parſon leaſe his glebe lands, and do not alſo grant the tithes thereof; the tenant ſhall pay the tithes thereof to the parſon. *Id.*

And if a parſon lets his rectory, reſerving the glebe lands, he ſhall pay the tithe thereof to his leſſee. *Gibſ.* 661.

If an incumbent ſows the glebe land and dies, his executor or adminiſtrator ſhall have the crop. But if his ſucceſſor be inducted before ſeverance thereof from the ground, and before it is carried off, in this caſe, the ſucceſſor ſhall not have the tithe; becauſe, though it was not ſet out, yet a right to it was veſted in the deceaſed parſon by the ſeverance from the ground. 1 *Roll's Abr.* 655.

GLOVES. By the 25 *G.* 3. *c.* 55. duties are impoſed upon gloves, and on licences to be taken out by dealers therein.

GODBOTE, Sax. an eccleſiaſtical fine, paid for offences againſt religion.

GODGILD, a tribute or offering to *God* or his ſervice.

GOOD BEHAVIOUR. Surety of good behaviour is near of kin to ſurety of the peace, but is of ſomewhat a larger extent. A man may be compelled to find ſureties both for the peace and good behaviour, and yet the good behaviour includes the peace; for he that is bound to the good behaviour is therein alſo bound to the peace. *Dalt. c.* 122.

GOOD CONSIDERATION, is that of blood or natural love and affection, when a man grants an eſtate to a near relation; a *valuable* conſideration, is that of money, marriage, or the like; which the law eſteems an equivalent for the grant. 2 *Black.* 297.

GORCE, Fr. *gort*, a wear or dam whereby the paſſage of boats is obſtructed. 1 *Inſt.* 5.

GRACE. Acts of parliament for a general and free pardon, are commonly called *acts of grace.*

GRAIL, *gradale*, a *gradual* or book, containing ſome of the offices of the Romiſh church.

GRAND ASSISE, was an extraordinary trial by jury, inſtituted by king *Hen.* 2. by way of alternative offered to the choice of the tenant or defendant in a writ of right, inſtead of the barbarous cuſtom of trial by battel. For this purpoſe, a writ *de magna aſſiſa eligenda* is directed to the ſheriff, to return four knights, who are to chuſe twelve other knights to be joined with them; and theſe ſixteen form the grand aſſiſe, or *great jury*, to try the right between the parties. 3 *Black.* 351.

GRAND CAPE, is a writ on a plea of land, where the tenant makes default in appearance at the day given, for the king to take the land into his own hands.

GRAND JURY. The ſheriff of every county is bound to return, to every commiſſion of oyer and terminer and of gaol delivery, and to every ſeſſion of the peace, 24 good and lawful men of the county, ſome out of every hundred, to inquire, preſent, do, and execute, all thoſe things which, on the part of our lord the king, ſhall then and there be commanded them. They ought to be freeholders; but to what amount is not limited by law.

Upon

Upon their appearance, they are ſworn upon the grand jury, to the amount of 12 at the leaſt, and not more than twenty-three, that twelve may be a majority. 4 *Black.* 302.

They are only to hear evidence on behalf of the proſecution; for the finding of an indictment is only in the nature of an inquiry or accuſation, which is afterwards to be tried and determined; and the grand jury are only to inquire, upon their oaths, whether there be ſufficient cauſe to call upon the party to anſwer it. *Id.* 303.

GRAND LARCENY. See LARCENY.

GRAND SERJEANTY, *(ſerjeantia, ſervicium,)* is where a perſon holdeth his lands of the king by ſuch ſervices as he ought to do in perſon; as to carry the king's banner, or his lance, or to carry his ſword before him at his coronation, or to do other like ſervices: and it is called *grand* ſerjeanty, becauſe it is a greater and more worthy ſervice than the ſervice in the common tenure of eſcuage. *Litt.* 153.

GRANT. A grant is the regular method, by the common law, of transferring the property of *incorporeal* hereditaments, or ſuch things whereof no livery of ſeiſin can be had. For which reaſon all *corporeal* hereditaments, as lands and houſes, are ſaid to lie *in livery*; and the others, as advowſons, commons, ſervices, rents, reverſions, and ſuch like, lie *in grant*. 2 *Black.* 317.

He that granteth is termed the grantor, and he to whom the grant is made is the grantee.

The grant is uſually made in theſe words, "have given, "granted, and confirmed:" and then, by delivery of the deed, the freehold paſſeth.

A grant differs from a *gift* in this; that *gifts* are always gratuitous, *grants* are upon ſome conſideration or equivalent. 2 *Black.* 440.

Grants may be divided, with reſpect to their ſubject matter, into grants of *chattels real*, and grants of *chattels perſonal*. *Ibid.*

Under the head of *chattels real*, are comprehended all leaſes for years of land, aſſignments and ſurrender of thoſe leaſes, and all other methods of conveying an eſtate leſs than freehold; and are uſually expreſſed to be in conſideration of blood, or natural affection, or of five ſhillings nominally paid to the grantor; and, in caſe of leaſes, always reſerving a rent, though it be but a peppercorn. Any of which conſiderations will, in the eye of the law, convert a *gift*, if executed, into a *grant*; if not executed, into a *contract*. *Ibid.*

Grants or gifts of *chattels perſonal*, are the act of transferring the right and the poſſeſſion of them, whereby one man renounces, and another man immediately acquires, all title and intereſt therein; which may be done either in writing, or by words atteſted by

by ſufficient evidence, of which the delivery of poſſeſſion is the ſtrongeſt and moſt eſſential. But this conveyance, when merely voluntary, is ſomewhat ſuſpicious; and is uſually conſtrued to be fraudulent, if creditors, or others, become ſufferers thereby. 2 *Black.* 441.

GREAT TITHES, are the tithes of corn, hay, and wood; all other tithes come under the denomination of ſmall tithes.

GREE, ſignifies ſatisfaction; as to make *gree* to the parties, is to *agree* with, or ſatisfy them for an offence done.

GREEN CLOTH, of the *king's houſehold*, ſo termed from the *green* cloth on the table, is a court of juſtice compoſed of ſeveral great officers of the king's houſehold, to which is committed the government and overſight of the king's court, and the keeping of the peace within the verge, *&c.*

GREENHUE, is every thing that bears a *green* leaf within the foreſt, which may be covert for the deer. It ſometimes ſignifies a payment in money, for the privilege of cutting green wood in the foreſt.

GREEN-WAX, is where eſtreats are delivered to the ſheriffs, out of the *exchequer*, under the ſeal of that court, made in *green-wax*, to be levied in the ſeveral counties.

GRESSOM, *(ingreſſus,)* a rent or fine paid to the lord of the manor.

GREVE, Sax. *gereſa*, the ſame as *reve*, a word of power and authority; as *ſhire-gereſa*, the ſheriff.

GRITH, Sax. *peace*. So *grithbreche*, breach of the peace.

GROSS, *in groſs*, abſolute, intire, not depending on another; as a *villein in groſs*, was ſuch a ſervile perſon as was diſtinct from, and not annexed to, the manor. An *advowſon in groſs* is ſpoken of in oppoſition to an advowſon appendant, and not ſeparated from the manor.

GROSS-BOIS, great wood, fit for timber.

GROSS, *common in*, is ſuch as is neither appendant nor appurtenant to land, but is annexed to a man's perſon, being granted to him and his heirs by deed; or it may be claimed by preſcriptive right, and is a ſeparate inheritance, and may be veſted in one who has not any ground in the manor. 2 *Black.* 34.

GROUNDAGE, a cuſtom or tribute paid for the ſtanding of a ſhip in the port.

GUARDIAN. Of the ſeveral ſpecies of guardians of infants, the firſt are guardians by *nature*; viz. the father, and (in ſome caſes) the mother of the child; for if an eſtate be left to an infant, the father is by common law the guardian, and muſt account to his child for the profits. 1 *Black.* 461.

There are alſo guardians *for nurture*; which are, of courſe, the father or mother, till the infant attains the age of fourteen years.

years. And in default of father or mother, the ordinary uſually aſſigns ſome diſcreet perſon to take care of the infant's perſonal eſtate, and to provide for his maintenance and education. *Id.*

Next are guardians *in ſocage*, who are called guardians *by the common law*. Theſe take place only when the minor is intitled to ſome eſtate in lands, and then, by the common law, the guardianſhip devolves upon his next of kin, to whom the inheritance cannot deſcend. Theſe guardians in ſocage, like thoſe for nurture, continue only till the minor is fourteen years of age; for then, in both caſes, he is preſumed to have diſcretion ſo far as to chuſe his own guardian. *Id.*

But by the 12 *C.* 2. *c.* 24. any father, under age, or of full age, may, by deed or will, diſpoſe of the cuſtody of his child, either born or unborn, till ſuch child attains the age of 21 years. And this guardian is commonly called a *teſtamentary* guardian.

A guardian cannot make a leaſe of lands for longer term than until his guardianſhip expires; if he does, the leaſe is void. 2 *Wilſon.* 129. 135.

The guardian, ought to apply the eſtate in his hands to pay the *debts* of the infant. 1 *Cha. Ca.* 157.

He may pay off the *intereſt* of any *real* incumbrance, and *principal* of a *mortgage*; but no other real incumbrance. *Prec. Cha.* 137.

The guardian, when the infant comes of age, is bound to give him an account of all that he hath tranſacted on his behalf. In caſe of large eſtates, it is thought prudent ſometimes to apply to the court of chancery, and account annually before the officers of that court. 1 *Black.* 463.

A guardian, upon account, ſhall have allowance of all reaſonable coſts and expences in all things. And if he receives the rents and profits, and be robbed without his default or negligence, he ſhall be diſcharged thereof. 1 *Inſt.* 89.

GUARDIAN OF THE SPIRITUALTIES, is he to whom the ſpiritual juriſdiction of any dioceſe is committed, during the vacancy of the ſee. The archbiſhop is guardian of the ſpiritualties, on the vacancy of any ſee within his province; but when the archiepiſcopal ſee is vacant, the dean and chapter of the archbiſhop's dioceſe are guardians of the ſpiritualties.

GUILD (from the *Saxon guildan*, to pay) ſignifies a fraternity, or company; becauſe every one was to pay ſomething towards the charge and ſupport of the company. The original of theſe guilds and fraternities is ſaid to be from the old *Saxon* law, by which the neighbours entered into an aſſociation, and became bound for each other, to bring forth him who committed any crime, or make ſatisfaction to the party injured; for which purpoſe they raiſed a ſum of money among themſelves, and put it into

into a common ſtock, whereout a pecuniary compenſation was made, according to the quality of the offence committed. From whence came our fraternities and guilds; and they were in uſe in this kingdom long before any formal licences were granted for them; though, at this day, they are a company combined together (with orders and laws made by themſelves) by the king's licence. *Guilda mercatoria*, or the merchant's guild, is a liberty or privilege granted to merchants, whereby they are enabled to hold certain pleas of land within their own precinct. And *guild-halls* are the halls of thoſe ſocieties, where they meet and make laws for their better government.

GULES OF AUGUST, from *gula*, a *throat*, is the entrance into, or the firſt day of, that month.

GYPSIES *(Egyptians)* are a kind of commonwealth among themſelves of wandering impoſtors and jugglers, who made their firſt appearance in *Germany* about the beginning of the ſixteenth century, and have ſince ſpread themſelves over all *Europe and Aſia*. About the year 1517, when ſultan *Selim* conquered *Egypt*, this people refuſed to ſubmit to the Turkiſh yoke, and retired into the deſerts, where they lived by rapine and plunder, and frequently came down into the plains of *Egypt*, committing great outrages in the towns upon the *Nile*, under the dominion of the *Turks*: but being at length ſubdued, and baniſhed from *Egypt*, they diſperſed themſelves, in ſmall parties, into every country in the known world; and, as they were natives of *Egypt*, a country where the occult ſciences, or black art (as it was called) was ſuppoſed to have arrived to great perfection, and which, in that credulous age, was in great vogue with perſons of all religions and perſuaſions, they found the people, wherever they came, very eaſily impoſed on. *Mod. Univ. Hiſt. vol.* 43. *p.* 271.

In the compaſs of a very few years, they gained ſuch a number of idle proſelytes, who imitated their language and complexion, and betook themſelves to the ſame arts of chiromancy, begging, and pilfering, that they became troubleſome, and even formidable, to moſt of the ſtates of *Europe*. Hence they were expelled from *France* in the year 1560, and from *Spain* in 1591. And the government in *England* took the alarm much earlier; for, in 1530, they are deſcribed by the ſtatute 22 *H.* 8. *c.* 10. as "outlandiſh people, calling themſelves *Egyptians*, uſing no craft, or feat of merchandize, who having come into this realm, and gone from ſhire to ſhire, and place to place, in great company, and uſed great, ſubtil, and crafty means to deceive the people; bearing them in hand, that they, by palmeſtry, could tell men's and women's fortunes; and ſo, many times by craft and ſubtilty, have deceived the people of their money, and alſo have committed many heinous felonies and robberies." Wherefore they are directed to avoid the realm, and not to return, under pain

pain of impriſonment, and forfeiture of their goods and chattels; and, upon their trials for felony, they ſhall not be intitled to a jury *de medietate linguæ*. And afterwards, it is enacted by 1 & 2 *P. & M. c.* 4. and 5 *El. c.* 20. that if any ſuch perſons ſhall be imported into this kingdom, the importer ſhall forfeit 40*l.*: and if the *Egyptians* themſelves remain one month in this kingdom; or if any perſon, being 14 years old, whether a natural born ſubject or ſtranger, which hath been ſeen or found in the fellowſhip of ſuch *Egyptians*, or which hath diſguiſed him or herſelf like them, ſhall remain in the ſame one month; the ſame ſhall be felony without benefit of clergy. But it is now above a century ſince any perſons were proſecuted for felony upon theſe acts; and the law now reſpects them chiefly as rogues and vagabonds, and they are deſcribed as ſuch in the vagrant act of 17 *G.* 2. *c.* 5. 4 *Black.* 166.

In *Scotland* they ſeem to have met with ſome indulgence; for, in the year 1594, there is a record among the writs of privy ſeal, whereby king *James* the fifth charges all his ſheriffs, ſtewards, bailies, and other officers, to be aſſiſtant to his beloved *John Faw*, lord and earl of *Little Egypt*, in the execution of juſtice againſt ſeveral of his company who had withdrawn themſelves from his obedience, and prohibiting all his ſubjects to diſturb or moleſt the ſaid *John Faw*, or any of his company, in going about on their lawful buſineſs. And it is poſſible, that from this lord of *Little Egypt*, this kind of ſtrolling people may have received the denomination (which they ſtill retain) of *Fawgang*.

HAB

HABEAS CORPORA JURATORUM, is a writ to the ſheriff to have the jurors before the judges at a certain day, to paſs on a trial between the parties.

HABEAS CORPUS, is the moſt celebrated writ in the Engliſh law. Of this there are various kinds made uſe of by the courts at *Weſtminſter*, for removing priſoners from one court into another, for the more eaſy adminiſtration of juſtice.

The moſt efficacious of which writs, in all manner of illegal confinement, is that of *habeas corpus ad ſubjiciendum*, directed to the perſon detaining another, and commanding him to produce the body of the priſoner, with the day and cauſe of his taking and detention, *ad faciendum, ſubjiciendum, et recipiendum, to do, ſubmit to, and receive* whatſoever the judge or court awarding ſuch writ ſhall conſider in that behalf. It is a high prerogative writ; and

and therefore, by the common law iſſuing out of the king's bench, not only in term time, but alſo during the vacation, by a *fiat* of the chief juſtice, or any of the judges. And the proceedings thereon are regulated by the ſtatute 31 *C.* 2. *c.* 2. which, by way of eminence from thence, hath obtained the diſtinctive appellation of the *habeas corpus* act. By this act, unleſs the priſoner be committed for treaſon or felony, (or ſuſpicion thereof,) plainly and ſpecially expreſſed in the warrant of commitment, he may in open court, the firſt week of the term, or firſt day of aſſize, petition to be tried; and if he ſhall not be indicted ſome time in the next term or aſſize after commitment, he ſhall, upon motion of the laſt day of the term or aſſize, be bailed, unleſs it appear to the judge upon oath, that the king's witneſſes could not be produced within that time, and then, if he is not tried in the ſecond term or aſſize, he ſhall be diſcharged.

In order to obtain an *habeas corpus*, to bring the priſoner before the court, he muſt firſt demand of the gaoler a true copy of the commitment, which the gaoler ſhall deliver in ſix hours, on pain of 100*l.* Then application is to be made in writing to one of the courts at *Weſtminſter*, or if out of term time, to the lord chancellor, or one of the judges, and a copy of the warrant of commitment delivered, or oath made that it was denied. But if he hath neglected for two terms to apply, he ſhall not have a *habeas corpus* granted in the vacation.

This being done, the lord chancellor or judges reſpectively ſhall grant the writ, returnable immediately; and ſhall indorſe thereon the charges of bringing the priſoner, not exceeding 12*d.* a mile.

Then the writ ſhall be ſerved on the goaler, and the ſaid charges tendered to him; and the priſoner ſhall give bond to pay the charges of carrying him back if he ſhall be remanded, and that he will not eſcape by the way.

This done, the gaoler ſhall, within the times reſpectively limited by the act, according to the reſpective diſtances, bring the body, and certify the cauſe of commitment. (But after the aſſizes are proclaimed for the county where the priſoner is detained, he ſhall not be removed.)

If upon the return it ſhall appear to the ſaid lord chancellor or judges, that the priſoner is detained on a legal proceſs, order, or warrant, out of ſome court that hath juriſdiction of criminal matters, or by warrant of a judge, or juſtice of the peace, for matters for which, by law, he is not bailable, in ſuch caſe he ſhall not be diſcharged.

Otherwiſe he ſhall be forthwith diſcharged, and ſhall enter into recognizance to appear on his trial; and the writ, and return thereof, and the recognizance, ſhall be certified into the court where the trial muſt be. And perſons ſo ſet at large, ſhall not be

be recommitted for the ſame offence, unleſs by order of court; on pain of 500*l.* to the party grieved.

But perſons charged in debt or other action, or with proceſs in any civil cauſe, after their diſcharge for a criminal offence, ſhall be kept in cuſtody for ſuch other ſuit.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM, is a writ that iſſues out of any of the courts of *Weſtminſter-hall*, when a perſon is ſued in ſome inferior juriſdiction, and is deſirous to remove the action into the ſuperior court, commanding the inferior judges to produce the body of the defendant, together with the day, and cauſe of his caption and detainer, (whence the writ is frequently denominated an *habeas corpus cum cauſa*,) to *do and receive* whatſoever the king's court ſhall conſider in that behalf. But by the 21 *Ja. c.* 23. no ſuch cauſe ſhall be removed, if the debt or damages do not amount to 5*l.*

HABEAS CORPUS AD PROSEQUENDUM, is a writ that iſſues to remove a man in order to *proſecution* and trial in the proper county or juriſdiction where the fact was committed.

HABEAS CORPUS AD RESPONDENDUM, is where a man hath a cauſe of action againſt one who is confined by the proceſs of ſome inferior court; in which caſe, this writ is granted to remove the priſoner to *anſwer* this new action in the court above.

HABEAS CORPUS AD SATISFACIENDUM, is a writ where a priſoner hath had judgment againſt him in an action, and the plaintiff is deſirous to bring him up to ſome ſuperior court to charge him with proceſs of execution.

HABEAS CORPUS AD TESTIFICANDUM, is where a perſon is removed in order to give teſtimony in a cauſe depending.

HABENDUM (to have), in a deed, is to determine what eſtate or intereſt is granted by the deed, the certainty thereof, for what time, and to what uſe. It ſometimes qualifies the eſtate, ſo that the general implication of the eſtate, which, by conſtruction of law, paſſeth in the premiſes, may by the *habendum* be controlled: in which caſe, the *habendum* may leſſen or enlarge the eſtate, but not totally contradict, or be repugnant to it. As if a grant be to one and the heirs of his body, to have to him and his heirs for ever, here he hath an eſtate tail by the grant, and by the *habendum* he hath a fee-ſimple expectant thereon. But if it had been in the premiſes to him and his heirs, to have to him for life, the *habendum* would be utterly void; for an eſtate of inheritance is veſted in him before the *habendum* comes, and ſhall not afterwards be taken away, or deveſted by it. 2 *Black.* 298.

HABERE FACIAS SEISINAM, is a writ of execution directed to the ſheriff, commanding him to give to the plaintiff poſſeſſion of a freehold; if it is a chattel intereſt, and not a freehold,

freehold, then the writ is intitled *habere facias poſſeſſionem.* 3 Black. 412.

In the execution of theſe writs, the ſheriff, if needful, may take with him the power of the county, and may juſtify breaking open doors, if the poſſeſſion be not quietly delivered; but if it be peaceably yielded up, the delivery of a twig, a turf, or the ring of a door, in the name of ſeiſin, is ſufficient. *Id.*

HACHIA, a *hack*, pick, or inſtrument for digging.

HACKNEY COACHES AND CHAIRS. By ſeveral acts of parliament, regulations are made for licenſing hackney coaches not exceeding 1000, and chairs not exceeding 400, within the bills of mortality; and the ſame ſhall be diſtinctly marked on each ſide.

And certain duties are impoſed on hackney coaches and chairs, according to the time they are employed, or the diſtance they travel. For which, ſee *Burn's Juſt.* title *Hackney Coaches and Chairs.*

And drivers and others miſbehaving, are to be puniſhed by the commiſſioners and juſtices of the peace.

HÆRETICO COMBURENDO, is a writ that lay againſt an heretic, whereby the perſon convicted of hereſy was delivered over to the ſecular power; and upon certificate of ſuch conviction unto the court of chancery, this writ iſſued to *burn* the offender. And this law continued till the latter end of the reign of king *Charles* the ſecond, when, by the 29 *C.* 2. *c.* 9. the writ commonly called *breve de hæretico comburendo*, with all proceedings thereupon, and all puniſhment by death in purſuance of any eccleſiaſtical cenſures, ſhall be utterly taken away and aboliſhed: provided, that this ſhall not extend to take away, or abridge, the eccleſiaſtical juriſdiction of proteſtant archbiſhops, biſhops, or any other judges of any eccleſiaſtical courts, in caſes of atheiſm, blaſphemy, hereſy, or ſchiſm, and other damnable doctrines and opinions; but they may proceed to puniſh them by excommunication, deprivation, degradation, and other eccleſiaſtical cenſures, not extending to death, as they might have done before.

HAIR-POWDER is not to be mixed with alabaſter, talke, plaſter of *Paris*, whiting, lime, or other thing of the like nature, under certain penalties. And by 27 *G.* 3. *c.* 13. a duty is impoſed on the importation thereof. And by 26 *G.* 3. *c.* 49. a licence is to be taken out by perſons dealing in perfumed hair-powder. And a duty is alſo laid upon all perfumed hair-powder according to the value thereof.

HALF BLOOD, is where brothers or ſiſters do not deſcend from the ſame couple of anceſtors; as where a man marries a woman, and hath iſſue by her a ſon; and the wife dying, he marries another woman, by whom he hath alſo a ſon; now theſe two ſons, though they are called brothers, are but brothers of the

the half blood, becauſe they had not both one father and mother: and therefore by law, they cannot be heirs to one another; for he that claims as heir to another by deſcent, muſt be of the whole blood to him from whom he claimeth; and if there be no heir of the whole blood, the land ſhall eſcheat.

But, with reſpect to perſonal eſtate, the law is otherwiſe; for the ſtatute of diſtribution, 22 & 23 *G.* 2. *c.* 10. requiring an inteſtate's eſtate to be divided amongſt every of the next of kindred in equal degree; and brothers and ſiſters of the half-blood, being in the ſame degree of kindred with brothers and ſiſters of the whole blood, the half blood are allowed by our law to come in for an equal ſhare.

HALFENDEAL, the moiety or *half* of a thing; as *farding-deal* is a quarter or fourth part.

HALL, (Sax. *heal,*) ſignified anciently a manor-houſe or habitation, and is ſtill in uſe to denote the manſion houſe belonging to any perſon of ſuperior rank; ſo alſo, it denotes the place of meeting of a town corporate, as the *Guildhall* in *London.*

HALLAGE, toll paid for goods or merchandize ſold in a *hall;* and particularly hath been applied to a fee or toll due for cloth brought for ſale to *Blackwell-hall* in *London.*

HALLMOTE, or *halimote,* Sax. *heal,* and *gemote,* an aſſembly,) was particularly applied to the lord's court within the manor, called the court baron.

HALY-MOTE, an holy or eccleſiaſtical court. So *holyverkfolk* (holy-workfolk) were tenants who held their lands by the ſervice of keeping in repair an ile in a church, a ſepulchre, or the like.

HAM, a Saxon word, ſignifying a *home* or place of dwelling, as *Brigham, Peterſham, Deerham.* So *hamlet* is a little village or place of habitation.

HAMBLING of dogs, an ancient term uſed by foreſters for expeditating.

HAMESECKEN, by our ancient law, is a name for burglary, as it is in *Scotland* to this day. 4 *Black.* 223. Lords of manors had many of them privileges granted of puniſhing offences of this kind; and a grant of freedom from *hamſecken,* or *hamſoken,* was to be free of amercements for the like offences.

HANAPER OFFICE, in the court of chancery, is that out of which iſſue all original writs that paſs under the great ſeal, and all commiſſions of charitable uſes, ſewers, bankrupts, idiocy, lunacy, and the like. Theſe writs, relating to the buſineſs of the ſubject, and the returns to them, were originally kept in a *hamper, in hanaperio;* the other writs (relating to ſuch matters wherein the crown is immediately or mediately concerned) were preſerved in a little ſack or bag, *in parva baga;* and thence hath ariſen the diſtinction of the *hanaper* office, and *petty-bag* office; both

both of which belong to the common law court in chancery. 3 *Black.* 48.

HANDHABEND, is where a thief is caught in the very fact, having the goods ſtolen in his *hand*. The like was anciently called *backberend*, as a bundle or fardell at his back; which *Bracton* uſeth for manifeſt theft, and ſo doth *Britton*. 2 *Inſt.* 188.

HANDSALE, is a ſelling by mutual ſhaking of *hands*; which ceremony, among all the northern nations, was anciently held neceſſary in order to bind the bargain: a cuſtom which we ſtill retain in many verbal contracts.

HANGWITE, is ſaid to be a forfeiture anciently claimed by lords of manors, for one who hangs himſelf within the lord's fee.

HARES. Beſides the general penalties for deſtroying the game, it is enacted by the 13 *G.* 3. *c.* 80. that if any perſon ſhall kill or deſtroy, or uſe any gun, dog, ſnare, net, or other engine, with intent to kill or deſtroy any hare in the night time, or on a *Sunday* or *Chriſtmas-day*, he ſhall forfeit for the firſt offence, not leſs than 10*l.* nor exceeding 20*l.*; for the ſecond offence, 20*l.*, and not exceeding 30*l.*: for the third offence, 50*l.* And on non-payment, he ſhall be impriſoned, for certain limited times reſpectively according to the ſeveral offences.

HARE HARRON, an outcry after felons and malefactors.

HART, is a ſtag or male deer of the foreſt, of five years old complete.

HATS. By 24 *G.* 3. *c.* 51. all retailers of hats ſhall take out a licence annually. And certain duties are alſo impoſed on all hats which ſhall be ſold, according to their value. And by 27 *G.* 3. *c.* 13. a duty is to be paid for all hats imported, and drawbacks are to be allowed on hats exported.

HAUGH, a great plot in a valley.

HAWKERS, by the ſtatute 25 *H.* 8. *c.* 9. were deſcribed to be deceitful fellows who went from place to place, buying and ſelling braſs, pewter, and other goods and merchandize, which ought to be ſold in open market: and the appellation ſeems to grow from their uncertain wandering, like perſons that with hawks ſeek their game where they can find it.

By 9 & 10 *W.* *c.* 27. and 3 & 4 *An.* *c.* 4. every hawker, pedlar, and petty chapman, going from town to town, or to other men's houſes, carrying any goods to ſell, ſhall pay an annual duty of 4*l.*; and if he travel with a horſe or other beaſt of burden, he ſhall pay 4*l.* more: and by 29 *G.* 3. *c.* 26. every ſuch perſon travelling on foot, or with a horſe or horſes, a further additional duty of 4*l.* for each year; and alſo 4*l.* yearly for each beaſt he ſhall ſo travel with. And if he trades without licence, he ſhall forfeit 12*l.*; and on non-payment thereof, ſhall be ſent to the houſe of correction. But this ſhall not prohibit any perſon

ſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, almanacks, or other printed papers licenſed by authority; or any fiſh, fruit, or victuals; nor the real maker of any goods carrying the ſame for ſale; nor any tinker, cooper, glazier, plumber, harneſs mender, or any perſon ſelling woollen manufactures by wholeſale: nor ſhall this hinder any perſon from ſelling any goods in any public fair or market.

And by 29 *G.* 3. *c.* 26. before any perſon ſhall be licenſed, he ſhall produce a certificate, ſigned by the clergyman officiating within the place where he uſually reſides, and two reputable inhabitants of the ſame place, atteſting that ſuch perſon is of good character and reputation, and fit to be licenſed.

By 9 *G.* 2. *c.* 35. if any pedlar, or other trading perſon, going from town to town, or other men's houſes, and trading either on foot, or with any horſe or otherwiſe, ſhall offer any tea to ſale, although he have a permit, he ſhall forfeit and ſuffer as for running of goods in like manner as if he had a permit.

HAWKS, in ancient time, were of very great eſtimation, inſomuch that ſtealing of them was made felony; and there were other ſevere penalties for killing, driving them out of their covert, or ſtealing their eggs: but ſince the diverſion of fowling hath fallen into another channel by gunpowder and hailſhot, theſe penalties are become obſolete.

HAY, *haia*, (Sax. *hæg*,) an hedge, or incloſure; alſo a net to take deer; as *deer-hay*.

HAYBOTE, an allowance to the tenant of wood ſufficient for reparation of the hedges, hays, or fences.

HAY-MARKET. Carts of hay which ſtand to be ſold in the *hay-market*, are to pay 3*d.* per load towards repairing the ſtreet; and are not to ſtand loaden after 3 o'clock in the afternoon, on pain of forfeiting 5*s.* And hay ſold in *London*, &c. between the 1ſt of *June* and the laſt of *Auguſt*, being new hay, is to weigh 60 pounds a truſs, and old hay, the reſt of the year, 56 pounds, on the penalty of 18*d.* a truſs. 2 *W.* & *M. ſt.* 2. *c.* 8. 8 & 9 *W.* 3. *c.* 17. & 31 *G.* 2. *c.* 40.

HEADBOROUGH, is the *head* or chief man of the *borow* or pledge, and is only another name for conſtable.

HEALFANG, or *halsfang*, (Sax. from *heal* or *hals* the neck, and *fang* to take,) a puniſhment by compreſſing the neck (in the pillory.) Sometimes it is taken for a pecuniary mulct paid to lords of manors to commute for the puniſhment of the pillory.

HEARSAY, is generally not to be admitted as evidence; for no evidence is to be allowed but what is upon oath; for if the firſt ſpeech was without oath, another oath that there was ſuch ſpeech, makes it no more than a bare ſpeaking, and ſo of no value in a court of juſtice; and, beſides, the adverſe party had no opportunity of a croſs examination; and if the witneſs is living,

what he has been heard to ſay is not the beſt evidence that the nature of the thing will admit. But, in ſome caſes, hearſay evidence is allowed to be admiſſible; as to prove who was a man's grandfather, when he married, what children he had, and the like; of which, it is not reaſonable to preſume that there is better evidence. So in queſtions of preſcription, it is allowed to give hearſay evidence, in order to prove general reputation; as where the iſſue was of a right to a way over the plaintiff's cloſe, the defendant was admitted to give evidence of a converſation between perſons not intereſted, then dead, wherein the right to the way was agreed. *Theory of Evid.* 111.

HEBBING WEARS, are wears or engines made or laid at *ebbing* water. So *hebbermen*, are fiſhers or poachers who fiſh at ebbing water.

HECCAGIUM, a rent paid to the lord of the fee for liberty to uſe *hecks* or ſtoppages for catching of fiſh.

HEDAGIUM, a toll or cuſtomary duty paid at the *hithe* or wharf for the landing of goods; immunities from the payment whereof were granted by ſeveral ancient charters.

HEDGEBOTE, an allowance to the tenant of wood ſufficient for reparation of the hedges or fences.

HEDGE BREAKERS, by ſtatute 43 *El. c.* 7. ſhall pay ſuch damages as a juſtice of the peace ſhall think fit; and, on non-payment, ſhall be whipped. And by the 15 *C.* 2. *c.* 2. the conſtable may apprehend a perſon ſuſpected, and by warrant of a juſtice may ſearch his houſes and other places; and if any hedge-wood ſhall be found, and he ſhall not give a good account how he came by the ſame, he ſhall be adjudged the ſtealer thereof.

HEIR, *hæres*, is he that ſucceeds by deſcent, in lands, tenements, and hereditaments, being an eſtate of inheritance: the eſtate muſt be in fee, becauſe nothing paſſeth by right of inheritance, but fee; and by the common law, a man cannot be heir of goods and chattels. 1 *Inſt.* 8.

A baſtard born out of lawful matrimony cannot be heir; neither can a man attainted of treaſon or felony, whoſe blood is corrupted; nor an alien who was born out of the king's allegiance, and though he be made denizen by the king's letters patent, yet this ſhall not confer upon him a right of inheritance: but otherwiſe it is of a perſon naturalized by act of parliament. *Id.*

There is an heir *apparent*, and an heir *preſumptive*. Heir *apparent* is ſuch, whoſe right of inheritance is indefeaſible, provided he outlives his anceſtor; as the eldeſt ſon or his iſſue, who muſt by the courſe of the common law be heir to his father whenever he happens to die. Heir *preſumptive* is ſuch, who, if the anceſtor ſhould die immediately, would, in the preſent circumſtances of things, be his heir; but whoſe right of inheritance may be defeated by the contingency of ſome nearer heir being

being born; as a brother, or nephew, whoſe preſumptive ſucceſſion may be deſtroyed by the birth of a child; or a daughter, by the birth of a ſon. 2 *Black.* 208.

The heir is generally favoured by the common law, and by the courts of equity; and dubious words in a will ſhall be conſtrued for the benefit of the heir.

If an executor hath aſſets, he is compellable in equity to redeem a mortgage for the benefit of the heir. And when the heir is ſued for the debt of his anceſtor, and pays it, he ſhall be reimburſed by the executor of the obligor, who hath perſonal aſſets. 1 *Atk.* 487.

But in an action of debt brought upon a bond againſt an heir, it is no good plea for the heir to ſay, that the executors have aſſets in their hands: for a creditor may ſue either heir or executor, for they are both chargeable upon ſpecialties. *Dyer*, 204.

Where a legacy is given out of a perſonal eſtate, payable at a future day, and the legatee dies before ſuch future day, the legacy is tranſmiſſible to executors or adminiſtrators; but if the legacy be charged upon land, and the legatee dies before ſuch future day, the legacy ſhall ſink into the inheritance for the benefit of the heir. 1 *Atk.* 555.

HEIRESS, is a female heir to a perſon having an eſtate of inheritance of lands. If there are more than one, they are called *coheireſſes*, or rather in legal expreſſion, *coheirs*. The offence of ſtealing an heireſs is founded on the ſtatute 3 *H.* 7. *c.* 2. which enacts, that if any man ſhall, for lucre, take any woman, being maid, widow, or wife, and having ſubſtance either in goods or lands, or being heir apparent to her anceſtor, contrary to her will, and afterwards ſhe be married to ſuch miſdoer, or by his conſent to another, or defiled; he, his procurors, and abettors, and ſuch as knowingly receive ſuch woman, ſhall be deemed principal felons: and by 39 *El.* *c.* 9. the benefit of clergy is taken away from the principals, procurors, and acceſſaries before. And it is not material, whether a woman ſo taken, contrary to her will, be at laſt married or defiled, with her own conſent or not, if ſhe were under the force at the time. 1 *Haw.* 110.

HEIR LOOMS, are ſuch goods and perſonal chattels, as, contrary to the nature of chattels, ſhall go by ſpecial cuſtom to the heir along with the inheritance, and not to the executor of the laſt proprietor. The termination *loom* is of *Saxon* original, in which language, it ſignifies a limb or member; ſo that an heir loom is nothing elſe but a limb or member of the inheritance. They are generally ſuch things as cannot be taken away without damaging or diſmembering the freehold: otherwiſe the general rule is, that no chattel intereſt whatſoever ſhall go to the heir, notwithſtanding it be expreſsly limited to a man and his heirs, but ſhall veſt in the executor. But deer in a real authorized park,

fiſhes in a pond, doves in a dove-houſe, though in themſelves perſonal chattels, yet are ſo annexed to, and ſo neceſſary to the well being of the inheritance, that they ſhall accompany the land wherever it veſts, by either deſcent or purchaſe. 2 *Black.* 28.

Charters likewiſe, and deeds, court rolls, and other evidences of the land, together with the cheſts in which they are contained, ſhall paſs together with the land to the heir, in the nature of heir looms, and ſhall not go to the executor. *Id.* 428.

By ſpecial cuſtom alſo, in ſome places, carriages, utenſils, and other houſehold implements, may be heir looms; but ſuch cuſtom muſt be ſtrictly proved. *Id.*

Heir looms, though they be mere chattels, cannot be deviſed from the heir by will. For though the owner might, during his life, have ſold or diſpoſed of them, as he might of the timber of the eſtate; yet, they being at his death inſtantly veſted in the heir, the deviſe (which is ſubſequent and not to take effect till after his death) ſhall be poſtponed to the cuſtom, whereby they have already deſcended. *Id.* 429.

HEMP AND FLAX, are not to be watered in any river, running water, or common pond, where beaſts are uſed to be watered, but only in ponds for that purpoſe; on pain of forfeiting 20*s.* 33 *H.* 8. *c.* 17.

HEORD-PENNY, *hearth-penny*, an annual tribute of one penny anciently paid out of every family to the pope at *Rome*; otherwiſe called *Romſcot*, and *Peterpence*.

HERALD, *hereault*, according to *Verſtegan*, is derived from *here*, an army, and *healt*, *altus*, high, or valiant, as if a man ſhould be called the champion of the army. The function of theſe officers, as now exerciſed with us, is to denounce war, proclaim peace, and to be employed by the king in martial meſſages. They are examiners and judges of gentlemen's coats of arms, and preſervers of genealogies; and they marſhal the ſolemnities at the coronations of princes, and funerals of great men. The three chief of theſe heralds are called *kings at arms*; of whom, *Garter* is the principal, inſtituted by king *Hen.* 5. whoſe office is, to attend the knights of the *garter* at their ſolemnities, and to marſhal the funerals of the nobility. The next is *Clarencieux*, inſtituted by king *Ed.* 4. after he became duke of *Clarence* by the death of *George* his brother; whoſe proper office is to marſhal and diſpoſe the funerals of all the leſſer nobility, knights, and eſquires, on the ſouth ſide of *Trent*. The third is *Norroy*, (*north roy*,) who has the like office on the *north* ſide of *Trent*. Beſides theſe kings at arms, there are ſix inferior heralds, according to their original, as they were created to attend dukes and great lords in martial expeditions; that is, *York*, *Lancaſter*, *Cheſter*, *Windſor*, *Richmond*, and *Somerſet*; and three heralds extraordinary; that is, *Arundel*, *Norfolk*, and *Nottingham*.

There

There is alſo *Ulſter*, king at arms, whoſe office is to attend the knights of the order of *St. Patrick* in *Ireland*, inſtituted 5th *February* 1783.

Their office in adjuſting armorial enſigns, and preſerving genealogies, is now grown much into diſuſe; ſo much falſity and confuſion having crept into their records, that, though formerly ſome credit hath been paid to their teſtimony, yet now even their common ſeal will not be received as evidence in any court of juſtice. But their original viſitation books, compiled when progreſſes were ſolemnly and regularly made into every part of the kingdom, to inquire into the ſtate of families, and to regiſter ſuch marriages and deſcents as were verified to them upon oath, are allowed to be good evidence of pedigrees. It were to be wiſhed, that this practice of viſitation at certain periods were revived; for the failure of *inquiſitions poſt mortem*, by the abolition of military tenures, combined with the negligence of the heralds in omitting their uſual progreſſes, hath rendered the proof of a modern deſcent, for the recovery of an eſtate, or ſucceſſion to a title of honour, more difficult than that of an ancient. This will indeed be remedied for the future, with reſpect to claims of peerage, by a ſtanding order in the houſe of lords, 11 *May* 1767, directing the heralds to take exact accounts, and preſerve regular entries, of all peers and peereſſes of *England*, and their reſpective deſcendants; and that an exact pedigree of each peer and his family ſhall, on the day of his firſt admiſſion, be delivered to the houſe by *Garter* principal king at arms. But the general inconvenience, affecting more private ſucceſſions, ſtill continues without a remedy. 3 *Black.* 105.

HERCE, *hercia*, an harrow.

HERDWIC, a grange or place for the herds of cattle.

HEREBANNUM, (from *here* an army, and *ban* an edict or proclamation,) was a mulct or fine for not going out to the field armed, upon ſummons of the lord or other ſuperior; ſo *herelode* was a bidding or calling out the tenants for that purpoſe; *herefare*, a military expedition; *heregeld*, a tribute or tax for maintenance of an army.

HEREBERG, *Sax.* an inn. So *herbigare*, to *harbour* or entertain. *Herebinger*, or *harbinger*, an officer that goes before, and provides harbour or lodgings.

HEREDITAMENT, is a word of extenſive ſignification; for it includes not only lands and tenements, but whatever may be *inherited*, be it corporeal or incorporeal, real, perſonal, or mixed. Thus an *heir-loom*, or implement of furniture, which by cuſtom deſcends to the heir together with an houſe, is neither land nor tenement, but a mere moveable; yet, being inheritable, is comprized under the general word hereditament. 2 *Black.* 17.

HEREMITORIUM, a ſolitary place of retirement for *hermits*. So *hermitorium*, is the chapel or place of prayer belonging to an hermitage.

HERESY, among proteſtants, is a falſe opinion repugnant to ſome point of doctrine clearly revealed in ſcripture, and either abſolutely eſſential to the chriſtian faith, or at leaſt, of moſt high importance. 1 *Haw.* 3.

By the ſtatute 9 & 10 *W. c.* 32. if any perſon, having been educated in, or having made profeſſion of the chriſtian religion, ſhall, by writing, printing, teaching, or adviſed ſpeaking, deny any one of the perſons in the Holy Trinity to be God, or aſſert or maintain that there are more Gods than one, or ſhall deny the chriſtian religion to be true, or the holy ſcriptures of the Old and New Teſtament to be of divine authority; he ſhall, for the firſt offence, be diſabled to hold any office; for the ſecond, he ſhall moreover be diſabled to proſecute any action, or to be guardian, executor, adminiſtrator, or legatee.

HERETOCHE, (from the Saxon *here*, an army, and *togen*, to lead,) was the general or leader of an army. Theſe *heretochs* were conſtituted through every province and county in the kingdom; being taken out of the principal nobility, and ſuch as were remarkable for their wiſdom, fidelity, and valour. Their duty was, to lead and regulate the armies, with a very unlimited power, as it ſhould ſeem good to them, to the honour of the crown, and benefit of the kingdom: and becauſe of this great power, they were elected by the people in their full aſſembly, in the ſame manner as ſheriffs were elected; following ſtill the old fundamental maxim of the *Saxon* conſtitution, that, where any officer was intruſted with ſuch power, as, if abuſed, might tend to the oppreſſion of the people, that power was delegated to him by the vote of the people themſelves. 1 *Black.* 408.

HERIOT, *heregate*, from *here*, an army, and *geat*, a march or expedition, was firſt paid in arms and horſes; it is now by cuſtom ſometimes the beſt live beaſt which the tenant dies poſſeſſed of, ſometimes the beſt inanimate good, under which a jewel or piece of plate may be included. 2 *Black.* 422.

This is no charge upon the lands, but merely upon the goods and chattels. Therefore if a *feme covert* dies poſſeſſed of a copyhold or other cuſtomary eſtate, the lord can have no heriot; for, being a married woman, ſhe can have no lands of her own.

By the 13 *El. c.* 5. all fraudulent conveyances of goods and chattels, to defeat the lord of his heriot, ſhall, in that reſpect, be void.

A heriot is not due upon the death of *ceſtuy que truſt*, but of him that has the legal eſtate. 1 *Vern.* 441.

Jointenants are only one and the ſame tenant in the law; and therefore

therefore the lord ſhall not have heriot till after the death of the laſt of them. *Bro.* Heriot. (Vin)

Heriots are of two kinds; heriot *ſervice*, and heriot *cuſtom*. The former are ſuch as are due upon a ſpecial reſervation in a grant or leaſe of lands, and therefore amount to little more than a mere rent, for which the lord may diſtrain; the latter ariſe upon no ſpecial reſervation, but depend merely upon immemorial uſage and cuſtom. 2 *Black. Ibid.*

And for heriot *cuſtom* the lord may ſeize out of the manor; becauſe he claims it as his proper goods by the death of the tenant, which he may ſeizein any place where he finds it; yet hereby he is not debarred of his remedy by action. 2 *Black. Ibid.*

And if the beaſt be removed, the lord may have an action againſt him that removed it; ſo alſo, as it ſeemeth, againſt him that detaineth it. *Br.* Heriot. (Vin.)

6 *Co.* 1. *Bruerton's* caſe. Lord and tenant of three acres of land by homage, fealty, annual ſervice of an hawk, and ſuit of court; the tenant made a feoffment in fee of one acre, the feoffee ſhall hold by homage, fealty, hawk, and ſuit of court, by the common law: for the things which cannot be divided into parts are performed by each intire. And there is no diverſity as to this purpoſe, between intire ſervices annual, as ſuit, hawk, or the like, and not annual, as homage, fealty, and heriot. And as to the heriot, the ſtatute of *quia emptores terrarum* cannot extend to intire ſervices to hold for a part, becauſe ſuch ſervices are not dividable; and, by conſequence, every one ſhall hold by intirety, as he ſhall hold by the common law.

8 *Co.* 104. *Talbot's* caſe. If the lord purchaſe parcel of the tenancy, the heriot *ſervice* is extinct. But if the cuſtom of the manor be, that upon the death of every tenant of the manor, that dieth ſeiſed of any land holden of the ſame manor, the lord ſhall have a heriot, although the lord purchaſe part of the tenancy, yet the lord ſhall have a heriot by the cuſtom of the manor for the reſidue; for he remains tenant to the lord, and the cuſtom extends to every tenant.

Upon the whole, the cuſtom of the manor is the law of it in all ſuch like caſes.

HERMAPHRODITE, a perſon that is both man and woman. *Lit. Dict.* And as they partake of both ſexes, they may give or grant lands, or inherit as heirs to any, and ſhall take according to the prevailing ſex. *Co. Lit.* 2. 7.

HEST, *Sax.* a command. It ſeems to have been applied to certain boons and ſervices commanded by the lords to be performed by their tenants.

HIDE of land, is ſuch a quantity as may be plowed with one plough in a year; or as much as may maintain one family. It contains

contains no determinate number of acres. 1 *Inſt.* 69. *Hidage*, was a tax on every hide of land.

HIDEGELT, a mulct or fine, when a perſon had committed any crime for which he deſerved whipping or other corporal puniſhment, to redeem ſuch puniſhment, whereby to ſave his *hide* or ſkin.

HIGH CONSTABLE, is the ſame within the hundred or other large diviſion, as the petty conſtable is within the townſhip or vill; and in many caſes being an officer ſubſervient to the juſtices of the peace, he is commonly appointed by them and ſworn in ſeſſions.

HIGH TREASON. See TREASON.

HIGHWAY. Of high ways there are three kinds; firſt, a footway; ſecondly, a foot and horſe-way, which is alſo a pack or drift-way; and, thirdly, a foot, horſe, and cart way. 1 *Inſt.* 56.

Every pariſh is bound of common right to keep their high-ways in good and ſufficient repair; unleſs, by reaſon of the tenure of lands or otherwiſe, this care is conſigned to ſome particular private perſon. From this burden no man was exempt by our ancient laws, whatever other immunities he might enjoy, this being part of the *trinoda neceſſitas* to which every man's eſtate was ſubject, *viz.* expedition againſt the enemy, building of caſtles, and reparation of bridges; for though *bridges* only are expreſſed, yet the roads were always underſtood. 1 *Black.* 357.

The ſurveyors are appointed by the juſtices annually, whoſe buſineſs it is to call out the ſtatute labour, levy compoſitions, and order all things relating to the repairs; and at the end of their year, they ſhall give account to the juſtices of their whole proceedings.

If the ſtatute labour and compoſition money be inſufficient, an aſſeſſment by order of the juſtices may be laid, not exceeding 9*d.* in the pound for any one year. And if all this ſhall be inſufficient, yet ſtill the pariſh is obliged by the common law, upon indictment, to make their roads good at all events.

And beſides the method of indictment, every juſtice of the peace, by the ſtatute, upon his own view, or on oath made to him by the ſurveyor, may make preſentment of roads being out of repair; and thereupon like proceſs ſhall be iſſued as upon indictment.

In aid of the pariſh, in many places, turnpikes have been erected; whereby all who paſs upon, and have benefit of the road, are brought in to be contributory.

HIGHWAYMEN. By 4 & 5 *W.* & *M. c.* 8. a reward of 40*l.* is given for the apprehending and taking a *highwayman*, to be paid within a month after conviction, by the ſheriff of the county.

HIGLER,

HIGLER, a perſon who carries from door to door, and ſells ſmall articles by retail.

HIRING and borrowing are contracts by which a qualified property may be transferred to the hirer, or borrower; in which there is only this difference, that hiring is always for a price, a ſtipend, or additional recompence; borrowing is merely gratuitous. But the law in both caſes is the ſame. They are both contracts, whereby the poſſeſſion and a tranſient property is transferred for a particular time or uſe, on condition and agreement to reſtore the goods ſo hired or borrowed, as ſoon as the time is expired or uſe performed; together with the price or ſtipend, in caſe of hiring, either expreſsly agreed on by the parties, or left to be implied by law according to the value of the ſervice. 2 *Black.* 454.

HOBLERS, light horſemen; or certain tenants bound by their tenure to maintain a light horſe for diſcovering and giving notice of the enemy.

HOCKDAY, *hocktide*, was the ſecond *Tueſday* after *Eaſter* week, commonly called *Hock Tueſday*, whereon the *Engliſh* maſtered the *Danes*; which day was ſo remarkable in ancient times, that rents were reſerved payable on that day. And in the accounts of *Magdalen* college in *Oxford*, there is a yearly allowance *pro mulieribus hockantibus*, in ſome of their manors in *Hampſhire*, where the men on *Monday*, and the women on *Tueſday*, in merriment ſtopped the way with ropes, and *hocked* (houghed) or pulled paſſengers to them by the houghs, requeſting them to give them ſomething to be laid out in pious uſes (or rather perhaps to be ſpent upon the occaſion).

HOGENHINE, was one that came gueſtwiſe into an inn, and laid there for three nights, after which he was accounted one of the family, for whom the hoſt was to be anſwerable. The firſt night he was *forman-night*, and reckoned as a ſtranger; the ſecond night, *twa-night*, a gueſt; the third night, *hogen*, or *awn-kind*, one of the hoſt's *own* domeſtics.

HOLDING OVER, is keeping poſſeſſion of the land after the expiration of the term. By ſtatute 4 *G.* 2. *c.* 28. if any perſon ſhall hold over after the determination of any term for life or years, and after demand made, and notice in writing given for delivering poſſeſſion, he ſhall pay double the yearly value, to be recovered by action of debt. And by 11 *G.* 2. *c.* 19. if any perſon ſhall hold over, after himſelf hath given notice (either verbal, or in writing, *Bur. Manſf.* 1603.) to quit, he ſhall pay double rent; to be recovered in like manner as the ſingle rent.

HOLME, Sax. a plain or level ground near the water ſide.

HOLT, Sax. a wood.

HOMAGE, *homagium*, is derived of *homo*; becauſe when the tenant

tenant doth his ſervice, he ſaith, *Jeo deveigne voſtre home*, I become your man. 1 *Inſt.* 64.

It is the moſt honourable ſervice of reverence that a free tenant may do to his lord; for when the tenant ſhall make homage to his lord, he ſhall be ungirt, and his head uncovered, and his lord ſhall ſit, and the tenant ſhall kneel before him on both his knees, and hold his hands extended and joined together between the hands of his lord, and ſhall ſay thus: "I become your man "from this day forward, of life and limb and earthly honour, "and to you will be faithful and loyal, and bear you faith, for "the tenements that I claim to hold of you (ſaving the faith that "I owe unto our ſovereign lord the king): So help me God." And then the lord, ſo ſitting, ſhall kiſs him. *Litt.* 85.

Homage cannot be done to any but to the lord himſelf; but the ſteward of the lord's court, or bailiff, may take fealty for the lord. *Lit.* 92.

HOMAGE ANCESTREL, is where a tenant holdeth his land of his lord by homage; and the ſame tenant and his anceſtors have holden the ſame land of the ſame lord and of his anceſtors, time out of memory of man by homage, and have done to them homage. 1 *Inſt.* 100.

HOMAGE JURY, is a jury in a court baron, conſiſting of tenants that do homage to the lord; who are to inquire and make preſentments of the death of tenants, of ſurrenders, admittances, and the like.

HOMESTALL, a manſion houſe.

HOMICIDE, is the killing of any human creature; and is of three kinds; 1. *Juſtifiable;* ſuch as is owing to ſome unavoidable neceſſity, without any will, intention, or deſire, and without any inadvertence or negligence, in the party killing, and therefore without any fault in himſelf. 2. *Excuſable;* which is either by *miſadventure*, where a man is doing a lawful act, without intent of hurt to another, and death caſually enſues; or in *ſelf-defence*, where one who hath no other poſſible means of preſerving his life, from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 3 *Felonious;* which is of a very different nature from the former, being the killing of a human creature, of any age or ſex, without juſtification or excuſe; and that may be, either by killing one's ſelf, or another perſon: in which latter caſe, if ſuch other perſon is killed without malice, either expreſs or implied in the perpetrator thereof, it is termed *manſlaughter;* if with malice, it is *murder*. 4 *Black. c.* 14.

HOMINE REPLEGIANDO, is an ancient writ, which lies to replevy a man out of priſon, or out of the cuſtody of any private perſon upon giving ſecurity to the ſheriff that the man ſhall be forthcoming to anſwer any charge againſt him. And if the perſon be

be conveyed out of the ſheriff's juriſdiction, the ſheriff may return that he is eloigned *(elongatus)*; upon which a proceſs iſſues, called a *capias in withernam*, to impriſon the defendant himſelf, without bail or mainprize, till he produces the party. But this method of proceeding is now almoſt entirely antiquated, and ſuperſeded by the more effectual writ of *habeas corpus*. 3 *Black.* 129.

HONOUR. Before the ſtatute of *quia emptores*, 18 *Ed.* 1. the king's greater barons, who had a large extent of territory holden under the crown, frequently granted out ſmaller manors to inferior perſons to be holden of themſelves; which do therefore now continue to be held under a ſuperior lord, who is called in ſuch caſes the lord *paramount* over all theſe manors; and his ſeigniory is frequently termed an *honour*, not a *manor*, eſpecially if it hath belonged to an ancient feudal baron, or hath been at any time in the hands of the crown. 2 *Black.* 91.

HOPS. By ſeveral ſtatutes, regulations are made for the curing of hops, which are to be under the inſpection of the officers of exciſe.

And by the 27 *G.* 3. *c.* 13. a duty is impoſed upon all hops grown and cured in *Great Britain*; and alſo on hops imported; and drawbacks are allowed on the exportation thereof, as particularly ſet forth in ſchedules annexed to the ſaid act.

HORA AURORÆ, the morning bell, or what is now called the four-o'clock bell; as the evening bell was at eight o'clock, commonly called the curfeu.

HORNGELD, a geld or tax for the privilege of putting *horned* cattle into the foreſt. In many ancient charters, there is a grant of immunity from ſuch tax.

HORSE RACES. By the 13 *G.* 2. *c.* 19. Whereas the great number of horſe races for ſmall prizes contributes to the encouragement of idleneſs, and the breed of ſtrong and uſeful horſes hath been thereby diſcouraged; it is enacted, that no plate, ſum of money, or other thing, ſhall be run for, or advertiſed or proclaimed to be run for, unleſs the ſame be of the value of 50*l.* or upwards: and if any perſon ſhall enter, ſtart, or run any horſe for any prize under that value, he ſhall forfeit 200*l.*; and the perſon who printed or publiſhed any advertiſement for the ſame, ſhall forfeit 100*l.*; the ſaid penalties to be applied half to the uſe of the poor, and half to him that ſhall ſue. And all ſums of money paid for entrance, ſhall go to the ſecond beſt horſe. And no perſon ſhall enter, ſtart, or run any horſe for any prize, unleſs the ſaid horſe be his own property; nor ſhall any perſon enter and ſtart more than one horſe for one prize; on pain that every ſuch horſe (other than that which was firſt entered) ſhall be forfeited, or the value thereof.

And by 24 *G.* 3. *c.* 31. there ſhall be paid for every horſe entered

ed to run for a plate, prize, ſum of money, or other thing, a duty of 2*l.* 2*s.* over and above all other duties: and alſo 2*l.* 2*s.* as the duty for one year; on the penalty of 20*l.*

HORSES. The ſale of an horſe in a fair or market ſhall not alter the property, unleſs the horſe be ſhewed an hour at leaſt in the open place where horſes are uſually ſold; nor unleſs the buyer and ſeller go to the toll-taker or book-keeper, and with him enter the particulars of the bargain, and the colour and mark of the horſe; and if the book-keeper doth not know the ſeller, then a voucher muſt be produced to teſtify his knowledge of the ſeller, and his name and place of abode. And the book-keeper ſhall give to the buyer a note of the particulars entered, on his paying 2*d.* for the ſame. But if the ſale hath been regular, the owner may not have his horſe again that hath been ſtolen, unleſs he pay to the purchaſer the price which he gave for him. 2 & 3 *P.* & *M. c.* 7. 31 *El. c.* 12.

By the ſtatute 22 & 23 *C.* 2. *c.* 7. killing any horſe in the night is felony and tranſportation; and maiming him makes the offender liable to treble damages.

And by 26 *G.* 3. *c.* 71. every perſon who ſhall keep any houſe or place for ſlaughtering horſes, ſhall be licenſed at the ſeſſions, and be ſubject to the rules and regulations in the ſaid act directed; and in default thereof ſhall be guilty of felony.

And by 24 *G.* 3. *c.* 31. 25 *G.* 3. *c.* 47. & 29 *G.* 3. *c.* 49. ſeveral duties are impoſed on horſes kept and uſed for the purpoſe of riding, or for drawing any carriages ſubject to any exciſe duty; the ſame to be paid annually, and to be under the management of the commiſſioners for the affairs of taxes.

And alſo by 24 *G.* 3. *c.* 31. every perſon exerciſing the trade of a horſe dealer, ſhall take out a licence annually from the ſtamp officers.

HOSPITALARS, were an order of knights, who took their name from an *hoſpital* built at *Jeruſalem* for the uſe of pilgrims coming to the Holy Land, dedicated to *St. John Baptiſt.* For the firſt buſineſs of theſe knights was, to provide for ſuch pilgrims at that hoſpital, and to protect them from injuries and inſults upon the road. They were inſtituted about the year 1092, and ſoon after came into *England*, and had an houſe built for them in *London* in the year 1100. In proceſs of time they obtained ſo great honours, that their ſuperior here in *England* was the firſt lay baron, and had a ſeat amongſt the lords in parliament. They were at firſt called knights of St. *John of Jeruſalem*; but ſettling chiefly at *Rhodes*, they were afterwards called knights of *Rhodes*; and after the loſs of *Rhodes* in the year 1522, and their having the iſland of *Malta* given to them by the emperor *Charles* the fifth, they obtained the name of knights of *Malta.*

HOSPITALS, (from *hoſpes*, an hoſt,) were originally founded in

in this kingdom for the relief and entertainment of travellers upon the road, and particularly of pilgrims, and therefore were generally built by the way ſide: but of latter times they have been founded for fixed inhabitants, ſubject to infirmities and maladies of divers kinds, according to the diſcretion and order of the founders.

HOTCHPOT, according to *Littleton*, ſignifies a pudding; for in a pudding (he ſays) is not commonly put one thing alone, but one thing with other things together; and it was uſed metaphorically to expreſs the putting and mixing together lands given in frank marriage, and then dividing the ſame equally among all the daughters. As if a man be ſeiſed of thirty acres of land, and hath iſſue two daughters; one of the daughters marries, and the father gives ten acres of the thirty to the huſband with the daughter in frank marriage, and dies ſeiſed of the remaining twenty acres; then the other ſiſter ſhall enter into the ſaid twenty acres, and occupy them to her own uſe, unleſs the huſband and his wife will put the ten acres given to them in frank marriage, with the twenty acres in hotchpot: in which caſe, the huſband and wife ſhall have, beſides the ten acres given to them in frank marriage, five acres in ſeveralty of the twenty acres, and the other ſiſter ſhall have the remaining fifteen acres for her purparty; ſo as upon the whole their ſhares of the father's eſtate ſhall be equal. *Litt.* 267, 8.

And by the ſtatute of diſtribution of inteſtates effects, 22 & 23 *C.* 2. *c.* 10. the equity of this proviſion is transferred to the perſonal eſtate of the deceaſed; which enacts, that no child of the inteſtate, (except his heir at law,) upon which child he ſettled in his life-time any eſtate in lands, or pecuniary portion, ſhall have any diſtributive ſhare of the perſonalty, unleſs ſuch child will bring his ſaid advancement into hotchpot with the other children, ſo as to make the eſtate of the ſaid ſeveral children, to be equal as near as can be eſtimated.

HOUSE, a place of habitation or dwelling. The doors of an houſe may not be broken open on arreſts, except for treaſon, felony, or breach of the peace. 2 *Hale's Hiſt.* 117.

For the dwelling houſe of a man is as his caſtle; therefore if thieves come to a man's houſe to rob or kill him, and the owner or his ſervants kill the thieves in defending him and his houſe, this is not felony, nor ſhall he forfeit any thing.

If a man builds his houſe ſo cloſe to mine, that his roof overhangs my roof, and throws the water off his roof upon mine, this is a nuiſance for which an action will lie. 3 *Black.* 217.

Alſo if a perſon keep his hogs, or other offenſive animals, ſo near the houſe of another, that the ſtench of them incommodes him, and makes the air unwholeſome, this is an injury, as it tends to deprive him of the uſe and benefit of his houſe. *Id.*

A like

A like injury is, if one's neighbour ſets up, and exerciſes any offenſive trade; as a tanner's, a tallow chandler's, or the like: for although theſe are lawful and neceſſary trades, yet they ſhould be exerciſed in remote places; therefore it is an actionable nuiſance. *Id.*

But depriving one of a mere matter of pleaſure, as of a fine proſpect, by building a wall, or the like; this, as it abridges nothing really convenient or neceſſary, is no injury to the ſufferer, and is therefore not an actionable nuiſance. *Id.*

A man ought ſo to uſe his houſe as not to damnify his neighbour: and a man may compel another to repair his houſe, in ſeveral caſes, by the writ *de domo reparanda.* 1 *Salk.* 360.

By 19 *G.* 3. *c.* 59. annual duties are impoſed on dwelling houſes inhabited, according to the yearly values thereof.

HOUSE BOTE, an allowance to the tenant of wood, ſufficient for reparation of the houſes and for fuel.

HOUSE OF CORRECTION. See CORRECTION.

HUE AND CRY, (*hutefium et clamor*, by *hooting*, or blowing a horn, and by making an *outcry*,) is the ancient common law proceſs after felons, and ſuch as have dangerouſly wounded any perſon, or aſſaulted any one with intent to rob him. And it hath received great countenance and authority by ſeveral acts of parliament. In any of which caſes, the party grieved, or any other, may reſort to the conſtable of the vill; and, 1. Give him ſuch reaſonable aſſurance thereof, as the nature of the caſe will bear. 2. If he knows the name of him that did it, he muſt tell the conſtable the ſame. 3. If he knows it not, but can deſcribe him, he muſt deſcribe his perſon, or his habit, or his horſe, or ſuch circumſtances as he knows, which may conduce to the diſcovery. 4. If the thing be done in the night, ſo that he knows none of theſe circumſtances, he muſt mention the number of the perſons, or the way they took. 5. If none of all theſe can be diſcovered, as where a robbery or burglary or other felony is committed in the night, yet they are to acquaint the conſtable with the fact, and deſire him to ſearch in his town for ſuſpected perſons, and to make hue and cry after ſuch as may be probably ſuſpected, as being perſons vagrant in the ſame night; for many circumſtances may happen to be uſeful for diſcovering a malefactor, which cannot at firſt be found out. 2 *H. H.* 100.

For the levying of hue and cry, although it is a good courſe to have a juſtice's warrant, when time will permit, in order to prevent cauſeleſs hue and cry; yet it is not neceſſary, nor always convenient, for the felon may eſcape before the warrant be obtained. And upon hue and cry levied againſt any perſon, or where any hue and cry comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch ſuſpected places within his vill, for the apprehending of the felon. And if the perſon, againſt whom the hue and cry is raiſed, be not found

found in the conſtablewick, then the conſtable, and alſo every officer to whom the hue and cry ſhall afterwards come, ought to give notice to every town round about him, and not to one next town only; and ſo from one conſtable to another, until the offender be found, or till they come to the ſea ſide. And this was the law before the conqueſt. *Il.*

And in ſuch caſes it is needful to give notice in writing, to the purſuers, of the thing ſtolen, and of the colour and marks thereof, as alſo to deſcribe the perſon of the felon, his apparel, horſe, or the like, and which way he is gone, if it may be: but if the perſon that did the fact be neither known, nor deſcribable by his perſon, cloaths, or the like, yet ſuch a hue and cry is good, and muſt be purſued, though no perſon certain can be named or deſcribed. *Id.* 103.

HUNDRED, is a diſtrict originally comprehending one hundred families; for in ancient time, for the more ſure keeping of the peace, all freemen were to caſt themſeves into ſeveral companies, by ten in each company, and every of theſe ten men was to be pledge or ſurety for the forthcoming of his fellows; and this diſtrict was therefore called the *decennary*, at the head of which is the petty conſtable. Upon ſolemn occaſions, ten of theſe *decennaries* aſſembled together; and as every decennary conſiſted of ten families, ſo theſe ten decennaries conſtituted what is now called the *hundred*; over which the high or chief conſtable preſides. In many caſes, agreeably to the ancient inſtitution, where an offence has been committed, and the offender eſcapes, the hundred by ſpecial acts of parliament is rendered liable to anſwer damages; as in caſes of robbery; cutting river or ſea-banks; cutting hop-binds; burning houſes, barns, out-houſes, hovels, cocks, mows, or ſtacks of corn, ſtraw, hay, or wood; mines or pits of coal; deſtroying granaries, turnpikes, and works of navigable rivers; and divers other ſuch like.

HUNDRED-LAGH, Sax. *laga*; the law relating to the hundred courts and matters cognizable therein.

HUNDRED-PENY, a tax or contribution collected by the ſheriff, in aid of the expences of his *hundred* court or tourn.

HUNREDUM, in ancient grants, as where a privilege is granted to a man to be free from the *hundredis*, ſignifies that money which was paid to the ſheriff towards his charges of holding the hundred courts: the ſame as *hundred-peny*.

HURST, *hyrſt*, *herſt*, Sax. a wood or grove of trees. There are many places in *England* which begin or end with this word, from the nature of their ſituation when they received that name.

HUS; Sax. *houſe*. So *huſbrece*, houſe breaking or burglary. *Huſcarle*, a domeſtic ſervant in tilling the lord's lands. *Husfaſtne*, one that hath a fixed home or habitation, a houſe of his own. *Huſgable*, a houſe rent or tax.

HUSBAND AND WIFE:

1. THE

1. THE huſband and wife are but one perſon in law; for which reaſon, a man cannot grant lands to his wife during the coverture, nor any eſtate or intereſt to her, nor enter into covenant with her. But he may by his deed covenant with others for her uſe, as for her jointure, or the like; and he may give to her by deviſe or will, becauſe the deviſe or will doth not take effect till after his death. 1 *Inſt.* 112.

2. All deeds executed by the wife, and acts done by her during her coverture, are void; except it be a fine, or the like matter of record, in which caſe, ſhe muſt be ſolely and ſecretly examined, that it may be known whether or no her act is voluntary. 1 *Black.* 444.

3. In trials of any ſort, huſband and wife are not allowed to be evidence for or againſt each other. *Id.* 443.

But where the offence is directly againſt the perſon of the wife, this rule hath been uſually diſpenſed with; and therefore, by the ſtatute 3 *Hen.* 7. *c.* 2. in caſe a woman be forcibly taken away and married, ſhe may be a witneſs againſt ſuch her huſband, in order to convict him of felony. *Id.*

Alſo, a wife may have ſecurity of the peace againſt her huſband; ſo may the huſband have ſecurity of the peace againſt his wife. *Id.* 445.

4. If a wife hath title to preſent to a benefice, the preſentation muſt be by huſband and wife. *Wood. b.* 2. *c.* 2.

5. If the wife be injured in her perſon or her property, ſhe can bring no action for redreſs without her huſband's concurrence, and in his name as well as her own. 1 *Black.* 443.

So for a treſpaſs done by the wife, or for a ſcandal publiſhed by her, the action lieth againſt both huſband and wife; and the huſband is chargeable for the damages or fine, becauſe he is party to the action and judgment: and both huſband and wife may be taken in execution. 11 *Co.* 61. 1 *Wilſ.* 149.

But if a wife, without her huſband, be indicted of a treſpaſs, riot, or other wrong, there the wife ſhall anſwer and be party to the judgment only, and the fine ſet upon her ſhall not be levied upon the huſband; and as for impriſonment, or other corporal pain, it ſhall be inflicted upon the wife only, and not upon the huſband for his wife's act or default. 11 *Co.* 61. *Dalt. c.* 139.

6. If a bond be given to a woman unmarried, and ſhe afterwards marries; the huſband and wife muſt join in the action, and both muſt recover: but if a bond be made to the wife ſubſequent to her marriage, the huſband alone, without the wife, may bring the action and recover. 2 *Atk.* 208.

7. If a wife be made executrix, ſhe cannot act therein without her huſband's conſent; nor can ſhe bring an action alone, but her huſband muſt join with her. 2 *Bac. Abr.* 378.

8. In

8. In the civil law, the husband and wife are considered as two distinct persons; and may have separate estates, contracts, debts, and injuries: and therefore in the ecclesiastical courts, a woman may sue and be sued without her husband. 1 *Black.* 444.

9. A wife is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft in company with, or by coercion of her husband. 1 *Haw.* 2.

But if she commit a theft of her own voluntary act, or by the bare command of her husband, or 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, because of the odiousness and dangerous consequence of these crimes. *Id.*

10. The husband by marriage obtains a *freehold* in the right of his wife, if he takes a woman to wife that is seised of a freehold; and he may make a lease thereof for twenty-one years, or three lives, if it be made according to the statute of 32 *H.* 8. *c* 28. 1 *Inst.* 351.

The husband also gains a *chattel real*, as a term for years, to dispose of, if he pleases, by grant or lease in her life-time, or by surviving her: otherwise it remains with the wife. And upon execution for the husband's debt, the sheriff may sell the term during the life of the wife. *Id.* 299. 351.

So the husband may assign and dispose of the wife's mortgage, whether it be a mortgage for a term of years, or a mortgage in fee. 2 *Atk.* 208.

The husband also by the marriage hath an absolute gift of all *chattels personal* in possession of the wife in her own right, whether he survives her or not. But if these chattels personal are *choses in action*; that is, things to be sued for by action; as debts by obligation, contract, or the like, the husband shall not have them, unless he and his wife recover them. 1 *Inst.* 351.

11. If rent be paid to a wife, yet the husband may recover it again; so if a legacy be bequeathed to a wife, the husband, and not the wife, must receive it. 1 *Vern.* 261.

12. By custom in *London*, a wife may carry on a separate trade; and as such, is liable to the statutes of bankruptcy, with respect to the goods in such separate trade, with which the husband cannot intermeddle. *Bur. Mansf.* 1776.

13. If the wife be indebted before marriage, the husband is bound afterwards to pay the debt, living the wife; for he has adopted her and her circumstances together. 1 *Black.* 443.

But if the wife die, the husband shall not be charged for the debt of his wife after her death, if the creditor of the wife do not get judgment during the coverture. 9 *Co.* 72.

14. The husband is bound to provide his wife necessaries; and if she contracts for them, he is obliged to pay for the same; but for any thing besides necessaries, he is not chargeable. Also, if a wife elopes, and lives with another man, the husband is not chargeable even for necessaries: at least, if the person who furnishes them is sufficiently apprized of her elopement. 1 *Black.* 442.

So if the husband forbid particular persons to trust her, he shall not be chargeable: but a prohibition in general not to trust a wife, as by putting her in the Gazette, or the like, doth not amount to legal notice. 1 *Ventr.* 42.

15. If a husband seised in fee or for life in right of his wife, do sow the land, and his wife dies before severance, he shall have the corn. 1 *Inst.* 55.

After her death, if he hath had issue by her born alive, he shall be tenant by the curtesy of all the lands in fee-simple, or fee tail general, of which she died seised. *Litt.* 52.

And after her death, he shall have all *chattels real*, as the term of the wife, or a lease for years of the wife, and all other chattels in possession; and also, all such as are of a *mixed nature*, (partly in possession, and partly in action,) as rents in arrear, incurred before the marriage, or after: but of things merely *in action*, as of an obligation or bond to the wife, he can only claim them as administrator to his wife, if he survives her. *Wood. b.* 1. *c.* 6.

16. If the wife survives the husband, she shall have for her dower, the third part of all his freehold lands: so she shall have her term for years again, if he hath not altered the property during his life: so also, she shall have again all other chattels real and mixed: and so things in action, as debts, shall remain to her, if they were not recovered during the marriage. *Id.*

But if she elopes from her husband, and goes away with her adulterer, she shall lose her dower; unless her husband had willingly, without coercion ecclesiastical, been reconciled to her, and permitted her to cohabit with him. 1 *Inst.* 32.

HUSSEL, *Sax.* the holy sacrament. So *husseling people*, are people of age to receive the sacrament.

HYPOTHECA, a pledge, where the possession of the thing remains with the debtor.

HYTH, a wharf or little haven, whereat to lade or unlade goods.

JACK,

I D I

JACK, a kind of defenſive coat armour, worn by horſemen in war; not made of ſolid iron, but of many plates faſtened together; which ſome tenants were bound by their tenure to find upon any invaſion.

JACTITATION of marriage, is when one of the parties *boaſts*, or gives out, that he or ſhe is married to the other, whereby a common reputation of their matrimony may enſue. On this ground, the party injured may libel the other in the ſpiritual court; and unleſs the defendant undertakes and makes out a proof of the actual marriage, he or ſhe is enjoined perpetual ſilence upon that head. 3 *Black.* 93.

JAMBEAUX, leg armour; from *jambe*, tibia.

JAMPNUM, furze or goſs, or ground where furze grows; as diſtinguiſhed from arable, paſture, or the like.

ICH DIEN, I ſerve; a motto belonging to the prince of *Wales*. It was firſt the motto of *John* king of *Bohemia*, ſlain in the battle of *Creſſy* by *Edward* the *Black Prince*: and taken up by him to ſhew his ſubjection to his father king *Edward* the third.

IDENTITATE NOMINIS, is a writ that lies for him who is taken and arreſted in a perſonal action, and committed to priſon for another man of the ſame name. In ſuch caſe, he may have this writ directed to the ſheriff, which is in nature of a commiſſion to inquire whether he be the ſame perſon againſt whom the action is brought; and if not, then to diſcharge him. *F. N. B.*

Where a father has the ſame name and the ſame addition with a defendant, being his ſon, the action is abateable unleſs it had the addition of *the younger*, to the other addition; but where the father is defendant, there is no need of the addition of *the elder*. 2 *Haw.* 187.

IDENTITY OF THE PERSON, is when the defendant in a criminal cauſe, pleads that he is not the ſame perſon that was attainted; in which caſe, a jury ſhall be impanelled to inquire concerning the identity of the perſon. And this ſhall be done immediately, and no time allowed to the priſoner to make his defence, or produce his witneſſes, unleſs he will make oath that he is not the perſon attainted. 4 *Black.* 396.

IDIOT, is one that hath had no underſtanding from his birth; and is therefore by law preſumed never likely to attain any. 1 *Black.* 302.

A man is not an idiot, if he hath any glimmering of reaſon, ſo that he can tell his parents, his age, or the like common matters. *Id.* 304.

By the old common law, there is a writ *de idiota inquirendo*, directed to the ſheriff, to inquire by a jury, whether the party is an idiot or not; and if they find him a perfect idiot, the profits of his lands, and the cuſtody of his perſon, belongs to the king, according to the ſtatute of *prerogativa regis*, 17 *Ed.* 2. *c.* 9. by which it is enacted, that the king ſhall have the cuſtody of the lands of natural fools, taking the profits of them without waſte or deſtruction, and ſhall find them neceſſaries, of whoſe fee ſoever the lands be holden. And after the death of ſuch idiots, he ſhall render it to the right heirs, ſo that ſuch idiots ſhall not aliene, nor their heirs be diſinherited.

But it ſeldom happens, that a jury finds a man an idiot from his nativity; but only *non compos mentis* from ſome particular time; which has an operation very different in point of law: for, in this caſe, he comes under the denomination of a *lunatic*; in which reſpect, the king ſhall not have the profits of his lands, but is accountable for the ſame to the lunatic when he comes to his right mind, or otherwiſe to his executors or adminiſtrators. 1 *Black.* 303.

Formerly it was adjudged that the iſſue of an idiot was legitimate, and conſequently that his marriage was valid: but it hath been ſince determined otherwiſe; for conſent is abſolutely neceſſary to matrimony; and an idiot is not capable of conſenting to any thing. 1 *Black.* 438.

IDLE AND DISORDERLY perſons, by the vagrant act, 17 *G.* 2 *c.* 5. are thus deſcribed: 1. Thoſe that threaten to run away and leave their wives and children to the pariſh. 2. Perſons returning without a certificate from the place to which they had been lawfully removed. 3. All thoſe who, not having wherewith to maintain themſelves, live idle without employment, and refuſe to work for the uſual and common wages. 4. All thoſe who go about from door to door, or place themſelves in ſtreets or paſſages, to beg or gather alms in the pariſhes or places where they dwell. All theſe, for every ſuch offence, are to be ſent to the houſe of correction, to be kept to hard labour for a month.

JEOFAIL is compounded of the French *j'ay faillé*, that is, *I have failed*; and ſignifies an overſight in pleading, or other law proceedings. *T. L.*

Formerly, ſuitors to the courts were much perplexed by writs of error brought upon very ſlight and trivial grounds, as mis-ſpellings, and other miſtakes of the clerks; all which might be amended at the common law, while all the proceedings were in paper, for they were then conſidered as only *in fieri*, and therefore ſubject to the control of the courts. But when once the record was made up, it was heretofore held, that by the common law no amendment could be permitted, unleſs within the very term in which

which the judicial act so recorded was done; for during the term, the record is in the breast of the court; but afterwards it admitted of no alteration. But now the courts are become more liberal; and, where justice requires it, will allow of amendments at any time while the suit is depending, notwithstanding the record be made up, and the term be past. For they at present consider the proceedings as *in fieri* till judgment is given; and therefore that, till then, they have power to permit amendments by the common law. Mistakes are also effectually helped by the statutes of *amendment* and *jeofails*, so called, because, when a pleader perceives any slip in the form of his proceedings, and acknowledgeth such error, *(jeo faile,)* he is at liberty by those statutes to amend it; which amendment is seldom actually made, but the benefit of the acts is attained by the court's overlooking the exception. These statutes are many in number, whereby all trifling exceptions are so thoroughly guarded against, that writs of error cannot now be maintained, but for some material mistake assigned. 3 *Black.* 406.

JETSAM, (from the French *jetter*, to cast,) is any thing cast out of a ship being in danger of wreck, which doth not float, but sinks, and remains under water.

JEWS. In seven years time, lord *Coke* tells us, from the 50 *Hen.* 3. to 2 *Ed.* 1. the king received of the Jews 420,000*l.* 15*s.* 4*d.*; at which time, the ounce of silver was but 20*d.*, and now it is more than treble as much. 2 *Inst.* 506.

Nevertheless, in the 18 *Ed.* 1. the Jews, to the number of 15,060, were banished out of *England*; and never returned, until *Oliver Cromwell* re-admitted them.

On their banishment, the richest of them having embarked themselves with their treasure in a ship of great burthen, when the ship was under sail, and got down the *Thames* towards the mouth of the river below *Quinborough*, the master of the ship, confederating with some of the mariners, invented a stratagem to destroy them, and to bring the same to pass, commanded to cast anchor, and rode at anchor till the ship at the ebb lay on the dry sands. The master and his confederates, in further execution of their plot, moved and enticed those rich Jews to walk with the master on land for their health and recreation, which they did. At last, when the master understood the tide to be coming in, he stole away from them, and got him back to the ship. The Jews made not so much haste as he did, because they knew not the danger; but when they perceived what peril they were in, they cried out to him for help. He answered that they ought rather to cry to *Moses*, by whose conduct their fathers passed through the Red Sea; and in a short time the water swallowed them up. The master, and such other as were consenting

ing to this fact, were before the juſtices itinerant indicted, convicted of murder, and hanged. 2 *Inſt.* 508.

A *Jew* is to be ſworn on the Old Teſtament; and perjury may be aſſigned on that oath. 2 *Keb.* 313.

When any of his majeſty's ſubjects, profeſſing the Jewiſh religion, ſhall take the oath of abjuration, the words, *upon the true faith of a Chriſtian*, ſhall be omitted. 10 *G. c.* 4.

Jews, on taking an oath, are allowed to put on their hats. *Str.* 821.

If a Jewiſh parent in order to compel his Proteſtant child to change his religion, ſhall refuſe to allow to ſuch child a competent maintenance; the lord chancellor ſhall make ſuch order therein as he ſhall think meet. 1 *An. ſt.* 1. *c.* 30.

IGNORAMUS (we are *ignorant* of the matter), was formerly indorſed by the grand jury on the back of a bill for which they did not find ſufficient evidence; but now, ſince the proceedings were in *Engliſh*, they indorſe *no bill*, or *not a true bill*, or (which is the better way) *not found*. 4 *Black.* 305.

IGNORANCE, *ignorantia*, which is want of knowledge of the law, ſhall not excuſe any man from the penalty of it. Every perſon is bound at his peril to take notice what the law of the realm is; and ignorance of it, though it be invincible, where a man affirms that he has done all that in him lies to know the law, will not excuſe him. But though ignorance of the law excuſeth not, ignorance of the fact doth; as if a perſon buy a horſe or other thing in open market, of one who had no property therein, not knowing but he had right, in that caſe he hath good title, and the ignorance ſhall excuſe him; but if he bought the horſe out of the market, or knew the ſeller had no right, the buying in open market would not have excuſed. *Doct. & Stud.* 5 *Rep.* 83.

ILE, from the French *aile (ala)*, a *wing*, is part of a church, not in the body of the church, but moſt commonly on one ſide of the church; and had its name from the form of the *Norman* churches, which were built in the form of a croſs, with a nave and two *wings*.

An *ile* in a church, which hath time out of mind belonged to a particular houſe, and been maintained and repaired by the owner of that houſe, is part of his frank-tenement, and the ordinary cannot diſpoſe of it, or intermeddle in it: and the reaſon is, becauſe the law in that caſe preſumes, that the ile was erected by his anceſtors, or thoſe whoſe eſtate he hath, and is thereupon particularly appropriated to their houſe. But no ſuch title can be good, either upon preſcription, or upon any new grant by a faculty, to a man and his heirs; but the ile muſt always be ſuppoſed to be held in reſpect of the houſe, and will always go with the houſe to him that inhabits it. 12 *Co.* 106.

ILLU-

ILLUMINARE, to illuminate; to draw in gold and colours the initial letters and occaſional pictures in manuſcript books. Thoſe who particularly practiſed this art were called *illuminatores*: hence our *limners*.

IMBARGO, a ſtop, ſtay, or arreſt, of ſhips or merchandize, by public authority.

IMBEZILLING, ſignifies to ſteal, pilfer, or purloin; or to waſte, conſume, or deſtroy, goods committed to one's charge or cuſtody; which is prohibited by ſeveral ſtatutes. By 31 *El. c.* 4. if any perſon ſhall, for gain, or to impede the public ſervice, imbezil any of the king's armour, ordnance, ammunition, or habiliments of war, he ſhall be guilty of felony without benefit of clergy. In like manner there are ſeveral puniſhments inflicted by divers ſtatutes, for imbezilling the public money, for imbezilling the public records of courts, for imbezilling the materials in divers kinds of manufacture, and many other ſuch like.

IMPANEL: to impanel a jury is, to enter into a parchment ſchedule, by the ſheriff, the names of the jury ſummoned to appear for the performance of ſuch public ſervice as juries are employed in.

IMPARLANCE, from the French *parler*, to ſpeak, is a petition in court, for a day to conſider or adviſe what anſwer the defendant ſhall make to the action of the plaintiff; being a continuance of the cauſe till another day, or a larger time given by the court, which is generally till the next term.

IMPEACHMENT (from the Latin *impetere*), is the accuſation and proſecution of a perſon in parliament, for treaſon, or other crime and miſdemeanor. An impeachment before the lords, by the commons of *Great Britain*, is a preſentment to the moſt high and ſupreme court of criminal juriſdiction, by the moſt ſolemn grand inqueſt of the whole kingdom. A *commoner* cannot be impeached before the lords for any *capital* offence, but only for high miſdemeanors; but a *peer* may be impeached for any crime. The articles of impeachment are a kind of bills of indictment, found by the houſe of commons, and afterwards tried by the lords, who are, in caſes of miſdemeanors, conſidered not only as their own peers, but as the peers of the whole nation. By ſtatute 12 & 13 *W. c.* 2. no pardon under the great ſeal ſhall be pleadable to an impeachment by the commons in parliament. 4 *Black.* 259.

IMPEACHMENT OF WASTE, is the proſecuting or *impeaching* any perſon for committing waſte; unto which all tenants for life, or any leſs eſtate, are liable. But he who hath a leaſe to hold *without impeachment of waſte*, hath thereby ſuch an intereſt given him in the land, that he may make waſte without being impeached for it; that is, without being queſtioned,

tioned, or any demand of recompence for the waſte done. 11 *Co.* 82.

IMPLICATION, is where the law doth imply ſomething that is not declared between parties in their deeds and agreements; as if a grant be made to a man of an office, generally, without adding other words, the law tacitly annexes hereto an implied *condition*, that the grantee ſhall duly execute his office; on breach of which condition it is lawful for the grantor, or his heirs, to ouſt him, and grant it to another perſon. 2 *Black.* 152.

An implied *contract* is ſuch, where the terms of agreement are not expreſsly ſet forth in words, but are ſuch as reaſon and juſtice dictate, and which therefore the law preſumes that every man undertakes to perform. As if I employ a perſon to do any buſineſs for me, or perform any work, the law implies that I undertook or contracted to pay him as much as his labour deſerves: if I take up wares from a tradeſman, without any agreement of price, the law concludes that I contracted to pay their real value. *Id.* 443.

Implied *malice* is, where no malice is expreſſed, but is ſuch as will ariſe by conſtruction. As where a man wilfully poiſons another; in this deliberate act the law preſumes malice, though no particular enmity can be proved. So if a man kills another ſuddenly, without any, or without a conſiderable provocation, the law implies malice; for no perſon but one utterly abandoned would be guilty of ſuch an act, upon a ſlight or no apparent cauſe. 4 *Black.* 200.

IMPOSTORS in religion, are ſuch as falſely pretend an extraordinary commiſſion from heaven, or terrify and abuſe the people with falſe denunciations of judgments. They are puniſhable by fine, impriſonment, and infamous corporal puniſhment. 1 *Haw.* 7. And by the ſtatute 9 *G.* 2. *c.* 5. all perſons who pretend to uſe any kind of witchcraft, ſorcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend, from their ſkill in the occult ſciences, to find out goods that have been ſtolen; ſhall be impriſoned for a year, and once in every quarter of that year be ſet on the pillory.

IMPOTENCY, in the eccleſiaſtical law, ſignifies an inability of generation, or propagating the ſpecies; which is cauſe of divorce *a vinculo matrimonii*, as being merely void, and therefore needs only a ſentence declaratory of its being ſo.

IMPRESSING ſeamen. See NAVY.

IMPRISONMENT, is the reſtraint of a man's liberty under the cuſtody of another; and extends not only to a gaol, but a houſe, ſtocks, or where a man is held in the ſtreet, or any other place; for, in all theſe caſes, the party ſo reſtrained is ſaid to be

be a priſoner, ſo long as he hath not his liberty freely to go about his buſineſs, as at other times. 2 *Inſt.* 589.

IMPROPRIATION, is, properly, where a benefice eccleſiaſtical is in the hands of a *layman*; and *appropriation*, when in the hands of a biſhop, college, or *religious* houſe. But they are often confounded. The impropriations, which had belonged to the monaſteries, coming into the king's hands, after the diſſolution of thoſe religious ſocieties, came from thence many of them into lay hands, by grant from the crown; and from thence are called *lay impropriations*.

INCENDIARY LETTER. Sending any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, or other valuable thing; or threatening to kill any of his majeſty's ſubjects; or to *burn* any out-houſe, barn, ſtack of corn or grain, hay or ſtraw, is felony without benefit of clergy.

INCEST, is the carnal knowledge of perſons within the Levitical degrees of kindred. Theſe, by our law, are totally prohibited to marry with each other; and ſentence of divorce, in ſuch caſe, is only declaratory of the illegality of the marriage, for the marriage itſelf is void *ab initio*.

INCHANTER *(incantator)*, is he that by *charms* deals with evil ſpirits. Theſe *charms* were anciently called *carmina*, by reaſon that they were in verſe. By the 9 *G.* 2. *c.* 5. all proſecutions for inchantment, conjuration, or witchcraft, are aboliſhed; and pretending to exerciſe any of theſe incurs the penalty of impriſonment for a year, being ſet on the pillory four times in that year, and, further, being bound to the good behaviour at the diſcretion of the court.

INCIDENT, is a thing neceſſarily depending upon, appertaining to, or following, another that is more worthy or principal. A court-baron is inſeparably incident to a manor; a court of piepowders, to a fair: theſe are ſo inherent to their principals, that, by the grant of one, the other is granted. Rent is incident to a reverſion; timber-trees are incident to the freehold, and alſo deeds and charters, and a way to lands. Fealty is incident to tenures; diſtreſs, to rent and amercement; eſtovers of wood, to a tenancy for life or years. *Kitch.* 36. 1 *Inſt.* 151.

INCLOSURE, pulling down; if it is done in the night time, and it is not known who did the ſame, the towns near adjoining ſhall be compelled to repair the ſame and render damages. 13 *Ed.* 1. *ſt.* 1. *c.* 46. And by ſtatute 9 *G.* 3. *c.* 29. if any perſon ſhall wilfully or maliciouſly pull down or damage any fence, made for dividing or incloſing any common or other grounds, in purſuance of any act of parliament, he ſhall be guilty of felony and tranſported for ſeven years.

INCON-

INCONTINENCY, *incontinentia*, where perſons are vitious, and have no command of themſelves.

INCORPORATION, power of. To the erection of any corporation, the king's conſent is neceſſary, either *impliedly* or *expreſsly* given. The king's *implied* conſent, is to be found in corporations which exiſt by force of the common law, to which our former kings are ſuppoſed to have given their concurrence; of this ſort are all biſhops, parſons, vicars, churchwardens, and ſome others, who, by common law, have ever been held to have been corporations by virtue of their office. Another method of implied conſent is with regard to all corporations by preſcription; ſuch as the city of *London*, and many others, which have exiſted as corporations for time immemorial; for though the members thereof can ſhew no legal charter of incorporation, yet, in caſes of ſuch high antiquity, the law preſumes there once was one, and that, by the variety of accidents which a length of time may produce, the charter is loſt or deſtroyed. The methods by which the king's conſent is *expreſsly* given, are either by act of parliament or charter; but the immediate creative act is uſually performed by the king alone, in virtue of his royal prerogative. 1 *Black.* 472.

INCORPOREAL HEREDITAMENT, is a right iſſuing out of, or annexed unto, a thing corporeal; as a rent out of houſes or lands; and of theſe incorporeal hereditaments there are divers kinds, of which the principal are advowſons, tithes, commons, ways, offices, dignities, franchiſes, corodies or penſions, annuities, and rents. 2 *Black.* 20.

INCROACHMENT, ſignifies an unlawful gaining upon the right of another; as where a man ſets his fence too far into the ground of his neighbour that lies next to him; or a lord by diſtreſs or otherwiſe, compels his tenant to pay more than he owes.

INCUMBENT, cometh of the word *incumbo*, to mind diligently; and ſignifies a clergyman that is diligently reſident upon his benefice, and applies, or ought to apply, all his ſtudy to the diſcharge of the cure of the church to which he belongs. 1 *Inſt.* 119.

INDEBITATUS ASSUMPSIT, is uſed in declarations and law proceedings, wherein the plaintiff ſets forth, that the defendant being *indebted* to him in ſuch a ſum, *aſſumed*, undertook, or promiſed to pay it, but failed therein. It is an action on the *caſe*, wherein the plaintiff ſhall recover damages, according to the circumſtances that ſhall appear to the jury; and hath generally ſucceeded in the place of an action of *debt*, unleſs where the debt is certain and determinate; for in an action of *debt*, the plaintiff recovers the whole debt he claims, or nothing. 3 *Black.* 154.

INDEMNITY, was a penſion paid to the biſhop, in conſideration

ration of discharging, or *indemnifying*, churches united, or appropriated, from the payment of procurations; or by way of recompence for the profits which the bishop would otherwise have received during the time of the vacation of such churches. *Gibs. Cod.* 706. 719.

INDENTURE (*instar dentium*), is a writing, containing a conveyance between two or more, indented or cut unevenly, or in and out, on the top or side, answerable to another writing that likewise comprehends the same words. Formerly, when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with some word or letters written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part, and half on the other: and this custom is still preserved in making out the indentures of a fine. But at last, indenting only hath come into use, without cutting through any letters at all; and it seems at present to serve for little other purpose, than to give name to the species of the deed. 2 *Black.* 294.

The indenture may be *bipartite*, where there are two parts and parties to the deed; *tripartite*, where there are three parts and parties; and so *quadripartite*, *quinquepartite*, according to the number of parts and parties thereto. 1 *Inst.* 229.

If it begins, *This indenture*, and in truth the parchment or paper is not indented, this is no indenture, because words cannot make it indented: but if the deed be actually indented, and there be no words of indenture in the deed, yet it is an indenture in law, for it may be an indenture without words, but not by words without indenting. *Id.*

When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the *original*, and the rest are *counterparts*: though of late it is most frequent for all the parties to execute every part, which renders them all originals. A deed, made by one party only, is not indented, but *polled* or shaved quite even, and therefore called a *deed-poll*, or a single deed. 2 *Black.* 294.

INDICAVIT (so called from those words in the writ, *indicavit nobis*), is a writ of prohibition that lieth for the patron of a church, whose clerk is defendant in the ecclesiastical court, in an action for tithes, commenced by another clerk, and extending to the fourth part of the value of the church at least; in which case the suit belongs to the king's court, by the statute of 13 *Ed.* 1. *c.* 5. But, at this day, writs of *indicavit*, as well as all other real actions, are grown almost obsolete, and seldom put in practice.

INDICTION, *ab indicendo*, was a space of fifteen years, by which

which charters and public writings were dated at *Rome*; which method of computing time was alſo ſometimes uſed in *England*. It began at the diſmiſſion of the council of *Nice*, and the firſt year was reckoned the firſt of ſuch an indiction, and ſo on to the number of fifteen, which was reckoned the fifteenth year of ſuch an indiction; and the next year was the firſt of the next ſucceeding indiction.

INDICTMENT, is a written accuſation of one or more perſons of a crime or miſdemeanor, preferred to, and preſented on oath by, a grand jury. 4 *Black.* 302.

As an *appeal* is the ſuit of the party, ſo the indictment is always the ſuit of the king, and as it were his declaration; and the party who proſecutes it, is a good witneſs to prove it. And when ſuch accuſation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *preſentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquiſition*. 1 *Inſt.* 126.

2. All capital crimes whatſoever, and alſo all kinds of inferior crimes of a public nature, as miſpriſions, contempts, diſturbances of the peace, oppreſſions, and all other miſdemeanors whatſoever, of a public evil example againſt the *common law*, may be indicted; but no injuries of a private nature, unleſs they ſome way concern the king. 2 *Haw.* 210.

Alſo it ſeems to be a good general ground, that wherever a *ſtatute* prohibits a matter of public grievance to the liberties and ſecurity of the ſubject; or commands a matter of public convenience, as the repairing the common ſtreets of a town; an offender againſt ſuch ſtatute is puniſhable, not only at the ſuit of the party grieved, but alſo by way of indictment for his contempt of the ſtatute, unleſs ſuch method of proceeding do manifeſtly appear to be excluded by it. 2 *Haw.* 210.

A fact amounting to a felony, is not indictable as a treſpaſs. *L. Raym.* 712.

3. Indictments muſt have a preciſe and ſufficient *certainty*. By the ſtatute 1 *H.* 5. *c.* 5. all indictments muſt ſet forth the chriſtian name, ſurname, and addition of the ſtate, degree, and myſtery of the perſon accuſed, and of the town or place, and county, where he doth inhabit; and all this to identify his perſon. 4 *Black.* 306.

But the inhabitants of a pariſh may be indicted for not repairing a highway, although no perſon is particularly named. *Wood. b.* 4. *c.* 5.

4. The *time* and *place* are alſo to be aſcertained, by naming the day, and townſhip, in which the fact was committed: though a miſtake in theſe points is in general not held to be material, provided the time be laid previous to the finding of the indict-

ment,

ment, and the place to be within the juriſdiction of the court; unleſs where the place is laid as part of the deſcription of the fact; and the time alſo may be ſometimes material, where there is any limitation in point of time aſſigned for the proſecution of offenders; as by ſtatute 7 & 8 *W. c.* 3. which enacts, that no proſecution ſhall be had for ſeveral of the treaſons therein mentioned, unleſs the indictment be found within three years after the offence committed; and in caſe of murder, the time of the death muſt be laid within a year and a day after the mortal ſtroke was given. 4 *Black.* 106.

Alſo all indictments on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be ſued within two years after the offence committed; if limited to the king and proſecutor, the ſuit ſhall be in one year; and in default thereof, the ſame ſhall be ſued for the king, within two years after that year ended. But where a ſtatute limits a ſhorter time, the ſuit ſhall be brought within ſuch time limited. 31 *El. c.* 5.

But where an indictment charges a man with a bare omiſſion, as the not ſcouring ſuch a ditch, it is ſaid that it needs not ſhew any time. 2 *Haw.* 236.

5. If the county is in the margin, and the indictment ſets forth the act to be done at ſuch a place in the county aforeſaid, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at ſuch a place, in the county aforeſaid, vitiates the indictment, becauſe two counties are named before, and therefore it is uncertain to which it refers. *Crown Circ. Comp.* 115.

And if the offence be done in the night, the indictment ſhall ſuppoſe it to be done in the day before: and if it happen after midnight, then it muſt ſay it was done that day after. *Lamb.* 492.

6. There are ſeveral words of art which the law hath appropriated for the deſcription of the offence, which no circumlocution can ſupply; as *feloniouſly*, in the indictment of any felony; *burglariouſly*, in an indictment of burglary; and the like. 2 *H. H.* 184.

And if a man be indicted that he *ſtole*, and it is not ſaid *feloniouſly*, this indictment imports but a treſpaſs. *Id.* 172.

7. Alſo, in indictments, the *value* of the thing, which is the ſubject or inſtrument of the offence, muſt ſometimes be expreſſed. In indictments for larceny, this is neceſſary, that it may appear whether it be grand or petit larceny; in homicides of all ſorts, it is neceſſary; as the weapon, with which it is committed, is forfeited to the king as a deodand. 4 *Black.* 307.

8. The

8. The grand jury are only to hear evidence on behalf of the profecution; for the finding of an indictment, is only in the nature of an inquiry or accufation, which is afterwards to be tried and determined; and the grand jury are only to inquire upon their oaths, whether there be fufficient caufe to call upon the party to anfwer it. However, they ought to be thoroughly perfuaded of the truth of an indictment fo far as their evidence goes; for the indictment being the foundation of all, and commonly found in the abfence of the party accufed, it is neceffary there fhould be fubftantial proof. 4 *Black.* 303. 3 *Inft.* 25.

INDORSEMENT, (from *indorfum*, a back,) fignifies any thing written upon the back of a deed or other inftrument. On fealing of a bond, the condition of the bond may be indorfed, and then the bond and indorfement fhall both ftand together. The writing of a man's name on the back of a note or bill of exchange, and fo in paffing from one to another, every fucceeding perfon indorfing his name, makes all the indorfers anfwerable as well as the drawer. In order to the executing a juftice of the peace's warrant in another county, it muft be indorfed by fome juftice in fuch other county, which is commonly called *backing* the warrant.

INDUCTION, is the giving a clerk inftituted to a benefice the actual poffeffion of the temporalties thereof, in the nature of livery of feifin. It is performed by a mandate from the bifhop to the archdeacon, who commonly iffues out a precept to fome other clergyman to perform it for him. Accordingly, the inductor ufually takes the clerk by the hand, and lays it upon the key or ring of the church door, and fays to this effect: "By virtue of this mandate, I do induct you into the real, "actual, and corporal poffeffion of this church of *C.*, with all "the rights, profits, and appurtenances thereto belonging." After which, the inductor opens the door, and puts the perfon inducted into the church; who ufually tolls a bell, to make his induction public and known to the parifhioners. Which being done, the clergyman who inducts him, indorfes a certificate of his induction on the archdeacon's mandate, and they who were prefent teftify the fame under their hands. And by this, the perfon inducted is in full and complete poffeffion of all the temporalties of his church. And what induction worketh in parochial cures, is effected by inftalment into dignities, prebends, and the like, in cathedral and collegiate churches.

INDULGENCES, in the Romifh church, are the good works of the faints, over and above thofe that were neceffary towards their own juftification, together, with the infinite merits of *Chrift*, which are depofited, as it were, in one inexhauftible treafury. The keys of this were committed to St. *Peter*, and to his fucceffors the popes, who may open it at pleafure, and by

by transferring a portion of this ſuperabundant merit to any particular perſon, for a ſum of money, may convey to him, either the pardon of his own ſins, or a releaſe for any one in whom he is intereſted, from the pains of purgatory. Such indulgences were firſt invented in the eleventh century by pope *Urban* the ſecond. 2 *Robertſ. Hiſt. Cha.* V. *p.* 79.

IN ESSE, is any thing in *being;* and the learned make this diſtinction between things *in eſſe*, and things *in poſſe;* as, a thing that is not, but may be, they ſay is *in poſſe*, or *in potentia;* but what is apparent and viſible, is *in eſſe;* that is, it hath a real being, whereas the other is caſual, and but a poſſibility. A child before he is born or conceived, is a thing *in poſſe;* after he is born, he is ſaid to be *in eſſe.*

INFAMOUS perſons are diſabled either to be witneſſes or jurors. A conviction of treaſon or felony, or judgment for any heinous crime to ſtand on the pillory, or to be whipped, or branded, are good cauſes of exception. But no ſuch conviction or judgment can be made uſe of for ſuch diſability, unleſs the record be actually produced in court. 2 *Haw.* 433.

And it is a general rule, that a witneſs ſhall not be aſked any queſtion, the anſwering to which might oblige him to accuſe himſelf of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs of particular crimes, whereof he never was convicted. *Id.*

And the king's pardon, after a conviction or attainder, reſtores the party to his credit. *Id.*

INFANGTHIEF, from the Saxon *fang*, to take, ſignifies a privilege or liberty granted to the lords of certain manors to try any thief taken within their fee; as *outfangthief* was a privilege whereby the lord was enabled to call any man dwelling in his manor, and taken for felony in another place *out* of his fee, to judgment in his own court. But theſe kinds of franchiſes are long ſince antiquated and gone. 2 *Inſt.* 31.

INFANT:

1. The ages of male and female are different for different purpoſes: A male at 12 years of age may take the oath of allegiance; at 14, is of years of diſcretion, and therefore may conſent or diſagree to marriage, may chuſe his guardian, and (if his diſcretion be actually proved), may make his teſtament of his perſonal eſtate; at 17, may be an executor; and at 21, is at his own diſpoſal, and may aliene his lands, goods, and chattels. A female, at 7 years of age may be betrothed or given in marriage; at 9, is intitled to dower; at 12, is of years of maturity, and therefore may conſent or diſagree to marriage, and (if proved to have ſufficient diſcretion), may bequeath her perſonal eſtate; at 14, is at years of legal diſcretion, and may chuſe a guardian;

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at 17, may be executrix; and at 21, may diſpoſe of herſelf and her lands. 1 *Black.* 463.

2. An infant in the mother's womb is capable of having a legacy; or a ſurrender of a copyhold eſtate made to it. It may have a guardian aſſigned to it, and is enabled to have an eſtate limited to its uſe, and to take afterwards by ſuch limitation, as if it were then actually born. 1 *Black.* 130.

3. In criminal caſes, an infant of the age of 14 years may be capitally puniſhed for any capital offence; but under the age of 7 he cannot. The period between 7 & 14 is ſubject to much uncertainty: for the infant ſhall, generally ſpeaking, be judged *prima facie* innocent: yet if he was capable of diſcretion, and could diſtinguiſh between good and evil, he may be convicted. 1 *Black* 464.

And generally, by the law, (as it now ſtands,) the capacity of doing ill, or contracting guilt, is not ſo much meaſured by years and days, as by the ſtrength of the delinquent's underſtanding and judgment; for one infant of 11 years old may have as much cunning as another of 14. Under 7 years of age, indeed, an infant cannot be guilty of felony; but above that age, if it clearly appear to the court and jury that he could diſcern between good and evil, he may be convicted and ſuffer death. 4 *Black.* 23.

4. By the 18 *Eliz. c.* 7. carnally knowing or abuſing any woman child under the age of ten years, is felony without benefit of clergy: in which caſe, conſent or not conſent is immaterial, as by reaſon of her tender years ſhe is incapable of judgment and diſcretion. And from the neceſſity of the thing, the infant may be a witneſs in ſuch caſe; and if ſhe hath any idea of an oath, may be alſo ſworn; it being found, by experience, that infants of very tender years, often give the cleareſt and trueſt teſtimony. But where a man's life is concerned, it is deſirable, in order to render her evidence credible, that there ſhould be ſome concurrent teſtimony of time, place, and circumſtances; and that the conviction ſhould not be grounded ſingly on the unſupported accuſation of an infant under years of diſcretion. 4 *Black.* 214.

5. An infant under 14, is preſumed, by law, unable to commit a rape; and therefore although in other felonies, a capacity of underſtanding in ſome caſes may ſupply the want of age, yet it ſeems, as to this fact, the law preſumes him impotent, as well as wanting diſcretion. 1 *Hale's Hiſt.* 630.

6. The law doth in ſome caſes privilege an infant under the age of 21, as to common miſdemeanors; ſo as to eſcape being fined, impriſoned, or the like: and particularly in caſes of omiſſion, as not repairing a bridge, or a highway, or other ſimilar offences: for not having the command of his fortune till 21,

he

he wants the capacity to do thoſe things which the law requires. 4 *Black.* 22.

But where there is any notorious breach of the peace, a riot, battery, or the like; for theſe, an infant above the age of 14, is equally liable to ſuffer, as a perſon of the full age of 21. 4 *Black.* 23.

And an infant under 14, if he commit a treſpaſs againſt the perſon or poſſeſſion of another, ſhall be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2.

7. An infant ſhall loſe nothing by non-claim, or neglect of demanding his right. 1 *Black.* 465.

8. An infant may bind himſelf apprentice by indenture; alſo he may bind himſelf to pay for his neceſſary meat, drink, apparel, phyſic, and ſuch other neceſſaries: but if he binds himſelf in an obligation, or writing, with a penalty for the payment of any of theſe, that obligation ſhall not bind him. 1 *Inſt.* 72.

9. An infant may preſent to a benefice; for the judgment of the fitneſs of the perſon preſented remaineth with the biſhop. 1 *Black.* 465.

10. An infant may purchaſe lands; but when he comes of age, he may either agree or diſagree to it. *Id.* 466.

11. Generally, an infant cannot aliene his eſtate; but infant truſtees or mortgagees are enabled to convey, under the direction of a court of equity, the eſtates which they hold in truſt or mortgage, to ſuch perſon as the court ſhall appoint. *Id.* 465.

And by the 29 *G.* 2. *c.* 31. infants may ſurrender leaſes in the courts of chancery or exchequer, in order to renew the ſame.

And a conveyance by leaſe and releaſe by an infant, is voidable only, and not void. *Bur. Manſf.* 1794.

Alſo, there are ſeveral kinds of powers which infants may execute, as where an infant is a mere inſtrument only; as delivery of ſeiſin, which is a mere miniſterial act, and requires no judgment or diſcretion. 3 *Atk.* 710.

And generally, whatſoever an infant is bound to do by law, the ſame ſhall bind him although he do it without ſuit of law; as, if he makes equal partition, if he pays rent, if he admits a copyholder upon a ſurrender. *Bur. Manſf.* 1801.

12. An infant cannot be ſued but under the protection of and joining the name of his guardian: but he may ſue either by his guardian, or *prochein amy;* that is, his next friend who is not his guardian. This *prochein amy* may be any perſon who will undertake the infant's cauſe. 1 *Black.* 464.

And if an infant refuſeth to name a guardian to appear by, the plaintiff, by order of court, may do it for him. *Str.* 1076.

13. A guardian cannot make a leaſe of the infant's lands, for longer term than until his guardianſhip expires; if he does, the leaſe is void. 2 *Wilſon.* 129. 135.

INFORMATIONS, are of two kinds: firſt, thoſe which are partly at the ſuit of the king, and partly at the ſuit of a ſubject; and, ſecondly, ſuch as are only in the name of the king: the former are uſually brought upon penal ſtatutes, which inflict a penalty on conviction of the offender, one part to the uſe of the king, and another to the uſe of the informer, and are a ſort of *qui tam*, or popular actions, only carried on by a criminal inſtead of a civil proceſs. 4 *Black.* 308.

Informations that are exhibited in the name of the king alone, are alſo of two kinds; firſt, thoſe which are truly and properly his own ſuits, and filed *ex officio* by his own immediate officer, the attorney general; ſecondly, thoſe in which, though the king is the nominal proſecutor, yet it is at the relation of ſome private perſon, or common informer; and they are filed by the maſter of the crown-office, under the expreſs direction of the court. The objects of the king's own proſecutions, filed *ex officio* by the attorney general, are properly ſuch enormous miſdemeanors, as peculiarly tend to diſturb or endanger the government: the objects of the other ſpecies of informations, filed by the maſter of the crown-office, upon the complaint or relation of a private ſubject, are any groſs and notorious miſdemeanors, riots, batteries, libels, or other immoralities of an atrocious kind, not peculiarly tending to diſturb the government, but which, on account of their magnitude, or pernicious example, deſerve the moſt public animadverſion. And when an information is filed either thus, or by the attorney general *ex officio*, it muſt be tried by a petit jury of the county where the offence ariſes; after which, if the defendant be found guilty, he muſt reſort to the court of king's bench for his puniſhment. *Id.*

Of near affinity to an information *qui tam*, is an action upon the ſtatute; which is either a *private* action, when an action is given upon a ſtatute to the king, and to the party grieved only; or a *popular* action, where the action is given to the *people* in general; that is, to any one that will ſue for the king and for himſelf.

By 31 *El. c.* 5. informations on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be brought within two years after the offence committed; if limited to the king, and to any other who ſhall proſecute, then within one year; and, in default of ſuch proſecution, then to be brought for the king in two years after that year ended.

Foraſmuch as an information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not ſo found, but is only the allegation of the officer

cer or perſon who exhibits it; whatſoever certainty therefore is required in an indictment, the ſame, at leaſt, is neceſſary alſo in an information. And the ſtatutes of jeofails, which remedy overſights in pleading, extend not to informations. 2 *Haw.* 260.

By the 18 *El. c.* 5. if any perſon informing under pretence of a penal law, ſhall make any compoſition without leave of the court, or take any money or promiſe from the defendant to excuſe him, he ſhall forfeit 10*l.* and ſtand two hours on the pillory, and ſhall be for ever diſabled to ſue on any popular or penal ſtatute.

The court of king's bench will not grant an information againſt a juſtice of the peace for an error in judgment only, or for having acted illegally, in the execution of his office; but will leave the party injured to his ordinary remedy at law: but if the juſtice acts with partiality, malice, or corruption, an information will be granted. *Bur. Manſf.* 561.

Alſo the court will grant an information againſt a pariſh officer, for procuring a poor man of another pariſh to marry a poor woman of his own pariſh, in order to get the woman ſettled in that other pariſh. *Id.* 2106.

But in the caſe *K.* v. *Compton et al. H.* 23 *G.* 3. an information was denied againſt the overſeers of *Doncaſter*, for conſpiring to prevail upon a ſoldier to marry a poor woman of their pariſh, then big with child, in order to throw her upon another pariſh; on the ground, that great inconvenience had been felt from the practice of obliging perſons in low circumſtances, to ſhew cauſe againſt informations at a great expence; as juſtice might be as effectually had by way of indictment. *Cald. Caſ.* 246.

ING, *Sax.* a watery meadow.

INGRESS, *egreſs*, and *regreſs*, are words in leaſes of land, to ſignify a free entering into, going forth of, and returning from, ſome part of the lands let; as to get in a crop of corn, or the like, after the term is expired.

INGROSSING, (from *in*, and *groſs*, great or whole,) is the getting into one's poſſeſſion, or buying up large quantities of corn, or other dead victual, with intent to ſell the ſame again. This was formerly puniſhable by the ſtatute 5 & 6 *Ed.* 6. *c.* 14. which ſtatute being repealed by the 12 *G.* 3. *c.* 71. the ſame remains now only an offence at common law, puniſhable by fine and impriſonment.

INHABITANTS, of a town or pariſh, with reſpect to the public aſſeſſments, and the like, are not only thoſe who dwell in an houſe there, but alſo thoſe who occupy lands within ſuch town or pariſh, although they be dwelling elſewhere. But the word inhabitants doth not extend to lodgers, ſervants, or the like; but to houſeholders only. 2 *Inſt.* 702.

INHERITANCE, *hæreditas*, is a perpetuity in lands or tenements, to a man and his heirs; and the word inheritance is not only intended where a man hath lands or tenements by deſcent, but alſo every fee-ſimple, or fee-tail, which a perſon hath by purchaſe, may be ſaid to be an inheritance, becauſe his heirs may inherit it. *Litt. ſ.* 9.

Inheritances are *corporeal* or *incorporeal*. *Corporeal* inheritances, relate to houſes and lands, which may be touched or handled; and *incorporeal* hereditaments, are rights iſſuing out of, annexed to, or exerciſed with corporeal inheritances; as advowſons, tithes, annuities, offices, commons, franchiſes, privileges, and ſervices. 1 *Inſt.* 49.

There are ſeveral rules of inheritances of lands, according to which, eſtates are tranſmitted from anceſtor to heir; *viz.* 1. That inheritances ſhall lineally deſcend to the iſſue of the perſon laſt actually ſeiſed, *in infinitum*, but ſhall never lineally aſcend. 2. The male iſſue ſhall be admitted before the female. 3. Where there are two or more males in equal degree, the eldeſt only ſhall inherit; but the females altogether. 4. The lineal deſcendants, *in infinitum*, of any perſon deceaſed, ſhall repreſent their anceſtor; that is, ſhall ſtand in the ſame place as the perſon himſelf would have done had he been living: thus the child, grandchild, or great grandchild (either male or female), of the eldeſt ſon, ſucceeds before the younger ſon, and ſo *in infinitum*. 5. On failure of iſſue of the perſon laſt ſeiſed, the inheritance ſhall deſcend to the blood of the firſt purchaſer. 6. The collateral heir of the perſon laſt ſeiſed, muſt be his next collateral kinſman of the whole blood. 7. In collateral inheritances, the male ſtocks ſhall be preferred to the female, unleſs where the lands have deſcended from a female: thus the relations on the father's ſide are admitted, *in infinitum*, before thoſe on the mother's ſide are admitted at all; and the relations of the father's father, before thoſe of the father's mother, and ſo on. 2 *Black. c.* 14

INHIBITION, is a writ to forbid a judge from a farther proceeding in a cauſe depending before him, being in nature of a prohibition. It moſt commonly iſſues out of an higher court chriſtian to an inferior, upon an appeal. But there are alſo inhibitions on the viſitations of archbiſhops and biſhops: thus, when the archbiſhop viſits, he inhibits the biſhop; and when the biſhop viſits, he inhibits the archdeacon. And this is to prevent confuſion. *T. L.*

INJUNCTION, is a kind of prohibition granted in divers caſes. It is generally grounded upon an interlocutory order or decree out of the court of chancery or exchequer, to ſtay proceedings in courts of law. It is alſo ſometimes granted to quiet the poſſeſſion of lands, or to ſtay waſte. *Weſt. Symb. ſect.* 25.

It

It is ſometimes alſo iſſued to the ſpiritual courts; as, particularly, where there is a truſt, or any thing in the nature of a truſt, notwithſtanding the eccleſiaſtical court may have an original juriſdiction, as in the caſe of legacies, yet the chancery will grant an injunction to ſtay the proceedings. 1 *Atk.* 491.

An injunction may be prayed at various ſtages of the cauſe, according to the circumſtances of the caſe. If the bill be to ſtay execution upon an oppreſſive judgment, and the defendant doth not put in his anſwer within the ſtated time allowed by the rules of the court, an injunction will iſſue of courſe; and, when the anſwer comes in, the injunction can only be continued upon a ſufficient ground, appearing from the anſwer itſelf. But if an injunction be granted to ſtay waſte, or other injuries of an equally urgent nature, then upon the filing of the bill, and a proper caſe ſupported by affidavit, the court will grant an injunction immediately, to continue till the defendant hath put in his anſwer, and till the court ſhall make ſome farther order concerning it: and, when the anſwer comes in, whether it ſhall be then diſſolved or continued till the hearing of the cauſe, is determined by the court upon argument, drawn from conſidering the anſwer and affidavit together. 3 *Black.* 443.

The court will grant an injunction at the ſuit of a ground landlord, to ſtay waſte in an under-leſſee, who holds by leaſe from the original leſſee. 3 *Atk.* 723.

A remainder man in fee may have an injunction to ſtay waſte in the firſt tenant for life, notwithſtanding an intermediate eſtate for life. *Id.*

If a mortgagee cuts down timber, and doth not apply the money ariſing from the ſale in ſinking the intereſt and principal, the mortgagor may have an injunction to ſtay waſte. *Id.*

So where the mortgagor commits waſte, the court will grant the mortgagee an injunction; for they will not ſuffer the mortgagor to prejudice the incumbrance. *Id.*

INLAGH, a perſon under the protection of the law, as an *outlaw* is a perſon put out of its protection.

INLAND, *terra interior*, the inner or incloſed land, was the demeſne of the lord; as that which was let to tenants was called *outland*. In an ancient will are theſe words: "To *Wulfey* I give "the *inland* or demeſnes; and to *Elfey* the *utlands* or tenancy." *Teſtam Britherici.* This word was in great uſe among the *Saxons*, and often occurs in *Domeſday*.

An *inland bill of exchange* is where the perſon that draws the bill and he upon whom it is drawn, do both of them reſide within the kingdom; as a *foreign* bill of exchange is, where one of the parties reſides out of the kingdom. So *inland trade* is that which is carried on within the kingdom; as *foreign trade* is that which is

carried on by a merchant within this kingdom, with his correſpondent abroad.

INMATE, is one that is admitted to dwell in the ſame houſe with another perſon, not being able to provide an houſe for himſelf. Inmates, by the 31 *El. c.* 7. were prohibited to be admitted in cottages: but by 15 *G.* 3. *c.* 32. the ſaid ſtatute of the 31 *El.* is repealed; ſetting forth that the ſame had laid the induſtrious poor under great difficulties to procure habitations, and tended very much to leſſen population.

INNS, *hoſpitia*, were inſtituted for lodging and relief of travellers; and at common law any man might erect and keep an inn or alehouſe, but now they are to be licenſed by juſtices of the peace. For which, ſee ALEHOUSES.

INNUENDO, (from *innuo*, to nod or beckon with the head,) is a word uſed in declarations and law pleadings, to aſcertain a perſon or thing which was named before; as to ſay, he (innuendo the plaintiff) did ſo and ſo, when there was mention before of another perſon. In an action of *ſlander*, for inſtance, two things are requiſite; firſt, that the *perſon* ſlandered be certain; and next, that the *words* be certain which contain the ſlander. As to the *perſon*: If a man ſay, without any previous communication, that one of the ſervants of *A. B.* (he having ſeveral ſervants) is a notorious felon; here, for the uncertainty of the *perſon*, no action lieth, and an innuendo cannot make this certain: but when the *perſon* hath been once named in certain, as if two ſpeaking of *J. S.* one of them ſaith, he is a notorious felon, this is certain enough, and an innuendo will be admitted to ſhew the perſon intended. So as to the *words*: If a man ſay, that ſuch a one had the pox, innuendo the French pox, this will not be admitted, becauſe the French pox was not mentioned before, and the words ſhall be conſtrued in a more favourable ſenſe. But, if in diſcourſe of the French pox, one ſay, that ſuch an one had the pox, innuendo the French pox, this will be admitted to render that certain which was uncertain before. 4 *Co.* 17.

INPENY, and *outpeny*, money paid by the cuſtoms of certain manors, on being admited to, or on the alienation of lands within the manor.

INQUEST OF OFFICE, is an inquiry made by the king's officer, ſheriff, coroner or eſcheator, by virtue of their office, or by writ to them ſent for that purpoſe, or by commiſſioners ſpecially appointed, concerning any matter that intitles the king to the poſſeſſion of lands or tenements, goods or chattels. This is done by a jury of no determinate number, being either twelve, or leſs, or more. As, to inquire, whether one who held immediately of the king died without heirs, in which caſe the lands belong to the king by eſcheat; whether one be attainted of treaſon, whereby his eſtate is forfeited to the crown; whether one who hath purchaſed

chaſed lands is an alien, which is another cauſe of forfeiture; whether ſuch a one be an idiot, in which caſe he and his lands appertain to the cuſtody of the king: and while the military tenures ſubſiſted, to inquire of what lands the king's tenant died ſeiſed, who was his heir, and of what age, in order to intitle the king to the wardſhip, marriage, relief, and other advantages. And with regard to other matters, the inqueſts of office ſtill remain in force; as in the caſe of wreck, treaſure trove, and the like, and eſpecially as to forfeitures for offences: for every jury which tries a man for treaſon or felony, every coroner's inqueſt that ſits upon a *felo de ſe*, or one killed by miſadventure, is, in all reſpects, an inqueſt of office; and if they find the treaſon or felony, or even the flight of the party accuſed, (though innocent,) the king is thereupon, by virtue of this office, found intitled to have his forfeitures. 3 *Black.* 258.

Some of theſe inquiſitions are in themſelves convictions, and cannot afterwards be traverſed or denied; and therefore the inqueſt ought to hear all that can be alledged on both ſides: of this nature are all inquiſitions of *felo de ſe*: of flight in perſons accuſed of felony; of deodands, and the like; and preſentments of petty offences in the ſheriff's tourn or court leet, whereupon the preſiding officer may ſet a fine. Other inquiſitions may be afterwards traverſed and examined; as particularly the coroner's inquiſition of the death of a man; for, in ſuch caſes, the offender may be arraigned upon the inquiſition, and diſpute the truth of it. 4 *Black.* 301.

INQUISITION POST MORTEM, was an inquiry by the eſcheator in every county, upon the death of any of the king's tenants *in capite*, what lands ſuch tenant held in ſuch county, what was the yearly value thereof, who was his heir, and of what age; in order to entitle the king to his relief, wardſhip, marriage, or other advantages, as circumſtances ſhould require.

INROLLMENT, *(irrotulatio,)* is the regiſtering or entering in the rolls of the chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter ſeſſions, of any lawful act: as a ſtatute or recognizance acknowledged, a deed of bargain and ſale of lands, and the like: but the inrolling a deed doth not make it a record, though it thereby becomes a deed recorded; for there is a difference between matter of record, and a thing recorded to be kept in memory; a record being the entry in parchment of judicial matters controverted in a court of record, and whereof the court takes notice; whereas an inrollment of a deed is a private act of the parties concerned, of which the court takes no cognizance at the time of doing it, although the court gives way to it. 2 *Lill. Abr.* 69.

The inrolling muſt be in parchment only, for the ſtrength and continuance

continuance thereof; though the indenture may be either in parchment or paper. 2 *Inſt.* 673.

By ſtatute 27 *H.* 8. *c.* 16. no lands ſhall paſs, whereby any eſtate of inheritance or freehold ſhall take effect, or any uſe thereof be made, by reaſon only of any bargain and ſale thereof, except the bargain and ſale be made by writing indented, ſealed, and within ſix months inrolled in one of the king's courts of record at *Weſtminſter*; or elſe within the county where the lands lie, before the clerk of the peace, and one or more juſtices. But by 5 *Eliz.* *c.* 26. in the counties palatine, they may be inrolled in the reſpective courts there, or at the aſſizes.

Deeds and wills of papiſts muſt in like manner be inrolled, otherwiſe no intereſt therein will paſs. 3 *G.* *c.* 18.

By the mortmain act, 9 *G.* 2. *c.* 36. no lands, nor money to be laid out in lands, ſhall be given to any charitable uſe, unleſs it be by deed executed twelve months before the death of the donor, and inrolled in chancery in ſix months after execution; and unleſs the ſame be made to take effect immediately.

By ſeveral ſpecial acts of parliament, memorials of deeds and wills are to be regiſtered in ſeveral parts of the county of *York*, and elſewhere; in order to render it more eaſy to borrow money on land ſecurity.

Every deed before it is inrolled, is to be acknowledged to be the deed of the party, before a maſter of chancery, or a judge of the court wherein it is inrolled; which is the officer's warrant for inrolling the ſame; and the inrollment of a deed, if it be acknowledged by the grantor, will be good proof of the deed itſelf upon a trial. 2 *Lill. Abr.* 69.

But a deed may be inrolled without the examination of the party himſelf; for it is ſufficient if oath is made of the execution. If two are parties, and the deed is acknowledged by one, the other is bound by it. And if a man lives abroad, and would paſs lands here in *England*, a nominal perſon may be joined with him in the deed, who may acknowledge it here, and it will be binding. 1 *Salk.* 389.

If after execution of the deed, and before the inrollment, either party dies; yet the land hereby paſſes, if the deed be inrolled within ſix months after the execution: ſo if there be two bargains and ſales of the ſame land to two ſeveral perſons, and the laſt deed is firſt inrolled, and afterwards the firſt deed is alſo inrolled within ſix months; the firſt buyer ſhall have the land; for when the deed is inrolled, the buyer is ſeiſed of the land from the delivery of the deed, and the inrollment ſhall relate to it. *Wood. b.* 2. *c.* 3.

INSIDIATORES VIARUM, are perſons that lie in wait, in order to the commiſſion of felony, or other miſdemeanors. Theſe were always excluded by the common law from the benefit

of

of clergy; and, therefore, ſometimes theſe words were put in indictments of felony, on purpoſe to deprive the offenders of that benefit: and this cauſed the ſtatute of 4 *Hen.* 4. *c.* 2. to be made, to put theſe words out of indictments, and to allow benefit of clergy if they were in them.

INSIMUL COMPUTASSENT, is a writ that lies upon a ſtated account between two merchants or other perſons; in which caſe the law implies, that he againſt whom the balance appears hath engaged to pay it to the other, though there be not any actual promiſe: and from this implication, it is frequent for actions on the caſe to be brought, declaring that the plaintiff and defendant had ſettled their accounts together, *inſimul computaſſent*, and that the defendant engaged to pay to the plaintiff the balance, but hath ſince neglected to do it: if no account has been made up, then the legal remedy is, by bringing a writ of account, *de compto*, commanding the defendant to render a juſt account to the plaintiff, or ſhew to the court good cauſe to the contrary. 3 *Black.* 162.

INSOLVENT. An act of inſolvency is an occaſional act frequently paſſed by the legiſlature, whereby all perſons whatſoever, who are either in too low a way of dealing to come within the ſtatutes of bankruptcy, or not being in a mercantile ſtate of life, are not included within the bankrupt laws, are diſcharged from all ſuits and impriſonment, upon delivering up all their eſtate and effects to their creditors upon oath, at the aſſizes or ſeſſions; in which caſe, if they be guilty of fraud or perjury, they are commonly puniſhed with death. 2 *Black.* 484.

By the ſtatute 32 *G.* 2. *c.* 28. if a defendant charged in execution for any debt under 100*l.* will ſurrender all his effects to his creditors (except his apparel, bedding, and tools of his trade, not amounting, in the whole, to the value of 10*l.*), and make oath of his punctual compliance with the ſtatute, he may be diſcharged, unleſs the creditor inſiſts on detaining him; in which caſe, he ſhall allow him 2*s.* 4*d.* a week, to be paid on the firſt day of every week, and, on failure of regular payment, the priſoner ſhall be diſcharged. Yet the creditor may, at any future time, have execution againſt the lands and goods of the defendant, though never more againſt his perſon. And, on the other hand, the creditors may compel (under pain of tranſportation) ſuch debtor charged in execution for any debt under 100*l.* to make a diſcovery and ſurrender of all his effects for their benefit; whereupon he is alſo intitled to a like diſcharge of his perſon. 3 *Black.* 416.

INSPEXIMUS, is a word in letters patent, reciting a former grant, *inſpeximus*, (we have ſeen,) ſuch former grant; and ſo reciting the ſame *verbatim*, and then granting ſuch further privileges as are thought convenient.

INSTALL-

INSTALLMENT. Payment of debt by inſtallment, is where ſeveral future days are appointed for diſcharging the debt, part at one time, and part at another. If a man be bound in a bond, or by contract to another, to pay 100*l.* at five ſeveral days, he ſhall not have an action of debt before the laſt day be paſt: and ſo note a diverſity between duties which touch the realty, and the mere perſonalty. But if a man be bound in a recognizance to pay 100*l.* at five ſeveral days, preſently after the firſt day of payment, he ſhall have execution upon the recognizance for that ſum, and ſhall not tarry till the laſt day be paſt; for that it is in the nature of ſeveral judgments: and ſo note a diverſity between a debt due by recognizance, and a debt due by bond or contract. And ſo it is of a covenant or promiſe; after the firſt default, an action of covenant, or an action upon the caſe, doth lie, for they are ſeveral in their nature: where alſo note a diverſity between debts and covenants, or promiſes. 1 *Inſt.* 292.

Inſtallment, in caſe of eccleſiaſtical dignities, is putting the party into actual poſſeſſion; as placing a prebendary in his *ſtall* in the quire.

INSTANTER, inſtantly, immediately; as where a perſon who hath been for ſome time attainted of felony, is brought into court, and it is demanded of him what he hath to allege why execution ſhould not be awarded againſt him; if he denies that he is the ſame perſon, this ſhall be tried *inſtanter*, by a jury immediately, without giving him time to make his defence, or produce his witneſſes, unleſs he will make oath that he is not the perſon attainted. 4 *Black.* 396.

INSTITUTION, to a benefice, is that whereby the ordinary commits the cure of ſouls to the perſon preſented; as by induction he obtains a temporal right to the profits of the living. Previous to the inſtitution, there are ſeveral oaths and ſubſcriptions requiſite to be taken and made before the ordinary; as, the oath againſt ſimony, the oaths of allegiance and ſupremacy, and (if it is a vicarage) the oath of reſidence; and to ſubſcribe the thirty-nine articles, and the articles concerning the king's ſupremacy and the book of common prayer.

INSUPER, is uſed by auditors in their accounts in the exchequer; as when ſo much is charged upon a perſon as due on his account, they ſay ſo much remains *inſuper* to ſuch accountant.

INSURANCE, amongſt merchants, is where a man, for a ſum of money paid to him by a merchant, obligeth himſelf to make good the loſs of a ſhip, or goods therein, or both. 2 *Black.* 458.

Bottomry, is in nature of a mortgage of a ſhip, when the owner borrows money to enable him to carry on his voyage, and pledges the *bottom* (that is, in effect the whole of it) as a ſecurity for

for the repayment; in which caſe, it is underſtood, that, if the ſhip be loſt, the lender loſes his whole money; but, if it returns in ſafety, then he ſhall receive back his money, and alſo the premium agreed upon, in conſideration of the extraordinary hazard run by the lender, however it may exceed the legal rate of intereſt: and in this caſe, the ſhip and tackle, if brought home, are anſwerable, as well as the perſon of the borrower, for the money lent. *Ibid.*

But if the loan is not upon the veſſel, but upon the goods and merchandize, which muſt neceſſarily be ſold or exchanged in the courſe of the voyage; then only the borrower, perſonally, is bound to anſwer the contract; who, therefore, in this caſe, is ſaid to take up money at *reſpondentia* (which he himſelf will *anſwer* for). *Ibid.*

Inſurances, being contracts, the very eſſence of which conſiſts in obſerving the pureſt good faith and integrity, are therefore vacated by any the leaſt ſhadow of fraud or undue concealment; and, on the other hand, being much for the benefit of trade, they are greatly encouraged and protected both by the common law and acts of parliament. *Ibid.*

But as a practice had obtained of inſuring large ſums without having any property on board, which were called inſurances, *intereſt or no intereſt*, and alſo of inſuring the ſame goods ſeveral times over, both of which were a ſpecies of gaming, and therefore were denominated *wagering* policies; it is enacted by the 19 G. 2. *c.* 37. that all theſe kinds of inſurance ſhall be void; and that no re-inſurance ſhall be lawful, except the former inſurer ſhall be inſolvent, a bankrupt, or dead; and that in the *Eaſt India* trade, the lender of money on bottomry, or at *reſpondentia*, ſhall alone have a right to be enſured for the money lent; and the borrower ſhall (in caſe of a loſs) recover no more upon any inſurance than the ſurplus of the property, above the value of his bottomry, or *reſpondentia* bond.

But different perſons may inſure various intereſts on the ſame thing; and each to the whole value. *Bur. Mansf.* 494.

When a ſhip has been long miſſing, and no advice is had of her, the premium runs proportionably high; and in that caſe, theſe words are uſually inſerted in the policy, *loſt or not loſt*; and if it ſo happens, that at the time of the ſubſcription the ſhip is caſt away, yet the inſurer ſhall be anſwerable.

An inſurance of the ſhip, tackle, and furniture, againſt perils of the ſea, fire, and other accidents in a voyage to and from ſuch a port, and the ſhip ſtays in the paſſage to clean and refit, during which time the ſails and furniture are, for ſecurity, carried into a ſtorehouſe at land, and there accidently burned; this doth not make the policy void, but the inſurers ſhall be anſwerable. *Bur. Mansf.* 347.

But

But if the loſs happens by the alteration of the voyage, or variation of the chance, or other fault of the owner or maſter of the ſhip, the inſurer ceaſes to be liable. *Ibid.*

Otherwiſe it is, if the thing be done for juſt cauſe; as if a ſhip warranted to depart with convoy, goes out of the way in order to have the opportunity of convoy, this is no deviation. *Ibid.*

It is eſtabliſhed upon a principle of convenience, that a man ſhall not recover more than he has loſt. Inſurance is an indemnity only, in caſe of a loſs; and therefore the ſatisfaction ought not to exceed the loſs. *Bur. Manſf.* 492.

And if the inſured is to receive but one ſatisfaction, natural juſtice requires that the ſeveral inſurers ſhall all of them contribute *pro rata*, to ſatisfy that loſs, againſt which they have all inſured. *Ibid.*

Where a man makes a double inſurance of the ſame thing, in ſuch a manner that he can recover againſt ſeveral inſurers in diſtinct policies a double ſatisfaction, the law ſays, that he ought not to recover doubly for the ſame loſs, but be content with one ſingle ſatisfaction for it; and if the whole be recovered from one, he ought to ſtand in the place of the inſured, to receive contribution from the other who was equally liable to pay the whole. *Ibid.*

Generally, if an inſured ſhip be taken by the enemy, the inſured may demand as for a total loſs, and abandon to the inſurer; but he cannot by abandoning, turn what was in its nature an average loſs into a total loſs. *Bur. Manſf.* 697.

Writers and nations differ in opinion with reſpect to the change of property by capture of the enemy: ſome hold it to be as ſoon as the engagement is over; ſome hold that the prize muſt be brought into ſome of the enemy's ports; others that 24 hours quiet poſſeſſion by the enemy is the criterion; the *Engliſh* courts of admiralty, not till after ſentence of condemnation. But as between inſurer and inſured, the ſhip is loſt by the capture; and the inſurer muſt indemnify the inſured, as to the loſs actually ſuſtained; and he ſhall ſtand in the place of the inſured, in caſe of a re-capture or abandonment. *Bur. Manſf.* 694.

By the 11 *G. c.* 29. if any owner of, or captain, maſter, mariner, or other officer, belonging to any ſhip, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the ſame, with intent to prejudice any perſon that ſhall underwrite any policy of inſurance thereon, or any merchant having goods therein; he ſhall be guilty of felony without benefit of clergy.

INTENDMENT. The intent of the parties in deeds and other inſtruments is much regarded by the law. With reſpect to wills, lord *Coke* ſays, the intention of the teſtator is the pole

ſtar

ſtar to guide the judges in the expoſition thereof: yet ſuch intention muſt be collected out of the words, and it muſt conſiſt with the law. *Swinb.* 10. The intendment ſhall ſometimes ſupply that which is not fully expreſſed or apparent; and when a thing is doubtful in ſome caſes, intendment may make it out. Alſo, many things ſhall be intended after verdict in a cauſe to make a good judgment; but intendment cannot ſupply the want of certainty in a charge in an indictment for any crime. 2 *Haw.* 227. 441.

INTER CANEM ET LUPUM, between the dog and the wolf; the twylight: for when the night begins, the dog ſleeps, and the wolf ſeeketh his prey. 3 *Inſt.* 63.

INTERCOMMONING, is where the commons of two manors lie together, and the inhabitants of both have, time out of mind, depaſtured their cattle promiſcuouſly in either.

INTERDICT, is an eccleſiaſtical cenſure, whereby the divine ſervices are prohibited, either to particular perſons, or in particular places, or both. And both theſe kinds of interdict have been frequently exerciſed heretofore, upon whole villages, towns, provinces, and even kingdoms; till they ſhould make ſatisfaction for injuries done, or abſtain from injuries they were doing to the church. *Lindw.* 320.

In the year 1208, the pope excommunicated king *John* and all his adherents, and put the whole kingdom under an interdict; which began the firſt *Sunday* after *Eaſter*, and continued ſix years and one month.

During the time of interdict, baptiſm was allowed, becauſe of the frailty and uncertainty of life; but the holy euchariſt was not allowed, except in the article of death; ſo alſo Chriſtian burial was denied in any conſecrated place, except it were done without divine offices.

But this cenſure hath been long diſuſed; and nothing of it appears in the laws of church or ſtate ſince the reformation. *Gibſ. Cod.* 1047.

INTERDICTED *of fire and water*, were anciently thoſe perſons who ſuffered baniſhment for ſome crime; by which judgment, order was given that no man ſhould receive them into his houſe, but ſhould deny them *fire* and *water*, the two neceſſary elements of life.

INTEREST, is vulgarly 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 the intereſt of the term (*de intereſſe termini*). But in legal underſtanding, it extends to eſtates, rights, and titles, that a man hath of, in, to, or out of lands, for he is truly ſaid to have an intereſt in them; and by the grant of his whole intereſt in ſuch lands, as well reverſions as poſſeſſions in fee-ſimple ſhall paſs. 1 *Inſt.* 345.

INTEREST

INTEREST OF MONEY. See USURY.

INTERLINEATION. When a deed is altered in any material point, either by interlineation, raſure, addition, or by drawing a pen through the line, or through the middle of any word material, this will vacate the deed, unleſs a memorandum be made thereof at the time of the execution and atteſtation. 11 *Co.* 27.

INTERLOCUTORY JUDGMENTS, are ſuch as are given in the middle of a cauſe, upon ſome plea, proceeding, or default; which is only intermediate, and doth not finally determine or complete the ſuit. 3 *Black.* 295.

INTERPLEADER, bill of, is where a perſon who owes a debt or rent to one of the parties in ſuit in the chancery, but, till the determination thereof, he knows not to which of them, deſires that they may *interplead*, that he may be ſafe in the payment. In this caſe it is uſual to order the money to be paid into court, for the benefit of ſuch of the parties, to whom, upon hearing, the court ſhall decree it to be due: and the plaintiff muſt annex an affidavit to his bill, ſwearing, that he doth not collude with either of the parties. 3 *Black.* 448.

INTERROGATORIES, are particular queſtions demanded of witneſſes brought in to be examined in a cauſe, eſpecially in the courts modelled by the rules of the civil law. And theſe interrogatories muſt be exhibited by the parties in ſuit on each ſide; which are either *direct* for the party producing them, or *counter* on behalf of the adverſe party; and generally both plaintiff and defendant may exhibit interrogatories. They are to be pertinent, and only to the points neceſſary, and either drawn or peruſed by counſel and ſigned by them. If the interrogatories are leading, ſuch as to ſay, "Did you not ſee ſuch a thing?" the depoſition thereupon ought not to be admitted; for it ſhould be, "Did you ſee, or did you not ſee?" without leaning to either ſide. The commiſſioners who examine witneſſes upon interrogatories, muſt examine only to one interrogatory at a time; and take what comes from the witneſſes without aſking any impertinent queſtions, or putting down any nugatory anſwers not relating to the interrogatories.

INTESTATE, is when a man dies having made no diſpoſition of his perſonal eſtate by will. In which caſe, by the old law, the king was intitled to ſeize upon his goods, as the general truſtee of the whole kingdom. Afterwards the king, in favour of the church, granted this prerogative to the ordinary; who therefore might ſeize upon the inteſtate's goods, and give, aliene, or ſell them as he pleaſed, and diſpoſe of the money to pious uſes, for the benefit of the ſoul of the deceaſed. Laſtly, the ordinary, by ſpecial acts of parliament, was required to grant adminiſtration

niſtration of the effects of the deceaſed to the widow or next of kin; who ſhall firſt pay the debts of the deceaſed, and then diſtribute the ſurplus amongſt the kindred, in the manner and according to the proportions directed by the 22 & 23 *C.* 2. *c.* 10. commonly called the ſtatute of diſtribution.

INTRUSION, is where a tenant for term of life dieth ſeiſed of certain lands and tenements, and a ſtranger enters thereon, after ſuch death of the tenant, and before any entry of him in remainder or reverſion. This entry and interpoſition of the ſtranger differs from an *abatement*, in that an *abatement* is always to the prejudice of the *heir* or immediate *deviſee*; an *intruſion* is always to the prejudice of him in *remainder* or *reverſion*. The remedy in either of theſe caſes may be by entry of the legal owner, without being put about to bring his action; for the original entry of the wrong doer being unlawful, the law allows this eaſy remedy by the mere entry of him that hath right, provided that he enter without force and violence, and provided that the intruder is living, and conſequently no deſcent caſt, for in caſe of a deſcent, the rightful owner ſhall not enter without bringing his action.

In caſe of intruſion into an eccleſiaſtical benefice, where the intruder gets poſſeſſion, and holds the ſame with force and violence, a writ iſſues to the ſheriff *de vi laica amovenda*; that is, to abate and remove the force; and the writ being returned into the king's bench, the offenders ſhall there be fined, and reſtitution awarded to the party intruded upon.

INVENTORY, is a liſt or ſchedule of all the goods and chattels which a perſon deceaſed died poſſeſſed of, with their value appraiſed by indifferent perſons; which every executor or adminiſtrator ought to exhibit to the ordinary, at ſuch time as he ſhall appoint. And by the eccleſiaſtical law, if an executor or adminiſtrator, without making an inventory, ſhall intermeddle himſelf with the goods of the deceaſed (except in certain caſes, as for the expences of the funeral, and neceſſary preſervation of the goods), he is bound to anſwer to every one of the creditors his whole debt. Alſo, it is ſaid, that every legatee may recover his whole legacy; for in ſuch caſe the law preſumes, that there are ſufficient goods to pay all the legacies, and that the executor doth ſecretly and fraudulently ſubtract the ſame. Whereas, otherwiſe, the executor is preſumed not to have any more goods which were the teſtator's, than are deſcribed in the inventory. And, therefore, if any creditor or legatary doth affirm, that the teſtator had any more goods than are compriſed in the inventory, he muſt prove the ſame; otherwiſe the judge is to give credit to the inventory, being lawfully made. *Swinb.* 228.

And in equity, although the not exhibiting an inventory is not concluſive

concluſive evidence of a ſufficiency of aſſets, yet it is a violent preſumption; and the court always inclines ſtrongly againſt an executor or adminiſtrator; ſince he may at any time relieve himſelf by an inventory, if he finds a deficiency of aſſets. 1 *Vezey.* 75.

But as to the value of the goods upon the appraiſement, it is not concluſive, nor very much regarded at the common law; for if it is too high, it ſhall not be prejudicial to the executor or adminiſtrator; and if it be too low, it ſhall be no advantage to him: but the very value found by the jury, when it comes in queſtion whether the executor hath fully adminiſtered, or hath aſſets or not, is that which is binding. *Wentw. Execut.* 83, 4.

IN VENTRE SA MERE, *in his mother's womb*, is, where a woman is with child at the time of her huſband's death, which child, if born, would be heir to the land of the huſband. And the law hath conſideration of ſuch child, on account of the apparent expectation of his birth. For a deviſe to an infant *in ventre ſa mere* is good by way of future executory deviſe. And where a daughter comes into land by deſcent, the ſon born after ſhall ouſt her and have the land. 3 *Co.* 61.

INVESTITURE, is the giving poſſeſſion of lands by actual ſeiſin. The ancient feudal inveſtiture was, where the vaſſal on the deſcent of lands was admitted in the lord's court, and there received his ſeiſin, in the nature of a renewal of his anceſtor's grant, in the preſence of the reſt of the tenants: but, in after-times, entering on any part of the lands, or other notorious poſſeſſion, was admitted to be equivalent to the formal grant of ſeiſin and inveſtiture. 2 *Black.* 209.

The manner of grant was by words of pure donation, *have given and granted:* which are ſtill the operative words in our modern infeodations or deeds of feoffment. This was perfected by the ceremony of corporal inveſtiture, or open and notorious delivering of poſſeſſion in the preſence of the other vaſſals. *Id.* 53.

But a corporal inveſtiture being ſometimes inconvenient, a ſymbolical delivery of poſſeſſion was in many caſes anciently allowed; by transferring ſomething near at hand, in the preſence of credible witneſſes, which by agreement ſhould ſerve to repreſent the very thing deſigned to be conveyed; and an occupancy of this ſign or ſymbol was permitted as equivalent to the occupancy of the land itſelf. Among the Jews, the ceremony was, a man plucked off his ſhoe and gave it to his neighbour. Among the ancient Goths and Swedes, the witneſſes extended the cloak of the buyer, whilſt the ſeller caſt a clod of the land into it. With our Saxon anceſtors, the delivery of a turf was a neceſſary ſolemnity. And to this day, the conveyance of many of our copyhold eſtates is made from the ſeller to the lord, or his ſteward

ard, by delivery of a rod or verge, and then from the lord to the purchaſer by a re-delivery of the ſame, in the preſence of a jury of tenants. 2 *Black.* 313.

INVOICE, a particular account of merchandize, with its value, cuſtoms, charges, and the like, ſent by a merchant to his factor or correſpondent in another country.

JOCALIA, jewels, or ornaments for women, which they peculiarly call their own property.

JOINDER IN ACTION, is coupling or joining of two in a ſuit or action againſt another. *F. N. B.*

JOINDER IN DEMURRER, is an iſſue joined in matter of law. It confeſſes the fact to be true, as ſtated by the oppoſite party, but denies that, by the law ariſing upon thoſe facts, any injury is done to the plaintiff, or that the defendant has made out a ſufficient excuſe. The oppoſite party avers it to be ſufficient, which is called a joinder in demurrer; and then the parties are at iſſue in point of law. 3 *Black.* 314.

JOINDER OF ISSUE. An iſſue of fact, is where the fact only, and not the law, is diſputed. And when he that denies or traverſes the fact pleaded by his antagoniſt, has tendered the iſſue, thus, "and this he prays may be inquired of by the country," or, "and of this he puts himſelf upon the country," it may be immediately ſubjoined by the other party, "and the ſaid *A. B.* doth the like." Which done, the iſſue is ſaid to be joined; both parties having agreed to reſt the fate of the cauſe upon the truth of the fact in queſtion. 3 *Black.* 315.

JOINT ACTIONS. In perſonal actions, ſeveral wrongs may be joined in one writ; but actions founded upon a tort, and a contract, cannot be joined, for they require different pleas and different proceſs. 1 *Keb.* 847. 1 *Vent.* 336.

JOINTENANTS are, as if a man was ſeiſed of certain lands or tenements, and infeoffeth two, three, or more, to have and to hold to them and their heirs, or leaſes to them for term of their lives, or for the term of another's life, by force of which feoffment or leaſe they are ſeiſed, theſe are jointenants. *Litt. ſect.* 277.

So alſo a jointenancy may be made by fine, recovery, bargain and ſale, releaſe, confirmation, or otherwiſe, except only by deſcent; whereas an eſtate in co-parcenary is always by deſcent, and an eſtate in common is always by ſeveral titles. 1 *Inſt.* 18.

It is the nature of jointenancy, that he who ſurviveth ſhall have the whole. As if there be three jointenants in fee ſimple, and one hath iſſue and dieth; yet they which ſurvive ſhall have the whole tenements, and the iſſue ſhall have nothing. And if the ſecond jointenant hath iſſue and dieth, yet the third which ſurviveth ſhall have the whole tenements to him and his heirs for ever. But otherwiſe it is of coparceners; for if there be

three coparceners, and before any partition made, one of them hath iſſue and dieth, that which belonged to her ſhall deſcend to her iſſue; and if ſhe died without iſſue, that which belonged to her ſhall deſcend to her coheirs, ſo as they ſhall have this by deſcent, and not by ſurvivor, as jointenants ſhall have. *Litt. ſect.* 280.

And ſurvivor holdeth place regularly as well between jointenants of goods and chattels in poſſeſſion, or in right, as jointenants of inheritance or freehold. As if a horſe be given to two, he who ſurviveth ſhall have the horſe only. 1 *Inſt.* 182.

But for the encouragement of huſbandry and trade, it is held that ſtock on a farm, though occupied jointly, and alſo ſtock in a joint undertaking, by way of partnerſhip in trade, ſhall always be conſidered as common, and not as joint property; and there ſhall be no ſurvivorſhip therein. 2 *Black.* 399.

Jointenants muſt have one and the ſame *intereſt*; one jointenant cannot be intitled to one period of duration or quantity of intereſt in lands, and the other to a different; one cannot be tenant for life, and the other for years; one cannot be tenant in fee, and the other tenant in tail. 2 *Black.* 181.

They muſt alſo have an unity of *title*: their eſtate muſt be created by one and the ſame act or grant; it cannot ariſe by deſcent or act of law, but merely by purchaſe or acquiſition by the act of the party. *Ibid.*

There muſt alſo be an unity of *time*: their eſtates muſt be veſted at one and the ſame period, as in caſe of a preſent eſtate made to two perſons, or a remainder in fee after a particular eſtate; in either caſe they are jointenants of this preſent eſtate, or this veſted remainder. *Ibid.*

Alſo there muſt be an unity of *poſſeſſion*; they each of them have the entire poſſeſſion, as well of every parcel, as of the whole. They have not, one of them a ſeiſin of one half or moiety, and the other of the other moiety; neither can one be excluſively ſeiſed of one acre, and his companion of another; but each hath an undivided moiety of the whole, and not the whole of an undivided moiety. 2 *Black.* 182.

So livery of ſeiſin to one is livery of ſeiſin to them both; the entry of one is the entry of them both; rent reſerved to be paid to one, ſhall enure to them both. But by conſtruction of the ſtatute of *Weſtminſter*, 2. *c.* 22. one jointenant may have an action of waſte againſt the other; and by the 4 *An. c.* 16. jointenants may have actions of account againſt each other. 2 *Black.* 182, 3.

Jointenants muſt jointly implead, and be jointly impleaded by others; which property is common to them and coparceners. 1 *Inſt.* 180.

Jointenants may make partition, or one party may by the ſtatute of the 31 *H.* 8. *c.* 1. and 32 *H.* 8. *c.* 32. compel the other to make partition; which muſt be by deed: that is to ſay, all the parties

parties muſt by deed actually convey and aſſure to each other the ſeveral eſtates, which they are to take and enjoy ſeparately 2 *Black.* 324.

And by the 8 & 9 *W.* *c.* 31, an eaſier method of carrying on the proceedings on a writ of partition, of lands held either in jointenancy, parcenary, or tenancy in common is marked out, than had been provided by the common law. 2 *Black.* 189.

If one jointenant alienes and conveys his eſtate to a third perſon, the jointenancy is ſevered, and turned into tenancy in common; though, till partition made, the unity of poſſeſſion continues. But a deviſe of one's ſhare by will is no ſeverance of the joint eſtate: for the will doth not take effect till after the death of the teſtator, and by ſuch death the right of the ſurvivor hath accrued, and is already veſted. 2 *Black.* 185, 6.

A JOINTURE, ſtrictly ſpeaking, ſignifies a joint eſtate, limited to both huſband and wife; but, in common acceptation, it extends alſo to a ſole eſtate, limited to the wife only, and may be thus defined: *viz.* a competent livelihood of freehold for the wife of lands and tenements, to take effect, in profit or poſſeſſion, preſently after the death of the huſband; for the life of the wife at leaſt. 2 *Black.* 137.

By the ſtatute of the 27 *H.* 8. *c.* 10. if a jointure be made to the wife, it is a bar of her dower, ſo as ſhe ſhall not have both jointure and dower. And to the making of a perfect jointure within that ſtatute ſix things are to be obſerved: 1. Her jointure is to take effect preſently after her huſband's deceaſe. 2. It muſt be for the term of her own life, or greater eſtate. 3. It muſt be made to herſelf, and to no other for her. 4. It muſt be made in ſatisfaction of her whole dower, and not of part of her dower. 5. It muſt either be expreſſed or averred to be in ſatisfaction of her dower. 6. It may be made either before or after marriage. 1 *Inſt.* 32.

A jointure hath a great advantage over dower in one reſpect: the jointreſs may enter without any formal proceſs; whereas no ſmall trouble, and a very tedious method of proceeding, is neceſſary to compel a legal aſſignment of dower. 2 *Black.* 139.

Notwithſtanding her dower or jointure, the wife ſhall have all her chattels real, and bonds again, unleſs her huſband altered the property in his life-time: alſo her proportion of chattles real and perſonal, upon an adminiſtration and diſtribution, if the huſband dies inteſtate. 1 *Inſt.* 351.

JOKELET, *yokelet*, a little farm, ſuch as requires a ſmall yoke of oxen to till it.

JOUR, Fr. a day. So *journal*, a day-book, or diary. *Journeyman*, a perſon in trade who works for another by the day.

IPSO FACTO, in the eccleſiaſtical law, is a cenſure of ex-

communication immediately incurred for divers offences: but this is not to be ſo underſtood as to condemn any perſon without a lawful trial; but he muſt firſt be found guilty in the proper court, and then the law gives this judgment.

IRELAND. At the time of the conqueſt of *Ireland* by king *Hen.* 2. the Iriſh were governed by what they called the Brehon law, ſo ſtyled from the Iriſh name of judges, who were denominated Brehons; but king *John*, in the twelfth year of his reign, introduced the Engliſh laws: and the Iriſh method of paſſing acts of parliament was then nearly the ſame as in *England.* But in the tenth year of *Hen.* 7. Sir *Edward Poynings* being then lord deputy, certain ſtatutes were made (which from him were called *Poynings'* laws), one of which enacts, that before any parliament be ſummonedor holden, the chief governor and council of *Ireland* ſhall certify to the king the conſiderations and cauſes thereof, and the articles of the acts propoſed to be paſſed therein; and that after the king in his council of *England* ſhall have conſidered, approved, or altered the ſaid acts or any of them, and certified them back under the great ſeal of *England*, and ſhall have given licence to ſummon and hold a parliament, then the ſame ſhall be ſummoned and held; and therein the ſaid acts ſo certified, and no other, ſhall be propoſed, received, or rejected.—But the uſage now is, that bills are often framed in either houſe, under the denomination of heads for a bill or bills; and in that ſhape they are offered to the conſideration of the lord lieutenant and privy council; who, upon ſuch parliamentary intimation, or otherwiſe upon the application of private perſons, receive and tranſmit ſuch heads, or reject them without any tranſmiſſion, to *England.* 1 *Black.* 99.

Where a debt is contracted in *England*, and a bond is taken for it in *Ireland*, it ſhall carry Iriſh intereſt; for it muſt be conſidered as referable to the place where it is made: but if it were a ſimple contract debt only, it ought to carry Engliſh intereſt, the variation of place in this caſe making no difference. 2 *Atk.* 382.

Juſtices of the peace in *England* may tranſmit a perſon offending againſt the Iriſh law, in order to his being ſent over. *Str.* 848.

ISSUE, is a ſingle, certain, and material point *iſſuing* out of the allegations and pleas of the plaintiff and defendant; conſiſting regularly of an affirmative and negative, to be tried by a jury. 1 *Inſt.* 126.

It is twofold; *general*, and *ſpecial*:

The *general* iſſue is, what traverſes, thwarts, and denies at once the whole declaration, without offering any ſpecial matter whereby to evade it; and it is called the general iſſue, becauſe by importing an abſolute and general denial of what is alleged in the declaration,

claration, it amounts at once to an iſſue; that is, a fact affirmed on one ſide, and denied on the other: as when, to a treſpaſs, the defendant pleads not guilty. 3 *Black.* 305.

Special, is that whereby the defendant doth not wholly deny the charge alleged againſt him, but means to palliate the charge and apprize the court and the oppoſite party of the nature and circumſtances of the defence; as, in aſſault and battery, where the defendant pleads, that the plaintiff ſtruck firſt. *Id.*

But of late, the courts in ſome inſtances, and the legiſlature in many more, have permitted the *general iſſue* to be pleaded, and allowed the *ſpecial* matter to be given in evidence at the trial. *Id.* 305, 6.

A *feigned* iſſue, is that whereby an action is brought for a *feigned* cauſe, by conſent of the parties, to determine ſome diſputed right, without the formality of pleading, and thereby to ſave much time and expence in the deciſion of a cauſe. 3 *Black.* 452.

JUDGMENT, is the ſentence of the law, pronounced by the court, upon the matter contained in the record. And it may be given in the four following reſpects: 1. Upon default; as if the defendant puts in no plea at all to the plaintiff's declaration. 2. By confeſſion; where the defendant acknowledges the action, which is often done by conſent of both parties, with a ſtay of execution till a certain time, to ſave charges, where the action is juſt; as in caſe of an action of debt, it is uſual for a debtor (in order to ſtrengthen a bond creditor's ſecurity) to execute a warrant of attorney to confeſs a judgment; which judgment, when confeſſed, is concluſive. 3. Upon demurrer; as when the defendant in an action of debt pleads a bad plea in bar, and the plaintiff demurs in law upon it, and the court gives judgment for the plaintiff to recover his debt, coſts, and damages. But if it were in an action on the caſe, a writ of inquiry of damages muſt be awarded before judgment on the demurrer. 4. On trial of the iſſue; where the court gives damages without writ of inquiry. *Wood. b.* 4. *c.* 4. 3 *Black.* 397.

And as in an action on the caſe, ſo a judgment in treſpaſs, covenant, or the like, is not a perfect judgment until writ of inquiry of damages taken out and executed upon it, of which notice is to be given to the defendant, and of the time of execution. But in an action of debt, it is a perfect judgment as ſoon as ſigned, and there needs no writ of inquiry. 2 *Lill. Abr.* 105.

Judgments are either *interlocutory* or *final*:

Interlocutory judgments are ſuch as are given in the middle of a cauſe, upon ſome plea, proceeding, or default, which is only intermediate, and doth not finally determine or complete the ſuit; as upon dilatory pleas, where the judgment in many caſes is, that the defendant ſhall anſwer over; that is put in a more ſubſtantial plea. *Id.* 396.

Final judgments are ſuch as at once put an end to the action,

by declaring that the plaintiff hath either intitled himſelf, or hath not, to recover the remedy he ſues for. 3 *Black.* 398.

By the ſtatute of frauds, 29 *C.* 2. *c.* 3. judgments, as againſt purchaſers of lands *bona fide* for valuable conſideration, ſhall relate only to the time they were ſigned, and not (as before the ſaid act) to the firſt day of the term, or the day of the return of the original, or filing the bail; and writs of execution of the defendant's goods ſhall bind the property only from the time that the writ is delivered to the ſheriff; who ſhall, upon receipt of the writ, indorſe the time when he received it.

And for the better diſcovery of judgments in the courts at *Weſtminſter*, there is a particular method of entering the ſame directed by the 4 & 5 *W.* *c.* 20. And no judgment, not ſo entered, ſhall affect any lands or tenements as to purchaſers or mortgagees, or have any preference againſt heirs, executors, or adminiſtrators, in their adminiſtration of their anceſtors, teſtators, or inteſtates eſtates.

The courſe for one to acknowledge a judgment for debt is, for him that doth acknowledge it, to give a general warrant of attorney to any attorney, or to ſome particular attorney of that court where the judgment is to be acknowledged, to appear for him at his ſuit, againſt the party who is to have the judgment acknowledged unto him, and thereupon to confeſs judgment for the ſum demanded, together with coſts of ſuit.

In the *Eaſter* term, 15 *C.* 2. it was ordered by the court of king' bench, that an officer ſhall not take any warrant to confeſs a judgment of any perſon in his cuſtody, unleſs an attorney for the defendant is preſent, and ſubſcribes his name to ſuch warrant. 3 *Salk.* 212.

And, *E.* 4 *G.* 2. the court taking notice of great inconveniences following from holding a warrant to confeſs judgment by one in cuſtody to be good if any attorney (though for the oppoſite party) was preſent, made a rule, that, for the future, there ſhall be an attorney preſent on the behalf of the defendant. *Str.* 902.

An action of covenant brought, and an interlocutory judgment that he ſhall recover; before final judgment, the defendant dies, and his executor confeſſes a judgment to a bond creditor; he may plead this in bar to a *ſcire facias* on the action of covenant. 2 *Atk.* 386.

JUNCARE, to ſtrew ruſhes; as was of old the cuſtom of accommodating churches, and the very bed-chamber of princes.

JUNCARIA, a place where ruſhes grow. 1 *Inſt.* 5.

JURATIS, *jurati*, (jurats,) are in nature of aldermen for the government of many corporations.

JURIDICAL

JURIDICAL DAYS, days in court, on which the law is adminiſtered.

JURISDICTION, is an authority or power which a man hath to do juſtice in cauſes of complaint brought before him. The courts and judges at *Weſtminſter* have juriſdiction all over *England*; and are not reſtrained to any county or place: but all other courts are confined to their partaicular juriſdictions; which, if they exceed, whatever they do is erroneous. 2 *Lill. Abr.* 120.

There are three ſorts of inferior juriſdictions: 1. To *hold pleas*, which is the loweſt, and the party may either ſue there, or in the king's courts. 2. The *cognizance of pleas*; and by this, a right is veſted in the lord of the franchiſe to hold pleas, and he is the only perſon that can take advantage of it, by claiming his franchiſe. 3. An *exempt* juriſdiction; as where the king grants to ſome city, that the inhabitants ſhall be ſued within their city, and not elſewhere. 3 *Salk.* 79.

Inferior juriſdiction cannot be intended, but they muſt be properly ſet out. *Bur. Manſf.* 2244.

On a plea to the juriſdiction, it muſt be ſhewn what other court has juriſdiction. 1 *Vez.* 202.

JURIS UTRUM, is a writ that lies for the ſucceeding incumbent of a benefice, to recover the lands or tenements belonging to the church, which were aliened by his predeceſſor: and it is ſo called, in like manner as moſt of the other writs in the regiſter, from certain words in the writ reſpecting the ſpecial matter for which the writ is brought.

JURORS:

1. *Antiquity of trial by jury.* Trial by jury is the Engliſhman's birthright; and is that happy way of trial, which, notwithſtanding all revolutions of times, hath been continued beyond all memory to this preſent day; the beginning whereof no hiſtory ſpecifies, it being contemporary with the foundation of this ſtate, and one of the pillars of it both as to age and conſequence. *Trial per pais*, 3.

2. *How many to be returned.* Upon a grand jury there may be, and uſually are, more than 12; but if there be twelve aſſenting, though others diſſent, it is not neceſſary for the reſt to agree: but, upon a trial by a petit jury, it can be by no more, nor leſs, than 12, and all aſſenting to the verdict. 2 *Hale's Hiſt.* 161.

3. *By whom to be returned.* Generally, the return of jurors belongs to the office of the ſheriff; but if the ſheriff be not an indifferent perſon, as if he be a party in the ſuit, or be related either by blood or affinity to either of the parties, he is not then truſted to return the jury; but the *venire* ſhall be directed to the coroners of the county. If any exception lies to the coroners, the *venire* ſhall be directed to two clerks of the court, or two perſons of the county named by the court, and ſworn; and theſe two, who are called

called *eliſors*, or electors, ſhall, indifferently, name the jury; and their return is final, no challenge being allowed to their array. 3 *Black.* 354.

4. *Summons.* Every ſummons of jurors ſhall be made by the ſheriff or his officer, ſix days before at leaſt; in *Wales* eight days; and in the counties palatine, fourteen days; ſhewing to the perſon ſummoned, the warrant under ſeal of the office; and if he is abſent, the officer ſhall leave under his hand notice thereof with ſome perſon inhabiting in his dwelling houſe. 7 & 8 *W.* *c.* 32.

5. *Special jury.* Special juries were originally introduced in trials at bar, when the cauſes were of too great nicety for the diſcuſſion of ordinary freeholders, or where the ſheriff was ſuſpected of partiality, though not upon ſuch apparent cauſe as to warrant an exception to him: he is, in ſuch caſes, upon motion in court, and a rule granted thereupon, to attend the prothonotary, or other proper officer, with his freeholders' book, and the officer is to take indifferently 48 of the principal freeholders, in the preſence of the attornies on both ſides; who are each of them to ſtrike out 12, and the remaining 24 are returned upon the panel. By the ſtatute 3 *G.* 2. *c.* 25. either party is intitled, upon motion, to have a ſpecial jury ſtruck upon the trial of any iſſue, as well at the aſſiſes as at bar; he paying the extraordinary expence, unleſs the judge will certify (in purſuance of the ſtatute 24 *G.* 2. *c.* 18.) that the cauſe required ſuch ſpecial jury. 3 *Black.* 357.

6. *Common jury.* A common jury is one returned by the ſheriff, according to the directions of the ſtatute 3 *G.* 2. *c.* 25. which appoints that the ſheriff ſhall not return a ſeparate panel for every ſeparate cauſe, but one and the ſame panel for every cauſe to be tried at the ſame aſſiſes, containing not leſs than 48 jurors, nor more than 72; and that their names, being written on tickets, ſhall be put into a box or glaſs, and when each cauſe is called, 12 of theſe perſons whoſe names ſhall be firſt drawn out of the box, ſhall be ſworn of the jury. *Id.* 358.

7. *Jury of view.* In caſe a view of the place in queſtion ſhall be thought neceſſary by the court, ſix or more of the jurors returned, to be agreed on by the parties, or named by a judge or other proper officer of the court, ſhall be appointed by ſpecial writ of *habeas corpora* or *diſtringas*, to have the matters in queſtion ſhewed to them by two perſons named in the writ; and then ſuch of the jury as have had the view, or ſo many of them as appear, ſhall be ſworn on the inqueſt, previous to any other jurors. 4 *An.* *c.* 16. 3 *G.* 2. *c.* 25.

8. *Challenge.* Challenge of jurors is of two kinds; either to the *array*, by which is meant the whole jury as it ſtands *arrayed* in the *panel*, or little ſquare *pane* of parchment on which the jurors names

names are written; or to the *polls*, by which are meant the ſeveral particular perſons or *heads* of the array. 1 *Inſt.* 156. 158.

Challenge to the *array*, is in reſpect to the bias, partiality, or default of the ſheriff, coroner, or other officer that made the return. If the ſheriff or other officer be of kindred to either party, or if any one or more of the jury be returned at the denomination of either party, this is a good cauſe of challenge to the array. 1 *Inſt.* 156.

Challenge to the *polls*, is in reſpect of particular jurors; as, if ſuch juror be intereſted in the cauſe, if he hath taken money of either party, if he hath been convicted of an infamous offence, and in a variety of other inſtances.

Where the challenge againſt a juror is in reſpect of partiality, the validity thereof ſhall be referred to the determination of *triers*, whoſe office it is to decide whether the juror be favourable or unfavourable. If the challenge be made before any jurors are ſworn, the court ſhall chuſe the triers; if two are ſworn, they ſhall try; and if they try one indifferent, and he be ſworn, then he and the two triers ſhall try another; and if another be tried indifferent and he be ſworn, then the two triers ceaſe, and the two that are ſworn on the jury ſhall try the reſt. The trier's oath is, "You "ſhall well and truly try, whether *A. B.* ſtand indifferent be- "tween the parties to this iſſue: So help you God." 1 *Inſt.* 158. 1 *Salk.* 152.

If the array be challenged, it lies in the diſcretion of the court how it ſhall be tried; ſometimes it is done by two coroners, and ſometimes by two of the jury returned. 2 *Hale's Hiſt.* 275.

A juror may himſelf be examined on oath of *voir dire, (veritatem dicere,)* with regard to ſuch cauſes of challenge as are not to his diſhonour or diſcredit; but not with regard to any crime, or any thing which tends to his diſgrace or diſadvantage. 1 *Inſt.* 158.

In *criminal* caſes, or at leaſt in *capital* ones, a *peremptory* challenge is allowed to the priſoner without ſhewing any cauſe: but this peremptory challenge ſhall not be allowed to the king; for it is provided by the 33 *Ed.* 1. *ſt.* 4. that he who challenges a juror for the king, ſhall ſhew cauſe, and the truth thereof ſhall be inquired into by the court. However, it is held, that the king need not aſſign his cauſe of challenge till all the panel is gone through, and unleſs there cannot be a full jury without the perſons ſo challenged. In caſe of treaſon or felony, the priſoner, by the common law, might peremptorily challenge 35, which was under the number of three juries; and in caſe of treaſon, the law continues ſo ſtill; but in caſe of murder and other felonies, the ſtatute 22 *Hen.* 8. *c.* 23. reduced the number to 20; but if the party challenges above that number, he ſhall not have judgment of death, but his challenge ſhall be over-ruled, and

and he ſhall be put upon his trial. 2 *Haw.* 413. 2 *Hale's Hiſt.* 270.

9. *Tales.* If by means of challenges, or other cauſe, a ſufficient number of unexceptionable jurors doth not appear at the trial, either party may pray a *tales*; that is to ſay, a ſupply of *ſuch* men as are returned on the firſt panel, in order to make up the deficiency. Theſe tales-men (*tales de circumſtantibus*) may be returned of the perſons preſent in court; and, at *niſi prius*, they ſhall be returned out of the other panels returned to ſerve at the ſame aſſiſes. 7 & 8 *W. c.* 32.

10. *Verdict.* After the evidence given upon the iſſue, the jury ought to be kept together, without meat or drink, fire or candle, unleſs by permiſſion of the judge, till they are all unanimouſly agreed: if they eat or drink, or have any eatables about them, without conſent of the court, and before verdict, it is fineable; and if they do ſo at his charge for whom they afterwards find, it will ſet aſide the verdict: alſo, if they ſpeak with either of the parties or their agents, after they are gone from the bar, or if they receive any freſh evidence in private, or if to prevent diſputes they caſt lots for whom they ſhall find; any of theſe circumſtances will intirely vitiate the verdict. 3 *Black.* 375.

After they are agreed, they may, in cauſes between party and party, if the court be riſen, give a *private* verdict to the judge out of court; and then they may eat and drink; and the next morning in open court they may either affirm, or alter, their private verdict, and that which is given in court ſhall ſtand. 1 *Inſt.* 227.

Sometimes, if there ariſes in the caſe any difficult matter of law, the jury will find a *ſpecial* verdict, wherein they ſtate the naked facts as they find them to be proved; concluding, conditionally, that if upon the whole matter the court ſhall be of opinion that the plaintiff had cauſe of action, then they find for the plaintiff; if otherwiſe, then for the defendant. 3 *Black.* 377.

Another method of finding the matter ſpecially, is when the jury find a verdict for the plaintiff, ſubject nevertheleſs to the opinion of the judge, or the court above, on a *ſpecial caſe* ſtated by the counſel on both ſides, with regard to a matter of law; which has this advantage over a ſpecial verdict, that it is attended with much leſs expence, and obtains a ſpeedier deciſion; but it has this diſadvantage, that if either of the parties is diſſatisfied with the judgment of the court or judge upon the point of law, they are precluded hereby from the benefit of a writ of error. 3 *Black.* 378.

But in both theſe inſtances, the jury may, if they think proper, take upon themſelves to determine, at their own hazard, the complicated queſtion of fact and law; and, without either ſpecial verdict, or ſpecial caſe, may find a verdict abſolutely either for the plaintiff or defendant. *Id.*

In *criminal* caſes, which touch life or member, the jury cannot give

give a *private* verdict; but they may give a *special* verdict, if they think fit, setting forth all the circumstances of the case, whether (for instance) on the facts stated, it be murder, manslaughter, or no crime at all. But, if they give a general verdict, and it be apparently wrong, or contrary to the direction of the judge, yet they are not punishable for it by the judge; but the court of king's bench hath sometimes set aside a verdict which found a prisoner guilty, contrary to evidence, and ordered a new trial; but in no case hath a new trial been granted when the prisoner was acquitted.

JUS PATRONATUS, is a commission from the bishop, directed usually to his chancellor and others of competent learning; who are to summon a jury of six clergymen, and six laymen, to inquire into and examine who is the rightful patron of a church. And this is, when the church is become litigious by the presentation of two several patrons of their clerks to avoid church within the six months. In this case, the bishop may, if he pleases, suspend the admitting either the one clerk or the other, and suffer lapse to incur, without awarding a *jus patronatus*; but upon request of either party, patron, or clerk, he must award it: and then, if he admits the clerk according to the verdict found, and certificate of the commissioners, he secures himself from being a disturber, though the right in a *quare impedit* shall be afterwards found for the other. 3 *Black.* 246.

JUSTICES OF THE PEACE, are persons appointed by the king's commission to keep the peace; unto which office is annexed a power to hear and determine offences.

The estate sufficient to qualify a justice of the peace, must be 100*l.* a year, clear of all deductions; of which he must make oath before he acts.

He must also, before he acts, take the oath of office; which is usually done before some persons in the country, by virtue of a *dedimus potestatem* out of chancery.

Sheriffs, coroners, and attorneys, may not act as justices of the peace.

The power, office, and duty of this magistrate, extends to an almost infinite number of instances, specified in some hundreds of acts of parliament, and every year accumulating.

The commission of the peace doth not determine by the death of the king, nor until six months after, unless sooner determined by the successor: but, before his death, the king may determine it, or may put out any particular person; which is most commonly done by a new commission, leaving out such person's names.

JUSTICE-SEAT, is the highest court of the forest, being always holden before the chief justice *in eyre*, or chief itinerant judge, *capitalis justiciarius in itinere*, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchises, liberties, and privileges, and all pleas and causes whatsoever

ſoever therein ariſing. It may alſo proceed to try preſentments made in the inferior courts of the foreſt, and to give judgment upon the convictions that have been made in the ſwainmote courts. It may be held every third year. This court may fine and impriſon, being a court of record; and a writ of error lies to the court of king's bench. 2 *Black.* 72.

JUSTICIES, is a writ directed to the ſheriff to do *juſtice* in a plea of trepſaſs *vi et armis*, or of any ſum above 40*s.* in the county court; of which he hath not cognizance by his ordinary power. It is in the nature of a commiſſion to the ſheriff; and is not returnable. 4 *Inſt.* 266.

JUSTIFICATION, *juſtificatio*, is a maintaining or ſhewing good reaſon in court why one did ſuch a thing which he is called to anſwer. *Broke.*

K I D

KAIAGE, toll money paid for loading or unloading goods at a *key* or wharf.

KALENDAR MONTH, conſiſts of 30 or 31 days, (except *February*, which hath but 28, and in leap-year 29 days,) according to the kalendar; twelve of which months make a year. 16 *C.* 2. *c.* 7. 24 *G.* 2. *c.* 23. 25 *G.* 2. *c.* 30.

KARL, *Sax.* a ſervant or perſon employed in huſbandry. Hence the place where they inhabited was often denominated *Carleton*: ſo *huſcarl*, a houſehold or domeſtic ſervant.

KEELAGE, a privilege to demand money for the bottom of ſhips reſting in a port or harbour.

KIDEL, a dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fiſh. 2 *Inſt.* 38.

KIDNAPPING, is the forcible abduction or ſtealing away of man, woman, or child, from their own country, and ſending them into another; which, by the civil law, was puniſhed with death, and undoubtedly is a very heinous and grievous crime, as it robs the king of his ſubject, baniſhes a man from his country, and may, in its conſequences, be productive of the moſt cruel and diſagreeable hardſhips; and therefore, by our law, is puniſhable by fine, impriſonment, and pillory. And alſo the ſtatute 11 & 12 *W.* *c.* 7. though principally intended againſt pirates, hath a clauſe that extends to prevent the leaving of ſuch perſons abroad, as are thus kidnapped, or ſpirited away; by enacting, that if any captain of a merchant veſſel ſhall (during his being abroad) force

force any perſon on ſhore, or wilfully leave him behind, or refuſe to bring home all ſuch men as he carried out, if able and deſirous to return, he ſhall ſuffer three months impriſonment.

KING. By ſtatute 35 *Hen.* 8. *c.* 3. the king's ſtyle and title were declared to be, "*Henry* the eighth, by the grace of *God*, "king of *England*, *France*, and *Ireland*, defender of the faith, "and of the church of *England*, and alſo of *Ireland*, in earth the "ſupreme head." And the ſame are enacted to be and continue for ever united and annexed to the imperial crown of this realm. Which laſt words [of the church of *England*, and alſo of *Ireland*, in earth the ſupreme head], are what ſeem to be underſtood in the abbreviated ſtyle of the king, as it is now commonly expreſſed, "defender of the faith, *and ſo forth.*"

By one of the acts of ſettlement of the crown at the revolution, 1 *W.* *c.* 6. it is required, that every king or queen who ſhall ſucceed to the imperial crown of this realm, ſhall, at their reſpective coronation, take the following oath, to be adminiſtered by one of the archbiſhops or biſhops.

The archbiſhop ſhall ſay, *Will you ſolemnly promiſe and ſwear, to govern the people of the kingdom of England and the dominions thereunto belonging, according to the ſtatutes in parliament agreed on, and the laws and cuſtoms of the ſame?* The king ſhall ſay, *I ſolemnly promiſe ſo to do.*

Archbiſhop: *Will you, to your power, cauſe law and juſtice in mercy to be executed in all your judgments?* The king ſhall anſwer, *I will.*

Archbiſhop: *Will you, to the utmoſt of your power, maintain the laws of God, the true profeſſion of the goſpel, and proteſtant reformed religion, eſtabliſhed by law? And will you preſerve unto the biſhops and clergy of this realm, and to the churches committed to their charge, all ſuch rights and privileges, as by law do or ſhall appertain to them, or any of them?* The king ſhall anſwer, *All this I promiſe to do.* After this, laying his hand upon the holy goſpels, he ſhall ſay, *The things which I have here before promiſed, I will perform and keep; So help me God:* and ſhall then kiſs the book.

And by 1 *W. ſeſſ.* 2. *c.* 2. Whereas the late king *James* the ſecond, by the aſſiſtance of divers evil counſellors, judges, and miniſters employed by him, did endeavour to ſubvert and extirpate the proteſtant religion, and the laws and liberties of this kingdom;

1. By aſſuming and exerciſing a power of diſpenſing with, and ſuſpending of laws, and the execution of laws, without conſent of parliament:

2. By committing and proſecuting divers worthy prelates, for humbly petitioning to be excuſed from concurring to the ſaid aſſumed power:

3. By iſſuing and cauſing to be executed a commiſſion under the

the great ſeal, for erecting a court called, *The court of commiſſioners for eccleſiaſtical cauſes:*

4. By levying money for, and to the uſe of the crown, by pretence of prerogative, for other time, and in other manner, than the ſame was granted by parliament:

5. By raiſing and keeping a ſtanding army within this kingdom in time of peace, without conſent of parliament, and quartering ſoldiers contrary to law:

6. By cauſing ſeveral good ſubjects, being proteſtants, to be diſarmed, at the ſame time when papiſts were both armed and employed, contrary to law:

7. By violating the freedom of election of members to ſerve in parliament:

8. By proſecutions in the court of king's bench, for matters and cauſes cognizable only in parliament; and by divers other arbitrary and illegal courſes:

9. And whereas of late years, partial, corrupt, and unqualified perſons have been returned and ſerved on juries in trials, and, particularly, divers jurors in trials for high treaſon, which were not freeholders:

10. And exceſſive bail hath been required of perſons committed in criminal caſes, to elude the benefit of the laws made for the liberty of the ſubjects:

11. And exceſſive fines have been impoſed, and illegal and cruel puniſhments inflicted:

12. And ſeveral grants and promiſes made of fines and forfeitures, before any conviction or judgment againſt the perſons upon whom the ſame were to be levied:

All which, are utterly contrary to the known law, ſtatutes, and freedom of this realm:

Therefore, the lords ſpiritual and temporal, and commons, in parliament aſſembled, do, for vindicating their ancient rights and liberties, declare,

1. That the pretended power of ſuſpending laws, or the execution of laws, by regal authority, without conſent of parliament, is illegal.

2. That the pretended power of diſpenſing with laws, or the execution of laws, by regal authority, as it hath been aſſumed and exerciſed of late, is illegal.

3. That the commiſſion for erecting the late court of commiſſioners for eccleſiaſtical cauſes, and all other commiſſions and courts of like nature, are illegal and pernicious.

4. 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.

5. That it is the right of the ſubjects to petition the king; and

and all commitments and profecutions for ſuch petitioning, are illegal.

6. That the raiſing or keeping a ſtanding army within the kingdom in time of peace, unleſs it be with conſent of parliament, is againſt law.

7. That the ſubjects, which are proteſtants, may have arms for their defence, ſuitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That freedom of ſpeech, and debates or pleadings in parliament, ought not to be impeached or queſtioned in any court or place out of parliament.

10. That exceſſive bail ought not to be required, nor exceſſive fines impoſed, nor cruel and unuſual puniſhments inflicted.

11. That jurors ought to be duly impanelled and returned, and jurors which paſs upon men in trials for high treaſon, ought to be freeholders.

12. That all grants and promiſes of fines and forfeitures of particular perſons before conviction, are illegal and void.

13. And that, for redreſs of all grievances, and for the amending, ſtrengthening, and preſerving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and inſiſt upon all and ſingular the premiſes, as their undoubted rights and liberties.

By the articles of the union of the two kingdoms of *England* and *Scotland*, all papiſts, and perſons marrying papiſts, are for ever excluded from the imperial crown of *Great Britain*; and, in ſuch caſe, the crown ſhall deſcend to ſuch perſon being a proteſtant, as ſhould have inherited the ſame, in caſe ſuch papiſt, or perſon marrying a papiſt, were naturally dead. 5 *An. c.* 8.

KING's BENCH, is the ſupreme court of common law in the kingdom; and is ſo called becauſe the king uſed formerly to ſit there in perſon, the ſtyle of the court being ſtill *before the king himſelf*. It conſiſts of a chief juſtice, and three other judges, who are, by their office, the principal coroners and conſervators of the peace. 3 *Black.* 41.

This court keeps all inferior juriſdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progreſs below. It ſuperintends all civil corporations in the kingdom: it commands magiſtrates and others to do what their duty requires, in every caſe where there is no ſpecific remedy: it protects the liberty of the ſubject, by ſpeedy and ſummary interpoſition: it takes cognizance both of criminal and civil cauſes; the former, in what is called the crown ſide or crown office; the latter, in the plea ſide of the court. *Id.* 42.

On the plea ſide, it hath cognizance in all pleas by bill, for debt,

debt, detinue, covenant, account, and of all actions on the case either upon promises, scandalous words, special nusances, trover, and conversion, on penal statutes, and all other personal actions, against any person supposed to be in the custody of the marshal, as every one sued here is supposed to be. *Wood. b.* 4. *c.* 1.

The crown side takes cognizance of all treasons, felonies, misdemeanors tending to the breach of the peace, or oppression of the subject; and of all causes prosecuted by way of indictment, inquisition, or information. Into this office, indictments from all inferior courts may be removed by certiorari. Inquisitions of *felo de se*, and of homicide by misadventure, are certified hither of course. Hence also issue attachments for disobeying rules or orders. *Id.*

It is also a court of appeal; into which may be removed, by writ of error, all determinations of the court of common pleas, and of all inferior courts of record in *England*; and to which a writ of error lies also from the court of king's bench in *Ireland*: and from this court lies an appeal by writ of error into the house of lords, or the court of exchequer chamber, as the case may happen, according to the nature of the suit, and the manner in which it has been prosecuted. 3 *Black.* 43.

KING's SILVER, otherwise called a *post fine*, is a sum of money paid to the king in the court of common pleas, for a licence granted to levy a fine of lands, tenements, or hereditaments; and this must be compounded for at the rate of ten shillings for every five marks of land; that is, three twentieth parts of the supposed annual value.

KNAVE, *Sax.* anciently a servant; as *scildknapa*, the servant who carried the knight's shield; his esquire, or armour bearer.

KNIGHT, is the next personal dignity after the nobility. Of knights there are several orders and degrees: the first in rank of precedence, are knights of the *garter*; instituted by king *Ed.* 3. in the year 1344. Next follows a knight *banneret*, who, by some statutes, is ranked next after barons; and his precedence, before the younger sons of viscounts, was confirmed to him by order of king *James* the first, in the tenth year of his reign: but in order to intitle himself to this rank, he must have been created by the king in person in the field, under the royal banner, in time of open war; otherwise, he ranks after *baronets*, who are next in order of precedency. Next follow knights of the *bath*, instituted by king *Hen.* 4. and revived by king *George* the first: they are so called from the ceremony of *bathing*, the night before their creation. The last order are knights *bachelors*, who though they are the lowest, yet are the most ancient order of knighthood; for we have an instance of king *Alfred's* conferring

ring this order on his ſon *Athelſtan*. 1 *Black.* 403. Theſe are ſometimes called knights of the *chamber*, being ſuch as are made in time of peace, and ſo called becauſe knighted in the king's chamber, and not in the field. 2 *Inſt.* 666.

Knights are in Latin called *equitis aurati: aurati*, from the gilt ſpurs they wore; and *equites*, becauſe they always ſerved on horſeback.

They are alſo in our law called *milites*, becauſe they formed a part, or indeed the whole, of the royal army, in virtue of their feudal tenures. 1 *Black.* 404.

KNIGHT's FEE, was anciently ſo much inheritance in land, as was ſufficient to maintain a knight; which, in the reign of king *Hen.* 2. being eſtimated at 20*l.* a year, may, by the continual decreaſe in the value of money, be now reckoned at about 400*l.* a year. Every man poſſeſſed of ſuch eſtate was obliged to be knighted, and attend the king in his wars, or pay a pecuniary ſum in lieu thereof, called eſcuage.

KNIGHT's SERVICE. Upon the *Norman* conqueſt, all the lands in the kingdom were divided into knight's fees, in number above 60,000. And for every knight's fee, a knight *(miles)*, or ſoldier, was bound to attend the king in his wars for 40 days in a year; in which ſpace of time, before war was reduced to a ſcience, the campaign was generally finiſhed, and a kingdom either conquered or victorious. By this means the king had, without any expence, an army of 60,000 men always ready at his command. If a man held only half a knight's fee, he was only bound to attend 20 days, and ſo in proportion.

This tenure by knight's ſervice drew after it, aids, relief, primer ſeiſin, wardſhip, marriage, fines for alienation, and eſcheat.

But this perſonal ſervice in proceſs of time degenerated into pecuniary commutations or aids; and, at laſt, the military part of the feudal ſyſtem was aboliſhed at the reſtoration, by the ſtatute of 12 *C.* 2. *c.* 24. 1 *Black.* 410. 2 *Black.* 62.

KNIGHTS HOSPITALLERS, were an order of knights that had their name from an *hoſpital* erected at *Jeruſalem*, for the uſe of pilgrims coming to the holy land, and dedicated to *St. John Baptiſt*. They were afterwards called *knights of St. John of Jeruſalem*. Their firſt buſineſs was to provide for and protect ſuch pilgrims as came to that hoſpital. Afterwards, being driven out of the holy land, they ſettled chiefly at *Rhodes*; and were there called *knights of Rhodes*; and, after the loſs of *Rhodes*, they came to *Malta*, where they now reſide, and are therefore called *knights of Malta*. Divers of them came into *England* in the year 1100; and in proceſs of time, they obtained ſo great wealth, and honours, and exemptions, that their ſuperior was

the firſt lay baron, and had a ſeat amongſt the lords in parliament.

KNIGHTS OF THE SHIRE, were ſo called becauſe anciently they were to be real knights; and ſtill the form of the writ runs, that they be knights girt with the ſword. But now by ſeveral ſtatutes, notable eſquires may be choſen; and their qualification is to be determined according to the value of the eſtate, which is not to be leſs than 600*l.* a year.

KNIGHTS OF THE THISTLE, are an order of knights in *Scotland*; who wear a green ribbon over their ſhoulders, and are otherwiſe honourably diſtinguiſhed.

KNIGHTS TEMPLARS, were inſtituted in the year 1118, and were ſo called from having their firſt reſidence in ſome apartments adjoining to the *temple* at *Jeruſalem*. Their employment was to guard the roads for the ſecurity of pilgrims in the holy land. They came into *England* pretty early in the reign of king *Stephen*; and increaſed ſo much in wealth, that they were thought dangerous, and too powerful: and in the year 1312, that order was diſſolved.

L A C

LABEL, is a narrow ſlip of paper or parchment, affixed to a deed or writing hanging at or out of the ſame; and an appending ſeal is called a label. And in heraldry it is the badge of the eldeſt houſe or branch of a family.

LABOUR, is the foundation of property. *Bodily labour*, beſtowed upon any ſubject which before lay in common to all men, is univerſally allowed to give the faireſt and moſt reaſonable title to an excluſive property therein. 2 *Black.* 5.

LACE. By 3 *G.* 3. *c.* 21. & 5 *G.* 3. *c.* 48. no perſon ſhall import any lace, not made in *Great Britain*, on pain of 200*l.*, and forfeiture of the ſame, which may be ſeiſed by the officers of the cuſtoms; and perſons in whoſe cuſtody the ſame ſhall be found, or who ſhall ſell or expoſe the ſame to ſale, or conceal with intent to prevent the forfeiture thereof, ſhall be ſubject to the like penalty. And by 19 *G.* 3. *c.* 49. diſputes between maſters and their workmen in the bone and thread lace manufacture, may be determined by one juſtice of the peace.

LACHES, from the French *laſcher*, *laxare*, or *laſche*, *ignavus*, idle; in our law ſignifies ſlackneſs, or negligence: and probably it may be an old Engliſh word; for when we ſay there is *laches* of

of entry, it is all one as if it were ſaid, there is a *lack* of entry; and in this ſignification it is uſed in 1 *Inſt.* 146. *Litt. ſ.* 136.

In the king there can be no laches or negligence, and therefore no delay will bar his right. 1 *Black.* 247.

No laches ſhall be adjudged in the heir within age; and regularly laches ſhall not bar either infants, or femes covert, for not entry or claim, to avoid deſcents: but laches ſhall be accounted in them for non-performance of a condition annexed to the ſtate of the land. 1 *Inſt.* 146.

LAGA, *Sax.* law: ſo *laghday*, a law day, or day when the courts are open. *Lageman*, a lawful man, as ſpoken of a juryman, or witneſs.

LAGAN, is where goods are *lying* or ſunk in the ſea, and tied to a cork or buoy in order to be found again.

LAIRWITE, *lecherwite*, *legergeldum*, from *lecher* a whoremaſter, and *wite*, or *geld*, a tribute, was a fine anciently inflicted in the temporal courts for fornication or adultery, and paid to the king, or to the lord of the manor if recovered of his tenants in the court baron.

LAND, in legal ſignification, comprehends any ground, ſoil, or earth whatſoever; as meadows, paſtures, woods, moors, waters, marſhes, furze, and heath: it includes alſo meſſuages (that is, houſes), tofts (that is, places where houſes once ſtood), mills, caſtles, and other buildings; for in conveying the land, the buildings paſs with it. 1 *Inſt.* 4.

Water is conſidered under the notion of land, in reſpect only of the land that lies underneath it; and may be ſued for under that name, as ſo many acres of land covered with water. 2 *Black.* 18.

Land hath an indefinite extent, upwards as well as downwards. *Cujus eſt ſolum, ejus eſt uſque ad cœlum*, is the maxim of the law, upwards; therefore no man may erect any building or the like, to overhang another's land: and downwards, whatever is in a direct line between the ſurface of any land, and the center of the earth, belongs to the owner of the ſurface, as is every day's experience in the mining countries. So that the word *land* includes not only the face of the earth, but every thing under it, or over it. *Id.*

LANDLORD and tenant. See DISTRESS.

LAND TAX hath ſucceeded into the place of the ancient fifteenths and ſubſidies; and the annual land tax acts are framed in many reſpects after the manner of the ancient ſubſidy acts.

We meet with the payment of *fifteenths* as far back as the ſtatute of *magna charta*; in the concluſion whereof, the parliament grants to the king, for the conceſſions by him therein made, a fifteenth part of all their moveable goods.

This taxation was originally ſet upon the ſeveral *individuals*. Afterwards, to wit, in the eighth year of *Edward* the third, a certain ſum was rated upon every town, by commiſſioners appointed in the chancery for that purpoſe, in like manner as commiſſioners are now appointed by the ſeveral land tax acts for carrying the ſaid acts into execution; which commiſſioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was recorded in the exchequer; and the inhabitants rated themſelves proportionably for their ſeveral parts, to make up the general ſum upon the whole townſhip. This fifteenth amounted in the whole to 29,000*l.* or near thereabouts.

But as the neceſſities of government multiplied, and the values of things increaſed, this fifteenth was inſufficient for the occaſions of the public; and thereupon the number of fifteenths was augmented to two or three fifteenths. Which ſtill proving defective, another and quite different taxation was ſuperadded, namely, the *ſubſidy*; which was an aid to be levied of every ſubject of his lands or goods, after the rate of 4*s.* in the pound for lands, and 2*s.* 8*d.* for goods. And, accordingly in the ancient ſubſidy acts, there is firſt a grant of ſo many *fifteenths*, and then the grant of a *ſubſidy*.

Theſe *fifteenths* were certain, as hath been ſaid, from the time of the eighth of *Edward* the third; but the *ſubſidy* was uncertain, and amounted anciently to about 70,000*l.*; and a ſubſidy of the clergy at the ſame time (including the monaſteries) was 20,000*l.* In the 8 *Eliz.* a ſubſidy amounted to 120,000*l.* In the 40 *Eliz.* it was not above 78,000*l.* Afterwards it fell to 70,000*l.*; and by reaſon of a looſe and uncertain way of aſſeſſing the ſame, kept continually decreaſing, until the parliament found it neceſſary to change the method of taxation; and, in the time of the long parliament, certain ſums were fixed upon the ſeveral counties; which courſe of taxation ſtill continues.

LAPSE, *lapſus*, is a ſlip or departure of the right of preſenting to a void benefice, from the original patron neglecting to preſent within ſix months next after the avoidance. Whence it is commonly ſaid that ſuch benefice is in lapſe, or lapſed, whereunto he that ought to preſent hath omitted or ſlipped his opportunity. And, in ſuch caſe, the patronage doth devolve from the patron to the biſhop, from the biſhop to the archbiſhop, and from the archbiſhop to the king.

The term or ſpace in which title by lapſe accrues ſucceſſively is ſix months; which being of eccleſiaſtical cognizance, is to be computed, by the kalendar, at one half year, and not accounting twenty-eight days to the month; and the day on which the church becomes void, is not to be taken into the account. 2 *Inſt.* 360.

If

If the biſhop be both patron and ordinary, he ſhall not have a double time allowed him to collate in: and if, upon lapſe, the biſhop doth not immediately collate his clerk, and the patron preſents, though after the ſix months are lapſed, yet his preſentation is good, and the biſhop is bound to inſtitute the patron's clerk. So if the biſhop ſuffers the preſentation to lapſe to the archbiſhop, the patron has the ſame advantage, if he preſents before the archbiſhop hath filled up the benefice. 2 *Black.* 277.

If the benefice becomes void by death, or ceſſion through plurality of benefices, the patron is bound to take notice at his peril; for theſe are matters of equal notoriety to the patron and ordinary: but in caſe of a vacancy by reſignation, or canonical deprivation, or if a clerk preſented be refuſed for inſufficiency, theſe being matters of which the biſhop alone is preſumed to be cognizant, here the law requires him to give notice thereof to the patron, otherwiſe he cannot take advantage of the lapſe. 2 *Black.* 278.

There is no lapſe from the king; and therefore if the king neglect to fill up the vacancy, there is no remedy but by the ordinary ſequeſtring the profits of the church, and appointing a clerk to ſerve the cure. *Gibſ.* 770.

A donative doth not go in lapſe; but the ordinary may compel the patron by eccleſiaſtical cenſures to fill up the vacancy. But if the donative hath been augmented by the governors of queen *Anne*'s bounty, it will lapſe in like manner as preſentative livings.

LAPSED LEGACY, is where the legatee dies before the teſtator; or where a legacy is given upon a future contingency, and the legatee dies before the contingency happens. As if a legacy be given to a perſon when he attains the age of twenty-one years, and the legatee dies before that age; in this caſe, the legacy is a loſt or lapſed legacy, and ſhall ſink into the reſiduum of the perſonal eſtate. 2 *Black.* 513.

LARCENY, *latrocinium*, is the felonious and fraudulent taking away of the perſonal goods of another; which goods, if they are above the value of 12*d.* it is called *grand* larceny; if of that value, or under, it is *petit* larceny: which two ſpecies are diſtinguiſhed in their puniſhment, but not otherwiſe. 4 *Black.* 229.

To make the offence felony, there muſt be a *felonious intention*; and therefore it ſhall not be imputed to a mere miſtake or miſanimadverſion; as where a perſon breaks open a door, in order to execute a warrant, which will not juſtify ſuch a proceeding, for in ſuch caſe, there is no felonious intention; for it is the mind that makes the taking of another's goods to be felony, or a bare treſpaſs only. The moſt common diſcovery of a felonious intent, is where the party doth it ſecretly, or being charged with the fact, denies it: but this is not the only criterion of

criminality; for in cases that may amount to larceny, the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to recount all those which may evidence a felonious intent; therefore they must be left to the due and attentive consideration of the court and jury. 1 *H. H.* 509.

And as there must be a felonious intention, so also there must be an actual *taking*; for all felony includes trespass: from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. And from this ground it hath been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them, is no felon; and much more one who has the actual possession of my goods by my delivery for a special purpose, as a carrier who receives them in order to carry them to a certain place; or a taylor who has them in order to make me a suit of cloaths; or a friend who is intrusted with them to keep for my use: these cannot be said to steal them by embezzling them afterwards. But if a carrier opens a pack, and takes out part of the goods, or a weaver who has received yarn to work, or a miller who has corn to grind, take out part thereof with intent to steal it, it is felony. 1 *Haw.* 89.

And there must be not only a *taking*, but also a *carrying away*. But to make it come within this description, any the least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off. And upon this ground, the guest, who having taken off the sheets 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 adjudged guilty of larceny: so also was he, who having taking an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. 1 *Haw.* 93.

Also this felonious taking and carrying away must be of the *personal* goods of another. For if they savour any thing of the realty, it cannot be larceny by the common law: and therefore they ought not to be any way annexed to the freehold: therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold; as wood cut, grass in cocks, stones dug out of the quarry, and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw.* 93. But by special statutes, many things belonging to the freehold, being not merely personal goods, are brought within the offence of larceny, and made felony without benefit of clergy.

The law which fixes the boundary between grand and petty larceny, making it capital to steal above the value of 12*d.* is as ancient

ancient as the reign of king *Edward* the firſt, at which time the ſum of 12*d.* in ſilver, was equal to 3*s.* of our preſent money weight, and equal to 40*s.* or more, in the value of any thing to be purchaſed by it. And therefore, juries are uſually inſtructed by the court to find the value, not according to the ſtrict nominal value as it is with us at this day, but reaſonably according to the ancient ſtandard.

LARDARIUM, the larder or place where the lard or meat were kept. The tenants of ſeveral manors were bound to carry ſalt or other proviſions from the place where they were purchaſed to the lord's larder. And *lardarium* ſeems to have been a rent paid by way of commuting for the ſaid ſervice. *Lardarius regis*, was the king's larderer, or clerk of the kitchen.

LASTAGE, a cuſtom or duty for goods in a market or fair, ſold by the *laſt*; as corn, wool, herrings, and ſuch like.

LATHE, *leda*, *leth*, (Sax. *læthe*,) is a large part of a county, being an intermediate diviſion between a ſhire and an hundred, containing (as in *Kent*) about three or four hundreds. In ſome of the ancient grants of immunities, was freedom from ſuit to the county, læth, and hundred courts; which *læth* court is probably no other than what is now, with a very little variation, called the *court leet*.

LATITAT, is a writ whereby a man is originally called to anſwer in a perſonal action in the king's bench; having its name upon a ſuppoſition that the defendant doth lurk and *lie hid*, and cannot be found in the county of *Middleſex* (in which the ſaid court is holden), to be taken there, but is gone into ſome other county, and therefore requiring the ſheriff to apprehend him in ſuch other county. *F. N. B.* 78.

LATROCINUM. An immunity *de latrocino* was a privilege of non-attendance at the courts which had ſole juriſdiction of robbery within ſuch diſtrict.

LAVATORIUM, a laundry or place to waſh in; applied to ſuch a place in the porch or entrance of cathedral churches, where the prieſts and other officiating members were to waſh their hands, before they proceed to the divine ſervice.

LAUNDE, a *lawn*, or open field without wood.

LAW, in its moſt general and comprehenſive ſenſe, ſignifies a rule of action; and is applied indiſcriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we ſay, the laws of motion, of gravitation, of optics, or mechanics, as well as the law of nature and of nations. And it is a rule of action, which is preſcribed by ſome ſuperior, and which the inferior is bound to obey. 1 *Black.* 38.

LAWING of dogs, is the cutting off the claws of the fore-feet of dogs in the king's foreſts, to prevent them from courſing and taking the deer.

LAW PROCEEDINGS of all kinds, are to be in the Engliſh language, 4 *G.* 2. *c.* 26. 5 *G.* 2. *c.* 27. Except known abbreviations and technical terms. 6 *G.* 2. *c.* 14.

LAW SPIRITUAL, *lex ſpiritualis*, is the *eccleſiaſtical* law, allowed by our laws where it is not againſt the common law, nor the ſtatutes and cuſtoms of the kingdom; and, regularly, according to ſuch eccleſiaſtical or ſpiritual laws, the biſhops, and other eccleſiaſtical judges, proceed in cauſes within their cognizance. *Co. Litt.* 344.

LAWYER, is a counſellor, or one learned in the law.

LAZARET, a place appointed wherein quarantine is to be performed by veſſels and perſons coming from infected countries.

LEASES.

1. *Of leaſes in general, by the common law.*
2. *Of leaſes of bodies corporate and others, by ſtatute.*

1. *Of leaſes in general, by the common law.*

1. A leaſe is properly a conveyance of any lands or tenements, (uſually in conſideration of rent, or other annual recompence,) made for life, for years, or at will; but always for a leſs time than the leſſor hath in the premiſes: for if it be for the whole intereſt, it is more properly an aſſignment than a leaſe. 2 *Black.* 317.

2. In all leaſes there muſt be a leſſor and leſſee. He that demiſes or lets to farm, is the leſſor (vulgarly called the landlord); and he unto whom it is demiſed or let, is the leſſee, commonly called the tenant. *Wood. b.* 2. *c.* 3.

3. By the ſtatute of frauds, 29 *C.* 2. *c.* 3. all intereſts of freehold, or terms for years, not put in writing, and ſigned by the parties or their agents authorized in writing, ſhall have no greater effect than as eſtates at will; except leaſes not exceeding three years from the making; whereof the rent reſerved ſhall be two thirds of the value of the thing demiſed.

4. The words to make a leaſe are; *demiſe, grant, and to farm let.* 1 *Inſt.* 45.

5. Regularly, in every leaſe for years, the term muſt have a certain beginning, and a certain end. But although there appear no certainty of years in the leaſe, yet if by reference it may be made certain, it ſufficeth: as if *A.* leaſe his land to *B.* for ſo many years as *B.* hath in the manor of *Dale*, and *B.* hath then a term in the manor of *Dale* for ten years; this is a good leaſe by *A.* to *B.* of the land of *A.* for ten years. *Ibid.*

So if a man make a leaſe for twenty-one years, if ſuch an one ſo long live, this is a good leaſe for years, although the life is uncertain. *Ibid.*

But if a parſon make a leaſe of his glebe, for ſo many years as he ſhall be parſon there, this cannot be made certain by any means;

means: for nothing is more uncertain than the time of death. But if he make a leaſe for three years, and ſo from three years to three years, ſo long as he ſhall be parſon, this is a good leaſe for ſix years, if he continue parſon ſo long; firſt for three years, and after that for three years, and for the reſidue uncertain. *Ibid.*

6. If a leaſe be made, bearing date (for inſtance) the 26th of *May*, to have and to hold for twenty-one years from the *date*, or from the *day* of the date, it ſhall begin on the 27th day of *May*: but if it be to have and to hold from the making thereof, or from *thenceforth*, it ſhallbegin on the day on which it is delivered; for the words of the leaſe are not of any effect till the delivery. 1 *Inſt.* 46.

So if the habendum be for the term of twenty-one years, without mentioning when it ſhall begin, it ſhall begin from the delivery, for there the words take effect. *Ibid.*

If the indenture of leaſe bear a date which is impoſſible, as on the 30th of *February*; if in this caſe the term be limited to begin from the date, it ſhall begin from the delivery, as if there had been no date at all. *Ibid.*

7. If a man reſerve a rent generally, without ſhewing to whom it ſhall go, the ſame ſhall go to his heirs, becauſe they have the reverſion. 1 *Inſt.* 47.

Yea, if he reſerve a rent to him and his *executors*, yet his executors ſhall not have it, but it ſhall end by his death; for the rent is incident to the reverſion. *Ibid.*

So if the rent be reſerved to the leſſor, his heirs and aſſigns, then ſhall all the aſſigns of the reverſion enjoy the ſame. *Ibid.*

8. In a leaſe for years, there needs no livery of ſeiſin to be made to the leſſee; but he may enter when he will by force of the ſame leaſe. But in a leaſe for life, whereby a freehold paſſeth, there muſt be livery of ſeiſin. *Litt. ſ.* 59.

2. *Of leaſes of bodies corporate and others, by ſtatute.*

By the common law, many perſons might make leaſes for years, or for life or lives, at their will and pleaſure, which now cannot make them firm in law. And ſome perſons may now make leaſes for years, or for life or lives, (obſerving due incidents), firm and good in law, which by the common law they could not do. And this, by virtue of divers acts of parliament, one of which is called the *enabling*, and the reſt *diſabling*, or reſtrictive, ſtatutes. 1 *Inſt.* 44.

Before theſe ſtatutes, biſhops, with confirmation of the dean and chapter, maſter and fellows of any college, deans and chapter, maſter or guardian of any hoſpital and his brethren, parſon or vicar, with conſent of the patron and ordinary, archdeacon, prebendary, or any other body politic, ſpiritual and eccleſiaſtical,

cal, obſerving the proper requiſites, might have made leaſes for lives or years, without limitation or ſtint. And ſo might they have made gifts in tail, or eſtates in fee, at their will and pleaſure; whereupon great decay of divine ſervice and other inconveniences enſued; and therefore they were diſabled and reſtrained by the ſaid acts to make any ſuch eſtate or conveyance. But there are excepted out of the ſaid acts, leaſes for three lives or twenty-one years, under divers proviſions and limitations. For at this day, there are three kinds of perſons who may make leaſes for three lives or twenty-one years, viz. Firſt, any perſon ſeiſed of an eſtate tail in his own right. Secondly, any perſon ſeiſed of an eſtate in fee ſimple, in right of his church. Thirdly, any huſband and wife ſeiſed of any eſtate of inheritance in fee ſimple in the wife's right, or jointly with her. *Ibid.*

All theſe are made good by the ſtatute of 32 *H.* 8. *c.* 28. which enableth them thereunto, and is therefore called the *enabling* ſtatute. But to the making good of ſuch leaſes by the ſaid ſtatute, ſeveral things are neceſſarily to be obſerved: As, 1. The leaſe muſt be by indenture; and not by deed poll, or by parol. 2. It muſt begin from the making, or day of the making, and not at any greater diſtance of time. 3. If there be any old leaſe in being, it muſt be firſt abſolutely ſurrendered, or be within a year of expiring. 4. It muſt be either for twenty-one years, or three lives; and not for both. 5. It muſt not exceed the term of three lives, or twenty-one years, but may be for a ſhorter term. 6. It muſt be of lands and tenements moſt commonly letten for twenty years laſt paſt; ſo that if they have been let for above half the time (as eleven years out of the twenty), either for life, for years, at will, or by copy of court roll, it is ſufficient. 7. The moſt uſual and cuſtomary rent, for twenty years paſt, muſt be reſerved yearly on ſuch leaſe. 8. Such leaſes muſt not be made without impeachment of waſte. 2 *Black.* 319.

But a parſon and vicar are excepted out of this ſtatute, and therefore as to this matter they continue as they were before; and, conſequently, if either of them make a leaſe for three lives, or twenty-one years, it muſt alſo be confirmed by patron and ordinary. 1 *Inſt.* 44.

Next follows the *diſabling* ſtatute, 1 *El. c.* 19. (made for the benefit of the ſucceſſor,) which enacts, that all grants, by archbiſhops and biſhops (including even thoſe confirmed by the dean and chapter), other than for the term of twenty-one years or three lives from the making, or without reſerving the uſual rent, ſhall be void. But concurrent leaſes, if confirmed by the dean and chapter, are held to be valid within this ſtatute provided they do not exceed (together with the leaſe in being) the term permitted by the act. 2 *Black.* 320.

Next comes the ſtatute 13 *El. c.* 10. explained and enforced by

by the 14 *El. c.* 11. & 14. 18 *El. c.* 11. and 43 *El. c.* 29. which extend the reſtrictions laid by the 1 *El. c.* 19. on biſhops, to certain other inferior corporations, both ſole and aggregate. From laying all which together, we may collect, that all colleges, cathedrals, and other eccleſiaſtical or eleemoſynary corporations, and all parſons and vicars, are reſtrained from making any leaſes of their lands, unleſs under the following regulations: 1. They muſt not exceed twenty-one years, or three lives, from the making. 2. The cuſtomary rent, or more, muſt be yearly reſerved thereon. 3. Houſes in corporations, or market towns, may be let for forty years, provided the leſſee be bound to keep them in repair. 4. Where there is an old leaſe in being, no concurrent leaſe ſhall be made, unleſs where the old one will expire within three years. 5. No leaſe ſhall be made without impeachment of waſte. *Ibid.*

Concerning theſe reſtrictive ſtatutes, there are two obſervations to be made. Firſt, that they do not, by any conſtruction, enable any perſons to make ſuch leaſes as they were by common law diſabled to make: therefore, a parſon or vicar, though he is reſtrained from making longer leaſes than for twenty-one years, or three lives, even *with* the conſent of patron and ordinary, yet is not enabled to make any leaſe at all, ſo as to bind his ſucceſſor, *without* obtaining ſuch conſent. Secondly, that though leaſes contrary to theſe acts are declared void, yet they are good againſt the *leſſor* during his life, if he be a ſole corporation; and are alſo good againſt an aggregate corporation ſo long as the head of it lives, who is preſumed to be the moſt concerned in intereſt; for the act was intended for the benefit of the ſucceſſor only; and no man ſhall make an advantage of his own wrong. *Ibid.*

With regard to college leaſes, by the 18 *El. c.* 6. one third of the old rent ſhall be reſerved in wheat at 6*s.* 8*d.* a quarter, or malt at 5*s.*; or the leſſees ſhall pay for the ſame according to the price that wheat and malt ſhall be ſold for, in the market next adjoining to the reſpective colleges, on the market day before the rent becomes due.

By ſeveral ſtatutes, if any beneficed clergyman be abſent from his cure above eighty days in any one year, all leaſes made by him of the profits of ſuch benefice ſhall be void except in the caſe of licenſed pluraliſts, who may demiſe the living on which they are non-reſident to their curates only. 2 *Black.* 322.

LEASE AND RELEASE, is a conveyance of right or intereſt in lands or tenements, which in law amounts to a feoffment. 1 *Inſt.* 207.

It was invented to ſupply the place of livery of ſeiſin, and is thus contrived: A *leaſe*, or rather bargain and ſale, upon ſome pecuniary conſideration, for one year, is made by the tenant of the freehold to the leſſee or purchaſer, which veſts in the ſaid purcha-

ſer

ſer the uſe of the term for a year; and then the ſtatute of uſes, 27 *H.* 8. *c.* 10. immediately transfers the uſes into poſſeſſion. He, therefore, being thus in poſſeſſion, is capable of receiving a *releaſe* of the freehold and reverſion; and, accordingly, the next day, a releaſe is granted to him. 2 *Black.* 339.

In the leaſe for a year, or any ſuch term, there muſt be the words *bargain and ſell* for money; and five ſhillings, or any other ſum, though never paid, is a good conſideration, whereupon the leſſee or bargainee is immediately in poſſeſſion without actual entry. If only the words *demiſe*, *grant*, *and to farm let*, are uſed, in that caſe the leſſee cannot accept a releaſe of the inheritance, until he hath actually entered, and is in poſſeſſion. 2 *Lill. Abr.* 435.

LEATHER. By ſeveral ſtatutes, regulations are made for the tanning and manufacturing of leather; and by the 27 *G.* 3. *c.* 13. a duty is laid upon all hides and ſkins imported, and drawbacks allowed on the exportation thereof. And alſo ſeveral duties are impoſed on hides and ſkins tanned in *Great Britain*, of what kind ſoever, as ſet forth in ſchedules annexed to the ſaid act. And by the 28 *G.* 3. *c.* 37. further regulations are made reſpecting the ſaid duties, which are to be under the management of the officers of exciſe.

LECHERWITE, *lairwite*, a fine on *lechers*; that is, on fornicators, or adulterers; which was anciently aſſeſſed in the temporal courts, and paid to the king.

LECTURERS, in ſeveral churches in *London* and other places, are appointed as aſſiſtants to the rectors or vicars. They are commonly choſen by the veſtry, or chief inhabitants, and are uſually the afternoon preachers. There are alſo one or more lecturers in moſt of the cathedral churches; and many lectureſhips have likewiſe been founded by the donation of private perſons.

By the act of uniformity, 13 & 14 *C.* 2. *c.* 4. lecturers are to be licenſed by the ordinary; and every lecturer, upon the firſt lecture day in every month, ſhall, before his lecture, read the common prayers and ſervice for that day, on pain of being diſabled: and if he ſhall preach any lecture during ſuch diſability, he ſhall ſuffer three months impriſonment in the common gaol.

LEET (*leth*, *læthe*, *lathe*,) is of *Saxon* original, and ſeemeth to be no other than the court of the *lathe*, as the county court is that of the *county*. For in ancient times, the counties were ſubdivided into lathes, rapes, wapentakes, hundreds and the like. And the ſheriff twice a year performed his *tourn*, or perambulation, for the execution of juſtice throughout the county. Afterwards, this power of holding courts was granted to divers great men within certain diſtricts. And from hence theſe courts, holden within particular parts of the county, have deſcended

unto

unto us without variation, under the name of the *leet*, *leth*, or *lathe* courts.

The court leet is a court of record, having the ſame juriſdiction within a particular precinct, which the ſheriff's tourn hath in the county.

For the leet, or view of frankpledge, was by the king, for the eaſe of the people, divided and derived from the tourn; who did grant to the lords, to have the view of the tenants and reſiants within their manors, ſo as that they ſhould have the ſame juſtice that they had before in the tourn, done unto them at their own doors, without any charge or loſs of time. 2 *Inſt.* 71.

The intention hereof for keeping the king's peace was, that every freeman at his age of twelve years, (except peers, clergymen, and tenants in ancient demeſne,) ſhould in the leet, if he were in any leet, take the oath of allegiance to the king; and that pledges or ſureties ſhould be found for his truth to the king, and to all his people, or elſe to be kept in priſon. *Id.* 73.

It is not neceſſary, that a juryman in the leet ſhould have any qualification by eſtate, but any perſon happening to be preſent, or riding by the place where it is holden, may, for want of jurors, be compelled by the ſteward to be ſworn. 2 *Haw.* 69.

The conſtables of common right are to be choſen and ſworn in the leet or tourn. *Id.* 62.

A court leet is ſo far intruſted with the keeping of the peace within its own precinct, that the ſteward of it may by recognizance bind any perſon to the peace who ſhall make an affray in his preſence, ſitting the court; or may commit him to ward, either for want of ſureties, or by way of puniſhment, without demanding any ſureties of him, in which caſe he may afterwards impoſe a fine according to his diſcretion. 2 *Haw.* 4.

This court hath cognizance of a great number of offences, both by the common law, and by ſtatute; as, for inſtance, tippling in alehouſes; aſſaults, whereby bloodſhed enſues; bakers; common barators; bawdy houſes; deſtroyers of ancient boundaries; brewers; butchers; eſtrays, waifs, and treaſure trove; hedge breakers; neglectors of hue and cry; innholders; millers; common nuiſances; want of ſtocks and common pound; neglecting watch and ward; and many others by particular ſtatutes. *Wood. b.* 4. *c.* 1.

The lord of the leet ought to have a pillory and tumbrel; and for want thereof, he may be fined and his liberty ſeiſed. But the ſtocks are to be provided at the charge of the town. *Id.*

The lord of common right may diſtrain for a fine or amercement in the leet, and may ſell the diſtreſs, but he cannot impriſon for it; and this is the only court that can fine and not impriſon. *Id.*

The jurors in the leet may receive indictments of felony, but they

they cannot hear and determine them, but muſt ſend them to the gaol delivery, if the offenders be in cuſtody; or remove them by certiorari into the king's bench, that proceſs may be made upon them to outlawry. 2 *Hale's Hiſt.* 71.

But the buſineſs of the leet hath declined for many years, and is now moſtly devolved on the quarter ſeſſions.

LEGACY.

1. *Legacy, what.*
2. *Lapſed legacy.*
3. *Legacy, how recoverable.*
4. *In what caſe to bear intereſt.*
5. *Abatement on deficiency of aſſets.*
6. *Payment to a feme covert.*
7. *Child's legacy in the hands of the parent.*

1. *Legacy, what.* A legacy is a bequeſt or gift of goods and chattels by teſtament; and the perſon to whom it is given is ſtyled the *legatee*, or ſometimes the *legatary*. There is alſo a *reſiduary legatee*, who is the perſon to whom the ſurplus or *reſidue* of the eſtate is given, after payment of the debts and particular legacies.

2. *Lapſed legacy.* If the legatee dies before the teſtator, the legacy is a loſt or lapſed legacy, and ſhall ſink into the reſiduum; inſomuch, that if the teſtator by his will bequeath his lands and tenements to a perſon *and his heirs*, yet if ſuch perſon die before the teſtator, his *heirs* ſhall not recover the land, becauſe the deviſee was not in being when the will ſhould take effect. *Swin.* 35. 560.

If the legatary *ſurvive* the teſtator, and die before the legacy becomes due, the legacy ſhall lapſe or not lapſe according to the ſpecial deſignation by the words of the will. If the legacy be given to one generally, *to be paid* or *payable* at the age of twenty-one, or any other age, this is ſuch an intereſt veſted in the legatee, that his executor or adminiſtrator may ſue for and recover it; for it is *debitum in præſenti*, though *ſolvendum in futuro*, the time being annexed to the payment, and not to the legacy itſelf: ſo if the legacy be made to carry *intereſt*, though the words, *to be paid*, or *payable*, be omitted, it ſhall be an intereſt veſted. But if a legacy be given to one *at* twenty-one, or *if* or *when* he ſhall attain the age of twenty-one, and the legatee dies before he attains that age, the legacy is lapſed. So where the legacy is to ariſe out of a real eſtate; this ſhall not go to the repreſentative of the legatee, but ſhall ſink in the inheritance for the benefit of the heir, as much as if it was a portion provided by a marriage ſettlement. *Law of Te.* 242.

3. *Legacy, how recoverable.* The legatary may not take the goods without the executor's conſent; for it may be, the executor hath not aſſets beſides to pay the teſtator's debts. But in caſe of a deviſe

deviſe of lands, the deviſee may enter without the aſſent of the executor; and if the heir at law ſhall enter before him, the deviſee may enter and eject him. 1 *Inſt.* 111.

An action at law doth not lie againſt an executor for a legacy, unleſs he promiſe to pay it upon good conſideration; for legacies are only to be recovered in the ſpiritual court, or in the courts of equity. *T. L.*

But if the legacy is payable out of the *land*, or out of the *profits* of the land, an *action on the caſe* lies at common law. *Sid.* 443. *Salk.* 223. And a legatee may maintain an action of debt at common law againſt the *owner* of the *land*, out of which the legacy is to be paid; and ſince the ſtatute of wills gives him a right, by conſequence he ſhall have an action at law to recover it. 2 *Salk.* 415.

4. *In what caſe to bear intereſt.* Where a legacy is bequeathed to be paid divers years after the teſtator's death, this difference is to be obſerved: if the day were given in favour of the legatee, being an infant, who could not ſafely receive it any ſooner, then he ſhall have the profit; but if the reſpite was in favour of the executor, then the legatee ſhall have the bare legacy without intereſt. *Wentw. Exec.* 352.

More particularly, 1. If one gives a legacy charged upon land, which yields rents and profits, and there is no time of payment mentioned in the will, the legacy ſhall carry intereſt from the teſtator's death, becauſe the land yields profits from that time. 2. But if a legacy be given out of a perſonal eſtate, and no time of payment mentioned in the will, this legacy ſhall carry intereſt only from a year after the death of the teſtator. 3. If a legacy be given, charged upon a dry reverſion, it ſhall carry intereſt only from a year after the death of the teſtator, a year being a convenient time for ſale. 4. If a legacy be given out of a perſonal eſtate, conſiſting of mortgages carrying intereſt, or of ſtocks yielding profits half yearly; it ſeems in this caſe the legacy ſhall carry intereſt from the death of the teſtator. 5. If a legacy be paid into court, and the legatee hath notice of it, ſo that it is his fault not to pray to have the money, or that the money ſhould be put out, the legatee in ſuch caſe ſhall loſe the intereſt from the time that the money was brought into court; but if the money was put out, the legatee ſhall have the intereſt, which the money put out by the court did yield. 2 *P. Will.* 26.

5. *Abatement on deficiency of aſſets.* In caſe of a deficiency of aſſets, all the general legatees muſt abate proportionably, in order to pay the debts; but a ſpecific legatee (of a piece of plate, a horſe, or the like) is not to abate at all, or allow any thing by way of abatement, unleſs there be not ſufficient without it. In like manner, if the legatees have been paid their legacies, they are afterwards bound to refund a rateable part, in caſe debts come in,

in, more than ſufficient to exhauſt the reſiduum after the legacies paid. 2 *Black.* 513.

But if the executor had at firſt enough to pay all the legacies, and afterwards, by his waſting the aſſets, occaſions a deficiency, the legatee who has recovered his legacy, ſhall have the advantage of his legal diligence, which the other legatees neglected by not bringing their ſuit in time. *Id.*

6. *Payment to a feme covert.* A legacy bequeathed to a feme covert to her ſole and ſeparate uſe is good, and may be paid to her excluſive of her huſband; but if it be bequeathed to her generally, the huſband ſhall have it; and if paid to her, the executor ſhall pay it over again. 1 *Vern.* 261.

7. *Child's legacy in the hands of the parent.* A legacy in the hands of the father, given to his children by a relation or other perſon, ſhall not be diminiſhed by the father, becauſe he is obliged to maintain his own children. 3 *Atk.* 399.

By divers late ſtatutes, certain ſtamp duties are impoſed on receipts for legacies, which vary in proportion to the amount of the legacies.

LEGATE, the pope's nuncio or ambaſſador; of whom there are three kinds: 1. *Legati a latere;* thoſe are cardinals, ſent by the pope *a latere;* that is, from his own immediate preſence. 2. *Legati nati,* legates born; and of this kind was anciently the archbiſhop of *Canterbury,* who had a perpetual legatine power annexed to his archbiſhopric. 3. *Legati dati,* legates given; and theſe are ſuch as have authority from the pope by ſpecial commiſſion.

LEGITIME, was the legal portion of the wife and children out of the huſband's or father's effects, which he could not deviſe from them by will, nor the ordinary diſtribute in caſe of inteſtacy, nothing remaining for the will or adminiſtration to operate upon, but what was called the *death's* (or deadman's) paſt.

LETTER. By ſtatute 9 *G. c.* 22. and 27 *G.* 2. *c.* 15. if any perſon ſhall ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, veniſon, or other valuable thing, or threatening to kill or murder any of his majeſty's ſubjects, or to burn their houſes, outhouſes, barns, ſtacks of corn or grain, hay or ſtraw, he ſhall be guilty of felony without benefit of clergy.

And by 30 *G.* 2. *c.* 24. all perſons who ſhall ſend or deliver any letter or writing, with or without a name ſubſcribed thereto, or ſigned with a fictitious name, threatening to accuſe any perſon of any crime puniſhable by law with death, tranſportation, pillory, or any other infamous puniſhment, with intent to extort from him any money or other goods, ſhall be puniſhed at the diſcretion of the court, by fine and impriſonment, pillory, whipping, or tranſportation for ſeven years.

LETTER

LETTER OF ATTORNEY, is a writing of any perſon authoriſing another in his *turn* or ſtead to do any lawful act; as, to give ſeiſin of lands, receive debts, or ſuch like.

LETTER OF CREDIT, is where a merchant or correſpondent writes a letter to another, requeſting him to credit the bearer with a certain ſum of money.

LETTER OF LICENCE, is an inſtrument or writing made by creditors to a man that has failed in his trade, allowing him longer time for the payment of his debts, and protecting him from arreſts in going about his affairs; giving him leave to reſort freely to his creditors, or to any others, and to compound debts, and ſuch like.

LETTER OF MARQUE, is an authority given to make repriſals for reparation of depredations committed by the ſubjects of a foreign ſtate.

LETTERS CLOSE, *literæ clauſæ*, cloſe letters, are grants of the king, ſpecially diſtinguiſhed from *letters patent*, in that the letters cloſe, being not of public concern, but directed to particular perſons, are cloſed up and ſealed; whereas the letters patent, or open letters, being directed to all the king's ſubjects in general, are not ſealed up, but left open for public inſpection.

LETTERS PATENT, or grants of the king, are matter of public record; for no freehold may be given to the king, nor derived from him, but by matter of record. And to this end, a variety of offices are erected, communicating in a regular ſubordination one with another, through which all the king's grants muſt paſs, and be tranſcribed and enrolled, that the ſame may be narrowly inſpected by his officers, who will inform him if any thing contained therein is improper or unlawful to be granted. Theſe grants, whether of lands, honours, liberties, franchiſes, or any thing beſides, are contained in *charters* or *letters patent*; that is, open letters, *literæ patentes*; ſo called, becauſe they are not ſealed up, but expoſed to open view, with the great ſeal pendant at the bottom; and are uſually directed or addreſſed by the king to all his ſubjects at large. And therein they differ from certain other letters of the king, ſealed alſo with his great ſeal, but directed to particular perſons, and for particular purpoſes; which, therefore, not being proper for public inſpection, are *cloſed* up and ſealed on the outſide, and are thereupon called writs *cloſe*, *literæ clauſæ*; and are recorded in the *cloſe rolls*, in the ſame manner as the others are in the *patent rolls*. 2 *Black.* 346.

Grants or letters patent muſt firſt paſs by *bill*, which is prepared by the attorney and ſolicitor general, in conſequence of a warrant from the crown, and is then ſigned, that is, ſuperſcribed at the top, with the king's own *ſign manual*, and ſealed with his *privy ſignet*, which is always in the cuſtody of the principal ſecretary of ſtate; and then ſometimes it immediately paſſes under

the great seal, in which case the patent is subscribed in these words, *per ipsum regem*, by the king himself; otherwise the course is, to carry an extract of the bill to the keeper of the *privy seal*, who makes out a writ or warrant thereupon to the chancery, so that the sign manual is the warrant to the privy seal; and the privy seal is the warrant to the great seal: and, in this last case, the patent is subscribed *per breve de privato sigillo*, by writ of privy seal. *Id.*

But there are some grants which only pass through certain offices, as the admiralty or treasury, in consequence of a *sign manual*, without the confirmation of either the *signet*, the *great*, or the *privy* seal. *Id.* 347.

LEVANT AND COUCHANT, (*levantes et cubantes*,) is where cattle have been so long upon the ground, as they may have had time to lie down and rise up to feed; which, in general, is held to be one night at least. 3 *Black.* 9.

LEVARI FACIAS, is a writ of execution, directed to the sheriff, commanding him to *levy* the plaintiff's debt on the lands and goods of the defendant, whereby the sheriff may seise all his goods, and receive the rents and profits of his lands, till satisfaction be made to the plaintiff. 3 *Black.* 417.

But of this writ little use is now made; the remedy by a writ of *elegit*, which takes possession of the lands themselves, being much more effectual. *Id.*

LEVITICAL DEGREES, are degrees of kindred within which persons are prohibited to marry; as set forth in the eighteenth chapter of *Leviticus*.

LEVY, *levare*, to raise, as to levy money, to levy a fine, so to erect a fence, to set up hay in cocks (*levare fœnum*.)

LEWDNESS, is properly punishable in the ecclesiastical court; yet the offence of keeping a bawdy house comes also under the cognizance of the temporal law, as a common nusance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 3 *Inst.* 205. 1 *Haw.* 196.

And in general, all open lewdness grosly scandalous, is punishable upon indictment at the common law. 1 *Haw.* 7.

And offenders of this kind are punishable not only by fine and imprisonment, but also by such infamous punishment as to the court in discretion shall seem proper. 1 *Haw.* 196.

In ancient times, the king's courts, and especially the leets, had power to inquire of and punish fornication and adultery; and it appeareth often in the book of Domesday, that the king had the fines assessed for those offences which were assessed in the king's courts, and could not be inflicted in the court christian. 2 *Inst.* 488.

And

And these fines were called *lecherwite*, *legerwite*, or *legergeldum*; *wite* and *gelt*, or *geld*, in the *Saxon*, signify a tribute, fine, or amerciament; and *leger* importeth a bed, from *liggan* to lie down, which in divers parts of *England* is still pronounced *ligg*: and these again, as also the Gothic *ligan*, the German *ligen*, the Danish *ligge*, the Belgic *liggen*, and the Latin *lectus*, (to shew the cognation of the languages of *Europe*, and of the western *Asia*,) from the Greek word λεχος; and this again from the Hebrew or Chaldee *lachath*, or *lecheth*, which signify to lie down; as *lachan*, or *lechen*, in the same languages, expresseth a harlot or concubine; unto which fountain may also be referred our Anglo-Saxon word *lecher* (wherein the Saxons pronounced the *ch* hard, as the letter κ); as also the Latin *leccator*; and the Greek word λεχω, which denotes a woman in child-bed.

LEY, Fr. law: so also, in many places, it signifies land *laid* down from arable to meadow or pasture. So the termination *ley*, *lee*, *lay*, at the end of the name of a place, signifies an open field of meadow or pasture; as *Woolsley*, *Bletchingley*, *Overlay*.

LIBEL, *libellus famosus*, is a malicious defamation of any person, and especially a magistrate, made public either by printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule. The direct tendency of these libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. 4 *Black.* 150.

The communication of a libel to any one person, is a *publication* of it in the eye of the law; and, therefore, the sending an abusive private letter to a man is as much a libel as if it were openly printed; for it equally tends to a breach of the peace. *Id.*

The *punishment* of a libel is either by *indictment* at the suit of the king, or by *action* on the case by the party injured, in order to obtain a satisfaction in damages.

The *judgment* upon an indictment is, fine, and such corporal punishment as the court in its discretion shall inflict; regarding the quantity of the offence, and the quality of the offender: and in this case, it matters not whether the facts charged in the indictment be true or false; for in a settled state of government, the party grieved ought to complain for any injury done to him in the ordinary course of law, and not by any means to revenge himself either by libeling or otherwise: and therefore, the defendant, on an indictment for publishing a libel, is not allowed to allege the truth of it by way of justification; but in the remedy by action on the case, which is to repair the party in damages for the injury sustained, the defendant may, as in case of an action for slander, justify the truth of the facts; for if the

charge be true, the plaintiff has received no private injury, and hath no ground to demand a compenſation for himſelf, whatever offence it may be againſt the public peace; and therefore, upon a civil proſecution, the truth of the accuſation may be pleaded in bar of the action. 5 *Co.* 125. 4 *Black.* 150.

LIBEL IN THE ECCLESIASTICAL COURT, is the declaration or charge drawn up in writing, on the part of the plaintiff; unto which the defendant is obliged to anſwer.

LIBERAM LEGEM. In the ancient trial by battel, if either party became recreant, or yielded and ſubmitted, he was condemned to loſe his *liberam legem*; that is, to become infamous, and not be accounted *liber et legalis homo*, and never after to be put upon a jury, or admitted as a witneſs in any cauſe. 3 *Black.* 340.

LIBERTIES AND FRANCHISES: Theſe are ſynonymous terms, and their definition is a royal privilege, or branch of the king's prerogative, ſubſiſting in the hands of a ſubject. The kinds of them are various, and almoſt infinite. 2 *Black.* 37.

LIBERTY, is a privilege held by grant or preſcription, by which men enjoy ſome benefit beyond the ordinary ſubject. But in a more general ſignification, it is ſaid to be "a power of doing whatever the laws permit." In a ſtate of nature, liberty conſiſts in a power of acting as one thinks fit, without any reſtraint or controul, unleſs by the law of nature. But man, when he enters into ſociety, finds it neceſſary to ſubmit to divers reſtrictions and regulations of his natural liberty, for the ſake of mutual aſſiſtance and defence. And theſe reſtrictions and regulations are called human laws; the obedience whereunto is infinitely more deſirable than that wild and ſavage liberty which is ſacrificed to obtain them. Political or civil liberty, therefore, is no other than natural liberty, ſo far reſtrained by human laws (and no farther) as is neceſſary and expedient for the general advantage of the public. Hence we may collect, that the law, which reſtrains a man from doing miſchief to his fellow-citizens, though it diminiſhes the natural, increaſes the civil liberty of mankind. But every wanton and cauſeleſs reſtraint of the will of the ſubject, whether practiſed by a monarch, a nobility, or a popular aſſembly, are a degree of tyranny, and deſtructive of liberty. In this kingdom, the idea and practice of political liberty hath been carried to very high perfection, and can only be loſt or deſtroyed by the folly or demerits of thoſe who are in poſſeſſion of it; the legiſlature, and of courſe the laws of *England*, being peculiarly adapted to the preſervation of this ineſtimable bleſſing, even in the meaneſt ſubject. Very different from the modern conſtitutions of other ſtates on the continent of *Europe*; and from the general genius of the imperial law, which in general are calculated to veſt an arbitrary and deſpotic

deſpotic power of controlling the actions of the ſubject, in the prince, or in a few grandees. And this ſpirit of liberty is ſo deeply implanted in our conſtitution, and rooted even in our very ſoil, that a ſlave, or a negro, the very moment he lands in *England*, falls under the protection of the laws, and ſo far becomes a freeman; though the maſter's right to his ſervice may poſſibly ſtill continue.

The abſolute rights of every Engliſhman (which, taken in a political and extenſive ſenſe, are uſually called their liberties), as they are founded on nature and reaſon, ſo they are co-eval with our form of government, though ſubject at times to fluctuate and change, their eſtabliſhment (excellent as it is) being ſtill human. At ſome times, we have ſeen them depreſſed by overbearing and tyrannical princes; at others, ſo luxuriant as to tend even to anarchy, which is a worſe ſtate than tyranny itſelf. But the vigour of our free conſtitution hath always delivered the nation from theſe embarraſſments: and, as ſoon as the convulſions conſequent on the ſtruggle have been over, the balance of our rights and liberties hath ſettled to its proper level; and their fundamental articles have been from time to time aſſerted in parliament, as often as they were thought to be in danger.

Firſt, by the great charter of liberties, which was obtained, ſword in hand, from king *John*, and afterwards, with ſome alterations, confirmed in parliament by his ſon king *Henry* the third; which charter contained very few new grants; but, as *Sir Edward Coke* obſerves, was for the moſt part declaratory of the principal grounds of the fundamental laws of *England*. Afterwards, by the ſtatute called *confirmatio chartarum*, whereby the great charter is directed to be allowed as the common law; all judgments contrary to it are declared void; and ſentence of excommunication to be denounced againſt all that by word, deed, or counſel, act contrary thereto, or in any degree infringe it. Next, by a multitude of ſubſequent corroboratory ſtatutes (*Sir Edward Coke* reckons 32) from *Ed.* 1. to *Hen.* 4. Then, after a long interval, by the *petition of right*, which was a parliamentary declaration of the liberties of the people, aſſented to by king *Charles* the firſt in the beginning of his reign; which was cloſely followed by the ſtill more ample conceſſions made by that unhappy prince to his parliament, before the fatal rupture between them; and by the many ſalutary laws, particularly the *habeas corpus* act, paſſed under *Charles* the ſecond. To theſe ſucceeded the *bill of rights*, or declaration delivered by the lords and commons to the prince and princeſs of *Orange*, *Feb.* 13, 1688, and afterwards enacted in parliament, when they became king and queen; which declaration concludes in theſe remarkable words; "and they do claim, demand, and "inſiſt upon all and ſingular the premiſes, as their undoubted

"rights and liberties." And the act of parliament itself recognizes them to be the true, ancient, and indubitable rights of the people of this kingdom. Lastly, these liberties were again asserted at the commencement of the present century in the *act of settlement*, whereby the crown was limited to his present majesty's illustrious house, and some new provisions added for the better securing our religion, laws, and liberties; which the statute declares to be "the birth-right of the people of *England*, according to the ancient doctrine of the common law." 1 *Black.* 125.

LIBRATE, a quantity of land, containing four bovates or oxgangs; which oxgangs were as much as one yoke of oxen could reasonably cultivate in one year.

LICENCE, is a power or authority given to a man to do some lawful act; and is a personal liberty to the party to whom given, which cannot be transferred over, unless it be made to a man and his assigns. 12 *Hen.* 7. 25.

There may be a parol license, as well as by deed in writing; but if it be not for a certain time, it passes no interest. 2 *Nelf. Abr.* 1123. And if there be no certain time in the licence, as if a man license another to dig clay in his land, but doth not say for how long, the licence may be countermanded; though if it be until such a time, it cannot. *Poph.* 151.

LICENTIA CONCORDANDI, is that licence for which the king's silver is paid on passing a fine.

LICENTIA SURGENDI, is a liberty or space of time given by the court to a *tenant*, to *arise* out of his bed who is essoined upon account of sickness *(de mala recti)* in a real action; and it is also the writ whereby the tenant obtaineth this liberty. And the law in this case is, that the tenant may not arise or go out of his chamber, until he hath been viewed by knights thereto appointed, and hath a day assigned him to appear: the reason whereof is, that it may be known whether he caused himself to be essoined deceitfully or not; and if the demandant can prove that he was seen abroad before the view or licence of the court, he shall be taken to be deceitfully essoined, and to have made default *Bract. b.* 5. *Fleta. b.* 6. *c.* 10.

LIEN, is a French word used in our law, and signifies *binding*. A *personal* lien is a bond or covenant which affects the *person*: a *real* lien binds the lands; as a judgment, statute, or recognizance.

LIEU, *locus*, place; as where one thing is done in lieu, or in the place or stead of another. So *lieu conus (cognitus)* is a place known and certain. *Lieutenant*, *(locum tenens,)* a deputy, or one that supplies the place of another.

LIFE ESTATES:

1. Estates for life are of two kinds; either such as are created by the act of the parties, as by deed or grant; or such as are

are created by operation of law, as eſtates by curteſy or dower. 2 *Black.* 120.

Eſtates for life, created by deed or grant, are where a leaſe is made of lands or tenements to a man, to hold for the term of his own life, or for that of any other perſon, or for more lives than one; in any of which caſes, he is ſtyled tenant for life; only, when he holds the eſtate by the life of another, he is uſually called tenant *pur auter vie;* that is, for another's life. *Ibid.*

2. Eſtates for life may be created, not only by the expreſs words before mentioned, but alſo by a general grant, without defining or limiting any ſpecific eſtate. As if one grants to *A.* the manor of *Dale*, this makes him tenant for life. For though, as there are no words of inheritance, or heirs, mentioned in the grant, it cannot be conſtrued to be a fee; it ſhall however be conſtrued to be as large an eſtate, as the words of the donation will bear, and therefore an eſtate for life. Alſo, ſuch a grant at large, or a grant for term of life generally, ſhall be conſtrued to be an eſtate for the life of the grantee, in caſe the grantor hath authority to make ſuch grant; for an eſtate for a man's own life is more beneficial, and of a higher nature, than for the life of any other; and the rule of law is, that all grants are to be taken moſt ſtrongly againſt the grantor, unleſs in the caſe of the king. 2 *Black.* 121.

3. A *deviſe* of an eſtate to one, without ſaying *and to his heirs*, ſhall be underſtood to be an eſtate in fee, if a ſum of money is to be paid out of it; otherwiſe it may happen, that it ſhall be a prejudice to the deviſee, for he may die before he ſhall be reimburſed out of the eſtate: but otherwiſe it is, if the charge be made payable only out of the annual profits; for then he ſhall not pay any thing until he hath received it. *Bur. Manſf.* 1623.

A deviſe of lands to one for life, and to the heirs of his body, unites the two eſtates, ſo as to make the firſt taker tenant in tail But where it is to one for life, and after his death, to the iſſue of his body, there is no inſtance where it hath been ſo conſtrued. 2 *Atk.* 265. 444.

4. Eſtates for life will, generally ſpeaking, endure as long as the life for which they are granted: but there are ſome eſtates for life which may determine upon future contingencies before the life, for which they are created, expires; as if an eſtate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in theſe, and ſuch like caſes, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the reſpective eſtates are abſolutely determined and gone: yet, while they ſubſiſt, they are reckoned eſtates for life; becauſe, the time for which they will

will endure being uncertain, they may by poſſibility laſt for life, if the contingencies upon which they are to determine do not ſooner happen. 2 *Black.* 121.

5. The incidents to an eſtate for life are principally the following; which are applicable not only to that ſpecies of tenants for life, which are expreſsly created by deed, but alſo to thoſe which are created by act and operation of law:

(1.) To every tenant for life, the law, as incident to his eſtate, without proviſion of the party, gives three kinds of eſtovers, viz. houſebote, that is, wood for building and fuel; ploughbote, for huſbandry; and haybote, for hedging. And theſe eſtovers muſt be reaſonable. Theſe the leſſee may take upon the land demiſed, without any aſſignment, unleſs he be reſtrained by ſpecial covenant. 1 *Inſt.* 41.

(2.) Tenant for life ſhall not be prejudiced by any ſudden determination of his eſtate; becauſe ſuch determination is contingent and uncertain: therefore, if a tenant for his own life ſows the land, and dies before harveſt, his executors ſhall have the emblements or profits of the crop; for the eſtate was determined by the act of *God*. So if a man be tenant for the life of another, which other perſon dies after the corn is ſown, the tenant for life ſhall have the crop. But if an eſtate for life be determined by the tenant's own act, as by forfeiture for waſte committed, or where a tenant holds during widowhood, and marries again; in theſe, and ſimilar caſes, the tenants having thus determined the eſtate by their own acts, ſhall not be intitled to receive the crop. This doctrine of emblements extends not only to corn ſown, but to roots planted, or other annual artificial profit. 2 *Black.* 122.

(3). The under-tenant or leſſee of an eſtate for life ſhall have the ſame indulgence as his leſſor; and, in caſes where the leſſor determines the eſtate by his own act, yet the leſſee ſhall not be prejudiced thereby: as in the caſe of a woman that holds during her widowhood, her taking huſband is her own act, and therefore deprives her of the crop; but if ſhe leaſes her eſtate to an under-tenant, who ſows the land, and ſhe then marries, this, her act, ſhall not deprive the tenant of his crop, who is a ſtranger, and could not prevent her. 2 *Black.* 123.

(4.) The leſſees of tenants for life had at the common law one unreaſonable advantage; for, at the death of their leſſors, the tenants for life, theſe under-tenants might, if they pleaſed, quit the premiſes, and pay no rent to any body for the occupation of the land ſince the laſt rent day: to remedy which, it is enacted by the 11 *G.* 2. *c.* 19. that the executors or adminiſtrators of tenant for life, on whoſe death any leaſe determined, ſhall recover of the leſſee a rateable proportion of rent, from the laſt day of payment to the death of ſuch leſſor.

(5.) Te-

(5.) Tenant for life is obliged to keep down the intereſt. The whole eſtate indeed is liable in reſpect of creditors; but between tenant for life, and him in reverſion, the tenant for life is only obliged. 3 *Atk.* 201. 1 *Vez.* 93.

If the principal ſhall be diſcharged, then the tenant for life ſhall pay one third thereof, and the reverſioner the other two thirds. 3 *Atk.* 201.

LIGAN, is where mariners, in danger of ſhipwreck, caſt goods out of the ſhip; and becauſe they know they are heavy and ſink, *tie* them to a cork or buoy, that they may find and have them again. Theſe, ſo long as they continue upon the ſea, are under the juriſdiction of the admiralty; if caſt away upon the land, they are under the juriſdiction of the common law, under the denomination of wreck.

LIGHTS. Stopping lights of an houſe is a nuſance for which an action will lie, if the houſe is an ancient houſe, and the lights ancient lights. But ſtopping a proſpect is not; being only a matter of delight, and not of neceſſity. 3 *Salk.* 247.

LIGNAGIUM, the right which a man has to the cutting of fuel in woods; and ſometimes it is taken for a tribute, or payment due for the ſame.

LIMITATION OF ACTIONS:

1. By the 32 *H.* 8. *c.* 2. "No perſon ſhall ſue or maintain "any writ of right, or make any preſcription, title, or claim, to "or for any manors, lands, tenements, rents, annuities, com- "mons, penſions, portions, corodies, or other hereditaments, of "the poſſeſſion of his anceſtor or predeceſſor, or declare any "further ſeiſin or poſſeſſion thereof, but only within ſixty years "next before." *ſ.* 1.

Writ of right.] In every complete title to lands, two things are neceſſary, the *poſſeſſion* and the *right*. Where the *poſſeſſion* is ſevered from the *right*, the law anciently provided this *writ of right*; which in its nature is the higheſt writ in the law, and lieth only of an eſtate in fee ſimple, and not for him who hath a leſs eſtate. 3 *Blackſt.* 176.

Where a perſon that hath *no right* hath taken poſſeſſion of lands, the law hath provided that the legal owner may *enter* upon him without any formal proceſs. But if the intruder had made an *alienation* of the land, or it had *deſcended* to his heir, in that caſe the legal owner could not enter upon him, but was driven to his *writ of entry* to gain poſſeſſion; becauſe, until the contrary be proved, the law will rather preſume the right to be in the heir whoſe anceſtor died ſeiſed, than in one who has no ſuch preſumptive evidence to urge in his own behalf. But after there had been more than *two deſcents*, or *two conveyances*, the legal owner, though he had both the right of *poſſeſſion* and of *property*, was not allowed this poſſeſſory action of a *writ of entry*, but

but was driven to his WRIT OF RIGHT, a long and tedious remedy, to punish his neglect in not sooner putting in his claim; for after so long an acquiescence, the law presumes, either that the disseisor had a good right originally, or since his entry hath procured a sufficient title, and therefore will not suffer him to be disturbed without inquiring into the absolute right of *property*. And by this statute of limitation, the said claim is restricted to the term of sixty years; so that the possession of lands in fee simple uninterruptedly for sixty years, is an absolute title against all the world. 3 *Blackst.* 196.

But this kind of action by *writ of right*, as also the possessory actions by *writ of entry*, *assise*, *formedon*, and the like, although indeed they are not so absolutely antiquated as to be out of force, yet they are nearly out of use; there being but very few instances, for more than a century now last past, of prosecuting any real action for land by any of this kind of writs. The forms are indeed preserved in the practice of common recoveries; but they are forms, and nothing else; and the title of lands is now usually tried upon actions of *ejectment* or *trespass*. 3 *Blackst.* 197.

By the 1 *Mar. sess.* 2. *c.* 5. the aforesaid statute of 32 *H.* 8. *c.* 2. shall not extend to any *writ of right of advowson*, *quare impedit*, *assise of darrein presentment*, or *jure patronatus*. And the reason is, because it may happen that the title to an advowson may not come in question, nor the right have opportunity to be tried within sixty years.

Also the statute extends not to a demand for *tithes*; for that these are not of the nature of those demands intended to be barred by the statutes of limitation. 15 *Fin.* 107.

In like manner, the said statute doth not extend to *services*, which, by common possibility, may not happen or become due within sixty years, as to cover the hall of the lord, or to attend on him when he goeth to war, or the like; nor to a rent created by deed, nor to a rent reserved upon any particular estate, for in the one case the deed is the title, and in the other the reservation. 1 *Inst.* 115. a.

With respect to the *king*; by the 21 *J. c.* 2. & 9 *G.* 3. *c.* 16. the king shall not claim or demand any right or title in any manors, lands, or other hereditaments, (other than liberties and franchises,) by reason of any title accrued within sixty years next before commencing the action; but the subject may hold the same against all grants, suggestions of concealment, or other defective title. But this not to bar any remainder or reversion in the crown.

2. By the said statute of 32 *H.* 8. *c.* 2. "No person shall sue "or maintain any *assise of mort-ancestor*, *cosinage*, *ayel*, *writ of en-* "*try*, or other possessory action real, of the seisin of his ances-

"tors,

"tors, in lands; and either of their seisin, or his own, in rents, "suits, and services; but only within fifty years next before." *Bl. B.* 3. *c.* 10.

Assise of mort-ancestor, cosinage, ayel.] The word *assise* is derived from the Latin *assideo*, to sit together; and it signifies originally, the jury who try the cause, and sit together for that purpose. A *writ of assise*, is a real action for recovering the possession of lands, and differeth in nothing from a *writ of entry*, save only, that a writ of entry *disproves* the title of the defendant, by shewing the unlawful commencement of his possession; and an assise *proves* the title of the plaintiff merely by shewing his or his ancestor's possession.

The remedy by *writ of assise* is applicable to two species of injury by dispossession, *viz. abatement*, and *novel disseisin*. *Abatement*, is where a person dies seised, and before the heir or devisee enters, a stranger who has no right makes entry, and takes possession. If the abatement happened upon the death of the demandant's father or mother, brother or sister, uncle or aunt, nephew or niece, the remedy is by an assise of *mort d'ancestor*, or the death of one's ancestor. If it happened on the death of one's grandfather or grandmother, then an assise of mort d'ancestor doth no longer lie, but a writ of *ayle*, or *de avo*; if on the death of the great grandfather or great grandmother, then a writ of *besayle*, or *de proavo*; but if it mounts one degree higher, to the *tresayle*, or grandfather's grandfather, or if the abatement happened upon the death of any collateral relation, other than those before mentioned, then it is called a writ of *cosinage*, or *de consanguineo*.

An assise of *novel*, (new or late) *disseisin*, is an action of the same nature with an assise of *mort d'ancestor*, and differs only in the form and manner of proceeding.

But all actions of this kind, as is aforesaid, are now almost entirely out of use. 3 *Bl.* 197.

3. By the same act of 32 *H.* 8. *c.* 2. "No person shall sue "or maintain any action real for any lands or other hereditaments, of *his own* seisin or possession, above thirty years next "before." *s.* 4.

And if, upon traverse, in any of these kinds of actions, he cannot prove seisin or possession within such respective times, he shall be for ever barred. *s.* 6.

For the law favours possession as an argument of right; and inclines rather to long possession without shewing any deed, than to an ancient deed without possession. 2 *Inst.* 118.

4. By the 21 *J. c.* 16. "All writs of *formedon in descender*, "*formedon in remainder*, and *formedon in reverter*, of any manors, "lands, tenements, or other hereditaments, shall be brought "within twenty years next after the title accrued, and not af-

"ter:

" ter: and no perſon ſhall *make entry* into any lands, tenements, " or hereditaments, but within twenty years next after his title " accrued; and, in default theteof, he ſhall be utterly diſabled " from ſuch entry." *ſ.* 1.

" But this ſhall not extend to infants, femes covert, perſons " *non compos mentis*, impriſoned, or beyond the ſeas; provided " that they bring their action, or make entry, within ten years " after the impediment removed." *ſ.* 2.

Formedon.] Upon an alienation by tenant in tail, whereby the eſtate tail is diſcontinued, and the remainder or reverſion is, by failure of the particular eſtate, diſplaced and turned into a mere right, the remedy is by action of *formedon, ſecundum formam doi*, reciting the form of the gift; which is in the nature of a *writ of right*, and is the higheſt action that tenant in tail can have; for he cannot have an abſolute writ of right: which is confined only to ſuch as claim in fee ſimple. The ſtatute diſtinguiſhes the writ of *formedon* into three ſpecies:—A writ of *formedon in the deſcender* lieth where a gift in tail is made, and the tenant in tail aliens the lands intailed, or is diſſeiſed of them, and dies; in this caſe, the heir in tail ſhall have this writ of *formedon in the deſcender*, to recover theſe lands ſo given in tail againſt him who is then the actual tenant of the freehold. A *formedon in the remainder* lieth where a man gives lands to another for life, or in tail, with remainder to a third perſon in tail, or in fee; and he who hath the particular eſtate dieth without iſſue inheritable, and a ſtranger intrudes upon him in remainder, and keeps him out of poſſeſſion; in this caſe, the remainder man ſhall have his writ of *formedon in the remainder*. A *formedon in the reverter* lieth where there is a gift in tail, and afterwards, by the death of the donee without iſſue of his body, the reverſion falls in upon the donor, his heirs, or aſſigns; in ſuch caſe, the reverſioner ſhall have this writ to recover the lands. 3 *Blackſt.* 192.

But theſe writs of *formedon* alſo are now antiquated, and in moſt caſes, where the entry is lawful, men chuſe to recover their poſſeſſions by *ejectment*, which is impliedly comprehended within the ſtatute; for, as twenty years is the time of limitation in any writ of *formedon*, conſequently twenty years is alſo the limitation in every action of *ejectment*; for no ejectment can be brought but where the claimant is intitled to enter on the lands, and no entry can be made by any perſon unleſs within twenty years after his right ſhall accrue. *Id.* 197.

By the 10 & 11 *W. c.* 14. no *fine* or *common recovery*, nor any *judgment* in any real or perſonal action, ſhall be reverſed for any error or defect therein; unleſs the *writ of error*, or ſuit, be commenced within twenty years; and in caſe of being incapacitated

tated as above, then within five years after ſuch incapacity removed.

If, after an ouſter of the reſt, one *tenant in common*, or *jointenant*, continues in poſſeſſion of the whole for twenty years, it is a bar. 2 *Atk.* 632.

If a man has had poſſeſſion of lands for twenty years without interruption, and then another gets poſſeſſion, the perſon diſpoſſeſſed (though plaintiff) may bring his ejectment; for a poſſeſſion of twenty years is like a deſcent, which takes away the entry, and gives a right of poſſeſſion, which is ſufficient to maintain an ejectment. 2 *Salk.* 421.

Where there is a *truſt* for payment of debts, it is eſtabliſhed in equity, that this will revive debts which have been barred by the ſtatute. 3 *Atk.* 107.

If the debtor by *will* directs the payment of *all* his debts, this revives a debt barred by the ſtatute. *Cha. Prac.* 385.

The ſtatute will not run as to a *legacy*; but it will run as to an *annuity*. 2 *Atk.* 71. And the reaſon why a *legacy* is out of the ſtatute, is becauſe it may be ſtopped till the debts are paid. 11 *Mod.* 44.

It is ſaid to have been laid down as an invariable rule, if there be no demand for money due upon a *bond* for twenty years, that the judges will direct a jury to find it ſatisfied, from the preſumption ariſing from the length of time. 2 *Atk.* 144. But in the caſe of *K.* v. *Stephens*, *M.* 31 *G.* 2. Lord *Mansfield* ſaid, that there is no direct and expreſs limitation of time when a bond ſhall be ſuppoſed to have been ſatisfied: the general time indeed is commonly taken to be about twenty years, but he had known Lord *Raymond* leave it to a jury upon eighteen years. *Bur. Mansf.* 434.

It is a rule in equity in relation to the redemption of a *mortgage*, by way of analogy to the ſtatute of limitation, that after twenty years poſſeſſion a mortgagee ſhall not be diſturbed. 3 *Atk.* 313.

If a man makes a mortgage by way of collateral ſecurity for money due upon a bond, although the mortgagee be not in poſſeſſion for twenty years and more, yet if the intereſt be paid upon the bond according to the agreement of the parties, it ſhall not be barred by the ſtatute. *L. Raym.* 740.

In the *Winchelſea* cauſes, *M.* 7 *G.* 3. it was laid down as a rule by the court of king's bench, that informations in nature of a *quo warranto*, for diſplacing members of a corporation, or the like, ſhall be limited to twenty years; as being analogous to the limitation of writs of formedon, and entry into lands, and alſo of dormant bonds, writs of error, bills of review, redemption of mortgages, and proof of poſſeſſion upon bringing ejectments. *Bur. Mansf.* 1963.

5. By

5. By the aforeſaid act of 21 *J. c.* 16. " All actions of treſ-
" paſs *quare clauſum fregit*, all actions of *treſpaſs*, *detinue*, *trover*,
" and *replevin*, all actions of *account*, and upon the *caſe*, (other
" than ſuch accounts as concern the trade of merchandize, be-
" tween merchant and merchant,) all actions of *debt* grounded
" upon any lending, or contract without ſpecialty, (*that is, not*
" *being by deed, or under ſeal,*) all actions of debt for arrearages of
" *rent*, and all actions of *aſſault*, *menace*, *battery*, *wounding*, and
" *impriſonment*, ſhall be commenced within the time and limitati-
" on as followeth, and not after; that is to ſay, the ſaid actions
" upon the *caſe*, (other than for *ſlander*,) and the ſaid actions for
" *account*, and the ſaid actions for *treſpaſs*, *debt*, *detinue*, and *re-*
" *plevin*, and the ſaid action for *treſpaſs quare clauſum fregit*, with-
" in ſix years after the cauſe of ſuch action; and the ſaid actions
" of *treſpaſs* of *aſſault*, *battery*, *wounding*, or *impriſonment*, within
" four years, and the ſaid action upon the caſe for *words*, within
" two years." *ſ.* 3.

" Provided, that if any perſon that ſhall be intitled to any ſuch
" action of treſpaſs, *detinue*, *action ſur trover*, *replevin*, action of
" *accounts*, action of *debt*, action of treſpaſs for *aſſault*, *menace*,
" *battery*, *wounding*, or *impriſonment*, action upon the caſe for
" *words*, ſhall be at the time of the cauſe of action within the age
" of twenty-one years, feme covert, *non compos mentis*, impriſon-
" ed, or beyond the ſeas; ſuch perſon may bring his or her ac-
" tion within the ſaid reſpective times after ſuch impediment
" ſhall be removed." *ſ.* 7.

Between merchant and merchant.] This extends only to merchants trading beyond the ſea, and not to inland merchants. *Cha. Ca.* 152.

Alſo bills of exchange, and other tranſactions between merchants, are not excepted out of the ſtatute, but only actions of account. And if the account is once ſtated, the ſtatute after ſix years will run. *Show.* 341. 1 *Mod.* 10.

Beyond the ſeas.] If the plaintiff be in *England* at the time the cauſe of action accrues, the time of limitation begins to run; ſo that if he, or (if he dies abroad) his executor or adminiſtrator, do not ſue within ſix years, they are barred by the ſtatute. 1 *Wilſ.* 134.

For when the ſix years are once begun, the ſtatute runs over all meſne acts, as coverture, infancy, or an aſſignment by a bankrupt. *Str.* 556

Upon the aforeſaid ſtatutes, if in any ſuit the injury, or cauſe of action, happened earlier than the period expreſsly limited by law, the defendant may plead the ſtatutes of limitation in bar; as, upon a promiſe of payment of money, the defendant may plead

that

that he made no ſuch promiſe within ſix years. *Blackſt. E.* 3. *c.* 10.

But where a note is given for payment of an *annuity*, or for payment of money at a *future time*, or for payment of a ſum of money by *inſtalments*; the defendant's pleading that he did not promiſe to pay within ſix years is bad; for he ſhould have pleaded that the *cauſe of action* had not accrued within ſix years. For where the duty ariſes on a conſideration executory, or for ſomething to be done at a future time, it is not material when the promiſe was made, if the cauſe of action did accrue within the ſix years. 2 *Salk.* 422. 3 *Atk.* 71.

But where a promiſſory note is given for payment of money *upon demand*, this is a preſent duty; and thereupon the ſtatute runs immediately, and doth not wait till demand ſhall be made. 12 *Mod.* 444. 15 *Vin.* 118.

Delivery of the *laſt goods* by a tradeſman continues the action for what was due before. *Wood. b.* 4. *c.* 4.

Alſo, a *conditional* promiſe after the ſix years will take it out of the ſtatute; as if a man promiſe to pay for the goods, if the plaintiff can prove the goods delivered. *L. Raym.* 421.

It is generally ſaid, that an *acknowledgment* of a debt within the ſix years will not amount to a new promiſe, ſo as to bring it back out of the ſtatute: but it is evidence of a promiſe. *L. Raym.* 422. 12 *Mod.* 224.

And in the caſe of *Lacon* and *Briggs*, in chancery, lord *Hardwicke* ſaid, there muſt be a direct admiſſion of a debt to take it out of the ſtatute; and there have been ſeveral caſes at law, where this hath not been held ſufficient, unleſs it is likewiſe attended with an expreſs promiſe to pay; but (he adds) this may be rather too hard. 3 *Atk.* 107.

The reaſon of the diſtinction ſeems to have been this: Acknowledgment of the debt is no more than what the ſtatute ſuppoſes; for if there is no debt, there is nothing on which the ſtatute can operate. For the ſtatute doth not extinguiſh the debt, but only precludes the remedy after a certain limited time. But otherwiſe it is, in the caſe of payment of *intereſt* within the time limited: this is more than a bare acknowledgment; it is a payment of part of the debt; which ſuperſedes any anterior promiſe, and draws after it the remaining part of the debt.

A *writ of latitat* taken out, and filed, and continued, is an avoidance of the ſtatute; for it is a demand, and a good bringing of an action within the time. 1 *Lill. Abr.* 19. 3 *Salk.* 229.

But if it is not actually ſued out till after the ſix years, although teſted within the ſix years, it is not relevant, and ſhall have no retroſpect to the fictitious date, for the ſtatute having

once

once run in truth and reality, ſhall not be overhawled and brought back by fiction. *Bur. Manſf.* 950.

And the party who ſues out the *latitat*, muſt have a *non eſt inveſtus* returned by the ſheriff, and then he muſt enter the writ upon the roll, and afterwards file it; otherwiſe, the ſuing it out will not avail. And all the continuances muſt be entered, and ſo ſhewn to the court. 12 *Mod.* 578.

After commencement of the action, an acknowledgment of the debt will take it out of the ſtatute; as ruled by Mr. Juſtice *Noel* on the circuit, and confirmed by the court of king's bench, in the caſe of Sir *William Yea* v. *Fouraker*, *M.* 1 *G.* 3. *Bur. Manſf.* 1099.

A *bill in chancery* is not a ſufficient demand of the debt, ſo as to take it out of the ſtatute. 1 *Atk.* 282. 2 *Atk.* 1.

LIMITATION OF ESTATE, in a legal ſenſe, imports how long the eſtate ſhall continue, or is rather a qualification of a precedent eſtate; and if there be not a performance according to the limitation, it ſhall determine the eſtate without entry or claim; which a *condition* doth not. For there is a difference between a *limitation* and a *condition*. When an eſtate is expreſsly confined and limited by the words of its creation, that it cannot endure for any longer time, than till the contingency happens, upon which the eſtate is to fail; this is called a *limitation*; as when land is granted to a man ſo long as he is parſon of ſuch a church, or while he continues unmarried, or until out of the rents and profits he ſhall have raiſed ſuch a ſum; in ſuch caſe the eſtate determines as ſoon as the contingency happens (when he ceaſes to be parſon, marries, or has raiſed the ſum ſpecified); and the next ſubſequent eſtate, which depends upon ſuch determination, becomes immediately veſted, without any act to be done by him who is next in expectancy. But where an eſtate is granted expreſsly upon *condition* to be *void* when the grantee ceaſes to be parſon of ſuch a church, or marries, or hath raiſed out of the rents and profits ſuch a ſum, in ſuch caſe, the law permits the eſtate to endure beyond the time when ſuch contingency happens, unleſs the grantor, or his heirs or aſſigns, take advantage of the breach of the condition, and make either an entry or a claim in order to avoid the eſtate. 2 *Black.* 155.

LINEN. By 24 *G.* 3. *c.* 41. every callico printer, and printer, painter, or ſtainer of ſilks, linens, cottons, or ſtuffs, ſhall take out a licence annually, from the officers of exciſe. And by 27 *G.* 3. *c.* 13. and 28 *G.* 3. *c.* 37. ſeveral duties are impoſed upon all goods printed, ſtained, painted, or dyed, in *Great Britain*; except ſuch as ſhall be dyed throughout of one colour only. And alſo, certain duties are impoſed on the importation, and drawbacks allowed on the exportation thereof; as ſet forth in ſchedules annexed to the ſaid act.

And

And by ſeveral ſtatutes, regulations are made for the manufacturing and marking linen cloth, cottons, and callicoes made in *Great Britain.*

LITERA, Fr. *litiere* or *lictiere*, from the Latin *lectum*, a bed, ſignifies *litter*, or ſtraw, now only uſed in ſtables for the *bedding* of horſes; but, in ancient times beds were commonly made of it. Some manors were held of the king by the ſerjeanty of finding ſtraw for the king's bedchamber, *inveniendi literam ad lectum regis.*

LITERARY PROPERTY. Authors have not, by the common law, the ſole and excluſive copy-right remaining in themſelves or their aſſigns in perpetuity, after having printed and publiſhed their compoſitions. But by the ſtatute of 8 *An. c.* 19. it is ſecured to them for 14 years from the day of publiſhing; and after the end of fourteen years, the ſole right of printing or diſpoſing of copies ſhall return to the authors, if then living, for other 14 years. *Bur. Manſf.* 2409.

LITIGIOUS, is where a church is void, and two preſentations are offered to the biſhop upon the ſame avoidance; in which caſe, the church is ſaid to become litigious; and if nothing further is done by either party, the biſhop may ſuſpend the admiſſion of either of the clerks, and ſuffer a lapſe to incur. 3 *Black.* 246.

LIVERY OF SEISIN, is a delivery of poſſeſſion of lands, tenements, and hereditaments, unto one that hath right to the ſame; being a ceremony in the common law uſed in the conveyance of lands, where an eſtate of fee ſimple, fee-tail, or other freehold paſſeth. 1 *Inſt.* 48.

And this, by the common law, is neceſſary to be made upon every grant of an eſtate of freehold in hereditaments corporeal, whether of inheritance or for life only. And this is one reaſon why a freehold cannot be made to commence *in futuro*, becauſe actual poſſeſſion is to be given, which muſt take effect at that inſtant, or not at all. 2 *Black.* 314.

Livery of ſeiſin is thus performed: The feoffor or his attorney, together with the feoffee or his attorney, come to the land, and there, in the preſence of witneſſes, declare the contents of the feoffment, on which delivery is to be made. And then the feoffor doth deliver to the feoffee, all other perſons being out of the ground, a clod, or turf, or a twig, or bough there growing, with words to this effect: "I deliver theſe to you, in the name "of ſeiſin of all the lands and tenements contained in this deed." But if it be of an houſe, the feoffor muſt take the ring or latch of the door, the houſe being quite empty, and deliver it to the feoffee in the ſame form; and then the feoffee muſt enter alone, and ſhut to the door, and then open it, and let in the others. And there muſt be as many liveries as there are lands in ſeveral counties. 2 *Black.* 315. And it is uſual to indorſe the livery of ſeiſin

on the back of the deed, ſpecifying the manner, place, and time, together with the names of the witneſſes.

But in an exchange, a fine, deviſe, a ſurrender by cuſtom, a leaſe and releaſe, a bargain and ſale by deed, indented and inrolled, (becauſe the ſtatute of uſes, 27 *H.* 8. *c.* 10. gives the poſſeſſion to the uſe,) a freehold may paſs without livery. 1 *Inſt.* 50.

Alſo, in hereditaments incorporeal, livery of ſeiſin cannot be made, for they are not the object of the ſenſes; and in leaſes for years, or other chattel intereſt, it is not neceſſary. In leaſes for years, indeed, an actual *entry* is neceſſary to veſt the eſtate in the leſſee; for the bare leaſe gives him only a right to enter; and when he enters in purſuance of that right, he is then, and not before, in the poſſeſſion of his term. 2 *Black.* 314.

LOCAL ACTION, is an action reſtrained to the proper county, in oppoſition to a *tranſitory* action, which may be laid in any county at the plaintiff's diſcretion. In local actions, where poſſeſſion of land is to be recovered, or damages for an actual treſpaſs, or for waſte, or the like, affecting land, the plaintiff muſt lay his declaration, or declare his injury to have happened in the very county and place that it really did happen: but in tranſitory actions, for injuries that may have happened any where, as debt, detinue, ſlander, and the like, the plaintiff may declare in what county he pleaſes, and then the trial muſt be in that county in which the declaration is laid; though if the defendant will make affidavit that the cauſe of action, if any, aroſe not in that, but in another county, the court will oblige the plaintiff to declare in the proper county. 3 *Black.* 294.

LONDON (cuſtom of):

1. If a freeman of *London* dies inteſtate, his effects, after payment of his debts, are divided according to the ancient univerſal doctrine of the *pars rationabilis*. If he leaves a widow and children, his ſubſtance (deducting the widow's apparel, and furniture of her bedchamber) is divided into three parts; one of which belongs to the widow, another to the children, and the third to the adminiſtrator: if only a widow, or only children, they ſhall reſpectively, in either caſe, take one moiety, and the adminiſtrator the other; if neither wife nor child, the adminiſtrator ſhall have the whole. And this portion, or *deadman's* part, the adminiſtrator was wont to apply to his own uſe, till the ſtatute 1 *Ja.* 2. *c.* 17. declared, that the ſame ſhould be ſubject to the ſtatutes of diſtribution. If ſhe hath a jointure made to her before marriage, in bar of her cuſtomary part, yet ſhe ſhall have her ſhare of the deadman's part, under the ſtatute of diſtribution, unleſs barred by ſpecial agreement. And if any of the children are advanced by the father in his life-time with any ſum of money, (not amounting to their full proportionable part,) they ſhall bring their portion

tion into hotchpot with the reſt of the brothers and ſiſters, but not with the widow, before they are intitled to any benefit under the cuſtom; but, if they are fully advanced, the cuſtom intitles them to no farther dividend. 2 *Black.* 518.

2. In *London*, every day, except *Sunday*, is a market overt; and ſales in the ſhops there for valuable conſideration are good. 5 *Co.* 83.

3. By cuſtom in *London*, where a feme covert uſeth any craft in the ſaid city, on her ſole account, wherewith the huſband meddleth not, ſhe ſhall be charged as a feme ſole concerning every thing that touched her craft; and if the huſband and wife ſhall be impleaded, the wife ſhall plead as a feme ſole; and if ſhe is condemned, ſhe ſhall be committed to priſon till ſhe has made ſatisfaction; and the huſband and his goods ſhall not be charged or impeached. *Bur. Manſf.* 1776.

And ſuch feme covert ſole trader is liable to a commiſſion of bankruptcy: but the commiſſion ought to be confined to matters in the way of her trade. *Id.* 1784.

If her huſband becomes bankrupt, and afterwards ſhe becomes bankrupt, the huſband's aſſignees cannot take her effects; they belong to *her* aſſignees. And the queſtion is not between huſband and wife, but between his creditors and her creditors. *Id.*

4. Cuſtoms of *London*, if put in iſſue, are certified by the mayor and aldermen by the mouth of their recorder. *Id.* 249.

LORD, *dominus*, is a word or title of honour, diverſely uſed, being attributed not only to thoſe who are noble by birth or creation, otherwiſe called peers of the realm, and *lords of parliament*; but to ſuch as are ſo called by the curteſy of *England*, as all the ſons of a duke, and the eldeſt ſon of an earl; and to perſons honourable by office, as the *lord chief juſtice*, and ſometimes to a private perſon that hath the fee of a manor, and conſequently the homage of the tenants within his manor, for by his tenants he is called *lord*. In this laſt ſignification, it is moſt uſed in our law books, where it is divided into lord *paramount*, or ſuperior lord, and lord *meſne*, (medius,) middle, between the lord paramount and the tenant.

LORD's DAY. All perſons, not having reaſonable excuſe, ſhall reſort to the *church* (or ſome congregation of religious worſhip allowed by the laws of this realm) on every *Sunday*; on pain of one ſhilling for every omiſſion. 1 *El. c.* 2.

By ſeveral acts of parliament there are penalties inflicted upon perſons exerciſing their *worldly calling* on the Lord's day.

King *James* the firſt, in the Book of *Sports*, 1618, declared the following games to be *lawful*, *viz.* dancing, archery, leaping, vaulting, May-games, Whitſun-ales, and morris dances; and allowed the ſame to be uſed on *Sundays* after evening ſervice; but reſtraining all recuſants from this liberty, and com-

manding each parish to use these recreations by itself; and prohibiting all *unlawful* games, bear baiting, bull baiting, interludes, and bowling by the meaner sort. And, by statute 1 *C. c.* 1. it is enacted, that there shall be no concourse of people out of their own parishes on the Lord's day, for any sport or pastime; or any bear baiting, bull baiting, interludes, plays, or other unlawful exercises and pastimes used by persons within their own parishes; on pain of 3*s.* 4*d.* for each offence.

Killing *game* on the Lord's day, incurs a forfeiture of 20*l.*, or not less than 10*l.* for the first offence; for the second offence 30*l.*, or not less than 20*l.*; and for every other offence 50*l.* To be recovered before the justices of the peace. 13 *G.* 3. *c.* 80.

By the 29 *C.* 2. *c.* 7. no *arrest* shall be made, nor *process* served on the Lord's day, (except for treason, felony, or breach of the peace,) but the service thereof shall be void. But this doth not extend to ecclesiastical process, as citations, or excommunications. *Gibs.* 371.

The hundred shall not be answerable for *robbery* committed on the Lord's day. 29 *C.* 2. *c.* 7.

The Lord's day is not a *juridical* day; therefore, when the return days are fixed on *Sunday*, (as it often happens,) yet the court never sits to receive the returns till the *Monday* following: for no proceedings can be had, or judgment given, or supposed to be given, on a *Sunday*. 3 *Black.* 278.

LOTTERIES, by 10 & 11 *W. c.* 17. are declared to be public nusances; and all grants, patents, and licences, for such lotteries, to be against law. And the setting up of any lottery, is, by several acts of parliament, made punishable with very high penalties. But, for the public service of the government, lotteries are frequently established by particular statutes, and managed by special officers and persons appointed.

And by 27 *G.* 3. *c.* 1. all persons who shall publicly or privately set up, or keep, by himself or any other, any office or place for buying, selling, or dealing in lottery tickets, or shares thereof, without being licensed, shall be deemed rogues and vagabonds, and shall be punished as directed by 17 *G.* 2. *c.* 5.

LOWBELL, from the Saxon *low*, a flame of fire, is an invention of taking birds in the night with a *light* and a *bell*; by the sight and noise whereof, birds, sitting upon the ground, become stupified, and so are covered and taken with a net: which is, by the game acts, prohibited.

LUNATIC, is one that at certain times is deprived of the use of his understanding; and is so denominated, from his disorder being supposed to depend upon the change of the *moon*.

By the statute of *prerogativa regis*, 17 *Ed.* 2. *c.* 10. the king shall provide, in the case of lunatics, that their lands and tenements shall be safely kept without waste and destruction, and that they

they and their houſehold ſhall live and be maintained competently with the profits of the ſame; and the reſidue, beſides their ſuſtentation, ſhall be kept to their uſe, to be delivered unto them when they come to their right mind, or otherwiſe to their executors or adminiſtrators.

The method of proving a man *non compos* is, by proceſs out of chancery, from whence a commiſſion iſſues to the ſheriff, to inquire, by a jury, into the party's ſtate of mind. And if he be found *non compos*, the lord chancellor uſually commits the care of his *perſon* to ſome friend, who is then called his *committee*. But the next heir is ſeldom permitted to have the care of his perſon, becauſe it is his intereſt that the party ſhould die. But the heir is generally made the manager of his *eſtate*; becauſe it is his intereſt to keep it in good condition. 1 *Black.* 305.

Any perſon may juſtify confining and beating his friend, being mad, in ſuch manner as is proper in ſuch circumſtances. 1 *Haw.* 130. And the overſeers of the poor, by the vagrant act, may confine lunatic vagrants.

The marriage of a lunatic, not being in a lucid interval, hath, by the late determinations, been adjudged to be void. But as it may be difficult to prove the exact ſtate of the party's mind, at the actual celebration of the marriage, therefore the ſtatute of 15 *G* 2. *c.* 30. hath provided, that the marriage of lunaties, and perſons under phrenzies, (if found lunatics under a commiſſion,) before they are declared of ſound mind by the lord chancellor, ſhall be totally void.

A conveyance to or by a lunatic is not abſolutely void, but voidable; and the next heir may, after his death, take advantage of his incapacity and ſet it aſide. 4 *Co.* 123. By 29 *G.* 2. *c.* 31. and 11 *G.* 3. *c.* 30. the guardians of lunatics may make leaſes under the direction of the court of chancery; and under the like direction, a lunatic may ſurrender or accept of a ſurrender of a leaſe in order to renew it.

In criminal caſes, a lunatic is not chargeable for his own acts whilſt under that incapacity. If there be any doubt whether he be *compos* or not, this ſhall be tried by an inqueſt of office to be returned by the ſheriff; and if he be found *non compos*, this, as it excuſes from the guilt, ſo alſo conſequently from the puniſhment. But if he hath lucid intervals of underſtanding, he ſhall anſwer for what he does in thoſe intervals, as if he had no deficiency. 1 *Haw.* 2.

If a man be *compos* when he commits a crime, yet if he becomes *non compos* after, he ſhall not be indicted; if after indictment, he ſhall not be convicted; if after conviction, he ſhall not receive judgment; and, if after judgment, he ſhall not be ordered for execution. 4 *Black.* 395.

If a perſon who wants diſcretion commit a treſpaſs againſt the perſon or poſſeſſion of another, he ſhall be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2.

MAG

MAGNA CHARTA, the great charter of liberties granted firſt by king *John*, and afterwards with ſome alterations confirmed in parliament by king *Henry* the third. It is ſo called, either for the excellency of the laws therein contained, or becauſe there was another charter called the *charter of the foreſt*, which was the leſs of the two; or in regard of the great wars and troubles in obtaining it. The ſaid king *Hen.* 3. after it had been ſeveral times confirmed by him, and as often broken, at laſt, in the 37th year of his reign, confirmed it in the moſt ſolemn manner. He came into *Weſtminſter-hall*, and, in the preſence of the nobility and biſhops, with lighted candles in their hands, *magna charta* was read; the king all that while laying his hand on his breaſt, and at laſt ſolemnly ſwearing "faithfully and inviolably to obſerve all things there-"in contained, as he was a man, a chriſtian, a ſoldier, and "a king." Then the biſhops extinguiſhed the candles, and caſt them to the ground, and every one ſaid, "Thus let him be ex-"tinguiſhed, and ſtink in hell, who violates this charter." Upon which the bells were ſet a ringing, and all perſons by their rejoicing approved of what was done. Afterwards, king *Ed.* 1. confirming this charter, in the 25th year of his reign, made an explanation of the liberties therein granted to the people; adding ſome, which are now called *articuli ſuper chartas*; and in the confirmation he directed that this charter ſhould be read twice a year to the people, and ſentence of excommunication to be conſtantly denounced againſt all that by word, or deed, or counſel, ſhall act contrary thereto, or in any degree infringe it. And afterwards, Sir *Edward Coke* obſerves, that it was confirmed by upwards of thirty ſubſequent corroboratory ſtatutes. This charter, beſides redreſſing many grievances incident to feudal tenures, which were of no ſmall moment at that time, provided for the protection of the ſubject againſt other oppreſſions, then frequently ariſing from unreaſonable amercements, from illegal diſtreſſes or other proceſs for debts or ſervices due to the crown, from the tyrannical abuſe of the prerogative and pre-emption. It fixed the forfeiture of lands for felony, in the ſame manner as it ſtill remains; it eſtabliſhed the teſtamentary

teſtamentary power of the ſubject over part of his perſonal eſtate, the reſt being diſtributed among his wife and children; it laid down the law of dower, as it hath continued ever ſince. In matters of public police and national concern, it enjoined an uniformity of weights and meaſures; gave new encouragement to commerce, by the protection of merchant ſtrangers; and forbad the alienation of lands in mortmain. With regard to the adminiſtration of juſtice, beſides prohibiting all denials, or delays of juſtice, it fixed the court of common pleas at *Weſtminſter*, that the ſuitors might be no longer harraſſed with following the king's perſon in all his progreſſes; and at the ſame time brought the trial of iſſues home to the very doors of the freeholders, by directing aſſizes to be taken in the proper counties, and eſtabliſhing annual circuits: it directed the regular awarding of inqueſts for life or member; and regulated the time and place of holding the inferior tribunals of juſtice, the county court, ſheriff's tourn, and court leet. It confirmed and eſtabliſhed the liberties of all the cities, boroughs, towns, and ports of the kingdom. And, laſtly, (which alone would have merited the title that it bears, of the *great* charter,) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unleſs declared to be forfeited by the judgment of his equals, or the law of the land. 4 *Black.* 423.

MAIDEN RENT, was a ſum of money paid to the lord on the marriage of his tenant's daughter, ſaid to be in recompence of the cuſtom of the lord's lying with the bride the firſt night after marriage. Others ſuppoſe it to have been a fine for licence to marry a daughter.

MAIHEM. See MAYHEM.

MAILE, in *French*, is a ſmall piece of money; and in 9 *Hen.* 5. ſilver half-pence here were termed mailes. In a large acceptation, the word *maile* ſignifies a rent in general, paid either in money, corn, cattle, or other goods, as geeſe maile, cow maile, and the like; and in *Scotland*, maile is ſtill the common name for rent. White maile, white rents, vulgarly called quit rents, were rents paid in ſilver, and thereby diſtinguiſhed from work-day rents, cummin-rents, corn-rents, and the like. Black maile or black rents, ſeem properly to have been rents paid in cattle; but, more largely taken, they ſeem to have been uſed to denote all rents not paid in ſilver, in contradiſtinction to the blanch farms or white rents.

MAIM, is ſuch a hurt of any part of a man's body, whereby he is rendered leſs able in fighting, either to defend himſelf, or annoy his adverſary. For the limbs of every ſubject are under the ſafeguard and protection of the law, to the end a man may ſerve his king and country, when occaſion ſhall be offered. 1 *Inſt.* 127.

The

The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are said to be maims; but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken, but only disfigure him. 1 *Haw.* 111.

By the statute 22 & 23 *C.* 2. *c.* 1. if any person, on purpose and by lying in wait, shall 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 person, with intent to maim or disfigure him; he shall be guilty of felony without benefit of clergy. If the maim comes not within any of the descriptions of this act, yet it is indictable at the common law, and may be punished by fine and imprisonment; or an appeal may be brought for it at the common law, in which the party injured shall recover his damages; or he may bring an action of trespass, which kind of action hath now generally succeeded into the place of appeals, in smaller offences not capital. 2 *Haw.* 157.

MAINOUR, (*main-avoir*, Fr.) is when a thief is apprehended in the very fact, *having* the thing stolen in his *hand* or possession. This was anciently called *handhabbend*, and sometimes *backberend*, as a bundle or fardel on his back. 2 *Inst.* 188.

Anciently, if one guilty of larceny had been freshly pursued and taken with the *manner*, and the goods so found upon him had been brought into the court with him, he might be tried immediately without any indictment; and this is said to have been the proper method of proceeding in those manors which had the franchise of *infangthefe*, but seems to be altogether obsolete at this day. 2 *Haw.* 211

MAINPERNORS, *manucaptores*, are those persons to whom a man is delivered out of custody or prison, on their becoming bound for his appearance; which, if he do not, they forfeit their recognizances.

MAINPRISE, (*manucaptio*, a taking into the hand, from the French *main*, a hand, and *pris*, taken,) signifies taking a man into friendly custody who might otherwise be committed to prison, upon security given for his appearance at a time and place assigned. He is supposed to go at large, and to be at his own liberty, under no possibility of being confined by his mainpernors or sureties, as in the case of bail. *Wood. b.* 4. *c.* 4.

The difference between bail and mainprise is this; that mainpernors are only sureties, who, in case the person doth not appear, (though he was never arrested or in prison,) are to forfeit their recognizances: but bail is a custody; for no man is bailed but he that is under an arrest or in prison; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him or deliver him up to a justice of the peace, who ought

ought to commit the priſoner in diſcharge of the bail, or put him to find new ſureties. *Hale's Pl.* 96.

There is alſo a *writ of mainpriſe*, directed to the ſheriff, (either generally, when a man is impriſoned for a bailable offence, and bail hath been refuſed; or ſpecially when the offence or cauſe of commitment is not properly bailable below,) commanding him to take ſureties for the priſoner's appearance, and to ſet him at large. 3 *Black.* 128.

MAINTENANCE, *(manu tenere,)* is an unlawful *taking in hand* or upholding of quarrels or ſuits, to the diſturbance of common right: and it is twofold; either *in the country*, as where one aſſiſts another in his pretenſions to certain lands by taking or holding the poſſeſſion of them for him by force or ſubtilty, or where one ſtirs up quarrels in the country in relation to matters wherein he is no way concerned; or in the *courts of juſtice*, where one officiouſly intermeddles in a ſuit depending in any ſuch court, which no way belongs to him, by aſſiſting either party with money, or otherwiſe, in the proſecution or defence of any ſuch ſuit. 1 *Haw.* 249.

Of this ſecond kind of maintenance there are three ſpecies: 1. Where one maintains another, without any contract to have part of the thing in ſuit; which generally goes under the common name of *maintenance*. 2. Where one maintains one ſide to have part of the thing in ſuit; which is called *champerty*. 3. Where one laboureth a juror; which is called embracery. *Id.*

Perſons guilty of maintenance are not only liable to an action at the ſuit of the party grieved, wherein they ſhall render ſuch damages as ſhall be anſwerable to the injury done to the plaintiff; but alſo they are indictable as offenders againſt public juſtice, and adjudged thereupon to ſuch fine and impriſonment as the court ſhall award, according to the circumſtances of the offence. 1 *Haw.* 255.

MALICE, when ſpoken of in relation to the crime of murder, is not to be underſtood in ſo reſtrained a ſenſe as to ſignify only a ſpite or malevolence to the deceaſed perſon in particular, but, more largely, an evil deſign in general, the dictate of a wicked, depraved and malignant heart. It is of two kinds; *expreſs* or *implied*. Malice *expreſs* is, when one, with a ſedate, deliberate mind, doth kill another; which formed deſign is evidenced by external circumſtances diſcovering that inward intention, as lying in wait, antecedent menaces, former grudges, and concerted ſchemes to do him ſome bodily harm. Malice *implied* is various; as when one voluntarily kills another without any provocation, or where one wilfully poiſons another; in ſuch like caſes, the law implies malice, though no particular enmity can be proved. 4 *Black.* 198.

MALT.

MALT. By the 12 *An. ſt.* 1. *c.* 2. no malt ſhall be imported, on forfeiture of the ſame, and the value thereof.

And, by the ſame ſtatute, a duty is impoſed on all malt made in *England* from barley or other grain; which duty hath been continued by annual acts ever ſince.

And by the 27 *G.* 3. *c.* 13. a further duty is impoſed on all malt made in *England* or *Scotland*; or made in *Scotland*, and brought into *England*. And allowances are to be made on malt exported, as ſet forth in ſchedules annexed to the act.

And by the 24 *G.* 3. *c.* 41. a licence is required to be taken out annually, by every maker of malt for ſale, from the offices of exciſe.

MAN, *Iſle of*, is a diſtinct territory from *England*, and is not governed by our laws; neither doth any act of parliament extend to it, unleſs it be particularly named therein. It was formerly a ſubordinate feudatory kingdom, ſubject to the kings of *Norway*; then to the kings of *England*; afterwards to the kings of *Scotland*; and then again to the crown of *England*; and was finally granted, by king *James* the firſt, to *William Stanley* earl of *Derby*, and the heirs male of his body, with remainder to his heirs general; which grant was confirmed by act of parliament, with a reſtraint of the power of alienation by the ſaid earl and his iſſue male. On the death of *James* earl of *Derby* in the year 1735, the male line of earl *William* failing, the duke of *Athol* ſucceeded to the iſland, as heir general by a female branch. In the mean time though the title of king had long been diſuſed, the earls of *Derby*, as lords of *Man*, had maintained a ſort of royal authority therein; which being found inconvenient for the purpoſes of public juſtice, and for the revenue, (it affording a commodious aſylum for debtors, outlaws, and ſmugglers,) authority was given to the treaſury, by ſtatute 12 *G. c.* 28. to purchaſe the intereſt of the then proprietors for the uſe of the crown; which purchaſe was at length completed in the year 1765, and confirmed by the ſtatutes 5 *G.* 3. *c.* 26. & 39. whereby the whole iſland, and all its dependencies, (except the landed property of the *Athol* family, their manerial rights and emoluments, and the patronage of the biſhopric and other eccleſiaſtical benefices,) are unalienably veſted in the crown, and ſubjected to the regulations of the Britiſh exciſe and cuſtoms. 1 *Black.* 105.

MANBOTE, a compenſation or recompence for homicide; for in ancient time almoſt all offences might be compenſated for money.

MANDAMUS, is a writ iſſuing in the king's name out of the court of king's bench, and directed to any perſon, corporation, or inferior court of judicature, *commanding* them to do ſome particular thing therein ſpecified, as appertaining to their office and duty. 3 *Black.* 110.

It

It is a high prerogative writ, of a moſt extenſively remedial nature. It lies to compel the admiſſion or reſtoration of the party applying, to any office or franchiſe of a public nature, whether ſpiritual or temporal; it lies for the production, inſpection, or delivery of public books and papers; for the ſurrender of the regalia of a corporation; to oblige bodies corporate to affix their common ſeal; to compel the holding of a court; and for an infinite number of other purpoſes: more particularly, it lies to the judges of any inferior court, commanding them to do juſtice according to the powers of their office, whenever the ſame is delayed: for it is the peculiar buſineſs of the court of king's bench, to ſuperintend all other inferior tribunals, and therein to inforce the due exerciſe of thoſe judicial or miniſterial powers, with which the crown or legiſlature have inveſted them; and this, not only by reſtraining their exceſſes, but alſo by quickening their negligence, and obviating their denial of juſtice. *Id.*

The writ is grounded on a ſuggeſtion, by the oath of the party injured, of his own right, and the denial of juſtice below; whereupon, in order more fully to ſatisfy the court that there is a probable ground for ſuch interpoſition, a rule is made, (except in ſome general caſes, where the probable ground is manifeſt,) directing the party complained of to ſhew cauſe why a writ of mandamus ſhould not iſſue; and if he ſhews no ſufficient cauſe, the writ itſelf is iſſued, at firſt in the alternative, either to do this, or ſignify ſome reaſon to the contrary; to which a return or anſwer muſt be made at a certain day. And if the inferior judge, or other perſon to whom the writ is directed, returns or ſignifies an inſufficient reaſon, then there iſſues, in the ſecond place, a *peremptory* mandamus, to do the thing abſolutely; to which no other return will be admitted, but a certificate of perfect obedience, and the execution of the writ. *Id.* 311.

If the inferior judge, or other perſon, makes no return, or fails in his reſpect and obedience, he is puniſhable for his contempt by attachment. But if he at firſt returns a ſufficient cauſe, although it ſhould be falſe in fact, the court of king's bench will not try the truth of the fact upon affidavits, but will for the preſent accept the return, and proceed no further on the mandamus. But then the party injured may have an action againſt him for his falſe return, and (if found to be falſe by the jury) ſhall recover damages equivalent to the injury ſuſtained; together with a peremptory mandamus to do his duty. *Id.*

Or, for a more ſpeedy redreſs, the party proſecuting the mandamus may, on the firſt return to the mandamus, plead to or traverſe all or any of the material facts in the ſaid return: to which the perſon making the return ſhall reply, take iſſue, or demur; and ſuch further proceedings may be had thereupon in

all

all reſpects, as if the perſon proſecuting the mandamus had brought his action upon the caſe for a falſe return. 9 *An. c.* 20.

Where there are croſs mandamuſes, as to admit different perſons to one and the ſame office, they muſt both be obeyed; for it is without prejudice to the right of either claimant, for a mandamus gives no right: it only brings the matter into a courſe of trial. *Bur. Manſf.* 1422.

MANNER. See MAINOUR.

MANOR, *manerium, á manendo*, becauſe the uſual reſidence of the owner, was a diſtrict of ground, held by lords or great perſonages, who kept in their own hands ſo much land as was neceſſary for the uſe of their families, which were called *terræ dominicales*, or demeſne lands, being occupied by the lord, or *dominus manerii*, and his ſervants. The other lands they diſtributed among their tenants, which the tenants held under divers ſervices. The reſidue of the manor, being uncultivated, was termed the lord's waſte, and ſerved for common of paſture to the lord and his tenants. Manors were formerly called *baronies*, as they ſtill are *lordſhips*: and each lord or baron was empowered to hold a domeſtic court, called the *court-baron*, for redreſſing miſdemeanors and nuſances within the manor, and for ſettling diſputes of property among the tenants. 2 *Black.* 90.

MANSLAUGHTER, is ſuch killing of a man, as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. There is no difference between murder and manſlaughter, but that murder is upon malice forethought, and manſlaughter upon a ſudden occaſion. As if two meet together, and ſtriving for the wall, the one kills the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the field and fought, and the one had killed the other, this had been but manſlaughter and no murder; becauſe all that followed was but a continuance of the firſt ſudden occaſion, and the blood was never cooled till the blow was given. This offence is within the benefit of clergy, but the offender ſhall be burned in the hand, and forfeit all his goods and chattels. 3 *Inſt.* 55.

MANSTEALING, or kidnapping, is the forcible abduction, or the ſtealing away, of man, woman, or child, from their own country, and ſending them into another. By the ancient Jewiſh law, and by the civil law, this crime is puniſhed with death; but by the common law of *England*, the puniſhment thereof doth not extend unto death; but the offender being found guilty, is liable to be fined, impriſoned, and pillored, at the diſcretion of the court. 4 *Black.* 219.

MANUMISSION, was the freeing of a ſlave out of bondage; and was ſo denominated from the maſter's taking him by the hand

hand before the ſheriff in the county court, and delivering him, or letting him go at liberty, with a declaration that it is his will that the ſlave ſhall thence go free.

MARCHERS, or LORDS MARCHERS, were the keepers or wardens of the *marches* or boundaries of the kingdom between *England* and *Scotland*, and *England* and *Wales*; ſo denominated from the word *marche*, a limit. They had courts of *marche*, wherein they tried cauſes of different kinds, and eſpecially offences againſt the public peace, which went by the general name of *marche treaſon*.

MARINARIUS, a mariner or ſeaman: and *marinarius capitaneus*, was the admiral or warden of the ports; which offices were commonly united in the ſame perſon: the word *admiral*, not coming into uſe till the latter end of the reign of king *Edward* the firſt; before which time, the king's letters ran thus: *Rex capitaneo marinariorum et ejuſdem marinariis, ſalutem.*

MARISCUS, a marſh, or fenny ground.

MARITAGIUM, *marriage*, was the privilege which the lord anciently had of giving a female heir, being his tenant, in marriage; in order to ſupport the feudal ſervices.

MARKET. See FAIR.

MARQUE and REPRISAL. When the ſubjects of one ſtate are oppreſſed and injured by thoſe of another, and juſtice is denied by that ſtate to which the oppreſſor belongs, letters of *marque* and *repriſal* (words in themſelves ſynonymous, and ſignifying a taking in return) are grantable by the law of nations, in order to ſeize the bodies or goods of the ſubjects of the offending ſtate, until ſatisfaction be made, wherever they happen to be found. To which purpoſe it is declared by the ſtatute 4 *Hen.* 5. *c.* 7. that if any ſubjects of the realm are oppreſſed in time of truce by any foreigners, the king will grant mar[illegible] in due form, to all that feel themſelves grieved. And, on complaint to the keeper of the privy ſeal, he ſhall make to the party complainant, *letters of requeſt* under the *privy ſeal*. And if, after ſuch requeſt of ſatisfaction made, the party required doth not make, in convenient time, due reſtitution or ſatisfaction to the party grieved, the lord chancellor ſhall make him out *letters of marque* under the *great ſeal*. And by virtue of theſe, he may attack and ſeize the property of the aggreſſor nation, without hazard of being condemned as a robber or pirate. 1 *Black.* 258.

MARQUESS, is a title of honour, above an earl, and next below a duke. His office, when he firſt received this denomination, was to guard the frontiers and limits of the kingdom, which were called the *marches*, from the Teutonic word *marche*, a limit; as were the *marches* of *England* and *Wales*, whilſt they continued hoſtile countries.

MARRIAGE:

MARRIAGE:

1. Of marriage there are ſeveral diſabilities: One is upon account of *kindred*; either by conſanguinity, which is a relation by blood; or by affinity, which is a relation by marriage. But marriages within the degrees prohibited, are not *ipſo facto* void, but only voidable by ſentence of divorce in the ſpiritual court. And after the death of either of the parties, the courts of common law will not ſuffer the ſpiritual court to declare ſuch marriages to have been void, ſo as to baſtardize the iſſue. 1 *Black.* 434.

By the civil law, firſt couſins are allowed to marry, but by the canon law, both firſt and ſecond couſins (which was in order to make diſpenſations more frequent) are prohibited. Therefore, where it is vulgarly ſaid, that firſt couſins may marry, but ſecond couſins cannot, probably this aroſe by confounding theſe two laws. But, by the law of *England*, it is lawful for both firſt and ſecond couſins to marry.

2. Another diſability is a *prior marriage*, or having another huſband or wife living; in which caſe, the ſecond marriage is actually void, without any declaratory ſentence. 1 *Black.* 436.

3. Another diſability is *want of age*. In which caſe, if a boy under fourteen, or a girl under twelve years of age, marries, this marriage is only inchoate and imperfect; and when either of them comes to thoſe reſpective ages, they may diſagree, and declare the marriage void. But, if at ſuch age of conſent, they agree to continue together, they need not be married again. If the huſband be of years of diſcretion, and the wife under twelve, when ſhe comes to years of diſcretion, he may diſagree as well as ſhe may; for, in contracts, the obligation muſt be mutual, both muſt be bound or neither; and ſo it is on the contrary, when the wife is of years of diſcretion, and the huſband under. *Id.*

4. Formerly another diſability was a *pre-contract*, either *per verba de præſenti*, or *per verba de futuro*. A contract *per verba de præſenti*, was deemed a valid marriage, and the parties might have been compelled in the ſpiritual court to celebrate it in the face of the church. But now, by the 26 *G.* 2. *c.* 33. no marriage is valid that is not celebrated in ſome pariſh church, or public chapel, unleſs by diſpenſation from the archbiſhop of *Canterbury*. It muſt alſo be preceded by publication of banns, or by licence from the ſpiritual judge. *Id.* 439.

And by the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. no action ſhall be brought whereby to charge any perſon upon any agreement made upon conſideration of marriage, unleſs the agreement or ſome memorandum or note thereof be in writing, and ſigned by the party to be charged therewith.

5. Another

5. Another incapacity ariſes from want of *conſent* of parents or guardians; to which purpoſe, it is enacted by the 26 *G.* 2. *c.* 33. that all marriages ſolemnized by *licence*, where either of the parties, not being a widower or widow, ſhall be under the age of twenty-one, without the conſent of the father if living, or guardian, or mother, (where there is no guardian,) if living, and unmarried, otherwiſe, of a guardian appointed by the court of chancery, ſhall be void. And in caſe of *banns* publiſhed, where either of the parties is under age, if the parent or guardian ſhall publicly declare, or cauſe to be declared, at the time and place of publication, his diſſent to the marriage, ſuch publication ſhall be void.

6. Another incapacity is want of *reaſon*: without a competent ſhare of which, no contract can be binding. Therefore, the marriage of idiots, and of lunatics, (unleſs under the direction of the court of chancery,) is totally void. 1 *Black.* 438.

7. In all caſes where banns have been publiſhed, the marriage ſhall be ſolemnized in one of the churches or chapels where the banns were publiſhed; and in caſe of licence, it ſhall be ſolemnized in one of the churches or chapels where one of the parties hath been uſually reſident for four weeks next before. 26 *G.* 2. *c.* 33.

But by a general clauſe in the ſaid act, nothing therein ſhall extend to *Scotland*; nor to any marriages amongſt the people called Quakers, or Jews, where both the parties are Quakers or Jews reſpectively; nor to any marriages beyond the ſeas.

In the caſe of *Robinſon* and *Bland*, *M.* 1 *G.* 3. lord *Mansfield* (arguendo) ſaid, "It has been laid down at the bar, that a marriage in a foreign country muſt be governed by the laws of that country where the marriage was had; which, in general, is true. But the marriages in *Scotland*, of perſons going from hence for that purpoſe, were inſtanced by way of example. Theſe may come under a very different conſideration; according to the opinion of *Huberus*, *p.* 33. and other writers. No ſuch caſe hath yet been litigated in *England*, except one, of a marriage at *Oſtend*; which came before lord *Hardwicke*, who ordered it to be tried in the eccleſiaſtical court. But the young man came of age, and the parties were married over again; and ſo the matter was never brought to a trial." *Bur. Mansf.* 1079.

But in *Buller's Law of Niſi Prius*, p. 113. there is a ſhort note of a caſe wherein this point was afterwards determined, upon an appeal to the delegates; viz. *Compton* and *Bearcroft*, 1 *Dec.* 1768. The appellant and reſpondent, being both *Engliſh* ſubjects, and the appellant being under age, ran away without the conſent of her guardian, and were married in *Scotland*; and, on a ſuit brought in the ſpiritual court to annul the marriage, it was holden that the marriage was good.

8. By

8. By ſeveral ſtatutes a penalty of 100*l.* is inflicted for marrying any perſons without banns or licence. But by the 26 *G.* 2. *c.* 33. if any perſon ſhall ſolemnize matrimony without banns or licence obtained from ſome perſon having authority to grant the ſame, or in any other place than a church or chapel where banns have been uſually publiſhed, unleſs by ſpecial licence from the archbiſhop of *Canterbury*, he ſhall be guilty of felony, and tranſported for fourteen years; and the marriage ſhall be void.

9. The lawfulneſs of marriage is to be tried by the biſhop's certificate, upon an iſſue, *whether accoupled in lawful matrimony*; as in a writ of dower, or other writ brought in the temporal courts. But whether a woman is the wife of ſuch a perſon, is triable by a jury upon ſuch an iſſue. 1 *Inſt.* 134.

10. Of *divorce*, or ſeparation of the parties, there are two kinds; the one total, the other partial: the one *a vinculo matrimonii*, from the band of matrimony; the other *a menſa et thoro*, being merely from cohabitation. 1 *Black.* 440.

The total divorce, *a vinculo*, muſt be from ſome cauſe of impediment exiſting before the marriage, as in the caſe of conſanguinity; and in this the marriage is declared null, as having been abſolutely unlawful *ab initio*. And the iſſue of ſuch marriage as is thus entirely diſſolved, are baſtards. 1 *Black.* 440.

Divorce *a menſa et thoro*, from bed and board, is when the marriage is juſt and lawful in itſelf, but from ſome ſupervenient cauſe it becomes improper for the parties to live together, as in caſe of cruel uſage or adultery in either of the parties. *Id.*

But for adultery, divorces *a vinculo matrimonii* have of late years been frequently granted by act of parliament, and the parties allowed to marry again. *Id.* 441.

11. In caſe of divorce *a menſa et thoro*, the law allows *alimony*, or maintenance, to the wife, out of her huſband's eſtate, at the diſcretion of the eccleſiaſtical judge. This is ſometimes called the *eſtovers*, for which, if he refuſes payment, there is (beſides the ordinary proceſs of excommunication) a writ at common law *de eſtoveriis habendis*, in order to recover it. But in caſe of elopement, and living with an adulterer, the law allows her no alimony; for as that amounts to a forfeiture of her dower after his death, it is alſo a ſufficient reaſon why ſhe ſhould not be partaker of his eſtate when living. 3 *Black.* 94.

MARSHALSEA court, was originally held before the ſteward and marſhal of the king's houſe, and was inſtituted to adminiſter juſtice between the king's domeſtic ſervants, that they might not be drawn into other courts, and thereby the king loſe their ſervice. It held plea of all treſpaſſes committed within the verge of the court, where only one of the parties is in the king's domeſtic ſervice, in which caſe, the inqueſt ſhall be taken by a jury of the

the country; and of all debts, contracts, and covenants, where both of the contracting parties belong to the royal houſehold, and then the inqueſt ſhall be compoſed of men of the houſehold only. Afterwards king *Charles* the firſt erected a new court of record, called the *curia palatii*, or *palace court*, to be held before the ſteward of the houſehold, and knight marſhal, and the ſteward of the court, or his deputy, with juriſdiction to hold plea of all manner of perſonal actions whatſoever, which ſhall ariſe between any parties within twelve miles of his majeſty's palace of *Whitehall*. The court is now held once a week, together with the ancient court of marſhalſea, in the borough of *Southwark*: and a writ of error lies from thence to the court of king's bench. But if the cauſe is of any conſiderable conſequence, it is uſually removed on its firſt commencement, together with the cuſtody of the defendant, either into the king's bench or common pleas, by a writ of *habeas corpus cum cauſa*. And as to matters of inferior conſequence, the buſineſs of the court hath of late years been much reduced, by the new courts of conſcience erected in the environs of *London*. 3 *Black*. 76.

MARSHALSEA priſon, belonging to the court of king's bench. By the 43 *Eliz. c.* 2. & 11 *G.* 2. *c.* 20. the juſtices of the peace yearly, in *Eaſter* ſeſſions, ſhall ſet down what ſums ſhall be ſent out of every county or place corporate, for the relief of the poor priſoners of the king's bench and marſhalſea priſons, ſo as there be ſent out of every county 20*s*. at the leaſt to each of the ſaid priſons.

MARTIAL LAW. Anciently, preparatory to an actual war, the kings of this realm, by advice of the conſtable and marſhal, were uſed to compoſe a book of rules and orders, for the due governance and diſcipline of their officers and ſoldiers, together with certain penalties on the offenders; and this was called *martial law*. But in truth and reality, this was not a law, but ſomething indulged rather than allowed as a law; the neceſſity of government, order, and diſcipline in an army, being that only which could give to thoſe laws any countenance and encouragement. *Hale's Hiſt. of the Com. Law*, 38, 9.

But now the military are ordered and governed by the annual acts of parliament againſt mutiny and deſertion, and by articles of war framed by his majeſty from time to time, in purſuance of the power given unto him by the ſaid acts.

MASTER. See SERVANT.

MAUNDAY THURSDAY, *mandati dies*, the day next before *Good Friday*, wherein is commemorated and practiſed the *command* of our Saviour in waſhing the feet of the poor, or doing other acts of humility.

MAYHEM, or *maihem*, ſignifies a maim or wound, and conſiſts in violently depriving another of the uſe of a member, pro-

per for his defence in fight. This is a battery, attended with this aggravating circumſtance, that thereby the party injured is for ever diſabled from making ſo good a defence againſt future external injuries, as he otherwiſe might have done. Amongſt theſe defenſive members are reckoned not only arms and legs, but a finger, an eye, and a foretooth, and alſo ſome others: but the loſs of one of the jaw-teeth, the ear, or the noſe, is not *mayhem* at common law, as they can be of no uſe in fighting. 3 *Black.* 121.

MAYOR, *major*, is the chief magiſtrate in a city or town corporate; who hath under him aldermen, common council, and officers of divers kinds.

Though a man be mayor of a corporation, it doth not follow that he is a juſtice of the peace; for there muſt be a particular grant in the charter: and, in ſeveral of the ancient corporations, there were mayors long before the inſtitution of the office of a juſtice of the peace.

But although he be not a juſtice of the peace by charter, yet there are many caſes wherein he hath the ſame power given unto him by particular ſtatutes; as in the caſe of convicting an offender for ſwearing, drunkenneſs, and ſuch like.

MEASURE, is a certain quantity or proportion of any thing. There are three different meaſures, one for wine, one for beer and ale, and one for corn. In the meaſure of wine; 8 pints make a gallon, 8 gallons a firkin, 16 gallons a kilderkin, half barrel, or rundlet; 4 firkins a barrel, 2 barrels a hogſhead, 2 hogſheads a pipe, 2 pipes a tun.—In corn meaſure; 8 pounds or pints of wheat make a gallon, 2 gallons a peck, 4 pecks a buſhel, 4 buſhels a ſack, and 8 buſhels a quarter.—In other meaſure; 3 barley corns in length make an inch, 12 inches a foot, 3 feet and 9 inches an ell, 16 feet and an half a perch, poll, or rod.

MEDICINES. By the 25 *G.* 3. *c.* 79. a duty is impoſed on medicines, (as ſet forth in a ſchedule annexed to the act,) the compounding or mixing whereof is unknown, and in which the perſon compounding or vending the ſame, claims ſome ſecret art.

And every perſon uttering or vending ſuch medicines, ſhall take out a licence annually from the ſtamp office.

MEDIETAS LINGUÆ, is a jury or inqueſt impanelled, where one of the parties to a ſuit is an alien; conſiſting of one half denizens, and the other half aliens, if ſo many be forthcoming in the place. But where both parties are aliens, the jury ſhall all be denizens. Alſo this doth not hold in treaſons; aliens being very improper judges of the breach of allegiance: nor in the caſe of *Egyptians*, under the ſtatute of 22 *Hen.* 8. *c.* 10.

MELIUS

MELIUS INQUIRENDUM, is a writ that lies for a ſecond inquiry, where partial dealing is ſuſpected; and particularly of what lands or tenements a man died ſeiſed, on finding an office for the king. So a *melius inquirendum* ſhall be awarded out of the king's bench, where the coroner's inquiſition is unſatisfactory.

MEMORY, time of, is aſcertained by our law, from the time of the transfretation of king *Richard* the firſt to the holy land. And any cuſtom may be deſtroyed by evidence of its non-exiſtence, in any part of that long period from the reign of king *Richard* the firſt to the preſent time. 2 *Black.* 31.

MENIAL SERVANT, (from *mænia*, the walls of a caſtle, houſe, or other place,) a domeſtic ſervant, who lives under his maſter's roof.

MERCHANT, *(mercator,)* is one that trades in *wares* of any kind; and is not reſtricted to thoſe only who traffic in the way of commerce, by importation or exportation. 1 *Salk.* 445.

Merchants have a particular ſyſtem of cuſtoms, called the cuſtom of merchants, or *lex mercatoria*; which cuſtom, however different from the general rules of the common law, is yet ingrafted into it, and made a part thereof; being allowed, for the benefit of trade, to be of the utmoſt validity in all commercial tranſactions. And the judges are to take notice of it, without requiring witneſſes to prove it. 1 *Black.* 75. *Burrow Manſf.* 1669.

By *magna charta* it is provided, that all merchants (unleſs publicly prohibited before-hand) ſhall have ſafe-conduct to come into and tarry in *England*, for the exerciſe of merchandize, without any unreaſonable impoſts, except in time of war; and, if a war breaks out between our country and theirs, they ſhall be attached (if in *England*) without harm of body or goods, till the king, or his chief juſticiary, be informed how our merchants are treated in the land with which we are at war; and if ours be ſecure in that land, they ſhall be ſecure in ours. But in time of war, no ſubject of a nation with whom we are at war can, by the law of nations, come into the realm, nor can travel himſelf upon the high ſeas, or ſend his goods or merchandize from one place to another, without danger of being ſeized by the king's ſubjects, unleſs he hath letters of ſafe-conduct, which by divers ancient ſtatutes were to be granted under the great ſeal; but now paſſports, under the king's ſign manual, or licences from his ambaſſadors abroad, are uſually obtained, and are allowed to be of equal validity. 1 *Black.* 260.

MERCHENLAGE, was the law of the ancient kingdom of *Mercia*, in the counties next adjoining to *Wales*; as the *Saxonlage* was the law introduced into this kingdom by the Saxons, and the *Danelage* was that introduced by the Danes. And from theſe ſeem

partly to be derived that which is now known by the name of the common law. 4 *Black.* 412.

MERCHET, *merchetum*, was a pecuniary payment to the lord, in compenſation of his privilege of lying with his tenant's wife the firſt night after marriage. This cuſtom prevailed in *Scotland* until aboliſhed by king *Malcolm* the third. And perhaps from hence aroſe the cloſe affinity and connection in the clanſhips; foraſmuch as the eldeſt child might have a ſort of preſumptive right to look upon the lord as his or her father: and ſo the whole clan might eſteem themſelves as kindred one with another. In the northern parts of *England* alſo, it is ſaid, this cuſtom was in uſe; and ſeems to have been carried by the ancient Britons into *Wales*, and from them to have received its denomination: the ſum paid to the lord, upon the marriage, being called in the Britiſh language *gwahr-merched*, the maid's fee.

MERGER, to *ſink*; as when a greater eſtate and a leſs coincide and meet in one and the ſame perſon, without any intermediate eſtate, the leſs is immediately *merged*; that is, ſunk or drowned in the greater. Thus, if there be tenant for years, and the reverſion in fee ſimple deſcends to, or is purchaſed by him, the term of years is merged in the inheritance, and ſhall never exiſt any more. But they muſt come to one and the ſame perſon, in one and the ſame right; therefore, if he who has the reverſion in fee, marries the tenant for years, this is no merger; for he has the inheritance in his own right, and the term of years in the right of his wife. 2 *Black.* 177.

MESNE lords, are thoſe who hold lordſhips or manors under ſome ſuperior lord, who is called the lord paramount. When the great barons, who held of the king as their ſuperior lord, granted out portions of their lands to inferior perſons, they became alſo lords with reſpect to thoſe inferior perſons, as they were ſtill tenants with reſpect to the king; and thus, partaking of a middle nature, they were called *meſne*, or middle lords: the tenants held of them immediately, and mediately of the king. 2 *Black.* 59.

There is alſo a *writ of meſne*, which lies where the tenant is diſtrained by the ſuperior lord, for the rent or ſervice of the meſne lord, who ought to acquit him to the ſuperior lord; in which caſe, if the meſne lord appear not, he ſhall loſe the ſervice of the tenant, and the tenant ſhall immediately become tenant to the chief lord: alſo in ſuch caſe, the tenant may by writ recover damages, and the meſne lord be compelled to pay the rent and do the ſervices. *T. L.*

MESNE PROCESS, is ſometimes put in contradiſtinction to *original* proceſs, and in that ſenſe it ſignifies an intermediate proceſs, which iſſues pending the ſuit, upon ſome collateral interlocutory matter, as to ſummon juries, witneſſes, and the like: ſome-

ſometimes it is put in contradiſtinction to *final* proceſs, or proceſs of *execution*, and then it ſignifies all ſuch proceſs as intervenes between the beginning and end of a ſuit. 3 *Black.* 279.

MESSUAGE, is properly a dwelling-houſe, with ſome adjacent land aſſigned to the uſe thereof.

METHEGLIN, an old Britiſh drink made of honey.

MICEL GEMOT, the great council or aſſembly of the realm, ſometimes called the *witena gemot*, or aſſembly of wiſe men; in after times denominated the parliament.

MILES, a ſoldier, is particularly applied in our law to the order of knighthood; becauſe the knights formed the moſt conſiderable part of the royal army, in virtue of their tenure; one condition whereof was, that every one who held a knight's fee (which in *Henry* the ſecond's time amounted to 20*l.* a year) was obliged to be knighted, and attend the king in his wars, or make fine for his non-compliance.

MILITIA. The number of private militia men throughout the kingdom (excluſive of the city of *London*, the *Tower hamlets*, and the *Cinque ports*) is 30,440, who are under the direction of the lieutenants of the ſeveral counties, appointed by his majeſty; which lieutenants are to appoint deputy lieutenants and commiſſion officers; unto whom the juſtices of the peace in many reſpects ſhall be aſſiſtant.

Which militia are to be trained and exerciſed twenty-eight days in every year; during which time, the proviſions, in any of the acts againſt mutiny and deſertion, ſhall be in force, with reſpect to the officers and private men; yet ſo as not to extend to life or limb.

And in caſe of invaſion or actual rebellion, they may be drawn out into actual ſervice, and put under the command of ſuch general officers as his majeſty ſhall appoint; but not to be carried out of the iſland of *Great Britain* upon any account whatſoever.

MILL. The *toll* of a mill muſt be regulated by cuſtom; and if the miller takes more than the cuſtom, it is extortion: but if it is a new mill, there the miller is not reſtrained to any certain toll; but they who will have their corn ground there, muſt comply with the miller's demand; and whatſoever he takes, it is not extortion, becauſe it is the voluntary agreement of the parties. *L. Raym.* 149.

In ſome manors; the *tenants* owe ſuit and ſervice to the lord's mill; the foundation whereof ſeems to have been, that the lord erected the mill for the uſe of his tenants, and for their convenience, on condition that, when erected, they ſhall all grind their corn there only: in which caſe, if they withdraw their ſuit, the lord may have an action, and recover damages. And a new erected houſe within the precinct, is within the cuſtom of mul-

ture; and none may grind elſewhere, but in caſe of exceſſive toll, or that the griſt cannot be ground in convenient time. *Hardr.* 177.

By the common law, *tithe* is due of mills: but it is only a perſonal tithe, and payable out of the clear grain, after all manner of charges and expences deducted. 2 *P. Will.* 463.

By the 9 *G.* 3. *c.* 29. if any perſon or perſons, riotouſly and tumultuouſly aſſembled, ſhall demoliſh or pull down, or begin to demoliſh or pull down, any wind ſaw mill, or other wind-mill, or any water-mill or other mill, or any of the works thereto belonging; or if any perſon ſhall wilfully or maliciouſly burn or ſet fire to any ſuch mill, he ſhall be guilty of felony, without benefit of clergy.

MINES:

1. By the old common law, if gold or ſilver be found in mines of baſe metal, according to the opinion of ſome, the whole was a royal mine, and belonged to the king; though others held that it only did ſo, if the quantity of gold or ſilver was of greater value than the quantity of baſe metal: but now, by the ſtatutes of 1 *W.* *c.* 30. and 5 *W.* *c.* 6. this difference is made immaterial; it being enacted, that no mine of copper, tin, iron, or lead, ſhall be deemed a royal mine, notwithſtanding gold or ſilver may be extracted from them in any quantities: but that the king, or perſons claiming royal mines under his authority, may have the ore of any mine, (other than tin ore, in the counties of *Devon* and *Cornwall,*) paying to the proprietor of the mine, within thirty days after the ore ſhall be laid upon the bank, and before the ſame ſhall be removed from thence; for all copper ore waſhed and made clean and merchantable, 16*l.* a tun; tin ore, 40*s.* a tun; iron ore, 40*s.* a tun; lead ore, 9*l.* a tun. And, in default of payment, the owner may diſpoſe thereof.

2. If a man hath land, in which there is a mine of coals or the like, and maketh a leaſe of the land, without mentioning any mines; the leſſee, for ſuch mines as were open at the time of the leaſe made, may dig and take the profit thereof: but he cannot dig for any new mine, which was not open at the time of the leaſe made, for that would be adjudged waſte. 1 *Inſt.* 54.

3. Coal mines by name are rateable to the poor, by the 43 *El.* *c.* 2. but other mines are not: and the reaſon of the difference ſeems to be, that coals are a more certain produce, being not attended with ſo much hazard as the other. *Bur. Manſ.* 1341.

4. If a perſon breaks up mines which he ought not to do, or threatens to break them up, this is a reaſon for applying to a court of equity for an injunction. 2 *Atk.* 182.

Digging mines in glebe lands is not waſte: otherwiſe no mines in glebe lands could ever be opened. 1 *Lev.* 107.

5. If

5. If any perſon ſhall wilfully ſet on fire any mine, pit, or delph of coal, or cannel coal, he ſhall be guilty of felony, without benefit of clergy. 10 *G.* 2. *c.* 32.

6. If any perſon ſhall divert or convey any water into any coal work, with deſign to deſtroy or damage the ſame, he ſhall pay to the party grieved treble damages. 13 *G.* 2. *c.* 21.

7. If any perſon ſhall wilfully or maliciouſly ſet fire to, burn, demoliſh, pull down, or otherwiſe deſtroy or damage any fire engine, or other engine erected for draining water from collieries, or for drawing coals out of the ſame; or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon way, or trunk, erected for conveying coals from any coal mine, or ſtaith for depoſiting the ſame; or any bridge or waggon way erected for conveying lead, tin, copper, or other mineral from any ſuch mine; or cauſe or procure the ſame to be done; he ſhall be guilty of felony, and tranſported for ſeven years.

MINIMENTS, or *muniments*, (from *munio*, to defend,) are the evidences and writings concerning a man's poſſeſſion or inheritance, whereby he is enabled to defend the title of his eſtate. *T. L.*

MINSTREL, in the laws againſt vagrants, ſignifies an itinerant muſician, wandering about the country in a ſtate of ſtrolling and idleneſs. Anciently it was uſual for lords and great men to retain minſtrels in their own houſes, but they were not permitted to go abroad. By an act 14 *El. c.* 5. all common players in interludes, and minſtrels, not belonging to any baron of this realm, or perſon of higher degree, wandering abroad, and not having the licence of two juſtices, were to be deemed rogues and vagabonds. Afterwards, in ſubſequent vagrant acts, the licence by the juſtices was left out. And by one of *Cromwell's* ordinances in 1656, it was more explicitly declared, that if any perſon or perſons, commonly called fidlers, or minſtrels, ſhould be taken playing, fidling, and making muſic, in any inn, ale-houſe, or tavern, or proffering themſelves, or intreating any perſons to hear them to play or make muſic; every ſuch perſon ſhould be adjudged a rogue, vagabond, and ſturdy beggar. And minſtrels are prohibited by the preſent vagrant act, 17. *G.* 2. *c.* 5. But there hath been all along an exception of the heirs or aſſigns of *John Dutton* of *Dutton* in the county of *Cheſter*, Eſquire, concerning their privilege of licenſed minſtrels within that county.

MISADVENTURE, when applied to homicide, is, where a man is doing a lawful act, without intent of hurt to another, and death caſually enſues. As where a labourer being at work with a hatchet, the head flies off, and kills one who ſtands by; or, where a perſon, qualified to keep a gun, is ſhooting at a mark,

mark, and undeſignedly kills a man; for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting his child, a maſter his apprentice or ſcholar, or an officer puniſhing a criminal, and happens to occaſion his death, it is only miſadventure; for the act of correction was lawful: but if he exceeds the bounds of moderation, either in the manner, the inſtrument, or the quantity of puniſhment, and death enſues, it is manſlaughter at leaſt, and in ſome caſes (according to the circumſtances) murder; for the act of immoderate correction is unlawful. 4 *Black.* 182.

MISCONTINUANCE, is where a ſuit is continued by an improper proceſs. In every action, whether civil or criminal, the proceſs ought to be continued from day to day, from its commencement to its concluſion, without any the leaſt gap or chaſm; and the ſuffering any ſuch gap or chaſm is called a *diſcontinuance*; and the continuing of the ſuit by improper proceſs, as by a *capias* inſtead of a *diſtringas*, or giving the parties an illegal day, is properly called a *miſcontinuance*. And as a cauſe is *diſcontinued*, where either nothing is done to continue it, or nothing but what is void in law; ſo it is properly ſaid to be *miſcontinued*, where it is continued amiſs, or by an erroneous and not void continuance. 2 *Haw.* 299.

MISDEMEANOR, in its uſual acceptation, is applied to all thoſe crimes and offences for which the law hath not provided a particular name; and it may be puniſhed, according to the degree of theoffence, by fine, or impriſonment, or both.

MISE, is a word of art appropriated to a writ of right; ſo called becauſe both parties have put themſelves upon the mere right, to be tried by grand aſſiſe or by battel; ſo as that which in all other actions is called an iſſue, in a writ of right in that caſe is called a *miſe*: but if a collateral point is to be tried in a writ of right, it is called an iſſue. It is derived of the word *miſſum*, for that the whole cauſe is put upon this point. It is alſo taken for expences, as *miſæ et cuſtagia*. And ſometimes it ſignifieth a cuſtomary grant to the king or lord marchers of *Wales* by their tenants at their firſt coming to their lands. 1 *Inſt.* 294. 2 *Inſt.* 528.

MISNOMER, is the uſing one name for another.——In caſes of miſnomer, where there is an original iſſued againſt a man, or a bill of indictment exhibited againſt him, by a wrong chriſtian name; if proceedings were had upon that writ or indictment, they could not finally affect him. If he was to be arreſted by proceſs upon ſuch writ or indictment, he might have an action of treſpaſs and falſe impriſonment againſt the officer; nay, if he made oppoſition, and killed him, it would be but manſlaughter. But notwithſtanding all this, to prevent any poſſible danger to this man's liberty or property, though he could not effectually

effectually be hurt by it, the law allows him time to come in and plead that misnomer to the writ or bill, and it shall abate for that reason, and the defendant not be put to answer, though he is in court. *Str.* 156.

Regularly, it is requisite that a purchaser be named by the name of baptism and his surname, and that special heed be taken to the name of baptism, for that a man cannot have two names of baptism, as he may have divers surnames. Yet in some cases, though the name of baptism be mistaken, the grant is good. Thus a *wife* is a good name of purchase, without a christian name; and so it is, if a christian name be added and mistaken, as *Em* for *Emelyn*. So if lands be given to *Robert* earl of *Pembroke*, where his name is *Henry*, or to *George* bishop of *Norwich*, where his name is *John*; for in these and the like cases there can be but one of that dignity or name. And therefore such a grant is good, albeit the name of baptism be mistaken. 1 *Inst.* 3.

If the defendant omits to plead a misnomer, he may be taken in execution by the wrong name. *Str.* 1218.

If there be a corporation aggregate, as mayor and commonalty, dean and chapter, the mayor or dean need not be named by his christian name, because that such a corporation standeth in lieu both of the christian name and surname. 2 *Inst.* 666.

A grant to one who is an esquire, by the name of such an one knight, is void; because knight is part of the name of a man, as much as his christian name. *L. Raym.* 303.

A bastard, after he hath gained a name by reputation, may purchase by his reputed name. 1 *Inst.* 3.

A woman was indicted by the name of *Elizabeth Newman*, alias *Judith Hancock*, and it was quashed for that reason; because a person cannot have two christian names. *L. Raym.* 562.

MISPLEADING. If in pleading any thing be omitted which is essential to the action or defence; as if the plaintiff doth not merely state his title in a defective manner, but sets forth a title that is wholly defective in itself; or if to an action of *debt* the defendant pleads *not guilty*, instead of *nil debet*; this mispleading is fatal, and cannot be cured by verdict. 3 *Black.* 395.

MISPRISION, (a term derived from the old French *mespris*, a neglect or contempt,) is generally understood to be of all such high offences as are under the degree of capital, but nearly bordering thereon: and it is said, that a misprision is contained in every treason and felony whatsoever; and that, if the king so please, the offender may be proceeded against for the misprision only. 4 *Black.* 119.

Misprision of *treason* consists in the bare knowledge and concealment of treason, without any degree of assent thereto; for any assent makes the party a principal traitor. This concealment

ment becomes criminal, if the party apprized of the treaſon doth not, as ſoon as conveniently may be, reveal the ſame to a magiſtrate. *Id.* 120.

Miſpriſion of *felony* is alſo the concealment of a felony which a man knows, but never aſſented to; for, if he aſſented, this makes him either principal or acceſſary. And the puniſhment of this, in a public officer, by the ſtatute 3 *Ed.* 1. *c.* 9. is impriſonment for a year; in a common perſon, impriſonment for a leſs, diſcretionary, time; and, in both, fine and ranſom at the pleaſure of the court. *Id.* 121.

MISUSER, is an abuſe of any liberty or benefit. A charter of a corporation may be forfeited by miſuſer; ſo alſo an office, either public or private; as if a judge takes a bribe, or a park-keeper kills deer without authority. 2 *Black.* 153.

MITTIMUS, is a writ for removing and transferring records from one court to another: and is alſo a precept in writing, under the hand and ſeal of a juſtice of the peace, directed to the gaoler, for the receiving and ſafekeeping of an offender, until he is delivered by law. 2 *Inſt.* 590.

MIXT TITHES, are thoſe which ariſe not immediately from the ground, but from things immediately nouriſhed by the ground; as by means of goods depaſtured thereupon, or otherwiſe nouriſhed with the fruits thereof; as colts, calves, lambs, chickens, milk, cheeſe, eggs.

MODUS DECIMANDI is, when lands, tenements, or ſome annual certain ſum, or other profit, hath been given, time out of mind, to a parſon and his ſucceſſors, in full ſatisfaction and diſcharge of tithes in kind in ſuch a place. 2 *Co.* 47. For which, ſee TITHES.

MOIETY, is the half of any thing.

MOLENDINUM, a mill, *ſecta ad molendinum*, is a writ that lies, where a man, by uſage, time out of mind, hath ground his corn at the mill of a certain perſon, and afterwards goeth to another mill with his corn, thereby withdrawing his ſuit to the former; and this writ lies eſpecially for the lord againſt his tenants, who hold of him to do ſuit at his mill. But now remedy in this and the like caſes is commonly turned into an action upon the caſe.

MONETAGIUM, a mintage, or privilege of minting or coining money. It alſo ſignified a certain tribute paid by the tenants every third year, to ſuch of the lords as had the privilege of coinage. For anciently divers lords of manors, and others, had the privilege of coining money; but this was uſually done by ſpecial grant from the king, or by preſcription, which ſuppoſes one; and therefore was derived from, and not in derogation of, the royal prerogative. Beſides that they had only the profit of the coinage, and not the power of inſtituting either the impreſſion

impreſſion or denomination, but had uſually the ſtamp ſent them from the exchequer. 1 *Black.* 277.

MONEY, is ſaid to be the common meaſure of all commerce throughout the world, and conſiſts principally of three parts; the material whereof it is made, being gold or ſilver; the denomination or intrinſic value, given by the king, by virtue of his prerogative: and the king's ſtamp thereon, for as wax is not a ſeal without a print, ſo metal is not money without an impreſſion. 1 *Inſt.* 207. 1 *Hale's Hiſt.* 188.

In order to fix the value, the weight and fineneſs of the metal are to be taken into conſideration. When a given weight of gold and ſilver is of a given fineneſs, it is then of the true ſtandard, and called ſterling metal; and of this ſterling metal all the coin of the kingdom muſt be made, by the ſtatute 25 *Ed.* 3. *ſt.* 5. *c.* 13. And no perſon can be inforced to take in payment any money but of gold or ſilver, except of ſums under ſixpence. And by the ſtatute 14 *G.* 3. *c.* 42. no tender of payment in ſilver money, exceeding 25*l.* at one time, ſhall be a ſufficient tender in law, for more than its value by weight, at the rate of 5*s.* 2*d.* an ounce. 1 *Black.* 278. 2 *Inſt.* 577. 1 *Hale's Hiſt.* 195.

The king may, by his proclamation, legitimate foreign coin, and make it current money of this kingdom, according to the value impoſed by ſuch proclamation; and therefore both *Engliſh* money, coined by the king's authority, and foreign money made current by proclamation, are within the denomination of lawful money of *England.* But of this latter ſort there is none at preſent in *England*; *Portugal* money being only taken by conſent, as approaching neareſt to our ſtandard, and falling in tolerably well with our diviſions of money into pounds and ſhillings; but no perſon is obliged to take it. 1 *Hale's Hiſt.* 192. 1 *Black.* 278. 4 *Black.* 89.

Any piece of money coined is of value according to the proportion it bears to other current money, and that without proclamation. And though there is no act of parliament or order of ſtate for *guineas* as they are taken, yet being coined at the mint, and having the king's impreſſion, they are lawful money, and current at the value for which they were coined. In legal proceedings, they ſhould be deſcribed as *pieces of gold called guineas, of ſuch a value.* 5 *Mod.* 7. *Carth.* 255.

Money paid into court is, where the defendant partly confeſſes the action, and pleads a tender, or offers payment, of what he acknowledges to be due. In which caſe, he uſually pays into the hands of the proper officer of the court as much as he acknowledges due to the plaintiff, together with the coſts hitherto incurred, (but if he pleads a tender before the action brought, then without coſts,) in order to prevent the expence of any farther proceedings. If, after the money paid in, the plaintiff proceeds

proceeds in his ſuit, it is at his own peril; for, if he doth not prove more due than is ſo paid into court, he ſhall be nonſuited and pay coſts to the defendant; but he ſhall ſtill have the money ſo paid in, for that the defendant has acknowledged to be his due. 3 *Black.* 304.

MONKS, from μονος, *ſolus*, were originally perſons that led a ſolitary life, having retired from the world by reaſon of the perſecutions which attended the firſt ages of the church, and lived in deſarts and places moſt private and unfrequented, in hopes to find that peace and comfort among beaſts which were denied them amongſt men. And this being the caſe of ſome very extraordinary perſons, their example gave ſo much reputation to retirement, that the practice was continued, when the reaſon ceaſed which firſt began it. And after the empire became chriſtian, inſtances of this kind were numerous; and thoſe whoſe ſecurity had obliged them to live ſeparately and apart, became afterwards united into ſocieties, and the places where they agreed to live together under certain rules and orders were called *monaſteries.*

MONOPOLY, is a licence or privilege allowed by the king, for the ſole buying, ſelling, making, working, or uſing of any thing; whereby the ſubject in general is reſtrained from that liberty of manufacturing or trading which he had before. Theſe monopolies were carried to an enormous height during the reign of queen *Elizabeth*, and in the former part of the reign of king *James* the firſt, but were in a great meaſure remedied by the ſtatute 21 *Ja. c.* 3. which declares ſuch monopolies to be contrary to law and void; except as to patents, not exceeding the grant of 14 years, to the authors of new inventions, and ſome other particular exceptions: and monopoliſts are puniſhed with forfeiture of treble damages and double coſts, to thoſe whom they attempt to diſturb; and if they procure any action, brought againſt them for theſe damages, to be ſtayed by any extrajudicial order, other than of the court wherein it is brought, they incur a *præmunire.* 4 *Black.* 159.

MONTH. There are in common uſe two ways of calculating months, either as *lunar*, conſiſting of twenty-eight days, the ſuppoſed revolution of the moon, thirteen of which make a year; or, as *calendar* months, of unequal lengths, commencing on the firſt day of the calends of each month, whereof in a year there are only twelve. A month in law is a lunar month, or twenty-eight days, unleſs otherwiſe expreſſed; not only becauſe it is always one uniform period, but becauſe it falls naturally into a quarterly diviſion by weeks. Therefore a leaſe for twelve months is only for forty-eight weeks; but if it be for a twelve-month, in the ſingular number, it is good for the whole year. 2 *Black.* 141.

But

But in eccleſiaſtical matters, as in caſe of the lapſe of livings, or the time for bringing prohibitions, the rule for the calendar months is obſerved. 3 *Atk.* 346.

MONUMENT, or tombſtone, in a church or church-yard, deſcends to the heir, in nature of an heir loom. And if any perſon takes away or defaces the ſame, he is liable to an action from the heir. And if any one ſteals the ſhroud of a dead body, it is felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. 2 *Black.* 429.

MOOR GAME. Beſides the general penalties for deſtroying the game, it is enacted by the 13 *G.* 3. *c.* 55. that no perſon ſhall kill, ſell, buy, or have in his poſſeſſion any heath fowl, called *black game*, between *Dec.* 10. and *Aug.* 20. nor any grouſe, commonly called *red game*, between *Dec.* 10 and *Aug.* 12. on pain of forfeiting, for the firſt offence, not exceeding 20*l.* nor leſs than 10*l.*; for the ſecond and every ſubſequent offence, not exceeding 30*l.* nor leſs than 20l.

And by the 13 *G.* 3. *c.* 18. if any perſon ſhall kill any moor game or heath game in the night time, or on a *Sunday* or *Chriſtmas-day*, he ſhall incur the like forfeiture for the firſt and ſecond offence, and for the third offence he ſhall forfeit 50l.

MORT D'ANCESTOR. An aſſiſe of *mort d'anceſtor* is a writ that lieth where, after the deceaſe of a man's immediate anceſtor, as where his father, mother, brother, ſiſter, uncle, aunt, nephew, or niece, die ſeiſed, a ſtranger abateth; in which caſe, if the demandant proves theſe particulars, and that he is the next heir, he will have judgment to recover poſſeſſion. 1 *Inſt.* 159. a.

But this courſe of proceeding is ſeldom uſed; the remedy being rendered now more eaſy by ejectment.

MORTGAGE:

1. *Mortgage, what.*
2. *Of the eſtate which the mortgagee hath in the premiſes.*
3. *Mortgage a perſonalty.*
4. *Of purchaſing in a prior incumbrance.*
5. *Of proportioning between tenant for life and the remainder man.*
6. *Of re-entry on payment or tender.*
7. *Account to be made by the mortgagee.*
8. *Of the eqtity of redemption*
9. *Of foreclosure.*

1. *Mortgage, what.*

ESTATES held *in vadio*, in *gage*, or pledge, are of two kinds; *vivum vadium*, or living pledge; and *mortuum vadium*, dead pledge, or *mortgage*.

Vivum

Vivum vadium, or living pledge, is when a man borrows a ſum of money of another, and grants him an eſtate to hold till the rents and profits ſhall repay the ſum ſo borrowed. This is an eſtate conditioned to be void, as ſoon as ſuch ſum is raiſed. And in this caſe, the land or pledge is ſaid to be living; it ſubſiſts and ſurvives the debt; and, immediately on the diſcharge of it, reſults back to the borrower. 2 *Black.* 157.

He that mortgages or pawns, is called the *mortgagor*; and he to whom the mortgage or pawn is made, is call the *mortgagee*

Mortuum vadium, a dead pledge, or *mortgage*, (which is much more common than the other,) is, where a man borrows of another a ſpecific ſum, and grants him an eſtate in fee, on condition that if he, the mortgagor, ſhall repay to the mortgagee the ſaid ſum on a certain day mentioned in the deed, that then the mortgagor may re-enter on the eſtate ſo granted in pledge; or, as is now the more uſual way, that the mortgagee ſhall reconvey the eſtate to the mortgagor; in this caſe, the land which is ſo put in pledge is, *by law*, in caſe of non-payment at the time limited, for ever dead and gone from the mortgagor; and the mortgagee's eſtate in the land is then no longer conditional, but abſolute. *Ibid.*

But as it was formerly a doubt, whether by taking ſuch eſtate in fee it did not become liable to the wife's dower and other incumbrances of the mortgagee, (though that doubt has been long ago over-ruled by the courts of equity,) it is therefore become uſual to grant only a long term of years, by way of mortgage, with condition to be void on repayment of the mortgage money: which courſe hath been ſince continued, principally becauſe, on the death of the mortgagee, ſuch term becomes veſted in his perſonal repreſentative, who alone is entitled in equity to receive the money lent, of whatever nature the mortgage may happen to be. *Ibid.*

As a man may make a feoffment in fee in mortgage, or a leaſe for a term of years, ſo he may make a gift in tail, or a leaſe for term of life in mortgage. *Litt. ſect.* 333.

If a man mortgageth his goods, chattels, and debts for a valuable conſideration, and the mortgagee permits the mortgagor to keep poſſeſſion, and to have the ordering, ſelling, and diſpoſing thereof, this is fraudulent againſt creditors; and if the mortgagor becomes bankrupt, the mortgaee ſhall only come in for his proportionable ſhare under the commiſſion: for the mortgagee of goods moveable and things in action is the true owner thereof; and therefore they ought to be delivered to him as much as they may or poſſibly can be; that is to ſay, by delivering the goods themſelves ſpecifically, or the key of the warehouſe wherein they are, with the poſſeſſion thereof, and by delivering the muniments, books, and writings relating to

to the things in action, and enabling the mortgagee to reduce the ſame into poſſeſſion by action or ſuit. 1 *Wilſ.* 260.

If a copyholder in fee ſurrenders to the uſe of the mortgagee in fee, and before preſentment in the lord's court becomes bankrupt, though this ſurrender is void in law for want of a preſentment, yet the ſurrender binds the land in equity, and the aſſignee of the bankrupt ſhall not be in a better caſe than the bankrupt himſelf, who was by this ſurrender bound in equity. 2 *Salk.* 449.

2. *Of the eſtate which the mortgagee hath in the premiſes.*

A MORTGAGEE is eſteemed in poſſeſſion on executing the mortgage deed; and if the mortgage money be not paid, whereby the land is forfeited, he may bring ejectment without actual entry. 2 *Lil. Abr.* 203.

The mortgagee, with regard to the inheritance, is a truſtee for the mortgagor till a foreclоſure. 2 *Bac. Abr.* 83. 1 *Atk.* 605.

Where the mortgagee of a leaſehold eſtate hath not covenanted, that he will procure the *lives* to be filled up, the mortgagee may do it; and on adding the expence of renewal to the principal of the mortgage, it ſhall carry intereſt. 3 *Atk.* 4.

Where the mortgagor, being in poſſeſſion, commits *waſte*, he may be reſtrained by injunction; for the whole eſtate is a ſecurity.—So if the mortgagee cuts down timber, and doth not apply the money ariſing from the ſale, in ſinking the intereſt and principal, the mortgagor may have an injunction to ſtay waſte. 3 *Atk.* 210. 723.

A mortgagee cannot preſent on an *avoidance* of a church, becauſe it doth not leſſen his debt. 9 *Mod.* 2. 3 *Atk.* 559.

If a mortgagor, retaining the poſſeſſion, levies a *fine* to a ſecond mortgagee; this ſhall not bar the firſt mortgagee.—So a fine levied by the mortgagee, and five years non-claim, will not bar the mortgagor of his equity of redemption. 1 *Lev.* 272. 1 *Vern.* 152.

A mortgagor in poſſeſſion is not liable to account for the rents and profits to the mortgagee; for he ought to take the legal remedy to get into poſſeſſion. 3 *Atk.* 244.

Where a mortgage is aſſigned with the concurrence of the mortgagor, the intereſt paid to the mortgagee by the aſſignee ſhall be taken as principal, and carry intereſt; but where it is aſſigned without the conſent of the mortgagor, the aſſignee muſt take it only upon the ſame terms with the aſſignor. 3 *Atk.* 271.

3. *Mortgage a perſonalty.*

IF there is a mortgage in fee, and two deſcents caſt, and there is more due on it than the value of the land, and though the

the mortgagor ſays he will not redeem; yet it ſhall go to the executor, and not to the heir, the equity of redemption not being foreclоſed nor releaſed. 2 *Vern.* 367.

If the heir of the mortgage foreclоſes the mortgagor, yet the land ſhall go to the executor, unleſs the heir thinks fit to pay him the mortgage money; and then he may have the benefit of the mortgage. 2 *Vern.* 67.

So a deviſe of all a man's goods and mortgages to his executors is a good deviſe, and will paſs all the lands mortgaged. *Cro. Car.* 37.

For the eſtate in land is the ſame thing as the money due upon it. It will be liable to debts; it will go to executors; it will paſs by a will not made and executed with the ſolemnities required by the ſtatute of frauds; and the aſſignment of the debt will draw the land after it. *Bur. Manſf.* 978.

If a man mortgage lands, and covenants to pay the money, and dies, the perſonal eſtate of the mortgagor ſhall, in favour of the heir, be applied to exonerate the mortgage: ſo it is if there was no covenant, if the mortgagor had the money; becauſe it was his debt, and he is bound to make it good, though the land be a defective ſecurity. 2 *Salk.* 449.

But this exoneration ſhall not be allowed, unleſs there be perſonal aſſets ſufficient to pay all legacies; for the mortgagee ſhall be paid out of the land if there be not perſonal aſſets to pay the legacies: and if by ſuch payment aſſets fall ſhort, the legatees may make ſuch mortgagee refund. 2 *Salk.* 450.

Alſo, this exoneration ſhall not be allowed to a deviſee of lands; as where lands were mortgaged, and afterwards deviſed to *A.* for life, remainder to *B.* in fee, and the deviſor makes *A.* executor, and leaves aſſets ſufficient to pay the debts. *B.* prayed that the aſſets might go to the payment of the mortgage. But the court took a difference between heir and deviſee; that though the heir ſhall be relieved in ſuch caſe, yet the deviſee ſhall not; and decreed, that the tenant for life and remainder man ſhould each pay their reſpective proportions in order to redeem. 1 *Cha. Ca.* 271.

4. *Of purchaſing in a prior incumbrance.*

If lands are thrice mortgaged, the third mortgagee may buy in the firſt incumbrance to protect his own mortgage; and he ſhall hold againſt the ſecond mortgagee, if ſuch ſecond mortgagee do not ſatisfy him the money he paid on the firſt, and alſo his own money which he lent on the laſt mortgage. 2 *Ventr.* 338. *Str.* 689.

And the reaſon is, becauſe the legal eſtate is in the firſt mortgagee, and the court will not take away that benefit from him, provided

provided he had no notice of the second at the time he bought in the third. 2 *Atk.* 53.

For the courts of equity never protect purchasors of prior incumbrances, but where such purchasors came in for a valuable consideration without notice of a mesne incumbrance. 2 *Ventr.* 339.

In like manner, a second mortgagee may protect himself, by purchasing an old judgment or statute precedent to the first mortgage; and shall not be impeached in equity, but upon payment of all that is due to him in both respects. 2 *Lill. Abr.* 206. 2 *Vern.* 160. 279.

Where the mortgagee has a bond likewise from the mortgagor, the mortgagor in his life-time may redeem the mortgage, without paying off the bond debt; otherwise it is as to the heir at law, because the moment he redeems the estate, it shall be assets in his hands; and for this reason the court compels him to discharge the bond as well as the mortgage. 2 *Atk.* 53.

A bond may likewise be tacked to a judgment; and the reason is, because the judgment creditor, by virtue of an *elegit*, may bring an ejectment, and hold upon the extended value: and as he has the legal interest in the estate, the court will not take it from him. 2 *Atk.* 53.

If a man hath two real estates, and mortgages both to one person, and afterwards only one of them to a second mortgagee, who had no notice of the first; the court, in order to relieve the second mortgagee, will direct the first to take his satisfaction out of the estate only which is not mortgaged to the second mortgagee, if that is sufficient to satisfy the first mortgage, even though the estates descend to two different persons. For it is a rule in equity, that if a creditor hath two funds, he shall take his satisfaction out of that fund on which another creditor hath no charge. 2 *Atk.* 446.

5. *Of proportioning between the tenant for life and remainder man.*

TENANT for life, out of the annual profits, must keep down the interest: and it is now settled, that, in order to redeem, the tenant for life must pay one third, and the remainder man, or reversioner, two thirds. 1 *Vern.* 70. *Cha. Ca. King.* 30.

A *jointress*, paying off the mortgage, shall hold over, till she and her executors are repaid with interest. 1 *Vern.* 214. 1 *Cha. Ca.* 271.

The *widow* of a mortgagor shall not be debarred of her dower and right, unless she legally joined with her husband in the mortgage, or otherwise lawfully barred herself from such her dower or right. 4 & 5 *W. c.* 16. *f.* 4.

6. *Of re-entry on payment or tender.*

If the mortgagor die before the day of payment, his heir may pay or tender the money; and if the mortgagee refuse to receive it, the heir may enter. Also, the executor or administrator of the mortgagor may pay or make tender. 1 *Inst.* 205, 6.

Although a convenient *time* before sunset be the last time given to the mortgagor to tender, yet if he tender it to the person of the mortgagee at any time of the day of payment, and he refuseth it, the condition is saved for that time. 1 *Inst.* 206.

And he may tender the money in purses or bags, without shewing or telling the same; for he doth that which he ought; namely, to bring the money in purses or bags, which is the usual manner of carrying money; and then it is the part of him that is to receive it, to put it out and tell it. 1 *Inst.* 208.

If no *place* is mentioned in the mortgage deed, at which the money shall be paid, it is not sufficient for the mortgagor to tender it upon the land, but he must seek the mortgagee, if he be then in any other place within the realm of *England*. But otherwise it is of a rent issuing out of land; for, in that case, it is sufficient that the rent be tendered upon the land out of which it issues. 1 *Inst.* 210.

But if the mortgagee be out of the realm of *England*, the mortgagor is not bound to seek him, or to go out of the realm unto him; and for that the mortgagee is the cause that the mortgagor cannot tender the money, the mortgagor shall enter into the land, as if he had duly tendered it according to the condition. 1 *Inst.* 210.

The mortgagee refusing to receive his money upon tender after forfeiture, shall lose his interest from the tender. 1 *Cha. Ca.* 29.

If the mortgagee, before the day of payment, makes his executors and dies, and his heir entereth into the land as he ought; the mortgagor ought to pay the money, at the day appointed, to the *executor*, and not to the heir unless the condition be, that the mortgagor shall pay the money to the mortgagee, *or his heirs*; and then it shall be paid to the heir accordingly. *Litt. sect.* 339.

And here note, that the executor doth more represent the person of the testator, than the heir doth that of the ancestor; for though the executor be not named, yet the law appoints him to receive the money; but so doth not the law appoint the heir, unless he be named. 1 *Inst.* 209, 210.

But if the condition be, to pay the money to the mortgagee, his heirs *or* executors, then the mortgagor hath his election to pay it either to the heir or executor. *Id.* 210.

If

If it be to pay the money to the mortgagee, his *heirs or aſſigns*, the mortgagor ought to pay it to the heir and not to the executor: for the executor in this caſe is not an *aſſign* in law; becauſe, by being made executor, the eſtate is not aſſigned over to him. *Id.* 210.

But if the mortgagee actually aſſigns the eſtate over, the mortgagor in this caſe may pay the money to the firſt mortgagee or the ſecond mortgagee at his election: and if the firſt mortgagee dies, the mortgagor may pay the money either to the heir of the firſt mortgagee, or to the ſecond mortgagee; for the law will not inforce the mortgagor to take knowledge of the ſecond mortgage, nor of the validity thereof, but at his pleaſure, and the firſt mortgagee and his heirs are expreſsly named in the condition. *Id.*

A mortgagee may refuſe to part with the title deeds till his money is paid; but ought not to deny an inſpection of the deeds in his hands, when he hath notice to be paid off. 2 *Atk.* 332.

The mortgage money being paid, the mortgagor ſued to have the mortgage deed delivered up to him, but not allowed; becauſe then the mortgagor may charge the mortgagee for the profits paſt. *Toth.* 229.

And if the mortgage deed were given up, this is not ſufficient to reſtore the eſtate, but there muſt be a re-conveyance; whereas the giving up a bond is in law an extinguiſhment of the debt. 1 *Salk.* 157. 1 *Atk.* 520.

By the 7 *G.* 2. *c* 20. in actions at law or ejectments concerning mortgages, no ſuit in equity being then depending to foreclose or redeem ſuch mortgage, the mortgagor, on tender, or payment into court, of principal, intereſt, and coſts, ſhall be diſcharged; and by rule of court, the mortgagee may be compelled to ſurrender or re-convey.

7. *Account to be made by the mortgagee.*

A MORTGAGEE in poſſeſſion is not obliged to lay out money any further than to keep the eſtate in neceſſary repair; but if he has expended any ſum in ſupporting the mortgagor's title where it has been impeached, he may add this to the principal, and it ſhall carry intereſt. 3 *Atk.* 518.

A mortgagee ſhall not be allowed for his trouble in receiving the rents of the eſtate himſelf; but if an eſtate lies at ſuch a diſtance as obliges him to employ a bailiff to receive them, what he paid to the bailiff ſhall be allowed. 3 *Atk.* 518.

Generally, though intereſt is in arrear when the mortgage is paid off, a mortgagee ſhall not have intereſt for that intereſt. 2 *Atk.* 332.

A proviſo in a mortgage deed, that if intereſt ſhall be behind

for six months, it shall then be accounted principal and carry interest, is void; for to make interest principal, it is requisite that interest be first grown due; and after that, an agreement concerning it may make it principal. 2 *Salk.* 449.

For an agreement to turn interest upon a mortgage into principal, must be done fairly, and is generally upon the advance of fresh money. 2 *Atk.* 331.

In taking an account from the mortgagee, of the rents and profits of the estate after he has come into possession of it, the court commonly directs annual rents to be made; but not so, in an account of personalty. 2 *Atk.* 410.

8. *Of the equity of redemption.*

THOUGH a mortgage be forfeited, and thereby the estate absolutely vested in the mortgagee at the common law; yet a court of equity will consider the real value of the tenements compared with the sum borrowed. And if the estate be of greater value than the sum lent thereon, they will allow the mortgagor at any reasonable time to recall or redeem the estate, paying to the mortgagee his principal, interest, and costs. This reasonable advantage, allowed to the mortgagors, is called the *equity of redemption.* 2 *Black.* 159.

An equity of redemption is always considered as an estate in the land; for it may be devised, granted, or intailed with remainders, and such in tail and remainders may be barred by fine and recovery; and therefore cannot be considered as a mere right only, but such an estate whereof there may be a seisin; the person, therefore, entitled to the equity of redemption is considered as the owner of the land, and a mortgage in fee is considered as personal assets. 1 *Atk.* 605.

In order to prevent fraudulent mortgages, it is enacted by the 4 & 5 *W. c.* 16. that "if any person shall borrow any money, "and for the payment thereof shall acknowledge any judgment, "statute, or recognizance; and afterwards shall mortgage his "lands, and not give notice to the mortgagee of such judgment, "statute, or recognizance, he shall forfeit his equity of redemp-"tion." *s.* 2.

And "if any person having once mortgaged, shall again "mortgage without giving notice of the first mortgage to the "second mortgagee, he also shall forfeit his equity of redempti-"on." *s.* 3.

Provided, "that the under-mortgagees may redeem the for-"mer mortgages, on payment of principal, interest, and costs, "to the prior mortgagees." *s.* 4.

9. *Of foreclosure.*

As the mortgagor hath a right to call on the mortgagee, who hath

hath poſſeſſion of his eſtate, to deliver it back, and account for the rents and profits received, on payment of his whole debt and intereſt; ſo, on the other hand, the mortgagee may either compel the ſale of the eſtate in order to get the whole of his money immediately, or elſe call upon the mortgagor to redeem his eſtate preſently, or, in default thereof, to be for ever foreclоſed from redeeming the ſame; that is, to loſe his equity of redemption. 2 *Black.* 159.

An *infant* cannot be foreclоſed, without a day to ſhew cauſe after he comes of age; but the proper way in ſuch caſes is, to decree the lands to be ſold to pay the debts. 1 *Vern.* 295.

It is a rule eſtabliſhed in equity, analogous to the ſtatute of limitation, that after *twenty years* poſſeſſion of the mortgagee, he ſhall not be diſturbed, unleſs there be extraordinary circumſtances; as in the caſe of femes covert, infants, and the like. 2 *Ventr.* 340. 3. *Atk.* 313.

In a caſe before lord *Hardwicke*, *Feb.* 28, 1740, on a bill brought for a redemption after twenty-five years poſſeſſion, the defendant by his anſwer ſubmitted to be redeemed, notwithſtanding the length of time; lord *Hardwicke* ſaid, he ſaw no colour for the redemption; but on the defendant's ſubmiſſion, he decreed an account, and ordered the plaintiff to pay in ſix months, and thereupon the defendant to re-convey; but in default of the plaintiff's payment as aforeſaid, the bill was to be diſmiſſed. 2 *Atk.* 140.

Finally; *June* 26, 1745, in the caſe of *Aggas* and *Pickerell*, a bill was brought to redeem, after the mortgagee had been thirty years in poſſeſſion. The defendant *pleaded the ſtatute of limitation* in bar, and inſiſted on the length of time that he had been in quiet poſſeſſion. Lord *Hardwicke* was in great doubt whether the defendant could plead the ſtatute; for inſiſting on the length of time againſt a bill to redeem, is only a kind of equitable bar, and by way of analogy to the ſtatute of limitation. But after a further hearing, and conſideration of all the caſes, he allowed the plea. 3 *Atk.* 225.

MORTMAIN, *(mortua manus,)* is where lands and tenements are given to any corporation, ſole or aggregate, eccleſiaſtical or temporal; and is called *mortmain*, as coming into a *dead hand*: becauſe the lords of them could receive nothing of the alienee, any more than from a dead hand, but loſt their eſcheats and ſervices before due to them. 1 *Inſt.* 2.

By the 9 *G.* 2. *c.* 36. no lands or tenements, or money to be laid out thereon, ſhall be given for, or charged with, any charitable uſe whatſoever, unleſs by deed indented, executed in the preſence of two witneſſes twelve calendar months before the death of the donor, and inrolled in the court of chancery within ſix months after its execution, (except ſtocks in the public funds,

which may be transferred within ſix months previous to the donor's death,) and unleſs ſuch gift be made to take effect immediately, and be without power of revocation: and all gifts in any other manner or form ſhall be void. Provided, that this ſhall not extend to the two univerſities, or their colleges, or to the ſcholars upon the foundation of *Eaton*, *Wincheſter*, and *Weſtminſter*: yet ſo that no college ſhall be at liberty to purchaſe more advowſons, than are equal in number to one moiety of the fellows, or perſons uſually ſtyled and reputed as fellows; or where there are none ſuch, then to one moiety of the ſtudents upon the reſpective foundations.

If a man deviſeth lands to truſtees to be turned into money, and that money to be laid out in a charity, it is not good within the act, for it is an intereſt ariſing out of land. So a deviſe of a mortgage, or of a term for years, to a charity is not good; for the words of the ſtatute are, that the lands ſhall not be *charged* with any charitable uſe whatſoever. So alſo money given to be laid out in lands, is expreſsly within the ſtatute; but money given generally, is not: and the truſtees are not reſtrained from laying out that money in land, if they think proper, provided that it be not required of them ſo to diſpoſe thereof by the act of donation.

MORTUARY, ſeems to have been originally an oblation made at the time of a perſon's *death*. In the Saxon times there was a funeral duty to be paid, which was called *pecunia ſepulchralis*, and *ſymbolum animæ*, or the *ſoul-ſhot*: which was required by the council of *Ænham*, and inforced by the laws of king *Canute*; and was due to the church which the party deceaſed belonged to, whether he was buried thereor not. 1 *Still.* 171.

Dr *Stillingfleet* makes a diſtinction between *mortuaries* and *corſe preſents*: The *mortuary*, he ſays, was a right ſettled on the church, upon the deceaſe of a member of it; and a *corſe preſent* was a voluntary oblation uſually made at funerals. *Id.* 172.

And it ſeemeth that, in ancient times, a man might not diſpoſe of his goods by his laſt will and teſtament, without firſt aſſigning therein a ſufficient mortuary to the church. And this in a conſtitution of archbiſhop *Winchelſea*, is called the *principal legacy*; ſo denominated, ſaith *Lindwood*, becauſe they who died did bequeath the beſt or ſecond beſt of their goods to *God* and the church, in the firſt place, and before other legacies. *Lind.* 196.

And in another conſtitution of the ſame archbiſhop, it is enjoined, that if a perſon, at the time of his death, have three or more quick goods, the firſt beſt ſhall be given to the lord of the fee for a heriot; and the ſecond beſt ſhall be reſerved to the church where the deceaſed perſon received the ſacraments whilſt he lived. *Id.* 184.

And

And this was usually carried to the church with the dead corpse. And Mr. *Selden* quotes an ancient record, where it is recited, that a horse was present at the church the same day in the name of a mortuary, and that the parson received him, according to the custom of the land and of holy church. *Seld. Hist. Tith.* 287.

Mortuaries are recoverable in the spiritual court, unless the matter turn upon the point of custom; and then a prohibition will be granted in order to try the custom at law. *Cro. Eliz.* 151.

The variety of customs with regard to mortuaries, having given frequently a handle to exactions on the one side, and frauds or expensive litigations on the other, it was thought proper by the statute 21 *Hen.* 8. *c.* 6. to reduce them to some kind of certainty. For which purpose it is enacted, that all mortuaries or corse presents shall be taken in manner following, unless where by custom less or none at all is due: *viz.* for every person who doth not leave goods clear, above his debts paid, to the value of ten marks, nothing; for every person who leaves goods to the value of ten marks, and under 30*l.* 3*s.* 4*d.*; if above 30*l.* and under 40*l.* 6*s.* 8*d.*; if above 40*l.* ten shillings. And no mortuary shall be paid for the debt of a feme-covert; nor for any child; nor for any one of full age, that is not an house-keeper; nor for any wayfaring man, but such wayfaring man's mortuary shall be paid in the parish to which he belongs.

MOTION in court, is an occasional application by the party or his counsel, in order to obtain some rule or order of court, and is usually grounded upon an affidavit of the truth of the suggestion. 3 *Black.* 304.

MOVEABLES, are all such things personal as attend a man's person wherever he goes; in contradistinction to things *immoveable*, as houses and lands. 2 *Black.* 384.

MULIER, hath three significations: 1. It signifieth a woman in general. 2. A virgin. 3. A wife; and this is the most proper and legal signification of it; and a son or daughter, born of a lawful wife, is called *filius mulieratus*, or *filia mulierata*, a son *mulier*, or a daughter *mulier*; and it is always used in contradistinction to a bastard: thus a bastard is an illegitimate issue, and mulier is legitimate. 1 *Inst.* 243.

MUM. By the 27 *G.* 3. *c.* 13. a duty is imposed on the importation of mum into *Great Britain*, and drawbacks are to be allowed on the exportation thereof, as set forth in a schedule annexed to the act.

And also, by the annual malt act, a duty is imposed on all mum made in, or imported into, this kingdom; which duties are to be under the management of the commissioners of the customs and excise.

MURAGE

MURAGE, *muragium*, is a reaſonable toll, to be taken of every cart or horſe coming laden through a city or town, for the building or repairing the public walls thereof, due either by grant or preſcription. The perſonal ſervice of the inhabitants and adjoining tenants in building or repairing the walls, was called *murorum operatio*; and when this perſonal duty was changed into money, the tax ſo gathered was called *murage*. In the city of *Cheſter*, there are two ancient officers called *murengers*, being two of the principal aldermen, annually choſen to ſee the walls kept in good repair; for the maintenance of which, they receive certain tolls and cuſtoms.

MURDER, is where a man of ſound memory, and of the age of diſcretion, unlawfully killeth any perſon under the king's peace, with malice forethought, either expreſſed by the party, or implied by law; ſo as the party wounded or hurt die of the wound or hurt within a year and a day. 3 *Inſt.* 47.

By malice *expreſs*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a perſon is not authoriſed. And the evidences of ſuch a malice muſt ariſe from external circumſtances, diſcovering that inward intention; as, lying in wait, menacings antecedent, former grudges, deliberate compaſſings, and the like; which are various, according to variety of circumſtances. 1 *Hale's Hiſt.* 451.

Malice *implied*, is in ſeveral caſes; as when one voluntarily kills another, without any provocation: for, in this caſe, the law preſumes it to be malicious, and that he is a public enemy of mankind. Poiſoning alſo implies malice, becauſe it is an act of deliberation. Alſo, where an officer is killed in the execution of his office, it is murder; and the law implies malice. Alſo, where a priſoner dieth by dureſs of the gaoler, the law implies malice, by reaſon of the cruelty. And, in general, any formed deſign of doing miſchief may be called malice, and therefore not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſely wicked, is adjudged to be of malice prepenſe, and conſequently murder. 1. *H. H.* 455. 2 *Haw.* 80.

If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them goeth and fetcheth his weapon, and they go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay, though it were the ſame day, if there were ſuch a competent diſtance of time that in common preſumption they had time of deliberation, then it is murder. And the law ſo far abhors all duelling in cold blood, that

that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 3 *Inſt.* 51. 1 *Haw.* 82.

By ſtatute 21 *Ja. c.* 27. if a woman be delivered of a baſtard child, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or any other way, either by herſelf or the procuring of others, ſo to conceal the death thereof, that it may not come to light whether it were born alive or not, but be concealed, ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs that it was born dead.

If a man have a beaſt, as a bull, cow, horſe, or dog, uſed to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it: if he hath no particular notice that it did any ſuch thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape or a monkey, if it get looſe and do harm to any perſon, the owner is liable to an action for the damage: if he have notice of the quality of any ſuch his beaſt, and uſe all due diligence to keep him up, yet he breaks looſe and kills a man, this is no felony in the owner, but the beaſt is a deodand. But if he did not uſe that due diligence, but through negligence the beaſt goes abroad, after warning or notice of the condition, and kills a man, it ſeems to be manſlaughter in the owner: but if he did purpoſely let him looſe or wander abroad, with deſign to do miſchief, nay though it were with deſign only to fright people and make ſport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Sentence, in caſe of murder, ſhall be pronounced in open court immediately after conviction, in which ſhall be expreſſed not only the uſual judgment of death, but alſo the time appointed for the execution, with the marks of infamy directed for ſuch offenders, which time ſhall be on the day next but one after ſentence paſſed; and in the mean time the priſoner ſhall be kept alone in ſome cell apart from the other priſoners, and ſhall be fed with bread and water only. And after execution, the body ſhall be diſſected and anatomized; and in no caſe ſhall be buried, unleſs after having been ſo diſſected or anatomized. But the judge, if he ſees cauſe, may relax or releaſe any of theſe reſtraints or regulations. 25 *G.* 2. *c.* 37.

MUTA CANUM, (Fr. *meut de chiens,*) ſignifies a kennel of hounds. By the ancient law, upon the death of a biſhop or abbot, the king is intitled to ſix things: his beſt horſe or palfrey, with its furniture; his cloak or gown, and tippet; his cup and cover; his baſon and ewer; his gold ring; and his *muta canum*, his *mew* or kennel of hounds. 2 *Inſt.* 491.

MUTE, *mutus*, is one who is dumb and cannot ſpeak; or, in caſes of arraignment for felony, who refuſes to ſpeak or make anſwer. Heretofore, a perſon ſtanding mute, and thereby refuſing

fuſing to ſtand to the law, was liable to a ſtrange and ſevere puniſhment, called *pain forte et dure*; the judgment in which caſe was, that the man or woman ſhould be removed to the priſon, and laid there in ſome low and dark room, where they ſhould lie naked on the bare earth, without any litter, ruſhes, or other covering, and without any garment about them but ſomething to cover their privy parts; and that they ſhould lie upon their backs, their heads uncovered and their feet, and one arm to be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the ſame manner to be done with their legs; and there ſhould be laid upon their bodies iron and ſtone, as much as they might bear and more; and the next day following, to have three morſels of barley bread, without any drink; and the ſecond day to drink thrice of the water next to the houſe of the priſon (except running water) without any bread; and this to be their diet until they were dead. 2 *Inſt.* 178.

And this ſome perſons endured, for the ſake of their children or other kindred; becauſe in ſuch caſe they forfeited their goods only, and not their lands; for lands could not be forfeited but by attainder.

But now, by the 12 *G.* 3. *c.* 20. if any perſon on arraignment for felony or piracy, ſhall ſtand mute, or will not anſwer directly, he ſhall be convicted of the offence, and ſuffer in all reſpects as if he had been convicted by verdict or confeſſion.

And the ſame law is, with reſpect to an arraignment for treaſon or petty larceny; for before this act perſons ſtanding mute in either of theſe caſes, were to have the like judgment as if they had confeſſed the indictment. 2 *Inſt.* 177.

MUTILATION, is the depriving a man of the uſe of any of thoſe limbs which may be uſeful to him in fight, the loſs whereof amounts to what the law calls *mayhem*. Both the life and limbs of a man are of ſuch high value in the eſtimation of the law, that it pardons even homicide if committed *ſe defendendo*, or in order to preſerve them. For whatever is done by a man to ſave either life or member, is looked upon as done upon the higheſt neceſſity and compulſion. 1 *Black.* 130.

MUTUAL DEBTS, between the plaintiff and defendant, may be ſet one againſt the other, and either pleaded in bar, or given in evidence (after notice) upon the general iſſue at the trial; which ſhall operate as payment, and extinguiſh ſo much of the plaintiff's demand. 3 *Black.* 305.

MUTUAL PROMISE is, where one man promiſes to pay money to another, and he in conſideration thereof promiſes to do a certain act. Such promiſes muſt be binding as well of the one ſide as of the other, and both made at the ſame time. *Hob.* 88. 1 *Salk.* 24.

NAME. See MISNOMER.

NAMIUM, (*nam*, *naam*, Sax.) ſignifies the taking or diſtraining another perſon's moveable goods. So *withernam*, (from *wyther*, other,) is another or ſecond diſtreſs; which is, when goods diſtrained are driven out of the county, or otherwiſe withholden by the diſtrainor, that the ſheriff cannot come at them to make a replevy; in this caſe, a writ of *withernam* goes, to take as much of the goods of the diſtrainor, and keep the ſame, until he make deliverance of the goods firſt by him diſtrained.

NATIVUS, one that was *born* a villein.

NATURAL AFFECTION, is a good conſideration in a deed; and if one, without expreſſing any conſideration, covenant to ſtand ſeiſed to the uſe of his wife, child, brother, or the like; here, the naming them to be of kin, implies the conſideration of natural affection, whereupon ſuch uſe will ariſe.

NATURALIZATION, is where a perſon who is an alien, is made the king's *natural* ſubject by act of parliament. Hereby an alien is put in the ſame ſtate as if he had been born in the king's ligeance, except only that he is incapable of being a member of the privy council, or parliament, and of holding any office or grant. No bill for a naturalization can be received in either houſe of parliament, without ſuch diſabling clauſe in it; nor without a clauſe diſabling the perſon from obtaining any immunity in trade thereby in any foreign country, unleſs he ſhall have reſided in *Britain* for ſeven years next after the commencement of the ſeſſion in which he is naturalized. Neither can any perſon be naturalized, or reſtored in blood, unleſs he hath received the ſacrament within one month before the bringing in of the bill, and unleſs he alſo takes the oaths of allegiance and ſupremacy in the preſence of the parliament. 1 *Black.* 374.

NAVAGE, a duty incumbent on tenants to carry their lord's goods by ſhipping.

NAVY;

1. FOR the ſupply of ſeamen to furniſh his majeſty's navy, the practice of *impreſſing*, and granting powers to the admiralty for that purpoſe, is of very ancient date, and hath been uniformly continued by a regular ſeries of precedents to the preſent time: and this power, though not expreſsly declared by any act of parliament, yet is recognized by ſeveral acts of parliament, which do very ſtrongly imply it. The 2 *Ric.* 2. *c.* 4. ſpeaks of mariners being arreſted and retained for the king's ſervice, as a thing well known,

known, and practiſed without diſpute; and provides a remedy againſt their running away. By the 2 & 3 *P. & M. c.* 16. if any waterman, who uſes the river *Thames*, ſhall hide himſelf during the execution of any commiſſion of preſſing for the king's ſervice, he is liable to heavy penalties. By the 2 & 3 *An. c.* 6. poor apprentices bound to the ſea ſervice, ſhall have a protection from the admiralty from being impreſſed till they attain eighteen years of age. And by ſeveral other ſtatutes, protections are allowed to ſeamen from being impreſſed in ſeveral particular circumſtances. All which ſtatutes fully ſuppoſe and imply the legality of preſſing; otherwiſe, they would be nugatory, and in the higheſt degree abſurd. *Foſt.* 154. 1 *Black.* 419.

2. For the regulation and government of the officers and ſeamen belonging to his majeſty's navy, particular proviſion is made by the 22 *G.* 2. *c.* 33. Which act, after taking order that public worſhip ſhall be duly obſerved, and prayers and preaching by the chaplain duly performed in each reſpective ſhip, goes on to recite particular offences, and enjoin their reſpective puniſhments. The offences are of three kinds or degrees; firſt, ſuch for which the offender ſhall ſuffer death; ſecondly, ſuch for which the offender ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict; thirdly, ſuch as do not extend unto death, but are liable only to an inferior puniſhment.

The crimes againſt which death is denounced without mitigation, are, holding intelligence with the enemy; treacherouſly or cowardly yielding or crying for quarter; cowardice, or other neglect in not doing the utmoſt to take or deſtroy the enemy's ſhipping; not aſſiſting or relieving any other of his majeſty's ſhips in view; not purſuing the chaſe of an enemy beaten or flying; deſerting to the enemy, or running away with any ſhip or ſtores; making mutinous aſſemblies on any pretence whatſoever; ſtriking, or offering to ſtrike, any ſuperior officer; ſetting fire to any magazine or veſſel not belonging to the enemy; committing murder, buggery, or ſodomy.

Crimes of a ſecond rate, for which a man ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict, are, not acquainting the ſuperior officer with any letter or meſſage ſent from the enemy in the nature of a ſpy; relieving an enemy with victuals, ammunition, or other ſupply; officer not preparing to fight on ſignal given, and not perſonally encouraging the men to fight courageouſly; not uſing all poſſible endeavours in putting the orders of the commanding officer in execution; delaying or diſcouraging the ſervice, on pretence of arrears of wages, or any other pretence; deſerting, or inticing others to deſert; not taking care of and defending ſhips under convoy; uttering words of ſedition or mutiny; concealing any traiterous or mutinous practice; quarrelling with a ſuperior officer, or diſobeying any of his lawful

lawful commands; neglect of ſteering a ſhip, whereby the ſame may come in danger of being ſtranded; ſleeping on watch, or forſaking the ſtation; robbery in the fleet.

Crimes not extending unto death, are profane curſing and ſwearing; drunkenneſs; not ſending to the admiralty papers found on board prize ſhips; taking goods out of prize ſhips before the ſame ſhall have been condemned; ſtripping off their cloaths, pillaging, or otherwiſe ill uſing perſons taken on board prize ſhips; behaving with contempt to a ſuperior officer; concealing mutinous words, or being preſent at any mutiny; ſtirring up any diſturbance about the unwholeſomeneſs of victuals, otherwiſe than by quietly making the ſame known to the commanding officer; quarrelling, or uſing reproachful ſpeeches or geſtures; waſting or embezzling the ſtores. Unto this head alſo belong thoſe offences of officers, for which the penalty of caſhiering is inflicted; which are, entertaining a deſerter, and not giving notice to the captain of the veſſel to which the deſerter belongs; taking goods on board other than for the uſe of the ſhip; making or ſigning falſe muſters; and, in general, behaving in a ſcandalous, infamous, cruel, oppreſſive, or fraudulent manner, unbecoming the character of an officer.

Provided always, that no ſentence of death (except in caſes of mutiny) given by a court martial ſhall be put in execution, till after report of the proceeding ſhall have been made to the admiralty if it is within the narrow ſeas, and elſewhere, to the commander in chief, and their directions given thereupon.

3. No liſted ſeaman ſhall be taken out of his majeſty's ſervice, by any proceſs, other than for ſome criminal matter, unleſs affidavit be firſt made that the debt or damage amounts to 20*l.* But the plaintiff may enter a common appearance, and have judgment and execution other than againſt his body. 31 *G.* 2. *c.* 10.

4. By the ſame ſtatute 31 *G.* 2. *c.* 10. many uſeful regulations are made for the punctual, frequent, and certain payment of the wages of ſeamen employed in the royal navy; and for enabling them more eaſily and readily to remit the ſame, for the ſupport of their wives and families.

And perſonating ſeamen in order fraudulently to obtain their wages, is felony without benefit of clergy.

5. A ſeaman may make a nuncupative will without the ſtrict formalities required of others by the 29 *C.* 2. *c.* 3. And the probate of the will of a ſeaman ſlain or dead in the ſervice, and the certificate of his marriage, ſhall be exempted from the ſtamp duty.

6. Seamen, who have been employed in the king's ſervice, may ſet up trades in any town or place without moleſtation, except in *Oxford* and *Cambridge*. 22 *G.* 2. *c.* 24.

7. If

7. If any ſeaman under the degree of a warrant or commiſſion officer, who entered voluntarily into his majeſty's ſervice, ſhall be killed or drowned in the ſervice, and leave a widow, ſhe ſhall, on certificate of the marriage by the miniſter, churchwardens, and overſeers of the poor where ſhe reſides, receive, from the admiralty, to the amount of one year's wages of her huſband. 14 *G.* 2. *c.* 38.

NE ADMITTAS, is a prohibitory writ directed to the biſhop, at the ſuit of one who is patron of any church, if he ſuſpects that the biſhop will admit the defendant's or any other clerk pending the plea betwixt them: in which caſe, a writ iſſues, requiring the biſhop *not to admit (ne admittas)* any clerk whatſoever to that church, until the right ſhall be determined. *F. N. B.*

NEATGELD, *neatgelt*, a rent or tribute paid in cattle.

NECESSITY. The law charges no man with default, where the act is compulſory, and not voluntary; and where there is not a conſent and election; and, therefore, if either an impoſſibility be for a man to do otherwiſe, or ſo great a perturbation of the judgment and reaſon as in preſumption of law man's nature cannot overcome, ſuch neceſſity carrieth a privilege in itſelf. *Bacon's Max. of the Law.*

Neceſſity is of three ſorts; neceſſity of conſervation of life; neceſſity of obedience; and neceſſity of the act of God, or of a ſtranger. 1. Neceſſity for conſervation of life; as if divers be in danger of drowning by the caſting away of ſome boat or bark, and one of them gets to ſome plank, or on the boat's ſide, to keep himſelf above water, and another to ſave his life thruſts him from it, whereby he is drowned; this is neither *ſe defendendo*, nor by miſadventure, but it is juſtifiable homicide. So if divers felons be in a gaol, and the gaol by caſualty is ſet on fire, whereby the priſoner gets forth; this is no eſcape, nor breaking of priſon. 2. Neceſſity of obedience; as where huſband and wife commit a felony, the wife can neither be principal nor acceſſary; becauſe the law intends her to have no will, in regard of the ſubjection and obedience ſhe oweth to her huſband. 3. Neceſſity of the act of God, or of a ſtranger; as if I be tenant for years of an houſe, and it be overthrown by lightning or tempeſt, or by ſudden floods, or by invaſion of enemies; in all theſe caſes I am excuſed in waſte. *Id.*

But then it is to be noted, that neceſſity privilegeth only as to private rights, and not as to matters concerning the public; thus, if in danger of tempeſt, thoſe that are in a ſhip throw overboard other men's goods, they are not anſwerable; but if a man be commanded to bring ordnance or ammunition to relieve any of the king's towns that are diſtreſſed, in ſuch caſe he cannot for any danger of tempeſt juſtify the throwing them overboard; for there it holdeth, which was ſpoken by the *Roman*, when he alledged

alledged the ſame neceſſity of weather to hold him from embarking, "It is neceſſary for me to go, but not neceſſary for me to live." *Id.*

So if a fire happen 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 aſſailed in my houſe and diſtreſſed, and to ſave my life I ſet fire to my houſe, which ſpreads and takes hold of the other houſes adjoining, this is not juſtifiable; but I am ſubject to their action upon the caſe, becauſe I cannot reſcue my own life by doing any thing againſt the public: but if it had been only a private treſpaſs, as the going over another's ground, or the breaking of his incloſure when I am purſued, for the ſafeguard of my life, it is juſtifiable. *Id.*

NE EXEAT REGNUM. Within the realm, the king may command the attendance and ſervice of all his liegemen; but he cannot ſend any man out of the realm, even upon the public ſervice, except ſeamen and ſoldiers, the nature of whoſe employment neceſſarily implies an exception. 1 *Black.* 138.

By the common law, every man may go out of the realm for whatever cauſe he pleaſeth, without obtaining the king's leave; but if the king, by writ of *ne exeat regnum*, under his great or privy ſeal, thinks proper to prohibit him from ſo doing; or if the king ſends a writ to any man, when abroad, commanding his return; and in either caſe the ſubject diſobeys; it is a high contempt, for which the offender's lands ſhall be ſeiſed till he return, and then he is liable to fine and impriſonment. 1 *Black.* 266. 1 *Haw.* 22.

This writ was originally confined to ſtate affairs, and the intent of it was, to prevent any perſon from going beyond ſea, to tranſact any thing to the prejudice of the king or his government; but now it is very properly uſed in civil caſes, on motion to the high court of chancery. 1 *Atk.* 521.

NEGATIVE, is the denial of any fact affirmed. A negative, regularly, cannot be proved or teſtified by witneſſes; yet in ſome caſes it may indirectly be proved by ſomething tantamount: as if a man accuſes another to have been at *York*, and there to have committed a certain fact, in proof of which he produces ſeveral witneſſes, here the defendant cannot prove that he was not at *York*, againſt poſitive evidence that he was, but he ſhall be allowed to make out the negative by collateral teſtimony, that at that very time he was at *Exeter*, or the like, in ſuch a houſe, and in ſuch company. *Forteſc.* 37.

NEGATIVE PREGNANT, is a negative which implies or brings forth an affirmative; and is ſaid to be where a negative carries an affirmative in its belly. Where an action is brought againſt a man, and he pleads in bar of the action a negative plea, which is not ſo ſpecial an anſwer to the action, but it in-

includes alſo an affirmative, this is a negative pregnant: as for inſtance, he in reverſion brings a writ of entry *in caſu proviſo* upon alienation made by tenant for life, ſuppoſing that he has aliened in fee, which is a forfeiture of his eſtate; if the tenant comes and pleads that he hath not aliened in fee, this is a *negative*, wherein is included an affirmative; for though it be true, that he has not aliened in fee, yet it may be he hath aliened in tail, which is alſo a forfeiture of his eſtate. 2 *Lill. Abr.* 212. So if a man, being impleaded to have done a thing on ſuch a day, or in ſuch a place, denies generally (without ſaying any thing more) that he did it on ſuch a day, or in ſuch a place, it is a negative pregnant, as it implies nevertheleſs that in ſome ſort he didit. *Dyer*, 17.

NEGLIGENT ESCAPE, is where a priſoner eſcapes without his keeper's knowledge or conſent, in which caſe, upon freſh purſuit, the party may be retaken, and the ſheriff ſhall be excuſed if he has him again before any action brought againſt himſelf for the eſcape. 3 *Black.* 415.

NEGRO. See SLAVERY.

NEIF, *nativa*, is one that was *born* a villein or bond-woman. Anciently the lords of manors ſold, gave, or aſſigned their bondmen or bond-women, as appears by the following deed or gift: *Sciant præſentes et futuri, quod ego* Radulphus *de* C. *miles, dominus de L. dedi domino Roberto de* D. Beatricem *filiam* Willielmi H. *de* L. *quondam nativam meam, cum tota ſequela ſua et omnibus catallis ſuis et omnibus rebus ſuis perquiſitis et perquirendis: habendam et tenendam prædictam* Beatricem, *cum tota ſequela ſua, et omnibus catallis ſuis, et omnibus rebus ſuis perquiſitis et perquirendis prædicto domino* Roberto *vel ſuis aſſignatis, libere, quiete, bene, et in pace, imperpetuum. In cujus, &c. Hiis teſtibus, &c. Datum apud* L. *in die ſancti* Laurentii *martyris, anno* 13 Ed. 3.

NE INJUSTE VEXES, is a writ founded on the ſtatute of *magna charta, c.* 10. that lies for a tenant diſtrained by his lord, for more ſervices than he ought to perform; and is a prohibition to the lord not *unjuſtly* to diſtrain or *vex* his tenant. And this is chiefly where the tenant in fee-ſimple hath prejudiced himſelf, by doing greater ſervices, or paying more rent, than he needed to have done; for in this caſe, by reaſon of the lord's ſeiſin, the tenant cannot avoid it by avowry, but is driven to his writ for remedy. *F. N. B.*

NEW ASSIGNMENT. In many actions, where the plaintiff in his declaration hath alledged a general wrong, and the defendant hath put in an evaſive plea, the plaintiff in his replication may reduce that general wrong to a more particular certainty, by aſſigning the injury afreſh with all its ſpecific circumſtances, in ſuch manner as clearly to aſcertain and identify it, conſiſtently with

with his general complaint; which is called a new or novel aſſignment. 3 *Black.* 311.

NEWSPAPERS. By ſeveral ſtatutes, ſtamp duties are impoſed on newſpapers.

And by the 29 *G.* 3. *c.* 50. newſpapers are not to be let out for hire.

NEW TRIAL:

FORMERLY, the only remedy for reverſal of a verdict unduly given, was by writ of *attaint*; in which caſe the law inflicted a ſtrange and ſevere puniſhment upon the jurors, though they erred never ſo innocently, but gave no relief to the party injured: but this courſe is now univerſally and juſtly exploded, and in the place thereof a new trial is granted. 3 *Black.* 389.

For if every verdict were to be final in the firſt inſtance, great injuſtice might enſue. Oftentimes, in the trial of a cauſe, the facts are complicated and intricate, the evidence of great length and variety, and ſometimes contradictory; and where the nature of the diſpute very frequently introduces nice queſtions and ſubtilties of law. Either party may be ſurpriſed by a piece of evidence, which (had he known of its production) he could have explained or anſwered; or may be puzzled by a legal doubt, which a little recollection would have ſolved. In the hurry of a trial, the ableſt judge may miſtake the law, and miſdirect the jury; he may not be able ſo to ſtate and range the evidence, as to lay it clearly before them; nor to take off the artful impreſſions which have been made on their minds by learned and experienced advocates. The jury are to give their opinion inſtantly; that is, before they ſeparate, eat, or drink: and under theſe circumſtances, the moſt intelligent and beſt-intentioned men may bring in a verdict, which they themſelves, upon cool deliberation, would wiſh to reverſe. 3 *Black.* 389, 90. *Bur. Manſf.* 393.

Granting a new trial, under proper regulations, cures all theſe inconveniences. But the court will not lend too eaſy an ear to every application for a review of the verdict. They muſt be ſatisfied that there are ſtrong probable grounds to ſuppoſe that the merits have not been fairly and fully diſcuſſed, and that the deciſion is not agreeable to the juſtice and truth of the caſe. A new trial is not granted upon nice and formal objections, which do not go to the real merits. It is not granted where the ſcales of evidence hang nearly equal; for that which leans againſt the verdict ought always very ſtrongly to preponderate. 3 *Black.* 391, 2.

In like manner, where the cauſe is extremely frivolous, as for a ſmall treſpaſs where the damages are very inconſiderable, the court will incline not to grant a new trial, although the verdict hath been contrary to the evidence; which denial is even beneficial to the party who prays the verdict to be ſet aſide, for he cannot

have a new trial without paying the coſts of the former trial, and can expect only very trifling damages. For a new trial ought only to be granted to obtain real juſtice, and not to gratify litigious paſſions. *Bur. Manſf.* 11. 54.

And in granting ſuch further trial, the court will provide for ſupplying ſuch defects as there may be; by laying the party applying under all ſuch equitable terms, as the oppoſite party ſhall deſire and mutually offer to comply with; ſuch as, the diſcovery of ſome facts upon oath, the admiſſion of others, the production of deeds, books, and papers, the examination of witneſſes infirm or going beyond ſea, and ſuch like. 3 *Black.* 392.

A new trial ſhall not be granted in *penal* actions, where the verdict is for the defendant, though contrary to evidence; as in perjury, forcible entry, and the like. *Ld. Raym.* 62.

But in many inſtances, where the jury, in criminal caſes, have contrary to evidence, found the priſoner guilty, their verdict hath been ſet aſide, and a new trial granted by the court of king's bench; but there is no inſtance of granting a new trial, where the priſoner was acquitted upon the firſt: therefore, if the jury find the priſoner not guilty, he is for ever quit and diſcharged. 4 *Black.* 355.

On an action for the penalty of killing a hare, not being qualified, the jury found for the defendant, contrary to the direction of the judge; but the court refuſed to grant a new trial, ſaying, it had never been carried ſo far as to a penal action. *Str.* 899.

So verdicts for defendants are never ſet aſide for penalties in the caſe of duties or cuſtoms. *Str.* 1238.

A judge of an inferior court cannot grant a new trial. 1 *Salk.* 113.

NIGHT, is when it is ſo dark that the countenance of a man cannot be diſcerned. 4 *Black.* 224.

NIGHT WALKERS, are ſuch perſons as ſleep by day and walk by night, being often pilferers and diſturbers of the peace, 5 *Ed.* 3. *c.* 14. And, by the common law, conſtables are authoriſed to arreſt night walkers and ſuſpicious perſons. Watchmen alſo may arreſt night walkers, and hold them until the morning. And it is ſaid that a private perſon may arreſt any ſuſpicious night walker, and detain him till he give a good account of himſelf. 2 *Haw.* 61. 80.

NIHIL DICIT, is a failing by the defendant to put in an anſwer to the plaintiff's declaration by the day aſſigned; which being omitted, judgment is had againſt him of courſe, as *ſaying nothing* why it ſhould not.

NIL DEBET, is the general plea to the declaration in an action of debt upon contract, whereby the defendant pleads that

that he *owes nothing*; and thereupon iſſue is joined. 3 *Black.* 305.

NISI PRIUS, is a commiſſion directed to the judges and clerk of aſſize, empowering them to try all queſtions of fact iſſuing out of the courts at *Weſtminſter* that are then ripe for trial by jury. The original of which name is this; all cauſes commenced in the courts of *Weſtminſter-hall* are, by the courſe of the courts, appointed to be tried on a day fixed in ſome *Eaſter* or *Michaelmas* term, by a jury returned from the county wherein the cauſe of action ariſes; but with this proviſo, "*niſi prius*" *juſticiarii ad aſſiſas capiendas venerint*; that is, "*unleſs before*" the day prefixed, the judges of aſſiſe come into the county in queſtion, which they always do in the vacation preceding each *Eaſter* and *Michaelmas* term, and there try the cauſe; which ſaves much expence and trouble, both to the parties, the jury, and the witneſſes. And then, upon the return of the verdict given by the jury to the court above, the judges there give judgment for the party for whom the verdict is found. 3 *Black.* 59.

But in matters of great weight, or where the title is intricate, the judges above will often retain cauſes to be tried there; and then the jury and witneſſes in ſuch caſe muſt come to the courts at *Weſtminſter* for the trial of the cauſe, which is called a trial at bar. *Wood. b.* 4. *c.* 1.

Errors before the juſtices at *niſi prius* ſhall be redreſſed in the king's bench, and not in the common pleas. *Id.*

NOBILITY. The civil ſtate of *England* conſiſts of the nobility and commonalty. The nobility are all thoſe who are above the degree of knight; namely, dukes, marquiſſes, earls, viſcounts, and barons. 1 *Black.* 396.

NOLLE PROSEQUI, is uſed in the law where a plaintiff in any action will proceed no further, and may be before or after verdict, though it is uſually before; and it is then ſtronger againſt the plaintiff than a nonſuit, which is only a default in appearance; but this is a voluntary acknowledgment that he hath no cauſe of action. 2 *Lill.* 218.

NOMINE POENÆ, is a penalty incurred for not paying rent, or the like, at the day appointed by the leaſe or agreement for payment thereof. 2 *Lill.* 221. If rent is reſerved, and there is a *nomine pœnæ* on the non-payment of it, and the rent is behind and unpaid, there muſt be an actual demand thereof made, before the grantee of the rent can diſtrain for it, the *nomine pœnæ* being of the ſame nature as the rent, and iſſuing out of the land out of which the rent doth iſſue. *Hob.* 82. 133.

NON-ABILITY, is an exception taken againſt the plaintiff in a cauſe, upon ſome juſt ground, why he cannot commence

any ſuit in law; as præmunire, outlawry, excommunication, or the like. *F. N. B.*

NON-AGE, in general underſtanding, is all the time of a perſon's being under the age of one-and-twenty; and in a ſpecial ſenſe, as where a man is under the age of fourteen with reſpect to marriage, or twelve with reſpect to taking the oath of allegiance.

NON ASSUMPSIT, is a plea in a perſonal action, whereby a man denies any promiſe made. The plaintiff, when the proceedings were in Latin, charged that the defendant *aſſumpſit*, that is, *aſſumed*, undertook, or promiſed to do ſuch a thing; the defendant, in joining iſſue, pleaded *non aſſumpſit*, that he did *not aſſume* or promiſe to do ſuch thing.

NON-CLAIM, is an omiſſion or neglect of one that claims not within the time limited by law, as within a year and a day, where continual claim ought to be made, or in five years after a fine levied.

NON COMPOS MENTIS, is where a perſon is not of ſound mind, memory, and underſtanding; and is of four kinds.

1. Idiots, who are of *non-ſane* memory from their nativity, by a perpetual infirmity.

2. They that loſe their memory and underſtanding by the viſitation of God; as by ſickneſs or other accident.

3. Lunatics; who have ſometimes their underſtanding, and ſometimes not.

4. Drunkards; who by their own vicious act for a time deprive themſelves of their memory and underſtanding. 1 *Inſt.* 247.

Idiots and lunatics, who are under a natural inability of diſtinguiſhing between good and evil, are not puniſhable by any criminal proſecution. 1 *Haw.* 2.

But drunkards have no privilege by their want of ſound mind; but ſhall have the ſame judgment as if they were in their right ſenſes. *Id.*

NON-CONFORMISTS. See DISSENTERS.

NON-CUL', abbreviated from *non-culpabilis*, is a plea of *not guilty* to any action of treſpaſs or wrong in a civil ſuit, or to an indictment in any matter criminal.

NON DAMNIFICATUS, is a plea to an action of debt upon a bond, with condition to ſave the plaintiff harmleſs; in which the defendant may plead generally that the plaintiff is not damnified; but if it is to ſave harmleſs ſpecially in a particular ſuit or thing, there the defendant muſt ſhew how he hath ſaved him harmleſs and indemnified. 2 *Lill.* 224. 1 *Leon.* 72.

NON DECIMANDO, is to be free from the payment of tithes, without any recompence for the ſame. Concerning which,

which, the general rule is, that no layman can præſcribe in *non decimando*; that is, to be diſcharged abſolutely of the payment of tithes, and to pay nothing in lieu thereof, unleſs he begin his preſcription in a religious or eccleſiaſtical perſon. But all ſpiritual perſons, as biſhops, deans, prebendaries, parſons, and vicars, may preſcribe generally in *non decimando*. 1 *Roll's Abr.* 653.

And theſe had their lands capable of being diſcharged of tithes ſeveral ways; as, 1. By real compoſition, originally made between the owner of the land on the one part, and the parſon, patron, and ordinary on the other. 2. By the pope's bull of exemption. 3. By unity of poſſeſſion; as where the rectory of a pariſh, and lands in the ſame pariſh, both belonged to a religious houſe, thoſe lands were diſcharged of tithes by this unity of poſſeſſion. 4. By preſcription; having never been liable to tithes, by being always in ſpiritual hands. 5. By virtue of their order; as the knights templars, hoſpitallers, ciſtercians, and præmonſtratenſes, whoſe lands were privileged by the pope, with a diſcharge of tithes: though, upon the diſſolution of the abbeys by king *Hen.* 8. moſt of theſe exemptions from tithes would have fallen with them, and the lands become tithable again, had they not been ſupported and upheld by the ſtatute 31 *H.* 8. *c.* 13. which enacts, that all perſons who ſhould come to the poſſeſſion of the lands of any abbey then diſſolved, ſhould hold them free and diſcharged of tithes, in as large and ample manner as the abbies themſelves formerly held them. And from this original have ſprung all the lands, which, being in lay hands, do at preſent claim to be tithe-free; for, if a man can ſhew his lands to have been ſuch abbey lands, and alſo immemorially diſcharged of tithes by any of the means aforeſaid, this is now a good preſcription *de non decimando*. But he muſt ſhew both theſe requiſites; for abbey lands, without a ſpecial ground of diſcharge, are not diſcharged of courſe; neither will any preſcription *de non decimando* avail in total diſcharge of tithes, unleſs it relates to ſuch abbey lands. 2 *Black.* 31.

NON EST FACTUM, is a plea where an action is brought upon a bond or any other deed, and the defendant denies it to be *his deed* whereon he is impleaded. In every caſe where the bond is void, the defendant may plead *non eſt factum*: but where a bond is voidable only, he muſt ſhew the ſpecial matter. 2 *Lill.* 226.

This plea is good in all caſes where the bond or ſpecialty was not executed; or if it were executed, but was void *ab initio*, as for default of capacity, the obligor being an infant, feme covert, or the like, in which caſe the defendant may plead a ſpecial *non eſt factum*.

NON EST INVENTUS, is the ſheriff's return to a writ when the defendant is *not to be found* in his bailiwick.

NON-FEASANCE, (*not doing* of a thing,) is an offence of omiſſion of what ought to be done, as in not reſorting to church; which offence need not be alleged in any certain place, for generally ſpeaking, it is not committed any where. 1 *How.* 13.

NON-JURORS, are perſons who refuſe to take the oaths to the government, who thereupon are liable to certain incapacities.

NON OBSTANTE, was a clauſe frequent in the king's letters patent granting a thing *notwithſtanding* any ſtatute or act of parliament to the contrary; which aſſumed power, ſetting the prerogative above the laws, was effectually demoliſhed by the bill of rights at the revolution, and abdicated *Weſtminſter-hall*, when king *James* abdicated the kingdom. 1 *Black.* 342.

NON OMITTAS, is a writ directed to the ſheriff, where the bailiff of a liberty or franchiſe, who hath the return of writs, refuſes or neglects to ſerve a proceſs, for the ſheriff to enter into the franchiſe and execute the king's proceſs himſelf, or by his officer, *non omittas propter aliquam libertatem.* But for diſpatch of buſineſs, a *non omittas* is commonly directed in the firſt inſtance. *F. N. B.*

NONPLEVIN, (*nonplevina,*) is defined to be *default after default.* Anciently the defendant was to replevy his lands ſeiſed by the king within fifteen days; and if he neglected, then at the next court day he ſhould loſe his ſeiſin, *ſicut per defaltam poſt defaltam.* But by ſtatute 9 *Ed.* 3. *c.* 2. it was enacted, that none ſhould loſe his land becauſe of *nonplevin*; that is, where the land was not replevied in due time.

NON PONENDIS IN ASSISIS ET JURATIS, is a writ granted for freeing ſome perſons from ſerving on juries; but by 4 & 5 *W. c.* 24. no ſuch writ ſhall be granted, unleſs upon oath made that the ſuggeſtions upon which it is granted are true.

NON PROS'. If the plaintiff neglects to deliver a declaration for two terms after the defendant appears, or is guilty of other delays or defaults againſt the rules of law in any ſubſequent ſtage of the action, he is adjudged *not to follow* or purſue his remedy as he ought to do; and thereupon a *nonſuit*, or *non proſequitur*, is entered; and by a compendious form of expreſſion, he is ſaid to be *non pros'd.* And for thus deſerting his complaint, he ſhall not only pay coſts to the defendant, but is liable to be amerced to the king. 3 *Black.* 295.

NON-RESIDENCE. See RESIDENCE.

NON SANE MEMORY. See NON COMPOS.

NONSENSE. Where a matter ſet forth is grammatically right, but abſurd in the ſenſe and unintelligible, ſome words can not

not be rejected to make ſenſe of the reſt, but muſt be taken as they are; for there is nothing ſo abſurd, but what by rejecting may be made ſenſe; but where a matter is nonſenſe, by being contradictory and repugnant to ſomewhat precedent, there the precedent matter which is ſenſe, ſhall not be defeated by the repugnancy which follows; but that which is contradictory ſhall be rejected. As in ejectment, where the declaration is of a demiſe the ſecond of *January*, and that the defendant afterwards, *ſcilicet*, the firſt of *January* ejected him, here the *ſcilicet* may be rejected, as being contrary to what went before. 1 *Salk.* 324.

NONSUIT, is the letting a ſuit or action fall; as if the plaintiff neglects to deliver a declaration for two terms after the defendant appears, or is guilty of other delays or defaults againſt the rules of law in any ſubſequent ſtage of the action, he is then adjudged *not to follow* or *purſue* his remedy as he ought to do; and thereupon a *nonſuit*, or *non proſequitur*, is entered: and for thus deſerting his complaint, after making a falſe claim or complaint, he ſhall not only pay coſts to the defendant, but is liable to be amerced to the king. 3 *Black.* 296.

And this deſerting or renunciation of the ſuit often happeneth upon the diſcovery of ſome error or defect, when the matter is ſo far proceeded in, as the jury is ready at the bar to deliver their verdict; in which caſe he is then called, and may be nonſuited, notwithſtanding his appearance before. *Br.* Nonſuit.

A *retraxit* differs from a nonſuit, in that the one is negative, and the other poſitive: the nonſuit is a default and neglect of the plaintiff, and therefore he is allowed to begin the ſuit again, upon payment of coſts; but a *retraxit* is an open and voluntary renunciation of his ſuit in court; and by this he for ever loſeth his action. 3 *Black.* 296.

A *diſcontinuance* is ſomewhat ſimilar to a nonſuit; for when a plaintiff leaves a chaſm in the proceedings of his cauſe, as by not continuing the proceſs regularly from day to day, and from time to time, as he ought to do, the ſuit is diſcontinued, and the defendant is no longer bound to attend; but the plaintiff muſt begin again, by ſuing out a new original, uſually paying coſts to the defendant. *Id.*

The king cannot be nonſuit, becauſe in judgment of law he is ever preſent in court; but the king's attorney may enter an *ulterius non vult proſequi*, which has the effect of a nonſuit. 1 *Inſt.* 139.

NON SUM INFORMA'TUS, is a formal anſwer made of courſe by an attorney, who is *not informed* or inſtructed to ſay any thing material in defence of his client; by which he is deemed to leave it undefended, and ſo judgment paſſeth againſt his client.

NON TENURE, is a plea in bar to a real action, by ſaying that

that he (the defendant) holdeth not the land mentioned in the plaintiff's declaration. And there is non-tenure *general* and *ſpecial*: *general*, where one denies ever to have been tenant of the land in queſtion; and *ſpecial*, which is an exception, alleging that he was not tenant on the day whereon the writ was obtained. *Weſt. Symb. par.* 2.

NON-USER, of a public office, is an immediate cauſe of forfeiture; ſo alſo of a franchiſe: but non-uſer of a private office is no cauſe of forfeiture, unleſs ſome ſpecial damage is proved to be occaſioned thereby. 2 *Black.* 153.

NOSE-SLITTING. By ſtatute 22 & 23 *C.* 2. *c.* 1. if any perſon ſhall of malice aforethought, and, by lying in wait, ſlit the noſe, or cut off a noſe or lip, of any perſon, with intent to diſfigure him, he ſhall be guilty of felony without benefit of clergy. Which ſtatute goes by the name of the *Coventry* act, becauſe it was made on occaſion of an aſſault on ſir *John Coventry* in the ſtreet, and ſlitting his noſe, in revenge (as was ſuppoſed) for ſome obnoxious words uttered by him in parliament. 4 *Blck.* 207.

NOTARY, is an officer who takes *notes*, or makes a ſhort draught of contracts, obligations, or other writings and inſtruments. A *notary public*, is properly one who publicly atteſts deeds or writings, to make them authentic in another country, eſpecially in buſineſs relating to merchants. They make proteſts in caſes of bills of exchange.

NOTE OF A FINE, is a brief of a fine made by the proper officer, before it is engroſſed.

NOTE OF HAND, or a promiſſory note, is an engagement in writing, to pay a ſum ſpecified at the time therein limited, to a perſon therein named, or ſometimes to his order, or often to the bearer at large; and by the ſtatute 3 & 4 *Ann. c.* 9. is made aſſignable in like manner as a bill of exchange. 2 *Black.* 467. See Bill of Exchange.

NOT GUILTY, is the general iſſue or plea of the defendant in any criminal action; as alſo in an action of treſpaſs, or for deceits and wrongs; but not on a promiſe or *aſſumpſit*. *Palm.* 393.

NOTICE;

1. The party that intends to move the court in a queſtionable matter, ought to give notice thereof to the party againſt whom he intends to move, or to his attorney or ſolicitor, and not to his counſel; for the counſel is not concerned to take notice of any thing but from his client, nor bound to ſeek out his client to give him notice. 2 *L. P. R.* 242.

2. If one be bound to give to another *perſonal* notice, it is not ſufficient that notice be left at the dwelling houſe of the party; for

for notice may be given there, and yet the party may not know it. 2 *L. P. R.* 237.

3. If the plaintiff intends to bring on his cauſe for trial at the aſſizes, he ſhall give the defendant, if he lives within forty miles of *London*, eight days *notice of trial*; and if he lives at a greater diſtance, he ſhall give fourteen days notice. 3 *Black.* 357.

And by the 14 *G.* 2. *c.* 17. no indictment, information or cauſe whatſoever, ſhall be tried at niſi prius, where the defendant lives above forty miles from *London*, unleſs ten days notice be given.

And if any perſon ſhall have given notice, and ſhall not countermand it at leaſt ſix days before the trial, he ſhall pay coſts as if ſuch notice had not been countermanded.

4. A recital of a deed which refers to an incumbrance upon an eſtate, is notice againſt a purchaſer; ſo if the title muſt be by a will; for it was his own negligence that he did not ſeek after it. 2 *Cha. Ca.* 246.

A purchaſer with notice himſelf, from a perſon who purchaſed without notice, may ſhelter himſelf under the firſt purchaſer; otherwiſe it would very much clog the ſale of eſtates. 2 *Atk.* 242.

If, on a marriage ſettlement, an agent is employed on both ſides, both will be affected by notice to him. 1 *Vez.* 65.

Notice to an agent placing out money on a mortgage, of a prior judgment, ſhall affect the employer. 2 *Vez.* 370.

A ſecond mortgagee, with notice of a former mortgage, but without notice of a truſt charge antecedent to both, of which the firſt mortgagee had notice, muſt take ſubject to that demand. 2 *Vez.* 485.

On notice to execute a writ of inquiry at a certain hour, the party is not tied down to the exact time fixed by the notice: the ſheriff may have prior buſineſs which may laſt beyond the hour. *Douglas.* 188.

NOVEL ASSIGNMENT, (*nova aſſignatio,*) is an aſſignment of time, place, or ſuch like, in an action of treſpaſs, otherwiſe than as it was before aſſigned. And if the defendant juſtifies in a place where no treſpaſs was done, then the plaintiff is to aſſign the place where, to which the defendant is to plead. *T. L.*

NOVEL DISSEISIN. A writ of aſſize of *novel* (new or recent) *diſſeiſin* lies, where tenant in fee ſimple, fee tail, or for term of life, is put out and *diſſeiſed* of his lands or tenements, rents, common of paſture, common way, or of an office, toll, or the like: in which caſe, if upon trial he can prove his title, and his actual ſeiſin in conſequence thereof, and the diſſeiſin by the preſent tenant, he ſhall have judgment to recover his ſeiſin and damages for the injury ſuſtained. *Blackſt. b.* 3. *c.* 10.

But

But this kind of action is now out of use, and is superseded by actions of trespass or ejectment.

NUDUM PACTUM, is a bare naked contract, without any consideration had for the same. If a man bargains or sells goods, and there is no recompence made or given for the doing thereof; as if one say to another, "I sell you all my lands or goods," but nothing is agreed upon what the other shall give or pay for them, this is a nude contract, and void in law; and for the performance thereof no action will lie. *T. L.*

But if such contract be evidenced by writing, it is allowed to be good, against the contractor himself, but not to prejudice creditors or strangers to the contract. *Burr. Mansf.* 1671.

NUN, a woman admitted into a monastery, called by the Latins *nonna*; they used also the word *nonnus*, to signify a monk; and both from the Hebrew *nin* or *nun*, which signifies a son.

NUNCUPATIVE WILL, or testament is, when the testator without any writing, declares his will, before a sufficient number of witnesses; who by the 4 & 5 *Ann*, *c.* 16. must be such as are admissible upon trials at common law.

But by the statute 29 *C.* 2. *c.* 3. no nuncupative will shall be good, where the estate bequeathed exceeds 30l. unless proved by three such witnesses present at the making thereof, and unless they or some of them were specially required to bear witness thereto by the testator himself; and unless it was made in his last sickness, in his own house, or where he had been previously resident ten days at least, except he be surprised with sickness on a journey or from home, and dies without returning.

And no *written* will shall be revoked or altered by a subsequent nuncupative one, except the same be in the life-time of the testator reduced to writing, and read over to him, and approved; and unless the same be proved to have been so done by three such witnesses.

And no nuncupative will shall be proved till fourteen days after the death of the testator, nor till process hath first issued to call in the widow, or next of kin, to contest it if they think proper.

NUSANCE, *nocumentum*, signifies any thing that worketh annoyance, hurt, damage, or inconvenience. 3 *Black.* 216.

Nusances are of two kinds; *public* or *common* nusances, which affect the public, and are an annoyance to all the king's subjects; and *private* nusances, which affect particular persons only in their private and separate capacity.

If a man erects an house, or other building, so near to mine, that it stops up my ancient lights and windows, this is a nusance; but then it must appear that the house is an ancient house, and the lights ancient lights; otherwise there is no injury done: for he hath as much right to build a new edifice upon his

his own ground, as I have upon mine; ſince every man may do what he pleaſes upon the upright or perpendicular of his own ſoil. *Id.*

The ſetting up and exerciſing of an offenſive trade, or keeping hogs, or other noiſome animals, ſo near a man's houſe as to incommode him, and render the air unwholeſome, is a nuſance; but ſtopping a proſpect only, which is merely matter of pleaſure, hath been held not to be in the eye of the law a nuſance. *Id.* 217.

If a man erects a ſmelting-houſe for lead, ſo near the land of another, that the vapour and ſmoke kill his corn and graſs, and damage his cattle therein, this is held to be a nuſance. *Id.*

So to corrupt or poiſon a water-courſe, by erecting a dye-houſe or a lime-pit in the upper part of the ſtream, or to do any act therein, that in its conſequences muſt neceſſarily tend to the prejudice of one's neighbour. *Id.* 218.

A gate erected in a highway, where none had been before, is a common nuſance. 1 *Haw.* 199.

If a man has a dog that kills ſheep, this is not a common nuſance; but the owner of the dog (knowing thereof) is liable to an action: but a maſtiff going at large in the ſtreet unmuzzled, from the ferocity of his nature being dangerous and cauſe of terror to the king's ſubjects, ſeemeth to be a common nuſance.

Generally, a nuſance may be abated or removed by the party aggrieved thereby, without the formalities of legal proceſs, provided he commit no riot in the doing of it. If a man builds a houſe ſo cloſe to mine that his roof overhangs my roof, and throws the water off his roof upon mine, which is a *private* nuſance, I may enter my neighbour's ground, and peaceably pull it down. Or if a new gate be erected acroſs a public highway, which is a *public* or common nuſance, any of the king's ſubjects paſſing that way may cut it down and deſtroy it. And the reaſon why the law allows this private ſummary method of doing one's ſelf juſtice is, becauſe injuries of this kind, which obſtruct or annoy ſuch things as are of daily convenience and uſe, require an immediate remedy; and cannot wait for the ſlow progreſs of the ordinary forms of juſtice. 3 *Black.* 5.

If a man hath not availed himſelf of this remedy by abatement, he may, if it is a *private* nuſance, bring his action againſt the wrong doer. The ancient remedy in this caſe, was by the writs of *aſſiſe of nuſance*, and *quod permittat proſternere*, whereby judgment was given for damages to the plaintiff, and to remove the nuſance; but the proceſs on theſe writs being tedious and difficult, they are now entirely out of uſe, and have given way to an action upon the caſe: by which action, indeed, though the party injured may recover ſatisfaction for the injury ſuſtained,

ed, yet the nuſance cannot be removed; but as every continuance of a nuſance is a freſh nuſance, therefore a freſh action will lie, and very exemplary damages will probably be given, if, after one verdict againſt him, the defendant has the hardineſs to continue it. *Id.* 220.

For a *public* nuſance, no action upon the caſe will lie; and this the law hath provided for avoiding a multiplicity of ſuits; for if any one might have an action, all men might have the like; but the law, for this public or common nuſance, hath provided an apt remedy, by preſentment or indictment at the ſuit of the king, in behalf of all his ſubjects; unleſs any man hath a particular damage, as if he and his horſe fall into a ditch made acroſs a highway, whereby he received hurt and loſs, there, for his ſpecial damage, which is not common to others, he ſhall have an action upon the caſe. 1 *Inſt.* 56.

On conviction of a nuſance, the offender may be fined and impriſoned; and it is ſaid, that a perſon convicted of a nuſance done to the king's highway, may be commanded by the judgment to remove the nuſance at his own coſts; and it ſeemeth to be reaſonable, that thoſe who are convicted of any other common nuſance, ſhall alſo have the like judgment. And the court never admits the defendant to a ſmall fine, until proof is made of the nuſance being removed. 1 *Haw.* 200. *Dalt. c.* 66.

OAT

OATH is a corruption of the Saxon word *eoth.* It is commonly called a corporal oath, becauſe the perſon lays his hand upon ſome part of the ſcriptures when he takes it.

If the oath be taken upon the common prayer-book, which has the epiſtles and goſpels, it is good enough, and perjury may be aſſigned on this oath. 3 *Keb.* 314.

If one call another a *perjured* man, he may have an action on the caſe, becauſe it ſhall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forſworn* man, no action lies; becauſe the forſwearing may be extrajudicial, and conſequently no perjury in law. 3 *Inſt.* 166.

The oath of *allegiance* is very ancient, and every layman above the age of twelve years was obliged to take it at the tourn or leet, on pain of being puniſhed as for a high contempt. But the clergy were not obliged to take it until the reformation, any further

ther than doing homage to the king for the lands holden of him in right of the church. 1 *Inſt.* 68.

The oath of *ſupremacy* came in upon aboliſhing the papal authority at the reformation.

The oath of *abjuration* came in after the revolution; received ſome alterations in the firſt year of queen *Anne;* and again in the firſt year of king *George* the firſt; and, finally, in the ſixth year of king *George* the third.

By ſtatute 1 *G. ſt.* 2. *c.* 13. two juſtices of the peace may ſummon perſons, whom they ſhall ſuſpect to be diſaffected, to appear before them at a time and place appointed, to take the oaths; which, if they ſhall refuſe or neglect to do, they ſhall certify the ſame to the next ſeſſions; and if the party ſhall not appear at ſuch ſeſſions, and take the oaths, he ſhall be adjudged a popiſh recuſant convict; and the clerk of the peace ſhall certify the ſame into the chancery, or court of king's bench, to be there recorded.

Quakers are allowed, in civil caſes, to take a ſolemn affirmation inſtead of an oath; but not in criminal caſes: nor ſhall they, without ſuch oath, be permitted to ſerve on juries, or to bear any office of profit in the government.

Jews and heathens are allowed to take an oath after their own form and manner. *Str.* 404.

OBIT, ſignifies a funeral ſolemnity or office for the dead; moſt commonly performed when the corpſe lies in the church uninterred. Alſo the anniverſary of any perſon's death was called the obit; and to obſerve ſuch day with prayers and alms, or other commemoration, was keeping of the obit.

OBLA'TIONS. See OFFERINGS.

OBLIGATION, *obligatio*, is a bond containing a penalty with a condition annexed for the payment of money, performance of covenants, or the like; it differs from a bill, which is generally without a penalty or condition, though a bill may be obligatory. *Co. Lit.* 172.

OBLIGOR, is the party that enters into an obligation or bond; OBLIGEE is the perſon to whom the bond is made.

OCCASIO, was a tribute which the lord impoſed on his vaſſals and tenants, occaſionally, for the wars or other neceſſities.

OCCUPANCY, is the taking poſſeſſion of thoſe things, which before belonged to no body; and this is the true ground and foundation of all property, or of holding thoſe things in ſeveralty, which by the law of nature, unqualified by that of ſociety, were common to all mankind. But this right of occupancy, ſo far as it concerns real property, hath been confined by the laws of *England* within a very narrow compaſs, and was extended only to a ſingle inſtance; namely, where a man was

tenant

tenant *pur auter vie*, or had an eſtate granted to himſelf only (without mentioning his heirs) for the life of another perſon, and died during the life of *ceſtuy que vie*, or him by whoſe life it was holden; in this caſe, he that could firſt enter on the land might lawfully retain the poſſeſſion ſo long as *ceſtuy que vie* lived, by right of occupancy: for it did not revert to the grantor, who had parted with all his intereſt, ſo long as *ceſtuy que vie* lived; it did not eſcheat to the lord of the fee, for all eſcheats muſt be of the abſolute entire fee, and not of any particular eſtate carved out of it; it did not belong to the grantee, for he was dead; it did not deſcend to his heirs, for there were no words of inheritance in the grant; nor could it veſt in his executors, for no executors could ſucceed to a freehold. Belonging therefore to no body, the law left it open to be ſeiſed and appropriated by the firſt perſon that could enter upon it, during the life of *ceſtuy que vie*, under the name of an occupant. But now the title of common occupancy is reduced almoſt to nothing, by two ſtatutes; the one 29 *C.* 2. *c.* 3. which enacts, that where there is no ſpecial occupant in whom the truſt may veſt, the tenant *pur autre vie* may deviſe it by will, or it ſhall go to executors or adminiſtrators, and be aſſets in their hands for payment of debts; the other, 14 *G.* 2. *c.* 20. which enacts, that the ſurplus of ſuch eſtate *pur autre vie*, after payment of debts, ſhall go, in a courſe of diſtribution, like a chattel intereſt. 2 *Black.* 258.

Generally, as to things *perſonal*, where theſe are found without any owner, they do not go to the firſt finder or occupant, but do belong to the king by his prerogative.

OCCUPATION ſignifies, in our law, uſe or tenure; as we ſay, ſuch lands are in the tenure or occupation of ſuch a man; that is, in his poſſeſſion or management. Alſo it is uſed for a trade or myſtery. 12 *C.* 2. *c.* 18.

ODHALL, or *allodial* right, ſignifies the abſolute property in lands; from *all*, and *odh*, which in the Northern languages ſignifies property. Theſe lands were holden of no ſuperior lord, being abſolutely independent, which, after the introduction of feuds, was converted into the military tenure. 2 *Black.* 45.

ODIO ET ATIA, was a writ anciently uſed, and directed to the ſheriff, commanding him to inquire whether a priſoner charged with murder was commited upon juſt cauſe of ſuſpicion, or merely *propter odium et atiam*, for hatred and ill-will: and if, upon the inquiſition, due cauſe of ſuſpicion did not appear, then there iſſued another writ for the ſheriff to admit him to bail. 3 *Black.* 128.

OFFENCE, is an act committed againſt law, or omitted where the law requires it. Offences are of two ſorts, *capital*, or *not capital*: capital offences are thoſe for which the offender ſhall loſe his life; ſuch as *high treaſon*, *petit treaſon*, and *felony*: offences

fences not capital, include the remaining part of the pleas of the crown, and come under the title of *miſdemeanors*. 2 *H. P. c.* 126. 134. *Finch*, 25.

OFFERINGS, *oblations*, and *obventions*, are one and the ſame thing; and under theſe are comprehended all ſmall eccleſiaſtical dues, payable at *Eaſter* by communicants; as alſo for marriages, chriſtenings, churchings, and burials.

OFFERTORY, *offertorium*, is a ſervice in the church, which is read at the celebration of the holy communion, during the time that the church wardens are collecting the alms or *offerings* of the congregation for the uſe of the poor. Sometimes the money collected is itſelf called the *offertory*.

OFFICE. By divers ſtatutes, every perſon admitted into any office, civil or military, or who ſhall receive any pay by reaſon of any patent or grant from the king, or ſhall have any command or place of truſt in *England*, or in the navy, or ſhall have any ſervice or employment in the king's houſehold, ſhall, within three months after his admiſſion, receive the ſacrament; and afterwards, in the court where he takes the oaths to the government, ſhall exhibit a certificate of ſuch his receiving under the hands of the miniſter and church wardens, and make and ſubſcribe the declaration againſt tranſubſtantiation.

Which ſaid oaths are the oaths of allegiance, ſupremacy, and abjuration, which are to be taken within ſix months after their admiſſion in one of the courts at *Weſtminſter*, or at the quarter ſeſſions, by all the ſaid perſons; as alſo by all eccleſiaſtical perſons, heads and members of colleges, being of the foundation, or having any exhibition, and being of eighteen years of age, and all perſons teaching pupils, ſchoolmaſters and uſhers, preachers and teachers of ſeparate congregations, high conſtables, and practiſers of the law.

And if any perſon ſhall make default in the premiſes, he ſhall be incapable to hold ſuch office, or to ſue in any action, or to be guardian, executor, or adminiſtrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and forfeit 500l.

By 31 *G.* 2. *c.* 22. a duty of 1*s.* in the pound is laid on all perquiſites of offices; by which perquiſites are meant, ſuch profits as ariſe from fees eſtabliſhed by cuſtom or authority, and payable in conſideration of buſineſs done in the courſe of ſuch offices.

When a perſon is refuſed to be admitted to an office or place in a corporation, or is wrongfully removed therefrom, the ſtatute 9 *An. c.* 20. hath provided a ſummary remedy by a writ of mandamus; commanding, upon good cauſe ſhewn to the court, the party complaining to be admitted or reſtored to his office. 3 *Black.* 264.

OFFICE,

OFFICE, *inqueſt of*, is an inquiry made by the king's officer, his ſheriff, coroner, or eſcheator, by virtue of their office, or by writ to them ſent for that purpoſe, concerning any matter that entitles the king to the poſſeſſion of lands or tenements, goods or chattels. Theſe inqueſts of office were more frequently in practice than at preſent, during the continuance of the military tenures; when, upon the death of every one of the king's tenants, an inqueſt of office was held, called an *inquiſition poſt mortem*; to inquire of what lands he died ſeiſed, who was his heir, and of what age; in order to entitle the king to his marriage, wardſhip, relief, primer ſeiſin, or other advantages. 3 *Black.* 258.

OFFICIAL, by the *civil* law, is one that is the miniſter of, or attendant upon, a magiſtrate. In the *canon* law, he is one to whom the biſhop commits the charge of ſpiritual juriſdiction, under the name of *official principal*, who hath cognizance of temporal matters, ſuch as wills, legacies, and adminiſtrations; as the *vicar general* hath of eccleſiaſtical matters, as viſitation, correction of manners, and the like. Both of which offices are commonly united under the general name of *chancellor*.

OFFICIO, EX, oath of, is an oath whereby a perſon may be obliged to make any preſentment of any crime or offence, or to confeſs or accuſe himſelf of any criminal matter or thing, whereby he may be liable to any cenſure, penalty, or puniſhment. This oath was made uſe of in the ſpiritual courts, as well in criminal caſes of eccleſiaſtical cognizance, as in matters of civil right; of which the high commiſſion court in particular made a moſt extravagant and illegal uſe, forming a court of inquiſition, in which all perſons were obliged to anſwer in caſes of bare ſuſpicion, if the commiſſioners thought proper to proceed againſt them for any ſuppoſed eccleſiaſtical enormities. But when the high commiſſion court was aboliſhed by ſtatute 16 *C.* 1. *c.* 11. this oath *ex officio* was aboliſhed with it; and it is alſo enacted by ſtatute 13 *C.* 2. *ſt.* 1. *c.* 12. that it ſhall not be lawful for any biſhop, or eccleſiaſtical judge, to tender to any perſon the oath *ex officio*, or any other oath whereby the party may be charged or compelled to confeſs, accuſe, or purge himſelf of any *criminal* matter. But this doth not extend to oaths in a *civil* ſuit; and therefore it is ſtill the practice, both in the ſpiritual courts and in equity, to demand the perſonal anſwer of the party himſelf upon oath. Yet if in the bill any queſtion be put, that tends to the diſcovery of any crime, the defendant may thereupon demur, and refuſe to anſwer. 3 *Black.* 447.

OLERON LAWS, are a code of maritime laws, made by king *Richard* the firſt, at the iſle of *Oleron*, on the coaſt of *France*, which was then part of the poſſeſſions of the crown of *England*.

England. Theſe laws are of ſo much repute, that they have been received by all the nations in *Europe*, as the ground work of their marine conſtitutions.

ONUS PROBANDI, is the burden of proving any thing.

OPTION. Every biſhop, whether created or tranſlated, is bound, immediately after confirmation, to make a legal conveyance to the archbiſhop, of the next avoidance of ſuch dignity or benefice belonging to the ſee, as the ſaid archbiſhop ſhall chuſe; which is therefore called an *option*; which options are only binding on the biſhop himſelf who grants them, and not on his ſucceſſors.

ORDEAL, is ſaid to be derived of two Saxon words, *or*, great, and *dele*, judgment; that is, the *great judgment*; which was a form of trial for diſcovering innocence or guilt. Anciently, when an offender being arraigned, pleaded not guilty, he was aſked (as he is ſtill to this day) how he would be tried. Which was then a ſignificant queſtion, although now it is only matter of form; for he had it in his choice, whether he would be tried by *battel*, or by *ordeal*, (which was called the judgment of God,) or by his *country* (that is, by a jury of twelve men). The trial by *ordeal*, which was peculiarly denominated the *judgment of God*, was called *common purgation*, to diſtinguiſh it from the *canonical purgation*, which was by the oath of the party: and it was of two ſorts; either *fire* ordeal, or *water* ordeal; the former being confined to perſons of higher rank, the latter to the common people. Both theſe might be performed by deputy, but the principal was to anſwer for the ſucceſs of the trial; the deputy only venturing ſome corporal pain, for hire, or perhaps for friendſhip. Some remains of which there are ſtill in the common expreſſion of going through fire and water to ſerve another. *Fire* ordeal, was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight; or elſe by walking, barefoot and blindfold, over nine red hot plowſhares, laid at unequal diſtances; and if the party eſcaped b ing hurt, he was adjudged innocent; but if it happened otherwiſe, he was then condemned as guilty. By this latter method, queen *Emma*, mother of *Edward* the Confeſſor, is mentioned to have cleared her character, when ſuſpected of familiarity with *Alwyn*, biſhop of *Wincheſter*. *Water* ordeal was performed, either by plunging the bare arm up to the elbow in boiling water, and eſcaping unhurt thereby, or by caſting the perſon ſuſpected into a river or pond of cold water; and if he floated therein, without any action of ſwimming, it was deemed an evidence of his guilt; but if he ſunk, he was acquitted: of which kind of water ordeal, there are ſtill ſome traditional remains in many countries to diſcover witches, by caſt-

ing them into a pool of water, whereby to determine their guilt or innocence, by floating or ſinking. 4 *Black.* 340.

ORDINARY, in the eccleſiaſtical law, is a word applied to a biſhop, or any other who hath ordinary juriſdiction in his own right, and not by deputation. But ſometimes it is taken leſs ſtrictly, for every one that is in the place of the biſhop; as guardian of the ſpiritualties, chancellors, commiſſaries, and all ſuch as are in the place of the ordinary. 1 *Inſt* 96. 2 *Inſt.* 398.

ORDINATION: No perſon ſhall be admitted to the holy order of deacon, unleſs he be twenty-three years of age; nor to the order of prieſt, unleſs he be twenty-four years of age complete. And none ſhall be ordained without a title. And he ſhall have a teſtimonial of his good life and behaviour. And the biſhop ſhall examine him; and, if he ſees cauſe, may refuſe him. And before he is ordained, he ſhall take the oaths of allegiance and ſupremacy before the ordinary, and ſubſcribe the thirty-nine articles.

ORIGINAL WRIT, is a mandatory letter from the king in parchment, ſealed with his great ſeal, and directed to the ſheriff of the county wherein the injury is committed, or ſuppoſed ſo to be, requiring him to command the wrong doer, or party accuſed, either to do juſtice to the complainant, or elſe to appear in court, and anſwer the accuſation againſt him. Whatever the ſheriff doth in purſuance of this writ, he muſt return or certify to the court, together with the writ itſelf; which return is always made to be at the leaſt fifteen days from the date or teſte of the writ. 3 *Black.* 273. This original is the foundation of the *capias*, and all ſubſequent proceſs. The court of common pleas proceeds by original in all caſes.

Original writs in actions are alſo uſed in the king's bench; and when the party proceeds on ſuch writ, error lies in parliament only, and not (as on the common proceſs) in the exchequer chamber.

To ſue a party to outlawry, the proceedings muſt be by *original.*

ORPHAN. In the city of *London*, a court is eſtabliſhed for the care and government of orphans, which is a court of record. The lord mayor and aldermen have the cuſtody of orphans (under age and unmarried) of freemen or freewomen of *London* that die, though they did not inhabit in *London*; and the keeping of all their lands and goods. And if they commit the cuſtody of an orphan to another man, he ſhall have a writ of raviſhment of ward, if the orphan is taken away; or the mayor and aldermen may impriſon the offender till he produces the infant. *Wood. b.* 4. *c.* 2.

Executors and adminiſtrators are to exhibit true inventories in this

this court, and muſt give ſecurity to the chamberlain, by recognizance for the orphan's part; which, if they refuſe to do, the court may commit them to priſon till they obey. And if any ſue in the eccleſiaſtical court, or elſewhere, for a legacy, account, or duty to them by the cuſtom, the court of orphans may by cuſtom ſend a prohibition. But an infant may waive the benefit of ſuing in the court of orphans, and file a bill in equity againſt any one for diſcovery of the perſonal eſtate. *Id.*

If any one without the conſent of the court of aldermen, marries ſuch orphan under the age of twenty-one, though out of the city, they may fine him, and impriſon him for non-payment. *Id.*

OVERT, Fr. open. So *overture*, an opening, or propoſal.

OVERT ACT, open deed. In the caſe of treaſon in compaſſing or imagining the death of the king, this imagining muſt be manifeſted by ſome open act; otherwiſe being only an act of the mind, it cannot fall under any judicial cognizance. Bare words are held not to amount to an overt act, unleſs put into writing; in which caſe they are then held to be an overt act, as arguing a more deliberate intention.

OUSTED, is from the French *ouſter*, to put out; as when we ſay ſuch a one is ouſted; that is, put out of poſſeſſion.

OUSTER LE MAIN, *amovere manum*, ſignifies a livery of lands out of the hands of the lord, after the tenant came of age; which, if the lord refuſed to do, the tenant might have a writ to recover the ſame from the lord; which recovery *out of the hands* of the lord, was called *ouſter le main.*

OUSTER LE MER, *ultra mare*, is one of the cauſes of eſſoign or excuſe, if a man appear not in court upon ſummons, for that he was then beyond the ſeas.

OUTFANGTHIEF, from the Saxon *ut*, out, and *fang*, taken, is a liberty or privilege, whereby a lord of a manor was enabled to call any man dwelling in his manor, and taken for felony in another place *out of* his manor, to judgment in his own fee; as *infangthief* was the privilege of trying a thief or felon taken *within* his fee.

OUTLAW, (outlaghe,) *utlagatus*, comes not immediately from the latin *lex*, but is derived to us through the Saxon *laga*, which ſignifies *law*: and a perſon outlawed, is one that is out of the protection of the king, and out of the aid of the law.

Proceſs of outlawry lies in all indictments of treaſon and felony, on returns of reſcous, or indictments of treſpaſs with force and arms; but not any indictment for a crime of an inferior nature. And it ſeems agreed, that it lies not on any action on a ſtatute, unleſs it be given by ſuch ſtatute, either expreſsly or impliedly. But, by divers ſtatutes, outlawry lies in many civil ac-

tions; as in debt, caſe, account, covenant, and the like. 2 *Haw.* 302.

In which caſes, in order to proceed to outlawry, an *original writ* muſt be ſued out regularly, and after that a *capias*; and if the ſheriff cannot find the defendant upon the *capias*, and returns a *non inventus*, there iſſues out an *alias* writ, and after that a *pluries*, to the ſame effect as the former. And if a *non inventus* is returned upon all of them, then a writ of *exigent* may be ſued out, requiring the ſheriff to cauſe the defendant to be proclaimed or *exacted* in five county courts ſucceſſively, to render himſelf; and, if he does, then to take him, as in a *capias*: but if he doth not appear, and is returned *quinto exactus*, he ſhall then be outlawed by the coroners of the county; whereby he is put out of the protection of the law, ſo as to be incapable of taking the benefit of it in any reſpect, either by bringing actions or otherwiſe. 3 *Black.* 283.

By the 31 *El. c.* 3. in every action *perſonal*, wherein any *exigent* ſhall be awarded, one writ of proclamation ſhall be iſſued, having day of teſte and return, as the writ of *exigent* ſhall have, directed to the ſheriff where the defendant dwells; which writ of proclamation ſhall contain the effect of the action; and the ſheriff ſhall make one proclamation in the open county court, and another at the general quarter ſeſſions of the peace where the defendant dwells, and another a month at leaſt before the *quinto exactus*, at or near the moſt uſual door of the church or chapel where the defendant ſhall be dwelling, at the time of the *exigent* awarded, on a *Sunday* immediately after divine ſervice.

And by 4 & 5 *W. c.* 22. upon iſſuing an *exigent* againſt any perſon for a *criminal* matter, before judgment or conviction, there ſhall alſo iſſue a writ of proclamation, bearing the ſame teſte and return, where the perſon in the record of the proceeding is mentioned to inhabit, according to the form of the ſaid ſtatute 31 *El. c.* 3. which writ of proclamation ſhall be delivered to the ſheriff, three months before the return of the ſame.

The puniſhment of an outlawry in a *civil* action, and alſo upon an indictment for a miſdemeanor, is forfeiture of goods and chattels. And if after outlawry, the defendant appears publicly, he may be arreſted by a writ of *capias utlagatum*, and confined till the outlawry be reverſed; which reverſal may be had by the defendant's appearing perſonally in court (and in the king's bench without perſonal appearance, ſo as he appear by attorney according to the ſtatute 4 & 5 *W. c.* 18.); and any plauſible cauſe, however ſlight, will in general be ſufficient to reverſe it, the ſame being conſidered only as a proceſs to compel an appearance. But then the defendant muſt pay full coſts, and put the plaintiff in the ſame condition, as if he had appeared before the *exigent* was awarded. An outlawry in *treaſon* or *felony* amounts to a conviction

on and attainder of the offence charged in the indictment, as much as if the offender had been found guilty by his country. 3 *Black.* 284. 4 *Black.* 319.

OWLING, (ſo called from its being carried on in the night, when the owl is abroad,) is the offence of tranſporting wool or ſheep out of the kingdom; which was an offence at common law, and is further prohibited by divers acts of parliament. The 8 *El. c.* 3. makes the tranſporting of live ſheep, or embarking them on board any ſhip, for the firſt offence, forfeiture of goods and impriſonment for a year; and, at the end of the year, the left hand to be cut off in ſome public market, and nailed in the openeſt place; and the ſecond offence is felony. (But the offender may have his clergy, as well in the caſe of cutting off his hand, as in the caſe of felony. 3 *Inſt.* 104.) The ſtatute 12 *C.* 2. *c.* 32. and 7 & 8 *W. c.* 28. make the exportation of wool, ſheep, or fuller's earth, liable to pecuniary penalties; and the forfeiture of the intereſt of the ſhip and cargo by the owners, if privy thereto; and confiſcation of goods, and three years impriſonment to the maſter and all the mariners. And the ſtatute 4 *G. c.* 11. (amended and further inforced by 12 *G.* 2. *c.* 21. and 19 *G.* 2. *c.* 34.) makes it tranſportation for ſeven years, if the penalties be not paid. 4 *Black.* 154. [All theſe acts are repealed by 28 *G.* 3. *c.* 38. See WOOL.]

OXGANG of land, is of no certain determinate quantity, being in general as much as in an ordinary way one yoke of oxen can cultivate in a year.

OYER AND TERMINER, is a court held by virtue of the king's commiſſion, to *hear and determine* all treaſons, felonies, and miſdemeanors. This commiſſion is directed commonly to two of the judges of the circuit, and ſeveral gentlemen of the county; but the judges only are of the quorum, ſo that the reſt cannot act without them. The words of the commiſſion are, "to inquire, hear, and determine;" ſo that, by virtue of this commiſſion, they can only proceed upon an indictment found at the ſame aſſizes; for they muſt firſt *inquire* by means of the grand jury, or inqueſt, before they are impowered to *hear and determine* by the help of the petty jury. Therefore, they have another commiſſion, of *general gaol delivery*; which empowers them to try and deliver every priſoner, who ſhall be in gaol when the judges arrive at the place of aſſize, whenever indicted, or for whatever crime committed. So that, one way or another, the gaol is cleared at that time. Sometimes, upon urgent occaſions, the king iſſues a ſpecial or extraordinary commiſſion of oyer and terminer, limited to thoſe offences which ſtand in need of immediate inquiry and puniſhment; upon which, the courſe of proceeding is much the ſame as upon general and ordinary commiſſions. Formerly, no judge could act in the county where he was born or

inhabited; but now by the 12 *G.* 2. *c.* 27. he may act as a juſtice of oyer and terminer, and of general gaol delivery, within any county of *England*; though he is ſtill reſtrained in civil cauſes of aſſize and niſi prius. 4 *Black.* 269.

OYES, is an expreſſion uſed by the cryer of a court, in order to enjoin ſilence, when any proclamation is to be made; being a corruption of the French *oyez*, which ſignifies *hear ye*. 4 *Black.* 340.

PAI

PAIN FORTE ET DURE. See MUTE.

PAINS AND PENALTIES. Acts of parliament to attaint particular perſons of treaſon or felony, or to inflict *pains and penalties* beyond, or contrary to the common law, to ſerve a ſpecial purpoſe, are to all intents and purpoſes new laws, made *pro re natâ*, and by no means an execution of ſuch as are already in being. 4 *Black.* 259.

PAIS, *patria*, the country; as trial *per pais*, is tryal by the country, or a jury.

PALATINE COUNTIES, are thoſe of *Cheſter*, *Durham*, and *Lancaſter*; ſo called *a palatio*, becauſe the owner thereof, the earl of *Cheſter*, the biſhop of *Durham*, and the duke of *Lancaſter*, had in thoſe counties *jura regalia*, as fully as the king hath in his *palace*. They had large privileges granted to them, becauſe they bordered upon the enemies countries, *Wales* and *Scotland*; in order that the owners, being encouraged by ſo large an authority, might be more watchful in their defence; and that the inhabitants, having juſtice adminiſtered at home, might not be obliged to go out of the county, and leave it open to the enemies incurſions. 1 *Black.* 116.

PALMESTRY, a kind of divination practiſed by looking upon the lines and marks in the *palm* of the hand; being a deceitful art uſed by the Egyptians, prohibited by the ſtatute 1 & 2 *P.* & *M.* *c.* 4. 4 *Black.* 166.

PANEL, is a little *pane*, or oblong piece of parchment, containing the names of the jurors, annexed to the writ of *venire facias*, and returned by the ſheriff to the court from whence the proceſs iſſued.

PANNAGE, *paſnage*, is the fruit of trees; as acorns, crabs, nuts, which the ſwine feed upon in the woods. Sometimes alſo, it is uſed to ſignify the money which is paid for the pannage.

PAPER.

PAPER. By the 24 *G.* 3. *c.* 41. every paper-ſtainer or maker of paper, ſhall take out a licence annually from the officers of exciſe.

And by the 27 *G.* 3. *c.* 13. and 27 *G.* 3. *c.* 31. certain duties are impoſed on all paper made, printed, painted, or ſtained in *Great Britain*; and alſo on paper imported; and drawbacks are allowed on the exportation thereof, as ſet forth in ſchedules annexed to the ſaid acts. And ſeveral regulations are made by the ſaid acts, and alſo by ſeveral others, concerning the making, printing, painting, and ſtaining of paper, which is to be under the management of officers appointed by the commiſſioners of the treaſury.

PAPISTS. See POPERY.

PAR, is a term in exchange, where a man, to whom a bill is payable, receives of the acceptor juſt ſo much in value as was paid to the drawer by the remitter. And, in the exchange between one country and another, *par* is defined to be a certain number of pieces of the coin of one country, containing in them an *equal* quantity of ſilver to that of another number of pieces of the coin of ſome other country; as, where 36*s.* of the money of *Holland*, have juſt as much ſilver as 20*s.* *Engliſh* money; the bills of exchange drawn from *England* to *Holland* at the rate of 36*s.* *Dutch* for each pound ſterling, is according to the *par*. *Lock's Conſideration of Money, pag.* 18.

PARAMOUNT, ſignifies the higheſt lord of the fee, having under him inferior or meſne lords, of whom the tenants hold immediately, as they hold mediately of the lord paramount. This ſeigniory of a lord paramount, is frequently termed an *honor*, and not a manor; eſpecially, if it hath belonged to an ancient feudal baron, or hath been at any time in the hands of the crown. 2 *Black.* 91.

PARAPHERNALIA, from παρὰ, and *præter*; and φερνὴ, *dos*; are the woman's apparel, jewels, and other things, which, in the life-time of her huſband, ſhe wore as the ornaments of her perſon, to be allowed by the diſcretion of the court according to the quality of her and her huſband, over and above her jointure and dower.

The huſband cannot by his will deviſe ſuch ornaments and jewels of his wife; though, during his life, he hath power to ſell or diſpoſe of them. But if ſhe continues in the uſe of them till his death, ſhe ſhall afterwards retain them againſt his executors and adminiſtrators, legatees, and all other perſons except creditors where there is a deficiency of aſſets. 2 *Black.* 430.

Where the perſonal eſtate hath been exhauſted in payment of ſpecialty creditors, the widow ſhall ſtand in their place to the amount of her *paraphernalia*, upon the real aſſets of the heir at law. 3 *Atk.* 369.

PARAVAIL,

PARAVAIL, ſignifies the loweſt tenant of the fee, or he that is immediate tenant to one that holdeth over of another: and he is called tenant *paravail*, becauſe it is preſumed he has the profit and *avail* of the land. 2 *Inſt.* 296.

PARCENARY, is the holding of lands jointly by parceners, when the common inheritance is not divided. For which, ſee COPARCENERS.

PARCHMENT. See VELLUM.

PARCO FRACTO, is a writ that lies againſt one who violently breaks the pound, and takes out beaſts from thence which had been lawfully impounded.

PARDON, is a work of mercy, whereby the king, either before the attainder, ſentence, or conviction, or after, forgives any crime, offence, puniſhment, execution, right, title, debt, or duty, temporal or eccleſiaſtical. 3 *Inſt.* 233.

Pardons are either *general* or *ſpecial*: *general*, are by act of parliament; of which, if they are without exceptions, the court muſt take notice *ex officio*; but if there are exceptions therein, the party muſt aver that he is none of the perſons excepted. The acts of general pardon, from time to time occaſionally paſſed, have commonly run in one and the ſame form. The laſt was that of the 20 *G.* 2. *c.* 52. whereby all perſons are pardoned and diſcharged from all treaſons, miſpriſions of treaſons, felonies, treaſonable and ſeditious words and libels, leaſing making, miſpriſions of felony, offences whereby any perſon may be charged with the penalty of *præmunire*, riots, routs, offences, contempts, treſpaſſes, entries, wrongs, deceits, miſdemeanors, forfeitures, penalties, ſums of money, pains of death, pains corporal, and pains pecuniary, and generally, from all other things, cauſes, quarrels, ſuits, judgments, and executions, not by this act excepted, which can by the king be pardoned:—Excepted, perſons in the ſervice of the pretender; forging the king's ſeal; coining; violating the privileges of ambaſſadors; murders; petty treaſons; poiſonings; burning of houſes, corn, hay, ſtraw, wood; ſhooting at any perſon; ſending threatening letters; piracy; deſtroying ſhips; offences in the navy or army; burglary; ſacrilege; robbery; ſodomy; buggery; rape; perjury; ſubordination; forgery; felony in caſes of bankruptcy; deſtroying banks of rivers, and ſea banks; firing coal-pits; offences againſt the exciſe, cuſtoms, land-tax, poſt-office, ſtamp duties, duty on houſes and windows, wool, importing, or exporting goods; offences concerning highways or bridges; imbezzling goods and warlike ſtores of the crown; titles of *quare impedit*; inceſt; ſimony; dilapidations; firſt fruits; tenths; money due to the king from public officers on account; perſons tranſported; offences by papiſts; contempts in caſes for non-performance of awards, or non-payment of coſts; contempts in eccleſiaſtical courts, in cauſes commenced

menced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, ſeveral perſons by name.

Special pardons are either *of courſe*, as to perſons convicted of manſlaughter, or *ſe defendendo*; and by divers ſtatutes, to thoſe who ſhall diſcover their accomplices in ſeveral felonies; or, *of grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they muſt be pleaded. 3 *Inſt.* 233.

Some things there are which the king cannot pardon; as, he cannot pardon an offence before it is committed, but ſuch pardon is void. 2 *Haw.* 389.

As the releaſe of the party will not bar an indictment at the ſuit of the king; ſo neither will a pardon by the king be any bar to an appeal at the ſuit of the party. 2 *Haw.* 392.

And in ſome caſes, even where the king is ſole party, ſome things there are which he cannot pardon; as, for example, for all common nuſances, as for not repairing of bridges or highways, the ſuit (for avoiding multiplicity of ſuits) is given to the king only, for redreſs and reformation thereof; but the king cannot pardon or diſcharge either the nuſance, or the ſuit for the ſame; becauſe, ſuch pardon would take away the only means of compelling a redreſs of it. 3 *Inſt.* 237.

Thus alſo, if one be bound by recognizance to the king, to keep the peace againſt another by name, and generally, all other lieges of the king, in this caſe, before the peace be broken, the king cannot pardon or releaſe the recognizance, although it be made only to him, becauſe it is for the benefit and ſafety of his ſubjects. *Id.* 238.

A pardon after retainder doth not reſtore the corruption of blood, for this cannot be reſtored but by act of parliament. But, as to iſſue born after the pardon, it hath the effect of a reſtitution of blood. 1 *H. H.* 358.

A pardon of treaſon or felony reſtores a man to his credit ſo as he may be a good witneſs; but a pardon of perjury doth not ſo reſtore his credit as to admit him to be a witneſs. 1 *Ventr.* 349.

PARENTS AND CHILDREN:

1. If a man hath a wife and dieth, and within a very ſhort time after, the wife marries again, and within nine months hath a child, ſo as it may be the child of the one or the other, this child may chuſe either of them for his father. 1 *Inſt.* 8.

2. The father hath intereſt in the profits of the children's labour while they are under age, if they live with him, and are maintained by him. But the father hath no intereſt in the *eſtate* of the children, either real or perſonal, otherwiſe than as their guardian; for he muſt account to them for it, and for the profits received, when they come of age. *Wood. b.* 1. *c.* 6.

So the father cannot apply a legacy left to a child in the maintenance

tenance of such child; nor can he put him out apprentice with the money arising from the legacy. 3 *Atk.* 399.

3. The consent or concurrence of the parent to the marriage of a child under age is necessary; otherwise the marriage is void. 26 *G.* 2. *c.* 33.

4. If a child dies intestate and unmarried, the father alone is intitled to the goods and chattels of such child: if there be no father, the mother can only come in for an equal share with every of the brothers and sisters.

5. The eldest son is heir to his father; if there be no son, but daughter only, then all the daughters shall be heirs equally.

6. Parents and children may assist each other in their suits; and may justify the defence of each other's persons. 2 *Inst.* 564.

7. Father and grandfather, mother and grandmother, and children of every poor and impotent person, being of sufficient ability, shall maintain such poor person in such manner as the justices in sessions shall appoint; by the 43 *Eliz. c.* 2. And the interpretation which the courts of law have made upon this statute is, that if a mother or grandmother marries again, and was before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this being a debt of her's when single, shall, like others, extend to charge the husband. But at her death, the relation being dissolved, the husband is under no farther obligation. 1 *Black.* 448.

If parents run away, and leave their children at the charge of the parish, the churchwardens and overseers, by order of the justices, may seize the rents, goods, and chattels of such parents, and dispose thereof towards their children's maintenance. 5 *G. c.* 8.

If any popish parent shall refuse to allow his protestant child a fitting maintenance, with a view to compel him to change his religion, the lord chancellor shall, by order of court, constrain him to do what is just and reasonable. 11 & 12 *W. c.* 4.

Also, if Jewish parents refuse to allow their protestant children a fitting maintenance, suitable to the fortune of the parent, the lord chancellor, on complaint, shall make such order therein as he shall think proper. 1 *An. st.* 1. *c.* 30.

8. A parent may lawfully correct his child, being under age, in a reasonable manner. But the legal power of a father over the persons of his children ceaseth at the age of twenty-one; for they are then arrived at that point which the law hath established, when the empire of the father, or other guardian, gives place to the empire of reason. 1 *Black.* 452, 3.

PARES, a man's *peers* or *equals*; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the king's vassals,

or

or the lords themſelves, judged each other in the king's court. 3 *Black.* 349.

PARISH, is that circuit of ground which is committed to the charge of one parſon, or vicar, or other miniſter, having care of ſouls therein. Theſe diſtricts are computed to be near ten thouſand in number. How ancient the diviſion of pariſhes is, may at preſent be difficult to aſcertain; for it ſeems to be agreed, that in the early ages of chriſtianity in this iſland, pariſhes were unknown, or at leaſt ſignified the ſame that a dioceſe does now. There was then no appropriation of eccleſiaſtical dues to any particular church; but every man was at liberty to contribute his tithes to whatever prieſt or church he pleaſed, provided only, that he did it to ſome: or, if he made no ſpecial appointment or appropriation thereof, they were paid into the hands of the biſhop, whoſe duty it was to diſtribute them among the clergy, and for other pious purpoſes, according to his own diſcretion. 2 *Black.* 112.

PARISH CLERK, was anciently a real clerk, and ſome are ſo at this day. He is generally appointed by the incumbent, but by cuſtom may be choſen by the inhabitants; and if ſuch cuſtom appears, the court of king's bench will grant a mandamus to the ordinary to ſwear him in, for the eſtabliſhment of the cuſtom turns it into a temporal or civil right. Pariſh clerks are regarded by the common law, as perſons who have freeholds in their offices; and therefore, though they may be puniſhed, yet they cannot be deprived, by eccleſiaſtical cenſures. 1 *Black.* 395.

PARK, (from the French *parquer*, to incloſe,) is a large parcel of ground privileged for wild beaſts of chaſe, by the king's grant, or by preſcription. 1 *Inſt.* 233.

A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands as forfeited; and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Id.*

The beaſts of park properly extend to the buck, doe, fox, martern, and roe; but, in a common and legal ſenſe, to all the beaſts of the foreſt; which, beſides the other, are reckoned to be hart, hind, hare, boar, and wolf, and, in a word, all wild beaſts of venery or hunting. *Id.*

Parks, as well as chaſes, are ſubject to the common law, and are not to be governed by the foreſt laws. 4 *Inſt.* 314.

If any perſon ſhall pull down or deſtroy the pale or wall of any park, he ſhall forfeit 30*l.* 16 *G.* 3. *c.* 30.

PARLIAMENT:

1. *Iſſuing the writ.*
2. *Qualification of the candidates.*
3. *Qualification of the electors.*
4. *Election.*

5. *Return.*

5. *Return.*
6. *Manner of proceeding in parliament.*
7. *Privilege of parliament.*
8. *Adjournment, prorogation, and diſſolution.*

1. *Iſſuing the writ.*

1. WHEN any new parliament is ſummoned, the lord chancellor ſends his warrant to the clerk of the crown in chancery, who thereupon iſſues out writs to the ſheriff of every county, for the election of all the members to ſerve for that county, and every city and borough therein. Or, if a vacancy happens during the ſitting of parliament, the ſpeaker, by order of the houſe, iſſues the like writ; and if a vacancy happens by death, in the time of a receſs for upwards of twenty days, then the ſpeaker iſſues ſuch writ without the order of the houſe.

And there ſhall be forty days between the teſte or date of the writ, and the return of it.

And the writ ſhall be delivered to the proper officer to whom the execution thereof doth belong, and to no other perſon. 7 & 8 *W. c.* 25. *ſ.* 1.

And every ſuch officer, upon receipt of the writ, ſhall indorſe thereon the day that he received it. *Id.*

2. And in caſe of an election of a *knight of a ſhire*, the ſheriff ſhall, within two days after the receipt of the writ, cauſe proclamation to be made at the place where the enſuing election ought by law to be holden, of a ſpecial county court to be there holden, for the purpoſe of ſuch election only, on any day, (*Sunday* excepted,) not later from the day of making ſuch proclamation than the ſixteenth day, nor ſooner than the tenth day; and ſhall proceed in ſuch election, at ſuch ſpecial county court, in the ſame manner as if the ſaid election was to be held at a county court as heretofore. 25 *G.* 3. *c.* 84. *ſ.* 4.

3. With reſpect to *cities*, *boroughs*, and *towns corporate*, the ſheriff or other officer who received the writ, ſhall forthwith, upon receipt thereof, make out a precept to each borough, town corporate, or place within his juriſdiction, where any members are to be elected, and within three days (and in the cinque ports ſix days) after receipt of the ſaid writ, ſhall, by himſelf, or his proper agent, deliver the precept to the officer to whom the execution thereof doth belong, and to no other perſon; which officer ſhall indorſe the day of his receipt thereof, in preſence of the party by whom he received the ſame; and ſhall forthwith cauſe public notice to be given of the time and place of election, and ſhall proceed in the election within eight days after receipt of the precept, and give four days notice at leaſt of the day appointed for the election. 7 & 8 *W. c.* 25. *ſ.* 1. 10 & 11 *W. c.* 7.

4. In a *city or town, being a county of itſelf*, the ſheriff ſhall forthwith,

with, on receipt of the writ, give public notice of the time and place of election, and proceed to election thereupon, within eight days after receipt of the writ, and give three days notice thereof at leaſt, excluſive of the day of receipt of the writ, and of the day of election. 19 *G.* 2. *c.* 28.

2. *Qualification of the candidates.*

1. No member ſhall ſit or vote in either houſe of parliament, unleſs he be *twenty-one years of age.* 4 *Inſt.* 47.

2. In order to prevent *papiſts* from ſitting in either houſe of parliament, it is enacted, that no perſon ſhall ſit or vote in either houſe till he hath, in preſence of the houſe, taken the oaths of allegiance, ſupremacy, and abjuration, and ſubſcribed and repeated the declaration againſt tranſubſtantiation, and invocation of ſaints, and the ſacrifice of the maſs. 30 *C.* 2. *ſt.* 2. *c.* 1. 1 *G.* *c.* 13.

3. No perſon born out of *Great Britain* or *Ireland*, or the dominions thereunto belonging (although he be naturalized and made a denizen, except ſuch as be born of *Engliſh* parents) ſhall be capable to be a member of either houſe of parliament. 12 & 13 *W.* *c.* 2.

4. Sheriffs of counties, and mayors and bailiffs of boroughs, are not eligible in their reſpective juriſdictions, as being returning officers; but a ſheriff of one county may be choſen knight of another. 1 *Black.* 175.

5. By ſeveral ſtatutes, no perſons concerned in the management of any duties or taxes created ſince 1692, except the commiſſioners of the treaſury; nor any of the officers following, viz. commiſſioners of prizes, tranſports, ſick, and wounded, wine licences, navy, and victualling; ſecretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations; officers of *Minorca* or *Gibraltar*; officers of the exciſe and cuſtoms; clerks or deputies in the ſeveral offices of the treaſury, exchequer, navy, victualling, admiralty, pay of the army or navy, ſecretaries of ſtate, ſalt, ſtamps, appeals, wine licences, hackney coaches, hawkers, and pedlars; nor any perſons that hold any new office under the crown, created ſince 1705, are capable of being elected. 1 *Black.* 175.

But this ſhall not extend to, or exclude the treaſurer or comptroller of the navy, ſecretaries of the treaſury, ſecretary to the chancellor of the exchequer, ſecretaries of the admiralty, under-ſecretary of ſtate, deputy paymaſter of the army, or any perſon holding any office for life, or for ſo long as he ſhall behave himſelf well in his office. 15 *G.* 2. *c.* 22.

If any member ſhall accept an office of profit under the crown, except an officer in the army or navy accepting a new commiſſion, his

his election shall be void; but he shall be capable of being re-elected. 6 *An. c.* 7. *s.* 26.

6. No person having a pension from the crown during pleasure, shall be capable of being elected. 6 *An. c.* 7. *s.* 25.

7. No person shall be capable to sit or vote in the house of commons for a county, unless he hath an estate freehold or copyhold, for his life or some greater estate, of the clear yearly value of 600*l.*; nor for a city or borough, unless he hath a like estate of 300*l.* And any other candidate, or two electors, may require him to make oath thereof at the time of election, or before the day of the meeting of the parliament; and before he shall vote in the house of commons, he shall deliver in an account of his qualification, and the value thereof, under his hand, and make oath of the truth of the same. But this shall not extend to the eldest son or heir apparent of a peer, or of any person qualified to serve as knight of a shire, nor to the members of either of the two universities. 9 *Ann. c.* 5. 33 *G.* 2. *c.* 20.

3. *Qualification of the electors.*

1. No person shall be admitted to vote, under the age of twenty-one years. 7 & 8 *W. c.* 25.

2. By several acts, every elector of a knight of a shire shall have freehold to the value of 40*s.* a year within the county; which is to be clear of all charges and deductions, except parliamentary and parochial taxes. 1 *Black.* 172.

3. No person shall vote in right of any freehold granted to him fraudulently to qualify him to vote. Fraudulent grants are such as contain an agreement to re-convey, or to defeat the estate granted; which agreements are enacted to be void, and the estate vested absolutely in him to whom it is so granted. 1 *Black.* 173.

4. No person shall vote for a knight of a shire, without having been in the actual possession of the estate for which he votes, or in the receipt of the rents or profits thereof to his own use, above twelve calendar months; unless it came to him by descent, marriage, marriage settlement, devise, or promotion to a benefice or office. 18 *G.* 2. *c.* 18. *s.* 5.

5. No person shall vote in respect of an annuity or rent charge, unless registered with the clerk of the peace twelve calendar months before. 3 *G.* 3. *c.* 24.

6. In mortgaged or trust estates, the mortgagor, or *cestuy que trust*, shall vote; and not the trustee or mortgagee, unless they be in actual possession. 7 & 8 *W. c.* 25. *s.* 7.

7. All conveyances to multiply voices, or to split votes, shall be void; and no more than one voice shall be admitted for one and the same house or tenement. *Id.*

8. No person shall vote for a knight of a shire, in respect of any

any meſſuages, lands, or tenements, which have not been charged to the land tax ſix calendar months before. 20 *G.* 3. *c.* 17. *ſ.* 1, 2.

9. No perſon ſhall vote for any eſtate holden by copy of court roll. 31 *G.* 2. *c.* 14.

10. The right of election in *boroughs* is various, depending intirely on the ſeveral charters, cuſtoms, and conſtitutions of the reſpective places; but by the 2 *G.* 2. *c.* 24. this right of voting for the future ſhall be allowed according to the laſt determination of the houſe of commons concerning it.

And no perſon, claiming to vote in right of his being a *freeman* of a corporation, ſhall be allowed, unleſs he hath been admitted to his freedom twelve calendar months before. 3 *G.* 3. *c.* 15.

And no perſon ſhall vote at any election for any city or borough, as an inhabitant paying ſcot and lot, or inhabitant houſeholder, houſekeeper, and pot-waller, legally ſettled or reſiant, or as an inhabitant thereof, unleſs he hath been *bona fide* an inhabitant thereof for ſix calendar months previous to the day of election; and ſuch vote ſhall be void, and he ſhall forfeit 20*l.* except poſſeſſion acquired by deſcent, deviſe, marriage, or marriage ſettlement, or promotion to an office or benefice: and this ſhall relate only to perſons who claim to vote in manner aforeſaid. 26 *G.* 3. *c.* 100. *ſ.* 1, 2.

4. *Election.*

1. In order that elections may be free, the ſecretary at war, on notice given to him by the clerk of the crown, of the writ being iſſued, ſhall ſend orders for the removal of ſoldiers, one day at leaſt before the election, to the diſtance of two or more miles, and not to return till one day after the poll ſhall be cloſed. But this not to extend to the guards, nor to any caſtle or fortified place where a garriſon is uſually kept, nor to any officer or ſoldier having right to vote at ſuch election. 8 *G.* 2. *c.* 30.

2. By vote of the houſe of commons, to whom alone belongs the power of determining conteſted elections, no lord of parliament, or lord lieutenant of a county, hath any right to interfere in the election of commoners. And, by ſeveral ſtatutes, if any officer of the exciſe, cuſtoms, poſt-office, ſtamps, or certain other branches of the revenue, ſhall meddle in elections, by perſuading or diſſuading any voter, he ſhall forfeit 100*l.* and be diſabled to hold any office. 1 *Black.* 178.

3. And to prevent bribery and corruption, no candidate, after teſte of the writ of ſummons, or after a place becomes vacant in parliament time, ſhall, by himſelf, or by any other ways or means on his behalf, or at his charge, before his election, directly or indirectly, give, or promiſe to give, to any elector, any money, meat,

meat, drink, proviſion, preſent, reward, or entertainment, to or for any ſuch elector in particular; or to any county, city, town, borough, port, or place in general; in order to his being elected, on pain of being incapacitated. 7 & 8 *W.* *c.* 4.

4. And the ſheriff ſhall erect, at the expence of the candidates, ſuch number of *booths* for taking the poll, as the candidates, or any of them, ſhall, three days at leaſt before the commencement of the poll, deſire, not exceeding the number of hundreds or other like diviſions, and not exceeding fifteen in the whole; and ſhall affix, on the moſt public part of each, the name of the hundred for which ſuch booth is deſigned; and ſhall make out a liſt for each booth of the ſeveral towns, pariſhes, and hamlets, wholly or in part within ſuch hundred; and ſhall, on requeſt, deliver a copy to any of the candidates, paying 2*s.* 18 *G.* 2. *c.* 18.

5. And the ſheriff ſhall appoint ſuch number of *clerks*, as he ſhall think fit, for taking the poll in the preſence of himſelf or deputy; which clerks, before they begin to take the poll, ſhall be ſworn by the ſheriff or under-ſheriff, truly and indifferently to take the poll, and to ſet down the name of each freeholder, and the place of his freehold, and for whom he polls; and to poll no freeholder who is not ſworn, if ſo required by any of the candidates. 7 & 8 *W.* *c.* 25. *ſ.* 3.

And where there are ſeveral booths, the ſheriff ſhall appoint clerks at each booth; who ſhall be paid by the candidates, not exceeding each one guinea a day. 18 *G.* 2. *c.* 18.

And he ſhall admit one perſon for each candidate to be *inſpector* of the clerks. 7 & 8 *W.* *c.* 25. *ſ.* 3.

6. Alſo the ſheriff ſhall allow a *cheque book* for every poll book for each candidate, to be kept by their inſpectors at the place of taking the poll. 19 *G.* 2. *c.* 28.

7. Before the returning officer ſhall proceed to the election, he ſhall, immediately after the reading of the writ, take and ſubſcribe the following oath, to be adminiſtered by a juſtice of the peace, or any three electors: "I *A. B.* do ſolemnly ſwear, that "I have not, directly or indirectly, received any ſum or ſums "of money, office, place, or employment, gratuity, or reward, "or any bond, bill, or note, or any promiſe of gratuity what-"ſoever, either by myſelf, or any other perſon to my "uſe, or benefit, or advantage, for making any return at "the preſent election of members to ſerve in parliament; and "that I will return ſuch perſon or perſons as ſhall, to the beſt "of my judgment, appear to me to have the majority of legal "votes;" which oath ſhall be entered amongſt the records of the ſeſſions. 2 *G.* 2. *c.* 24. *ſ.* 3.

And if the election ſhall not be determined upon view, with the conſent of the freeholders there preſent, but a poll ſhall be demanded, the ſame ſhall commence on the day on which ſuch demand

demand is made, or upon the next day at fartheſt, (unleſs it be *Sunday*, and then on the day after,) and ſhall be regularly proceeded in from day to day (*Sunday* excepted) until the ſame be finiſhed, and ſhall not continue more than fifteen days at moſt, (*Sunday* excepted;) and the poll ſhall be kept open ſeven hours at leaſt each day, between eight in the morning and eight in the evening. 25 *G.* 3. *c.* 84. *ſ.* 1. 3.

8. And every *freeholder*, before he is admitted to poll for a knight of the ſhire, ſhall, if required by a candidate, or any elector, take the following oath (to be adminiſtered by the ſheriff, under-ſheriff, or one of the ſworn clerks): "You ſhall ſwear (*or, being one of the people called Quakers*, you ſhall ſolemnly affirm) "that you are a freeholder in the county of and have "a freehold eſtate, conſiſting of [*ſpecifying the nature of it, whether meſſuage, land, rent, tithe, or what elſe; and if ſuch freehold eſtate conſiſts in meſſuages, lands, or tithes, then ſpecifying in whoſe occupation; and if in rent, then ſpecifying the names of the owners or poſſeſſors of the lands or tenements, out of which ſuch rent is iſſuing*] lying or being at in the "county of of the clear yearly value of 40*s.* over and "above all rents and charges payable out of, or in reſpect of the "ſame; and that you have been in the actual poſſeſſion or receipt of rents or profits thereof, for your own uſe, above twelve "calendar months, or that the ſame came to you within the "time aforeſaid, by deſcent, marriage, marriage-ſettlement, "deviſe, or promotion to a benefice in the church, or by promotion to an office; and that ſuch freehold eſtate has not been "granted or made to you fraudulently, on purpoſe to qualify "you to give your vote; and that the place of your abode is "at in and that you are twenty-one years "of age, as you believe; and that you have not been polled before at this election." And if he falſifies, he ſhall ſuffer as in caſe of perjury. 18 *G.* 2. *c.* 18. *ſ.* 1.

And the ſheriff and clerks ſhall enter not only the place of his freehold, but alſo the place of his abode, as he ſhall declare the ſame at the time of giving his vote; and ſhall enter *jurat* againſt the name of every ſuch voter who hath taken the oath. 10 *An. c.* 23. *ſ.* 5.

And the aforeſaid act of the 18 *G.* 2. *c.* 18. ſhall extend to *cities and towns, that are counties of themſelves*, where perſons have a right to vote in reſpect of a freehold of 40*s.* a year; but not where they have a right to vote in reſpect of burgage tenure, or where the right to vote for a freehold doth not require the ſame to be of 40*s.* a year. 19 *G.* 2. *c.* 28.

9. And the voter, if required by either of the candidates, or any two electors, ſhall, before he votes, take the oath againſt bribery, to be adminiſtered by the returning officer, or his deputy,

as follows: "I *A. B.* do swear *(or being one of the people called* "*Quakers*, do solemnly affirm) I have not received or had by "myself, or any person whatsoever in trust for me, or for "my use and benefit, directly or indirectly, any sum or sums of "money, office, place, or employment, gift or reward, or any "promise or security for any money, office, employment, or "gift, in order to give my vote at this election; and that I have "not before been polled at this election." 2 *G.* 2. *c.* 24. *s.* 1.

And if any person shall take any money or other reward, or contract or agree for any money, gift, office, employment, or other reward, to give, or forbear to give his vote, he shall forfeit 500*l.* *s.* 7.

And in all cases where no oath of qualification other than the said oath against bribery, or the oaths of allegiance, supremacy, and abjuration, can now by law be required, every person claiming to vote, shall, (if required as aforesaid,) before he is admitted to poll, take the oath following:

"I do swear *(or* affirm) that my name is *A. B.*, and that I "am and that the place of my abode is at in "the county of and that I have not before polled at "this election; and that I verily believe myself to be of the "full age of twenty-one years." 25 *G.* 3. *c.* 84. *s.* 5.

5. *Return.*

1. AFTER the election, the names of the persons chosen shall be written in an indenture, under the seals of the electors, and tacked to the writ. 7 *H.* 4. *c.* 15.

2. The returning officer in boroughs, returns his precept to the sheriff, with the persons elected by the majority. And the sheriff returns the whole, together with the writ for the county, and the knights elected thereupon, to the clerk of the crown in chancery, before the day of meeting, if it be a new parliament; or within fourteen days after the election, if it be an occasional vacancy; and this, under the penalty of 500*l.* And if the sheriff doth not return such knights only as are duly elected, he forfeits by the ancient statutes 100*l.*; and the returning officer of a borough, for a like false return, 40*l.* And by later statutes, they are liable to an action at the suit of the party duly elected, and to pay double damages. And the like remedy shall be against an officer making a *double* return. 1 *Black.* 180. 7 & 8 *W.* *c.* 7.

3. And the sheriff shall deliver copies of the poll to any person desiring the same, paying a reasonable charge for writing thereof. 7 & 8 *W.* *c.* 25. *s.* 6.

4. And he shall, within twenty days after the election, deliver over upon oath, (to be administered by two justices,) all the poll books to the clerk of the peace, without alteration; to be kept amongst the records of the sessions. 10 *Ann.* *c.* 23. *s.* 5.

And

And the check polls, as well as the original polls taken by the ſheriff or his clerks, muſt be lodged with the clerk of the peace: as in the *Radnorſhire* election, the ſheriff ſwore a clerk, and each of the candidates two others, and five polls were taken, which were delivered to the ſheriff; he carried in that only which was taken by his clerk, as being the original poll, and the others only checks; the court held, that all the books ought to have been carried in; and granted an information againſt the ſheriff for not doing it. 2 *Str.* 1048. *R.* v. *Davis.*

5. On petition to the houſe of commons, complaining of an undue election, forty-nine members of the houſe of commons ſhall be choſen by ballot, out of whom each party ſhall alternately ſtrike out one, till they be reduced to the number of thirteen; who together with two more, of whom each party ſhall nominate one, ſhall be a ſelect committee, for determining ſuch controverted election. 10 *G.* 3. *c.* 16 11 *G.* 3. *c.* 42.

6. *Manner of proceeding in parliament.*

1. THE method of making laws is much the ſame in both houſes. In the houſe of commons, in order to bring in a bill, if the relief ſought by it is of a *private* nature, it is firſt neceſſary to prefer a petition; which muſt be preſented by a member, and uſually ſets forth the grievance deſired to be remedied. This petition, when founded on facts that may be in their nature diſputed, is referred to a committee of members, who examine the matter alleged, and accordingly report it to the houſe; and then (or otherwiſe upon the mere petition) leave is given to bring in the bill. In *public* matters, the bill is brought in upon motion made to the houſe, without any petition at all. 1 *Black.* 181.

2. If the bill begins in the houſe of lords, if of a *private* nature, it is referred to two of the judges, to make report. *Id.* 182.

3. After the ſecond reading, the bill is *committed*, that is, referred to a committee; which is either ſelected by the houſe, in matters of ſmall importance; or elſe, upon a bill of conſequence, the houſe reſolves itſelf into a committee of the whole houſe. A committee of the whole houſe is compoſed of every member; and to form it, the ſpeaker quits the chair, and may ſit and debate as a private member, another member being appointed chairman for the time. In theſe committees the bill is debated clauſe by clauſe, amendments made, and ſometimes the bill intirely new modelled. Upon the third reading, amendments are ſometimes again made to it; and if a new clauſe be added, it is done by tacking a ſeparate piece of parchment on the bill, which is called a rider. 1 *Black.* 182.

7. *Privilege of Parliament.*

By the common law, a member of parliament ſhall have the privilege of parliament, not only for himſelf and his ſervants, to be freed from arreſt, *ſubpœna*, *citation*, and the like; but alſo for his horſes and goods to be free from diſtreſſes: but for treaſon, felony, and breach of the peace, there can be no privilege. 4 *Inſt.* 24, 25.

But by the 10 *G.* 3. *c.* 50, any perſon may commence and proſecute any action in any court of record, or court of equity, or of admiralty, or in cauſes matrimonial and teſtamentary, againſt any peer or member of the houſe of commons, or any of their menial or other ſervants; and no proceedings thereupon ſhall be delayed under colour of ſuch privilege: provided, that this ſhall not ſubject the perſon of any member of the houſe of commons to be arreſted or impriſoned on any ſuit or proceedings. And the court out of which the writ proceeds, may order the iſſues levied by diſtringas from time to time, to be ſold, and the money ariſing thereby, to be applied to pay ſuch coſts to the plaintiff as the court ſhall think juſt, and the ſurplus to be detained till the defendant ſhall have appeared, or other purpoſe of the writ be anſwered. And obedience may be inforced to any rule of court againſt any perſon intitled to privilege by diſtreſs infinite, if the plaintiff ſhall chuſe to proceed in that way.

8. *Adjournment, prorogation, and diſſolution.*

1. *Adjournment* is a continuance of the ſeſſion from one day to another; and this is done by the authority of each houſe ſeparately every day; and ſometimes for a fortnight or a month together, as at *Chriſtmas* or *Eaſter*; or upon other particular occaſions: but the adjournment of one houſe is no adjournment of the other. 1 *Black.* 186.

2. *Prorogation* is the continuance of the parliament, not from one day to another, but from one ſeſſions to another. And this is done by the royal authority. And by this, both houſes are prorogued at the ſame time; it not being a prorogation of the houſe of lords or commons, but of the parliament. The ſeſſion is never underſtood to be at an end until a prorogation; though unleſs ſome act be paſſed, or ſome judgment given in parliament, it is, in truth, no ſeſſion at all. *Id.*

3. *Diſſolution* of the parliament puts an end to it altogether: and this may be effected either by the king, who by his prerogative may diſſolve the parliament whenever he pleaſes, or by the death of the king, or by the expiration of the time for which they were convened. *Id.*

By the 1 *G. ſt.* 2. *c.* 38. the parliament ſhall have continuance

for

for ſeven years, to be accounted from the day on which, by the writ of ſummons, they ſhall be appointed to meet; unleſs ſooner diſſolved by the king.

And by the 7 & 8 *W.* *c.* 25. and 6 *An.* *c.* 7. they ſhall not be immediately diſſolved by the king's death, but ſhall continue further for ſix months, unleſs ſooner diſſolved by the ſucceſſor.

PAROL DEMURRER, is a privilege allowed to an infant, that the action may ſtay till he comes of full age. In many real actions brought againſt, or by an infant under the age of twenty-one years, and alſo in actions of debt brought againſt him as heir to any deceaſed anceſtor, either party may ſuggeſt the nonage of the infant, and pray that the proceedings may be deferred till his full age, or according to the legal phraſe, that *the infant may have his age*, and that the *parol may demur*; that is, that the pleadings may be ſtayed; and then they ſhall not proceed till his full age, unleſs it be apparent that he cannot be prejudiced thereby. But by the ſtatutes 3 *Ed.* 1. *c.* 46. and 6 *Ed.* 1. *c.* 2. in writs of entry *ſur diſſeiſin* in ſome particular caſes, and in actions *anceſtral* brought by an infant, the parol ſhall not demur; otherwiſe he might be deforced of his whole property, and even want a maintenance till he came of age. So likewiſe, in a writ of dower, the heir ſhall not have his age; for it is neceſſary that the widow's claim be immediately determined, elſe ſhe may want a preſent ſubſiſtence. Nor ſhall an infant patron have it in a *quare impedit*, ſince the law holds it neceſſary and expedient that the church be immediately filled. 3 *Black.* 300.

PARRICIDE, is the murder of one's father or mother; for which the law hath provided no peculiar puniſhment different from that of common murder, preſuming probably, that no perſon, unleſs totally deprived of reaſon, can be guilty of it.

PARSON, *perſona*, properly ſignifies the rector of a pariſh church; becauſe, during the time of his incumbency, he repreſents the church, and, in the eye of the law, ſuſtains the *perſon* thereof, as well in ſuing, as in being ſued, in any action touching the ſame. He is in himſelf a body corporate, in order to protect and defend the rights of the church by a perpetual ſucceſſion. He is ſometimes called the *rector*, or governor of the church; but *parſon* is the more proper and legal appellation. 1 *Inſt.* 300. When a parſon is inſtituted and inducted into a rectory, he is then, and not before, in full and complete poſſeſſion, and is called in law, *perſona imperſonata*, or *parſon imparſonee*. 1 *Black.* 391.

PARTITION, is a dividing of lands deſcended by the common law, or by cuſtom, among coheirs or parceners, where there are two at the leaſt. It may be made by coparceners, jointenants and tenants in common.

PARTNERS, are where two or more agree to come in, ſhare

and ſhare alike, to any trade or bargain. And although generally, where an obligation is made to divers perſons for one debt, he who ſurviveth ſhall have the whole; yet in caſe of joint traders it is otherwiſe; for the wares, merchandizes, debts, or duties, that they have as joint merchants or partners, ſhall not ſurvive, but the ſhare of him that dieth ſhall go to his executors. And this is by the law of merchants, which is part of the laws of this realm, for the advancement and continuance of commerce and trade. 1 *Inſt.* 182.

So if there are two partners in trade, and judgment is recovered againſt one of them, his moiety of the goods in partnerſhip only ſhall be taken in execution. *Show. Rep.* 174.

An agent or factor to joint merchants, muſt ſue the ſurvivor for the wages: and if he accounts, he ſhall deduct his charges out of the effects of both; but that which is clear upon the account ſtated, will belong to the ſurvivor and to the adminiſtrator; but the ſurvivor ſhall take the whole, and allow a moiety to the adminiſtrator: for it would cauſe great confuſion if both ſhould ſue, one in his own, and the other in the right of another. *L. Raym.* 341.

PASSAGE, *paſſagium*, is, properly, over water, as a *way* is over land. It relates to the ſea and great rivers: it is uſed for the hire that a man pays for being tranſported over the ſea, or over any river. An immunity from this payment was granted to ſeveral of the religious houſes by divers ancient charters.

PASTURE, common of, is a right of feeding one's beaſts on another's land; for in thoſe waſte grounds which are called commons, the property of the ſoil is generally in the lord of the manor, as in common fields it is in the particular tenants. 2 *Black.* 32.

PATRONAGE, is the right of preſentation to a church, or eccleſiaſtical benefice: it ſignifies to take the church into his protection. For when lords of manors firſt built churches on their own demeſnes, and endowed them with lands or other poſſeſſions, they had of common right a power annexed of nominating miniſters to officiate in ſuch churches of which they were the founders, endowers, or *patrons*. 2 *Black.* 21.

PAVIAGE, is money paid towards the paving of ſtreets or highways.

PAUPERIS FORMA. See FORMA PAUPERIS.

PAWN, *(pignus,)* is a pledge or gage for ſurety of payment of money lent.

PAWN-BROKER, is one who lets out money upon pawn or pledge, whoſe office is regulated by divers ſtatutes.

By the 25 *G.* 3. *c.* 48. every pawn-broker is required to take out a licence annually from the commiſſioners of the ſtamp duties. By 30 *G.* 2. *c.* 24. *ſ.* 4. & 29 *G.* 3. *c.* 57. *ſ.* 4. every perſon

ſon who ſhall take any goods by way of pawn or pledge, ſhall enter a deſcription thereof in a book, and the money advanced thereon, at what time, and to whom, and deliver a duplicate thereof to ſuch perſon, if required.

And where goods pawned ſhall be damaged through neglect of the pawn-broker, a juſtice of the peace may award a reaſonable ſatisfaction to be deducted out of the principal and intereſt. *ſ.* 5. & 29 *G.* 3. *c.* 57. *ſ.* 18.

Perſons buying or taking in pledge linen or apparel, intruſted to others to waſh or mend, ſhall forfeit double the ſum, and reſtore the goods. *ſ.* 6.

The ſale of goods wrongfully gotten within *London* and *Weſtminſter*, to any broker or pawn taker, ſhall not alter the property. And ſuch broker ſhall, upon requeſt, declare what goods are come to his hands, on pain of forfeiting double value. 1 *Ja.* *c.* 21.

Perſons offering goods to ſale or pawn, not giving a good account of themſelves, may be detained with the goods, and delivered over to a conſtable, to be carried before a juſtice, who may commit the party for further examination; and a juſtice, on application and oath of the owner whoſe goods are unlawfully pawned, may iſſue his warrant to ſearch the ſuſpected perſon's houſe; and the goods, if found, ſhall be reſtored to the owner. 30 *G.* 2. *c.* 24. *ſ.* 7, 8, 9.

Goods remaining unredeemed for two years [but by 29 *G.* 3. *c.* 57. *ſ.* 12. one year] may be ſold, ſubject to an account for the overplus. *ſ.* 11.

PAYMENT. If a rent is reſerved upon a leaſe of lands at four uſual feaſts in the year, the leſſor ſhall have an action of debt after the firſt day of failure; becauſe the ſame is accounted in law a reſervation of parcel of the profits of the land: ſo that every quarter's rent is a ſeveral debt. So it is of a covenant or promiſe, or recognizance to pay 100*l.* at five ſeveral days after the firſt default. Yet if one leaſe a ſtock of cattle, or other *perſonal* goods, and the rent is to be paid at ſeveral days, the leſſor muſt tarry until all the days are expired, becauſe it is a perſonal contract. And ſo it is of a contract for payment of ſeveral ſums of money. Where note a diverſity between real and perſonal contracts. *Wood.* *b.* 2. *c.* 2.

When one is to pay rent at a certain day, he hath all that day until night to pay it; but ſo that the receiver may ſee to tell it. And when a common perſon appoints no place of payment of his rent, the law appoints it to be on the land; but in the caſe of the king, the payment muſt be at the exchequer, or to his receiver. If a man is bound in an obligation to pay his rent at a day, he muſt ſeek out his landlord to pay him. *Id.*

Payment of money before the day, is in law payment at the day;

day; for it cannot in presumption of law, be any prejudice to him to whom the payment is made, to have his money before the time; and it appears by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it. 5 *Co.* 117.

Upon pleading of payment at the day, it is good evidence to prove payment at any time *after* the day, and before action brought. 2 *Lil.* 287.

PEACE. The king, by his office and dignity royal, is the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the *king's peace.* All the great officers of state are generally conservators of the peace throughout the kingdom, and may commit all breakers of it, or bind them in recognizances to keep it. As also the sheriff, coroner, constables, and tithingmen, are conservators of the peace within their own jurisdiction, and may apprehend all breakers of the peace, and commit them, till they find sureties to keep the peace. 1 *Black.* 350.

By the ancient *Saxon* constitution, these sureties of the peace were always at hand, by means of king *Alfred's* institution of decennaries or frankpledges, wherein the whole neighbourhood or tithing were mutually pledges of each other's good behaviour. But this falling into disuse, there hath succeeded to it the method of making suspected persons find particular and special sureties for their future conduct. 4 *Black.* 252.

Any justices of the peace, by virtue of their commission, or those who by virtue of their office are conservators of the peace, may demand such security according to their own discretion, or at the request of any other, on due cause shewn. 4 *Black.* 253.

When the courts of justice are open, and the judges and ministers of the same may by law protect men from wrong and violence, and distribute justice to all, it is said to be the time of peace. So when, by invasion, insurrection, rebellion, or such like, the peaceable course of justice is disturbed and stopped, so that the courts of justice are, as it were, shut up, then it is said to be time of war. If a man be disseised in time of peace, and a descent is cast in time of war, this shall not take away the entry of the disseisee. In all real actions, the explees or taking of the profits are laid *in time of peace;* for if they were taken *in time of war,* they are not accounted of in law. 1 *Inst.* 249.

PECULIARS, are places exempt from the jurisdiction of the ordinary of the diocese; and are of several sorts: 1. Royal peculiars; which are the king's free chapels, and are exempt from any jurisdiction but the king's. 2. Peculiars of the archbishops, exclusive of the bishops and archdeacons, which arose from

from a privilege they had to enjoy juriſdiction in ſuch places where their ſeats and poſſeſſions were. Of theſe, there are upwards of an hundred in the province of *Canterbury*, wherein juriſdiction is adminiſtered by ſeveral commiſſaries, the chief of whom is the dean of the arches, for the thirteen peculiars of the archbiſhop within the city of *London*. 3. Peculiars of biſhops, excluſive of the juriſdiction of the biſhop of the dioceſe in which they are ſituate. 4. Peculiars of biſhops in their own dioceſes, excluſive of archidiaconal juriſdiction. 5. Peculiars of deans, deans and chapters, prebendaries, and the like; which are places wherein, by ancient compoſitions, the biſhops have parted with their juriſdiction as ordinaries, to theſe ſocieties.

PEDAGE, *pedagium*, is money given for a *foot* paſſage through any diſtrict or place.

PEERS, PEERAGE:

1. *Peers*, *pares*, ſignify generally by the common law, thoſe that are impanelled in an inqueſt for the trial of any perſon, and convicting or clearing him of the offence for which he is called in queſtion: and by *magna charta*, every one is to be tried by his peers or equals. But in common acceptation, the word peers denotes the nobility of the kingdom only, or lords of parliament, conſiſting of dukes, marqueſſes, earls, viſcounts, and barons. And the reaſon why they are called *peers* is, for that notwithſtanding there be a diſtinction of dignities, yet in all public actions they are equal; as in their votes in parliament, and in paſſing upon the trial of any nobleman.

2. The right of peerage ſeems to have been originally territorial; that is, annexed to lands, honors, caſtles, and the like; the proprietors and poſſeſſors of which were (in right of thoſe eſtates) allowed to be peers of the realm, and were ſummoned to parliament to do ſuit and ſervice to their ſovereign; and, when the land was alienated, the dignity paſſed with it as appendant. Thus the biſhops ſit ſtill in the houſe of lords in right of ſucceſſion to certain ancient baronies annexed, or ſuppoſed to be annexed to their epiſcopal lands. 1 *Black.* 399.

But afterwards, when alienations grew to be frequent, the dignity of peerage was confined to the lineage of the party ennobled, and inſtead of territorial, became perſonal. Actual proof of a tenure by barony became no longer neceſſary to conſtitute a lord of parliament; but the record of the writ of ſummons to him, or his anceſtors, was admitted as a ſufficient evidence of the tenure. *Id.* 400.

3. Peers are now created either by *writ* or by *patent*; for thoſe who claim by preſcription muſt ſuppoſe either a writ or patent made to their anceſtors, though by length of time it may be loſt. The creation by *writ*, or the king's letter, is a ſummons

mons to attend the houſe of peers, by the ſtyle and title of that barony, which the king is pleaſed to confer; that by *patent*, is a royal grant to a ſubject of any dignity and degree of peerage. The creation by writ is the more ancient way; but a man is not ennobled thereby, unleſs he actually take his ſeat in the houſe of lords: and therefore the moſt uſual, becauſe the ſureſt, way is to grant the dignity by patent, which enures to a man and his heirs, according to the limitations thereof, though he never himſelf makes uſe of it. *Id.*

4. In criminal caſes, a nobleman ſhall be tried by his peers. But it is ſaid, that this doth not extend to biſhops; who, though they are lords of parliament, and ſit there by virtue of their baronies which they hold in right of the church, yet are not ennobled in blood, and conſequently not peers of the realm. But this trial by peers is to be underſtood only at the ſuit of the king, upon an indictment of high treaſon, petit treaſon, felony, or miſpriſion thereof; but in a caſe of a præmunire, riot, or the like, and generally for all other crimes out of parliament (unleſs otherwiſe ſpecially provided for by ſtatute, as it is in many inſtances) though it be at the ſuit of the king, a nobleman ſhall not be tried by his peers, but by the freeholders of the county. 3 *Inſt.* 30. 2 *Haw.* 424.

5. Peers ſhall have the benefit of clergy for the firſt offence of felony, without being burned in the hand. 1 *Ed.* 6. *c.* 12.

6. A peer ſitting in judgment gives not his verdict upon oath, like an ordinary juryman, but upon his honour. He anſwers to bills in chancery upon his honour, and not upon his oath. But when he is examined as a witneſs, either in civil or criminal caſes, he muſt be ſworn. 1 *Black.* 402.

7. To ſpread falſe reports of peers or noblemen is much more penal than of common perſons; ſcandal againſt them being called by the peculiar name of *ſcandalum magnatum*, and ſubjected to peculiar puniſhment by divers ancient ſtatutes. *Id.*

8. A peer or peereſs cannot be arreſted in civil caſes.

9. A peer or peereſs cannot be bound over to the peace, or good behaviour, in any other place than the courts of king's bench or chancery. 1 *Haw.* 127.

10. Peers are not obliged to attend at the tourn or leet.

11. No peer hath privilege againſt being compelled by proceſs of the courts of *Weſtminſter-hall* to pay obedience to a writ of *habeas corpus* directed to him. *Burr. Manſf.* 632.

12. Proceſs of outlawry lies againſt a peer, if he be indicted, and appears not, and cannot be taken; otherwiſe he might take advantage of his own contumacy. 3 *Inſt.* 31.

13. By an order of the houſe of lords, *May* 11, 1767, the heralds are directed to take exact accounts, and preſerve regular entries, of all peers and peereſſes of *England*, and their reſpective deſcen-

deſcendants; and an exact pedigree of each peer and his family ſhall, on the day of his firſt admiſſion, be delivered to the houſe by the principal king at arms. 3 *Black.* 106.

PEN, Brit. a hill or mountain, a head. So in the names of places; *Penrith*, a red hill; *Penruddock*, from the name of the owner: ſo *Penhurrock*, a heap of ſtones upon a hill.

PENAL STATUTES, muſt be conſtrued ſtrictly; as, where the ſtatute 1 *Ed.* 6. *c.* 12. having enacted, that thoſe who are convicted of ſtealing *horſes* ſhould not have the benefit of clergy, the judges conceived that this did not extend to him that ſhould ſteal but one horſe, and therefore procured an act for that purpoſe in the year following. 1 *Blak.* 88.

All actions upon penal ſtatutes, for any forfeiture limited to the king, ſhall be brought within two years after the offence committed; if limited to the king and proſecutor, then within one year: and if it is not ſued for in that one year, then the king may ſue for the ſame within two years after the expiration of that one year. 31 *Eliz.* *c.* 5.

PENANCE, (*pœnitentia,*) is an eccleſiaſtical puniſhment, uſed in the diſcipline of the church, which affects the body of the penitent, by which he is obliged to give a public ſatisfaction to the church for the ſcandal he hath given by his evil example. So in the primitive times, they were to give teſtimony of their reformation before they were re-admitted into the Chriſtian ſociety. In the caſe of incontinence, the offender is uſually enjoined to do a public penance in the pariſh church, bareheaded and barefooted, in a white ſheet, and to make open profeſſion of his crime in a preſcribed form of words; which is augmented or moderated, according to the quality of the offence, and the diſcretion of the judge. So in ſmaller faults and ſcandals, a public ſatisfaction or penance, as the judge ſhall decree, is to be made before the miniſter, churchwardens, or ſome of the pariſhioners, reſpect being had to the quality of the offence, and circumſtances of the fact; as in caſe of defamation, or laying violent hands on a clerk, or the like. And as theſe cenſures may be moderated by the judge's diſcretion, according to the nature of the offence, ſo alſo they may be totally altered by a commutation of penance; and this hath been the ancient privilege of the eccleſiaſtical judge, to admit that an oblation of a ſum of money, for pious uſes, ſhall be accepted in ſatisfaction of public penance. But penance muſt be firſt enjoined, before there can be a commutation; or otherwiſe it is a commutation for nothing. *Gibſolph. Repert. Canon. Append.* 18.

PENSION. No perſon having a penſion from the crown, during pleaſure, or for any term of years, is capable of being elected a member of the houſe of commons. 1 *Black.* 176.

To receive a penſion from a foreign prince or ſtate, without leave

leave of our king, hath been held to be criminal; becauſe it may incline a man to prefer the intereſt of ſuch foreign prince to that of his own country. 1 *Haw.* 58.

By ſtatute 31 *G.* 1. *c.* 22. a duty of 1*s.* a pound is laid upon all perquiſites of offices and penſions, payable by the crown. 1 *Black.* 326.

PENSION ECCLESIASTICAL, is a certain ſum of money, paid to a clergyman in lieu of tithes: and ſome churches have ſettled on them annuities or penſions, payable by other churches. It may be ſued for in the eccleſiaſtical court; and a biſhop may ſue for a penſion before his chancellor, and an archdeacon before his official. *Wood. b.* 2. *c.* 2.

If an incumbent leaves arrearages of a penſion, the ſucceſſor ſhall be anſwerable; becauſe the church itſelf is charged, into whatever hand it comes. *Cro. El.* 810.

PENTECOSTALS, were oblations uſually paid to the church at the time of pentecoſt; from whence they were alſo called *Whitſun-farthings.* The payment of theſe is now out of uſe, except in ſome particular churches by cuſtom.

PER; entry *ſur diſſeiſin in the per.* See ENTRY.

PERFUMERY. By the 26 *G.* 3. *c.* 49. a ſtamp duty is impoſed on perfumery, according to the price the ſame ſhall be ſold at. And every perſon who ſhall deal therein, ſhall take out a licence annually from the ſtamp-office.

PERJURY, by the common law, is a wilful falſe oath by one, who, being lawfully required to depoſe the truth in a judicial proceeding, ſwears abſolutely, in a matter material to the point in queſtion, whether he be believed or not. 3 *Inſt.* 164.

It muſt be in a judicial proceeding; therefore no oath whatſoever, taken before perſons acting merely in a private capacity; or before thoſe who take upon them to adminiſter oaths, without legal authority; or before thoſe who are legally authorized to adminiſter ſome kinds of oaths, but not thoſe which happen to be taken before them; or even before thoſe who take upon them to adminiſter juſtice by virtue of an authority, ſeemingly colourable, but in truth unwarranted, and merely void; can amount to perjury, but is altogether idle and of no force. 1 *Haw.* 174.

And though an oath be given by him that hath lawful authority, and the ſame be broken, yet if it be not in a judicial proceeding, it is not perjury; becauſe ſuch oaths are general and extrajudicial; but it ſerves for aggravation of the offence: ſuch are general oaths given to officers or miniſters of juſtice, the oaths of fealty and allegiance, and ſuch like. Thus, if an officer commit extortion, it is againſt his general oath, but yet not perjury, becauſe not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may ſerve for aggravation. 3 *Inſt.* 166.

Subornation of perjury, by the common law, is an offence in procuring

procuring a perſon to take a falſe oath, amounting to perjury, who actually taketh ſuch oath. 1 *Haw.* 177.

But if the perſon incited to take ſuch an oath, do not actually take it, the perſon by whom he was ſo incited is not guilty of ſubornation of perjury; yet he is liable to be puniſhed, not only by fine, but alſo by infamous corporal puniſhment. *Id.*

To convict a man of perjury, a probable evidence is not enough, but it muſt be a ſtrong and clear evidence; and the witneſſes muſt be more numerous than thoſe on the ſide of the defendant; for otherwiſe, it is only oath againſt oath. 10 *Mod.* 194.

And the party prejudiced by the perjury, ſhall not be admitted to prove the perjury. *L. Raym.* 396.

By the ſtatute 5 *El. c.* 9. the puniſhment of *ſubornation* of perjury, if the proſecution is on that ſtatute, is forfeiture of 40*l.*; and if the offender is not able to pay, he ſhall be impriſoned for half a year, and ſtand on the pillory one hour. The puniſhment of *perjury* by the ſame ſtatute is, forfeiture of 20*l.* and impriſonment for ſix months; and if the offender is not able to pay the 20*l.* he ſhall be ſet on the pillory, and have both his ears nailed. And if the proſecution is at the common law, no leſs puniſhment ſhall be ſet than is contained in this ſtatute.

And the judge, if he ſees cauſe, may order the offender to be ſent to the houſe of correction, not exceeding ſeven years, to be kept to hard labour; or otherwiſe to be tranſported for any term not exceeding ſeven years. 2 *G.* 2. *c.* 25.

The judge, ſitting the court, or within twenty-four hours after, may direct a proſecution for perjury, and aſſign counſel to the proſecutor, who ſhall do their duty *gratis*. 23 *G.* 2. *c.* 11.

A perſon convicted of perjury, is diſabled from being a juror or witneſs. 2 *Haw.* 287, 433.

If a perſon calleth another *perjured* man, he may have an action upon the caſe againſt him, becauſe it muſt be intended contrary to his oath in a judicial proceeding; but for calling him a *forſworn* man, no action lies, becauſe the forſwearing may be extrajudicial. 3 *Inſt.* 166.

PERNANCY, (from the French *prendre*, to take,) is a taking or receiving; as a pernor of profits, is he who receives the profits of lands; tithes in pernancy, are tithes taken, or that may be taken in kind.

PERPETUATING the teſtimony of witneſſes is, where the witneſſes are old and infirm, and one of the parties inſtitutes a ſuit to perpetuate their teſtimony; for it may be a man's antagoniſt only waits for the death of ſome of them to begin his ſuit. This is moſt frequent where lands are deviſed by will away from the heir at law; and the deviſee, in order to perpetuate the teſtimony of the witneſſes to ſuch will, exhibits a bill in chancery againſt the heir, and ſets forth the will *verbatim* therein, ſuggeſting

geſting that the heir is inclined to diſpute its validity; and then, the defendant having anſwered, they proceed to iſſue as in other caſes, and examine the witneſſes to the will; after which, the cauſe is at an end, without proceeding to any decree, no relief being prayed by the bill; but the heir is intitled to his coſts, even though he conteſts the will. This is what is uſually meant by proving a will in chancery. 3 *Black.* 450.

PERPETUITY is, where if all that have intereſt join in the conveyance, yet they cannot bar or paſs the eſtate; for if, by concurrence of all having intereſt, the eſtate may be barred, it is no perpetuity. 1 *Cha. Ca.* 213.

A perpetuity is a thing odious in law, and deſtructive to the public; tending to put a ſtop to commerce, and prevent the circulation of the property of the kingdom; for the defeating whereof, the method of common recoveries was invented. 12 *Mod.* 282.

PER QUOD, are words reſpecting any ſpecial damage; as if a man's title to his land be ſlandered, whereby he brings his action for damages, he muſt ſet forth ſpecially, *per quod*, (that is, whereby,) he loſt an opportunity of ſelling it. If a man brings an action againſt another for beating his ſervant, he muſt ſay *per quod* he loſt his ſervice.

PERRY. See CYDER.

PERSONA IMPERSONATA, *perſon imperſonate*, is the rector that is in poſſeſſion of a church parochial, be it preſentative or impropriate, and of whom the church is full. 1 *Inſt.* 300.

PERSONAL ACTIONS, are ſuch whereby a man claims a debt, or perſonal duty or damages in lieu thereof; and likewiſe, whereby a man claims a ſatisfaction in damages for ſome injury done to his perſon or property. The former are ſaid to be founded on contracts, the latter upon injuries and wrongs. Of the former nature, are all actions upon debt or promiſes; of the latter, all actions for treſpaſſes, nuiſances, aſſaults, defamatory words, and the like. Of this latter ſort, for perſonal injuries and wrongs, when the perſon dieth, the action dieth with him, and cannot be revived either by or againſt executors or adminiſtrators. But for debt, or other perſonal duty, where the matter ariſeth from contract, though the ſuit ſhall abate by the death of either of the parties, yet the right being tranſmiſſible to the repreſentatives, the action may be revived by and againſt the executors or adminiſtrators reſpectively. 3 *Blackſt.* 117. 302.

PERSONAL TITHES, are ſuch profits as do ariſe by the honeſt labour and induſtry of man employing himſelf in ſome perſonal work, artifice, or negociation; being the tenth part of the clear gain, after charges deducted. *Watſ. c.* 49.

PERSONATING, is to repreſent one by a fictitious or aſſumed character, ſo as to paſs for the perſon repreſented. By ſtatute 21 *J. c.* 26. to acknowledge any fine, recovery, deed inrolled, ſtatute, recognizance, bail, or judgment, in the name of another

another perſon, not privy to the ſame, is felony, without benefit of clergy. As is alſo, by 31 *G.* 2. *c.* 10. the perſonating any ſeaman in his majeſty's ſervice, or his executors or adminiſtrators, in order to obtain his wages or other allowance.

PETER-PENCE, was an annual tribute of one penny, paid at *Rome*, out of every family, at the feaſt of St. *Peter*. And this, *Ina* the Saxon king, when he went in pilgrimage to *Rome*, about the year 740, gave to the pope, partly as alms, and partly in recompence of a houſe erected in *Rome* for *Engliſh* pilgrims. And this continued to be paid generally, until the time of king *Henry* the eighth, when it was enacted, that from henceforth no perſon ſhall pay any penſions, *Peter-pence*, or other impoſitions, to the uſe of the biſhop or ſee of *Rome*.

PETIT LARCENY. See LARCENY.

PETIT SERJEANTY, is where a man holds his land of the king, to render to him yearly, a bow, a ſword, a lance, a pair of gloves of maile, a pair of gilt ſpurs, or ſuch other ſmall things belonging to war: and ſuch ſervice is but ſocage in effect, becauſe ſuch tenant, by his tenure, ought not to go, nor do any thing in his proper perſon, but to render and pay yearly certain things to the king, as if a man ought to pay a rent. *Litt.* 160.

PETIT-TREASON. See TREASON.

PETITIONING. By the 13 & 14 *C.* 2. *ſt.* 1. *c.* 5. no petition to the king, or to either houſe of parliament, for any alteration in church or ſtate, ſhall be ſigned by above twenty perſons, unleſs the matter thereof be approved by three juſtices of the peace, or the major part of the grand jury, in the country; and in *London*, by the lord mayor, aldermen, and common council; nor ſhall any petition be preſented by more than ten perſons at a time. But under theſe regulations, it is declared by the ſtatute 1 *W. ſt.* 2. *c.* 2. that the ſubject hath a right to petition, and that all commitments and proſecutions for ſuch petitioning, are illegal. 1 *Black.* 143.

PEWS, in a church, are ſomewhat of the nature of heir-looms, which may deſcend by cuſtom immemorial, from the anceſtor to the heir, without any eccleſiaſtical concurrence. 2 *Black.* 429.

PHYSICIANS. By ſtatute 14 & 15 *H.* 8. *c.* 5. phyſicians in *London*, and within ſeven miles thereof, are incorporated, with power to make ſtatutes for the government of the ſociety; and no phyſician ſhall practiſe within the ſaid limits, till admitted by the preſident and community under their common ſeal. And four cenſors are to be choſen yearly, who ſhall have the ordering of the practitioners within the ſaid limits, and the ſuperviſing of medicines, with power to fine and impriſon. And no perſon ſhall be allowed to practice in phyſic out of *London*, until he ſhall have been examined at *London*, by the preſident and three of the elects of the ſaid ſociety, and have letters teſtimonial of their approving

proving and examination; except he be a graduate of *Oxford* or *Cambridge*.

PICKAGE, is a payment to the lord of the ſoil, for liberty to pick up or break the ground, in order to erect a ſtall in a fair or market.

PIEPOUDRE court, *curia pedis pulverizati*, is commonly ſaid to be ſo called from the *duſty feet* of the ſuitors: others derive it, with more probability, from the old French, *pied puldreaux*, a pedlar; being the court of ſuch petty chapmen as reſort to fairs or markets. It is the moſt expeditious court of juſtice known to this kingdom. It is a court of record, incident to every fair and market, whereof the ſteward of him who owns, or has the toll of the fair or market is the judge. 3 *Black.* 32.

It was inſtituted to adminiſter juſtice for all commercial injuries done in that very fair or market, and not in any preceding one. So that the injury muſt be done, complained of, heard, and determined, within the compaſs of one and the ſame day, unleſs the fair continues longer. *Id.*

The trial is by merchants and traders in the fair; and the judgment againſt the defendant is, that he ſhall be amerced. *Wood. b.* 4. *c.* 1.

From this court a writ of error lies, in the nature of an appeal, to the courts of *Weſtminſter*. 3 *Black.* 32.

But this court is now gone much out of uſe.

PIGEONS. A lord of a manor may build a dove-coat on his own lands, parcel of the manor; but a tenant cannot, without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Every perſon who ſhall ſhoot at or kill any pigeon, ſhall be impriſoned three months, unleſs he pay to the poor 20*s.* for every pigeon. 1 *Jac. c.* 27. *ſ.* 2. 2 *G.* 3. *c.* 29.

But if the pigeons come upon my ground, and I kill them, the owner hath no remedy againſt me, though I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Ja.* 492.

Pigeons in a dove houſe ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

PILLORY, (in Latin *colliſtrigium*, from the perſon's neck being put between two boards,) is a very ancient puniſhment in this kingdom, and was uſed heretofore by the Saxons. 3 *Inſt.* 192.

The word *pill* is common to all the European languages, and ſignifies to ſpoil, plunder, or *pillage*. And *pillory*, which we have immediately from the French, *pilleurie*, hath been improperly applied to denote the mode of puniſhment; whereas it ſignifies the *offence*, as *pillour* ſignifies the *offender*. *Barrington on the Statutes*, 30.

Every one that hath a leet or market, ought to have a pillory; and it ſeems that a leet may be forfeited for the want of it. 2 *Haw.* 75.

They

They that have been adjudged to the pillory, are infamous, and not to be received to be jurors or witneſſes. 3 *Inſt.* 219.

PIRACY. Formerly piracy was only cognizable by the admiralty courts, which proceed by the rules of the civil law. But it being inconſiſtent with the liberties of the ſubject, that any man's life ſhould be taken away, unleſs by the judgment of his peers, or the common law of the land, the ſtatute of 28 *H.* 8. *c.* 15. eſtabliſhed a new juriſdiction for this purpoſe, which proceeds according to the courſe of the common law. 4 *Black.* 71.

By which ſtatute, all treaſons, felonies, robberies, murders, and confederacies, committed upon the ſea, or in any haven, creek, or place where the admiral hath juriſdiction, ſhall be tried in ſuch ſhires or places, as the king ſhall appoint by his commiſſion, in like form as if ſuch offence had been committed upon the land, and according to the courſe of the common law. And the offenders ſhall ſuffer death, without benefit of clergy.

By the 11 & 12 *W. c.* 7. the ſaid offences may be tried by like commiſſion in any of his majeſty's colonies, forts, or factories abroad, at any place at ſea, or upon the land; and they may hear and determine, and award execution, according to the civil law, and the method and rules of the admiralty.

The offence of piracy properly conſiſts in committing thoſe acts of robbery and depredation upon the high ſeas, which, if committed upon land, would have amounted to felony there; but by ſtatute, ſome other offences are made piracy alſo.

As, by the ſaid act of 11 & 12 *W. c.* 7. if any of his majeſty's ſubjects ſhall commit any act of hoſtility againſt any other of his majeſty's ſubjects upon the ſea, under colour of a commiſſion from any foreign power, he ſhall be adjudged a pirate.

And if any maſter or mariner ſhall betray his truſt, and run away with the ſhip, or any boat, ammunition, goods, or merchandize, or yield them up voluntarily to a pirate, or confederate with any pirate, or attempt to hinder the defence of the ſhip, he ſhall ſuffer death as a pirate; whether he be principal, or merely acceſſary, by ſetting forth ſuch pirates, or abetting them before the fact, or receiving or concealing them or their goods after the fact. And by a ſubſequent ſtatute theſe acceſſaries are declared principals.

And a reward of 10*l.* for every ſhip of one hundred tuns or under, and of 15*l.* for every ſhip of greater burthen, ſhall be paid by the captain or maſter of the ſhip, to the perſon who ſhall firſt make diſcovery of any combination to run away with the ſhip; to be paid at the port where the wages of the ſeamen are to be paid.

And by the ſame ſtatute, 11 & 12 *W. c.* 7. commanders of ſhips or others, trading with pirates, or furniſhing them with

ſtores or ammunition, or correſponding with them, and perſons belonging to any veſſel, forcibly boarding any merchant ſhip, and throwing overboard or deſtroying any of the goods, ſhall be adjudged pirates: and ſhips fitted out to trade with pirates, and the goods therein, ſhall be forfeited, half to the king, and half to him who ſhall diſcover the ſame; to be ſued for in the admiralty.

And for encouragement of the mariners, when a ſhip hath been defended and brought to the deſigned port, and any of the officers or ſeamen have been killed or wounded, the judge of the court of admiralty in the port of *London*, and the mayor or chief officer in the ſeveral out-ports, may, on petition of the ſeamen, call unto him four or more ſubſtantial merchants, not intereſted, and by advice with them, may levy upon the owners of the ſhip and goods, by proceſs out of the ſaid court, ſuch ſum as himſelf and the ſaid merchants, by plurality of voices, ſhall judge reaſonable, not exceeding two *per cent.* of the frieght, and of the ſhip and goods; which ſhall be diſtributed among the officers and ſeamen, or the widows and children of the ſlain, according to the direction of ſuch juſtice, mayor, or chief officer. And perſons maimed in ſuch ſervice, ſhall alſo be intitled to be admitted into Greenwich hoſpital. 8 *G. c.* 24.

And maſters or ſeamen, not defending the ſhip (if it carries guns or arms) againſt pirates, or who ſhall utter any diſcouraging words, ſhall, if the ſhip be taken, forfeit their wages to the owners, and ſuffer ſix months impriſonment. *Id.*

PISCARY, is a right or liberty of fiſhing in the water of another; of which there are three kinds; *free* fiſhery, *ſeparate* fiſhery, and *common* of fiſhery. See FISHERY.

PLAGUE. By ſtatute 9 *An. c.* 2. and 26 *G.* 2. *c.* 6. all veſſels, perſons, and goods, coming from any place from whence the king, with advice of his council, ſhall judge it probable that the infection may be brought, ſhall make their quarentine in ſuch places, and for ſuch time as his majeſty ſhall direct.

And the juſtices of the peace ſhall appoint watchmen, who ſhall not permit any perſon to come on ſhore or go on board, except perſons licenſed by thoſe who have the charge of ſeeing the quarentine duly performed.

And if any ſuperintendant of the quarentine or watchman ſhall neglect his duty, he ſhall be guilty of felony without benefit of clergy.

And if the maſter of a ſhip, having on board any perſon infected, ſhall conceal the ſame, he ſhall incur the like penalty.

And if any officer of the cuſtoms, or other officer, ſhall neglect his duty, he ſhall forfeit his office, and alſo 100*l.*

If

If the commander of the ſhip ſhall go, or permit any other to go on ſhore during the quarentine, without licence, the ſhip and tackle ſhall be forfeited, and the maſter ſhall forfeit 500*l.*

And if any perſon ſhall go on board, he ſhall be compelled to continue during the quarentine.

And lazarets ſhall be appointed for receiving of perſons obliged to perform quarentine, and for airing of goods; and if any perſon appointed to perform quarentine ſhall eſcape, or attempt to eſcape from thence, he ſhall be guilty of felony without benefit of clergy.

And if any perſon not infected, nor obliged to perform quarentine, ſhall enter ſuch lazaret, he ſhall be compelled to continue during the quarentine; and if he ſhall eſcape, he ſhall be guilty of felony without benefit of clergy.

PLAINT, *querela*, is the exhibiting any action, real or perſonal, in writing; and the party making his plaint, is called the *plaintiff*.

This plaint is chiefly in ſmall actions in the inferior courts, under the value of 40*s.*: it is in the nature of an original writ, briefly ſetting forth the plaintiff's cauſe of action, in this manner: "*A. B.* complains againſt *C. D.* of a plea of treſpaſs, &c." If the defendant ſhall not appear, he muſt be diſtrained, firſt, by ſomething of ſmall value; and then, if he doth not appear, a further diſtreſs is to be taken to a greater value, and ſo on: if all his goods are taken upon the firſt diſtreſs, an attachment may be applied for to the court of king's bench. 2 *Lill. Abr.* 294.

PLANTATIONS, or colonies, in diſtant countries, are either ſuch where the lands are claimed by right of occupancy only, by finding them deſart and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conqueſt, or ceded by treaties. 1 *Black.* 107.

With reſpect to their interior policy, they are properly of three ſorts: 1. Provincial eſtabliſhments, the conſtitutions of which depend on the reſpective commiſſions iſſued by the crown to the governors, and the inſtructions which uſually accompany thoſe commiſſions; under the authority of which, provincial aſſemblies are conſtituted, with power of making local ordinances, not repugnant to the laws of the mother country. 2. Proprietary governments, granted out by the crown to individuals, in the nature of feudatory principalities, with all the inferior regalities, and ſubordinate powers of legiſlation, which formerly belonged to the owners of counties palatine, yet ſo that nothing be attempted which may derogate from the ſovereignty of the mother country. 3. Charter governments, in the nature of civil corporations, with the power of making by-laws for their own interior regulation,

and with ſuch ſpecial authorities as are given them in their charters of incorporation. 1 *Black.* 108.

PLATE. To prevent frauds in the true manufacturing of plate, aſſayers ſhall be appointed for the aſſaying and making of plate, to which all working gold or ſilver ſmiths ſhall ſend all plate made by them to be touched or aſſayed.

And, by 32 *G.* 2. *c.* 24. every perſon who ſhall trade in, or ſell any gold or ſilver plate, or goods in which gold or ſilver is manufactured, ſhall take out a licence annually from the officers of exciſe.

PLAYERS acting for hire where they have no ſettlement nor licence from the lord chamberlain, ſhall be deemed rogues and vagabonds, and puniſhed as ſuch; or, otherwiſe, every ſuch player ſhall forfeit 50*l.*, in which caſe he ſhall not ſuffer as a vagrant. 10 *G.* 2. *c.* 28.

But by the 28 *G.* 3. *c.* 28. juſtices of the peace in ſeſſions may licence playhouſes for a certain time, and under certain reſtrictions.

PLEA, *placitum*, is that which either party alleges for himſelf in court, in a cauſe there depending to be tried: and *pleading*, in a large ſenſe, contains all the matters which come after the declaration, as well on the defendant's as on the plaintiff's ſide, till iſſue is joined; but it is commonly taken for the defendant's anſwer to the plaintiff's declaration.

Pleas are divided into *common pleas*, and *pleas of the crown*: *common* pleas are thoſe which are agitated between *common* perſons in *civil* caſes, and not between the king and the party: *pleas of the crown* are all ſuits in the king's name for *criminal* offences againſt his *crown* and dignity; as treaſons, felonies, batteries, and ſuch like.

Common pleas are either *dilatory*, or *pleas to the action*. *Pleas dilatory* are ſuch as tend merely to delay, or put off the ſuit, by queſtioning the propriety of the remedy, rather than by denying the injury: *pleas to the action* are ſuch as diſpute the very cauſe of ſuit. 3 *Black.* 301.

Dilatory pleas are, 1. To the *juriſdiction of the court*; alleging, for inſtance, that it ought not to hold plea of this injury, becauſe it aroſe beyond ſea; or, becauſe the land in queſtion is of ancient demeſne, and ought only to be demanded in the lord's court. 2. To the *diſability of the plaintiff*; by reaſon whereof he is incapable to commence or continue the ſuit; as, that he is an infant, an alien enemy, outlawed, or excommunicate. 3. In *abatement*; which abatement is either of the writ or the declaration, for ſome defect in one of them; as by miſtaking the defendant, or giving him a wrong addition, or other want of form in any material reſpect. *Id.*

Theſe

Theſe pleas to the juriſdiction, to the diſability, or in abatement, were formerly very often uſed as merely dilatory, without any foundation of truth, and calculated only for delay, but now, by the ſtatute 4 & 5 *An. c.* 16. no dilatory plea ſhall be admitted without affidavit made of the truth thereof, or ſome probable matter ſhewn to the court to induce them to believe it true. *Id.* 302.

Pleas to the *juriſdiction*, conclude to the cognizance of the court, praying "judgment whether the court will have further "cognizance of the ſuit:" pleas to the *diſability*, conclude to the perſon, by praying "judgment if the plaintiff ought to be "anſwered:" pleas in *abatement*, when the ſuit is by *original*, conclude to the writ or declaration, by praying "judgment of the writ or declaration, and that the ſame may be quaſhed;" but if the action be by *bill*, the plea muſt pray "judgment of the bill," and not of the declaration, the bill being here the original, and the declaration only a copy of the bill. *Id.* 303.

When theſe dilatory pleas are allowed, the cauſe is either diſmiſſed from that juriſdiction, or the plaintiff is ſtayed till his diſability be removed; or he is obliged to ſue out a new writ by leave obtained from the court, or to amend and new frame his declaration. But when, on the other hand, they are over-ruled, as frivolous, the defendant hath judgment to anſwer over to the action. *Id.*

Plea *to the action*, is to anſwer to the *merits* of the complaint; and is either *general* or *ſpecial*. The *general* plea, or *general iſſue*, is what traverſes, thwarts, and denies at once the whole declaration, without offering any ſpecial matter whereby to evade it. As, in treſpaſs either by force of arms, or on the caſe, *not guilty*; in debt upon contract, *he owes nothing*; in debt on bond, *it is not his deed*; on a promiſe, *he made no ſuch promiſe*: theſe pleas are called the *general iſſue*; becauſe, by importing an abſolute and general denial of what is alleged in the declaration, they amount at once to an iſſue, by which is meant a fact affirmed on one ſide, and denied on the other. *Id.* 305.

Formerly, the general iſſue was ſeldom pleaded, except when the party intended wholly to deny the charge alleged againſt him. But when he meant to diſtinguiſh away or palliate the charge, it was always uſual to ſet forth the particular facts in what is called a *ſpecial* plea; which was originally intended to apprize the court and the adverſe party of the nature and circumſtances of the defence, and to keep the law and the fact diſtinct. And it is an invariable rule, that every defence which cannot be thus ſpecially pleaded, may be given in evidence, upon the general iſſue at the trial. But the ſcience of ſpecial pleading having been frequently perverted to purpoſes of chicane and delay, the courts have of late, in ſome inſtances, and the legiſlature in many more,

permitted the general iſſue to be pleaded, which leaves every thing open, the fact, the law, and the equity of the caſe; and have allowed ſpecial matter to be given in evidence at the trial. *Id.*

Special pleas, in bar of the plaintiff's demand, are very various, according to the circumſtances of the defendant's caſe; as in real actions, a general releaſe, or a fine, both of which may deſtroy the plaintiff's title: or in perſonal actions, an accord, arbitration, conditions performed, non-age of the defendant, or ſome other fact which precludes the plaintiff from his action. A juſtification is likewiſe a ſpecial plea in bar; as in an action of aſſault and battery, that it was the plaintiff's own original aſſault; in treſpaſs, that the defendant did the thing complained of in right of ſome office which warranted him ſo to do; or, in an action of ſlander, that the plaintiff is really as bad a man as the defendant ſaid he was. Alſo a man may plead in bar the ſtatutes of limitation; as upon a promiſe to pay money to the plaintiff, the defendant may plead that he made no ſuch promiſe within ſix years. *Id.* 306.

The conditions and qualities of a plea are, 1. That it be ſingle, and contain only one matter. 2. That it be direct and poſitive, and not argumentative. 3. That it have convenient certainty of time, place, and perſons. 4. That it anſwer the plaintiff's allegations in every material point. 5. That it be ſo pleaded as to be capable of trial. But by ſtatute 4 & 5 *Ann. c.* 16. a man, with leave of the court, may plead two or more diſtinct matters; as in an action of aſſault and battery, he may plead not guilty, that the other ſtruck firſt, and the ſtatute of limitation. *Id.* 308.

When the plea of the defendant is thus put in, if it doth not amount to an iſſue or total contradiction of the declaration, but only evades it, the plaintiff may *reply* to the defendant's plea, either traverſing it, or alleging new matter in contradiction to it. To which replication the defendant may *rejoin*, or put in an anſwer called a *rejoinder*. The plaintiff may anſwer the rejoinder by a *ſurrejoinder*. Upon which the defendant may *rebut*; and the plaintiff anſwer him by a *ſurrebutter*. But it is ſeldom that the matter goes ſo far. Which ſaid pleas, replications, rejoinders, ſurrejoinders, rebutters, and ſurrebutters, anſwer to the *exceptio, replicatio, duplicatio, triplicatio, and quadruplicatio*, of the Roman law. *Id.* 309.

In *criminal* matters, the plea is of five kinds: 1. To the *juriſdiction of the court*; which is, where an indictment is taken before a court that hath no cognizance of the offence; as if a man be indicted for a rape at the ſheriff's tourn, or for treaſon at the quarter ſeſſions. 2. *Demurrer*; which is when the fact, as alleged, is allowed to be true; but the priſoner joins iſſue upon ſome

ſome point of law in the indictment, by which he inſiſts, that the fact, as ſtated, is no felony, treaſon, or whatever the crime is alleged to be: as if a man be indicted for feloniouſly ſtealing a greyhound, which is not felony, but only a civil treſpaſs. But this demurrer is ſeldom uſed; becauſe the ſame advantage may be taken upon the plea of not guilty; or afterwards, in arreſt of judgment, when the verdict hath eſtabliſhed the fact. 3. In *abatement;* which is principally for miſnaming the priſoner, or giving him a wrong addition: but this kind of plea is of little advantage; for if the exception be allowed, a new bill of indictment may be framed according to what the priſoner in his plea avers to be his true name and addition. 4. A *ſpecial plea in bar;* of which there are four kinds: Firſt, a former acquittal, *(auterfoits acquit,)* founded on this principle, that no man ſhall be brought in jeopardy of his life more than once for the ſame offence. Secondly, a former conviction *(auterfoits convict)* for the ſame offence, though no judgment was given, or perhaps will be given, (being ſuſpended by the benefit of clergy, or other cauſe); and this depends on the ſame principle as the former, that no man ought to be twice brought in danger of his life for one and the ſame crime. Thirdly, a former attainder, *(auterfoits attaint,)* which is a good plea in bar, whether it be for the ſame or any other felony; for having, by the attainder, forfeited all he had, he is dead in law; and it would be abſurd to attaint him a ſecond time; but it is otherwiſe if the attainder hath been reverſed for error, or the judgment hath been vacated by the king's pardon, with regard to felonies committed afterwards. Fourthly, a *pardon* of the offence charged in the indictment may be pleaded in bar; which at once deſtroys the end and purpoſe of the proſecution, by remitting the puniſhment which the proſecution was calculated to inflict. Fifthly, the *general iſſue,* or plea of *not guilty;* upon which plea alone the priſoner can receive his final judgment of death. In caſe of an indictment of felony or treaſon, there can be no ſpecial juſtification by way of plea; as on an indictment of murder, a man cannot plead that it was in his own defence againſt a robber on the highway, or a houſebreaker; but he muſt plead the general iſſue *not guilty,* and give this ſpecial matter in evidence; and the jury, upon the evidence, will take notice of any defenſive matter, and give their verdict accordingly, as effectually as if it were, or could be, ſpecially pleaded. 4 *Black.* 332.

PLEDGE is of two kinds; living and dead. *Living* pledge is, when a man borrows a ſum of money of another, and grants him an eſtate, to hold till the rents and profits ſhall repay the ſum ſo borrowed. This is an eſtate conditioned to be void, as ſoon as ſuch ſum is raiſed. And in this caſe, the land or pledge is ſaid to be *living:* it ſubſiſts and ſurvives the debt; and immediately,

ately, on the diſcharge of it, reſults back to the borrower. A *dead* pledge or *mortgage*, is where a man borrows of another a ſpecific ſum, and grants him an eſtate in fee, on condition that if he, the mortgagor, ſhall repay to the mortgagee the ſaid ſum on a certain day conditioned in the deed, that then the mortgagee may re-enter on the eſtate ſo granted in pledge, or that the mortgagee ſhall re-convey the eſtate to the mortgagor; and in this caſe the land, which is ſo put in pledge, is by law, in caſe of non-payment at the time limited, dead and gone. 2 *Black.* 157.

If a pawnbroker receives plate or jewels as a pledge or ſecurity for the re-payment of money lent thereon at a day certain, he has them on an expreſs contract or condition to reſtore them, if the pledger performs his part by redeeming them in due time; for the due execution of which contract, many uſeful regulations are made by the ſtatute 30 *G.* 2. *c.* 24. 2 *Black.* 452.

And ſo if a landlord diſtrains goods for rent, or a pariſh officer for taxes, theſe, for a time, are only a pledge in the hands of the diſtrainors; and they are bound by an implied contract in law, to reſtore them on payment of the debt, duty and expences, before the time of ſale; or, when ſold, to render back the overplus. *Id.*

PLENARTY, in the eccleſiaſtical law, is where a church is *full* of an incumbent. At the common law, if a ſtranger who had no right to the preſentation had preſented a clerk upon a vacancy, and the clerk had been admitted and inſtituted thereupon, the true patron had no other remedy to recover his advowſon, but a writ of right of advowſon, wherein the incumbent was not to be removed; for plenarty, generally, was a good plea both in *quare impedit*, and a *darrein preſentment*; and the reaſon was, to the intent that the incumbent might quietly intend and apply himſelf to his ſpiritual charge. But by ſtatute 7 *An.* *c.* 18. no uſurpation upon any avoidance ſhall diſplace the eſtate or intereſt of any perſon intitled to an advowſon, or hinder him to preſent on the next avoidance, or to maintain a *quare impedit* to gain the poſſeſſion.

PLOUGH-BOTE, is an allowance to the tenant of wood ſufficient for ploughs, harrows, carts, and other inſtruments of huſbandry.

PLOUGH-LAND, is as much land as can reaſonably be cultivated in a year with one plough. By the ſtatutes relating to the repair of the high-ways, it hath been uſually eſtimated at 50*l.* *per annum.*

PLURALITY. By the ſtatute 21 *H.* 8. *c.* 13. if any perſon, having one benefice with cure of ſouls of 8*l.* a year in the king's books, ſhall accept another of whatſoever value, and be inſtituted and inducted into the ſame, the former benefice ſhall be void;

void; unleſs he have a diſpenſation from the archbiſhop of *Canterbury*, who hath power to grant diſpenſations to chaplains of noblemen and others, under proper qualifications, to hold two livings, provided that the livings be not more than thirty miles diſtant from each other, and provided that he reſide in each for a reaſonable time in every year, and that he keep a ſufficient curate in that wherein he doth not ordinarily reſide.

Though the act mentions *inſtituted and inducted*, yet, when he is inſtituted into the ſecond benefice, the diſpenſation to hold two benefices comes too late, although he be afterwards inducted; for, by inſtitution, the church is full of the incumbent. 4 *Co.* 79.

But with reſpect to *lapſe*, the avoidance of the former benefice doth not take place, till induction to the ſecond; ſo that the patron hath ſix months from the induction to preſent in, to ſave the incurring of a lapſe; yet he may, if he pleaſes, preſent before the induction. *Bur. Manſf.* 1512.

But a man may hold as many benefices *without cure* as he can get; all of them, or all but the laſt, being under the value of 8*l.* a year. *Watſ. c.* 3.

PLURIES, is a writ that iſſues in the third place, after two former writs have been diſobeyed; for firſt, goes out the original writ, or *capias*: which, if it has not effect, then iſſues the *alias*; and if that alſo fails, then the *pluries*: "We command "you as we have often commanded you,"—*ſicut* pluries *præcipimus*. It is uſed in proceedings to outlawry, and in great diverſity of caſes.

POISONING, is the moſt deteſtable of all kinds of murder; becauſe it is moſt horrible and fearful to the nature of man, and of all others can be leaſt prevented, either by reſiſtance or foreſight. By the ſtatute 22 *H.* 8. *c.* 9. was inflicted for this crime a more grievous and lingering death than the common law preſcribed: namely, that the offender ſhould be boiled to death; but this was repealed by 1 *Ed.* 6. *c.* 12.

If a man perſuade another to drink a poiſonous liquor, under the notion of a medicine, who afterwards drinks it in his abſence, the procuror of the felony, in this caſe, is as much a principal, as if he had been actually preſent when it was done; ſo are all thoſe who were preſent when the poiſon was infuſed, and privy and conſenting to the deſign. But thoſe who only abetted the crime by their command, counſel, or advice, but were abſent when the poiſon was infuſed, are acceſſaries, and not principals. 2 *Haw.* 313.

POLICY OF INSURANCE, is an inſtrument entered into by inſurers of ſhips and merchandize to merchants, obligatory for the payment of a ſum agreed on in caſe of loſs. It is a courſe taken by thoſe who adventure goods to ſea, that they, unwilling

unwilling to hazard the whole, give unto ſome other, called an inſurer, a certain rate or proportionable ſum of ſo much *per cent.*, to ſecure the ſafe arrival of the ſhip and goods at the place agreed on; ſo that if the ſhip and merchandize miſcarry, the inſurer makes good to the adventurer ſo much as he promiſed to ſecure; but if the ſhip arrive ſafely, he gains that clear which the merchant compounds to pay him. See INSURANCE.

POLL, a head; ſo where particular jurors are challenged, it is called a challenge to the *polls*; ſo *poll money*, *poll ſilver*, ſometimes call a capitation tax, is a tax upon the people at ſo much a head. *Pollard* trees, are ſuch whoſe heads have been cut off. A *deed-poll*, is a deed not indented at the top, but is polled or ſhaved quite even.

POLYGAMY, in ſtrictneſs, differs from *bigamy*; *polygamy*, being where a man hath ſeveral wives at the ſame time; *bigamy* where he hath had two wives ſucceſſively. By ſtatute 1 *J. c.* 11. if any perſon within his majeſty's dominions of *England* and *Wales*, being married, ſhall marry any perſon, the former huſband or wife being alive, ſuch offence ſhall be felony (but within clergy). But this ſhall not extend (1.) to any perſon whoſe huſband or wife ſhall be continually remaining beyond the ſeas, by the ſpace of ſeven years together, and this, although the party in *England* hath notice, that ſuch huſband or wife is living: nor (2.) to any perſon whoſe huſband or wife ſhall abſent him or herſelf, the one from the other for ſeven years together, in any part of his majeſty's dominions, the one of them not knowing the other to be living within that time: nor (3.) to any perſon who ſhall be at the time of ſuch marriage divorced by ſentence in the eccleſiaſtical court: nor (4.) to any perſon whoſe former marriage by ſentence in the eccleſiaſtical court, hath been declared to be void: nor (5.) to any perſon by reaſon of any former marriage made within age of conſent; that is, either the woman being under twelve, or the man under fourteen.

If the firſt marriage was beyond ſea, and the latter in *England*, the party may be indicted here, becauſe the latter marriage makes the offence; but if the firſt marriage was in *England*, and the latter beyond ſea, the offender cannot be indicted here, becauſe the offence was not within the kingdom. *Kely.* 79.

On a proſecution on this ſtatute, the firſt and true wife cannot be allowed as a witneſs againſt the huſband; but the ſecond wife may be admitted to prove the ſecond marriage, for ſhe is not his wife ſo much as *de facto*. 1 *Hale's Hiſt.* 693.

PONE, is a writ whereby a cauſe depending in the county court, or other inferior court, is removed into the court of common pleas, and ſometimes into the king's bench; as when a replevin is depending by writ out of chancery, the plaintiff or defendant may remove the plea by *pone*, requiring the ſheriff to *put* the

the plaint, which is in his county court, before the king's juſtices at Weſtminſter. *Wood. b.* 4. *c.* 4.

Alſo a writ commanding the ſheriff (on the plaintiff's putting in ſureties to proſecute, which is a thing merely ſuppoſed) to ſummon the defendant to appear, and to anſwer to the plaintiff's ſuit, is likewiſe called a *pone*. *Id.*

PONTAGE, *pontagium*, is a contribution towards the maintenance or rebuilding of bridges. And it alſo ſignifies toll taken for that purpoſe. This was one of the three public charges from which no one was exempt; *viz.* caſtles, bridges, and expeditions. Unto which even the religious ſocieties were ſubject.

POPERY. Amongſt many other forfeitures, and diſabilities, it was enacted by the ſtatute 10 & 11 *W. c.* 4. that if any popiſh prieſt ſhall ſay maſs, or exerciſe any part of his office or function, (except in foreign miniſters houſes,) or if any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth, he ſhall be adjudged to perpetual impriſonment: and if any papiſt ſhall not, within ſix months after he ſhall be eighteen years of age, take the oaths to the government, he ſhall be incapable to take any lands by deſcent, deviſe, or limitation; alſo, every papiſt ſhall be diſabled to purchaſe any lands in his own name, or in the name of any other to his uſe. But by the 18 *G.* 3. *c.* 66. all this is repealed, with reſpect to ſuch perſons as ſhall within ſix months after the accruing of his title, being of the age of twenty-one years, take an oath in the nature of the preſent oath of allegiance and ſupremacy.

POPULAR ACTION, is an action given in general to any of the king's *people*, who will ſue for a penalty on the breach of ſome penal ſtatute. See INFORMATION.

PORTION. Where a portion is charged upon land, by deed or by will, if the perſon dies before it becomes due, it ſhall ſink into the inheritance for the benefit of the heir at law, whether it be given with or without intereſt. 1 *Atk.* 555.

A portion given to one payable at a certain age, and if he dies, limited over to another, without mentioning any age; if the firſt dies before the time of payment, it veſts in the ſecond immediately. *Id.* 556.

If a younger brother hath a proviſion under a ſettlement, and lives with the elder, whoſe eſtate is charged with the portion, he ſhall have an allowance for his maintenance out of the intereſt. For where there is a power of charging intereſt, it ſhall be conſidered as maintenance; for giving intereſt is the ſame thing as giving expreſs maintenance. *Id.*

PORT-

PORT-REEVE, *portgreve*, is the chief magiſtrate of a port town; as *ſheriff (ſhire-reeve)* is the chief officer of the ſhire.

PORT TOLL, is a payment for the liberty of bringing goods into a port; and for this the owner of the port may preſcribe, without any conſideration alleged; for the privilege of bringing goods into a port for ſafety, implies a conſideration in itſelf.

POSSE COMITATUS. For keeping the peace, and purſuing felons, the ſheriff may command all the people of his county to attend him, which is called the *poſſe comitatus*: which ſummons, every perſon above the age of fifteen, and under the degree of a peer, is bound to attend, on pain of fine and impriſonment. 1 *Black.* 343.

POSSESSION, obtained by a mere ſtranger without right, is a title, until the true owner enters upon him; which, in ſuch caſe, the true owner may do, without the formalities of law. But if a deſcent hath been caſt, this *prima facie* operates as a title in him who comes in by deſcent; and he ſhall not be ouſted by the true owner without proceſs of law, and proving in himſelf a ſuperior title. 3 *Black.* 176.

Poſſeſſion is the loweſt degree of title, which may be without any apparent right, or pretence of right; as where one man invades the poſſeſſion of another, and, by force or ſurpriſe, turns him out of the occupation of his lands, which is uſually called a diſſeiſin. Or it may happen, when, after the death of the anceſtor, and before the entry of the heir, or after the death of a particular tenant, and before the entry of him in remainder or reverſion, a ſtranger gets poſſeſſion of the vacant land, and holds out him that had a right to enter; in ſuch caſes, the wrong doer hath only a mere naked poſſeſſion, which the rightful owner may put an end to by a variety of legal remedies. But in the mean time, till ſome act be done by the rightful owner, to deveſt this poſſeſſion, and aſſert his title, ſuch actual poſſeſſion is *prima facie* evidence of a legal title in the poſſeſſor; and it may, by length of time, and negligence of him who hath the right, by degrees, ripen into a perfect and indefeaſible title. 2 *Black.* 196.

The next ſtep towards a good title, is the *right* of poſſeſſion; for this may reſide in one man, while the actual poſſeſſion is not in himſelf, but in another. For if a man be diſſeiſed, or otherwiſe kept out of poſſeſſion, although the actual poſſeſſion be loſt, yet he hath ſtill remaining in him the *right* of poſſeſſion, and may exert it whenever he thinks proper, by entering upon the diſſeiſor, and turning him out of that occupancy which he hath ſo illegally gained. But this right of poſſeſſion is of two ſorts; an *apparent* right of poſſeſſion, which may be defeated by proving a better; and an *actual* right of poſſeſſion, which will ſtand the teſt againſt all opponents. Thus, if the diſſeiſor, or other

wrong

wrong doer, dies poſſeſſed of the land whereof he ſo became ſeiſed by his own unlawful act, and the ſame deſcends to his heir, now by the common law, the heir hath obtained an *apparent* right, though the actual right of poſſeſſion reſides in the perſon diſſeiſed; and it ſhall not be lawful for the perſon diſſeiſed to deveſt this apparent right by mere entry, or other act of his own, but only by an action at law: for until the contrary be proved by legal demonſtration, the law will rather preſume the right to reſide in the heir, whoſe anceſtor died ſeiſed, than in one who has no ſuch preſumptive evidence to urge in his own behalf. But if he, who has the actual right of poſſeſſion, puts in his claim, and brings his action within a reaſonable time, and can prove by what unlawful means the anceſtor became ſeiſed, he will then, by ſentence of law, recover that poſſeſſion to which he hath ſuch actual right. Yet if he omits to bring his poſſeſſory action within a competent time, his adverſary may imperceptibly gain an actual *right* of poſſeſſion, in conſequence of the other's negligence; and in ſuch caſe, he will have nothing left in him but the mere right of *property*, without either *poſſeſſion*, or even a right of poſſeſſion. Thus if a diſſeiſor turns me out of poſſeſſion of my lands, he thereby gains a *mere naked poſſeſſion*, and I ſtill retain the *right of poſſeſſion*, and *right of property*. If the diſſeiſor dies, and the lands deſcend to his ſon, the ſon gains an *apparent* right of poſſeſſion; but I ſtill retain the *actual* right both of poſſeſſion and property. If I acquieſce for thirty years, without bringing any action to recover poſſeſſion of the lands, the ſon gains the actual *right of poſſeſſion*, and I retain nothing but the mere *right of property*: and even this right of property will fail, unleſs I purſue it within the ſpace of ſixty years. 2 *Black.* 196.

POST:

1. By the ſeveral acts of parliament relating to the poſt office, there ſhall be one general poſt office in *London*, and one poſt maſter general. And none but perſons authorized by him, ſhall carry letters; except letters carried by carriers or ſhipmaſters with goods, inſtruments out of any court, letters ſent by friends in their journey, or by a ſpecial meſſenger; and except the two univerſities; to and from which letters and other things may be ſent in manner as heretofore hath been uſed.

2. The rates for carriage of letters ſhall be as follows:

For every ſingle letter, not exceeding one whole poſt ſtage from the office where the letter is put in, 2*d.*; double letter, 4*d.*; treble, 6*d.*; an ounce, 8*d.*; and ſo in proportion.

Above one poſt ſtage and not exceeding two; a ſingle letter, 3*d.*; double, 6*d.*; treble, 9*d.*; an ounce, 1*s.*

Above two poſt ſtages, and not exceeding eighty miles from *London*;

London; a ſingle letter 4*d.*; double, 8*d.*; treble, 1*s.*; an ounce, 1*s.* 4*d.*

Above eighty miles, and not exceeding one hundred and fifty miles; a ſingle letter, 5*d.*; double, 10*d.*; treble, 1*s.* 3*d.*; an ounce, 1*s.* 8*d.*

Above one hundred and fifty miles; ſingle, 6*d.*; double, 1*s.*; treble, 1*s.* 6*d.*; an ounce, 2*s.*; and ſo in proportion.

But no letter under an ounce, ſhall be rated higher than as a treble letter; and if one ounce, to be rated as four ſingle letters, and ſo in proportion above an ounce; every quarter of an ounce to be rated as a ſingle letter.

3. Within the limits of the penny poſt in *London*, ſhall be paid, 1*d.* at putting in, and 1*d.* at delivery.

4. No letters ſhall be exempted from poſtage;

Except letters from or to the king:

And ſuch, not exceeding the weight of two ounces, as ſhall be ſent during the ſitting of parliament, or within forty days before or after any ſummons or prorogation, and whereon the whole ſuperſcription ſhall be of the hand-writing of the member directing the ſame, and ſhall have his name indorſed thereon, together with the name of the poſt town, from which it is intended to be ſent; and the day, month, and year, when put into the office, (the day of the month to be in words at length,) and ſhall be put into the office on the day of the date put upon ſuch letter.

Or ſuch as ſhall be directed to any member of either houſe of parliament, at the place where he ſhall actually be at the time of the delivery thereof, or at his uſual place of reſidence in *London*, or at the houſe of parliament, of which he is a member.

Or to the officers of the treaſury, admiralty, war office, general poſt office, ſecretaries of ſtate, paymaſter general of the forces, clerk of the parliaments, clerk of the houſe of commons, or upon his majeſty's ſervice (indorſed by the proper officer).

Alſo this ſhall not extend to printed votes or proceedings in parliament, or printed newſpapers, ſent without covers, or in covers open at the ſides, ſigned on the outſide by any member of parliament, or directed to a member at any place whereof he ſhall have given notice to the poſtmaſter general.

Alſo clerks in the offices of the ſecretaries of ſtate and poſt office, being thereunto licenſed by the ſecretaries or poſtmaſter general reſpectively, may continue to frank votes and newſpapers as heretofore hath been uſed; provided the ſame be ſent without covers, or in covers open at the ſides.

5. If any perſon ſhall counterfeit the handwriting of any perſon in the ſuperſcription, or ſhall alter the date put thereon, or knowingly write or ſend any letter, the cover whereof ſhall have

have been forged, counterfeited, or altered, he ſhall be guilty of felony, and tranſported for ſeven years.

6. If any poſt boy ſhall quit the mail before his arrival at the next ſtage, or ſhall ſuffer any other perſon (except the perſon employed to guard the mail) to ride on the horſe or carriage; or ſhall loiter on the road, or ſhall not, in all poſſible caſes, convey the mail after the rate of ſix miles an hour, at leaſt, he ſhall be ſent to the houſe of correction.

7. If any poſt boy ſhall, by himſelf, or in combination with others, unlawfully collect any letters, or convey, or cauſe them to be conveyed, he ſhall forfeit, for every letter, 10*s.* or be committed to the houſe of correction.

8. If any perſon employed in any buſineſs in the poſt office, who ſhall take any letter or packet to be forwarded by the poſt, and receive any money therewith for the poſtage, ſhall burn or deſtroy any ſuch letter or packet, or ſhall advance the rate of poſtage upon any letter or packet, and not duly account for the money by him received for ſuch advanced poſtage, he ſhall be guilty of felony.

9. No perſon ſhall open, detain, or delay any letter or packet, after the ſame ſhall be delivered into the poſt office; except by warrant from a ſecretary of ſtate, or where the party ſhall refuſe to pay for the ſame, or where they are returned for want of true directions, and the party cannot be found, on pain of 20*l.* and being diſabled from having any employment in the poſt office; and every poſtmaſter, before he enters upon his office, ſhall make oath before a juſtice of the peace to the like purpoſe.

And in all poſt towns, the poſtmaſter is bound to deliver letters at the houſes of the inhabitants, on paying the legal poſtage only. *Bur. Manſf.* 2153.

10. All ſums, not exceeding 5*l.*, that ſhall be due from any perſons for letters, or which ſhall be received for the carriage of letters, without anſwering the ſame to the receiver general, ſhall be recovered before juſtices of the peace, in the ſame manner as ſmall tithes; and ſuch debt ſhall be preferable in payment, before any debt to any private perſon.

11. If any perſon employed in the poſt office, ſhall ſecrete, embezzle, or deſtroy any letter or packet, containing any bank note, bill of exchange, or other writing, for payment of money, he ſhall be guilty of felony, without benefit of clergy.

12. The poſtmaſters, and no other perſon, (except the owners of chaiſes duly licenſed,) ſhall provide horſes and furniture to let to hire, to perſons riding poſt; and they may charge 3*d.* a mile for each horſe riding poſt, and 4*d.* a mile for the perſon riding as guide, and ſhall not charge for any bundle or parcel of goods, not exceeding eighty pounds weight, to be laid on the horſe rode by the guide. But if the poſtmaſter doth not, or cannot furniſh perſons

perſons riding poſt with horſes, in half an hour after demand, ſuch perſons may furniſh themſelves elſewhere, provided that they take no horſes without the owner's conſent.

13. And by the 25 *G.* 3. *c.* 51. every poſtmaſter, inn-keeper, or other perſon, who ſhall let any horſe, or carriage, to travel poſt, or for hire, ſhall take out a licence annually from the commiſſioners of the ſtamp duties.

And alſo a duty is to be paid for all horſes travelling poſt, hired by the mile, ſtage, or by the day; and on public ſtage coaches and diligences, hackney coaches excepted. And by the 27 *G.* 3. *c.* 26. the ſaid duties may be let to farm.

14. And by the 25 *G.* 3. *c.* 57. all carriages or horſes employed in carrying the mail, ſhall be exempted from tolls at every turnpike-gate.

15. No poſtmaſter ſhall, by word, meſſage, or writing, or in any other manner, endeavour to perſuade any elector to give, or diſſuade any elector from giving, his vote for the choice of any perſon to ſerve in parliament, on pain of 100*l.* and of being incapacitated.

POSTEA, is the return of the judge, before whom a cauſe was tried, of what was done in the cauſe *after* the joining iſſue, and awarding the trial, and is indorſed on the back of the *niſi prius* record. The ſubſtance of which is, that *poſtea (afterwards)* the ſaid plaintiff and defendant appeared by their attorneys in the place of trial; and a jury, being ſworn, found ſuch a verdict; or that the plaintiff, after the jury ſworn, made default, and did not proſecute his ſuit, or as the caſe ſhall be. It is uſually delivered by the clerk of aſſize to the attorney in the cauſe, who is to deliver the ſame into the office, that judgment may be entered according thereto by the officer of the court. It is brought into court at the day in bank, and recorded there, and delivered back to the attorney, who gives a rule for judgment upon it; and if there be no rule to the contrary, after the rule for judgment is out, the attorney brings his *poſtea* to the ſecondary, who ſigns the judgment, and then he enters all this matter upon the iſſue roll. 2 *Lill.* 337.

POSTERIORITY ſignifies the being or coming *after*, and is a word of compariſon and relation in tenures, the correlative whereof is *priority*. As a man holding lands of two lords, holds of his ancient lord by *priority*, and of his latter lord by *poſteriority*. 2 *Inſt.* 392.

POST-FINE, is a duty to the king, for a fine acknowledged in his court, paid by the cognizee after the fine is fully paſſed. It is called a *poſt-fine*, becauſe there was a former or *primer* fine paid on ſuing out the writ. This poſt-fine is as much as the primer fine, and half as much more, or ten ſhillings for every five marks of

of land; that is, three twentieth parts of the ſuppoſed annual value. 2 *Black.* 350.

POSTHUMOUS, is where a child is born after his father's death. By ſtatute 10 & 11 *W. c.* 16. where it often happens, that by marriage, and other ſettlements, eſtates are limited in remainder, to the uſe of the ſons and daughters, the iſſue of ſuch marriage, with remainders over, without limiting an eſtate to truſtees, to preſerve the contingent remainders limited to ſuch ſons and daughters, who, if they happen to be born after the deceaſe of their father, are in danger to be defeated of their remainder, by the next in remainder after them; it is therefore enacted, that ſuch ſons and daughters, that ſhall be born after the deceaſe of their father, may take ſuch eſtates, ſo limited to the firſt and other ſons, or to the daughter or daughters, as if born in the life-time of their father, although there ſhall happen to be no eſtate limited to truſtees, after the deceaſe of the father, to preſerve the contingent remainder to ſuch after-born children, until they ſhall come *in eſſe*, or be born.

A poſthumous child, either of the whole, or half blood, ſhall take under the ſtatute of diſtribution. 1 *Vez.* 156.

POUND, *parcus*, is generally any place incloſed to keep in beaſts; but eſpecially a place of ſtrength, to keep cattle that are diſtrained, or put in for any treſpaſs done by them, until they are replevied or redeemed.

And it is either a pound *overt* or pound *covert*. A pound *overt*, is an open pound, uſually built in the lord's waſte, and which he provides for the uſe of himſelf and his tenants; and it is alſo called the lord's or common pound; alſo a backſide, yard, or other place, whereto the owner of the beaſts impounded may come to give them meat, without treſpaſs, is a pound *overt*: A pound *covert* is a cloſe place, where the owner of the cattle cannot come for the purpoſe aforeſaid, without treſpaſs. *T. L.*

There is difference between a *common* pound, an *open* pound, and a *cloſe* pound, as to cattle impounded; for where cattle are kept in a common pound, no notice is neceſſary to the owner to feed them; but if they are put into any other open place, it is otherwiſe, for notice is to be given.

A common pound belongs to a townſhip, lordſhip, or village, and there ought to be ſuch a pound in every townſhip, kept in repair by thoſe who have uſed to do it time out of mind; the overſight whereof is to be by the conſtable or ſteward of the leet.

If the owner be guilty of pound-breach, and takes away his goods, the party diſtraining may have his action, and alſo may take the goods that were diſtrained wherever he finds them, and impound them again. 1 *Inſt.* 47.

If diſtreſs be taken of goods without cauſe, the owner may make reſcous; but if they be diſtrained without cauſe, and impounded, the owner may not break the pound and take them out, becauſe they are then in cuſtody of the law. *Id.*

POUND-BREACH. By the common law, if a man break the pound, or the lock of it, or part of it, he ſhall be puniſhed as for a breach of the peace; and the party who diſtrained may take the goods again, whereſoever he finds them, and impound them again.

And by ſtatute 2 *W. c.* 5. on any pound breach, or reſcous of goods diſtrained for rent, the party grieved, on a ſpecial action on the caſe, ſhall recover treble damages and coſts.

Alſo for pound-breach, the offender may be puniſhed in the court leet. 1 *Inſt.* 47.

POWER, is an authority which one man gives another to act for him; and is ſometimes a reſervation, which a perſon makes in a conveyance for himſelf, to do ſome acts; as to make leaſes, or the like. 2 *Lill. Abr.* 339.

The limitation and modifying of eſtates, by virtue of powers, came from equity into the common law, with the ſtatute of uſes. *Burr. Manſf.* 120.

In conveyances to an uſe, a man may direct and model that uſe as he pleaſes, and the ſtatute 27 *H.* 8. *c.* 10. executes the poſſeſſion to the uſe; therefore he may annex powers to eſtates, which cannot be annexed to them by a conveyance at the common law. 1 *Inſt.* 237.

To make leaſes, is of all kinds of powers the moſt frequent. *Burr. Manſf.* 120.

The plan of this power to make leaſes is for the mutual advantage of poſſeſſor and ſucceſſor. *Id.* 121.

The ſucceſſor therefore muſt not be prejudiced in point of remedy, or any other circumſtance of full and ample enjoyment. *Id.*

The two uſual methods of leaſing are, either at the beſt rent, or upon fines; and the conditions in favour of the ſucceſſor, muſt be purſued not only literally, but ſubſtantially. *Id.* 122.

If the ancient rent is to be reſerved, it muſt be reſerved with all the beneficial circumſtances, that the remainder man may be under no difficulty in receiving the rent. *Id.*

POYNINGS' LAW, was a law made in *Ireland* in the reign of king *Hen.* 7. when Sir *Edward Poynings* was lord deputy there, that all acts of parliament before that time, made in *England*, ſhould be of force within the realm of *Ireland*. 1 *Black.* 103.

PRÆCIPE, is a writ commanding the defendant to do the thing required, or to ſhew cauſe why he hath not done it. The uſe of this writ is, where ſomething certain is demanded by the plaintiff,

plaintiff, which is in the power of the defendant to perform; as to reſtore the poſſeſſion of land, to pay a certain liquidated debt, to perform a ſpecific covenant, to render an account, and the like; in all which caſes, the writ is drawn up in the form of a *præcipe* or command, to do thus, or ſhew cauſe to the contrary; giving the defendant his choice, to redreſs the injury or ſtand ſuit. 2 *Black.* 274.

Tenant to the præcipe, is he againſt whom the writ of *præcipe* is brought, in ſuing out a common recovery, and muſt be ſeiſed, or tenant of the freehold of the lands of which the recovery is to be ſuffered.

PRÆDIAL TITHES, are ſuch as ariſe merely and immediately from the ground; as grain of all ſorts, hay, wood, fruits, herbs; for a piece of land or ground being called in Latin *prædium*, (whether it be arable, meadow, or paſture,) the fruit or produce thereof is called *prædial*; and conſequently, the tithe, payable for ſuch annual produce, is called a *prædial tithe*.

PRÆMONSTRATENSES, were canons who lived according to the rule of *St. Auſtin*, as reformed by *St. Norbert*, who ſet up this regulation about the year 1120 at *Præmonſtratum* in *Picardy*; a place ſo called becauſe it was ſaid to be foreſhewn, or *premonſtrated*, by the Bleſſed Virgin, to be the head ſeat or mother church of this order. They were brought into *England* ſoon after the year 1140, and had about thirty-five houſes in this kingdom before the diſſolution.

PRÆMUNIRE, is ſo called from a word in the writ reſpecting the principal matter, *præmunire facias præfatum A. B. quod tunc ſit coram nobis*, &c. where *præmunire* is uſed for *præmonere*, to warn the perſon to appear. 1 *Inſt.* 129.

By 27 *Ed.* 3. *c.* 1. called the ſtatute of proviſors, they which ſhall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do ſue in any other court, to defeat or impeach the judgment given in the king's court, ſhall have a day, containing the ſpace of two months, by warning to be made to them by the ſheriff or other officer, to appear to anſwer in their proper perſons for the contempt: and if they come not at the ſaid day to be at the law, they ſhall be put out of the king's protection, their lands and goods forfeited to the king, and their bodies (whereſoever they may be found) ſhall be taken and impriſoned, and ranſomed at the king's will. And, upon the ſame, a writ ſhall be made to take them by their bodies, and to ſeize their lands, goods, and poſſeſſions, into the king's hands. And if it be returned, that they be not found, they ſhall be put in exigent and outlawed.

And by the 16 *R.* 2. *c.* 5. commonly called the ſtatute of præmunire, both they who purſue, or cauſe to be purſued, in the court of *Rome* or elſewhere, any proceſſes or inſtruments, or other things

things whatſoever, which touch the king, againſt him, his crown and regality, or his realm, and alſo they who ſhall bring, receive, or execute the ſame, ſhall be out of the king's protection; and their lands and tenements, goods and chattels, forfeited to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or proceſs ſhall be made againſt them by *præmunire facias*, in manner as is ordained in other ſtatutes of proviſors.

And in theſe two ſtatutes are contained the pains and penalties of what is called a premunire: they were intended chiefly to oppoſe the papal incroachments in this realm; but the penalties thereof, by ſeveral ſubſequent ſtatutes, are extended to other caſes which have no principal relation to popery.

So odious was this offence formerly, that a man who was attainted of the ſame, might have been ſlain by any one without danger of law; becauſe it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy; and therefore, by the 5 *El. c.* 1. it is enacted, that it ſhall not be lawful for any one to ſlay any perſon attainted in a præmunire. But he is ſo far out of the king's protection, that he is diſabled to bring an action for any injury whatſoever. And no one, knowing him guilty, can with ſafety give him aid, comfort, or relief. 1 *Haw.* 55.

PREBEND, is an endowment in land, or penſion in money, given to a cathedral or conventual church *in præbendum*; that is, for the maintenance of a ſecular prieſt, or regular canon, who was a *prebendary*, as ſupported by the ſaid *prebend*. Authors generally confound the two words *prebend* and *prebendary*; whereas the former ſignifies the office, or the ſtipend annexed to that office; and the latter ſignifies the officer, or perſon who executes the office, and enjoys the ſtipend.

PRECEDENCE, among the nobility, by ſtatute 31 *H.* 8. *c.* 10. is thus regulated:—On the right ſide of the parliament-chamber, the archbiſhop of *Canterbury*, next to him the archbiſhop of *York*, next to him the biſhop of *London*, next to him the biſhop of *Durham*, next to him the biſhop of *Wincheſter*, and then all the other biſhops according to their ſeniority. On the left ſide, on the higher part of the form, the lord chancellor, lord treaſurer, lord preſident of the council, the lord privy ſeal, above all dukes, except thoſe of the royal family. Next, the great chamberlain, the conſtables, the marſhal, the lord admiral, the grand maſter or lord ſteward, and the king's chamberlain. Then the king's chief ſecretary, being of the degree of a baron; and all dukes, marqueſſes, earls, viſcounts, and barons, after their ancientry.

The

The rules of precedence may be reduced to the following table:

Archbiſhop of *Canterbury*.
Lord chancellor.
Archbiſhop of *York*.
Lord treaſurer.
Lord preſident of the Council.
Lord privy ſeal.
Lord great chamberlain.
Lord high conſtable.
Lord marſhal.
Lord admiral.
Lord ſteward of the houſehold.
Lord chamberlain of the houſehold.
Dukes.
Marqueſſes.
Duke's eldeſt ſons.
Earls.
Marqueſſes eldeſt ſons.
Dukes younger ſons.
Viſcounts.
Earl's eldeſt ſons.
Marqueſſes younger ſons.
Secretary of ſtate, if a biſhop.
Biſhop of *London*.
Biſhop of *Durham*.
Biſhop of *Wincheſter*.
Biſhops.
Secretary of ſtate, if a baron.
Barons.
Speaker of the houſe of commons.
Lords commiſſioners of the great ſeal.
Viſcounts eldeſt ſons.
Earl's younger ſons.
Baron's eldeſt ſons.
Knights of the garter.
Privy counſellors.
Chancellor of the exchequer.
Chancellor of the dutchy.
Chief juſtice of the king's bench.
Maſter of the rolls.
Chief juſtice of the common pleas.
Chief baron of the exchequer.
Judges and barons of the coif.
Knights bannerets royal.
Viſcounts younger ſons.
Barons younger ſons.
Baronets.
Knights bannerets.
Knights of the bath.
Knights bachelors.
Baronets eldeſt ſons.
Knights eldeſt ſons.
Baronets younger ſons.
Knights younger ſons.
Colonels.
Serjeants at law.
Doctors.
Eſquires.
Gentlemen.
Yeomen.
Tradeſmen.
Artificers.
Labourers.

Note, married women and widows are intitled to the ſame rank among each other, as their huſbands would reſpectively have been between themſelves, except ſuch rank as is merely profeſſional or official; and unmarried women, to the ſame rank as their elder brothers would bear among men, during the lives of their fathers. 1 *Black.* 405.

By a late ſtanding order of the houſe of lords, an exact pedigree of each peer and his family, ſhall, on the day of his firſt admiſſion, be delivered to the houſe by garter the principal king at arms. 3 *Black.* 106.

PRECONTRACT of marriage, is a mutual promiſe or covenant

nant of a marriage to be had afterwards; and is either *per verba de præſenti*, or *per verba de futuro*. Heretofore the ſpiritual judge would compel a contract *per ver a de præſenti*; that is, a contract of preſent marriage, to be carried into execution; but now, by ſtatute 26 *G.* 2. *c.* 23. no ſuit ſhall be had in any eccleſiaſtical court, to compel the celebration of any marriage by reaſon of any contract of marriage, either *per verba de præſenti*, or *per verba de futuro*.

PREGNANCY, is a plea in ſtay of execution, when a woman is convicted of a capital crime, alleging that ſhe is with child; in which caſe, the judge muſt direct a jury of twelve matrons or diſcreet women to inquire of the fact: and if they bring in their verdict *quick with child*, (for barely *with child*, unleſs it be alive is not ſufficient,) execution ſhall be ſtayed generally till the next ſeſſion; and ſo from ſeſſion to ſeſſion, till either ſhe be delivered or proves by the courſe of nature, not to have been with child. But if ſhe once hath had the benefit of this reprieve, and been delivered, and afterwards becomes pregnant again, ſhe ſhall not be intitled to the benefit of a further reſpite; for ſhe may then be executed before the ſecond child is quick in the womb. 4 *Black.* 395.

PREMISES in a deed, is that part in the beginning thereof, wherein are ſet forth the names of the parties, with their titles and additions; and wherein are recited ſuch deeds, agreements, or matters of fact, as are neceſſary to explain the reaſons upon which the preſent tranſaction is founded. And herein alſo is ſet down the conſideration upon which the deed is made, and the certainty of the thing granted. 2 *Black.* 298.

It is alſo commonly uſed to denote the lands granted, or other ſubject matter of the deed or conveyance.

PREROGATIVE, (from *pre*, *ante*, and *rogare*, to aſk or demand,) is a word of great extent, including all the rights which by law the king hath, as chief of the common wealth, and as intruſted with the execution of the laws. 4 *New Abr.* 149. *Co. Lit.* 90.

But although the king is intruſted with the executive part, and from him all juſtice is ſaid to flow, yet he is to make the law of the land the rule of his government; that being the meaſure, as well of the power as of the ſubjects obedience; for as the law aſſerts, maintains, and provides for the ſafety of the king's royal perſon, crown, and dignity, and all his juſt rights, ſo it likewiſe declares and aſſerts the rights and liberties of the ſubject. 1 *And.* 153. *Co. Lit.* 19. 75. 4 *Co.* 124. 4 *New. Abr.* 149.

And all prerogatives muſt be for the advantage of the people, otherwiſe they ought not to be allowed by law. *Moor.* 672. 4 *New Abr.* 149.

For more on this ſubject, See *Black. Com.* 1 & 4 *vols.*

PRERO-

PREROGATIVE COURT of the archbiſhop, is that court wherein all teſtaments are proved, and all adminiſtrations granted, where the party dying within the province hath *bona notabilia* in ſome other dioceſe than where he dieth; and is ſo called from the archbiſhop's having a *prerogative* throughout his whole province for the ſaid purpoſes. From which court an appeal lies to the delegates. 4 *Inſt.* 335.

PRESCRIPTION, is a title acquired by uſe and time, and allowed by the law; as when a man claims any thing becauſe he and his anceſtors, or they whoſe eſtate he hath, have had, or uſed it all the time, whereof no memory is to the contrary: or it is, where for continuance of time, beyond the memory of man, a particular perſon hath a particular right againſt another. 1 *Inſt.* 113.

There is a difference between *preſcription*, *cuſtom*, and *uſage*; *preſcription* hath reſpect to a certain *perſon*, who by intendment may have continuance for ever; as, for inſtance, he and all they whoſe eſtate he hath in ſuch a thing, this is a preſcription: but *cuſtom* is local, and always applied to a certain place; as that time out of mind there hath been ſuch a cuſtom in ſuch a place: and *preſcription* belongeth to *one* or a *few* only, but *cuſtom* belongeth to all: now *uſage* differs from both; for it may be either to *perſons* or *places*; as to the inhabitants of a town to have a way, and the like. 1 *Inſt.* 114.

Preſcription muſt be *time out of mind*; though it is not the length of time that begets the right of preſcription, but it is a preſumption in law, that a poſſeſſion cannot continue ſo long quiet and not interrupted, and it was againſt right, or injurious to another. 1 *Inſt.* 114.

Nothing but *incorporeal* hereditaments can be claimed by preſcription, as a right of a way, a common, or the like; but no preſcription can give a title to lands, and other corporeal ſubſtances, of which more certain evidence may be had. 2 *Black.* 264.

A preſcription *muſt always be laid in him that is tenant of the fee.* A tenant for life, for years, at will, or a copyholder, cannot preſcribe; for as preſcription is uſage beyond time of memory, it is abſurd that they ſhould pretend to preſcribe, whoſe eſtate commenced within the remembrance of man. And therefore the copyholder muſt preſcribe under cover of the lord's eſtate, and the tenant for life under cover of the tenant in fee-ſimple. 2 *Black.* 265.

A preſcription *cannot be for a thing which cannot be raiſed by grant.* For the law allows preſcription only in ſupply of the loſs of a grant; and therefore every preſcription preſuppoſes a grant to have exiſted. Thus a lord of a manor cannot preſcribe to raiſe a tax or toll upon ſtrangers; for as ſuch claim could never have been

been good by any grant, it shall not be good by prescription. *Id.*

What is to arise by matter of record cannot be prescribed for, but must be claimed by grant entered on record; such as, for instance, the royal franchises of deodands, felons goods, and the like. These not being forfeited till the matter on which they arise is found by the inquisition of a jury, and so made a matter of record, the forfeiture itself cannot be claimed by any inferior title. But the franchises of treasure trove, waifs, estrays, and the like, may be claimed by prescription; for they arise from private contingencies, and not from any matter of record. *Id.*

Among things incorporeal, which may be claimed by prescription, a distinction must be made with regard to the *manner* of prescribing; that is, whether a man shall prescribe in a *que estate*; that is to say, in himself and those whose estate he holds, or in him and his ancestors; for if a man prescribes in a *que estate*, nothing is claimable by this prescription, but such things as are incident, appendant, or appurtenant to lands; for it would be absurd to claim any thing as the consequence, or appendix of an estate, with which the thing claimed hath no connection: but if he prescribes in himself and his ancestors, he may prescribe for any thing whatsoever that lies in grant; not only things that are appurtenant, but also such things as may be in gross. Therefore a man may prescribe, that he, and those whose estate he hath in such a manor, have used to hold an *advowson appendant* to that manor; but if the advowson be a distinct inheritance, and not appendant, then he can only prescribe in himself and his ancestors. So also a man may prescribe in a *que estate* for a *common appurtenant* to a manor; but if he would prescribe for a *common in gross*, he must prescribe in himself and his ancestors. 2 *Black.* 266.

PRESENTATION to a benefice, is the offering a clerk to the ordinary to be admitted. And this an *infant* may do, though of never so tender age; for the ordinary is judge of the fitness of the person presented.

Coparceners may join in a presentation; but if they cannot agree, then the eldest shall present first, and the rest in their turns.

Jointenants or *tenants in common* must all join; for if they present singly, the bishop may refuse the clerk.

If a *married woman* hath title to present, she and her husband must join in the presentation; and if she dies, he shall present as tenant by the *curtesy*.

A *widow* has only the third turn, after the heir has presented twice.

After presentation, the bishop has the right of examination of the person presented; and if he finds him insufficient, he may refuse

refuſe him. The moſt common and ordinary cauſe of refuſal is want of learning: but there are other cauſes; as if a man hath been convicted of perjury, or other grievous crime, if he be outlawed, excommunicate, or an heretic.

If the refuſal be for hereſy, want of learning, or other matter of eccleſiaſtical cognizance, the biſhop, if the patron is a layman, muſt give notice to him of the refuſal; otherwiſe lapſe will not incur; but if the cauſe be temporal, the biſhop is not bound to give notice.

If the biſhop doth refuſe without good cauſe, the patron hath a remedy againſt him by a *quare impedit* in the temporal court; and the clerk hath a remedy by *duplex querela* in the court ſpiritual.

PRESENTMENT of *offences*, is that which the grand jury find of their own knowledge, and preſent to the court, without any bill of indictment laid before them at the ſuit of the king; as the preſentment of a nuſance, a libel, and the like; upon which, the officer of the court muſt afterwards frame an indictment, before the party preſented can be put to anſwer it. There are alſo preſentations by juſtices of the peace, conſtables, ſurveyors of the highways, churchwardens, and others, of matters belonging to their reſpective offices.

PRESENTMENT *of copyhold ſurrenders*, is an information, in court, to acquaint the lord, or his ſteward, with a ſurrender made out of court; which ſurrender is not effectual till preſented in court. By the general cuſtoms of manors, it is to be made at the next court baron immediately after the ſurrender; but by ſpecial cuſtom, it may be at the ſecond or other ſubſequent court. The ſurrender muſt be made in court by the ſame perſon that took the ſurrender, then preſented by the homage. If a man who hath ſurrendered out of court dies before preſentment, and the preſentment is made after his death, according to the cuſtom, this is ſufficient. So alſo, if he to whoſe uſe the ſurrender is made, dies before preſentment, yet, upon preſentment made after his death, his heir, according to the cuſtom, ſhall be admitted. The ſame law is, if thoſe into whoſe hands the ſurrender was made, die before preſentment; for, upon ſufficient proof in court that ſuch a ſurrender was made, the lord ſhall be compelled to admit accordingly. 2 *Black.* 369.

PRESSING ſeamen for the royal navy hath been a matter of ſome diſpute; but it now ſeems to be ſettled that the king hath a power by the common law, to iſſue his commiſſion to the admiralty to compel ſeamen into the ſervice; and this power is implied in ſeveral late acts of parliament, referring thereunto as a thing well known. *Foſt.* 154.

PRESUMPTION, is a ſuppoſition, opinion, or belief, previouſly formed, and is of three ſorts; violent, probable, and light or

or temerary. Violent presumption oftentimes amounts to full proof; as if one be run through the body with a sword in an house, whereof he instantly dies, and a man is seen to come out of that house with a bloody sword, and no other person was at that time in the house; probable presumption moveth little; but light or temerary presumption moveth not at all. 1 *Inst.* 6.

If all the witnesses to a deed be dead, then violent presumption, which stands for a proof, is continual and quiet possession; although the deed may receive credit from comparing of seals, writing, and other circumstances. *Id.*

PRESUMPTIVE HEIR, is spoken in distinction from an heir *apparent*. An heir *apparent* is one whose right of inheritance is indefeasible, provided he outlives the ancestor, as the eldest son or his issue. A *presumptive* heir is one who, if the ancestor should die immediately, would in the present circumstances of things be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother, whose presumptive succession may be destroyed by the birth of a child; or a daughter whose present expectation may be cut off by the birth of a son. 2 *Black.* 208.

PRETENDED TITLES. See TITLE, BUYING OF.

PRETENDER. If any of the sons of the late pretender to the crown of this realm shall land, or attempt to land, in this kingdom, or be found in *Great Britian* or *Ireland*, he shall be attainted of high treason. And if any person shall correspond with any of them, or remit money for their use, he shall be guilty of high treason. 1 *Ann. st.* 2. *c.* 17. 17 *G.* 2. *c.* 39.

And there is an oath, 13 *W.* *c.* 6. commonly called the oath of abjuration, required to be taken by all persons in any office, trust, or employment, recognizing his majesty's right to the crown, under the act of settlement, engaging to support him, promising to disclose all conspiracies against him, and expressly renouncing any claim of the descendants of the late Pretender.

PRIMER FINE, or *præ fine*, is a sum due to the king, on suing out a *præcipe* or writ of covenant, in order to the levying a fine; being a noble for every five marks of land sued for; that is, one tenth of the annual value. It is called the *primer*, or *first fine*, because there is another fine due afterwards, in the course of the proceedings, called a *post-fine*. 2 *Black.* 350.

PRIMER SEISIN, *prima seisina*, the first seisin or possession. It was a branch of the king's prerogative, whereby he had the first possession, or profits for a year, of all lands and tenements holden of him *in capite*, whereof his tenant died seised in fee, his heir being then of full age; if the heir was under age, the king took the profits until the heir came of age.

PRINCIPAL AND ACCESSARY. *Principal* is the person who commits the offence; *accessary* is he who is not the chief actor,

actor, but is some way concerned therein, either before or after the felony committed. A man may be principal in two degrees; a principal in the first degree, is he that is the actor, or absolute perpetrator of the crime: and a principal in the second degree, is he who is *present*, aiding and abetting the fact to be done: which presence need not always be an actual immediate standing by, within sight or hearing of the fact: but there may be also a constructive presence; as when one commits a robbery or murder, and another keeps watch or guard at some convenient distance; or where one man administers poison, which had been prepared by another, though not actually present when it was taken.

PRIORITY, is an antiquity of tenure, in comparison of another less ancient, which latter is termed *posteriority*. A tenant may hold by priority of one lord, and by posteriority of another. *Old Nat. Brev.* 94.

A prior *suit* depending, may be pleaded in abatement of a subsequent action or prosecution.

A prior *mortgage* ought to be first paid off. But there is no priority of time in *judgments*; but the judgment first executed shall be first paid.

If two *informations* be exhibited on the very same day, it seems that they mutually abate each other. 2 *Haw.* 275.

Debts ought to be paid by an executor or administrator, according to their priority; as debts due to the king, on record or specialty before judgments, statutes or recognizances; next to these, debts due on special contract; as for rent, or upon bonds, covenants, and the like, under seal; and lastly, debts on simple contracts; as upon notes unsealed, and verbal promises. 2 *Black.* 511.

PRIORY, is a society of religious persons, where the head is termed a prior or prioress; of which, in this kingdom, there were two sorts: 1. Where the prior was chief governor, as fully as an abbot within his abbey; of which kind were all the cathedral priors, and most of the order of St. *Austin*. 2. Where the priory was a cell, subordinate to some greater abbey, and the prior was placed and displaced at the pleasure of the abbot.

Alien priory, was a cell to some foreign monastery; for when manors or tithes were given, as was frequently done, to foreign monasteries, the monks built convenient houses here for the reception of a small convent, and then sent over such a number as they thought proper, constituting priors over them. In the wars between *England* and *France*, these estates were generally seized by the English, and were restored again upon a peace.

PRISAGE, was a custom due to the king, of the wines brought in by the merchants of *England*, of every ship having twenty tons or more. It was called *prisage*, because it was a

taking.

taking or purveyance for wine to the king's uſe; it was alſo called *butlerage*, becauſe the king's chief *butler* received it. 4 *Inſt.* 30.

PRISON. See GAOL.

PRISON BREAKING, at the common law, was felony, for whatever cauſe the party was impriſoned. But by the ſtatute *de frangentibus priſonam*, 1 *Ed.* 2. *ſt.* 2. the ſeverity of the common law is mitigated, which enacts, that no perſon ſhall have judgment of life or member for breaking priſon, unleſs committed for ſome capital offence. So that, unleſs the commitment be for treaſon or felony, the breaking of priſon is not felony, but is otherwiſe puniſhable, as a miſdemeanor only, by fine and impriſonment. 4 *Black.* 130.

Any place whatever, wherein a perſon under a lawful arreſt, for a ſuppoſed crime, is reſtrained of his liberty, whether in the ſtocks, or ſtreet, or in the common gaol, or the houſe of a conſtable, or a private perſon, is a priſon, in this reſpect, for a priſon is nothing elſe but a reſtraint of liberty; and therefore this extends as well to a priſon in law, as to a priſon in deed. 2 *Inſt.* 589.

PRIVILEGE, is defined to be a private or particular law, whereby a private perſon or corporation is exempted from the rigour of the common law; or it is ſome benefit or advantage granted or allowed to any perſons contrary to the courſe of law; and is ſometimes uſed for a place that hath a ſpecial immunity. A privilege is therefore *perſonal* or *real*; *perſonal*, as of members of parliament and of convocation, and their menial ſervants, not to be arreſted in the time of parliament or convocation, nor for certain days before or after; ſo alſo of peers, ambaſſadors, and their ſervants: *real*, is that which is granted to a place; as to the king's palaces, the courts at *Weſtminſter*, and the univerſities, that their members and officers muſt be ſued within their precincts and courts, and not elſewhere.

Formerly, one of the greateſt obſtructions to public juſtice, was the multitude of pretended privileged places, where indigent perſons aſſembled together, to ſhelter themſelves from juſtices, (eſpecially in *London* and *Southwark*,) under the pretext of their having been ancient palaces of the crown, or the like; all of which ſanctuaries are now demoliſhed by ſeveral acts of parliament. 4 *Black.* 129.

PRIVY. *Privies* are ſuch as are partakers, or had any intereſt in any action or thing, or any relation to another. Theſe are either privies in *eſtate*, as donor and donee, leſſor and leſſee; or privies in *blood*, as heir to the anceſtor; privies in *repreſentation*, as executors to teſtators, adminiſtrators to inteſtates; and privies in *tenure*, as lord and tenant. *Wood. b.* 2. *c.* 3.

Privies

Privies in eſtate or blood, are bound or barred preſently for ever by a fine, if they claim the ſame title that their anceſtors had, that levied the fine, notwithſtanding their being under the impediments of infancy, coverture, inſanity, or the like. *Id.*

PROBATE of wills, was originally of temporal cognizance; afterwards, the juriſdiction thereof belonged to the county court, where the biſhop and ſheriff jointly ſat as judges, in matters both temporal and ſpiritual; and finally, after the ſeparation of the eccleſiaſtical courts from the temporal, the juriſdiction of wills generally followed the courts eccleſiaſtical; yet to this day, lords of manors, and others, have the probate of teſtaments within their liberties, by ſpecial privilege.

Generally, the will is to be proved before the biſhop of the dioceſe where the teſtator inhabited, or before his officer ſpecially appointed; but in caſe the teſtator had goods in ſome other dioceſe than that wherein he died, to the value of 5*l.* or upwards, (which are commonly called *bona notabilia,*) the teſtament muſt be proved in the prerogative court of the archbiſhop of the province.

A will of lands is not ſubject to the eccleſiaſtical juriſdiction. But where a will concerns both lands and goods, the probate thereof ought to be intire in the ſpiritual court, and not of parcels; but the probate of the will for the lands, will not prejudice the heir at law, for it ſhall not be evidence at the common law, nor ſhall the examination of the witneſſes, in the ſpiritual court, be given in evidence at the common law.

But a will of goods is not of any effect, until probate is made thereof; nor can any executor or other perſon give a will in evidence concerning perſonal eſtate, without producing the probate; for it is no will until it hath received a ſanction by the ſpiritual judge, for he is to determine whether it be a will or no.

Where there are more executors than one, and ſome of them do refuſe, and others of them prove the will, they who refuſe may afterwards come in and have probate in like manner as the other. If they all refuſe, adminiſtration ſhall be granted to whom the ordinary thinks fit, with the will annexed to ſuch adminiſtration.

The manner of proving teſtaments is of two ſorts; the one is called the vulgar, or *common form*; the other is termed the *ſolemn form*, or form of law. The common form is moſt commonly upon the executor's own oath, that he believes the writing exhibited to be the true laſt will and teſtament of the deceaſed; the ſolemn form is by witneſſes firſt calling in all perſons having intereſt, in caſe the will ſhall not be proved to be a good will.

After the will is approved of by the judge, the original is depoſited in the regiſtry of the ordinary; and a copy thereof, in parchment, is made out under the ſeal of the ordinary, and delivered

vered to the executor, together with a certificate of its having been proved before him: all which together is usually styled the probate.

PROCEDENDO, is a writ which lieth where a cause hath been called up from an inferior to a superior court, and such superior court finds the suggestion for removing it to be insufficient; in which case, the superior court, by this writ, remits the cause to the court from whence it came, commanding the said inferior court to *proceed* to the final hearing and determining the same.

PROCESS, is that which *proceedeth* or goeth out upon former matter, either *original* or *judicial*: and this is in causes either *civil* or *criminal*. *Lamb.* 519.

Process in *civil* causes, is called *original* process, when it is founded upon the *original* writ; and also to distinguish it from *mesne* or intermediate process, which issues pending the suit, upon some collateral interlocutory matter; as to summon juries, witnesses, and the like. *Mesne* process, is also sometimes put in contradistinction to *final* process, or process of *execution*; and then it signifies all such process as intervenes between the beginning and end of a suit. 3 *Black.* 279.

In *criminal* cases, upon an indictment for a misdemeanor not being felony, or a greater offence, the first process is a *venire*, or summons; and if, by the return thereof, it appears that the party hath lands in the county whereby he may be distrained, then a *distress infinite* shall be awarded, from time to time, until he shall appear; and by virtue thereof, he shall forfeit, on every default, so much as the sheriff shall return upon him in issues. But if it be returned upon the *venire* that he hath no lands, a writ of *capias* shall issue, to take his body; and if he cannot be taken on the first capias, then a second and a third shall issue, called an *alias* and a *pluries capias*; and last of all, an *exigent*, in order to outlawry. But on an indictment for treason or felony, a *capias* is the first process. 4 *Black.* 319.

Where the inhabitants of a parish are indicted or presented, the process is first a *venire*, and then a *distringas*. *Crown Circ.* 21.

PROCHEIN AMY, *propinquior amicus*, is he that appears in court for an infant, who sues any action, and aids the infant in pursuit thereof.

PROCLAMATION. From the king being the fountain of justice, hath been deduced the prerogative of issuing proclamations, which is vested in the king alone. These proclamations have then a binding force, when (as Sir *Edward Coke* observes) they are grounded upon, and inforce the law of the realm. For though the making of laws is intirely the work of a distinct part (the legislative branch) of the sovereign power, yet the manner, time,

time, and circumſtances of putting thoſe laws in execution, muſt frequently be left to the diſcretion of the executive magiſtrate. And therefore his conſtitutions or edicts concerning theſe points, which we call proclamations, are binding upon the ſubject, where they do not either contradict the old laws, or tend to aboliſh new ones; but only inforce the execution of ſuch laws as are already in being, in ſuch manner as the king ſhall judge neceſſary. 1 *Black.* 270.

Thus the eſtabliſhed law is, that the king may prohibit any of his ſubjects from leaving the realm; a proclamation therefore forbidding this in general for three weeks, by laying an embargo upon all ſhipping in time of war, will be equally binding as an act of parliament, becauſe founded upon a prior law. But a proclamation to lay an embargo in time of peace, upon all veſſels laden with wheat, (though in the time of a public ſcarcity,) being contrary to law, the adviſers of ſuch proclamation, and all perſons acting under it, found it neceſſary to be indemnified by a ſpecial act of parliament, 7 *G.* 3. *c.* 7.

A proclamation for diſarming papiſts is alſo binding, being only in execution of what the legiſlature hath firſt ordained: but a proclamation for allowing arms to papiſts, or for diſarming any proteſtant ſubjects, will not bind; becauſe the firſt would be to aſſume a diſpenſing power, the latter a legiſlative one; to the veſting of either of which in any ſingle perſon, the laws of *England* are abſolute ſtrangers. 1 *Black.* 271.

When any fine of land is paſſed, proclamation is ſolemnly made thereof, in the court of common pleas, where levied, after ingroſſing it; and tranſcripts alſo are ſent to the judges of aſſize, and juſtices of the peace of the county where the lands lie, to be openly proclaimed there.

On a ſuit commenced in chancery, if the defendant doth not appear, an attachment is iſſued againſt him; and if the ſheriff returns that he is not to be found, then an attachment with proclamations iſſues, directing the ſheriff to cauſe public proclamations to be made throughout the county, to ſummon the defendant, upon his allegiance, perſonally to appear and anſwer. If he ſtill ſtands out in contempt, a commiſſion of rebellion is awarded againſt him, for not obeying the proclamations according to his allegiance. 3 *Black.* 444.

When a defendant abſconds, and cannot be found, there ſhall iſſue a writ, commanding the ſheriff to proclaim him in five county courts ſucceſſively; and if he then does not appear, he ſhall, by the judgment of the coroners of the county, be outlawed. 3 *Black.* 283.

The legitimation of money, and giving to it its denominative value, is one ſpecial part of the king's prerogative. Alſo, by his proclama-

proclamation, he may legitimate foreign coin, and make it current money of this kingdom. 1 *Inſt.* 207.

The king, by proclamation, (with the advice of his privy council,) may call or diſſolve parliaments. 4 *Inſt.* 4.

On the riot act, 1 *G. c.* 5. if, after proclamation, any twelve or more of the rioters ſhall be found together, they ſhall be guilty of felony without benefit of clergy. And if any perſon ſhall oppoſe the reading of the proclamation, he ſhall be in like manner guilty.

PROCTOR, *procurator*, is one who is appointed to repreſent in judgment the party who empowers him, by writing under his hand called a *proxy*. They are chiefly in uſe in the courts of the civil or eccleſiaſtical law.

Proctors of the clergy, are thoſe who are choſen and appointed to appear for cathedral or collegiate churches, as alſo for the common clergy of every dioceſe, to be their repreſentatives in convocation.

PROCURATIONS, *procurationes*, are certain ſums of money paid yearly by the inferior clergy, to the biſhop or archdeacon, for the charges of viſitation. The procurations were anciently made, by *procuring* victuals, and other proviſions in ſpecie; but the demands of theſe in kind, being thought to be exorbitant, and divers complaints being made thereof to the provincial councils, and to the popes, it became at laſt univerſally ſettled, to pay a fixed ſum in money, inſtead of a procuration in meat, drink, provender, and other accommodation. Theſe being merely an eccleſiaſtical duty, are only ſuable in the ſpiritual court; and may be levied by ſequeſtration, or other eccleſiaſtical proceſs. *Gibſ.* 1546.

PROCURATOR, is one who hath a charge committed to him by any perſon; in which general ſignification it hath been applied to a vicar or lieutenant, who acts inſtead of another; and we read of *procurator regni*, and *procurator reipublicæ*, which is a public magiſtrate: alſo *proxies* of lords in parliament, are, in our law books, called *procuratores*. The biſhops are ſometimes termed *procuratores eccleſiarum*; and the advocates of religious houſes, who were to ſolicit the intereſt, and plead the cauſes of the ſocieties, were denominated *procuratores monaſterii*. And from this word proceeds the common word *proctor*.

PROCURATORIUM, was the proxy 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.

PROFANENESS. All blaſphemies againſt God, as denying his being or providence; and all contumelious reproaches of Jeſus Chriſt; all profane ſcoffing at the holy ſcripture, or expoſing any part thereof to contempt or ridicule; and all open lewdneſs, groſsly

groſsly ſcandalous; are puniſhable (not only by the ſpiritual court, but alſo) by the temporal courts, by fine and impriſonment; and alſo ſuch corporal puniſhment as to the court in diſcretion ſhall ſeem meet, according to the heinouſneſs of the crime. 1 *Haw.* 7.

By the 3 *Ja. c.* 21. if any perſon ſhall, in any ſtage play, interlude, ſhow, May-game, or pageant, jeſtingly or profanely ſpeak or uſe the holy name of God, or of Chriſt Jeſus, or of the Holy Ghoſt, or of the Trinity, he ſhall forfeit 10*l.*

And by the 9 & 10 *W. c.* 32. if any perſon, educated in the chriſtian religion, or profeſſing the ſame, ſhall, by writing, printing, or adviſed ſpeaking, deny any one of the perſons in the Holy Trinity to be God; or maintain that there are more gods than one; he ſhall, for the firſt offence, be diſabled to hold any office; for the ſecond, he ſhall moreover be diſabled to proſecute any action, or to be guardian, executor, adminiſtrator, or legatee, and ſhall be impriſoned for three years.

PROFERT IN CURIA, is where the plaintiff in an action declares on a deed, or the defendant pleads a deed, he muſt do it with producing the ſame in court, to the end that the other party may, at his own charges, have a copy of it; and until then he is not obliged to anſwer it. 2 *Lill. Abr.* 382. But by ſtatute 4 & 5 *An. c.* 16. no advantage or exception ſhall be taken for want of a *profert 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 ſhewn for cauſe of demurrer.

PROFESSION, is uſed particularly for the entering into any religious order; by which the monk offered himſelf to God by a vow of three things; obedience, chaſtity, and poverty, which he promiſed conſtantly to obſerve: and this was called *ſanctæ religionis profeſſio*, and the monk a *religious profeſſed*. And this entering into religion, whereby a man is ſhut up from all the common offices of life, is by our law termed a *civil death*.

PROHIBITION, is a writ properly iſſuing only out of the court of king's bench, being the king's prerogative writ; but, for the furtherance of juſtice, it may now alſo be had in ſome caſes out of the court of chancery, common pleas, or exchequer, directed to the judge and parties of a ſuit in an inferior court, commanding them to ceaſe from the proſecution thereof, upon a ſuggeſtion that either the cauſe originally, or ſome collateral matter ariſing therein, doth not belong to that juriſdiction, but to the cognizance of ſome other court. 3 *Black.* 112.

This writ may iſſue either to inferior courts of common law, as to the courts of the counties palatine, or principality of *Wales*, if they hold plea of land or other matters not lying within their reſpective franchiſes; to the county court, or court baron, when

they attempt to hold plea of any matter of the value of 40*s.*, to the court of chivalry, or of the admiralty, if they hold plea of a contract made or to be executed within this kingdom; or to the eccleſiaſtical court, if they attempt to try the validity of a cuſtom, or if in handling of matters within their cognizance, they tranſgreſs the bounds preſcribed to them by the laws of *England*; as where they require two witneſſes to prove the payment of a legacy, or the like. *Id.*

For the obtaining of a prohibition, the party aggrieved in the court below applies to the ſuperior court, ſetting forth in a ſuggeſtion upon record the nature and cauſe of his complaint. And ſometimes affidavit is neceſſary to be made of the truth of the ſuggeſtion; the diſtinction in which caſe, is this: where the matter ſuggeſted appears upon the face of the libel or other proceedings, the court never requires an affidavit; but if it doth not appear upon the face of the proceedings, the court will require affidavit of the truth of the ſuggeſtion. *Bur. Manſf* 2036.

Upon the court being ſatisfied that the matter alleged by the ſuggeſtion is ſufficient, the writ of prohibition immediately iſſues; commanding the judge not to hold, and the party not to proſecute the plea. And if either the judge or party ſhall proceed after ſuch prohibition, an attachment may be had againſt them for the contempt by the court that awarded it, and an action will lie againſt them to repair the party in damages. 3 *Black.* 113.

But ſometimes the point may be too nice and doubtful to be decided merely upon a motion; and then, for the more ſolemn determination of the queſtion, the party applying for the prohibition is directed by the court to *declare* in prohibition; that is, to proſecute an action, by filing a *declaration* againſt the other, upon a ſuppoſition, or fiction, that he hath proceeded in the ſuit below, notwithſtanding the writ of prohibition. And if upon demurrer and argument, the court ſhall finally be of opinion, that the matter ſuggeſted is a good and ſufficient ground of prohibition in point of law, then judgment, with nominal damages, ſhall be given for the party complaining; and the defendant, and alſo the inferior court, ſhall be prohibited from proceeding any farther. On the other hand, if the ſuperior court ſhall think it no competent ground for reſtraining the inferior juriſdiction, then judgment ſhall be given againſt him who applied for the prohibition in the court above, and a writ of *conſultation* ſhall be awarded; ſo called, becauſe upon deliberation and conſultation had, the judges find the prohibition to be ill founded, and therefore by this writ they return the cauſe to its original juriſdiction, to be there determined in the inferior court. *Id.*

PROHIBITION TO STAY WASTE, *(prohibitio de vaſto,)* is a writ judicial directed to the tenant, prohibiting him from making

making waſte upon the land in controverſy, during the ſuit. So alſo a prohibition ſhall be granted to any perſon who commits waſte in the houſes of the incumbent of a ſpiritual living, or that cuts down any trees on the glebe, or doth any other waſte.

PROMISE, is where perſons bind themſelves by words to do or perform ſuch a thing as is agreed on: it is in the nature of a verbal covenant, and wants nothing but the ſolemnity of writing and ſealing to make it abſolutely the ſame. Yet for the breach of it, the remedy is different; for inſtead of an action of covenant, there lies only an action upon the caſe, the damages whereof are to be eſtimated and determined by the jury. As if a builder promiſes or undertakes to another, that he will build and cover his houſe within a time limited, and fails to do it, an action upon the caſe lies againſt the builder for this breach of his promiſe, and the plaintiff ſhall recover a pecuniary ſatisfaction for the injury ſuſtained by ſuch delay. So in the caſe of a debt by ſimple contract, if the debtor promiſes to pay it and doth not, this breach of promiſe intitles the creditor to his action on the caſe, inſtead of being driven to an action of debt. Some agreements indeed, though never ſo expreſsly made, are deemed of ſo important a nature, that they ought not to reſt in verbal promiſe only; and therefore by the 29 *C. 2. c.* 3. commonly called the ſtatute of frauds and perjuries, it is enacted, that in the five following caſes, no verbal promiſe ſhall be ſufficient to ground an action upon, but at the leaſt ſome note or memorandum of it ſhall be made in writing, and ſigned by the party to be charged therewith: 1. Where an executor or adminiſtrator promiſes to anſwer damages out of his own eſtate. 2. Where a man undertakes to anſwer for the debt, default, or miſcarriage of another. 3. Where any agreement is made upon conſideration of marriage. 4. Where any contract or ſale is made of lands, tenements, or hereditaments, or any intereſt therein. 5. Where there is any agreement that is not to be performed within a year from the making thereof. In all theſe caſes, a mere verbal promiſe is void. 3 *Black.* 157.

PROMISSORY NOTE, or *note of hand.* See BILL OF EXCHANGE.

PROPERTY, is the higheſt right a man can have to any thing, being uſed for that right which one hath to lands or tenements, goods or chattels, which no ways depend on another. For preſerving property the law hath three rules: 1. No man is to deprive another of his property, or diſturb him in enjoying it. 2. Every perſon is bound to take due care of his own property, ſo as the neglect thereof may not injure his neighbour. 3. All perſons muſt ſo uſe their right, that they do not in the manner of doing it damage their neighbour's property.

PROROGUE, ſignifies to prolong or put off to another day.

Prorogation of the parliament, is the continuance of it from one ſeſſion to another; whereas the adjournment of it is the continuance of the ſame ſeſſion from day to day. 1 *Black.* 186.

PROTECTION, in a general ſenſe, is taken for that benefit and ſafety which every ſubject hath by the king's laws: every man who is a loyal ſubject is in the king's protection; and in this ſenſe, to be out of the king's protection, is to be excluded the benefit of the law. In a ſpecial ſignification, a protection of the king is an act of grace, by writ iſſued out of chancery; which lies where a man is to paſs over the ſea in the king's ſervice: and by this writ, when allowed in court, he ſhall be quit of all manner of ſuits between him and any other perſon until his return. 2 *Lill. Abr.* 398. But now theſe protections are ſeldom uſed, and are often ouſted by act of parliament; as where it is ſaid, that in ſuch an action, no eſſoin, *protection*, or wager of law, ſhall be allowed.

PROTEST, *proteſtatio*, hath two applications; one by way of caution, to call witneſſes, (as it were,) or openly affirm that he doth either not at all, or but conditionally, yield his conſent to any act, or unto the proceeding of a judge in a court, wherein his juriſdiction is doubtful, or to anſwer on his oath further than by law he is bound. The other is by way of complaint, as to proteſt a man's bill of exchange. For which, ſee BILL OF EXCHANGE.

In the houſe of lords, every peer hath a right, with leave of the houſe, when a vote paſſes contrary to his ſentiments, to enter his diſſent on the journals of the houſe, with the reaſons for ſuch diſſent; which is uſually ſtyled his *proteſt*.

PROTESTANDO, is a word uſed to avoid duplicity in pleading: it prevents the party that makes it from being concluded by the plea he is about to make. Every plea ought to be ſimple, intire, connected, and confined to one ſingle point; it muſt never be intangled with a variety of diſtinct independent anſwers to the ſame matter, which muſt require as many different replies, and introduce a multitude of iſſues upon one and the ſame diſpute. Yet it is frequently expedient to plead in ſuch a manner as to avoid any implied admiſſion of a fact which cannot with propriety or ſafety be poſitively affirmed or denied: and this may be done by what is called a *proteſtation*; whereby the party interpoſeth an oblique allegation or denial of ſome fact, proteſting *(proteſtando)*, that ſuch a matter doth or doth not exiſt; and at the ſame time avoiding a direct affirmation or denial: as if an award be ſet forth by the plaintiff, and he can aſſign a breach in one part of it by the defendant, namely, the non-payment of a ſum of money, and yet is afraid to admit the performance of the reſt of the award, or to aver in general a non-performance of any part of it, leſt ſomething ſhould appear to have been performed; he may

ſave

ſave to himſelf any advantage he might hereafter make of the general non-performance, by alleging *that* by proteſtation, and plead only the non-payment of the money. 5 *Black.* 311.

PROTHONOTARY, is a chief officer or clerk of the common pleas and king's bench; the former hath three, and the latter but one; whoſe office is to record all civil actions, as the clerk of the crown-office doth criminal cauſes in that court. Thoſe of the common pleas, enter and inroll all manner of declarations, pleadings, aſſiſes, judgments, &c.

PROVINCE. The eccleſiaſtical diviſion of this kingdom is into two provinces; of *Canterbury* and *York*. A province is the circuit of an archbiſhop's juriſdiction, which is ſubdivided into biſhopricks or dioceſes. 1 *Black.* 111.

PROVINCIAL CONSTITUTIONS, in this kingdom, were decrees made in the provincial ſynods, held under divers archbiſhops of *Canterbury*, from *Stephen Langton*, in the reign of *Hen.* 3. to *Henry Chichele*, in the reign of *Hen.* 5. which were alſo adopted by the province of *York*, in the reign of *Hen.* 6.

PROVISO, in a deed, is generally taken for a *condition*, on the performance whereof the validity of the deed depends; but it differs from it in ſeveral reſpects; for a condition is uſually created by the grantor or leſſor, but a proviſo by the grantee or leſſee. 2 *Nelſ. Abr.* 21.

A proviſo always implies a condition, if there be no words ſubſequent, which may change it into a covenant. And where a proviſo is a condition, it ought to do the office of a condition; that is, make the eſtate conditional, and ſhall have reference to the eſtate, and be annexed to it, but ſhall not make it void without entry, as a limitation will. *Cro. Eliz.* 242.

A leaſe was made for years, rendering rent at ſuch a day, proviſo, if the rent be arrear for one month after, the leaſe to be void. The queſtion was, whether this was a condition or limitation; for if it was a condition, then the leaſe is not determined without entry. Adjudged, that it was a limitation, though the words were conditional, becauſe it appeared by the leaſe itſelf, that it was the expreſs agreement of the parties, that the leaſe ſhall be void on non-payment of the rent, and it ſhall be void without entry. *Mo.* 291.

Trial by proviſo, is where the plaintiff forbears to bring his cauſe to trial, and the defendant takes a *venire facias*, directed to the ſheriff, with a clauſe, "provided, that if the plaintiff taketh out "any writ to that purpoſe, the ſheriff ſhall ſummon only one "jury upon them both." *T. L.*

PROVISOR, heretofore was one nominated by the pope to a benefice, before it became void, in prejudice of the right of the true patron, againſt which ſeveral ſtatutes were made. By 25 *Ed.* 3. *ſt.* 6. if any reſervation or proviſion be made by the court

of *Rome*, of any dignity or benefice, in diſturbance of the rightful donors, the king ſhall preſent for that time, if the patrons themſelves ſhall not exerciſe their right. And if the perſons lawfully preſented, ſhall be diſturbed by ſuch proviſors, then the ſaid proviſors ſhall be attached by their bodies, and impriſoned till they make fine to the king, and ſatisfaction to the party grieved. And by 27 *Ed.* 3. *c.* 1. commonly called the ſtatute of proviſors, they ſhall be put out of the king's protection, their lands and goods forfeited to the king, and their bodies impriſoned at the king's will.

PROVOST MARSHAL, is an officer of the navy, who hath the charge of priſoners taken at ſea, and is ſometimes uſed for like purpoſes at land, or to ſeiſe or arreſt any within the juriſdiction of his office. 13 *C.* 2. *c.* 9. *Cowell.*

PROXIES, are perſons appointed inſtead of others to repreſent them.

PUBERTY, is the ripeneſs of age, at which perſons may conſent to marry; which, by our law, is in women at the age of twelve, and men at fourteen.

PUBLIC WORSHIP: Every perſon above the age of ſixteen years, having no lawful or reaſonable excuſe, who ſhall abſent himſelf from church, chapel, or place of public worſhip, on *Sundays*, ſhall forfeit 12*d.* for every offence, and alſo 20*l.* a month. 1 *El.* *c.* 2. 23 *El.* *c.* 1. 29 *El.* *c.* 6.

And if any perſon ſhall diſturb a preacher in his ſermon, by word or deed, he ſhall be committed to gaol by two juſtices of the peace, for three months, and further to the next ſeſſions. 1 *Mary*, *Seſſ.* 2. *c.* 3.

And if any perſons ſhall willingly, and of purpoſe, come into any church, chapel, or other congregation, permitted by law, and diſturb the ſame, or miſuſe any preacher or teacher, he ſhall, on conviction at the ſeſſions, forfeit 20*l.* 1 *W.* *c.* 18.

PUISNE, Fr. younger, or born after.

PUNISHMENT, is the penalty of tranſgreſſing the law: and as debts are diſcharged to private perſons by payment, ſo obligations to the public, for diſturbing ſociety, are diſcharged when the offender undergoes the puniſhment inflicted for his offence.

PUR AUTER VIE. An eſtate *pur auter vie*, is where a leaſe is made of lands or tenements to a man, to hold *for the life of another perſon.* Formerly, where the tenant had the eſtate granted to himſelf only (without mentioning his heirs) during the life of another perſon, and died during the life of that other perſon; in this caſe, he that could firſt enter upon the land, might lawfully retain the poſſeſſion, during the life of ſuch other perſon, by right of occupancy; but if the eſtate had been granted to a man and his *heirs*, there the heir might, and ſtill may enter

enter and hold poſſeſſion, and is called in law, a *ſpecial occupant*, as having a ſpecial excluſive right, by the terms of the original grant, to enter upon and occupy this eſtate during the life of him by whoſe life it was holden. 2 *Black.* 259.

By the 29 *C.* 2. *c.* 3. an eſtate *pur auter vie* ſhall be deviſeable by will; and if no deviſe be made thereof, the ſame ſhall be chargeable in the hands of the heir, if it ſhall come to him by reaſon of a *ſpecial occupancy*, as aſſets by deſcent, as in caſe of lands in fee ſimple: if there be no ſpecial occupant, it ſhall go to the executors or adminiſtrators of the party that had the eſtate thereof by grant, and ſhall be aſſets in their hands for payment of debts. And by 14 *G.* 2. *c.* 20. the ſurplus of ſuch eſtate *pur auter vie*, after payment of debts, ſhall go in a courſe of diſtribution like a perſonal eſtate.

PURCHASE, (according to *Littleton*,) is the poſſeſſion of lands or tenements that a man hath by his deed or agreement, unto which poſſeſſion he cometh not by title of deſcent from any of his anceſtors, or of his kindred, but by his own deed. *Litt. ſect.* 12.

By *purchaſe*, the lawyers underſtand any method of acquiring an eſtate otherwiſe than by deſcent: it includes every other method of coming to an eſtate, but merely by inheritance, wherein the title is veſted in a perſon, not by his own act or agreement, but by the ſimple operation of law. 1 *Black.* 215. 2 *Black.* 241.

Purchaſe, indeed, in its vulgar and confined acceptation, is applied only to ſuch acquiſitions of land, as are obtained by way of bargain and ſale, for money, or ſome other valuable conſideration. But this falls ſhort of the legal idea of purchaſe; for if I *give* land freely to another, he is, in the eye of the law, a purchaſer, and falls within *Littleton*'s definition, for he comes to the eſtate by his own agreement, that is, he conſents to the gift. *Id.*

A man who hath his father's eſtate ſettled upon him in tail, before he is born, is alſo a purchaſer; for he takes quite another eſtate than the law of deſcents would have given him. *Id.*

Nay, even if the anceſtor deviſeth his eſtate to his heir at law, by will, with other limitations, or in any other ſhape than the courſe of deſcents would direct, ſuch heir ſhall take by purchaſe. *Id.*

But if a man, ſeiſed in fee, deviſeth his whole eſtate to his heir at law, ſo that the heir takes neither a greater nor a leſs eſtate by the deviſe, than he would have done without it, he ſhall be adjudged to take by deſcent, even though it be charged with incumbrances for the benefit of creditors and others, who have demands on the eſtate of the anceſtor. *Id.*

The difference, in effect, between the acquiſition of an eſtate by

by deſcent, and by purchaſe, conſiſts principally in theſe two points: 1. That by purchaſe, the eſtate acquires a new inheritable quality, and is deſcendible to the owner's blood in general, and not the blood only of ſome particular anceſtor: for when a man takes an eſtate by purchaſe, he takes it not as a fee paternal or maternal, which would deſcend only to the heirs by the father's or mother's ſide; but he takes it as an ancient fee, or a fee of indefinite antiquity, whereby it becomes inheritable to his heirs general, firſt of the paternal, and then of the maternal line. 2. An eſtate taken by purchaſe, will not make the heir anſwerable for the acts of his anceſtor, as an eſtate by deſcent will; for if the anceſtor, by any deed, obligation, covenant, or the like, bindeth himſelf and his heirs, and dieth, this deed, obligation, or covenant, ſhall be binding upon the heir, ſo far forth only as he had any eſtate of inheritance veſted in him (or in ſome other in truſt for him) by deſcent from that anceſtor, ſufficient to anſwer the charge, whether he remains in poſſeſſion, or hath aliened it before action brought; which *ſufficient* eſtate is in law called *aſſets*, from the French word *aſſez*, enough. Therefore, if a man covenants for himſelf and his heirs, to keep my houſe in repair, I can then, and then only, compel his heir to perform this covenant, when he hath an eſtate ſufficient for this purpoſe, or *aſſets* by deſcent from the covenantor: for though the covenant deſcends to the heir, whether he inherits any eſtate or no, it lies dormant, and is not compulſory, until he hath aſſets by deſcent. 2 *Black.* 243.

Where there is a purchaſer for valuable conſideration, without notice of a mortgage, the mortgagee cannot tack a bond to his mortgage, and can only be ſatisfied for his bond out of the general aſſets of the mortgagor; becauſe in this caſe, the eſtate, being not aſſets by deſcent will not be liable to the bond debt. 3 *Atk.* 659.

PURGATION, is the purging or clearing a man's ſelf of a crime, of which he is publicly ſuſpected or accuſed; and anciently, was much in uſe in this kingdom, both with reſpect to civil and eccleſiaſtical offences. With reſpect to civil offences, it was of two ſorts, either fire ordeal, or water ordeal; the former being confined to perſons of higher rank, the latter to the common people. Fire ordeal was performed either by taking up in the hand, unhurt, a piece of red-hot iron, of one, two, or three pounds weight, or elſe by walking barefoot and blindfold over nine red-hot plough-ſhares, laid lengthwiſe at unequal diſtances; and if the party eſcaped being hurt, he was adjudged innocent; but if it happened otherwiſe, he was condemned as guilty. 4 *Black.* 342.

Water ordeal was performed, either by plunging the bare arm up to the elbow in boiling water, and eſcaping unhurt thereby,

or

or by caſting the perſon ſuſpected into a river or pond of cold water, and if he floated therein, without any action of ſwimming, it was deemed an evidence of his guilt; but if he ſunk, he was acquitted. *Id.*

The eccleſiaſtical purgation was, when a man or woman lay under a common ſuſpicion, or public fame of incontinence or other vice; if he denied that he was guilty, he had a purgation appointed; which was, that he himſelf ſhould ſwear that he was innocent, and ſhould bring a certain number of compurgators, who ſhould ſwear that they believed what he ſwore was true. But this was aboliſhed by the ſtatute 13 *C.* 2. *c.* 12. which enacts, that no perſon ſhall be compelled to confeſs, or accuſe, or purge himſelf of any criminal matter, whereby he may be liable to cenſure or puniſhment.

PURLIEU, comes from the French *pur*, clear, intire, and exempt; and *lieu*, a place: that is, a place intire, clear, or exempt from the foreſt; and ſignifies thoſe grounds which *Henry* the ſecond, *Richard* the firſt, or king *John*, added to their ancient foreſts, over other men's ground, and were diſafforeſted by the ſtatute of *charta de foreſta*. 4 *Inſt.* 303.

But nevertheleſs the purlieu, as to ſome purpoſes, is foreſt ſtill, and is diſafforeſted as to the particular owners of the land, and for their benefit, and not generally to give liberty to any man to hunt the wild beaſts, and ſpoil the vert. And if thoſe beaſts do eſcape out of the foreſt into the purlieu, the king hath a property in them ſtill againſt any man, but againſt the owners of the woods and lands in which they are; and ſuch owners have a ſpecial property in them *ratione loci*, but yet ſo that they hunt them fairly, and not foreſtall them in their return towards the foreſt. *Manw.* 366.

PURPARTY, Fr. *pour part*, *(pro parte,)* is that part or ſhare of an eſtate, firſt held in common by parceners, which is by partition allotted to any of them. To make purparty, is to divide and ſever the lands which fall to parceners, which till partition they held jointly and undivided.

PURPRESTURE, (from the French *pourpris*, hence alſo *purpriſum*, an incloſure,) is where an houſe is erected, or an incloſure made, upon any part of the king's demeſne lands of his crown, or of an highway, or common ſtreet, or public water, or ſuch like public things; whereby a perſon endeavours to make that private to himſelf, which ought to be public: and for this an indictment lies at the common law, in the nature of a common nuſance. 1 *Inſt.* 277. 2 *Inſt.* 38.

PURVEYANCE, *proviſo*, was a right enjoyed by the crown of buying up proviſions and other neceſſaries by the king's purveyors, for the uſe of the royal houſehold, at an appraiſed valuation, in preference to all others, and even without conſent of the

the owner; and alſo of forcibly impreſſing the carriages and horſes of the ſubject, to do the king's buſineſs on the public roads, in the conveyance of timber, baggage, and the like, upon paying to the proprietor a ſettled price. Theſe purveyors, in proceſs of time, greatly abuſed their authority, and became a great oppreſſion to the ſubject, ſo that at laſt the crown was prevailed upon to give up this branch of the prerogative, by the ſtatute 12 *C.* 2. *c.* 24. and the parliament in recompence ſettled on the king and his ſucceſſors part of the hereditary exciſe on ale and beer. 1 *Black.* 287.

PUTURE, Sir *Edward Coke* explains, as ſignifying *poture*, or drinking. It was a demand made by the officers of the foreſt, within the circuit of their perambulation, of all kinds of victuals for themſelves, their ſervants, horſes, and dogs. Others, who call it *pulture*, explain it as ſignifying a demand in general; and derive it from the monks, who, before they were admitted, *pulſabant*, that is knocked at the gates for ſeveral days together.

QUA

QUAKERS, were originally ſo called from their quaking and trembling in their extaſies of devotion. They are, together with the other diſſenters, intitled to the benefits of the act of toleration. They are alſo, by act of parliament, diſpenſed with from the formality of taking an oath, their ſolemn affirmation being allowed inſtead of it: but they ſhall not be admitted to give evidence in a criminal caſe, unleſs they be ſworn. Their tithes, both great and ſmall, may be recovered before juſtices of the peace, to any amount not exceeding 10*l.*

QUANTUM MERUIT, (that is, as much as he has deſerved,) is an action on the caſe, grounded upon the promiſe of another, to pay him for doing any thing ſo much as he ſhould deſerve or *merit*. If a man retains any perſon to do work, or other thing for him, as a taylor to make a garment, a carrier to carry goods, or the like, without any certain agreement, in ſuch caſe, the law implies, that he ſhall pay for the ſame as much as they are worth, and ſhall be reaſonably demanded, for which this action may be brought; wherein he is at liberty to ſuggeſt, that the defendant promiſed to pay him ſo much as he reaſonably deſerved, and then to aver, that his trouble was worth ſuch a particular ſum, which the defendant has omitted to pay. But this valuation of his trouble is ſubmitted to the determination

mination of the jury, who will aſſeſs ſuch a ſum in damages as they think he really merited. 3 *Black.* 161.

QUANTUM VALEBAT, is where one takes up goods or wares of a tradeſman, without expreſsly agreeing for the price. In this caſe, the law concludes, that both parties did intentionally agree, that the real value of the goods ſhould be paid; and an action on the caſe may be brought accordingly, if the vendee refuſes to pay that value. So it is, where the law obliges one to furniſh another with goods or proviſions; as an innkeeper his gueſts, and the like. 3 *Black.* 161.

QUARE CLAUSUM FREGIT. Before the ſtatute 19 *H.* 7. *c.* 9. giving the proceſs of *capias* in all actions on the caſe, a practice had been introduced of commencing the ſuit by bringing an original writ of treſpaſs *quare clauſum fregit*, for breaking the plaintiff's cloſe *vi et armis*; which, by the old common law, ſubjected the defendant's perſon to be arreſted by writ of *capias*: and then afterwards, by connivance of the court, the plaintiff might proceed to proſecute for any other leſs forcible injury. This practice, (through cuſtom, rather than neceſſity, and for ſaving ſome trouble and expence in ſuing out a ſpecial original adapted to the particular injury,) ſtill continues in almoſt all caſes, except in actions of debt; though now, by virtue of the ſtatutes, a *capias* might be had upon almoſt every ſpecies of complaint. 3 *Black.* 281.

QUARE EJECIT INFRA TERMINUM, is a writ that lieth for a leſſee, where he is caſt out of his farm, before his term is expired, againſt the feoffee of the land, or the leſſor that ejects him; and the effect of it is, to recover his term again, and his damages. But ſince the introduction of fictitious ouſters, whereby the title may be tried againſt any tenant in poſſeſſion, (by what means ſoever he acquired it,) this action is fallen into diſuſe. 3 *Black.* 207.

QUARE IMPEDIT, is a writ which lies where one hath an advowſon, and the parſon dies, and another preſents a clerk, or diſturbs the rightful patron to preſent: in which caſe, the writ commands the diſturber to permit the plaintiff to preſent a proper clerk, or otherwiſe to appear in court, and ſhew cauſe (*quare impedit*) why he hinders him. *T. L.*

It is moſt adviſeable to bring the writ againſt both the biſhop, the pretended patron, and the clerk. For if the biſhop be left out, and the ſuit be not determined till the ſix months are paſt, the biſhop is intitled to preſent by lapſe, inaſmuch as he is not party to the ſuit. If the patron be left out, the writ will abate; for the right of the patron is the principal queſtion in the cauſe. And if the clerk be left out, and has received inſtitution before the action brought, the true patron by this ſuit may recover his right of patronage, but not the preſent turn. 3 *Black.* 247.

The

The biſhop and the clerk uſually diſclaim all title, ſave *only* the one, as ordinary, to admit and inſtitute; and the other, as preſentee of the patron, who is left to defend his own right. *Id.* 249.

If the right, on trial, be found for the plaintiff, three things are to be inquired after: 1. If the church be full; and, if full, then of whoſe preſentation; for if it be of the defendant's preſentation, then the clerk is removeable by writ brought in due time. 2. Of what value the living is; in order to aſſeſs the damages, which are directed to be given by the ſtatute 13 *Ed.* 1. *c.* 5. namely, to the amount of one year's value of the living. 3. In caſe of plenarty upon an uſurpation, whether ſix months have paſſed between the avoidance, and the time of bringing this action; for if ſo, this is a ſufficient bar to the action. *Id.*

QUARE INCUMBRAVIT, is a writ that lies, where two are in plea for the advowſon of a church, and the biſhop admits the clerk of one of them within the ſix months; then the other ſhall have this writ againſt the biſhop, that he appear and ſhew cauſe *why he hath incumbered* the church. And if it be found by verdict, that the biſhop hath incumbered the church, after a *ne admittas* delivered to him, and within ſix months after the avoidance, damages are to be awarded to the plaintiff, and the biſhop directed to diſincumber the church.

QUARE NON ADMISIT, is a writ that lies where a man hath recovered an advowſon, and ſends his clerk to the biſhop to be admitted, and the biſhop will not receive him; then he ſhall have the ſaid writ againſt the biſhop, and may recover againſt him ample ſatisfaction in damages.

QUARENTINE, is a ſpace of forty days: thus where the law ſays, that a widow ſhall remain in her huſband's capital manſion houſe for forty days after his death, during which time her dower ſhall be aſſigned, theſe forty days are called the widow's *quarentine.* So where perſons coming from infected countries, are obliged to wait forty days before they are permitted to land; this is called performing *quarentine.* 2 *Black.* 135.

Quarentine, likewiſe ſignifies a quantity of ground containing forty perches. *Leg. Hen.* 1. *c.* 16.

QUARTER SESSION, is a general court holden by the juſtices of the peace in every county or other diſtrict, having liberty to hold ſeſſions, once in every quarter of the year, at certain times limited by ſtatute, for the execution of the authority given them by the commiſſion of the peace, and by divers acts of parliament. If ſuch general court is holden at other times than the particular times ſo limited, it is then called a *general* ſeſſions; if for the execution of ſome particular branch only of their office, it is then a *ſpecial* ſeſſions.

The

The particular time in every quarter of the year, is as follows, *viz.* in the firſt week after the *Epiphany*, in the firſt week after the clauſe of *Eaſter*, in the firſt week after the tranſlation of St. *Thomas* the Martyr, and in the firſt week after the feaſt of St. *Michael*. If any of the ſaid feaſt days falleth on a *Sunday*, the ſeſſions ſhall be holden in the week following, and not in that ſame week. 2 *H.* 5. *ſt.* 1. *c.* 4. 2 *H. Hiſt.* 49.

QUEEN ANNE's BOUNTY. See FIRST FRUITS.

QUE ESTATE, *quorum ſtatum*, as much as to ſay, *whoſe eſtate* he hath; which is a plea where a man, intitling another to lands, ſaith, that he and they *whoſe eſtate he hath* have enjoyed the ſame. A man cannot preſcribe in any thing by a *que eſtate* that lies in grant, and cannot paſs without deed or fine; but *in him and his anceſtors* he may, becauſe he comes in by deſcent without any conveyance. 1 *Inſt.* 121.

So in the caſe of an advowſon appendant to a manor, he may preſcribe that he and they whoſe eſtate he hath in the manor, have uſed to hold the ſame; but if it be an advowſon in groſs, or a diſtinct inheritance, and not appendant, then he can only preſcribe in him and his anceſtors. 2 *Black.* 266.

QUINTO EXACTUS, is one that hath been five times proclaimed in the county court, in order to outlawry; and if he doth not then appear, he is by the judgment of the coroners returned outlawed.

QUI TAM, is when an information is exhibited againſt any perſon, on a penal ſtatute at the ſuit of the king and the party who is informer, where the penalty for breach of the ſtatute is to be divided between them; and ſuch proceſs is called a *qui tam*, from thoſe words in the declaration reſpecting the proſecutor, when the proceedings were in Latin, "*qui tam pro domino* "*rege quam pro ſeipſo proſequitur.*"

QUIT CLAIM, *quieta clamatio*, is the quitting, releaſing, or giving up all claim or title.

QUIT RENTS, *quieti redditus*, are ſo called becauſe the tenant thereby goes *quit* and free of all other ſervices. When theſe payments were reſerved in ſilver or white money, they were anciently called *white rents*, or *blanch farms*, *redditus albi*; in contradiſtinction to rents reſerved in work, grain, or the like; which were called *redditus nigri*, or *black maile*. 2 *Black.* 42.

QUOD CUM, in indictments or the like, being only by way of recital, (*that whereas* ſuch a one being ſo and ſo,) and not a poſitive charge, is inſufficient. 2 *Haw.* 227.

QUOD EI DEFORCEAT. Anciently if the owners of a particular eſtate, as for life, in dower, by the curteſy, or in fee tail, were barred of the right of poſſeſſion by a recovery had againſt them, through their default or non-appearance in a poſ-

ſeſſory

ſeſſory action, they were abſolutely without any remedy by the common law; as a writ of right doth not lie for any, but ſuch as claim to be tenants of the fee ſimple. Therefore, the ſtatute of the 13 *Ed.* 1. *c.* 4. gives a new writ for ſuch perſons, after their lands have been ſo recovered againſt them by default, called a *quod ei deforceat;* which, though not ſtrictly a writ of right, ſo far partakes of the nature of one, as that it will reſtore the right to him, who has been thus unwarily deforced by his own default. 3 *Black.* 193.

QUOD PERMITTAT, is a writ that lies for one that is diſſeiſed of his common of paſture; ſo of a turbary, piſcary, fair, market, and the like. The heir of the perſon diſſeiſed may have this writ againſt the heir of the diſſeiſor: ſo a perſon may have a *quod permittat* againſt a diſſeiſor in the time of his predeceſſor. *T. L.*

QUOD PERMITTAT PROSTENERE, is a writ commanding the defendant to permit the plaintiff to abate the nuſance complained of, *(quod permittat proſternere,)* or otherwiſe to appear in court, and ſhew cauſe why he will not. On this writ the plaintiff ſhall have judgment to abate the nuſance, and to recover damages: but the proceedings on this writ being tedious and expenſive, it is now diſuſed, and hath given way to a ſpecial action on the caſe.

QUO MINUS, is a writ in the exchequer, wherein the plaintiff ſuggeſts that he is the king's farmer or debtor, and that the defendant hath done him the injury complained of, *quo minus ſufficiens exiſtit*, by which he is the leſs able to pay to the king his debt or rent. This writ was formerly allowed only to ſuch perſons as were real tenants or debtors to the king; but now the practice is become general, for the plaintiff to ſurmiſe that he is the king's debtor, although he is no way indebted to him, and the words are mere matter of form, and the truth thereof never inquired into, but the form is retained to give juriſdiction to the court of exchequer.

QUO WARRANTO, is in nature of a writ of right for the king, againſt him who claims or uſurps any office, franchiſe, or liberty, to inquire by what authority he ſupports his claim, in order to determine the right: it lies alſo in caſe of non-uſer, or long neglect of a franchiſe, or miſuſer, or abuſe of it; being a writ commanding the defendant to ſhew *by what warrant* he exerciſeth ſuch a franchiſe, having never had any grant of it, or having forfeited it by neglect or abuſe. 3 *Black.* 262.

This was originally returnable before the king's juſtices at *Weſtminſter*, but afterwards only before the juſtices in eyre, by virtue of the ſtatutes of *quo warranto*, 6 *Ed.* 1. *c.* 1. and 18 *Ed.* 1. *ſt.* 2.; but ſince thoſe juſtices have given place to the king's temporary commiſſioners of aſſiſe, (the judges on the ſeveral circuits,)

cuits,) this branch of the ſtatutes hath loſt its effect; and writs of *quo warranto* (if brought at all) muſt now be proſecuted and determined before the king's juſtices at *Weſtminſter:* and in caſe of judgment for the defendant, he ſhall have an allowance of his franchiſe; but in caſe of judgment for the king, for that the party is intitled to no ſuch franchiſe, or hath diſuſed or abuſed it, the franchiſe is either ſeized into the king's hands, to be granted out again to whomever he ſhall pleaſe; or, if it be not ſuch a franchiſe as may ſubſiſt in the hands of the crown, there is merely judgment of ouſter, to turn out the party who uſurped it. *Id.*

The judgment on a writ of *quo warranto* (being in the nature of a writ of right) is final and concluſive, even againſt the crown; which, together with the length of its proceſs, probably occaſioned that diſuſe into which it is now fallen, and introduced a more modern method of proſecution by *information* filed in the court of king's bench, by the attorney general, *in the nature of a writ of quo warranto*, wherein the proceſs is ſpeedier, and the judgment not quite ſo deciſive againſt the crown. This is properly a criminal method of proſecution, as well to puniſh the uſurper by a fine for the uſurpation of the franchiſe, as to ouſt him, or ſeize it for the crown; but hath been long applied to the mere purpoſes of trying the civil right, ſeizing the franchiſe, or ouſting the wrongful poſſeſſor; the fine being nominal only. 3 *Black.* 263.

This proceeding, by virtue of the ſtatute 9 *An. c.* 20. is now applied to the deciſion of corporation ſuits, between party and party, without any intervention of the prerogative, which permits an information *in nature of a quo warranto* to be brought, with leave of the court, at the relation of any perſon deſiring to proſecute the ſame, (who is called the *relator,*) againſt any perſon uſurping, intruding into, or unlawfully holding any franchiſe or office in any city, borough, or town corporate; provides for its ſpeedy determination, and directs that, if the defendant be convicted, judgment of ouſter (as well as a fine) may be given againſt him, and that the relator ſhall pay or receive coſts, according to the event of the ſuit. 3 *Black.* 264.

R A C

RACK, an engine to extort confeſſion from perſons accuſed, which is in uſe at this day in countries governed by the civil law: but the trial of guilt or innocence, by this

this method, is utterly unknown to the laws of *England*; though once, when the dukes of *Exeter* and *Suffolk*, and other miniſters of *Hen.* 6. had laid a deſign to introduce the civil law into this kingdom, as the rule of government, for a beginning thereof, they erected a rack for torture, which was called in deriſion, the duke of *Exeter's* daughter, and ſtill remains in the tower of *London*, where it was occaſionally uſed as an engine of ſtate, more than once, in the reign of queen *Elizabeth*. But when upon the aſſaſſination of *Villiers*, duke of *Buckingham*, by *Felton*, it was propoſed in the privy council to put the aſſaſſin to the rack, in order to diſcover his accomplices; the judges, being conſulted, declared unanimouſly, that no ſuch proceeding was allowable by the laws of *England*. 4 *Black.* 326.

RACK RENT, is the full extended yearly value of a tenement let to farm.

RANSOM, *redemptio*, is properly the ſum paid for redeeming a captive or priſoner of war. Sometimes, in our law, it is taken for a ſum of money paid for pardoning ſome great offence, and ſetting the offender at liberty, who was under impriſonment.

When a ſtatute ſaith, that ſuch a perſon ſhall pay fine and ranſom to the king, in legal underſtanding ſuch fine and ranſom are all one; for if they were divers, then ſhould the party pay two ſums, one for the fine, another for the ranſom, which was never done. 1 *Inſt.* 127.

If a ſhip was taken by the enemy, and ranſomed, the ranſom money muſt be raiſed out of the profits, notwithſtanding any former mortgage of the ſhip; for if the ſhip had not been redeemed, the whole mortgage money muſt have been loſt; and inſurers always pay a part of the ranſom money. 2 *Eq. Abr.* 690.

RAPE OF WOMEN, is where a man hath carnal knowledge of a woman by force, and againſt her will. Alſo if any perſon ſhall unlawfully and carnally know and abuſe any woman child under the age of ten years, whether with her conſent or againſt it, he ſhall be puniſhed as for a rape. And it is not a ſufficient excuſe in the raviſher, to prove that the woman is a common ſtrumpet; for ſhe is ſtill under the protection of the law, and may not be forced. Nor is it any excuſe, that ſhe conſented after the fact. 1 *Haw.* 108.

The party raviſhed may give evidence on oath, and is in law a competent witneſs; but the credibility of her teſtimony, and how far forth ſhe is to be believed, muſt be left to the jury, and is more or leſs credible according to the circumſtances of fact that concur in that teſtimony; as if the witneſs be of good fame; if ſhe preſently diſcovered the offence, and made purſuit after the offender; ſhewed circumſtances and ſigns of the

the injury, whereof many are of that nature, that only women are the moſt proper examiners and inſpectors; if the place wherein the fact was done, was remote from inhabitants or paſſengers; if the offender fled for it; theſe and the like are concurring evidences to give greater probability to her teſtimony, when proved by others as well as herſelf. But, on the other ſide, if ſhe concealed the injury for any conſiderable time after ſhe had opportunity to complain; if the place where the fact was ſuppoſed to be committed was near to inhabitants, or common recourſe of paſſengers, and ſhe made no outcry where it is probable ſhe might be heard by others; or if a man prove himſelf to be in another place, or in other company at the time ſhe charges him with the fact; or if ſhe is wrong in the deſcription of the place, or ſwears the fact to be done in a place where it was impoſſible the man could have acceſs to her at that time; as if the room was locked up, and the key in the cuſtody of another perſon; theſe, and the like circumſtances, carry a ſtrong preſumption that her teſtimony is falſe or feigned. 1 *H. H.* 633.

Of old time rape was felony, for which the offender was to ſuffer death; afterwards the offence was made leſſer, and the puniſhment changed from death to the loſs of thoſe members whereby he offended; that is, it was changed to caſtration, and loſs of his eyes, unleſs ſhe that was raviſhed, before judgment, demanded him for her huſband. Afterwards, by the ſtatute 3 *Ed.* 1. *c.* 13. it was made a treſpaſs, ſubjecting the offender to two years impriſonment, and a fine at the king's will. By 13 *Ed.* 1. *c.* 34. it was again made felony; and at laſt, by 18 *El. c.* 7. was excluded from the benefit of clergy. 2 *Inſt.* 180.

RASURE, from *rado*, to ſhave, is where part of the writing is ſcraped or ſcratched out, and where a deed is altered in any material part by the plaintiff himſelf, or by a ſtranger without the privity of the obligee, be it either by raſure, interlineation, or addition, or by drawing the pen through a line, or through the middle of any word material, this will vacate the deed, unleſs a memorandum be made thereof at the time of the execution and atteſtation. And if the obligee himſelf alter the deed after the execution thereof, although it be in words not material, yet this ſhall vacate the deed: but if a ſtranger, without his privity, alter the deed in any point not material, this ſhall not vacate the deed. 11 *Co.* 27.

If a deed contain divers diſtinct and abſolute covenants, if any of the covenants be altered by raſure, addition, or interlineation, this misfeazance *ex poſt facto* ſhall vacate the whole deed; for though they be ſeveral covenants, yet it is but one deed. *Id.* 28.

RATIONABILI PARTE BONORUM, is a writ that lieth where the wife or ſons and daughters of the deceaſed cannot have their reaſonable part of the deceaſed's goods, after the debts are paid, and funeral expences ſatisfied. *F. N. B.* Of which goods the children, if there were any, ſhould have one part; and the wife, if ſhe ſurvived, another part; if only a wife, or only children, they ſhould reſpectively in either caſe take one moiety, and the adminiſtrator the other. *Bracton.* 60.

RAVISHMENT. See Rape.

RAVISHMENT OF WARD, was a writ that lay for the guardian by knight's ſervice, or in ſocage, againſt a perſon who took from him the body of his ward. By the ſtatute 12 *C.* 2. *c.* 24. this writ is taken away as to lands held by knight's ſervice, but not where there is guardian in ſocage, or appointed by will. But the proceedings by this kind of writ are now antiquated, and the moſt uſual method of redreſſing all complaints relative to wards and guardians, is by application to the court of chancery, which is the ſupreme guardian, and has the ſuperintendent juriſdiction of all the infants in the kingdom. 3 *Black.* 141.

REAL ACTIONS, are thoſe which concern the realty only, being ſuch whereby the plaintiff (who in this caſe is called the demandant) claims title to have any lands or tenements, rents, commons, or other hereditaments, in fee ſimple, fee tail, or for term of life. By theſe actions formerly all diſputes concerning real eſtates were decided; but they are now moſtly laid aſide in practice, upon account of the great nicety required in their management, and the inconvenient length of their proceſs, a much more expeditious method of trying titles being ſince introduced by other actions perſonal and mixed. 3 *Black.* 117.

REALTY, relates to *real* property, as lands and tenements, in contradiſtinction to *perſonalty*, which concerns things belonging to a man's perſon. A *real action*, is that whereby the plaintiff claims title to lands, tenements, rents, commons, or other hereditaments; a *perſonal action* is ſuch whereby a man claims a debt, or perſonal duty, or damages in lieu thereof. 3 *Black.* 117.

REASONABLE PART, was the portion of goods of a perſon deceaſed, which, by our ancient law, belonged to his wife and children; which the owner could not bequeath by will, nor the ordinary diſpoſe of in caſe of inteſtacy. For which, ſee Rationabili Parte Bonorum.

REBELLION, commiſſion of, is when, on diſobedience to the ſeveral proceſſes of the court of chancery for cauſing the defendant to appear, the court iſſues a writ called a *commiſſion of rebellion*, directed to ſeveral commiſſioners therein named, to attach

attach him, wherever he may be found, as a rebel and contemner of the king's laws and government. 3 *Black.* 444.

REBUTTER, (from *bouter*, Fr. *repellere*, to put back,) is the anſwer of the defendant to the plaintiff's *furrejoinder*. But it is ſeldom that the parties go ſo far in pleading as to a rebutter.

RECAPTION, that is, *retaking*, is when any one hath deprived another of his property in goods or chattels perſonal, or wrongfully detains one's wife, child, or ſervant; in which caſe the owner of the goods, and the huſband, parent, or maſter, may lawfully claim and *retake* them, wherever he happens to find them, ſo it be not in a riotous manner, or attended with a breach of the peace; for this right of recaption ſhall not be exerted, where ſuch exertion muſt occaſion ſtrife and bodily contention, or endanger the peace of ſociety. If, for inſtance, my horſe is taken away, and I find him in a common, a fair, or a public inn, I may lawfully ſeize him to my own uſe; but I cannot juſtify breaking open a private ſtable, or entering on the grounds of a third perſon to take him, except he be felonioufly ſtolen; but muſt have recourſe to an action at law. 3 *Black.* 4.

There is alſo a writ of recaption, which is, where goods have been diſtrained for rent, or other ſervices, and are again diſtrained for the ſame thing, pending the plea in the county court, or before the juſtices. *F. N. B.*

RECEIPTS. By the 23 *G.* 3. *c.* 49. certain ſtamp duties are impoſed on receipts given on the payment of money, where the ſum amounts to 2*l.*, or upwards; ſubject nevertheleſs to ſeveral exceptions, as ſet forth in the act, and alſo in the act of 24 *G.* 3. *c.* 7. *ſeſſ.* 1. *ſ.* 6, 7.

RECEIVING STOLEN GOODS, knowing them to be ſtolen, is a high miſdemeanor at the common law, and by ſeveral ſtatutes is made felony and tranſportation, and in ſome particular inſtances, felony without benefit of clergy.

RECITAL, in a deed, is the ſetting forth ſuch conſiderations and matters of fact as are neceſſary to explain the reaſons upon which the tranſaction is founded. 2 *Black.* 298.

So in the aſſignment of leaſes and mortgages, it is uſual to recite part of the ancient or former deeds in the premiſes. *Wood. b.* 2. *c.* 3.

Yet a recital is not concluſive, becauſe it is not a direct affirmation. 1 *Inſt.* 352.

RECOGNIZANCE, is an obligation of record, which a man enters into before ſome court of record, or magiſtrate duly authoriſed, with condition to do ſome particular act; as to appear at the aſſizes or quarter ſeſſions, to keep the peace, to pay a debt, or the like. It is in moſt reſpects like another

bond, the difference being chiefly this, the bond is the creation of a freſh debt, or obligation *de novo*; the recognizance is an acknowledgement of a former debt upon record; the form whereof is, "that *A. B. doth acknowledge to owe to our ſovereign* "*lord the king*, (to the plaintiff, to C. D., or the like,) *the ſum* "*of ten pounds*," with condition to be void on performance of the thing ſtipulated: in which caſe the king, the plaintiff, C. D., or the like, is called the cognizee, "is *cui cognoſcitur*;" as he that enters into the recognizance is called the cognizor, "is *qui cognoſcit*." This being either certified to, or taken by the officer of ſome court, is witneſſed only by the record of that court, and not by the party's ſeal; ſo that it is not in ſtrict propriety a deed, though the effects of it are greater than of a common obligation; being allowed a priority in point of payment, and binding the lands of the cognizor from the time of inrollment on record. There are alſo other recognizances of a private kind, in nature of a *ſtatute ſtaple*, by virtue of the ſtatute 23 *H.* 8. *c.* 6. which alſo are a charge upon real property. 2 *Black.* 341.

RECORD, is a memorial or remembrance in rolls of parchment of the proceedings and acts of a court of juſtice, which hath power to hold plea, according to the courſe of the common law, of real or mixed actions, or of actions *quare vi et armis*, or of perſonal actions, whereof the debt or damage amounts to 40*s.* or above, which are called courts of record, and are created by act of parliament, letters patent, or preſcription. 1 *Inſt.* 260.

It is derived of *recordari*, to keep in remembrance; but in legal acceptation, records are reſtrained to the rolls of ſuch courts only as are courts of record, and not the rolls of inferior or any other courts which proceed not according to the law and cuſtom of *England*. And the rolls being the records or memorials of the judges of the courts of record, import in them ſuch uncontrollable credit, as they admit no averment, plea, or proof to the contrary. And if ſuch a record be alleged, and it be pleaded that there is no ſuch record, it ſhall be tried only by itſelf: the reaſon whereof is apparent, for otherwiſe, there would never be any end of controverſies. *Id.*

During the term wherein any judicial act is done, the record remaineth in the breaſt of the judges of the court, and therefore the roll is alterable during that term as the judges ſhall direct; but when the term is paſt, then the record is in the roll, and admits no alteration, averment, or proof to the contrary. *Id.*

Every court of record is the king's court; wherein if the judges do err, a writ of error lieth. But the county court, the hundred court, the court baron, and ſuch like, are no courts of record, and therefore the proceedings therein may be denied

denied and tried by jury, and upon their judgments a writ of error lieth not, but a writ of falſe judgment; for that they are no courts of record, becauſe they cannot hold plea of debt or treſpaſs, if the debt or damage do amount to 40*s.*, or of any treſpaſs *vi et armis*. 1 *Inſt.* 117.

A *debt* of record is a ſum of money, which appears to be due by the evidence of a court of record: thus, when any ſpecific ſum is adjudged to be due to the plaintiff from the defendant, on an action or ſuit at law, this is a contract of the higheſt nature, being eſtabliſhed by the ſentence of a court of judicature. Recognizances alſo, and ſtatutes merchant and of the ſtaple, if forfeited by non-performance of the condition, are ranked among debts of record; becauſe the contract, on which they are founded, is witneſſed by the higheſt kind of evidence; namely, by matter of record. 2 *Black.* 405.

RECORDARE, is a writ commanding the ſheriff to make a *record* of the proceedings in the county court, by writ or without writ; and to ſend the record up to the king's bench or common pleas: it is in the nature of a certiorari. The plaintiff may remove the plaint in the county court without cauſe ſhewed; but the defendant cannot remove it without cauſe expreſſed in the writ, as upon a plea of freehold, or the like. But if the plaint is in another court, neither the plaintiff nor defendant can remove it without cauſe ſhewed. 2 *Inſt.* 339.

RECOVERY:

1. *Recovery, what.*
2. *Who may ſuffer a recovery.*
3. *Of what things.*
4. *Manner of ſuffering a recovery.*
5. *Effect of a recovery ſuffered.*

1. *Recovery, what.*

COMMON recoveries were invented by the eccleſiaſtics to elude the ſtatutes of mortmain; and afterwards encouraged by the fineſſe of the courts of law, in order to put an end to all fettered inheritances, and bar not only all eſtates tail, but alſo all remainders and reverſions expectant thereon. *Black. b.* 2. *c.* 21. *ſ.* 4.

A common recovery is ſo far like a fine, that it is a ſuit or action, either actual or fictitious; and in it the lands are recovered againſt the tenant of the freehold; which recovery, by a ſuppoſed adjudication of the right, binds all perſons, and veſts a free and abſolute fee ſimple in the recoverer. *Id.*

And a common recovery is now looked upon as the beſt aſſurance, except an act of parliament, that purchaſers can have.

There muſt be three perſons at leaſt to make a common recovery; a *recoveror*, a *recoveree*, and a *vouchee*. The *recoveror* is the plaintiff or demandant, that brings the writ of entry. The *re-*

ccveree is the defendant or tenant of the land, againſt whom the writ is brought. The *vouchee* is he whom the defendant or tenant *voucheth* or calls *(vocat)* to warranty of the land in demand, either to defend the right, or to yield him other lands in value, according to a ſuppoſed agreement. *Wood. b.* 2. *c.* 3.

And this being by conſent and permiſſion of the parties, it is therefore ſaid that a recovery is *ſuffered.*

2. *Who may ſuffer a recovery.*

TENANT *for years* cannot ſuffer a recovery, for he is not tenant of the freehold. *Wood. Ibid.*

And by the 14 *Eliz. c.* 8. no tenant *for life,* of any ſort, can ſuffer a recovery, ſo as to bind them in remainder or reverſion.

But if he, or the tenant to the *præcipe,* (that is, the recoveree, ſo called from thoſe words in the writ, when the proceedings were in Latin, *præcipe quod reddat,)* vouches the remainder man, and he appears and vouches the common vouchee, it is good. *Blackſt. b.* 2. *c.* 21. *ſ.* 4.

It is now fully ſettled, that a *tenant in tail* may, if he pleaſes, either turn his eſtate tail into a fee, or alienate it for his own benefit, by duly ſuffering a common recovery. But he muſt have a ſufficient eſtate and power to qualify him to ſuffer ſuch recovery: he muſt either be tenant in tail in *poſſeſſion,* or he muſt have a concurrence of the tenant for life; by which tenant for life is meant, not the leſſee of the land under a beneficial leaſe, but the original tenant for life claiming under the family ſettlement, and having a life eſtate ſettled upon him, prior (in order of ſucceſſion) to the other's remainder in tail. *Bur. Manſf.* 1072.

By the 11 *H.* 7. *c.* 20. no *woman, after her huſband's death,* ſhall ſuffer a recovery of lands, ſettled on her in tail by way of jointure, by her huſband or any of his anceſtors.

A *mortgagee* cannot ſuffer a recovery, ſo as to bar the mortgagor of the equity of redemption.

If tenant in tail makes a mortgage or a leaſe for years, or charges the land with any other incumbrance, and afterwards ſuffers a recovery, this lets in all the incumbrances. 1 *Wilſ.* 276.

3. *Of what things.*

A COMMON recovery may be had of ſuch things, for the moſt part, as paſs by a fine. An uſe may be raiſed upon a recovery, as well as upon a fine; and the ſame rules are generally to be obſerved and followed for the guiding and directing the uſes of a recovery, as are obſerved for the guidance and direction of a fine. *Weſt. Symb. ſect.* 2, 3. 1 *Co.* 15.

If lands are *copyhold,* a common recovery, ſuffered in the com-

mon

mon pleas, will not paſs ſuch lands; but if lands are cuſtomary freeholds, and paſs by ſurrender in a borough court, a recovery in the common pleas of ſuch lands may be good. 1 *Atk.* 474.

4. *Manner of ſuffering a recovery.*

In order to ſuffer a common recovery, the tenant of the freehold agrees with the demandant (ſome friend) that he, the demandant, ſhall bring his action real againſt the ſaid tenant, as though he, the demandant, had good right to the land, and the tenant no right of entry to the ſame; but after a diſſeiſin which a ſtranger (commonly one *Hugh Hunt*) had unjuſtly made, whereas indeed the demandant never had poſſeſſion thereof, nor the ſtranger. The tenant, appearing to the writ, vouches or calls to warranty ſome perſon (commonly the crier of the court, who thereupon is ſtyled the *common* vouchee) who is ſuppoſed to warrant the title. This vouchee appears, as though he would defend the title: whereupon the demandant deſires leave of the court to imparl, or confer with the vouchee in private; which is allowed him. And ſoon afterwards, the demandant returns to court, but the vouchee diſappears, or makes default: whereupon judgment is given for the demandant to recover the land againſt the defendant or tenant in tail, and he to recover in value againſt the common vouchee. But this recovery in value is only imaginary; and the lands are now abſolutely veſted in the ſaid recoveror by judgment of law, and ſeiſin thereof is delivered by the ſheriff of the county; ſo that this colluſive recovery operates merely in the nature of a conveyance in fee ſimple, and is taken for a bar of the tail for ever. *Wood. b.* 2. *c.* 3.

A recovery is either with a *ſingle* voucher, (as above,) or with a *double* voucher; that is, where the tenant voucheth one, who voucheth over the common vouchee: and this is the moſt common, and the ſafeſt way. Alſo, there may be more vouchees, or more vouchers over, where three or more are vouched; but the laſt is always the common vouchee. *Id.*

The common recovery with *ſingle* voucher is, to bar the tenant in tail and his heirs of ſuch eſtate tail which is in his *poſſeſſion*, (not where he is put to a writ of right,) with the remainder dependant upon the ſame, and the reverſion expectant, which others have; and of all leaſes and incumbrances, derived out of ſuch remainder or reverſion. The common recovery with *double* voucher is, to bar the firſt voucher and his heirs of every ſuch eſtate as *at any time was in him or any of his anceſtors*, whoſe heir he is of ſuch eſtate; and all others, of ſuch right to remainder or reverſion, as was at any time dependent or expectant upon the ſame; and of all leaſes and incumbrances derived out of them: and it will alſo be a bar of ſuch eſtate, whereof the tenant was then

then ſeiſed in reverſion or remainder, expectant or dependant upon the ſame. *Id.*

In a recovery with *ſingle* voucher, the *præcipe* or writ of entry muſt be brought againſt the tenant in tail in poſſeſſion, and he to vouch the common vouchee. But in a recovery with *double* voucher, a tenant of the freehold muſt be made by fine or deed, who is commonly called the tenant to the *præcipe*, and the writ muſt be brought againſt him, and he to vouch the tenant in tail, and he the common vouchee, who pleads, and after makes default; and then judgment is given for the demandant againſt the tenant to the *præcipe*, and he to recover in value againſt the firſt vouchee, and he again to recover in value againſt the ſecond or common vouchee. *Id.*

5. *Effect of a recovery ſuffered.*

THE effect of a common recovery is, that it is an abſolute bar, not only of all eſtates tail, but of remainders and reverſions, expectant on the determination of ſuch eſtates. So that a tenant in tail may, by this method of aſſurance, convey the lands held in tail to the recoveror, his heirs and aſſigns, abſolutely free and diſcharged of all conditions and limitations in tail, and of all remainders and reverſions. *Black. b. 2. c. 21. ſ. 4.*

But *ſtrangers* are not barred by a recovery, or by non-claim, as in a fine; but only parties or privies to the eſtate in poſſeſſion, remainder, or reverſion. 3 *Co.* 5.

If tenant in tail, by marriage ſettlement or otherwiſe, on the part of the mother, with reverſion in fee in himſelf, on the part of the mother alſo, ſuffers a recovery to the uſe of himſelf in fee, this deſtroys the title by deſcent on the part of the mother, and gains him an abſolute fee, deſcendible to his heirs general, and not to the heirs on the part of his mother. *Str.* 1179.

A *feme covert*, with her huſband, is bound by a recovery; but, as in a fine, ſhe ought to be examined. *Wood. b. 2. c. 3.* And by a rule of court, an affidavit thereof made and annexed to the warrant of attorney.

A widow of the tenant to the *præcipe* in a recovery is not intitled to dower, foraſmuch as he is only a mere inſtrument for the purpoſe of form only. *Bur. Manſf.* 117.

By the 34 & 35 *H.* 8. *c.* 20. no recovery had againſt tenant in tail of the *king's gift*, (the remainder or reverſion being in the *king*,) ſhall be barred by a common recovery; nor the remainder or reverſion, which is at the time of the recovery in the king.

By the 21 *H.* 8. *c.* 15. a *leſſee for years* ſhall not be ouſted by a recovery, but ſhall enjoy his term againſt the recoveror, according to his leaſe.

If

If a recovery be ſuffered without any good conſideration, and without any uſes declared, this, like other conveyances, enures only to the uſe of him who ſuffers it. And if any conſideration appears, yet as a common recovery conveys an abſolute eſtate, without any limitations, to the recoveror, this aſſurance could not be made to anſwer the purpoſes of family ſettlement, unleſs directed by other more complicated deeds, wherein particular uſes can be more particularly expreſſed. If ſuch deed is made previous to the recovery, it is called a deed to *lead* the uſes of the recovery; if ſubſequent, it is called a deed to *declare* the uſes. *Black. b.* 2. *c.* 7.

RECREANT, cowardly, faint-hearted. A term uſed in the ancient trial by battel, when one of the combatants yielded the conteſt; in which caſe, he from thenceforth became infamous, and loſt his *liberam legem*, ſo as never to be put upon a jury, nor admitted as a witneſs in any cauſe. 3 *Black.* 340.

RECTOR, *governor*, is he that hath that part of the revenues of a church, which heretofore was appropriated to ſome of the monaſteries; as a *vicar* hath the other part, which was ſet out for the maintenance of him that was to ſupply the cure; or if the church was never appropriate, nor had any vicar, then the rector, as ſole incumbent, hath the whole revenues.

RECUSANT, is one who refuſeth to go to church, and worſhip God after the manner of the church of England; a *popiſh* recuſant, is a papiſt who ſo refuſeth; and a *popiſh recuſant convict*, is a papiſt legally convicted thereof. See PAPISTS.

REDDENDUM, is a clauſe in a deed, whereby the grantor doth create or reſerve ſome new thing to himſelf out of what he had before granted; as, "rendering therefore yearly, the ſum "of 10*s.* or a pepper corn, or two days ploughing," or the like. Under the pure feudal ſyſtem, this render, *redditus*, or rent, conſiſted in chivalry, principally of military ſervices; in villenage, of the moſt ſlaviſh offices; and in ſocage, it uſually conſiſts of money, though it may conſiſt of ſervices ſtill, or of any other certain profit. To make a *reddendum* good, if it be of any thing newly created by the deed, the reſervation muſt be to the grantor, and not to any ſtranger to the deed. But if it be of ancient ſervices, or the like, annexed to the land, then the reſervation may be to the lord of the fee. 2 *Black.* 299.

RE-ENTRY, is the reſuming or retaking a poſſeſſion lately had: as if a man makes a leaſe of lands to another, he thereby quits the poſſeſſion; and if he covenants with the leſſee, that for non-payment of rent at the day, it ſhall be lawful for him to reenter; this is as much as if he conditioned to take again the land into his own hands, and to recover the poſſeſſion by his own act, without the aſſiſtance of the law. But words in a deed give

no

no re-entry if a *clauſe* of re-entry be not added. *Wood's Inſt.* 140.

In a feoffment, leaſe, *&c.* one may reſerve a rent on condition, that if the rent is behind he ſhall re-enter, and hold the lands till he is ſatisfied or paid the rent in arrear; and in this caſe, if the rent is behind, he may re-enter; though when the feoffee, *&c.* pays or tenders on the land all the arrears, he may enter again. *Lit.* 327. And the feoffor, *&c.* by his re-entry, gaineth no eſtate of freehold, but an intereſt, by the agreement of the parties, to take the profits in the nature of a diſtreſs. Here the profits ſhall not go in part of ſatisfaction of the rent; but it is otherwiſe, if the feoffor was to hold the land till he was paid by the profits thereof. *Id.*

All perſons who would re-enter on their tenants for non-payment of rent, are to make a demand of the rent; and to prevent the re-entry, tenants are to tender their rent. 1 *Inſt.* 201.

If there is a leaſe for years, rendering rent, with condition, that if the leſſee aſſigns his term the leſſor may re-enter; and the leſſee aſſigneth, and the leſſor receiveth the rent of the aſſignee, not knowing or hearing of the aſſignment, he may re-enter, notwithſtanding the acceptance of the rent. 3 *Rep.* 65. *Cro. El.* 553.

REFUSAL, *of an executorſhip*, is where one that is named executor in a will declines the acceptance of that office; in which caſe, the refuſal muſt not be by word only, but muſt be entered and recorded in court. But if he hath already meddled with the goods, he cannot afterwards refuſe. *Swinb.* 384.

Refuſal, of a clerk preſented to a benefice, is when the biſhop on a preſentation will not admit him; as if he be an heretic, excommunicate, outlawed, under age, or of evil life and converſation. In which caſe, if the refuſal is for any matter of eccleſiaſtical cognizance, the ordinary is to give notice to the patron, becauſe the patron, being uſually a layman, is not ſuppoſed to have knowledge of it, elſe the biſhop cannot collate by lapſe; but if the cauſe be temporal, the biſhop is not bound to give notice. If an action at law is brought by the patron againſt the biſhop for refuſing his clerk, the biſhop muſt aſſign the cauſe; and if the cauſe be of a temporal nature, and the fact admitted, (as for inſtance, outlawry,) the judges of the king's courts muſt determine its validity; but if the fact be denied, it muſt be determined by a jury. If the cauſe be of a ſpiritual nature, (as *hereſy*, particularly alleged,) the fact, if denied, ſhall alſo be determined by a jury; and if the fact be admitted or found, the court, upon conſultation and advice of learned divines, ſhall decide its ſufficiency. If the cauſe be want of learning, the biſhop need not ſpecify in what points the clerk is deficient, but the court

ſhall

ſhall write to the metropolitan to re-examine him, and certify his qualification; which certificate of the archbiſhop is final. 1 *Black.* 389.

REGARD (court of) is a foreſt court to be holden every third year, for the lawing or expeditation of maſtiffs; which is done by cutting off the claws of the forefeet, to prevent them from running after deer. No other dogs but maſtiffs were permitted to be kept within the king's foreſt; it being ſuppoſed that the keeping of theſe, and theſe only, was neceſſary for the defence of a man's houſe. 3 *Black.* 72.

REGARDANT, is a word relating to the ſtate of villenage. For there is a *villein regardant*, and a *villein in groſs*. A villein *regardant*, is where a man is ſeiſed of a manor, unto which there is a villein annexed; ſuch villein is called *regardant*, becauſe he has the charge to do all the baſe and inferior ſervices; and his ſervice is not certain, but he muſt have *regard* to that which he is commanded unto. A villein *in groſs*, is not annexed to any manor, but belongs to the *perſon* of the lord, and is transferrable by deed from one to another. 1 *Inſt.* 120.

REGISTER, is an officer of ſome court, who hath the cuſtody of the records and archives of that court; and the repoſitory where theſe records are kept, is called the *regiſtry*.

Regiſter is alſo the name of a *book*, wherein are entered moſt of the forms of writs original and judicial uſed at common law, called the *regiſter of writs*; which is one of the moſt ancient and authoritative books of the common law.

In every pariſh is to be kept a *regiſter book*, wherein the births, marriages and burials in ſuch pariſh are to be recorded: and the regiſter of marriages is particularly inforced by the ſtatute 26 *G.* 2. *c.* 33. in order to prevent clandeſtine marriages; the forging or altering of which, or making any falſe entry therein is made felony without benefit of clergy.

And by the 23 *G.* 3. *c.* 67. a ſtamp duty is impoſed upon the entry of every burial, marriage, birth, or chriſtening in the regiſter of any pariſh or place. And the ſame to extend to Quakers [and by the 25 *G.* 3. *c.* 75. to all proteſtant diſſenters]. But ſhall not extend to perſons buried from a workhouſe, or hoſpital, or at the ſole expence of any charity, nor to the entry of the birth or chriſtening of any child whoſe parents ſhall at that time receive any pariſh relief.

In ſome of the large counties, as in *Yorkſhire* and *Middleſex*, public regiſter offices are erected, wherein memorials of the wills and deeds of lands are to be entered, in order to guard againſt fraudulent charges and incumbrances.

REGRATING, (from *re* again, and the French *grater*, to *grate* or ſcrape,) ſignifies the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again. This offence was deſcribed by

by the ſtatute 5 & 6 *Ed.* 6. *c.* 14. to be the buying of corn or other dead victual in any market, or within four miles of the place, and ſelling the ſame again in the ſame market, or in ſome other within four miles thereof. Which ſtatute being now repealed by the 12 *G.* 3. *c.* 71. the ſame remains an offence at the common law, puniſhable at the diſcretion of the court, by fine and impriſonment.

REHEARING, in chancery, is when either of the parties thinks himſelf aggrieved by the decree; in which caſe, he may petition the lord chancellor for the cauſe to be heard over again: but a petition for rehearing muſt be ſigned by two of the counſel, certifying that they apprehend the cauſe is proper to be reheard. 3 *Black.* 453.

REJOINDER, is the defendant's anſwer to the plaintiff's replication, and ought to follow and inforce the defendant's plea; otherwiſe it is a departure from his plea, which the law will not allow. As if the defendant in his plea to the declaration pleads performance of covenants, and the plaintiff replies, that the defendant did not ſuch an act according to the covenant; and then the defendant *rejoins*, that he offered to do it, and the plaintiff refuſed it; this is a departure, becauſe the matter is not purſuant, for it is one thing to do a thing, and another to offer to do it; therefore this ſhould have been offered in the plea at firſt. 1 *Inſt.* 304.

RELATION, is where, in conſideration of law, two different times or things are accounted as one; and by ſome act done, the thing ſubſequent is ſaid to take effect by *relation* from the time preceding: as if one deliver a writing to another, to be delivered to a third perſon, as the deed of him who made it, when ſuch third perſon hath paid a ſum of money; now when the money is paid, and the writing delivered, this ſhall be taken as the deed of him who made and delivered it at the time of its firſt delivery, to which it hath *relation*. And ſo things relating to a time long before ſhall be as if they were done at that time. *Terms of the Law.*

This deviſe is moſt commonly to help acts in law, and make a thing take effect, and ſhall relate to the ſame thing, the ſame intent, and between the ſame parties only; for it ſhall never do a wrong, or lay a charge upon a perſon that is no party. 1 *Co.* 99.

And when the execution of a thing is done, it ſhall have relation to the thing executory, and makes all but one act or record, although performed at ſeveral times. So a judgment had in full term ſhall have relation to the firſt day of the term, as if given on that very day, unleſs there is a memorandum to the contrary; as where there is a continuance till another day in the ſame term. 3 *Salk.* 212.

Judgment againſt an heir, on the obligation of his anceſtor, ſhall

ſhall have relation to the time of the writ firſt purchaſed; and from that time it will avoid all alienations made by the heir. *Cro. Car.* 102.

And if one be bail for the defendant, and before judgment he leaſeth his lands, they ſhall be liable to the bail and judgment by relation. *Poph.* 112. 132.

It was formerly holden, that where the defendant in a ſuit, after the teſte of the *fieri facias*, but before the ſheriff had executed it, ſold the goods, and delivered them to the buyer, the ſheriff might take them in execution in the hands of the buyer; for when ſuch execution was made, it ſhould have relation to the teſte of the *fieri facias*. 1 *Leon.* 304.

But now by *ſt.* 29 *Car.* 2. *c.* 3. *ſ.* 16. writs of execution ſhall bind the property of the goods only from the time of their delivery to the officer.

Sale of goods of a bankrupt, by commiſſioners, ſhall have relation to the firſt act of bankruptcy, and be good, though the bankrupt ſell them afterwards. 1 *Ja. c.* 15.

RELATOR, a rehearſer or teller: it is alſo applied to an *informer*; as by ſtatute 9 *An. c.* 20. which permits an information in nature of a *quo warranto* to be brought with leave of the court againſt a perſon intruding into any franchiſe or office in a corporation; the informant is thereupon ſtyled the *relator*. So where the attorney general files an information *ex officio* in caſe of the miſapplication of a charity, the perſon applying for the proſecution is called the *relator*.

RELEASE:

1. A RELEASE, is a diſcharge or conveyance of a man's right in lands or tenements to another that hath ſome former eſtate in poſſeſſion. The words generally uſed are, "remiſed, releaſed, and for ever quit claimed." 2 *Black.* 324.

When a man hath in himſelf the poſſeſſion of lands, he muſt at the common law convey the freehold by feoffment and livery; but if he hath only a right or a future intereſt, he may convey that right or intereſt by a mere releaſe to him that is in poſſeſſion of the land. *Id.* 325.

2. Releaſe is of two ſorts: a releaſe as to lands, goods, and chattels; and a releaſe of actions, whether real, perſonal, or mixed. *Litt. ſ.* 444.

3. In releaſes of all the right which a man hath in certain lands, it behoveth him to whom the releaſe is made, that he hath the freehold in the lands in deed or in law, at the time of the releaſe made; for in every caſe where he, to whom the releaſe is made, has the freehold in deed or in law, at the time of the releaſe, there the releaſe is good. *Litt. ſ.* 447.

4. Some actions are *mixed* in the realty, and in the perſonalty; as an action of waſte ſued againſt tenant for life, this action is

is in the realty, becauſe the place waſted ſhall be recovered; and alſo in the perſonalty, becauſe damages ſhall be recovered for the wrongful waſte done by the tenant: and therefore, in this action, a releaſe of actions real is a good plea in bar, and ſo is a releaſe of actions perſonal. *Litt. ſ.* 492.

5. No right paſſes by the releaſe, but the right which the releaſor had at the time of the releaſe made; if he has no right, the releaſe is void. *Litt. ſ.* 446.

6. By the releaſe of all *actions*, cauſes of action are releaſed; but within a ſubmiſſion of all actions to arbitration, cauſes of action are not contained. 1 *Inſt.* 285.

7. By the releaſe of all *quarrels*, all cauſes of actions are releaſed, although no action be then depending for the ſame. 1 *Inſt.* 292.

8. If a man releaſe to another all manner of *demands*, this is the beſt releaſe of all, and the moſt effectual to bar actions, rights of action, and includes in it moſt of the others: by this releaſe, all rights and titles to lands, conditions before broken or after, contracts, covenants broken, rents, annuities, debts, duties, obligations, recognizances, ſtatutes, judgments, executions, all manner of actions, real and perſonal, are barred and diſcharged. *Litt. ſ.* 508. 1 *Inſt.* 291.

9. Where two are bound jointly in a bond or obligation, and the obligee releaſes to one of them, this ſhall diſcharge the other. 1 *Inſt.* 232.

So if two commit a treſpaſs againſt a man, his releaſe to one of them ſhall diſcharge the other; for againſt joint treſpaſſors there can be but one ſatisfaction. *Id.*

10. Where there are general words only in a releaſe, they ſhall be taken moſt ſtrongly againſt the releaſor; as where a releaſe is made to two perſons of all actions, it releaſes all ſeveral actions which the releaſor has againſt them, as well as all joint actions. So if an executor releaſes all actions, it will extend to all actions that he has in both rights. But where there is a particular recital in a *deed*, and then general words follow, the general words ſhall be qualified by the particular recital. *L. Raym.* 235.

But if a releaſe is given on a particular conſideration recited, notwithſtanding that releaſe concludes with general words, yet the law, in order to prevent ſurprize, will conſtrue it to relate to the particular matter recited, which was under the contemplation of the parties, and intended to be releaſed. 2 *Vez.* 310.

11. The effect of a releaſe is various: ſometimes it extinguiſhes the thing in the poſſeſſion of the releaſee; as rents, commons, and the like. Sometimes it transfers the eſtate; as of one joint-tenant to another. Sometimes it enlarges an eſtate, being made by a reverſioner to the leſſee in privity, with apt enlarging words. *Litt. ſ.* 305, 6. 1 *Inſt.* 193.

A re-

A releaſe made to tenant in tail, or tenant for life, of the right of the land, ſhall enure to him that has the remainder or reverſion; and ſo on the contrary. *Litt. ſ.* 452, 3. 1 *Inſt.* 267.

RELIEF, was a certain ſum of money that the heir, on coming of age, paid unto the lord, on taking poſſeſſion of the inheritance of his anceſtor; by payment whereof, the heir *relieved* (*relevabat*); that is, as it were, raiſed up again the lands, after they had fallen into the hands of the ſuperior. And, on payment of the relief, the heir had *livery* of the lands; that is, the lands were to be delivered to the heir; and in caſe of refuſal, the heir might have a writ to recover the ſame from the lord; which recovery out of the hands of the lord, was called, *ouſter le main*.

REMAINDER:

1. *Of remainders in general.*
2. *Of contingent remainders.*
3. *Of remainders created by will, commonly called executory deviſes.*

1. *Of remainders in general.*

An eſtate in remainder, is an eſtate limited to take effect and be enjoyed after another eſtate is determined. As if a man ſeiſed in fee ſimple granteth lands to one for twenty years, and after the determination of the ſaid term, then to another and his heirs for ever; here the former is tenant for years, remainder to the latter in fee. In the firſt place, an eſtate for years is created or carved out of the fee, and given to the former, and the reſidue or remainder of it is given to the latter. But both theſe intereſts are in fact only one eſtate; the preſent term of years, and the remainder afterwards, when added together, being equal only to one eſtate in fee. *Black. b.* 2. *c.* 11. *ſ.* 2.

So if lands be granted to one for twenty years, and after the determination of the ſaid term to another for life, and after the determination of the ſaid life eſtate to a third perſon, and his heirs for ever; this makes the firſt perſon tenant for years, remainder to the ſecond for life, remainder over to third in fee. Now here the eſtate of inheritances undergoes a diviſion into three portions: the firſt is an eſtate for years carved out of it, after that an eſtate for life, and after that an eſtate in fee. And here alſo the firſt eſtate, and both the remainders, (for life and in fee,) are one eſtate only, being nothing but parts or portions of one entire inheritance; and if there were never ſo many remainders, it would ſtill be the ſame thing, upon a principle grounded on mathematical truth, that all the parts are equal, and no more than equal to the whole. *Id.*

And hence it is eaſy to collect, that no remainder can be limited after the grant of an eſtate in fee ſimple; becauſe a fee ſimple

ple is the higheſt and largeſt eſtate that a ſubject is capable of enjoying; and he that is tenant in fee, hath in him the whole of the eſtate; a remainder therefore, which is only a portion, or reſiduary part of the eſtate, cannot be reſerved after the whole is diſpoſed of. *Id.*

From hence we may be enabled to comprehend certain rules that have been laid down concerning the creation of remainders. And,

(1) There muſt neceſſarily be ſome particular eſtate precedent to the eſtate in remainder; as an eſtate for years to one, remainder to another for life; or, an eſtate for life to one, remainder to another in tail. This precedent eſtate is called the *particular* eſtate, as being only a ſmall *part* of the inheritance; the reſidue or remainder whereof is granted over to another. The neceſſity of creating this preceding particular eſtate, in order to make a good remainder, ariſes from this plain reaſon; that the word *remainder* is a relative term, and implies that ſome part of the thing is previouſly diſpoſed of; for where the whole is conveyed at once, there cannot poſſibly exiſt a remainder; but the intereſt granted, whatever it be, will be an eſtate in poſſeſſion. *Id.*

Therefore an eſtate created to commence at a diſtant period of time, without any intervening eſtate, is properly no remainder: it is the whole of the gift, and not a reſiduary part. And ſuch future eſtates can only be made of chattel intereſts, which were conſidered in the light of mere contracts by the ancient law, to be executed either now or hereafter, as the contracting parties ſhould agree; but an eſtate of freehold muſt be created to commence immediately. For it is an ancient rule of the common law, that no eſtate of freehold can be created to commence *in futuro*; but it ought to take effect preſently either in poſſeſſion or remainder; becauſe at common law, no freehold in lands can paſs without livery of ſeiſin; which muſt operate either immediately, or not at all. It would therefore be contradictory, if an eſtate, which is not to commence till hereafter, could be granted by a conveyance, which imports an immediate poſſeſſion. *Id.*

So that where it is intended to grant an eſtate of freehold, whereof the enjoyment ſhall be deferred till a future time, it is neceſſary to create a previous particular eſtate, which may ſubſiſt till that period of time is completed; and for the grantor to deliver immediate poſſeſſion of the land to the tenant of this particular eſtate, which is conſtrued to be giving poſſeſſion to him in remainder, ſince his eſtate, and that of the particular tenant, are one and the ſame eſtate in law: as where a man grants to one a leaſe of an eſtate for years, remainder to another in fee, and makes livery of ſeiſin to the leſſee; here,

here, by the livery, the freehold is immediately created, and veſted in the remainder man, during the continuance of the leſſee's term of years. The whole eſtate paſſes at once from the grantor to the grantees, and the remainder man is ſeiſed of his remainder at the ſame time that the termor is poſſeſſed of his term; the enjoyment of it muſt indeed be deferred till hereafter; but it is, to all intents and purpoſes, an eſtate commencing *in præſenti*, though to be occupied and enjoyed *in futu o*. *Id.*

And as no remainder can be created without ſuch a precedent particular eſtate, therefore the particular eſtate is ſaid to *ſupport* the remainder. But a *leaſe at will* is not held to be ſuch a particular eſtate as will ſupport a remainder over; for an eſtate at will is of a nature ſo ſlender and precarious, that it is not looked upon as a portion of the inheritance; and a portion muſt be firſt taken out of it in order to conſtitute a remainder. *Id.*

(2.) A ſecond rule to be obſerved is this: that the remainder muſt commence, or *paſs out of the grantor*, at the time of the creation of the particular eſtate; as where there is an eſtate to one for life, with remainder to another in fee, here the remainder in fee paſſes from the grantor at the ſame time that ſeiſin is delivered of the life eſtate in poſſeſſion: and it is this which induces the neceſſity at common law of livery of ſeiſin being made on the particular eſtate, whenever a freehold remainder is created; for if it be limited even on an eſtate for years, it is neceſſary that the leſſee for years ſhould have livery of ſeiſin, not thereby to ſtrengthen his eſtate, but in order to convey the freehold from, and out of the grantor; otherwiſe the remainder is void. *Id.*

(3.) A third rule reſpecting remainders is this: that the remainder muſt *veſt in the grantee* during the continuance of the particular eſtate, or at the very inſtant when it determines: as if one be tenant for life, remainder to another in fee tail; here the remainder is veſted at the creation of the particular eſtate for life: or if two be tenants for their joint lives, remainder to the ſurvivor in fee; here, though during their joint lives the remainder is veſted in neither, yet on the death of either of them, the remainder veſts inſtantly in the ſurvivor; therefore both theſe are good remainders. But if an eſtate be limited to one for life, remainder to the eldeſt ſon of another in tail, and the tenant for life dies before the other hath a ſon; here the remainder will be void; and even ſuppoſing he ſhould afterwards have a ſon, he ſhall not take by this remainder; for as it did not veſt before, or at the end of the particular eſtate, it never can veſt at all: and this depends upon the principle before laid down, that the precedent particular eſtate, and the remainder, are one eſtate in law; they muſt therefore ſubſiſt at one and the ſame inſtant of time, either during the continuance of the firſt eſtate, or

at the very inſtant when that determines, ſo that no other eſtate can poſſibly come between them. *Id.*

2. *Of contingent remainders.*

On conſideration of the premiſes, ariſes the doctrine of CONTINGENT remainders; for remainders are either *veſted* or *contingent*. *Veſted* remainders, (or remainders *executed*, whereby a preſent intereſt paſſes to the party, though to be enjoyed *in futuro*,) are, where the eſtate is invariably fixed to remain to a determinate perſon after the particular eſtate is ſpent; as if one be tenant for twenty years, remainder to another in fee, this is a *veſted* remainder, which nothing can defeat or ſet aſide. 2 *Black. b.* 2. *c.* 11. *ſ.* 2.

Contingent or *executory* remainders, (whereby no preſent intereſt paſſes,) are where the eſtate in remainder is limited to take effect, either to a dubious and uncertain *perſon*, or upon a dubious and uncertain *event*; ſo that the particular eſtate may chance to be determined, and the remainder never take effect. *Id.*

Firſt, they may be limited to a dubious and uncertain *perſon*: as if one be tenant for life, with remainder to the eldeſt ſon (then unborn) of another in tail; this is a contingent remainder, for it is uncertain whether he will have a ſon or no; but the inſtant that a ſon is born, the remainder is no longer contingent, but veſted; though if the tenant for life had died before the contingency happened, that is, before the ſon was born, the remainder would have been gone, except in the caſe of a poſthumous child; which by the 10 & 11 *W. c.* 16. may take in remainder as if born in the father's life time. *Id.*

This ſpecies of contingent remainders, to a perſon not in being, muſt however, be limited to ſome one that may by common poſſibility exiſt at or before the time that the particular eſtate determines: as if an eſtate be made to *A.* for life, remainder to the heirs of *B.*; now if *A.* dies before *B.*, the remainder is at an end; for *B.* cannot have an heir whilſt he is living; but if *B.* dies firſt, the remainder then immediately veſts in his heir, who will be intitled to the land on the death of *A.* This is a good contingent remainder; for the poſſibility of *B.*'s dying before *A.* is a common poſſibility; but a remainder to the right heirs of *B.*, if there be no ſuch perſon as *B.* at that time, is void: for here, two contingencies muſt happen; firſt, that ſuch a perſon as *B.* ſhall be born; and, ſecondly, that he ſhall alſo die during the continuance of the particular eſtate; which makes it a remote and very improbable poſſibility. *Id.*

A remainder may be alſo contingent where the perſon to whom it is limited is fixed and certain; but the *event* upon which it is to take effect is vague and uncertain: as where land is

is given to *A.* for life, and in caſe *B.* ſurvives him, then with remainder to *B.* in fee; here *B.* is a certain perſon, but the remainder to him is a contingent remainder, depending upon a dubious *event*, the uncertainty of his ſurviving *A.*: during the joint lives of *A.* and *B.* it is contingent; and if *B.* dies firſt, it never can veſt in his heirs, but is gone for ever; but if *A.* dies firſt, the remainder to *B.* becomes veſted. *Id.*

Contingent remainders of either kind, if they amount to a freehold, cannot be limited on an eſtate *for years*, or any other particular eſtate leſs than a freehold. For unleſs the freehold paſſes out of the grantor at the time when the remainder is created, ſuch freehold remainder is void: it cannot paſs out of him without veſting ſomewhere; and in caſe of a contingent remainder, it muſt veſt in the particular tenant, elſe it can veſt no where. *Id.*

Contingent remainders may be *defeated* by deſtroying or determining the particular eſtate upon which they depend, before the contingency happens whereby they become veſted. Therefore where there is tenant for life, with divers remainders in contingency, he may, not only by his death, but by alienation, ſurrender, or otherwiſe, deſtroy and determine his own life eſtate, before any of thoſe remainders veſt; the conſequence of which is, that he utterly defeats them all; as if there be tenant for life, with remainder to his eldeſt ſon unborn in tail; and the tenant for life, before any ſon is born, ſurrenders his life eſtate, he by that means defeats the remainder in tail to his ſon; for his ſon not being *in eſſe* when the particular eſtate determined, the remainder could not then veſt; and as it could not veſt then, it never can veſt at all. In theſe caſes, therefore, it is neceſſary to have TRUSTEES appointed to preſerve the contingent remainders; in whom there is veſted an eſtate in remainder for the life of the tenant for life, to commence when his determines. If therefore his eſtate for life determines otherwiſe than by his death, their eſtate, for the reſidue of his natural life, will then take effect, and become a particular eſtate in poſſeſſion, ſufficient to ſupport the remainders depending in contingency. *Id.*

For though contingent remainders by law muſt veſt during, or at the inſtant the particular eſtate determines, yet it doth not hold in the caſe of *truſtees*. The ground the law goes upon is, that a freehold cannot be in abeyance, becauſe there muſt be a tenant of the freehold to perform ſervices, and to anſwer to a *præcipe*, and all writs to be brought concerning the realty; but this holds not in the caſe of an equitable eſtate, becauſe the truſtee is tenant of the freehold to perform the ſervices and anſwer to writs aforeſaid: ſo neither doth it hold in caſe of a *copyhold*; for there no *præcipe* can be brought, being parcel of

the manor only, and the freehold is in the lord. 1 *Atk.* 590. 3 *Atk.* 12.

Theſe truſtees to preſerve contingent remainders have an eſtate, and not only a right of entry; and may bring a bill to ſtay waſte, or the like, before the contingent remainder man ſhall be *in eſſe*. 1 *Vez.* 555.

And truſtees of the *legal* eſtate of inheritance are ſufficient truſtees to ſupport contingent remainders. 2 *Vez.* 230.

3. *Of remainders created by will; commonly called executory deviſes.*

In laſt wills and teſtaments greater latitude is allowed, and in them remainders may be created contrary to the rules laid down for the conſtruction of deeds; but theſe are not allowed to be ſtrictly remainders, but are called by another name, that of EXECUTORY DEVISES, or deviſes hereafter to be executed. 2 *Black. b.* 2. *c.* 11. *ſ.* 2.

An executory deviſe of lands is ſuch a diſpoſition of them by will, that thereby no eſtate veſts at the death of the deviſor, but only on ſome future contingency: it differs from a remainder in three very material points; as,

(1.) That it needs not any particular eſtate to ſupport it; as when a man deviſeth a future eſtate to ariſe upon a contingency, and till that contingency happens, doth not diſpoſe of the fee ſimple, but leaves it to deſcend to his heir at law: ſo if one deviſes land to an unmarried woman and her heirs upon her day of marriage, here is, in effect, a contingent remainder, without any particular eſtate to ſupport it. This limitation, though it would be void in a deed, yet is good in a will, by way of *executory deviſe*; for ſince by a deviſe, a freehold may paſs without livery of ſeiſin, (as it muſt do if it paſſes at all,) therefore it may commence *in futuro*, and needs no particular eſtate to ſupport it. And hence it is, that ſuch an executory deviſe, not being a preſent intereſt, cannot be barred by a recovery ſuffered before it commences. *Id.*

And if it appears that the teſtator, however improperly his will may be penned, manifeſtly intended a ſtrict ſettlement, though there are no words in the will to preſerve contingent remainders, a court of equity will direct truſtees to be inſerted in a conveyance to be ſettled by the maſter; and whenever the court makes uſe of the words *ſtrict ſettlement* in an order, it implies a direction to the maſter to have *truſtees to preſerve contingent remainders* inſerted. 1 *Atk.* 593. 2 *Atk.* 279.

(2.) By executory deviſe a fee ſimple, or other leſs eſtate, may be limited after a fee ſimple; and this happens where a man deviſeth his whole eſtate in fee, but limits a remainder thereon to commence on a future contingency; as if a man deviſeth lands to one and his heirs, but if the deviſee dies before the age of

of twenty-one, then to another and his heirs; this remainder, though void in a deed, is good by way of executory deviſe. But in both theſe ſpecies of executory deviſes, the contingencies ought to be ſuch as may happen within a reaſonable time; as within one or more life or lives in being, or within a moderate term of years; for courts of juſtice will not indulge even wills, ſo as to create a perpetuity. The utmoſt length that has hitherto been allowed, is that of a life in being, and until the eldeſt child ſhall attain the age of twenty-one years. 2 *Black. b.* 2. *c.* 11. *ſ.* 2.

(3.) By an executory deviſe a remainder may be limited of a chattel intereſt, after a particular eſtate for life created in the ſame, which could not be done by deed; for by law the firſt grant of it to a man for life, was a total diſpoſition of the whole term; but afterwards it was allowed, that a term of years might be given to one for life, and limited over in remainder to another. Yet, in order to prevent the danger of perpetuities, it was ſettled, that though ſuch remainders may be limited to as many perſons ſucceſſively as the deviſor thinks proper, yet they muſt be all in being during the life of the firſt deviſee; for then they are like candles all lighted and conſuming together, and the ultimate remainder is in reality only to that remainder man who happens to ſurvive the reſt. *Id.*

And it is now ſettled, that if a man, either by deed or will, limits his books, furniture, or the like, to one for life, with remainder over to another, this remainder is good: but where an *eſtate tail* in things perſonal is given to the firſt or any ſubſequent poſſeſſor, it veſts in him the total property, and no remainder over ſhall be permitted on ſuch a limitation; for this, if allowed, would tend to a perpetuity, as the deviſee or grantee in tail of a chattel has no method of barring the intail; and therefore the law veſts in him at once the intire dominion of the goods, being analogous to the fee ſimple which a tenant in tail may acquire in a real eſtate. *Id. c.* 25.

REMEDY, *remedium*, is the action or means given by the law for recovery of a right; and whenever the law giveth any thing, it gives alſo a remedy for the ſame.

REMITTER, is where one that hath right to lands, but is out of poſſeſſion, hath afterwards the freehold caſt upon him by ſome ſubſequent defective title, and enters by virtue of that title: in this caſe, the law *remits* him to his ancient and more certain right, and by an equitable fiction ſuppoſes him to have gained poſſeſſion in conſequence and by virtue thereof; and this, becauſe he cannot poſſibly obtain judgment at law, to be reſtored to his prior right, ſince he is himſelf the tenant of the land, and therefore hath no perſon againſt whom to bring his action. 3 *Black.* 190.

RENT, *render*, *redditus*, is a *certain profit iſſuing yearly out of lands and tenements corporeal.* It muſt be a *profit*; yet there is no occaſion for it to be, as it uſually is, a ſum of money; for ſpurs, capons, horſes, corn, and other matters, may be rendered by way of rent. It may alſo conſiſt in ſervices, or manual operations; as to plough ſo many acres of ground, to attend the king or the lord to the wars; which ſervices, in the eye of the law, are *profits*. This profit muſt alſo be *certain*, or that which may be reduced to a certainty. It muſt alſo iſſue *yearly*, though it need not be every year, but it may be every ſecond, third, or fourth year. It muſt *iſſue out of* the thing granted, and not be part of the land or thing itſelf; wherein it differs from an exception in the grant, which is always part of the thing granted. It muſt iſſue out of *lands and tenements corporeal*; that is, from ſome inheritance whereunto the owner or grantee of the rent may have recourſe to diſtrain. 2 *Black.* 41.

There are at common law three kinds of rents; *rent ſervice*, *rent charge*, and *rent ſeck*. *Rent ſervice*, is where the tenant holdeth his land of his lord by fealty and certain rent; or by homage, fealty, and certain rent; or by other ſervice and certain rent: and it is called a rent *ſervice*, becauſe it hath ſome corporal ſervice incident to it, which, at the leaſt, is fealty. *Rent charge*, is ſo called becauſe the land for payment thereof is *charged* with a diſtreſs. *Rent ſeck*, *redditus ſiccus*, a dry rent, is where the land is granted without any clauſe of diſtreſs for the ſame. 1 *Inſt.* 141, 2, 3.

There are alſo other ſpecies of rent; ſuch as *rents of aſſize*, which are the certain eſtabliſhed rate of the freeholders and ancient copyholders of a manor, ſo called, becauſe they are *aſſized* and certain, and thereby diſtinguiſhed from *redditus mobiles*; farm rents for life, years, or at will, which are variable and uncertain. Thoſe of the freeholders are frequently called *chief* rents, *redditus capitales*; and both ſorts are indifferently denominated *quit* rents, *quieti redditus*; ſo called becauſe the tenant thereby goes *quit* and free of all other ſervices. When theſe payments were reſerved in ſilver, or *white* money, they were anciently called *white rents*, or *blanch farms*, *redditus albi*; in contradiſtinction to rents reſerved in work, grain, or the like, which were called *redditus nigri*, or *black maile*. 2 *Black.* 42.

Fee farm rent, is a rent charge iſſuing out of an eſtate in fee, of at leaſt one fourth of the value of the lands at the time of its reſervation; for a grant of lands, reſerving ſo conſiderable a rent, is indeed only letting lands to *farm* in *fee* ſimple, inſtead of the uſual methods for life or years. *Id.* 43.

The difference between the ſeveral kinds of rents, in reſpect of the method for recovering them, is now totally aboliſhed, they

they being all recoverable by diſtreſs, in purſuance of the ſeveral acts of parliament for that purpoſe.

Strictly, the rent is demandable and payable before the time of ſun-ſet of the day whereon it is reſerved; though ſome have thought it not abſolutely due till midnight. 2 *Black.* 43.

But for rent in arrear, one cannot diſtrain until after the laſt day on which it is due; for till then it is not in arrear. And therefore ſome uſe to reſerve the laſt half year's rent at ſome time before the expiration of the term, that, if the rent is not paid, they may have opportunity to diſtrain for it during the term. 1 *Inſt.* 47.

REPAIRS. A tenant for life or years may cut down timber trees to make reparations, although he be not compelled thereto; as where a houſe is ruinous at the time the leaſe is made, and the leſſee ſuffers it to fall, he is not bound to rebuild it; and yet, if he fell timber for reparations, he may juſtify the ſame. *Co. Litt.* 54.

And where a leſſee covenants, that from and after the amendment and reparation of the houſes by the leſſor, he, at his own charges, will keep and leave them in repair; in this caſe the leſſee is not obliged to do it, unleſs the leſſor firſt make good the reparations. And if it be well repaired at firſt when the leaſe began, and after happen to decay, the leſſor muſt *firſt* repair, before the leſſee is bound to keep it ſo. *Cro. Jac.* 645.

REPLEADER, is where iſſue is joined on a fact totally immaterial, or inſufficient to determine the right, ſo that the court upon the finding, cannot know for whom judgment ought to be given; in which caſe, the court will, after verdict, award a *repleader;* that is, that the parties *plead again;* unleſs it appears from the whole record that nothing material can poſſibly be pleaded in any ſhape whatever; and then a repleader would be fruitleſs. And whenever a repleader is granted, the pleadings muſt begin *de novo* at that ſtage of them, whether it be the plea, replication, rejoinder, or whatever elſe, wherein there appears to have been the firſt defect or deviation from the regular courſe. When a repleader is awarded, it muſt be without coſts. 3 *Black.* 395. *Bur. Manſf.* 304.

REPLEVY:

1. It is worthy of obſervation, how provident the law is that men's beaſts, cattle, or other goods, be not unjuſtly or exceſſively diſtrained; and if they be, that deliverance be ſpeedily made of them by replevy (or *taking back the pledge*); otherwiſe, the huſbandry of the realm, and men's other trades, might be overthrown or hindered. 2 *Inſt.* 137.

2. To which purpoſe, it is enacted by the 1 & 2 *P. & M. c.* 12. that the ſheriff of every county ſhall, at his firſt county day, or in two months after he hath received his patent of office, appoint

appoint and proclaim in the ſhire town, four deputies at the leaſt dwelling not above twelve miles one diſtant from another, to make replevies.

3. In order to obtain a replevy, application muſt be made to the ſheriff, or one of his deputies, and ſecurity given that the party replevying will purſue his action againſt the diſtrainor; for which purpoſe, by the ancient law, he is required to put in pledges to proſecute, *plegios de proſequendo*; and that if the right be determined againſt him, he will return the diſtreſs again, for which purpoſe he is to find pledges to make return, *plegios de retorno habendo*. Theſe pledges are diſcretionary, and at the peril of the ſheriff. 3 *Black.* 147.

And in the caſe of diſtreſs for *rent* in particular, it is enacted by the 11 *G.* 2. *c.* 19. that the ſheriff or other officer having authority, to grant replevies, ſhall, in every ſuch replevy, take in his own name, from the plaintiff and two ſureties, a bond in double the value of the goods diſtrained, to be aſcertained on the oath of one witneſs, and conditioned for proſecuting the ſuit with effect, and without delay, and for duly returning the goods diſtrained, in caſe a return ſhall be awarded before any deliverance be made of the diſtreſs; and the ſheriff ſhall aſſign ſuch bond to the avowant or perſon making conuſance; which, if forfeited, may be ſued in the name of the aſſignee.

4. Although the cattle diſtrained be put into a caſtle or fortreſs, yet the ſheriff muſt nevertheleſs make replevin and deliverance; for if occaſion be, he may take the power of the county with him for that purpoſe. But if the cattle are driven out of the county, or concealed, ſo that the ſheriff cannot make replevin, then a writ of *withernam* ſhall go to the ſheriff to take ſo many of the diſtrainor's cattle, and keep them until he ſhall have the original diſtreſs forthcoming. 1 *Roll's Abr.* 565.

5. After the goods are delivered back to the party replevying, he is then bound to bring his action of replevin againſt the diſtrainor; which may be proſecuted in the county court, be the diſtreſs of what value it may: but either party may remove it to the ſuperior courts of king's bench or common pleas, the plaintiff at pleaſure, and the defendant upon reaſonable cauſe. 3 *Black.* 149.

6. Upon the action brought, and declaration delivered, the diſtrainor who is now the defendant, makes *avowry*; that is, avows taking the diſtreſs in his own right, and ſets forth the reaſon of it; as for rent arrear, damage done, or other cauſe: or elſe, if he juſtifies in another's right, as his bailiff or ſervant, he is ſaid to make *cognizance*; that is, he acknowledges the taking, but inſiſts that ſuch taking was legal, as he acted by the command of one who had a right to diſtrain. And on the truth and

and legal merits of this avowry or cognizance, the cauſe is determined. *Id.*

7. If it be determined for the plaintiff, namely, that the diſtreſs was wrongfully taken, he hath already got his goods back into his own poſſeſſion, and ſhall keep them, and moreover recover damages. But if the defendant prevails, by the default or nonſuit of the plaintiff, then he ſhall have a writ *de retorno habendo*, whereby the goods or chattels (which were deſtrained, and then replevied) are returned again into his cuſtody, to be ſold, or otherwiſe diſpoſed of, as if no replevin had been made. *Id.*

If the diſtreſs was for damage feaſant, the diſtrainor may keep the goods ſo returned, until tender ſhall be made of ſufficient amends. *Id.* 146.

8. On a *retorno habendo* awarded, the party deſiring to have the cattle or goods returned muſt ſhew them to the ſheriff; for otherwiſe, the ſheriff may not know them. *Caſ. Hardw.* 121.

REPLICATION, is the exception or anſwer made by the plaintiff to the defendant's plea. For if the plea made by the defendant to the plaintiff's declaration, doth not amount to an iſſue or total contradiction of the declaration, but only evades it, then the plaintiff may *reply* or *plead again*, either traverſing the plea, that is, totally denying it; as if on an action of debt upon bond, the defendant pleads that he paid the money when due, here the plaintiff in his replication may totally traverſe this plea, by denying that the defendant paid it; or he may allege new matter in contradiction to the defendant's plea; as when the defendant pleads no award made, the plaintiff may reply and ſet forth an actual award, and aſſign a breach of it. To the replication the defendant may *rejoin*, or put in an anſwer, called a *rejoinder*; unto which the plaintiff may anſwer again by a *ſur-rejoinder*. 3 *Black.* 309.

The replication muſt not vary from the declaration, but muſt purſue and maintain the cauſe of the plaintiff's action; otherwiſe it will be a departure in pleading, a going to another matter, a ſaying and unſaying, which the law will not allow. 1 *Inſt.* 304.

REPORTS *of caſes*, are hiſtories of the ſeveral caſes and deciſions of the courts, with a ſhort ſummary of the proceedings, which are preſerved at large in the record, the arguments on both ſides, and the reaſons the court gave for its judgment, taken down in ſhort notes by perſons preſent at the determination. And theſe ſerve as indexes to, and alſo to explain the records; which always, in matters of conſequence and nicety, the judges direct to be ſearched. 1 *Black.* 71.

There are likewiſe *reports*, when the court of chancery, or other

other court, refer the ſtating of ſome caſe or other matter to a maſter of chancery, or other referee; his certificate therein is called a report, on which the court makes an abſolute order. *Pract. Solic.* 67.

REPRIEVE, from *reprendre*, to take back, is the withdrawing of judgment for a time, whereby the execution is ſuſpended. This may be at the diſcretion of the judge, either before or after ſentence; as where the judge is not ſatisfied with the verdict, or the evidence is ſuſpicious, or the indictment is inſufficient, or he is doubtful whether the offence be within clergy; or ſometimes if it be a ſmall felony, or any favourable circumſtances appear in the criminal's character, in order to give room to apply to the crown for either an abſolute or conditional pardon. Theſe arbitrary reprieves may be granted or taken off by the juſtices of gaol delivery, although their ſeſſions be ended and their commiſſion expired; but this is rather by common uſage than of ſtrict right. A reprieve may alſo be from the neceſſity of the law; as where a woman is capitally convicted, and pleads her pregnancy; though this is no cauſe to ſtay judgment, yet it is to reſpite the execution till ſhe be delivered. 4 *Black.* 394.

REPRISAL, letters of. See MARQUE.

REPUTATION, is the vulgar opinion concerning any particular matter of which there is not poſitive proof. It is not what this or that man ſays, but what hath generally been ſaid or thought by many. And ſome ſpecial matter muſt be averred to induce a reputation. 2 *Lill. Abr.* 464.

Land may be reputed part of a manor, though not really ſo. There may be a pariſh in reputation, an office in reputation, and the like. 3 *Nelſ. Abr.* 137.

REQUEST, of things to be done. Where one is to do a collateral thing agreed upon by contract, there ought to be a requeſt to do it. But if a duty is due, or a debt exiſts before a promiſe made, it is payable without requeſt; for then the requeſt is not any cauſe of the action. So where an action of debt is brought for money due upon a bond, there needs no ſpecial requeſt; but otherwiſe it is of a thing collateral. 2 *Lill.* 464.

REQUESTS, court of, was a court of equity, of the ſame nature with the court of chancery, but inferior to it; principally inſtituted for the relief of ſuch petitioners, as in caſes of equity addreſſed themſelves by ſupplication to his majeſty. Of this court the lord privy ſeal was chief judge, aſſiſted by the *maſters of requeſts*. It had its beginning about the 9 *Hen.* 7. and being thought oppreſſive and arbitrary, was aboliſhed by act of parliament 16 *Car. c.* 10. 4 *Inſt.* 97.

RESCOUS, is an old French word, coming from *reſcourer*, *recuperare*, to recover; and denotes an illegal taking away and ſetting

ſetting at liberty of a diſtreſs taken, or of a perſon arreſted by proceſs or courſe of law. 1 *Inſt.* 160.

Alſo it is uſed for a writ which lies for a reſcue, called *breve de reſcuſſu.*

If goods be diſtrained without cauſe, or contrary to law, the owner may make reſcue; but if they be once impounded, even though taken without any cauſe, the owner may not break the pound and take them out, for they are then in cuſtody of the law. 3 *Black.* 12.

An hinderance of a perſon to be arreſted that hath committed felony, is a miſdemeanor, but no felony; but if the party be arreſted, and then reſcued, if the arreſt was for felony, the reſcuer is a felon; if for treaſon, a traitor; if for treſpaſs, finable. 2 *Haw.* 140.

But on an indictment for a reſcue, the principal muſt be firſt attainted before the reſcuer can be puniſhed, for it may turn out that there has been no offence committed.

RESIDENCE. Regularly, perſonal reſidence is required of eccleſiaſtical perſons upon their cures; and to that end, by the common law, if he that hath a benefice with cure be choſen to a temporal office, he may have the king's writ for his diſcharge. 2 *Inſt.* 625.

By the 25 *H.* 8. *c.* 13. perſons wilfully abſenting themſelves from their benefices for one month together, or two months in the year, ſhall forfeit 10*l.* for every month's abſence, except chaplains to the king, or others therein mentioned, during their attendance in the houſehold of ſuch as retain them; and alſo except all heads of houſes, magiſtrates, and profeſſors in the univerſities, and all ſtudents under forty years of age, reſiding there *bonâ fide* for ſtudy.

By the 13 *Eliz.* *c.* 20. and divers other ſubſequent ſtatutes, if any beneficed clergyman be abſent from his cure above four ſcore days in one year, he ſhall not only forfeit one year's profit of his benefice, to be diſtributed among the poor of the pariſh, but all leaſes made by him of the profits of ſuch benefice, and all covenants and agreements of like nature, ſhall ceaſe and be void; except in the caſe of licenced pluraliſts, who are allowed to demiſe the living on which they are non-reſident to their curates only.

By the 1 *W.* *c.* 26. if a man preſented by either of the univerſities to a popiſh living, ſhall be abſent above ſixty days in one year, the living ſhall thereby become void.

It is not only non-reſidence if a man dwell in an houſe in another pariſh, but it is alſo non-reſidence to dwell in another houſe in the ſame pariſh; becauſe the ſtatute of non-reſidence was made, not only that the cure ſhould be ſerved, and hoſpitality maintained, but alſo that the parſonage houſe ſhould be upholden,

upholden, and preſerved in a condition fit for incumbents to live in, that their ſucceſſors thereby may receive no prejudice.

But if a man hath no parſonage houſe, or remove by advice of his phyſician for better air, in order to the recovery of his health, or be removed and detained by impriſonment, or the like, he is not puniſhable by the ſaid ſtatute; for the words of the ſtatute are, if he ſhall *abſent himſelf wilfully*.

RESIDUARY LEGATEE, is he to whom the reſidue of the perſonal eſtate is given by will, after payment of the debts and particular legacies.

RESIGNATION of a benefice, is where a parſon, vicar, or other beneficed clergyman, voluntarily gives up and ſurrenders his charge and preferment to thoſe from whom he received them.

Reſignation is of no avail till accepted by the ordinary; and therefore all preſentations made to benefices reſigned, before ſuch acceptance, are void.

After acceptance of the reſignation, lapſe ſhall not run but from the time of notice given by the biſhop to the patron. The church indeed is void immediately upon acceptance, and the patron may preſent if he pleaſes; but as to lapſe, he has time to preſent until ſix months ſhall be expired after notice.

General bonds of reſignation have been held not to be within the ſtatute of ſimony, and therefore allowed to be good, both at law and in equity, unleſs there appeared ſome unfair uſe was intended to be made thereof. But in the caſe of *Ffytche* againſt the biſhop of *London*, in the houſe of lords, it was determined otherwiſe. See *Burn's Eccleſiaſtical Law*, tit. SIMONY.

RESPONDEAT OUSTER, is to *anſwer over* in an action on the merits of a cauſe, after his plea in abatement of the action hath been over-ruled as frivolous.

RESPONDENTIA, (from *reſpondeo*, to anſwer,) is where the maſter of a ſhip, in a foreign country, takes up money to enable him to carry on his voyage, and pledges the goods and merchandize, which muſt neceſſarily be ſold or exchanged in the courſe of the voyage; in which caſe the borrower, perſonally, is bound to *anſwer*, and is therefore ſaid to take up money at *reſpondentia*; as where money is borrowed on the ſecurity of the ſhip itſelf, where the keel or *bottom* of the ſhip, (a part in the name of the whole,) is pledged, it is called *bottomry*. 2 *Black.* 458.

RESTITUTION, is where one being attainted of treaſon or felony, (whereby the blood is ſtained or corrupted,) he or his heirs is reſtored to his lands or poſſeſſions. The king by his charter may reſtore lands or goods forfeited to him by any attainder; but if by attainder the blood is corrupted, this can only be reſtored by act of parliament. *Wood. b.* 4. *c.* 5.

In

In the caſe of ſtolen goods, by ſtatute 21 *Hen.* 8. *c.* 11. on conviction of an offender, the proſecutor is intitled to have his goods again, by writ to be granted by the juſtices, notwithſtanding the property of them is endeavoured to be altered by ſale in market overt. And though this may ſeem ſomewhat hard upon the buyer, yet ſince it is come to this, that either the owner or buyer muſt ſuffer, the law prefers the right of the owner who has done a meritorious action, by purſuing the felon to puniſhment, to the right of the buyer, whoſe merit is only negative, that he has been guilty of no unfair tranſaction. And it is now uſual for the court, upon the conviction of a felon, to order (without any writ) immediate reſtitution of ſuch goods as are brought into court. Or the party himſelf may retake his goods wherever he happens to find them, unleſs a new property be fairly acquired therein. 4 *Black.* 362.

RESTITUTION OF TEMPORALTIES, is a writ directed to the ſheriff to reſtore the temporalties to a biſhop elected, confirmed, and conſecrated. *Wood. b.* 4. *c.* 4.

RESULTING USE, is when an uſe limited by a deed expires, or cannot veſt, it then returns back to him who raiſed it. As if a man makes a feoffment to the uſe of his intended wife for life, with remainder to the uſe of her firſt-born ſon in tail; here, till he marries, the uſe reſults back to himſelf; after marriage, it is executed in the wife for life; and, if ſhe dies without iſſue, the whole reſults back to him in fee. 2 *Black.* 335.

RETAINER *of debts.* An executor, among debts of equal degree, is allowed to pay himſelf firſt, by retaining in his hands ſo much as his debt amounts unto. And the reaſon is, becauſe an executor cannot, without an apparent abſurdity, commence a ſuit againſt himſelf; and therefore, if he could not retain, he would be in a worſe condition than any other creditor; but an executor of his own wrong is not allowed to retain. 3 *Black.* 18.

RETAINING *of a ſervant*, is the hiring of him: ſo retaining of a *counſel*, is the engaging of him in the cauſe.

RETORNO HABENDO, is a writ that lies where cattle are diſtrained and replevied, and the perſon that took the diſtreſs juſtifies the taking, and proves it to be lawful; upon which the cattle are to be *returned* to him. This writ alſo lieth when the plaint in replevin is removed by *recordare* into the king's bench or common pleas, and he, whoſe cattle are diſtrained, makes default, and doth not proſecute his ſuit. *F. N. B.*

RETRAXIT, is where the plaintiff cometh in perſon in the court where his action is brought, and ſaith he will not proceed in it; and this is a bar to that action for ever; whereas, after a nonſuit the plaintiff may begin again. 8 *Co.* 58.

RETURN,

RETURN, is of various kinds in our law; but it is moſt commonly uſed for the return of writs, which is the certificate of the ſheriff made to the court of what he hath done, touching the execution of any writ directed to him; and where a writ is executed, or the defendant cannot be found, or the like, this matter is indorſed on the writ by the officer, and delivered into the court whence the writ iſſued, at the day of the return thereof, in order to be filed; which return, is always made to be at leaſt fifteen days from the date or teſte of the writ. 2 *Lill. Abr.* 476.

The name of the ſheriff muſt always be to the return of writs, otherwiſe it doth not appear how they come into court. If a writ be returned by a perſon to whom it is not directed, the return is not good; it being the ſame as if there were no return at all upon it; and after a return is filed, it cannot be amended; but before, it may. *Id.* 477.

In each term there are ſtated days for the return of writs, which are generally at about the diſtance of a week from each other; on ſome one of which days, all original writs are made returnable, and therefore are generally called the *returns* of that term.

If the ſheriff makes no return, the court will order an attachment againſt him for his contempt; if he make an inſufficient return, the court will amerce him; but if he make a falſe return, the party grieved may have his action againſt him. *Wood. b.* 1. *c.* 7.

There are alſo returns of bailiffs of liberties, returns of jurors by the ſheriff for trial of cauſes, returns of commiſſions by commiſſioners, and many others of various kinds.

REVERSAL of a judgment, may be either for matter foreign to, or not apparent on the face of the record, or for a miſtake in the record itſelf, by a writ of error; which lies from all inferior criminal juriſdictions to the court of king's bench, and from the king's bench to the houſe of peers. 4 *Black.* 392.

REVERSION:

A REVERSION, (from *reverto*, to return,) is the reſidue of an eſtate left in the grantor, to commence in poſſeſſion after the determination of ſome particular eſtate granted out by him. Sir *Edward Coke* deſcribes a reverſion to be the returning of land to the grantor or his heirs, after the grant is over; as if there be a gift in tail, the reverſion of the fee ſimple is in the donor; in a leaſe for life, or for years, the reverſion is in the leſſor. For the fee ſimple of all lands muſt abide ſomewhere; and if he, who was before poſſeſſed of the whole, carves out of it any ſmaller eſtate, and grants it away, whatever is not ſo granted remains in him. A reverſion is therefore

fore never created by deed or writing, but ariſes from conſtruction of law; whereas a remainder can never be limited, unleſs by either deed or will. 2 *Black.* 175.

When the particular eſtate determines, then the reverſion comes into poſſeſſion, which before was ſeparated from it; for he that hath the poſſeſſion, cannot have the reverſion, becauſe by uniting them, the one is *merged* or ſunk in the other. 2 *Lill. Abr.* 484.

In order to aſſiſt ſuch perſons as have any eſtate in remainder, reverſion, or expectancy, after the death of others, againſt fraudulent concealments of their deaths, it is enacted by the 6 *Ann. c.* 18. that all perſons, on whoſe lives any lands or tenements are holden, ſhall, (upon application to the court of chancery, and order made thereupon,) once in every year, if required, be produced to the court, or to commiſſioners appointed by the ſaid court; or upon neglect or refuſal, they ſhall be taken to be actually dead, and the perſon intitled to ſuch expectant eſtate may enter upon and hold the lands and tenements till the party ſhall appear to be living.

A reverſioner may bring an action upon the caſe for ſpoiling of trees, or other damage to the reverſion; but he cannot bring an action of treſpaſs, for that is founded on the poſſeſſion. 3 *Lev.* 209.

On an action brought by a reverſioner againſt the defendant for erecting a wall whereby the lights were obſtructed, it was objected, that a temporary nuſance cannot be an injury to the inheritance, for it may be abated before the reverſioner comes into poſſeſſion; but, by the court, it is a preſent injury; for if the reverſioner wanted to ſell the reverſion, this obſtruction would leſſen the value of it. And the wrong doer is liable to a double action; by the poſſeſſor, and by the reverſioner, in reſpect of their ſeveral intereſt. *Bur. Manſf.* 2141.

A reverſion expectant upon an eſtate tail is not aſſets for payment of debts; becauſe it lieth in the will of tenant in tail to dock and bar it at his pleaſure: otherwiſe it is of a reverſion on an eſtate for life or years. 1 *Inſt.* 171. 6 *Co.* 58.

REVERTER. A *formedon* in *reverter* is, where there is a gift in tail, and afterwards by the death of the donee, or his heirs without iſſue of his body, the reverſion falls in upon the donor, his heirs or aſſigns; in which caſe, the reverſioner ſhall have a writ of *formedon (ſecundum formam doni)* to recover the lands; wherein he ſhall ſuggeſt the gift, his own title to the reverſion derived from the donor, and the failure of iſſue upon which his reverſion takes place. 3 *Black.* 192.

REVIEW. A bill of a review may be had in a court of equity, upon apparent error in judgment, appearing upon the

the face of the decree; or, by ſpecial leave of the court, upon oath made of the diſcovery of new matter or evidence, which could not poſſibly be had or uſed at the time when the decree paſſed. But no new evidence or matter then in the knowledge of the parties, and which might have been uſed before, ſhall be a ſufficient ground for a bill of review. 3 *Black.* 454.

REVIVOR, is when a bill in chancery hath been exhibited againſt one who anſwers, and before the cauſe is heard, (or if heard, and the decree is not inrolled,) either party dies; in this caſe, a *bill of revivor* muſt be brought, to put the proceedings again in motion, without which they remain at a ſtand. 3 *Black.* 448.

REVOCATION, or new declaration, is a deed made purſuant to ſome proviſo contained in a former deed or conveyance; giving power to revoke or call back ſomething granted; and by a new declaration, to create a new eſtate of the lands; after which revocation and declaration, the lands ſhall ſettle accordingly. Theſe proviſoes, containing power of revocation in voluntary conveyances, are become very frequent, and paſs by raiſing of uſes according to the 27 *Hen.* 8. *c.* 10. for being coupled with an uſe, thay are allowed to be good, and not repugnant to the former eſtates. But in caſe of a feoffment, or other conveyance, whereby the feoffee or grantee is in by the common law, ſuch proviſo would be merely repugnant and void. *Wood. b.* 2. *c.* 3.

Theſe revocations are favourably interpreted, becauſe many men's inheritances depend upon them. *Id.*

Some things may be revoked of courſe, though they are made irrevocable by expreſs words; as a letter of attorney, a ſubmiſſion to an award, a teſtament or laſt will; for theſe of their own nature are revocable. *Id.*

But by the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. no deviſe of *lands* ſhall be revocable, otherwiſe than by ſome other will or codicil in writing, or other writing declaring the ſame, ſigned in the preſence of three or four witneſſes.

RIDER, is a ſchedule or ſmall piece of parchment added to ſome part of a record; as when, on the third reading of a bill in parliament, a new clauſe is added, this is tacked to the bill on a ſeparate piece of parchment, and is called a rider.

RIGHT, writ of, is in its nature the higheſt writ in the law, and lieth only of an eſtate in fee ſimple, and not for him who hath a leſs eſtate. This writ lies concurrently with all other real actions, in which an eſtate of fee ſimple may be recovered: and it alſo lies *after* them, being as it were an appeal to the mere right, when judgment hath been had as to the poſſeſſion in an inferior poſſeſſory action. But though a writ

writ of right may be brought, where the demandant is intitled to poſſeſſion, yet it rarely is adviſeable to be brought in ſuch caſes; as a more expeditious and eaſy method is had, without meddling with the property, by proving the demandant's own, or his anceſtor's poſſeſſion, and their illegal ouſter, in one of the poſſeſſory actions. But in caſe the right of poſſeſſion be loſt by length of time, or by judgment againſt the true owner in one of theſe inferior ſuits, there is no other choice; this is the only remedy that can be had, and it is of ſo forcible a nature, that it overcomes all obſtacles, and clears all objections that may have ariſen to cloud and obſcure the title. 3 *Black.* 193.

There are alſo ſome other writs, which though not ſtrictly writs of right, yet are in the nature of writs of right; as the writ of right of advowſon, of ward, of dower, of formedon, of eſcheat. This writ ought to be firſt brought in the court baron of the lord of whom the lands are holden, and then it is open or *patent*: but if he holds no court, or hath waived his right, it may be brought in the king's courts originally; and then it is a writ of right *cloſe*, being directed to the ſheriff, and not to the lord. But now, the manner of proceeding by writ of right is almoſt antiquated and not of uſe, and the title of lands is uſually tried upon actions of ejectment or treſpaſs. 3 *Black.* 192.

RIGHTS AND LIBERTIES of the ſubject, are co-eval with our form of government, and were aſſerted and confirmed by the great charter of liberties, called *magna charta*, in the time of king *Henry* the ſecond, and many other ſucceeding kings of this realm. Afterwards they were confirmed by a parliamentary declaration called the *petition of rights*, in the reign of king *Charles* the firſt; and finally aſſerted and demanded as the *juſt rights of the ſubject*, by the *declaration of rights*, in the act of ſettlement of the crown at the revolution.

RIOT. When three or more perſons ſhall aſſemble themſelves together, with an intent mutually to aſſiſt one another againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, with force or violence, againſt the peace, or to the manifeſt terror of the people, whether the act intended were of itſelf lawful or unlawful; if they only meet to ſuch a purpoſe or intent, although they ſhall afterwards depart of their own accord, without doing any thing, this is an *unlawful aſſembly*: if after their firſt meeting, they ſhall move forward towards the execution of any ſuch act, whether they put their intended purpoſe in execution or not, this is a *rout*: and if they execute ſuch a thing in deed, then it is a *riot*. 1 *Haw.* 155.

To conſtitute a riot, there muſt be three perſons at the leaſt; and therefore, if the jury do acquit all but two, and find them

guilty, the verdict is void, unleſs they be indicted *together, with other rioters unknown*: becauſe it finds them guilty of an offence whereof it is impoſſible that they ſhould be guilty; for there can be no riot where there are no more perſons than two. 2 *Haw.* 441.

If a number of perſons, being met together at a fair, or market, or church aiſle, or on any other lawful and innocent occaſion, happen on a ſudden quarrel to fall out, they are not guilty of a riot, but of a ſudden affray only; but if upon a diſpute happening, they form themſelves into parties, with promiſes of mutual aſſiſtance, and then make an affray, they are guilty of a riot. 1 *Haw.* 156.

Alſo it is poſſible for three perſons, or more, to aſſemble with an intention to execute a wrongful act, and alſo actually to perform their intended enterprize, without being riotous; as if a man aſſemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, which cannot be carried without a great number, if the number be not more than are needful for ſuch purpoſe, although another man hath better right to the thing ſo carried away, and that this act be wrong and unlawful, yet it is of itſelf no riot, except there be withal threatening words uſed, or other diſturbance of the peace. *Dalt. c.* 137.

Much more may any perſon, in a peaceable manner, aſſemble a meet company to do any lawful thing, or to remove or caſt down any common nuſance. Thus every private man, to whoſe houſe or land any nuſance ſhall be done, may in peaceable manner aſſemble a meet company, with neceſſary tools, and may remove the nuſance. But if in removing the nuſance, they uſe any extraordinary words, (as to ſay they will do it, though they die for it, or ſuch like words,) or ſhall uſe any other behaviour, in apparent diſturbance of the peace, it is then a riot; and therefore where there is cauſe to remove any ſuch nuſance, or to do any like act, it is the ſafeſt not to aſſemble any multitude of people, but only to ſend one or more perſons; or if a greater number, yet no more than are needful, and only with meet tools, to remove the ſame; and that ſuch perſons tend their buſineſs only, without diſturbance of the peace, or threatening ſpeeches. *Id.*

By the common law, any private perſon may lawfully endeavour to ſuppreſs a riot, by ſtaying thoſe, whom he ſhall ſee engaged therein, from executing their purpoſe; and alſo by ſtopping others whom he ſhall ſee coming to join them: and alſo the ſheriff, conſtable, or other peace officer, may and ought to do all that in them lies towards the ſuppreſſing of a riot, and may command all other perſons to aſſiſt therein. 1 *Haw.* 159.

And by ſtatute 34 *Ed.* 3. *c.* 1. one juſtice of the peace hath power

power to reſtrain rioters, and cauſe them to be impriſoned according to the nature of their offence: but if the rioters are above the number of twelve, the power of a juſtice is very much inlarged, by the 1 *G. ſt.* 2. *c.* 5. commonly called the *riot act*; by which it is enacted, that on notice or knowledge of any perſons tumultuouſly aſſembled, to the number of twelve or more, he ſhall (together with ſuch help as he ſhall command) reſort to the place; and there he ſhall, with a loud voice, command, or cauſe to be commanded, ſilence to be, while proclamation is making; and after that, ſhall make or cauſe proclamation to be made, in the words or to the effect following: "Our ſovereign "lord the king chargeth and commandeth all perſons being aſ- "ſembled, immediately to diſperſe themſelves, and peaceably to "depart to their habitations, or to their lawful buſineſs, upon "the pains contained in the act made in the firſt year of king "*George* the firſt, for preventing tumults and riotous aſſemblies. "God ſave the king." And if any perſon ſhall with force oppoſe or hinder any perſon, whereby the proclamation ſhall not be made; or if any twelve or more ſhall continue together for one hour after proclamation made, or after ſuch hindrance; the ſame ſhall be felony without benefit of clergy. And if any rioters, (though under the number of twelve, and whether any proclamation be made or not,) ſhall demoliſh or pull down, or begin to demoliſh or pull down, any church or chapel, or any building for religious worſhip, regiſtered according to the act of toleration, or any dwelling houſe, barn, ſtable, or other out-houſe, they ſhall be guilty of felony without benefit of clergy; and the hundred ſhall anſwer damages as in caſes of robbery.

The puniſhment of rioters by the common law is fine and impriſonment.

By ſtatute 13 *H.* 4. *c.* 7. and 2 *H.* 5. *c.* 8. two juſtices, together with the ſheriff, may go with the power of the county, if need be, to ſuppreſs any riot, and arreſt the rioters, and record upon the place the nature and circumſtances of the riot; which record alone is a ſufficient conviction of the offenders, and the juſtices thereupon may fine and impriſon them.

RIVERS waſhing away their banks. See ALLUVION.

ROBBERY, is a felonious and forcible taking from the perſon of another, of goods or money to any value, by violence, or putting him in fear. 1. There muſt be a *taking*, otherwiſe it is no robbery; but it is ſufficient, although the taking be not ſtrictly from the perſon of another, if it be done in his preſence; as where a robber by menaces and violence puts a man in fear, and drives away his cattle or other goods before his face. 2. It is not material of what *value* the thing taken is; a penny, as well as a pound, thus forcibly extorted, makes a robbery. 3. The taking muſt be by *force*, or a previous putting in *fear*, which

makes the violation of the perſon more atrocious than privately ſtealing. This previous violence, or putting in fear, is the criterion that diſtinguiſhes robbery from other larcenies. For if a man privately ſteals 6*d.* from the perſon of another, and afterwards keeps it by putting him in fear, this is no robbery, for the fear is ſubſequent; neither is it capital, as private ſtealing, being under the value of 12*d.* Not that it is neceſſary, although it be uſual, to lay in the indictment that the robbery was committed by putting in fear; it is ſufficient, if laid to be done by violence. And when it is laid to be done by putting in fear, this doth not imply any great degree of terror or affright in the party robbed: it is enough that ſo much force, or threatening by word or geſture, be uſed, as might create an apprehenſion of danger, or induce a man to part with his property without or againſt his conſent. Thus, if a man be knocked down without previous warning, and ſtripped of his property while ſenſeleſs, though ſtrictly he cannot be ſaid to be put in fear, yet this is undoubtedly a robbery. 4 *Black.* 243.

In caſe of a robbery committed, the hundred is liable to anſwer damages, 27 *El. c.* 13. And a 40*l.* reward is given for apprehending a robber, and proſecuting him to conviction. 4 *W. c.* 8.

ROBERDSMEN, followers of *Robert Hood*, who in the reign of king *Richard* the firſt committed great outrages on the borders of *England* and *Scotland*, in woods and deſerts, by robbery, burning of houſes, felony, waſte, and ſpoil, and principally by and with vagabonds, idle wanderers, night-walkers, and drawlatches. And although he lived in *Yorkſhire*, yet men of his quality took their denomination of him, and were called *Roberdſmen* throughout all *England*. And divers acts of parliament were made againſt them. 3 *Inſt.* 197.

ROGUES. See VAGRANTS.

ROMESCOT, a tribute of a penny for every family, paid yearly at *Rome*; otherwiſe called *Peter-pence*.

ROSETUM, (from the Britiſh *rhos*,) a low watry place of reeds and *ruſhes*.

ROUT, is where three or more perſons meet to do an unlawful act upon a common quarrel; as forcibly breaking down fences upon a right claimed of common or of a way, and make ſome advances towards it. And the difference between an *unlawful aſſembly*, a *rout*, and a *riot*, is this: An *unlawful aſſembly* is when three or more do aſſemble themſelves together to do an unlawful act; as to pull down incloſures, to deſtroy a warren and the game therein, and depart without doing it, or making any motion towards it: a *rout* is, when, after their meeting, they move forward towards the execution of any ſuch act, whether they put their intended purpoſe in execution or not: a *riot* is, where they actually

actually commit an unlawful act of violence, either with or without a common cause of quarrel; as if they beat a man, or kill game in another man's liberty, or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuſance, in a violent and tumultuous manner. 4 *Black.* 140.

RUBRICK, in the book of common prayer, is that part which contains rules and directions for the celebration of divine ſervice; ſo called, becauſe it was anciently written in *red* letters.

RULE OF COURT. 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 refuſes to obey ſuch a rule made, the court will, upon motion, grant an attachment againſt the party that diſobeys the rule.

But generally, an attachment is not grantable for diſobedience to any rule, unleſs the party hath been ſerved with it perſonally; as for diſobeying a rule at *niſi prius*, till it is made a rule of court. 1 *Salk.* 71. 83.

Perſons ſubmitting their differences to be determined by arbitrators, may agree that their ſubmiſſion be made a rule of any of his majeſty's courts of record at *Weſtminſter*; in which caſe, if either party ſhall refuſe to perform the award, the ſubmiſſion may be entered of record in ſuch court; and, on motion for that purpoſe, the court will grant an attachment. 9 & 10 *W. c.* 15.

RUNCARIA, land full of brambles and briars. 1 *Inſt.* 5.

RURAL DEANS, are very ancient officers of the church, but now almoſt grown out of uſe, though their deanries ſtill ſubſiſt as an eccleſiaſtical diviſion of the dioceſe, or archdeaconry. Their office was, to execute the biſhop's proceſſes, to inſpect the lives and manners of the clergy and people within their diſtrict, and to report the ſame to the biſhop; to which end, that they migh thave knowledge of the ſtate and condition of their reſpective deanries, they had power to convene rural chapters.

S A B

SABBATH BREAKING. See LORD'S DAY.

SABULONARIUM, a gravel pit, or liberty to dig gravel or ſand: alſo money paid for the ſame.

SAC, *ſaca*, an ancient privilege which a lord of a manor

claims to have in his court, of holding plea in cauſes of treſpaſs ariſing amongſt his tenants, and of impoſing fines and amercements touching the ſame. It is ſometimes uſed to ſignify the amercement itſelf.

SACRAMENT. See LORD'S SUPPER.

SACRILEGE, robbing of the church, or ſtealing things out of a ſacred place.

SAFE CONDUCT, is a privilege granted by the crown to foreigners to come into and abide in the realm, and ſend their goods from one place to another, according to the terms expreſſed in the ſeveral inſtruments. Theſe letters by ancient ſtatutes muſt be granted under the king's great ſeal, and inrolled in chancery. But paſſports under the king's ſign manual, or licences from his ambaſſadors abroad, are now more uſually obtained, and allowed to be of equal validity. 1 *Black.* 259.

And during the continuance of the ſafe conduct, either expreſs or implied, the foreigner is under the protection of the king and the law; and more eſpecially, as it is one of the articles of *magna charta*, that foreign merchants ſhall be intitled to ſafe conduct and ſecurity throughout the kingdom; therefore any violation of either the perſon or property of ſuch foreigner, may be puniſhed by indictment in the name of the king. 4 *Black.* 69.

SAIL CLOTH. By the 9 *G.* 2. *c.* 37. every maker of *Britiſh* ſail cloth ſhall ſtamp his name and place of abode in words at length on every piece; on pain of forfeiting 10*l.*

SALE, is a transferring the property of goods and chattels from one to another, for valuable conſideration.

If a man agrees with another for goods at a certain price, he may not carry them away before he hath paid for them; for it is no ſale without payment. 2 *Black.* 446.

Where no place or time of delivery is appointed, it is always implied that the delivery be made immediately, and payment upon the delivery, unleſs it be inconſiſtent with the nature of the thing delivered, or it be otherwiſe ſpecially agreed. 3 *Salk.* 61.

If the buyer doth not come at the time agreed on, and pay and take the goods, the ſeller ought to go and requeſt him; and then if he doth not come and pay, and take away the goods in convenient time, the agreement is diſſolved, and the ſeller is at liberty to ſell them to any other perſon. 1 *Salk.* 113.

But if any part of the price be paid down, if it be but a penny, or any portion of the goods be delivered by way of earneſt, the property is bound by it, and the vendee may recover the goods by action, as well as the vendor may the price of them. 1 *Salk.* 113. 2 *Black.* 448.

But by 29 *C.* 2. *c.* 3. no contract for the ſale of goods of the value

value of 10*l.*, or more, ſhall be valid, unleſs the buyer actually receives part of the goods ſold, by way of earneſt on his part; or unleſs he gives part of the price to the vendor, by way of earneſt to bind the bargain, or in part of payment; or unleſs ſome note in writing be made and ſigned by the party, or his agent, who is to be charged with the contract.

And with regard to goods under the value of 10*l.*, no contract, or agreement for the ſale of them, ſhall be valid, unleſs the goods are delivered within one year, or unleſs the contract be made in writing, and ſigned as aforeſaid. 2 *Black.* 448.

If the vendee tenders the money to the vendor, and he refuſes it, the vendee may ſeiſe the goods, or have an action againſt the vendor for detaining in them. 2 *Black.*

If a man ſells a horſe, he may keep him till he is paid; and if the horſe dies in his ſtable after ſale, and before he is delivered, the ſeller may nevertheleſs recover the money, becauſe the property was in the buyer. *Ibid.*

But by *Holt, Ch. J.* an earneſt does not alter the property, but only binds the bargain, the property remaining in the vendor till payment of the money or delivery of the goods. 12 *Mod.* 344. *M.* 11. *W.* 3. *K.* & *Anon.*

In contracts for ſale, it is always underſtood, that the ſeller undertakes that the commodity he ſells is his *own*; and if it proves otherwiſe, an action on the caſe lies againſt him for damages. 2 *Black. Ibid.*

In contracts for proviſions, it is always implied that they are wholeſome; and if they be not, the ſame remedy may be had. *Ibid.*

Lord *Coke* ſays, by the *civil law*, every man is bound to warrant the thing that he ſelleth or conveyeth, albeit there be no expreſs warranty; but the common law bindeth him not, unleſs there be a warranty either in deed or in law; for (ſays he) *caveat emptor.* 1 *Inſt.* 102.

And *Sir William Blackſtone* ſays, with regard to the goodneſs of the wares purchaſed, the ſeller is not bound to anſwer; but if he that ſelleth any thing, doth, upon the ſale, *warrant* it to be good, the law annexeth a tacit contract to this warranty, that, if it be not ſo, he ſhall make compenſation to the buyer; otherwiſe it is an injury to good faith, for which an action on the caſe will lie to recover damages. 2 *Black. Ibid.*

But the warranty muſt be upon the ſale; for if it be made after, and not at the time of the ſale, it is a void warranty: for it is then made without any conſideration; neither doth the buyer then take the goods upon the credit ofthe ſeller. *Ibid.*

Alſo the warranty can only reach to things in being at the time of the warranty made, and not to things *in futuro*; as that a horſe

horſe is ſound at the buying of him, not that he will be ſound two years hence. *Ibid.*

But if the ſeller knew the goods to be unſound, and hath uſed any art to diſguiſe them, or if they are in any reſpect different from what he repreſents them to the buyer, this artifice ſhall be equivalent to an expreſs warranty, and the ſeller is anſwerable for their goodneſs. *Ibid.*

A general warranty will not extend to guard againſt defects that are plainly and obviouſly the object of one's ſenſes; as if a horſe be warranted perfect, and wants a tail or an ear, unleſs the buyer in this caſe be blind. *Ibid.*

But if cloth is warranted to be of ſuch a length, when it is not, there an action on the caſe lies for damages; for that cannot be diſcovered by ſight, but only by a collateral proof, the meaſuring it. *Ibid.*

Alſo, if a horſe is warranted ſound, and he wants the ſight of an eye, though this ſeems to be the object of one's ſenſes, yet as the diſcernment of ſuch defects is frequently matter of ſkill, it hath been held that an action on the caſe lieth to recover damages for this impoſition. *Ibid.*

In the caſe of *Payne* againſt *Cave*, *E.* 29 *G.* 3. it was determined, that a bidder at an auction, under the uſual conditions that the higheſt bidder ſhall be the purchaſer, may retract his bidding any time before the hammer is down; for the auctioneer is the agent only of the vendor, and the aſſent of both parties is neceſſary to make the contract binding. Every bidding is nothing more than an offer on one ſide, which is not binding until aſſented to by the ſeller, which is ſignified on his part by knocking down the hammer. *Caſ.* by *Durnf.* & *Eaſt. vol.* 3. 148.

SALET, a head piece, or ſcull of iron, or other metal.

SALICETAM, a place where willows grow.

SALINA, a, ſalt pit or place where ſalt is made.

SALT. By ſeveral ſtatutes a duty is laid on all ſalt made in *Great Britain*, and alſo on foreign ſalt imported; which is put under the management of the officers of the cuſtoms and exciſe.

SALTATORIUM, a deer leap.

SALVAGE, is an allowance made for *ſaving* ſhips or goods from danger of ſeas, enemies, or the like. And by the ſtatute of the 12 *An. ſt.* 2. *c.* 18, where a ſhip ſhall be in danger of being ſtranded or loſt, all head officers and others near the ſea ſhall ſummon as many perſons as ſhall be neceſſary for aſſiſtance; who ſhall, in caſe of aſſiſtance given, have a reaſonable ſalvage, to be aſcertained by three neighbouring juſtices.

SALVAGIUS, wild, ſavage; as *ſalvagius catus*, a wild cat.

SANC-

SANCTUARY. Anciently, if a perſon accuſed of any crime (except treaſon and ſacrilege,) had fled to any church or church-yard, and within forty days after went in ſackcloth, and confeſſed himſelf guilty before the coroner, and declared all the particular circumſtances of the offence, and thereupon took the oath in that caſe provided; namely, that he abjured the realm, and would depart from thenceforth at the port that ſhould be aſſigned him, and would never return without leave from the king; he, by this means, ſaved his life, if he obſerved the conditions of the oath, by going with a croſs in his hand, and with all convenient ſpeed, to the port aſſigned, and embarking: for if, during this forty days privilege of ſanctuary, or in his way to the ſea ſide, he was apprehended and arraigned in any court for this felony, he might plead the privilege of ſanctuary, and had a right to be remanded, if taken out againſt his will: but by this abjuration his blood was attainted, and he forfeited all his goods and chattels. The immunity of theſe privileged places was very much abridged by the ſtatutes 27 *H.* 8. *c.* 19. and 32 *H.* 8. *c.* 12. And now, by the ſtatute 21 *J. c.* 28. all privilege of ſanctuary, and abjuration conſequent thereupon, is utterly taken away and aboliſhed. 4 *Black.* 332.

SATISFACTION, is the giving of recompence for an injury done; or the payment of money due on bond, judgment, or other ſecurity. A ſum given in the teſtator's life-time, is a ſatisfaction for the ſame ſum left in his will. And it is a rule generally, that a legacy in a will greater, or as great as the debt, ſhall be taken to be a ſatisfaction for that debt. 2 *Atk.* 48. 301.

SCANDAL. See SLANDER.

SCANDALUM MAGNATUM, is a ſlander of the great men of the realm; which, by divers ancient ſtatutes, is made a more heinous offence, than when the like is ſpoken of a common perſon: for which offence, an action on the caſe lies, as well on the behalf of the crown to inflict the puniſhment of impriſonment on the ſlanderer, as on behalf of the party to recover damages for the injury ſuſtained.

SCEPP, an ancient meaſure, the quantity now not known. Baſkets in ſome places are called *ſkips*; ſo a bee-hive is called a *bee-ſkip*.

SCHARNPENNY, from the Saxon *ſcarn*, which ſignifies *dung*, was a payment in ſome manors by the tenants in lieu of folding up their cattle in the lord's yard for the benefit of their dung. In ſome of the northern counties they ſtill call cow's dung by the name of *cow ſcarn*; and a *ſcarny-boughs* denominates a drab, or dirty dunghill wench.

SCHISM, Gr. a rent or diviſion in the church. It is ſpoken commonly of diſſenters ſeparating from the church of *England*.

SCIRE FACIAS, is a judicial writ, and properly lieth after a year

a year and a day after judgment given; whereby the ſheriff is commanded to ſummon or give notice *(ſcire faciat)* to the defendant, that he appear and ſhew cauſe why the plaintiff ſhould not have execution. 1 *Inſt.* 290.

If judgment is againſt a teſtator, there muſt iſſue a *ſcire facias* againſt the executor, (though within the year,) to ſhew cauſe why execution ſhould not be awarded. *Wood. b.* 4. *c.* 4.

If one recovers againſt a feme ſole, and ſhe is married within the year and day, a *ſcire facias* muſt go againſt the huſband to ſhew cauſe. *Id.*

SCIREWIGHT, *ſchiregeld*, a fine impoſed by the ſheriff on ſuch perſons as neglected to attend the county court.

SCOLD. A common ſcold, *communis rixatrix*, (for our law-latin confines it to the feminine gender,) is a public nuſance to her neighbourhood; for which offence ſhe may be indicted, and, if convicted, ſhall be ſentenced to be placed in a certain engine of correction called the trebucket, caſtigatory, or cucking ſtool, which in the Saxon ſignifies the ſcolding ſtool, though now it is frequently denominated the ducking ſtool; becauſe the reſidue of the judgment is, that, when ſhe is ſo placed therein, ſhe ſhall be plunged in water for her puniſhment. 4 *Black.* 169.

An indictment of a common ſcold is good, although it conclude to the common nuſance of *divers* (and not of *all*) the king's ſubjects; which is contrary to the general rule in other caſes. And ſhe may be convicted without ſetting forth the particulars in the indictment. 1 *Haw.* 198. 2 *Haw.* 227.

SCOT ALE, was where any officer of a foreſt kept an alehouſe within the foreſt, by colour of his office, cauſing people to come to his houſe, and there ſpend their money for fear of his diſpleaſure; which, by tranſpoſing the words, may be otherwiſe called an *ale ſhot*.

SCOT AND LOT, a cuſtomary contribution laid upon perſons according to their reſpective abilities; in which reſpect they are at this day ſaid to pay *ſcot and lot*.

SCOTLAND, by the articles of the union, is now become part of the kingdom of *Great Britain*: the principal of which articles are; that the ſucceſſion to the monarchy ſhall be the ſame in both kingdoms: that the united kingdom ſhall be repreſented by one parliament; that ſixteen peers be choſen to repreſent the peerage of *Scotland* in parliament, and forty-five members to ſit in the houſe of commons; that the laws relating to trade, and the exciſe, ſhall be the ſame in both kingdoms; that when *England* raiſes 2,000,000*l.* by a land tax, *Scotland* ſhall raiſe 48,000*l.*

SCUTAGE, a tax on thoſe that held lands by knights ſervice, towards furniſhing the king's army.

SEA. The main ſea beneath the low water mark, and round *England*,

England, is part of *England*; for there the admiralty hath juriſdiction. 1 *Inſt.* 260.

But between the high water mark and low water mark, the common law and the admiral have juriſdiction by turns; one upon the water, the other upon land. But if the water is within a county, the common law claims juriſdiction. 5 *Co.* 107.

Though the land be within the body of a county at the reflow, yet when the ſea is full, the admiral hath juriſdiction upon the water as long as the ſea flows; ſo as at one place there is *diviſum imperium* at ſeveral times. 3 *Inſt.* 113.

By ſtatute 6 *G.* 2. *c.* 37. maliciouſly cutting down or deſtroying any ſea banks, is made felony without benefit of clergy.

SEAL. The uſe of ſeals, as a mark of authenticity to letters and other inſtruments in writing, is very ancient, and was allowed to be ſufficient without ſigning the name, which few could do of old time. Among our Saxon anceſtors, uſually they who could write ſubſcribed their names, and, whether they could write or not, they affixed the ſign of the croſs; which cuſtom, for thoſe that cannot write, is for the moſt part kept up to this day. The Normans uſed ſealing only, without writing their names. The impreſſions of theſe ſeals were ſometimes a knight on horſeback, ſometimes other devices; but coats of arms were not introduced into ſeals, or indeed into any other uſe, till about the reign of *Richard* the firſt, who brought them from the croiſade in the Holy Land, where they were firſt invented and painted on the ſhields of knights, to diſtinguiſh the variety of perſons of every chriſtian nation who reſorted thither; and who could not, when clad in complete armour, be otherwiſe known or aſcertained. 2 *Black.* 305.

Sealing of a deed, is an eſſential part of it; for if a writing is not ſealed, it cannot be a deed.

And for a long time, ſealing was held to be ſufficient without ſigning, and ſo the common form of atteſting deeds, "ſealed "and delivered," continues to this day, notwithſtanding the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. revives the Saxon cuſtom, and expreſsly directs ſigning, in all grants of lands, and many other ſpecies of deeds. *Id.* 305, 306.

But on an iſſue directed out of chancery, whether there was a *deviſe* or not, *Raymond*, chief juſtice, ruled, that ſealing a will is aſſigning within the ſtatute. *Str.* 764.

If a ſeal is broken off, it will make the deed void; and when ſeveral are bound in a bond, the pulling off the ſeal of the one, makes it void as to the others. 2 *Lev.* 220.

But in a deed of covenants, where the parties covenant ſeverally, the breaking off the ſeal of one, ſhall avoid the deed only againſt himſelf. But if the deed be raſed or obliterated in any part

part which concerns them all, or in the date, it ſhall avoid the deed as to them all. *Cro. Eliz.* 408. 546.

It is eſſential to a corporation or body politic to have a *common ſeal*; for though the particular members may expreſs their particular conſents to any act by words, or ſigning their names, yet this does not bind the corporation; it is the fixing of the ſeal, and that only, which unites the ſeveral aſſents of the individuals which compoſe the community, and makes one general aſſent of the whole. 1 *Black.* 475.

SEAMEN:

1. For the encouragement of navigation and commerce, and for a ſupply of ſeamen for his majeſty's navy, it is enacted by the 12 *C.* 2. *c.* 18. commonly called the navigation act, that no goods ſhall be imported into, or exported out of, any part of his majeſty's dominions in *Aſia*, *Africa*, or *America*, in any veſſels but ſuch as belong to the people of *England* or *Ireland*, or are of the built of, and belong to any of the ſaid dominions, and whereof the maſter and three fourths of the mariners at leaſt are *Engliſh*, on pain of forfeiture of both ſhip and goods. And no alien, not being naturalized, ſhall exerciſe the occupation of a merchant or factor in any of the ſaid places.

And no goods of the produce of *Aſia*, *Africa*, or *America*, ſhall be imported into *England* or *Ireland*, in any other veſſel but ſuch as belongs only to the people of *England* or *Ireland*, or of his majeſty's dominions in *Aſia*, *Africa*, or *America*, and whereof the maſter and three-fourths at leaſt of the mariners are *Engliſh*, on pain of like forfeiture of both ſhip and goods.

And no foreign goods ſhall be imported but only from the place of their growth or manufacture, or from thoſe ports where they can only, or have been uſually firſt ſhipped for exportation, on like pain of forfeiture.

But by the 13 *G.* 2. *c.* 3. his majeſty, in time of war, ſhall have power by proclamation to permit all merchant ſhips and privateers to be manned with foreign ſeamen during ſuch war, ſo as they do not exceed three fourths of the whole number. And ſervice by a foreign ſeaman, during the time of war, on board any of his majeſty's ſhips of war, or any merchant ſhip, or privateer, for the ſpace of two years, ſhall have the effect of a naturalization.

2. And by 13 *G.* 2. *c.* 17. every perſon of the age of fifty-five years, or upwards, and under eighteen, and alſo every foreigner, who ſhall ſerve in any merchant ſhip or privateer, ſhall be exempted from being *impreſſed*.

And every landman who ſhall betake himſelf to the ſea ſervice, ſhall be exempted from being impreſſed for two years from the time of his firſt going to ſea.

And every perſon, not having before uſed the ſea, who ſhall bind

bind himſelf apprentice to the ſea ſervice, ſhall be exempted from being impreſſed for three years from the time of ſuch binding.

And the admiralty ſhall make out protections accordingly.

3. A ſeaman ſhipwrecked or caſt on ſhore, having a teſtimonial from a juſtice of the peace, ſetting forth the time and place of his landing, and the place to which he is to go, and limiting the time of his paſſing, ſhall not be liable to be apprehended as a *vagrant*. 17 *G.* 2. *c.* 5.

4. No maſter of a ſhip ſhall ſet ſail, without firſt agreeing with the ſeamen for their *wages*, which agreement ſhall be in writing, and ſigned by both parties; which ſaid agreement, in caſe of diſputes, the maſter ſhall be obliged to produce. 2 *G.* 2. *c.* 36.

For convenience of ſeamen, the admiralty hath been allowed to hold plea for mariners wages. And in this caſe, in a ſuit for wages, the ſeamen may all join; and in that court, the ſhip itſelf is liable, as well as the maſter; and the admiralty hath juriſdiction of their contracts, though they be in writing, and made at land: but if the agreement be ſpecial, out of the common way; or if it be under ſeal, ſo as to be more than a parol agreement; that court hath no juriſdiction, but the common law ſhall have cognizance. *Burr. Manſf.* 1948. 1950.

But it was never allowed that the *maſter* ſhould ſue in the admiralty; nor is it reaſonable, where he commences the voyage *as* maſter; for though the mariners contract upon the credit of the ſhip, the maſter contracts on the credit of the owners. 1 *Salk.* 33.

To prevent deſertion, no maſter ſhall advance to any ſeaman above half his wages, while beyond the ſea, on pain of forfeiting double the ſum advanced, to be recovered in the admiralty by the informer. 8 *G. c.* 24.

And if the ſhip be loſt or taken before the end of the voyage, the wages are not payable: and this is, in order to oblige the ſeamen to uſe their utmoſt endeavours to preſerve the ſhip. *Burr. Manſf.* 1845.

5. A ſhip was taken by a French privateer, and the maſter ranſomed her for 300*l.* and was carried priſoner to *Dunkirk*. He libelled in the admiralty againſt the ſhip for payment of the money, and it was held that he well might; for the taking and pledge being on the high ſeas, the ſhip, by the law of the admiralty, ſhall anſwer for the redemption of the maſter by his own contract. *L. Raym.* 24.

6. The maſter may hypothecate or pawn the ſhip, but he cannot ſell. And if he be driven by tempeſt into port, and there borrows money to refit, the ſhip is liable to condemnation in the admiralty, notwithſtanding that the contract was made at land, for the cauſe of pledging ariſe upon the ſea. *L. Raym.* 152.

7. A ſea-

7. A ſeaman may make a *nuncupative teſtament*, without the ſtrict formalities required of others by the 29 *C.* 2. *c.* 3.

SECRETARY OF STATE, is a great officer under the king; but it doth not ſeem, that in that capacity he is in any conſiderable degree the object of our laws, or hath any very important ſhare of magiſtracy conferred upon him; except that he is allowed the power of commitment, in order to bring offenders to trial. 1 *Black.* 338.

SECTA, *ſuit*, or *action*. This word *(à ſequendo)* anciently ſignified the *followers* or witneſſes of the plaintiff. For in former times, the law would not put the defendant to the trouble of anſwering the charge, till the plaintiff had made out at leaſt a probable caſe. But the actual production of the *ſuit*, the *ſecta*, or *followers*, is now totally diſuſed, though the form of it ſtill continues in the end of the declaration, which always concludes, *and thereupon he bringeth ſuit.* 3 *Black.* 295.

SECTA AD MOLENDINUM, ſuit to another's *mill*; where the perſons reſident in a particular place, by uſage, time out of mind, have been accuſtomed to grind their corn at a certain mill; and afterwards any of them go to another mill, and withdraw their ſuit from the ancient mill: and for this injury, the owner ſhall have a writ *de ſecta ad molendinum*, commanding the defendant to do his ſuit at that mill, or ſhew good cauſe to the contrary. In like manner, a man may have a writ of *ſecta ad fernum*, for ſuit due to his public oven or bakehouſe, or to his *torrale*, his kiln, or malthouſe; when a perſon's anceſtors have erected a convenience of that ſort for the benefit of the neighbourhood, upon an agreement proved by immemorial cuſtom, that all the inhabitants ſhould uſe and reſort to it when erected, An action upon the caſe will alſo lie, to repair the party injured in damages. 3 *Black.* 235.

SECTA CURIÆ, ſuit of court, a ſervice performed by the tenant at the lord's court.

SECURITAS PACIS, is a writ that lies for one that is threatened with bodily harm by another, and is uſually granted out of the chancery or king's bench, againſt peers of the realm, or other offenders of high degree, requiring the juſtices of the peace, or others to whom it is directed, to take recognizance from the perſons complained of, that they will keep the peace towards the complainant, and certify the ſame into the court from whence the writ did iſſue.

SE DEFENDENDO, is where one who hath no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. And not only he, who upon an aſſault, retreats to a wall, or ſome ſuch ſtrait, beyond which he can go no further before he kills another, is judged by the law

to

to act upon unavoidable neceſſity; but alſo he, who being aſſaulted 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 *Haw.* 75.

SEISIN, in the common law, ſignifies poſſeſſion: ſo to ſeiſe, is to take poſſeſſion of a thing. There is a ſeiſin in *fact*, and a ſeiſin in *law*: a ſeiſin in *fact* is, when an actual poſſeſſion is taken; a ſeiſin in *law* is, where lands deſcend, and one hath not actually entered on them. 1 *Inſt.* 31.

SELF DEFENCE. See SE DEFENDENDO.

SELF MURDER. See FELO DE SE.

SEQUESTER, is a term uſed in the civil law for renouncing; as when a widow comes into court and diſclaims having any thing to do, or to intermeddle with her deceaſed huſband's eſtate, ſhe is ſaid to ſequeſter.

SEQUESTRATION, ſignifies the ſeparating or ſetting aſide of a thing in controverſy, from the poſſeſſion of both the parties that contend for it; and it is twofold, voluntary and neceſſary. Voluntary, is that which is done by conſent of each party; neceſſary, is what the judge of his authority doth, whether the party will conſent or not.

There is alſo a ſequeſtration in the court of chancery againſt a perſon for non-appearance upon a bill exhibited, or for not yielding to a decree, or the like. In which caſe, a commiſſion is uſually directed to certain perſons therein named, impowering 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 ſequeſter 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 injoined him by the court, for not doing whereof he is in contempt. *Curſ. Canc.* 89.

A ſequeſtration is alſo a kind of execution for debt, eſpecially in the caſe of a beneficed clerk, of the profits of the benefice, to be paid over to him that had the judgment, till the debt is ſatisfied.

SERJEANT, is a word diverſely uſed, and applied to ſundry offices and callings. Firſt, a *ſerjeant at law*, *ſerviens ad legem*, which is the higheſt degree taken in the common law. The court of common pleas is ſet apart for ſerjeants to plead therein, yet they are not ſo limited as to be reſtrained from pleading in any other court. Of theſe one or more are eſpecially called the *king's ſerjeants*, to plead for him in all his cauſes, eſpecially in caſes of criminal juriſdiction. There are alſo *ſerjeants at arms*, whoſe office is to attend on the perſon of the king, to arreſt perſons of condition offending. They may not be above thirty in number, two of whom by the king's allowance attend on the two houſes of parliament.

ment. One of them alſo attends on the lord high chancellor in chancery, one on the lord treaſurer, one on the lord mayor of *London*, on extraordinary ſolemnities. They were anciently called *virgatores*, becauſe they carried ſilver rods gilt. There are likewiſe *ſerjeants at mace*, in divers towns corporate; who with their maces attend on the mayor or other head officer. Heretofore, there were alſo *ſerjeants of the foreſt*, *ſerjeants of hundreds*, *ſerjeants of manors*, *ſerjeants of the peace*; the word *ſerjeant*, *ſerviens*, being indeed nothing but another word for *ſervant*, or rather indeed the ſame word varied a little in the orthography.

SERGEANTY, *ſergeanti*, *ſervicium*, ſignifies in law a ſervice that cannot be due from a tenant to any lord, but to the king only; and it is of two kinds, *grand ſerjeanty* and *petit ſerjeanty*. *Grand ſergeanty*, is where a perſon holds his lands of the king by ſuch ſervices as he ought to do in perſon; as to carry the king's banner, or his lance, or to carry his ſword before him at his coronation, or to do other like ſervices: and it is called *grand* ſerjeanty, becauſe it is a greater and more worthy ſervice than the ſervice in the common tenure of eſcuage. *Petit ſergeanty*, is where a man holds his land of the king, to render to him yearly, a bow, a ſword, a lance, a pair of gloves of maile, a pair of gilt ſpurs, or ſuch other ſmall things belonging to war. And ſuch ſervice is but ſocage in effect, becauſe ſuch tenant by his tenure, ought not to go nor do any thing in his proper perſon, but to render and pay yearly certain things to the king, as if a man ought to pay a rent. *Litt.* § 153. 160. Though all tenures are turned into common ſocage, by the 12 *C.* 2. *c.* 4. yet the honorary ſervices of grand ſerjeanty ſtill remain, being therein excepted.

SERVANTS:

1. SERVANTS are either *menial*, who are domeſtics, living *intra mœnia*, within the *walls* of the houſe; or they are ſuch as are no part of the maſter's family, but are hired to do ſome particular kinds of buſineſs.

2. If the hiring be general, without any particular time limited, the law conſtrues it to be a hiring for a year; upon a principle of natural equity, that a ſervant ſhall ſerve, and the maſter maintain him, throughout all the revolutions of the reſpective ſeaſons as well when there is work to be done, as when there is not. But the contract may be made for a longer or ſmaller time. 1 *Black.* 425.

3. If a ſervant be under age, his agreement with the maſter to his diſadvantage ſhall not prejudice him; but if it be to his advantage, it is good in law. *Dalt. c.* 58.

4. If a woman who is a ſervant ſhall marry, yet ſhe ſhall ſerve out her time, and her huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58.

5. If

5. If any perſon hire or retain my ſervant, being in my ſervice, for which the ſervant departeth from me, and goeth to ſerve the other, I may have an action for damages againſt both the new maſter and the ſervant, or either of them; but if the new maſter did not know that he is my ſervant, no action lies, unleſs he afterwards refuſe to reſtore him upon information and demand. 1 *Black.* 429.

6. If a ſervant fall ſick, or be hurt or diſabled by the act of God, or in doing his maſter's buſineſs, his maſter may not put him away, nor abate any part of his wages. *Dalt. c.* 58.

7. A ſervant aſſaulting his maſter or other perſon having overſight of him, ſhall be impriſoned for a year, or ſuch leſs time as two juſtices before whom he ſhall be convicted ſhall think fit. 5 *El. c.* 4.

8. A maſter is allowed by law with moderation to chaſtiſe his ſervant being under age; but if the maſter or miſtreſs beats any ſervant of full age, it may be a good cauſe of diſcharge, on complaint to the juſtices. 1 *Black.* 428.

9. A maſter may abet and aſſiſt a ſervant in any action at law againſt a ſtranger: whereas, in general, it is an offence againſt public juſtice to encourage ſuits and animoſities, by helping to bear the expence of them, and is called in law maintenance. *Id.* 429.

10. A maſter may bring an action againſt any man for beating or maiming his ſervant; but in ſuch caſe, he muſt aſſign, as a ſpecial reaſon for ſo doing, his own damage by the loſs of his ſervice, and this loſs muſt be proved upon the trial: and the ſervant alſo may maintain an action for the battery or impriſonment. 3 *Black.* 142.

11. So a maſter may juſtify an aſſault and battery in defence of his ſervant, for otherwiſe he might loſe his ſervice; as a ſervant may juſtify an aſſault and battery in defence of his maſter. *Wood. b.* 1. *c.* 6.

12. The maſter is indictable for a nuſance done by his ſervant; as for throwing dirt in the highway: and the ſervant alſo is indictable; for a ſervant is not excuſed the commiſſion of any crime by the command or coercion of his maſter. 1 *Haw.* 3.

If an innkeeper's ſervant rob his gueſts, the maſter is bound to reſtitution. 1 *Black.* 435.

If a ſmith's ſervant lames a horſe in ſhoeing him, an action lies againſt the maſter, and not againſt the ſervant. *Id.* 431.

13. If I pay money to a banker's ſervant, the banker is anſwerable for it: but if I pay it to a man's ſervant, whoſe uſual buſineſs it is not to receive money for his maſter, and he embezzles it, I muſt pay it over again. *Id.* 430.

So if a ſteward lets a leaſe of a farm without the owner's know-

ledge, the owner muſt ſtand to the bargain; for this is the ſteward's buſineſs. *Id.*

A wife, a friend, a relation, that uſe to tranſact buſineſs for a man, are to this purpoſe his ſervants, and the principal muſt anſwer for their conduct; for the law implies, that they are under a general command; and without ſuch a doctrine as this, no mutual intercourſe between man and man could ſubſiſt with any tolerable convenience. *Id.*

If I uſually deal with a tradeſman by myſelf, or conſtantly pay him ready money, I am not anſwerable for what my ſervant takes up upon truſt; for here is no implied order to the tradeſman to truſt my ſervant: but if I uſually ſend him upon truſt, or ſometimes on truſt, and ſometimes with ready money, I am anſwerable for all he takes up; for the tradeſman cannot poſſibly diſtinguiſh, when he comes by my order, and when upon his own authority. *Id.*

14. Formerly, if a ſervant kept his maſter's fire negligently, ſo that his neighbour's houſe was burned down thereby, an action lay againſt the maſter: but now, by 6 *An. c.* 3. no action ſhall be brought againſt any in whoſe houſe a fire ſhall accidentally begin; for their own loſs is ſufficient puniſhment for their own, or their ſervant's careleſſneſs: but if the fire happens through a ſervant's negligence, ſuch ſervant ſhall forfeit 100*l.* to be diſtributed among the ſufferers; and in default of payment, ſhall be committed to ſome workhouſe, and there kept to hard labour for eighteen months.

15. If a ſervant is robbed of the maſter's money, the maſter or the ſervant may bring the action againſt the hundred. *Wood. b.* 1. *c.* 6.

16. If a ſervant ſells his maſter's horſe or other goods in a fair or market, with ſecret faults which the maſter knew of, the buyer can have no advantage againſt the maſter, unleſs he bid the ſervant ſell to that perſon certain. *Wood. b.* 1. *c.* 6. 1 *Roll's Abr.* 95.

17. By hiring and ſervice for a year, a ſervant gains a ſettlement in the pariſh where he ſerved the laſt forty days.

18. Diſputes concerning wages or miſbehaviour, between maſter and ſervant, are in moſt caſes determinable before juſtices of the peace.

19. No maſter can put away his ſervant, or ſervant leave his maſter, either before, or at the end of his term, without a quarter's warning, unleſs upon reaſonable cauſe to be allowed by a juſtice of the peace: but they may part by conſent, or make a ſpecial contract. 5 *El. c.* 4.

20. The contract is not diſſolved by the death of the maſter; the ſervant is obliged to ſerve the executor, and the executor is to pay him. *Burr. Settlem. Caſ.* 182.

And

And by the 25 *G.* 3. *c.* 43. and 25 *G.* 3. *c.* 70. certain duties are impoſed on ſeveral deſcriptions of male and female ſervants, which are to be under the management of the commiſſioners of the window duties.

SESSION OF PARLIAMENT, is the ſitting of the parliament on the great affairs of the nation; which ſeſſion continues till it be either prorogued or diſſolved, and breaks not off by adjournment; therefore, upon an adjournment, all things continue in the ſtate they were in before the adjournment; but a prorogation puts an end to the ſeſſion: in which caſe, ſuch bills as are begun, and not perfected, muſt be reſumed *de novo* (if at all) in a ſubſequent ſeſſion. 4 *Inſt.* 27.

SESSION OF THE PEACE, is a court of record, holden before two or more juſtices, whereof one is of the quorum, for execution of the authority given to them by the commiſſion of the peace, and certain acts of parliament. The *general* ſeſſions and *quarter* ſeſſions are not ſynonymous; for the *quarter* ſeſſions are a ſpecies only of the *general* ſeſſions; and ſuch ſeſſions only are properly called *general quarter ſeſſions*, which are holden in the four quarters of the year, in purſuance of the ſtatute 2 *Hen.* 5. and any other ſeſſions, holden at any other time for the general execution of the juſtices authority; which, by the ſaid ſtatute, they are authoriſed to hold oftener than at the times therein ſpecified, if need be, may be properly called *general* ſeſſions; and thoſe holden on a ſpecial occaſion, for the execution of ſome particular branch of their authority, are called ſpecial ſeſſions. 2 *Haw.* 42.

The juriſdiction of the quarter ſeſſions extends to the trying and determining all felonies and treſpaſſes whatſoever, though they ſeldom, if ever, try any greater offence than ſmall felonies within the benefit of clergy; their commiſſion providing, that if any cauſe of difficulty ariſes, they ſhall not proceed to judgment but in the preſence of one of the judges. 4 *Black.* 271.

A SET-OFF, is when the defendant acknowledges the juſtice of the plaintiff's demand on the one hand, but on the other ſets up a demand of his own, to counterbalance that of the plaintiff, either in the whole, or in part; as if the plaintiff ſues for 10*l.* due on a note of hand, the defendant may ſet off 9*l.* due to himſelf for merchandize ſold to the plaintiff. 3 *Black.* 304.

This depends on the ſtatutes 2 *G.* 2. *c.* 22. and 8 *G.* 2. *c.* 24. which enact, that where there are mutual debts between the plaintiff and defendant, one debt may be ſet againſt the other, and either pleaded in bar, or given in evidence upon the general iſſue at the trial; which ſhall operate as payment, and extinguiſh ſo much of the plaintiff's demand. *Id.* 305.

If the ſet-off is pleaded, the defendant muſt pay the remaining balance into court. *Id.* 304.

SEVERAL *action*, is where two or more perſons are ſeverally charged in any action.

So a *ſeveral covenant*, is a covenant by two or more ſeverally; and in a deed where the covenants are ſeveral between divers perſons, they are as ſeveral deeds written on one piece of parchment.

Several fiſhery, is an excluſive right of fiſhing in a public river.

Several inheritance, is an inheritance conveyed ſo as to deſcend, or come to two perſons ſeverally by moieties.

Several tail, is that whereby land is given and intailed ſeverally to two.

SEVERALTY, eſtate in, is that which is holden by the tenant in his own right only, without any other perſon being joined or connected with him in point of intereſt, during the continuance of his eſtate. 2 *Black.* 179.

SEVERANCE of *joint tenancy*, may be made by deſtroying any of its conſtituent *unities*. 1. That of *time*, which reſpects only the original commencement of the joint eſtate, cannot indeed (being now paſt) be affected by any ſubſequent tranſactions. But, 2. The jointenants eſtate may be deſtroyed without any alienation, by merely *diſuniting* their poſſeſſions; and therefore, if two jointenants agree to part their lands, and hold them in ſeveralty, they are no longer jointenants; alſo, one jointenant may, by writ of partition, compel another to divide. 3. By deſtroying the unity of *title*; as if one jointenant alienes and conveys his eſtate to a third perſon, here the jointenancy is ſevered, and turned into a tenancy in common. 4. By deſtroying the unity of *intereſt*. And therefore, if there be two jointenants for life, and the inheritance is purchaſed by or deſcends upon either, it is a ſeverance of the jointure.

Severance of *corn*, is the cutting and carrying it off from the ground: and ſometimes the ſetting out the tithes from the reſt of the corn, is called ſeverance.

SEWER, is a freſh water trench, or little river, defended with banks on both ſides, to carry the water into the ſea, and thereby preſerve the land againſt inundations.

Commiſſions of ſewers are appointed under the great ſeal. Formerly, they were wont to be granted *pro re natâ* at the pleaſure of the crown, but now at the diſcretion and nomination of the lord chancellor, lord treaſurer, and chief juſtices, purſuant to the ſtatute 23 *H.* 8. *c.* 5. 3 *Black.* 73.

Their juriſdiction is to overlook the repairs of ſea banks, and ſea walls, and the cleanſing of rivers, public ſtreams, ditches, and other conduits, whereby any waters are carried off; and is confined to ſuch county or particular diſtrict as the commiſſion ſhall expreſsly name. *Id.*

Their court is a court of record; and they may fine and impriſon

ſon for contempts, and in the execution of their duty may proceed by jury, or upon their own view; and may take order for the removal of any annoyances, or the ſafeguard and converſation of the ſewers within their commiſſion, either according to the laws and cuſtoms of *Romney* marſh, or otherwiſe at their own diſcretion. *Id.*

They may alſo aſſeſs ſuch rates, or ſcots, upon the owners of lands within their diſtrict, as they ſhall judge neceſſary; and if any perſon refuſes to pay them, the commiſſioners may levy the ſame by diſtreſs of his goods and chattels; or they may by the ſtatute 23 *Hen.* 8. *c.* 5. ſell his freehold lands, (and by the 7 *An. c.* 10. his copyhold alſo,) in order to pay ſuch ſcots or aſſeſſments. *Id.* 74.

But their conduct is under the control of the court of king's bench, which will prevent or puniſh any illegal or tyrannical proceedings. *Id.*

To pull down or deſtroy any lock, ſluice, floodgate, or other works, on a navigable river, is, by the 8 *G.* 2. *c.* 20. made felony without benefit of clergy. And by 4 *G.* 3. *c.* 12. damaging any ſuch works, is made felony and tranſportation for ſeven years.

SEXTON, *ſegsten, ſegerſtane, (ſacriſta,)* is the keeper of the holy things belonging to the divine worſhip. He is a perſon ſo far regarded by the common law, as one who hath a freehold in his office; and therefore, though he may be puniſhed, yet he cannot be deprived by eccleſiaſtical cenſures. 1 *Black.* 395.

Alſo a part of the office of a ſexton is digging graves. *Caſ.* by *Durnf.* and *Eaſt. vol.* 3. 118.

SHAW, a grove of trees, a wood.

SHEEP. By the 14 *G.* 2. *c.* 6. ſtealing or killing any ſheep or lamb, with intent to ſteal the carcaſe, or any part thereof, is felony without benefit of clergy; and a reward of 10*l.* is given to the proſecutor.

And by the 28 *G.* 3. *c.* 38. every perſon who ſhall export any live ſheep or lambs, ſhall forfeit 3*l.* for every ſheep or lamb, and ſhall alſo ſuffer ſolitary impriſonment for three months, without bail, and until the forfeiture be paid; but not to exceed twelve months for ſuch non-payment. And for every ſubſequent offence 5*l.* a piece, and a like impriſonment for ſix months, and until the forfeiture be paid; but not to exceed two years for the non-payment thereof. And all ſhips or veſſels employed therein ſhall be forfeited.

SHERIFF:

1. SHERIFF, *ſhire-reeve*, the reeve, bailiff, or officer of the ſhire, is an officer of great antiquity in this kingdom. He is called in Latin *vice-comes*, as being deputy of the earl or *comes*, to whom the cuſtody of the *county* was committed at the firſt di-

viſion of the kingdom into ſhires. But the earls in proceſs of time, by reaſon of their high employments and attendance on the king's perſon, not being able to tranſact the buſineſs of the county, were delivered of that burden, reſerving to themſelves the honour, but the labour was laid on the ſheriff. So that now the ſheriff doth all the king's buſineſs in the county; and though he be ſtill called *vice-comes*, yet he is intirely independent of, and not ſubject to the earl; the king by his letters patent committing the cuſtody of the county to the ſheriff, and to him alone. 1 *Black.* 339.

2. By ſeveral ſtatutes, none ſhall be ſheriff, except he have ſufficient land within the county to anſwer the king and his people. And by the militia act, 26 *G.* 3. *c.* 107. no man, during the time that he is acting as a *militia officer*, ſhall be obliged to ſerve the office of ſheriff. Alſo an *attorney* is exempted from the office of ſheriff, by reaſon of his attendance on the courts at *Weſtminſter*. Burr. Manſf. 2109.

3. At the common law, the ſheriff was choſen by the county; but this was afterwards altered by ſtatute; and the cuſtom now is, that the great officers of ſtate, together with the judges, meet in the exchequer chamber, and there agree upon three perſons to be propoſed to the king, who afterwards appoints one of them to be ſheriff.

4. At the entering upon his office, the ſheriff ſhall take the following oath, to be adminiſtered in purſuance of a writ of *dedimus poteſtatem*: "I *A. B.* do ſwear, that I will well and truly ſerve the king's majeſty in the office of ſheriff, in 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 aſſent to decreaſe, leſſen, or conceal the king's right, or the rights of his franchiſes. And whenſoever 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 may not do it myſelf, I will certify and inform the king thereof, or ſome of his judges. I will not reſpite or delay to levy the king's debts, for any gift, promiſe, reward, or favour, where I may raiſe the ſame without 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, or for favour or hatred. I will diſturb no man's right, and will truly 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

"may be disturbed, injured, or delayed. I will truly return, "and truly serve all the king's writs, according to the best of "my skill and knowledge. I will take no bailiffs into my ser- "vice, 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 truly set and return reasona- "ble and due issues of them that be within my bailiwick, ac- "cording to their estate and circumstances, and make due panels "of persons able and sufficient, and not suspected, or procured, "as is appointed by the statutes of this realm. I have not sold "or let to farm, nor contracted for, nor have I granted or pro- "mised for reward or benefit, nor will I sell or let to farm, or "contract for, or grant for reward or benefit, by myself, or any "other person for me or for my use, directly or indirectly, my "sheriffwick, or any bailiwick thereof, or any office belonging "thereunto, or the profits of the same, to any person or persons "whatsoever. I will truly and diligently execute the good laws "and statutes of this realm; and in all things well and truly be- "have myself in my office, for the honour of the king, and the "good of his subjects, and discharge the same according to the "best of my skill and power: So help me God" 3 *G.* c. 15.

5. After he is sworn, he ought at, or before the next county court to deliver a writ of discharge to the old sheriff, who is to set over all the prisoners in the gaol, severally by their names (together with all the writs) precisely by view and indenture between the two sheriffs; wherein must be comprehended all the actions which the old sheriff hath against every prisoner, though the executions are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff, notwithstanding the letters patent of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol only. But the office of the old sheriff ceases, when the writ of discharge cometh to him. 3 *Co.* 72.

6. As keeper of the king's peace, the sheriff is the first man in the county, and superior in rank to any nobleman therein, during his office. He may apprehend and commit to prison all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the king's peace. He may, and is bound *ex officio* to pursue and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the king's enemies when they come into the land: and for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county; which summons, every person above fifteen years of age, and under the degree of a peer, is bound to attend upon warning, on pain of fine and imprison-

ment.

ment. Yet he cannot exerciſe the office of a juſtice of the peace, for then this inconvenience would ariſe, that he ſhould command himſelf to execute his own precepts. 1 *Black.* 343.

7. He hath juriſdiction in cauſes both criminal and civil; for which purpoſe he hath two courts; his *tourn* for criminal cauſes, which is therefore the king's court; the other is his *county court*, for civil cauſes; and this is the court of the ſheriff himſelf.

8. The *under-ſheriff* is appointed by the high ſheriff, becauſe he ſhall anſwer for him; and he ſhall take the like oath as the high ſheriff, *mutatis mutandis*. 3 *G. c.* 15.

The under-ſheriff uſually performs all the duties of the office; a very few only excepted, where the perſonal preſence of the high ſheriff is neceſſary. But no under-ſheriff ſhall abide in his office above one year; nor ſhall he practiſe as attorney during the time he continues in ſuch office. 1 *Black.* 345.

9. The *Bailiffs* alſo are appointed by the ſheriff; and every bailiff, when he gives ſecurity upon entering into his office, ſhall make it part of the condition of ſuch ſecurity, that he will deliver a copy of the clauſes in the ſtatute of 32 *G.* 2. *c.* 28. concerning the carrying of priſoners for debt to alehouſes. And he ſhall take the following oath of office, before a judge of aſſize or two juſtices of the peace: "I *A. B.* ſhall not uſe or exerciſe the "office of bailiff corruptly during the time that I ſhall remain "therein, neither ſhall or will accept, receive, or take, by any "colour, means, or device whatſoever, or conſent to the taking "of any manner of fee or reward of any perſon or perſons, for "the impanelling, or returning of any inqueſt, jury, or tales, in "any court of record, for the king, or betwixt party and party, "above 2*s.* or the value thereof, or ſuch fees as are allowed and "appointed for the ſame by the laws and ſtatutes of this realm, "but will, according to my power, truly and indifferently, with "convenient ſpeed, impanel all jurors, and return all ſuch writ "or writs, touching the ſame, as ſhall appertain to be done by "my duty or office, during the time that I ſhall remain in the "ſaid office: So help me God." 27 *Eliz. c.* 12.

10. By ſeveral ſtatutes, the ſheriffs have the keeping of gaols. And in all *civil* cauſes, as in caſes of impriſonment for debt, the ſheriff or gaoler, at the election of the party, ſhall be anſwerable for eſcapes ſuffered by the gaoler; but if the gaoler ſuffer a *felon* voluntarily to eſcape, this, inaſmuch as it reacheth to life, is felony only in the gaoler; but the ſheriff may be indicted, fined and impriſoned. 1 *Hale's Hiſt.* 597.

11. Where the ſheriff levies money on a *fieri facias*, the plaintiff may have an action of debt againſt him for the money, becauſe it was received by him to the plaintiff's uſe, and the defendant is diſcharged of it: and it lies againſt his executors if he die. 3 *Salk.* 323.

12. In

12. In cauſes where the king is party, and in cauſes criminal, the ſheriff or his officer may break open a door to execute proceſs, after demand and refuſal to open, and ſignifying the cauſe of his coming; but not in a civil cauſe at the ſuit of a ſubject, unleſs where the execution is once lawfully begun; as where the out-doors are open, the ſheriff entering may proceed and break open inner doors. *Foſt.* 319.

13. By the 13 & 14 *C. c.* 21. no ſheriff (except of *London*, *Middleſex*, *Weſtmorland*, and towns which are counties of themſelves) ſhall keep any tables at the aſſizes, except for his own family or retinue, or give any preſent to the judges for their proviſion, or any gratuity to their officers or ſervants, nor ſhall have more than 40 men in livery, nor leſs than twenty in *England* and twelve in *Wales*.

14. By ſeveral old ſtatutes, ſheriffs are to continue in their office no longer than one year, except in *London*, *Middleſex*, and towns being counties of themſelves, and where the office is a man's freehold or inheritance: yet it hath been ſaid, that a ſheriff may be appointed during the king's pleaſure; and ſo is the form of the writ. And none that hath been ſheriff, ſhall be ſo again within three years, if there be other ſufficient. 1 *Ric.* 2. *c.* 11.

15. If the ſheriff ſhall die before his office ſhall be expired, the under-ſheriff ſhall execute the ſame in the deceaſed ſheriff's name, till a new ſheriff be ſworn; and ſhall be anſwerable for the execution thereof as the deceaſed ſheriff would have been. 3 *G.* *c.* 15.

SHIPS. Wilfully deſtroying a ſhip, with intent to prejudice the inſurers; plundering a ſhip in diſtreſs; ſtealing goods of the value of 40*s.* from on ſhipboard; burning or deſtroying any of his majeſty's ſhipping or ſtores; are, by a variety of ſtatutes, made felony without benefit of clergy.

SHIREMAN, was anciently the governor of the ſhire; the *earl* having been ſo denominated from his preſiding over, and having the cuſtody of the ſhire committed to him.

SHOOTING at any perſon, in any dwelling-houſe or other place, though death doth not enſue, is felony without benefit of clergy, by the black act, 9 *G.* *c.* 22.

SHOP-BOOK, is not allowed of itſelf to be given in evidence for the owner: but a ſervant who made the entry may have recourſe to it to refreſh his memory; and if ſuch ſervant (who was accuſtomed to make thoſe entries) be dead, and his hand be proved, the book may be read in evidence. But by the ſtatute 7 *J.* *c.* 12. this ſpecies of evidence is confined to ſuch tranſactions as have happened within one year before the action brought; unleſs between merchant and merchant in the uſual intercourſe of trade. 3 *Black.* 368.

SHOPLIFTERS, are thoſe that ſteal goods privately out of *ſhops*;

ſhops; which being of the value of 5*s*. though no perſon be in the ſhop, is felony without benefit of clergy.

SHORTLING and MORTLING, are words to diſtinguiſh *fells* of ſheep; *ſhorling* being the fells after the fleeces are *ſhorn* or clipped off; and *mortling*, the fells flead off after they *die* or are killed.

SHROUD; ſtealing of it is felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. But ſtealing the corpſe itſelf, which has no owner, (though a matter of great indecency,) is not felony, unleſs ſome of the grave cloaths be ſtolen with it. 2 *Black.* 419. 4 *Black.* 236.

SHRUBS, deſtroying. By the 6 *G. c.* 36 & 48. and 13 *G.* 3. *c.* 33. wilfully to ſpoil or deſtroy any trees, roots, ſhrubs, or plants, is, for the two firſt offences, liable to pecuniary penalties; and for the third, the offender ſhall be guilty of felony, and tranſported for ſeven years. And if it is by night, the ſtealing of any of them to the value of 5*s*. is felony for the firſt offence.

SIDESMEN, or more properly *ſynodſmen*, are church officers, anciently appointed to aſſiſt the churchwardens in making preſentments of eccleſiaſtical offences at the biſhop's *ſynod* or viſitation. By *Can.* 90. they are to be choſen yearly in *Eaſter* week, by the miniſter and pariſhioners, if they can agree; otherwiſe to be appointed by the ordinary of the dioceſe. But for the moſt part this whole office is now devolved upon the churchwardens.

SIGNIFICAVIT, is a writ iſſuing out of chancery, upon a certificate given by the ordinary of a perſon's ſtanding excommunicate by the ſpace of forty days, for the impriſoning him till he ſubmit himſelf to the authority of the church. And it was ſo called, becauſe *ſignificavit* is an emphatical word in the writ. There are alſo ſome other writs in the regiſter of the ſame denomination, ſetting forth that *ſignification* had been made to the court in certain particular caſes: but this concerning excommunication is the writ that generally obtains the name of a *ſignificavit*, and is the ſame with that which is otherwiſe termed an *excommunicato capiendo*.

SIGNING, of deeds, is not of very great antiquity in this kingdom, ſealing alone having been held to be ſufficient for that purpoſe; and ſo the common form of atteſting deeds, "ſealed and delivered," continues to this day, notwithſtanding the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. expreſsly directs *ſigning* in all grants of lands, and many other ſpecies of deeds; in which, therefore, ſigning ſeems to be now as neceſſary as ſealing, though it hath been ſometimes held that the one includes the other. 2 *Black.* 306.

SIMILITUDE of *hand-writing*. Though from the reverſal of colonel *Sydney*'s attainder by act of parliament in 1689, it may be collected, that the mere ſimilitude of hand-writing in two papers ſhewn to a jury, without other concurrent teſtimony, is no evidence that

that both were written by the ſame perſon; yet, undoubtedly, the teſtimony of witneſſes, well acquainted with the party's hand-writing, that they believe the paper in queſtion to have been written by him, is evidence to be left to a jury. 4 *Black.* 358.

SIMONY, is a corrupt contract for a preſentation to any benefice of the church, for money, gift, or reward. It is ſo called from the reſemblance it is ſaid to bear to the ſin of *Simon Magus*, though the purchaſing of holy orders ſeems to approach nearer to this offence. It was by the canon law a very grievous crime; unto which, divers acts of parliament have added other reſtrictions.

By one of the canons of 1603, every perſon, before his admiſſion to any eccleſiaſtical promotion, ſhall, before the ordinary, take an oath, that he hath made no ſimoniacal payment, contract, or promiſe, directly or indirectly, by himſelf or any other, for the obtaining of the ſaid promotion; and that he will not afterwards perform or ſatisfy any ſuch kind of payment, contract, or promiſe, made by any other without his knowledge or conſent.

By the ſtatute 31 *El. c.* 6. if any perſon ſhall, for any reward or promiſe thereof, directly or indirectly give or beſtow any benefice with cure of ſouls, dignity, prebend, or living eccleſiaſtical, the ſame ſhall be void, and the king ſhall preſent for that turn: and every perſon giving or taking ſuch reward, ſhall forfeit double the value of one year's profit of the benefice: and every perſon accepting ſuch benefice ſimoniacally, ſhall be diſabled to have or enjoy the ſame.

And by the 12 *An. ſt.* 2. *c.* 12. if any perſon, for money or profit, ſhall procure in his own name, or in the name of any other, the next preſentation to any living eccleſiaſtical, and ſhall be preſented thereupon, this is declared to be a ſimoniacal contract.

General bonds of reſignation upon notice, have been held not to be within theſe ſtatutes; becauſe there doth not appear a corrupt or ſimoniacal contract in the condition; and becauſe a man may bind himſelf to reſign upon good and valuable reaſons; as in caſe of plurality, or non-reſidence, or when the patron's ſon is of age, and qualified to take the benefice: but if it had been for a leaſe of the glebe, or tithes, or a ſum of money, that had been within the ſtatutes. 2 *Black.* 680.

SIMPLE CONTRACT:

DEBTS by *ſimple contract*, (in oppoſition to debts by ſpecialty, or *ſpecial contract*,) are ſuch where the contract upon which the obligation ariſes, is neither aſcertained by matter of record, nor yet by deed or ſpecial inſtrument, but by mere oral evidence, or by notes unſealed, which are only better than a verbal promiſe, by being more capable of proof: whereas debts by ſpecialty are ſuch whereby the contract is aſcertained by deed or inſtrument under ſeal. 2 *Black.* 462.

SINE-CURE, is where there is both rector and vicar in the ſame

ſame church; in which caſe, the duty commonly reſts in the vicar, and the rectory is what is called a *fine-cure*. But no church where there is but one incumbent is properly a fine-cure. A church may be down, or the pariſh become deſtitute of pariſhioners, but ſtill this is not a fine-cure, for the incumbent is under an obligation of performing divine ſervice, if the church ſhall be rebuilt, or the pariſh become inhabited.

SINKING FUND, is ſo denominated from its having been originally deſtined to *ſink* and lower the national debt. It is a proviſion made by parliament, conſiſting of ſurpluſages of other funds, appropriated for payment of the public debts of the nation. Many acts of parliament have been made for applying the growing produce thereof; and money is often borrowed thereupon, towards raiſing the preſent ſupplies for the current ſervice.

SLANDER, is the defaming of a man in his reputation, profeſſion, or livelihood: as if a man, maliciouſly and falſely, utter any ſlander or falſe tale of another, which may either endanger him in law, by impeaching him of ſome heinous crime, as to ſay that a man hath poiſoned another, or is perjured; or which may exclude him from ſociety, as to charge him with having an infectious diſeaſe; or which may impair or hurt his trade or livelihood, as to call a tradeſman a bankrupt. Words ſpoken in derogation of a peer, a judge, or other great officer of the realm, which are called *ſcandalum magnatum*, are held to be ſtill more henious; and though they be ſuch as would not be actionable in the caſe of a common perſon, yet, when ſpoken in diſgrace of the great men of the realm, they amount to an atrocious injury, which is redreſſed by action on the caſe, founded on many ancient ſtatutes, as well on behalf of the crown to inflict the puniſhment of impriſonment on the ſlanderer, as on behalf of the party to recover damages for the injury ſuſtained. Words alſo tending to ſcandalize a magiſtrate or perſon in a public truſt, are reputed more highly injurious than when ſpoken of a private man. 3 *Black.* 124.

For ſcandalous words of any of the kinds above-mentioned, an action on the caſe may be had, without proving any particular damage; but with regard to words that do not thus apparently, and upon the face of them, import ſuch defamation as will of courſe be injurious, it is neceſſary that the plaintiff ſhould aver ſome particular damage to have happened; which is called laying his action with a *per quod*; as if I ſay, that ſuch a clergyman is a baſtard, he cannot for this bring an action againſt me, unleſs he can ſhew ſome ſpecial loſs by it; in which caſe, he may bring his action againſt me for ſaying he was a baſtard, *per quod* he loſt the preſentation to ſuch a living. In like manner, to ſlander another man's title, by ſpreading ſuch injurious reports, as, if true, would deprive him of his eſtate, (as to call the iſſue in tail, or one who hath land by

by deſcent, a baſtard,) is actionable, provided any ſpecial damage accrues to the proprietor thereby; as if he loſes an opportunity of ſelling the land. *Id.*

But mere ſcurrility, or opprobrious words, which neither in themſelves import, nor are in fact attended with any injurious effects, will not ſupport an action. So ſcandals, which concern matters merely ſpiritual, as to call a man heretic or adulterer, are cognizable only in the eccleſiaſtical court, unleſs any temporal damage enſues, which may be a foundation for a *per quod*. So words of heat and paſſion, as to call a man rogue and raſcal, if productive of no ill conſequence, and not of any of the dangerous ſpecies before mentioned, are not actionable; neither are any reflecting words made uſe of in legal proceedings, and pertinent to the cauſe in hand, a ſufficient cauſe of action for ſlander. Alſo if the defendant be able to juſtify, and prove the words to be true, no action will lie, even though ſpecial damage hath enſued; as if I can prove the tradeſman a bankrupt, this will deſtroy his action; for though there may be damage ſufficient accruing from it, yet, if the fact be true, it is damage without an injury; and where there is no injury, the law gives no remedy. *Id.*

Finally, by the 21 *Ja. c.* 16. actions upon the caſe for ſlander, ſhall be brought within two years after the words ſpoken, and not after: and if the jury find the damages under 40*s.*, the plaintiff ſhall have no more coſts than damages.

SLAVERY. A *ſlave*, or a negro, the moment he lands in *England*, falls under the protection of the laws, and ſo far becomes a freeman. Yet with regard to any right which the maſter may have lawfully acquired to his perpetual ſervice, that will remain exactly in the ſame ſtate as before: for this is no more than the ſame ſtate of ſubjection for life, which every apprentice ſubmits to for the ſpace of ſeven years, or ſometimes for a longer term. 1 *Black.* 127. 424.

Hence it follows, that the infamous and unchriſtian practice of withholding baptiſm from negro ſervants, leſt they ſhould thereby gain their liberty, is totally without foundation, as well as without excuſe. The law of *England* acts upon general and extenſive principles: it gives liberty, rightly underſtood, that is, protection, to a Jew, a Turk, or a Heathen, as well as to Chriſtians; and it will not diſſolve a civil obligation between maſter and ſervant, on account of the alteration of faith in either of the parties: but the ſlave is intitled to the ſame protection in *England* before as after baptiſm; and whatever ſervice the heathen negro owed of right to his *American* maſter, by general, not by local law, the ſame (whatever it be) is he bound to render when brought to *England*, and made a Chriſtian. *Id.* 425.

SLUICE, is a frame to keep or let out water. By 1 *G.* 2. *c.* 19. to

19. to deſtroy any lock or ſluice on any navigable river is made felony, and the offender may be tranſported for ſeven years.

SMUGGLERS, are thoſe perſons that conceal prohibited goods, and defraud the king of his cuſtoms on the ſea coaſt, by running of goods and merchandize.

If any goods be ſhipped or landed without warrant and preſence of an officer, the veſſel ſhall be forfeited, and the wharfinger ſhall forfeit 100*l.*, and the maſter or mariner of any ſhip inward bound, ſhall forfeit the value of the goods: and any carman, porter, or other aſſiſting, ſhall be committed to gaol, till he find ſurety of the good behaviour, or until he ſhall be diſcharged by the court of exchequer. 13 & 14 *C.* 2. *c.* 11.

If goods be relanded after drawback, the veſſel and goods ſhall be forfeited; and every perſon concerned therein ſhall forfeit double value of the drawbacks. 8 *An. c.* 13.

Goods taken in at ſea ſhall be forfeited, and alſo the veſſel into which they are taken; and every perſon concerned therein ſhall forfeit treble value. 9 *G.* 2. *c.* 35.

Veſſel hovering near the coaſt ſhall be forfeited, if under fifty tons burthen; and the goods ſhall alſo be forfeited, or the value thereof. 5. *G.* 3. *c.* 43.

Perſons receiving or buying run goods ſhall forfeit 20*l.* 8 *G. c.* 18.

Concealer of run goods ſhall forfeit treble value. 8 *G. c.* 18.

Offering run goods to ſale, the ſame ſhall be forfeited, and the perſon to whom they are offered may ſeize them; and the perſon offering them to ſale ſhall forfeit treble value. 11 *G. c.* 30.

Porter or other carrying run goods ſhall forfeit treble value. 9 *G.* 2. *c.* 35.

Perſons armed or diſguiſed carrying run goods, ſhall be guilty of felony, and tranſported for ſeven years. 8 *G. c.* 18. 9 *G.* 2. *c.* 35. And if they be three or more in company, they ſhall be guilty of felony without benefit of clergy. 19 *G.* 2. *c.* 34.

An officer of the cuſtoms is liable to an action for a wrong ſeizure, notwithſtanding that there may be a probable cauſe. *Str.* 820.

SNUFF. See TOBACCO.

SOAP. By the 27 *G.* 3. *c.* 13. certain duties are impoſed on all ſoap made in *Great Britain*, and alſo on all ſoap imported, and drawbacks allowed on the exportation thereof; as ſet forth in ſchedules annexed to the ſaid act: which duties, on home made ſoap, are to be under the management of officers appointed by the commiſſioners of the treaſury.

And by the 24 *G.* 3. *c.* 41. every ſoap-maker ſhall take out a licence annually from the officers of exciſe.

SOC,

SOC, *ſoke*, Sax. power or liberty to miniſter juſtice, and execute laws; alſo a circuit or territory wherein ſuch power is exerciſed. Whence the word *ſoca* is uſed for ſeigniory or lordſhip infranchiſed by the king, with the liberty of holding a court of ſockmen.

SOCAGE:

TENURE in *ſocage*, according to *Littleton*, is where the tenant holds his tenement of the lord by any certain ſervice, in lieu of all other ſervices, ſo that the ſervice be not knight's ſervice. *Litt. ſect.* 17.

The ſervice therefore muſt be certain, in order to denominate it ſocage; as to hold by fealty and certain rent; or by homage, fealty, and certain rent; or by homage and fealty without rent; ro by fealty and certain corporal ſervice; as ploughing the lord's land for a determinate number of days; or by fealty only, without any other ſervice. 2 *Black.* 79.

Services originally were of various kinds; as by payment of a roſe, a pair of gilt ſpurs, a certain number of capons or hens, or certain buſhels of corn: and of ſome tenements, the ſervice was to be hangman, or executioner of perſons condemned in the lord's court: for in ancient time, ſuch officers were not volunteers, nor for lucre to be hired, unleſs they were bound thereto by tenure. 1 *Inſt.* 86. And from hence, perhaps the denomination of the *common* hangman; being an officer known and diſtinguiſhed by the nature of his tenure.

The common lawyers generally derive this word from *ſoca*, which they ſay is an old Latin word denoting a plough; but as ſervice of the plough was only one amongſt ſeveral other ſpecies of ſocage, Mr. *Somner*'s etymology ſeems more appoſite, who derives it from the *Saxon* appellation *ſoc*, which ſignifies liberty or privilege, denoting thereby a free or privileged tenure. 2 *Black.* 80.

By the ſtatute of 12 *C.* 2. *c.* 24. all the ancient tenures by knight's ſervice are turned into free and common ſocage.

SOLDIERS:

1. THE regulations concerning the ſoldiery (excluſive of the militia) depend chiefly on the annual acts againſt mutiny and deſertion. In the caſe of *inliſting*, when any man ſhall be inliſted, he ſhall in four days time, but not ſooner than twenty-four hours, be carried before the next juſtice of the peace, and before him ſhall be at liberty to declare his diſſent to ſuch inliſting; and in ſuch caſe, on returning the inliſting money, and 20*s.* for the charges expended onhim, he ſhall in preſence of ſuch juſtice be diſcharged; otherwiſe, he ſhall take the oath of inliſting before ſuch juſtice, and by him be certified to be duly inliſted: but if, after having received the inliſting money, he ſhall abſcond, or refuſe to go before

fore ſuch juſtice, he ſhall be deemed to be inliſted, and may be proceeded againſt as if he had taken the ſaid oath.

2. No ſoldier ſhall be *arreſted* and taken out of the ſervice for any debt leſs than 10*l.*

3. Soldiers ſhall not be billetted except only in public houſes, and not in the houſe of any private perſon without his conſent.

4. During the time of *election* of members of parliament, they ſhall, by order of the ſecretary at war, be removed from the place of election.

5. If any officer or ſoldier ſhall kill *game*, without leave of the lord of the manor, ſuch officer ſhall forfeit 5*l.*, and for every ſuch ſoldier killing game, the commanding officer ſhall forfeit 20*s.*: and ſuch officer, not paying, ſhall forfeit his commiſſion.

6. Every officer or ſoldier who ſhall excite or join in any *mutiny* or ſedition, or ſhall not uſe his utmoſt endeavours to ſuppreſs the ſame, or ſhall not give immediate notice thereof to his commanding officer, or ſhall deſert, or liſt in any other regiment, or be found ſleeping on his poſt, or leave it before relieved, or ſhall hold correſpondence with the enemy, or ſtrike, or uſe any violence againſt his ſuperior officer, or diſobey his lawful commands, ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict.

7. The conſtable may take up any perſon reaſonably ſuſpected to be a *deſerter*, and carry him before a juſtice; and if it ſhall appear that he is a deſerter, the conſtable ſhall have a reward of 20*s.* to be paid to him by the collector of the land tax of that pariſh or townſhip.

8. After their diſcharge, ſoldiers may ſet up and uſe any *trade* in any place, (except the two univerſities,) notwithſtanding any by-law of ſuch place, and notwithſtanding their not having ſerved a regular apprenticeſhip to ſuch trade: and neither they, nor their wives or children, during the times they ſhould exerciſe ſuch trades, ſhall be removeable to their place of ſettlement, until they ſhall become actually chargeable.

SOLICITOR, is a perſon employed to follow and take care of ſuits depending in the courts of equity. But by ſtatute 23 *G.* 2. *c.* 26. a ſolicitor may be ſworn and admitted an attorney in the court of king's bench or common pleas; as by 2 *G.* 2. *c.* 23. an attorney may be ſworn and admitted a ſolicitor in any of the courts of equity.

SON ASSAULT, is a juſtification in an action of aſſault and battery; becauſe the plaintiff made the firſt aſſault, and what the defendant did, was in his own defence.

SORCERY, *ſortilegium*, is witchcraft or divination by lots. By the 9 *G.* 2. *c.* 5. all proſecutions for ſorcery, inchantment, or

or conjuration, are abolished; and any person pretending to the same shall be imprisoned for a year, set on the pillory four times in that year, and further bound to the good behaviour as the court shall award.

SOULSCOT, *symbolum animæ*, in the laws of king *Canute*, is used for a mortuary; a payment originally voluntary given to the priest, supposed for the benefit of the soul of the deceased. 2 *Black.* 425.

SPECIAL JURY, was originally introduced in trials at bar, when the causes were of too great nicety for the discussion of ordinary freeholders; or where the sheriff was suspected of partiality, though not upon such apparent cause as to warrant an exception to him. He is in such cases, upon motion in court, and a rule granted thereupon, to attend the prothonotary, or other proper officer, with the freeholder's book; and the officer is to take indifferently forty-eight of the principal freeholders in the presence of the attornies on both sides; who are each of them to strike out twelve, and the remaining twenty-four are returned upon the pannel. 3 *Black.* 357.

Either party is intitled upon motion to have a special jury struck as well at the assizes as at bar, he paying the extraordinary expence; unless the judge shall in open court certify upon the back of the record, that the cause was proper to be tried by a special jury. *Id.* 358.

A person serving on a special jury, shall not be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea; except in causes wherein a view is directed. 24 *G.* 2. *c.* 18.

SPECIAL OCCUPANT. See PUR AUTER VIE.

SPECIAL PLEADING, is where the defendant doth not traverse or deny the whole declaration, (which is called the *general issue,*) but sets forth some special matter whereby to evade it. Special pleas, in bar of the plaintiff's demand, are various, according to the circumstances of the defendant's case; as in real actions, a general release or a fine, either of which may destroy and bar the plaintiff's title. Or in personal actions an accord, arbitration, condition performed, non-age of the defendant, or some other fact which precludes the plaintiff from his action. A justification is likewise a special plea in bar; as in actions of assault and battery, that the plaintiff struck first; in trespass, that the defendant did the thing complained of in right of some office which warranted him so to do; or in an action of slander, that the plaintiff is as bad as the defendant represented him. Formerly, the general issue was seldom pleaded, except when the party meant wholly to deny the charge alleged against him; but when he meant to excuse or palliate the charge, it was usual to set forth the particular facts in a special plea. But

the ſcience of ſpecial pleading having been often perverted to the purpoſes of delay, the courts, in ſome inſtances, and the legiſlature in many more, have permitted the general iſſue to be pleaded, and the ſpecial matter to be given in evidence. 3 *Black.* 305.

SPECIALTY:

DEBTS by *ſpecialty*, or *ſpecial contract*, are ſuch whereby a ſum of money becomes due by deed, or inſtrument under ſeal: whereas, on the contrary, debts by *ſimple contract* are ſuch, where the contract upon which the obligation ariſes is neither aſcertained by matter of record, nor yet by deed or ſpecial inſtrument, but by mere oral evidence, or by notes unſealed, which are only better than a verbal promiſe, by being capable of a more eaſy proof. 2 *Black.* 465.

SPECIFIC LEGACY, is the bequeſt of a certain particular thing; as of a horſe, or a piece of plate, or the *like*; which, in a caſe of a deficiency of aſſets, ſhall not abate as the other legacies, unleſs there ſhall not be ſufficient without it. 2 *Black.* 512.

SPECIFIC RELIEF IN EQUITY, is where the courts of law cannot give a remedy in kind, but only a recompence in damages; in which caſe, a court of equity will compel the thing itſelf ſpecifically to be performed: as in the caſe of executory agreements, a court of equity, inſtead of giving damages for their non-performance, will compel them to be carried into ſtrict execution. 3 *Black.* 438.

SPIRITING away of men, women, or children, is a very heinous crime; and puniſhable by fine, impriſonment, and pillory. 4 *Black.* 219.

SPIRITUAL CORPORATIONS, are where the members thereof are intirely ſpiritual perſons; as biſhops, archdeacons, parſons, and vicars, which are *ſole* corporations; ſo deans and chapters, as formerly abbot and convent, are bodies *aggregate*. 1 *Black.* 470.

SPIRITUAL COURT. See ECCLESIASTICAL COURT.

SPIRITUALTIES, guardian of, is the archbiſhop during the vacancy of a biſhopric; and when the archbiſhopric is vacant, the dean and chapter of his dioceſe are guardians of the ſpiritualties, who exerciſe all eccleſiaſtical juriſdiction during the vacancy. *Ayliff's Parerg.* 125.

SPIRITUOUS LIQUORS. By the 27 *G.* 3. *c.* 13. a duty is impoſed on all ſpirits made in *Great Britain*, and alſo on all ſpirits imported; and drawbacks are allowed on the exportation thereof, as ſet forth in ſchedules annexed to the act.

And by ſeveral ſtatutes, regulations are made for the diſtilling and rectifying of ſpirits, which is to be under the management of the officers of exciſe.

And

And by the 24 *G.* 3. *c.* 41. every diſtiller and rectifier of ſpirits ſhall take out a licence annually, for which he ſhall pay according to the contents of his ſtill, on the penalty of 30*l.*

And every dealer in ſpirits, not being a retailer, rectifier, or iſtiller, ſhall take out a licence annually, for which he ſhall pay 5*l.* on the penalty of 100*l.*

And by the 30 *G.* 3. *c.* 38. every retailer of ſpirits, ſhall take out a licence annually, for which he ſhall pay a ſum in proportion as his houſe ſhall be rated, under the 19 *G.* 3. for impoſing a duty on inhabited houſes, on the penalty of 50*l.*

SPOLIATION, is a writ obtained by one of the parties in ſuit, ſuggeſting that his adverſary *(ſpoliavit)* had waſted the fruits and profits, or received the ſame, to the prejudice of him who ſueth out the writ. It is brought in the ſpiritual court, by one incumbent againſt another, where they both claim by one patron, and the right of patronage doth not come in queſtion; as if a parſon be created a biſhop, and hath a diſpenſation to hold his benefice, and afterwards the patron preſents another incumbent, who is inſtituted and inducted, in this caſe the former may have a ſpoliation in the ſpiritual court againſt the latter, becauſe they both claim by one patron, and the right of patronage doth not come in debate; and becauſe the intruder came into poſſeſſion of the benefice, by the courſe of the ſpiritual law; that is, by inſtitution and induction: for otherwiſe, if he be not inſtituted and inducted, a ſpoliation lies not againſt him, but a writ of treſpaſs, or an aſſize of *novel diſſeiſin*. *F. N. B.*

SQUIBS. See FIREWORKS.

STABBING, is a ſpecies of manſlaughter, which is puniſhed as murder, the benefit of clergy being taken away from it by ſtatute 1 *Ja. c.* 8. which enacts, that where one thruſts or ſtabs another, not then having a weapon drawn, or who hath not then firſt ſtricken the party ſtabbing, ſo that he dies thereof within ſix months after, the offender ſhall not have the benefit of clergy, though he did it not of malice aforethought.

STABLE STAND, *ſtabilis ſtatio*, is where a man is found at his *ſtanding* in the foreſt, with a croſs or long bow bent, ready to ſhoot at any deer; or ſtanding cloſe by a tree, with greyhounds in a leaſh, ready to ſlip. It was an evidence or preſumption of a man's intending to ſteal the king's deer in the foreſt.

STAFF-HERDING, is a right to drive cattle on a common, gently, without hounding or other violence.

STALLAGE, *ſtallagium*, (from the Saxon *ſtal*, *ſtabulum*, *ſtatio*,) is a payment for the liberty of ſetting up a ſtall in a fair or market.

Of common right, every man hath liberty of coming into any public market or fair, to buy and ſell, without paying any toll,

unleſs it be due by cuſtom or preſcription; but if he requires any particular eaſement or convenience, as a ſtall in the market or fair, he muſt agree with the owner of the ſoil, if there be no particular ſum fixed by the cuſtom for ſtallage; if there is a fixed ſum, he muſt pay the ſame accordingly. 1 *Wilſon*, 114.

STANNERIES, (from *ſtannum*, tin,) are the mines and works in *Devonſhire* and *Cornwall*, where tin metal is got and purified. The privileges of the tinners are confirmed by a charter 33 *Ed.* 1. and expounded by a private ſtatute 50 *Ed.* 3. and further by a public act 16 *C.* 1. *c.* 15. by which all labourers in and about the ſtanneries ſhall have the privilege of the ſtannary court while they work there, and may not be impleaded in any other court, for any cauſe ariſing within the ſtannaries; except for pleas of land, life, or member. Their courts are holden before the lord warden, or his ſubſtitutes, and no writ of error lies from thence to any court at *Weſtminſter*. But an appeal lies from the ſteward of the court to the under-warden, from him to the lord warden, thence to the privy council of the prince of *Wales*, as duke of *Cornwall*, and from thence to the king. 3 *Black.* 80.

STAR, (*ſtarrum*,) ſaid to be from an Hebrew word *ſhetar*, a deed or contract, which were anciently called *ſtars*, and writ for the moſt part in Hebrew alone, or in Hebrew and Latin underneath it. And ſome are of opinion, that the court called the *ſtar-chamber* had its name from thence; becauſe in that place, the ſaid ſtars or contracts were anciently kept. 4 *Black.* 266.

STAR, or *bent*, planted on the ſea coaſts in the north-weſt parts of *England*, being of great uſe to preſerve the ſand from being blown away, and caſt upon the adjacent lands; a penalty of 20*s.* is inflicted on any perſon pulling up or deſtroying the ſame, by the ſtatute 15 *G.* 2. *c.* 33.

STARCH. By the 24 *G.* 3. *c.* 41. every ſtarch-maker ſhall take out a licence annually, from the officers of exciſe.

And by ſeveral ſtatutes, regulations are made for the making of ſtarch, and duties are impoſed thereon, which are alſo to be under the management of the officers of exciſe.

STAR CHAMBER, *camera ſtellata*, is ſaid to have been ſo called from the roof of the chamber where the court was holden having been anciently garniſhed with gilded ſtars. It was a court of very ancient original, but new modelled afterwards by divers ſtatutes. It conſiſted of ſeveral of the lords ſpiritual and temporal, being privy counſellors, together with two judges of the courts of common law, without the intervention of any jury. Their legal juriſdiction extended over riots, perjury, miſbehaviour of public officers, and other notorious miſdemeanors. But afterwards, they ſtretched their power beyond the utmoſt bounds of legality, vindicating all the incroachments of the crown, in granting monopolies, in iſſuing proclamations which ſhould have

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the force of laws, in puniſhing ſmall offences, or no offences at all, but of their own creating, by exorbitant fines, impriſonment, and corporal ſeverities; until at laſt this court became ſo odious, that it was finally aboliſhed by the ſtatute 16 *C. c.* 10. 4 *Black.* 264.

STATUTE has divers ſignifications. Firſt, it ſignifies an act of parliament made by the king, lords, and commons in parliament. Secondly, it is a ſhort writing called a ſtatute merchant, or ſtatute ſtaple, which are in the nature of bonds, and are called *ſtatutes*, as being made according to the form provided in certain ſtatutes or acts of parliament.

STATUTE MERCHANT, is a bond, or obligation of record, acknowledged before ſufficient perſons for that purpoſe appointed, ſealed with the ſeal of the debtor and of the king; on condition, that if the obligor pay not the debt at the day, execution may be awarded upon his body, lands, and goods; and that the obligee may hold the lands to him, his heirs and aſſigns, till the debt is ſatisfied and paid. And during the time of being in poſſeſſion of the lands, the obligee hath an eſtate by *ſtatute merchant*, or is *tenant by ſtatute merchant*; the bond or recognizance being ſo called, becauſe it is entered into purſuant to the *ſtatute* 13 *Ed.* 1. *de mercatoribus.*

Statutes merchant were contrived for the ſecurity of merchants only, to provide a ſpeedy remedy to recover their debts; but afterwards they were uſed by others, and became one of the common aſſurances of the kingdom. But now ſtatutes merchant are moſtly out of uſe. *Wood. b.* 2. *c.* 3.

STATUTE STAPLE. *Staple* ſignifies a mart or market, and is that market town where the merchants are commanded to bring their goods. And a *ſtatute ſtaple* is a bond of record, acknowledged before the mayor of the ſtaple or town, in the preſence of one or more conſtables of the ſame ſtaple; by virtue of which ſtatute ſtaple, the creditor may forthwith have execution of the body, lands, and goods of the debtor, on non-payment. And then he hath an eſtate in the lands of *ſtatute ſtaple*, or is *tenant in ſtatute ſtaple*, till the debt is paid. It is denominated a *ſtatute*, becauſe it is founded on the ſtatute 27 *Ed.* 3. *c.* 9. which ſets forth the manner of entering into it, and of its execution. *Wood. b.* 2. *c.* 1.

There is alſo a *ſtatute ſtaple*, improperly ſo called, being a *recognizance in the nature of a ſtatute ſtaple*, which extends the benefit of this mercantile tranſaction to all the king's ſubjects in general, by virtue of the ſtatute 23 *H.* 8. *c.* 6.

But now *ſtatute ſtaple*, as well as *ſtatute merchant*, are in a great meaſure become obſolete.

STERLING, was the epithet for ſilver money current within this kingdom, and took name from this; that there was a pure

coin ſtamped firſt in *England*, by the *Eaſterlings*, or merchants of *Eaſt Germany*, by the command of king *John*; and *Hoveden* writes it *eſterling*. Inſtead of the pound ſterling, we now ſay, ſo many pounds of lawful *Engliſh* money; but the word is not wholly diſuſed, for though we ordinarily ſay lawful money of *England*, yet in the mint they call it ſterling money. And when it was found convenient in the fabrication of money to have a certain quantity of baſer metal to be mixed with the pure gold and ſilver, the word *ſterling* was then introduced; and it has ever ſince been uſed to denote the certain proportion or degree of fineneſs, which ought to be retained in the reſpective coins. *Lowndes's Eſſay on Coins*, 14.

STEWS, (from the French *eſtuves*, a *ſtove*, or bath,) are thoſe places which were permitted in *England* to women of profeſſed lewdneſs, and who for hire would proſtitute their bodies to all comers; ſo called, becauſe diſſolute perſons are wont to prepare themſelves for acts of incontinence by bathing. Theſe had long continued on the bank ſide in *Southwark*, but were finally ſuppreſſed by king *Henry* the eighth, by proclamation, in the 37th of his reign. 3 *Inſt.* 205.

STINT, is the proportionable part of a man's cattle, which he may keep upon the common. The general rule is, that the commoner ſhall not turn more cattle upon the common, than are ſufficient to manure and ſtock the land, to which his right of common is annexed. There may be ſuch a thing as common without ſtint or number; but this hath been very ſeldom granted; and the grantee, at this day, cannot grant it over. 3 *Black.* 239. *L. Raym.* 407.

STIRPES, a ſtock, is chiefly uſed in eſtimating the different intereſts of the ſeveral kindred, in the diſtribution of an inteſtate's effects; of which kindred, ſome take *per capita*, by the heads, and ſome *per ſtirpes*, by the ſtocks, from which they have reſpectively deſcended: as if the next of kin to the inteſtate be his three brothers, *A.*, *B.* and *C.*: here his eſtate is divided into three equal portions, and diſtributed *per capita*, to every one an equal ſhare; but if one of theſe brothers, *A.* had been dead, leaving three children, and another, *B.* leaving two, then the diſtribution muſt have been *per ſtirpes*; to wit, one third to *A.*'s three children, another third to *B.*'s two children, and the remaining third to *C.* the ſurviving brother: yet if *C.* had alſo been dead without iſſue, then *A.*'s and *B.*'s five children, being all in equal degree to the inteſtate, would take in their own rights *per capita*; to wit, each of them one fifth part. 2 *Black.* 517.

But in caſe of real eſtates, they do not deſcend *per capita*, but ſhall go to the lineal deſcendants *in infinitum*. As in the caſe of the three brothers abovementioned, the eſtate ſhall deſcend to the eldeſt

eldeſt ſingly, and his heirs, in excluſion of the other two brothers and their deſcendants. 2 *Black.* 216.

STOC and *ſtovel*, a forfeiture where one is taken carrying *ſticks* and *pabulum* out of the woods; *ſtoc* ſignifying *ſtick*, and *ſtovel*, *pabulum*, (fodder for cattle.)

STOC, a ſtump of a tree; hence *ſtoke*, a woody ground: which is often added to the name of a place, as *Greyſtock*, *Baſing ſtoke*, *Woodſtock*. Hence alſo a *pair of ſtocks*; an engine made of two pieces of timber, for putting the legs of offenders in, for the ſecuring of diſorderly perſons, and by way of puniſhment of divers offenders by ſeveral acts of parliament. Every vill is, by the common law, bound to provide a pair of ſtocks. 2 *Haw.* 73.

STOCK JOBBING. By the 7 *G.* 2. *c.* 8. all contracts upon which any premium ſhall be given for liberty to put upon, or to deliver, accept, or refuſe any public ſtock or ſecurity, or any ſhare or intereſt therein, and all wagers, and contracts in the nature of wagers, relating to the price of ſtock, ſhall be void, and the money paid thereon ſhall be reſtored, or may be recovered by action with double coſts; and perſons making ſuch contracts ſhall forfeit 500*l.*

And no money ſhall be given or received for compounding differences relating to ſtock not actually delivered, on pain of 100*l.*

Stock ſold, and not paid for at the time agreed on, may be ſold again, and the firſt buyer ſhall make good the damage.

And if ſtock be bought and not transferred, the buyer may purchaſe other ſtock, and recover like damage.

And all contracts for ſtock, whereof the ſeller is not in actual poſſeſſion at the time, ſhall be void; and every of the parties ſhall forfeit 500*l.* and the broker 100*l.*

STOLEN GOODS. By 3 *W.* *c.* 9. if any perſon ſhall buy or receive any ſtolen goods, knowing them to be ſtolen, he ſhall be deemed an acceſſary after the fact, and ſuffer accordingly.

By 4 *G.* *c.* 11 if any perſon ſhall take money or other reward, under pretence of helping any perſon to ſtolen goods, he ſhall, unleſs he proſecutes the felon, be guilty of felony, in the ſame manner as if he had ſtolen the ſaid goods.

And by the ſame ſtatute, advertiſing a reward for the return of things ſtolen, with no queſtions aſked or words to the like purport, ſubjects both the advertiſer and printer to a forfeiture of 50*l.*

By the 30 *G.* 2. *c.* 24. if any perſon who ſhall offer any goods by way of pawn, exchange, or ſale, ſhall not give a ſatisfactory account how he came by the ſame, or if there be any other reaſon to ſuſpect them to be ſtolen, the perſon to whom they are offered may detain him, and deliver him to a conſtable, who ſhall carry him before a juſtice; and if the juſtice ſhall find cauſe to ſuſpect that the goods were ſtolen, he may commit him for ſix days for further examination; and if it ſhall appear to the ſatisfaction

faction of ſuch juſtice, that the ſaid goods were ſtolen, he ſhall commit the offender to be dealt with according to law.

STORES:

1. If any perſon having charge of the king's armour, ordnance, ammunition, ſhot, powder, or habiliments of war, or of any victuals provided for victualling the army, ſhall *imbezzle* the ſame, to the value of 20*s.*; or ſhall ſteal or imbezzle any of his majeſty's ſails, cordage, or other naval ſtores, to the like value of 20*s.*; he ſhall be guilty of felony without benefit of clergy: if under that value, he may be puniſhed by fine, impriſonment, or proceſs out of the exchequer. 31 *El. c.* 4. 22 *C.* 2. *c.* 5. 9 *G.* 3. *c.* 30.

2. No perſon ſhall *mark* any ſtores of war, or naval ſtores, with the king's mark; that is, cordage of three inches and upwards with a white thread laid the contrary way, or any ſmaller cordage with twine in lieu of white thread laid the contrary way, or any canvas with a blue ſtreak in the middle, or any other ſtores with the broad arrow, on pain of forfeiting not exceeding 200*l.* 17 *G.* 2. *c.* 40.

And the perſon in whoſe cuſtody ſuch goods or ſtores ſo marked, or any timber, thick ſtuff, or plank, marked with the broad arrow, ſhall be found, ſhall incur the like forfeiture. 9 & 10 *W. c.* 41. 9 *G. c.* 8.

3. If any perſon ſhall either in this realm, or in any place thereto belonging, *ſet on fire*, burn, or deſtroy, any of his majeſty's military, naval, or victualling ſtores, or other ammunition of war, or any place where the ſame ſhall be kept, he ſhall be guilty of felony without benefit of clergy. 12 *G.* 3. *c.* 24.

4. The king ſhall have power by proclamation, to prohibit the *exportation* of gunpowder and ſalt-petre, or any ſort of arms or ammunition; and if any ſuch ſhall be ſhipped after ſuch proclamation, the ſame ſhall be forfeited; and the owner ſhall forfeit 100*l.* for every hundred weight of ſalt-petre and gunpowder; 100*l.* for every twenty-five arms; and 100*l.* for every two hundred weight of other ammunition; and every perſon aſſiſting in ſhipping the ſame, ſhall forfeit 100*l.* and treble value, and the maſter alſo ſhall forfeit 100*l.* 12 *C.* 2. *c.* 4. 29 *G.* 2. *c.* 16.

SUBINFEUDATION, was where the inferior lords, in imitation of their ſuperiors, began to carve out and grant to others minuter eſtates than their own, to be held of themſelves, and were ſo proceeding downwards *in infinitum*, till the ſuperior lords obſerved, that by this method of ſubinfeudation they loſt all their feudal profits of worſhips, marriages, and eſcheats, which fell into the hands of thoſe meſne or middle lords, who were the immediate ſuperiors of the terretenant, or him who occupied the land. This occaſioned the ſtatute of *quia emptores terrarum*, 18 *Ed.* 1. to be made, which directs, that upon all ſales or feoffments

ments of lands, the feoffee ſhall hold the ſame, not of his immediate feoffor, but of the chief lord of the fee, of whom ſuch feoffor himſelf held it. And from hence it is holden, that all manors exiſting at this day, muſt have exiſted by immemorial preſcription, or at leaſt ever ſince the ſtatute of *quia emptores* was made. 2 *Black.* 91.

SUBORNATION of perjury. See PERJURY.

SUBPOENA, *ad teſtificandum*, is a proceſs to cauſe witneſſes to appear and give teſtimony, commanding them, laying aſide all pretences and excuſes, to appear, under the penalty *(ſub pœna)* of 100*l.*, to be forfeited to the king; to which the ſtatute 5 *El. c.* 9. hath added a penalty of 10*l.* to the party grieved, and damages equivalent to the loſs ſuſtained for want of his evidence. A ſubpœna *duces tecum*, is to compel the witneſs to *bring with him* ſome writing or other evidence neceſſary to be produced in the cauſe. A ſubpœna in *chancery*, is a writ commanding the defendant to appear and *anſwer* the plaintiff's bill; ſo there is a ſubpœna to make *better anſwer*, ſubpœna to *reply*, ſubpœna to *rejoin*, ſubpœna to *hear judgment*, ſubpœna for *coſts*, and divers others.

SUBSIDY. Anciently the neceſſities of government were ſupplied by *fifteenths* and *ſubſidies*. A *fifteenth*, was a grant by the commons of the fifteenth part of all their moveable goods, for perſonal eſtate was very inconſiderable in thoſe days, an intire fifteenth throughout the kingdom being only about 29,000*l.*; and therefore unto this was ſuperadded the *ſubſidy*, which was an aid to be levied of every ſubject of his lands or goods, after the rate of 4*s.* in the pound for lands, and 2*s.* 8*d.* for goods. This ſubſidy was eſtimated at a medium at about 70,000*l.*, whilſt a ſubſidy of the clergy (including the monaſteries) was about 20,000*l.* But this way of taxation by fifteenths and ſubſidies being attended with many inconveniences, they were ſucceeded by the modern land tax.

SUCCESSOR. A ſole corporation regularly cannot take in ſucceſſion goods and chattels, either in action, as bonds and recognizances; or in poſſeſſion, as leaſes for years; for the executors or adminiſtrators ſhall have them. And although a leaſe be made to a man and his heirs, yet it ſhall not go to his heirs, but to his executors. 1 *Inſt.* 46.

SUFFERANCE, (eſtate at,) is where one comes into poſſeſſion of land by lawful title, but keeps it afterwards without any title at all; as if a man takes a leaſe for a year, and after the year is expired, continues to hold the premiſes without any freſh leave from the owner of the eſtate. Or if a man grants a leaſe at will, and dies, the eſtate at will is thereby determined; but if the tenant continue in poſſeſſion, he is tenant at ſufferance: and in this caſe, having come in by lawful title, the landlord cannot

not recover poſſeſſion, but by actual entry and legal proceſs of ejectment. But by the 4 *G.* 2. *c.* 28. tenants holding over, after determination of their term, and after demand made in writing, to deliver poſſeſſion, are rendered liable to pay double the yearly *value*. And by the 11 *G.* 2. *c.* 19. tenants giving notice of their intention to quit, and not accordingly delivering up the poſſeſſion at the time in ſuch notice contained, are rendered liable to pay double the *rent* they ſhould otherwiſe have paid. And it hath been held, that under this act, the notice need not be in writing, and that the landlord may levy this double *rent* by *diſtreſs*. *Burr. Mansfield*, 1603.

SUGGESTION, is a ſurmiſe of a thing; and by *magna charta*, no perſon ſhall be put to his law, on the ſuggeſtion of another, but by lawful witneſſes. 9 *H.* 3. *c.* 28.

Suggeſtions are grounds to move for prohibitions to ſuits in the ſpiritual courts where they meddle with matters out of their juriſdiction. Though matters of record ought not to be ſtayed on 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 ſtaying the proceedings. 2 *Lill. Abr.* 536.

In which caſe, the party aggrieved in the court below applies to the ſuperior court, ſetting forth in a ſuggeſtion upon record, thenature and cauſe of the complaint, in being drawn *ad aliud examen*, by a juriſdiction or manner of proceſs diſallowed by the laws of the kingdom; upon which, if the matter alleged appear to the court to be ſufficient, the writ of prohibition immediately iſſues; but if the point be doubtful, the court will not determine upon that motion, but will require the party to declare in prohibition; that is, to proſecute an action: and if upon argument, the court ſhall be of opinion that the ſuggeſtion is ſufficient, they will thereupon grant the prohibition. 3 *Black.* 113.

SUICIDE. See FELO DE SE.

SUIT, *ſecta*, *(a ſequendo,)* anciently ſignified the witneſſes or *followers* of the plaintiff; and to this day, the concluding words of the declaration are, "and thereupon he bringeth *ſuit*." For in former times, the law would not put the defendant to the trouble of anſwering the charge, till the plaintiff had made out at leaſt a probable caſe. But the actually producing the *ſuit*, *ſecta*, or *followers*, is now antiquated; though the form thereof ſtill continues. 3 *Black.* 295.

SUMAGE, toll for carriage on horſeback.

SUMMARY proceedings, are ſuch as are directed by particular acts of parliament, for the conviction of offenders, and the inflicting of certain penalties created by thoſe acts. In which there is no intervention of a jury, but the party accuſed is acquitted, or condemned, by the ſuffrage of ſuch perſon only as the ſtatute hath appointed for his judge. Of this kind are moſt of

of the proceedings before juſtices of the peace, intended for the eaſe of the ſubject, by doing him ſpeedy juſtice, and not haraſſing the freeholders with frequent and troubleſome attendance to try every minute offence; but hereby, withal, the ſubject is deprived of the benefit of that famous clauſe in the great charter, that a man ſhall be tried by his equals. 4 *Black.* 280.

SUMMONS, is a notice given upon all writs in real actions; and alſo upon perſonal writs for injuries not being againſt the peace, for the defendant to appear in court at the return of the original writ; and this notice is given to the defendant by two of the ſheriff's officers called *ſummoners*, either in perſon, or left at his houſe or land; in like manner as in the civil law, the firſt proceſs is by perſonal citation. This warning on the land, is given in real actions, by erecting a white ſtick or wand on the defendant's grounds; and by the ſtatute of 31 *El. c.* 3. it muſt alſo be proclaimed on ſome *Sunday* before the door of the pariſh church. 3 *Black.* 279.

Alſo in ſummary convictions before juſtices of the peace, it is neceſſary that the party accuſed be ſummoned before he be condemned. 4 *Black.* 279.

But the want of a ſummons in ſuch caſe may be ſupplied, if the party appears and anſwers to the charge againſt him. *Bur. Munſf.* 1786.

SUNDAY. See LORD'S DAY.

SUPERSEDEAS, is a writ that lies in a great many caſes, and ſignifies in general, a command to ſtay proceedings at law, on good cauſe ſhewn, which ought otherwiſe to proceed. *F. N. B.*

When a certiorari is delivered, it is a ſuperſedeas to inferior courts below; and being allowed, all their proceedings afterwards are erroneous.

If a ſheriff holds plea of 40*s.* debt in his county court, the defendant may ſue for a ſuperſedeas that he do not proceed; or after judgment, he may have a ſuperſedeas directed to the ſheriff, requiring him not to award execution upon ſuch judgment.

SUPPLETORY OATH, in eccleſiaſtical proceedings, is an oath given by the judge to the plaintiff or defendant, upon half proof already made: this being joined to the half proof, *ſupplies* and gives ſufficient power to the judge to condemn or abſolve. This oath is diſcretionary in the judge, and is only uſed where there is but what the civilians eſteem a *ſemiplena probatio*; for if there be full proof, it is never required; and if the evidence doth not amount to a half proof, it is never granted, becauſe this oath is not evidence ſtrictly ſpeaking, but only confirmation of evidence; and if that evidence doth not amount to a half proof, a confirmation of it by the party's own oath will not alter the caſe. *Strange*, 80.

SUP-

SUPPLICAVIT, is a writ iſſuing out of the king's bench or chancery, for taking ſurety of the peace, and is commonly iſſued to the juſtices of the peace, when they are averſe from acting in the affair in their judicial capacity; and the juſtice who takes the recognizance, muſt make a return to the writ, under his hand and ſeal, ſpecifying his compliance. But this writ is ſeldom uſed; for when application is made to the ſuperior courts, they uſually take the recognizance there. And indeed a peer or peereſs cannot be bound in any other place than the court of king's bench or chancery. 4 *Black.* 253.

SUPPOSITITIOUS BIRTH. See VENTRE INSPICIENDO.

SUPREMACY. The papal incroachments upon the king's ſovereignty in this realm having anciently obtained great ſtrength and long continuance, it at length became neceſſary to aſſert and vindicate the king's ſupreme authority, by ſeveral acts of parliament; declaring, that the ſupremacy of the crown of *England* in matters eccleſiaſtical is a moſt indubitable right of the crown; that this kingdom is an abſolute empire and monarchy, conſiſting of one head which is the king, and of a body conſiſting of ſeveral members, which the law divides into two parts, the clergy and laity, both of them next and immediately under God, ſubject and obedient to the head. And finally, it hath been thought proper to ſubſtitute by authority of parliament a recognition by oath of the king's ſupremacy, ſpecifying that no foreign prince, prelate, ſtate, or potentate, hath or ought to have any juriſdiction, power, ſuperiority, pre-eminence, or authority, eccleſiaſtical or ſpiritual, within this realm. 1 *Black.* 368.

SURCHARGE, an overcharge; as where a man puts more cattle upon the common than he hath a right to do, he is ſaid to ſurcharge the common. In which caſe, he that ſurcharges doth an injury to the reſt of the owners, by depriving them of their reſpective portions, or at leaſt contracting them into a ſmaller compaſs. The uſual remedies for ſurcharging are either by diſtraining ſo many of the beaſts as are above the number allowed, or elſe by an action of treſpaſs; both which may be had by the lord; or by a ſpecial action on the caſe for damages; in which any commoner may be plaintiff. 3 *Black.* 237.

SURETY, is the bail or pledge for any perſon, that he ſhall do or perform ſuch a thing; as ſurety for the *peace* is the acknowledging a recognizance or bond to the king, taken by a competent judge of record, for keeping the king's peace. And this ſurety of the peace, every juſtice of the peace may take and command by a twofold authority: firſt, as a miniſter, commanded thereto by an higher authority: as when a writ of *ſupplicavit*, directed out of the chancery or king's bench, is delivered to him: ſecondly, as a judge, and by virtue of his office derived from the commiſſion of the peace. *Dalt. c.* 116.

SUR-

SURREBUTTER, is the replication or anſwer of the plaintiff to the defendant's *rebutter*.

SURREJOINDER, is the plaintiff's anſwer to the defendant's *rejoinder*. Firſt, the plaintiff *declares* his cauſe of action; to this the defendant puts in his *plea*, unto which the plaintiff may offer a *replication*, then the defendant brings his *rejoinder*, unto which the plaintiff replies by a *ſurrejoinder*; and ſometimes the cauſe goes on to a *rebutter* and *ſurrebutter*.

SURRENDER, is properly a yielding up of an eſtate for life or years, to him that hath an immediate eſtate in reverſion or remainder; wherein the eſtate for life or years may merge or drown, by mutual agreement between them. 1 *Inſt.* 337.

There is alſo a ſurrender of cuſtomary eſtates holden by copy of court roll; in which caſe the word *ſurrender* is ſo neceſſary, that it cannot be ſupplied by any other word of conveyance. Theſe ſurrenders are of ſeveral ſorts, according to the ſeveral cuſtoms of manors. In ſome manors, where a copyholder ſurrenders his tenement, he holds a little rod in his hand, which he delivers to the ſteward or bailiff, according to the cuſtom of the manor, to deliver it over to the party to whoſe uſe the ſurrender was made, in the name of ſeiſin, and from thence they are called tenants by the *virge*. In ſome manors, inſtead of a wand, a ſtraw is uſed, and in other manors a glove; and always the cuſtom of the place is to be obſerved. *Coke's Copyh.* 103, 4.

SURVIVORSHIP, is where two perſons or more are ſeiſed of a joint eſtate of inheritance, for their own lives, or for the life of another perſon, or are jointly poſſeſſed of any chattel intereſt; in which caſe the intire tenancy, upon the deceaſe of any of them, remains to the ſurvivors, and at length to the laſt ſurvivor. And the ſame law is as to things perſonal. They cannot indeed be veſted in coparcenary, becauſe they do not deſcend from the anceſtor to the heir, which is neceſſary to conſtitute coparceners. But if a horſe, or other perſonal chattel, be given to two or more, they are jointenants thereof; and unleſs the jointure be ſevered, the ſame doctrine of ſurvivorſhip ſhall take place as in eſtates of lands and tenements. But for the encouragement of huſbandry and trade, it is held, that a ſtock on a farm, though occupied jointly, and alſo a ſtock uſed in a joint undertaking, by way of partnerſhip in trade, ſhall be conſidered as common, and not as joint property; and there ſhall be no ſuch ſurvivorſhip therein. 2 *Black.* 183. 399.

SUSPENSION, is an eccleſiaſtical cenſure, and is of two ſorts; one relating ſolely to the clergy, the other extending alſo to the laity. That which relates ſolely to the clergy, is ſuſpenſion from office and benefice jointly, or from office or benefice ſingly, and may be called a temporary gradation, or deprivation, or

or both. The other ſort of ſuſpenſion which extends alſo to the laity, is ſuſpenſion *ab ingreſſu eccleſiæ*, or from the hearing of divine ſervice, and receiving the holy ſacrament; which may therefore be called a temporary excommunication. *Gibſ.* 1047.

SUS' PER COLL'. When a criminal is attainted upon his trial, it is uſual for the judge to ſign the calendar or liſt of the priſoner's names, with their ſeparate judgments, in the margin. As, for a capital felony, it is written oppoſite the priſoner's name, "let him be hanged by the neck;" which, when the proceedings were in Latin, was "*ſuſpendatur per collum*;" or in the more abbreviated form "*ſus' per coll'.*" 4 *Black.* 403.

SUSPICION. It hath been held by ſome, that a juſtice of the peace cannot apprehend a felon on bare ſuſpicion but; it ſeems to be the better opinion, that a juſtice may iſſue a warrant to apprehend a perſon ſuſpected of felony, though the original ſuſpicion be not in himſelf, but in the party that prays the warrant, becauſe he is a competent judge of the probability offered to him of ſuch ſuſpicion. But it is fitting to examine upon oath the party requiring a warrant, as well to aſcertain that there is a felony or other crime actually committed, without which no warrant ſhould be granted; as alſo to prove the cauſe and probability of ſuſpecting the party, againſt whom the warrant is prayed. 4 *Black.* 290.

The cauſes of ſuſpicion which are generally agreed to juſtify the arreſt of an innocent perſon for felony, are, (1.) being found in ſuch circumſtances as induce a ſtrong preſumption of guilt; as being found in poſſeſſion of any part of goods ſtolen, without giving a probable account of coming honeſtly by them; (2.) abſconding; (3.) being found in company of known offenders, or of perſons of ſcandalous reputation; (4.) living an idle, vagrant, and diſorderly life, without having any viſible means to ſupport it; (5.) being purſued by hue and cry; for if a felony is done, and one is purſued upon hue and cry, who is not of ill fame, nor ſuſpicious, yet he may be attached and impriſoned by the law of the land. But generally, no ſuch cauſe of ſuſpicion, as the abovementioned, will juſtify an arreſt, when in truth no ſuch crime hath been committed, unleſs it be in the caſe of hue and cry. 2 *Haw.* 76.

SWAINMOTE court, in foreſts, is holden before the verderers as judges, by the ſteward of the ſwainmote, thrice in every year; the ſweins or freeholders within the foreſt compoſing the jury. Unto this court all the freeholders in the foreſt owe ſuit and ſervice. And all the officers of the foreſt are to appear at every ſwainmote; alſo out of every town and village in the foreſt, four men and a reeve. The juriſdiction of this court is, to inquire into the oppreſſions and grievances committed by the officers

officers of the foreſt; and to receive and try preſentments certified from the court of attachments againſt the offenders in vert and veniſon.

SWANS. It is felony to take any ſwans that are lawfully marked, though they be at large. *Dalt. c.* 156.

And if they be unmarked, yet if they be domeſtical or tame, that is, kept in a moat, or in a pond near to the dwelling houſe, to ſteal ſuch is alſo felony. *Id.*

But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long, felony cannot be committed by taking them. *Id.*

And yet ſuch unmarked and wild ſwans the king's officers may ſeize for the king's uſe, by his prerogative. Alſo the king may grant them, and conſequently another may preſcribe to have them, within a certain place or precinct. *Id.*

Swans may be eſtray, which no other fowl can be. *Kitch.* 86.

Taking ſwans eggs out of the neſt is puniſhable by impriſonment for a year, and fine at the diſcretion of the court. 11 *H.* 7. *c.* 17.

SWEARING. By the 19 *G.* 2. *c.* 21. (which act is to be read by the miniſter in every church and chapel, four times in the year, on the *Sundays* next after *Lady-day*, *Midſummer*, *Michaelmas* and *Chriſtmas*) every labourer, ſoldier, or ſailor, profanely curſing or ſwearing, ſhall forfeit 1*s.*; every other perſon, under the degree of a gentleman, 2*s.*; and every gentleman or perſon of ſuperior rank, 5*s.*; to the poor of the pariſh: on a ſecond conviction, double; and for every ſubſequent offence, treble; with all charges of conviction: and, in default of payment, ſhall be committed to the houſe of correction for ten days unleſs he be a ſoldier or ſailor, who ſhall inſtead thereof, be ſet in the ſtocks for the firſt offence one hour; and for any number of offences whereof he ſhall be convicted at one and the ſame time two hours. And any juſtice of the peace may convict him on his own hearing, or the teſtimony of one witneſs; and any conſtable, or peace officer, on his own hearing, may apprehend and carry him before a juſtice.

SWEETS. By the 24 *G.* 3. *c.* 41. every maker of ſweets for ſale, ſhall take out a licence annually, from the officers of exciſe. And by the 30 *G.* 3. *c.* 38. every retailer of ſweets or Britiſh-made wines ſhall alſo take out a licence annually in like manner.

And by the 27 *G.* 3. *c.* 13. a duty is impoſed on all made wines or ſweets, made in *Great Britain* for ſale, which is to be paid by the maker thereof.

SYLVA CÆDUA; wood under twenty years growth; coppice wood.

SYNGRAPH, (from συν, together, and γραφω, to write,) was a deed,

a deed, bond, or writing, under the hand and ſeal of both parties. Formerly, when deeds were more conciſe than at preſent it was uſual to write both parts on the ſame piece of parchment with the word *ſyngraphus* in large letters written between them; through which the parchment being cut, one part thereof was delivered to each party; and theſe being matched and tallied together, proved their authenticity.

SYNOD, a meeting or aſſembly of eccleſiaſtical perſons concerning religion; of which there are four kinds: 1. A general or univerſal ſynod or council, where biſhops of all nations meet. 2. A national ſynod, of the clergy of one nation only. 3. A provincial ſynod, where eccleſiaſtical perſons of a province only aſſemble. 4. A dioceſan ſynod, of thoſe of one dioceſe.

SYNODALES TESTES, were anciently perſons ſummoned out of every pariſh to appear at the epiſcopal *ſynods*, and there *atteſt* or make preſentment of the diſorders of the clergy and people. They were in after-times a kind of impanelled jury, conſiſting of two, three, or more perſons in every pariſh, who were upon oath to preſent all heretics and other irregular perſons. And theſe in proceſs of time became ſtanding officers in ſeveral places, eſpecially in great cities, and from hence were called *ſynodſmen*, and by corruption *ſideſmen*: they are alſo ſometimes called *queſtmen*, from the nature of their office, in making inquiry concerning offences. But for the moſt part, this whole office is now devolved upon the churchwardens. *Ken. Par. Ant.* 649.

TAI

TAIL:

1. *Origin of eſtates tail.*
2. *What may or may not be intailed.*
3. *Of the ſeveral kinds of intail.*
4. *Incidents of intail.*
5. *Intail, how barred or deſtroyed.*
6. *Tenant in tail after poſſibility of iſſue extinct.*

1. *Origin of eſtates tail.*

By the common law all inheritances were *fee ſimple*, which were divided into two ſorts; fee ſimple *abſolute*, and fee ſimple *conditional*. *Litt. ſ.* 13.

A conditional fee at the common law was, a fee reſtrained to ſome particular heirs, excluſive of others; as to the *heirs of a man's*

man's body, by which only his lineal deſcendants were admitted, in excluſion of collateral heirs; or, to the heirs *male* of his body, in excluſion both of collateral and lineal females alſo. It was called a *conditional* fee, by reaſon of the condition expreſſed or implied in the donation of it, that if the donee died without ſuch particular heirs, the land ſhould revert to the donor. For this was a condition annexed by law to all grants whatſoever, that on failure of the heirs ſpecified in the grant, the grant ſhould be at an end, and the land return to its ancient proprietor. 2 *Black. b.* 2. *c.* 7.

Now with regard to the *condition* annexed to theſe fees by the common law, it was held, that ſuch a gift (to a man and the heirs of his body) was a gift upon condition, that it ſhould revert to the donor, if the donee had no heirs of his body; but, if he had, it ſhould then remain to the donee. It was therefore called a fee ſimple, on condition that he had iſſue. Now, it is to be obſerved, that when any condition is performed, it is thenceforth intirely gone; and the thing to which it was before annexed, becomes abſolute, and wholly unconditional: ſo that, as ſoon as the grantee hath any iſſue born, his eſtate was ſuppoſed to become abſolute, by the performance of the condition; at leaſt for theſe three purpoſes: Firſt, to enable the tenant to aliene the land, and thereby to bar not only his own iſſue, but alſo the donor, of his intereſt in the reverſion. Secondly, to ſubject him to forfeit it for treaſon, which he could not do till iſſue born, longer than for his own life. Thirdly, to impower him to charge the land with rents, commons, and certain other incumbrances, ſo as to bind his iſſue. *Id.*

However, if the tenant did not in fact aliene the land, the courſe of deſcent was not altered by this performance of the condition; for if the iſſue had afterwards died, and then the tenant, or original grantee, had died, without making any alienation; the lands by the terms of the donation, could deſcend to none but the heirs of his body, and therefore, in default of them, muſt have reverted to the donor. *Id.*

For which reaſon, in order to ſubject the lands to the ordinary courſe of deſcent, the donees of theſe conditional fees ſimple, took care to aliene as ſoon as they had performed the condition by having iſſue; and afterwards repurchaſed the lands, which gave them a fee ſimple abſolute, that would deſcend to the heirs general, according to the courſe of the common law. And the judges gave way to this kind of fineſſe, by reaſon of the inconveniences which attended theſe limited inheritances, in order thereby to ſhorten their duration. *Id.*

But on the other hand, the nobility, who were willing to perpetuate their poſſeſſions in their own families, in order to put a ſtop to this practice, procured the ſtatute of *Weſtminſter* the ſecond, 13 *Ed.* 1 *ſt.* 1. *c.* (commonly called the ſtatute *de donis*

conditionalibus) to be made; which pays a greater regard to the private will and intention of the donor, than to the propriety of ſuch intention, or any public conſideration whatſoever. By which it is enacted as follows:

"Concerning tenements that many times are given *upon condi-*
" *tion*, that is to wit, where any giveth his land to any man nd
" his wife, and to the heirs begotten of the bodies of the ſame man
" and his wife, with ſuch condition expreſſed, that if the ſame
" man and his wife die without heirs of their bodies between
" them begotten, the land ſo given ſhall revert to the giver or his
" heir; alſo in caſe where one giveth land to another, and the
" heirs of his body iſſuing, it ſeemeth hard to the givers and their
" heirs, that their will being expreſſed in the gift is not obſerved;
" in which caſes, after iſſue begotten and born between them,
" (to whom the lands were given under ſuch condition,) hereto-
" fore ſuch feoffees had power to aliene the land ſo given, and
" to diſinherit their iſſue of the land, contrary to the minds of
" the givers, and contrary to the form expreſſed in the gift; and
" further, when the iſſue of ſuch feoffee is failing, the land ſo
" given ought to return to the giver or his heir, by form of the
" gift expreſſed in the deed, though the iſſue (if any were) had
" died, yet by the deed and feoffment of them to whom the land
" was ſo given upon condition, the donors have been barred of
" their reverſion, which was directly repugnant to the form of
" the gift: it is ordained, that the will of the giver, according to
" the form in the deed of gift manifeſtly expreſſed, ſhall be
" from henceforth obſerved; ſo that they to whom the land was
" given under ſuch condition, ſhall have no power to aliene the
" land ſo given, but that it ſhall remain unto the iſſue of them to
" whom it was given after their death, or ſhall revert to the giver
" or his heirs, on failure of ſuch iſſue."

Upon the conſtruction of this act, the judges determined that the donee had no longer a *conditional* fee ſimple, which became abſolute, and at his own diſpoſal, the inſtant any iſſue was born; but they divided the eſtate into two parts, leaving in the donee a new kind of particular eſtate, which they denominated a *fee tail*, (from the French word *tailler*, to cut, foraſmuch as the heirs general are thereby cut off,) and veſting in the donor the ultimate fee ſimple of the land, expectant on the failure of iſſue; which expectant eſtate is what we now call a *reverſion*. 2 *Black. Ibid.*

2. *What may or may not be intailed.*

TENEMENTS is the only word uſed in the ſtatute, which comprehends not only all corporeal inheritances that are or may be holden, but alſo all incorporeal inheritances iſſuing out of any of thoſe inheritances, or concerning, or annexed to, or which may be exerciſed with the ſame, though they be not in tenure; therefore all theſe without queſtion may be intailed; as rents, eſtovers, com-

commons, or other profits whatſoever, granted out of land; or uſes, offices, dignities, which concern lands or certain places, may be intailed within the ſaid ſtatute, becauſe all theſe favour of the realty. 1 *Inſt.* 19, 20.

But if the grant be of an inheritance merely perſonal, or to be exerciſed about chattels, and is not iſſuing out of land, nor concerning any land, or ſome certain place; ſuch inheritances cannot be intailed, becauſe they favour nothing of the realty: in theſe the grantee hath a fee conditional, as they were before the ſtatute; and by his grant or releaſe, he may bar his heir, as he might have done at the common law; for that, in theſe caſes, he is not reſtrained by the ſaid ſtatute. *Id.*

So a grant of an *annuity* to a man and the heirs of his body is void; ſo alſo a *leaſe* for years, for the chattels cannot be turned to an inheritance. But it is commonly aſſigned *in truſt*, that the truſtees ſhall permit the iſſue in tail to receive the profits, which is an intail in effect. 4 *Inſt.* 87.

A *copyhold* cannot be intailed by virtue of the ſtatute; but by ſpecial cuſtom of the manor, it may be limited to the heirs of the body. 2 *Black. Ibid.*

3. *Of the ſeveral kinds of intail.*

ESTATES tail are either *general* or *ſpecial*. Tail *general* is, where lands are given to one and *the heirs of his body begotten*; which is called *tail general*, becauſe, how often ſoever ſuch donee in tail be married, his iſſue in general by all and every ſuch marriage is, in ſucceſſive order capable of inheriting the eſtate tail by force of the gift, becauſe that every ſuch iſſue is of his body begotten. *Litt. ſect.* 14.

In the ſame manner it is where lands are given to a woman, and to the heirs of her body, although ſhe hath diver ſhuſbands, yet the iſſue which ſhe may have by every huſband may inherit as iſſue in tail by force of this gift; and therefore ſuch gifts are called *general tails*. *Litt. ſect.* 15.

Tenant in *tail ſpecial* is, where lands are given to a man and to his wife, and to *the heirs of their two bodies begotten*; in this caſe, none ſhall inherit by force of this gift, but thoſe that be procreated between them two. And it is called *ſpecial tail*, becauſe if the wife die, and he taketh another wife, and they have iſſue, the iſſue of the ſecond wife ſhall not inherit by force of this gift; nor alſo the iſſue of the ſecond huſband, if the firſt huſband die. *Litt. ſect.* 16.

Eſtates, either in *general* or *ſpecial* tail, may be further divided into tail *male*, or tail *female*; as if lands be given to a man and *his heirs male of his body begotten*, this is an eſtate in *tail male general*; but if to a man and the *heirs female of his body on his preſent wife begotten*, this is an eſtate in *tail female ſpecial*. And in caſe of an intail *male*, the heirs *female* ſhall never inherit, nor any derived

from them; nor, on the other hand, the heirs *male* in caſe of a gift in tail *female*. Thus if the donee in tail male hath a daughter who dies leaving a ſon, ſuch grandſon, in this caſe, cannot inherit the eſtate tail; for he cannot derive his deſcent wholly by heirs male. And as the heir male muſt convey his deſcent wholly by males, ſo muſt the heir female wholly by females. And therefore, if a man hath two eſtates tail, the one in tail male, the other in tail female, and he hath iſſue a daughter, which daughter hath iſſue a ſon; this grandſon can ſucceed to neither of the eſtates, for he cannot convey his deſcent wholly either in the male or female line. 2 *Black. Ibid.*

In gifts in tail, the word *heirs* is as neceſſary as in a fee ſimple; and the word *body*, (or other words that amount to it,) makes the tail, and may be reſtrained to males or females of the body. But a gift to heirs male or heirs female, is a fee ſimple, becauſe it is not limited to what body. 1 *Inſt.* 20. 26, 27.

But in a will, the word *body* is not abſolutely neceſſary, in order to make an intail; but it may be ſufficient, if it be to one and the *iſſue*, or the *children* of his body, or the like: for in making his will, a man hath not always opportunity to conſult with able counſel. 1 *Inſt.* 27.

If lands are given to a man and his wife, and to the heirs of the body of the man, the huſband hath an eſtate in general tail, and the wife an eſtate for life; becauſe the word *heirs* relates generally to the body of the huſband. And if the eſtate is made to the huſband and wife, and to the heirs of the body of the wife by the huſband begotten, there the wife hath an eſtate in ſpecial tail, and the huſband for term of life; becauſe the word *heirs* relates to the body of the wife to be begotten by that particular huſband. But if lands are given to huſband and wife, and to the heirs of their two bodies, both of them have an eſtate in ſpecial tail; becauſe the word *heirs*, or the inheritance, is not limited to one more than to the other. Therefore by obſerving to whom the word *heirs* relates, whether to both or one of them, it may be ſeen where the inheritance is lodged. *Litt. ſect.* 26. 28.

4. *Incidents of intail.*

THE incidents to a tenancy in tail under the ſtatute aforeſaid, are chiefly theſe: 1. That a tenant in tail may commit *waſte* on the eſtate tail, by felling timber, pulling down houſes, or the like, without being impeached, or called to account for the ſame. 2. That the wife of tenant in tail ſhall have her *dower* or thirds of the eſtate tail. 3. That the huſband of a female tenant in tail may be tenant by the *curteſy* of the eſtate tail. 2 *Black. ibid.*

5. *Intail how barred or deſtroyed.*

THE inconveniencies ariſing from the ſaid ſtatute *de donis*, by degrees became intolerable. *Children* grew diſobedient, when they

they knew they could not be ſet aſide; *farmers* were ouſted of their leaſes by tenant in tail; for if ſuch leaſes had been valid, then under colour of long leaſes, the iſſue might in effect have been diſinherited; *creditors* were defrauded of their debts, for if tenant in tail could have charged his eſtate with their payment, he might have defeated his iſſue by mortgaging it for as much as it was worth; *treaſons* were encouraged, as eſtates tail were not liable to be forfeited longer than for the tenant's life; and innumerable *latent intails* were produced, to deprive purchaſers of the lands they had fairly bought. But as the nobility were always fond of this family law, (as it may very properly be ſtyled,) there was little hope of procuring the repeal of it by the legiſlature. And therefore the application of fictitious *recoveries* was given way to by the judges, and at laſt in the 12 *Ed.* 4. ſolemnly declared to be a ſufficient bar of an eſtate tail. By the 4 *Hen.* 7. *c.* 24. and 32 *Hen.* 8. *c.* 36. a *fine* was declared to be ſufficient to bar an eſtate tail. By the 26 *Hen.* 8. *c.* 13. eſtates tail are made ſubject to be forfeited for *treaſon*. By the 32 *Hen.* 8. *c.* 28. *leaſes* made by tenant in tail for twenty-one years, or three lives, (under certain reſtrictions,) are allowed to bind the iſſue. By the 33 *Hen.* 8. *c.* 39. eſtates tail are rendered liable to be charged for payment of *debts due to the crown*, by record or ſpecialty. And by the 21 *J. c.* 19. they are ſubjected to be ſold for the debts contracted by a *bankrupt*.

Eſtates tail being thus by degrees unfettered, are now reduced again to almoſt the ſame ſtate, even before iſſue born, as conditional fees were in at the common law, after the condition was performed by the birth of iſſue. *Id.*

6. *Tenant in tail after poſſibility of iſſue extinct.*

TENANT in tail after poſſibility of iſſue extinct, is where one is tenant in ſpecial tail, and a perſon, from whoſe body the iſſue was to ſpring, dies without iſſue; or having left iſſue, that iſſue becomes extinct: in either of theſe caſes, the ſurviving tenant in ſpecial tail becomes tenant in tail after poſſibility of iſſue extinct. 2 *Black. ubi ſupra.*

TALES, *(Lat.)* is uſed in the law for a ſupply of men impanelled on a jury and not appearing, or on their appearance challenged and diſallowed; when the judge upon motion orders a ſupply to be made by the ſheriff of one or more *ſuch* perſons preſent in court, to make up a full jury.

Tales are of two ſorts: *tales de circumſtantibus*, and a *decem tales*. *Tales de circumſtantibus*, is where a full jury doth not appear at *niſi prius*, or ſo many are challenged that there is not a full jury; then on the prayer of the plaintiff's or defendant's counſel, the judge will grant this *tales*, which the ſheriff returns immediately in court. A *decem tales*, is when a full jury doth not

appear on a trial at bar, and is a writ to the ſheriff to return ten ſuch as the other: on a trial at bar, the court cannot grant a *tales de circumſtantibus*, but will grant a *decem tales*, returnable in ſome convenient time, the ſame term, to try the cauſe. 2 *Lill. Abr.* 552.

A *tales* is not to be granted where the whole jury is challenged; but the whole panel, if the challenge be made good, is to be quaſhed, and a new jury returned; for a *tales* conſiſts but of ſome perſons to ſupply the places of ſuch of the jurors as were wanting of the number of twelve, and is not to make a new jury. *Id.*

TALLAGE, cometh of the French word *tailler*, to ſhare or cut out a part; and figuratively is underſtood, when the king or any other hath a ſhare or part of the annual revenue of his lands, or puts any charge or burden upon another; ſo as *tallage* is a general word, and includes all ſubſidies, taxes, tenths, fifteenths, impoſitions, or other burdens or charge put or ſet upon any *man*. 2 *Inſt.* 532.

TANNER. By the 24 *G.* 3. *c.* 41. every tanner ſhall take out a licence annually from the officers of exciſe.

TARE and TRET. *Tare* is an allowance in merchandize, made to the buyer, for the weight of the box, bag, or caſks, wherein the goods are packed; and *tret* is a conſideration in the weight, for waſte in emptying and re-ſelling the goods, by duſt, dirt, breaking, or the like.

TAWER. By 24 *G.* 3 *c.* 41. every tawer ſhall take out a licence annually from the officers of exciſe.

TEA. By the 27 *G.* 3. *c.* 13. a duty is impoſed on all tea imported, according to the price at which the ſame ſhall be ſold at the public ſales of the *Eaſt India* company. And by ſeveral ſtatutes, regulations are made reſpecting the importing, ſtoring, exporting, and true manufacturing of tea, which is to be under the management of the officers of the cuſtoms and exciſe. And by the 20 *G.* 3. *c.* 53. every perſon who ſhall trade in or ſell any tea, ſhall take out a licence annually from the officers of exciſe.

TEMPLARS, were an order of knights, ſo called from having their firſt reſidence in ſome apartments adjoining to the *Temple* at *Jeruſalem*. They were inſtituted in the year 1118. Their buſineſs was to guard the roads for the ſecurity of pilgrims in the Holy Land. They came into *England* in the reign of king *Stephen*; and in a little time obtained great poſſeſſions, ſo that at length their wealth and power were thought too great: they were accuſed of horrid crimes, and every where impriſoned; their eſtates were ſeized, and their order finally ſuppreſſed by pope *Clement* the fifth, in the year 1312.

TEMPORALTIES, of a biſhop, are all ſuch things as the biſhops

biſhops have by livery from the king, as caſtles, manors, lands, tenements, and ſuch other certainties, of which the king is anſwered during the vacation. *Watſ. c.* 40.

And upon the filling of a void biſhopric, not the new biſhop, but the king, by his prerogative, has the temporalties thereof, from the time that the ſame became void, to the time that the new biſhop ſhould receive them from the king. *Id.*

This revenue of the king was anciently very conſiderable; but now, by a cuſtomary indulgence, it is almoſt reduced to nothing: for at preſent, as ſoon as the new biſhop is conſecrated and confirmed, he uſually receives from the king the reſtitution of his temporalties intire and untouched; and then, and not ſooner, he has a fee ſimple in his biſhopric, and may maintain an action for the profits. 1 *Black.* 283.

TENANT HOLDING OVER. See SUFFERANCE.

TENANT TO THE PRÆCIPE, is he againſt whom the writ of *præcipe* is brought, in ſuing out a common recovery, and muſt be the tenant, or ſeized of the frechold.

TENANT AT WILL. See WILL, TENANT AT.

TENDER:

A MAN may *tender* money in purſes or bags, without ſhewing or telling the ſame; for he doth that which he ought; namely, to bring the money in purſes or bags, which is the uſual manner to carry money in; and then it is the part of him who is to receive it, to put it out and tell it. 1 *Inſt.* 208.

He that pleads a tender at the time and place, and no one there to receive, muſt ſhew at what time of the day he was there, and how long he ſtaid; for he ought to ſhew that he has done all that could be done on his part to accompliſh what by his agreement he was bound to do: and if the payment is mentioned to be on ſuch a day, he ought to ſhew that he continued ready to pay at the laſt inſtant of that day ſo long as a man can ſee to count money. 2 *Salk.* 624.

After tender and refuſal of a debt, if the creditor will haraſs the debtor with an action, it is requiſite for the defendant to acknowledge the debt, and plead the tender; adding, that he has always been ready, and ſtill is ready, to diſcharge it; for a tender by the debtor, and refuſal by the creditor, will in all caſes diſcharge the coſts, but not the debt itſelf; though in ſome particular caſes the creditor will totally loſe his money. 3 *Black.* 303.

If an obligation of 100*l.* be made, with condition for the payment of 50*l.* at a day, and at the day the obligor tender the money, and the obligee refuſes the ſame, yet in an action of debt upon the obligation, if the defendant plead tender and refuſal, and that he is yet ready to pay the money, and tender the ſame in court; if the plaintiff will not then receive it, but take iſſue upon

upon the tender, and the ſame be found againſt him, he hath loſt the money for ever. 1 *Inſt.* 207.

But if a man be bound in two hundred quarters of wheat, for delivery of one hundred quarters, he ſhall not plead that he is ſtill ready to deliver them; for they are periſhable goods, and it is a charge for the obligor to keep them. *Id.*

So if a man make an obligation of 100*l.*, with condition for delivery of corn, timber, or the like, or for the performance of an award, or doing of any act, this is collateral to the obligation; that is to ſay, is not parcel of it, and therefore a tender and refuſal is a perpetual bar. *Id.*

And in ſuch caſes the obligor is not bound to carry the corn, timber, or the like, about, to ſeek the obligee; but the obligor, before the day, muſt go to the obligee, and know where he will appoint to receive it, and there it muſt be delivered. 1 *Inſt.* 210.

Payment of money into court is a kind of tender; which is done by paying into the hands of the proper officer of the court, as much as the defendant acknowledges to be due, together with the coſts already incurred, in order to prevent the expence of any further proceedings. And if, after the money is paid in, the plaintiff proceeds in his ſuit, it is at his own peril; for if he doth not prove more due than is ſo paid into court, he ſhall be nonſuited, and pay the defendant's coſts: but he ſhall ſtill have the money ſo paid in, for that the defendant hath acknowledged to be his due. 3 *Black.* 304.

And where money is paid into court, ſo much is ordered by the court to be ſtruck out of the declaration. *Bur. Manſf.* 1773.

TENEMENT, in its vulgar acceptation, is applied only to houſes and other buildings; but in its original, proper, and legal ſenſe, it ſignifies every thing that may be *holden*, provided it be of a permanent nature, whether it be of a ſubſtantial, or of an unſubſtantial and ideal kind. Thus *frank-tenement*, or freehold, is applicable not only to lands and other ſolid objects, but alſo to offices, rents, commons, and the like; and, as lands and houſes are tenements, ſo is an advowſon a tenement; and a franchiſe, an office, a right of common, a peerage, or other property of the like unſubſtantial kind, are all of them, legally ſpeaking, tenements. 2 *Black.* 17.

TENENDUM (to hold) in deeds, was formerly uſed to ſignify the tenure by which the eſtate granted was to be holden; as to hold by knight's ſervice, in burgage, in free ſocage, and the like. But all theſe being now reduced to free and common ſocage, the tenure is not uſually ſpecified. Before the ſtatute of *quia emptores*, 18 *Ed.* 1. it was alſo ſometimes uſed to denote the lord of whom the land ſhould be holden; but the ſtatute directing

recting all future purchaſes to hold, not of the immediate grantor, but of the chief lord of the fee, this uſe of the *tenendum* hath been alſo antiquated, though for a long time after we find it mentioned in ancient charters, that the tenements ſhall be holden of the chief lords of the fee; but as this expreſſed nothing more than the ſtatute had already provided for, it gradually grew out of uſe. 2 *Black.* 298. But in ſeveral cuſtomary manors, it is uſual to ſet forth of whom the land is to be holden, and by what ſervices.

TENOR, in caſe of a libel, imports a tranſcript or copy of the part in diſpute; and to ſay *according to the purport*, is not ſufficient in caſe of a proſecution.

TENTHS, were anciently a temporary aid granted by parliament, and was the real tenth of all the moveables belonging to the ſubject; ſuch moveables, or perſonal eſtate, being much leſs conſiderable then, than what they are at preſent. The clergy alſo, in their convocations, granted the tenth of all their eccleſiaſtical livings.

TENURE, is the manner whereby lands or tenements are *holden*, or the ſervice that the tenant owes to his lord. And there can be no tenure without ſome ſervice, for the ſervice makes the tenure. 1 *Inſt.* 1. 93.

TERM, *terminus*, is a limitation of *time*; as an eſtate for *term of life*; a *term day* for payment of rent: but more particularly it is uſed to ſignify the time wherein the courts of law at *Weſtminſter* are open for all that complain of wrongs or injuries, and ſeek their right by courſe of law. Of theſe terms there are four in every year, denominated from ſome feſtival or ſaint's day immediately preceding; namely, the terms of St. *Hilary*, of *Eaſter*, of the *Holy Trinity*, and of St. *Michael*.

There are in each of theſe terms ſtated days, called *days in bank*; that is, days of appearance in the court of common pleas, called uſually *bancum*, or *commune bancum*, to diſtinguiſh it from *bancum regis*, or the court of king's bench. They are generally at the diſtance of about a week from each other, and regulated by ſome feſtival of the church. On ſome of theſe days in bank, all original writs muſt be made returnable, and therefore they are generally called the *returns* of that term. 3 *Black.* 277.

The firſt return in every term is, properly ſpeaking, the firſt day in that term; and thereon the court ſits to take *eſſoigns*, or excuſes, for ſuch as do not appear according to the ſummons of the writ; wherefore this is uſually called the *eſſoign day* of the term. But the perſon ſummoned hath three days of grace, beyond the return of the writ, in which to make his appearance; and if he appears on the fourth day incluſive, *quarto die poſt*, it is ſufficient. Therefore, at the beginning of each term, the court doth not ſit for diſpatch of buſineſs till the fourth day, and in

Trinity

Trinity term, by ſtatute 32 *H.* 8. *c.* 21. not till the ſixth day. *Id.* 278.

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 the term is as effectual as on the firſt day: and for this reaſon, the judges may alter their judgments at any time during the ſame term.

TERRETENANT, is he who has the legal property and poſſeſſion of the land in truſt for him to whoſe uſe the land was granted.

TEST ACT, is an act of parliament, 25 *C.* 2. *c.* 2. for preventing papiſts from being appointed to offices in the ſtate; whereby it is enacted, that every perſon who ſhall be admitted to any office, civil or military, ſhall, within three months after his admiſſion, receive the ſacrament of the Lord's Supper, according to the uſage of the church of *England*, in ſome public church on the Lord's-day immediately after divine ſervice and ſermon. And in the court where, in purſuance of ſuch promotion, he takes the oaths of allegiance, ſupremacy, and abjuration, he ſhall, at the ſame time, deliver a certificate of ſuch his having received the ſacrament, under the hands of the miniſter and church-wardens, and make proof of the truth thereof by two witneſſes: and he ſhall alſo at the ſame time make and ſubſcribe the declaration againſt tranſubſtantiation (which is emphatically called the *teſt*).

TESTAMENT, is a voluntary diſpoſition of what one would have to be done, concerning his goods and chattels, real and perſonal, after his deceaſe; with the appointment of an executor. For which, ſee WILLS.

TESTATUM CAPIAS, is a writ in perſonal actions, where the defendant cannot be arreſted upon a *capias* in the county where the action is laid, but is returned *non inventus* by the ſheriff; then this writ ſhall be ſent out into any other county where ſuch perſon is thought to be, or to have wherewith to ſatisfy; and this is termed a *teſtatum*, by reaſon the ſheriff hath *teſtified* that the defendant was not to be found in his bailiwick. But it is now uſual, for ſaving trouble, time, and expence, to make out a *teſtatum capias* at the firſt, ſuppoſing a former *capias* to have been granted, which in fact never was. And this fiction being beneficial to all parties, is readily acquieſced in, and is become the ſettled practice. 3 *Black.* 283.

TESTE, is a word generally uſed in the laſt part of all writs wherein the date is contained, which runs *teſte meipſo*, if it is an original writ; or *teſte* the lord chief juſtice, if a judicial one.

THEFTBOTE, (from the Saxon words *theft*, and *bote*, boot, or amends,) is where one not only knows of a felony, but takes his

his goods again, or other amends, not to profecute. 1 *Haw.* 125.

This is frequently called compounding of felony; and formerly was held to make a man an acceſſary; but is now puniſhed only by fine and impriſonment. *Id.*

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewed to the thief. *Id.*

THIRDBOROUGH. When the kingdom was firſt divided into hundreds and tithings, an officer was ſet at the head of each tithing in the nature of conſtable, called the *headborough*: but whereas, in ſome places, only one headborough was ſet over three tithings, he was therefore called the *thirdborough*.

THOROUGH TOLL, is when a town preſcribes to have toll for ſuch a number of beaſts, or for every beaſt that goeth through their town, or over a bridge or ferry, maintained at their coſt. *Terms of the Law.*

And this requires a conſideration to be ſhewn to ſupport the demand of it, becauſe it is againſt common right; for there is a difference between preſcriptions for private rights, and preſcriptions that affect the public: in the former caſe, a conſideration may be implied; but in the latter, a ſufficient conſideration muſt be proved. *Bur. Manſf.* 1402.

THORP, Sax. a village.

THREATNING LETTER. If any perſon ſhall ſend any letter threatning to accuſe any other perſon of a crime puniſhable with death, tranſportation, pillory, or other infamous puniſhment, with a view to extort money from him, he ſhall be puniſhed at the diſcretion of the court, with fine, impriſonment, pillory, whipping, or tranſportation. 30 *G.* 2. *c.* 24.

And if any perſon ſhall ſend any letter threatning to kill any of the king's ſubjects, or to fire their houſes, outhouſes, barns, ſtacks of corn or grain, hay or ſtraw, he ſhall be guilty of felony without benefit of clergy. 9 *G. c.* 22. 27 *G.* 2. *c.* 15.

TILES. By the 27 *G.* 3. *c.* 13. ſeveral duties are impoſed on tiles made in *Great Britain*: and by ſeveral ſtatutes regulations are made for the true making of tiles, and the ſurveying thereof by the officers of exciſe.

TIMBER TREES, are properly oak, aſh, and elm. In ſome particular countries, by local cuſtom, other trees, being commonly there made uſe of for building, are conſidered as timber. 2 *Black.* 28. Of theſe, being part of the freehold, larceny cannot be committed; but if they be ſevered at one time, and carried away at another, then the ſtealing of them is larceny. And by ſeveral late ſtatutes, the ſtealing of them, in the firſt inſtance, is made felony, or otherwiſe ſubject to a pecuniary forfeiture. 4 *Black.* 233. 247.

TIME. If one binds himſelf to another to pay a ſum of money,

ney, and doth not ſay at what time, the obligation is good, and the money is to be paid preſently; that is, in convenient time. And yet in caſe of a condition of a bond or obligation, there is a diverſity between a condition of an obligation which concerns the doing of a *tranſitory act* without limitation of any time, as payment of money, delivery of writings, or the like, for there the condition is to be performed preſently, that is, in convenient time; and when by the condition of the obligation, the act that is to be done to the obligee is of its own nature *local*, for there the obligor (no time being limited) hath time during his life to perform it, as to make a feoffment, or the like, if the obligee doth not haſten the ſame by requeſt. 1 *Inſt.* 208.

When the obligor, feoffor, or feoffee, is to do a ſole act or labour, as for inſtance, to go to *Rome*, in ſuch caſe he hath time during his life, and cannot be haſtened by requeſt. And ſo it is if a ſtranger to the obligation or feoffment were to do ſuch an act, he hath time to do it at any time during his life. *Id.*

TIPSTAFF, an officer appointed by the marſhal of the court of king's bench to attend upon the judges, with a kind of rod or *ſtaff tipped* with ſilver, to take priſoners into cuſtody.

TITHES:

1. TITHES are the tenth part of the increaſe yearly ariſing and renewing from the profits of lands, the ſtock upon lands, and the perſonal induſtry of the inhabitants. And hence they are uſually divided into three kinds; *prædial*, *mixt*, and *perſonal*. *Prædial* tithes are ſuch as ariſe merely and immediately from the ground; as grain of all ſorts, hay, wood, fruits, herbs; for a piece of land or ground being called in Latin, *prædium*, (whether it be arable, meadow, or paſture,) the fruit or produce thereof is called *prædial*, and conſequently the tithe payable for ſuch annual produce is called a *prædial* tithe. *Mixt* tithes are thoſe which ariſe not immediately from the ground, but from things immediately nouriſhed by the ground; as by means of goods depaſtured thereupon, or otherwiſe nouriſhed with the fruits thereof; as colts, calves, lambs, chickens, milk, cheeſe, eggs. *Perſonal* tithes, are ſuch as do ariſe by the honeſt labour and induſtry of man, employing himſelf in ſome perſonal work, artifice, or negotiation; being the tenth part of the clear gain, after charges deducted. *Watſ. c.* 59.

2. Tithes, with regard to value, are divided into *great* and *ſmall*: *great* tithes; as corn, hay, wood: *ſmall* tithes; as the prædial tithes; of other kinds, together with thoſe that are mixt and perſonal.

3. Tithes of common right belong to that church within the precincts of whoſe pariſh they ariſe. But one parſon may preſcribe to have tithes within the pariſh of another; and this is what is called a *portion* of tithes. *Gibſ.* 663.

The reaſon whereof may be, the lord of a manor's having his eſtate

eſtate extending into what is now apportioned into diſtinct pariſhes; for there were tithes before the preſent diſtribution of pariſhes took place.

Tithes in extraparochial places, that is within the compaſs of no certain pariſh, belonging to the king; and he may grant them to whomſoever he pleaſes.

4. Of things that are *feræ naturæ*, no tithe ſhall be paid; therefore no tithe is due for fiſh taken out of the ſea, or out of a river, unleſs by cuſtom; ſo neither for the ſame reaſon is any tithe due of deer, conies, or the like. But if the tithe thereof be due by cuſtom, it muſt be paid. 2 *Inſt.* 651.

Of *barren land*, converted into tillage, no tithe ſhall be paid for the firſt ſeven years; but if it be not barren in its own nature, as if it be woodland grubbed and made fit for tillage, tithes ſhall be paid preſently; for woodland is fertile and not barren. *Id.* 655.

Glebe lands, in the hands of the parſon, ſhall not pay tithe to the vicar; nor being in the hands of the vicar, ſhall they pay tithe to the parſon; becauſe the church ſhall not pay tithe to the church. But if the parſon lets his rectory, reſerving the glebe lands, he ſhall pay the tithes thereof to his leſſee. *Gibſ.* 661.

5. Exemptions from tithes are of two kinds; either to be exempted from paying any tithes at all, or from paying tithes in kind. The former is called *de non decimando*: the latter *de modo decimandi*.

6. Preſcription *de non decimando* is, to be free from the payment of tithes, without any recompence for the ſame. Concerning which, the general rule is, that no layman can preſcribe in *non decimando*; that is, to be diſcharged abſolutely of the payment of tithes, and to pay nothing in lieu thereof; unleſs he begin his preſcription in a religious or eccleſiaſtical perſon. But all ſpiritual perſons, as biſhops, deans, prebendaries, parſons, and vicars, may preſcribe generally in *non decimando*. 1 *Roll's Abr.* 653.

7. A *modus decimandi*, commonly called by the ſingle name of *modus* only, is, where there is by cuſtom a particular *manner* of tithing different from the general law of taking tithes in kind. This is ſometimes a pecuniary compenſation, as ſo much an acre for the tithe of land: ſometimes it is a compenſation in work and labour; as that the parſon ſhall have only the twelfth cock of hay, and not the tenth, in conſideration of the owner's making it for him: ſometimes in lieu of a large quantity, when arrived to greater maturity; as a couple of fowls in lieu of tithe eggs, and the like. Any means, in ſhort, whereby the general law of tithing is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or ſpecial manner of tithing. 2 *Black.* 29.

8. To

8. To make a *modus* or preſcription good, ſeveral qualifications are requiſite. As firſt, it muſt be ſuppoſed to have had a *reaſonable commencement*, as that at the time of the compoſition the modus was the real value of the tithes, though by the decreaſe in the value of money, it is now become much leſs.

It muſt be ſomething for the *parſon's benefit*: therefore the finding ſtraw for the body of the church, the finding a rope for a bell, the paying 5*s.* to the pariſh clerk, have been adjudged not to be good. But it is a good modus to be diſcharged, that he hath been uſed time out of mind to employ the profits for the repair of the chancel, for the parſon hath a benefit by that.

It muſt not be *one tithe paid in lieu of another*; as it muſt not be to pay tithes of other kinds, to be diſcharged of the tithes of dry cattle, and muſt not be ſo much for every cow and calf, for the tithe of herbage.

It muſt be ſomething in its kind *different from the thing that is due*; and therefore a load of hay in lieu of tithe hay, or certain ſheaves of corn for all tithes of corn, is not a good preſcription.

A modus muſt be *certain*: ſo a preſcription to pay a penny, or thereabouts, for every acre of land, is void for the uncertainty. And heretofore it was held, that if a preciſe day of payment is not alleged, the modus ſhall be ill; but now it is holden, that where an annual modus hath been paid, and no certain day for the payment thereof is limited, the ſame ſhall be due and payable on the laſt day of the year.

A modus muſt be *ancient*: and therefore if it is any thing near the value of the tithe, it will be ſuppoſed to be of late commencement, and for that reaſon will be ſet aſide.

It muſt be *durable*, for the tithe in kind being an inheritance certain, it is reaſonable that the recompence for it ſhould be as durable; for which reaſon, a certain ſum to be paid by the inhabitants of ſuch an houſe hath been ſet aſide, becauſe the houſe may go down, or none may inhabit it.

It muſt be *conſtant* and without interruption; for if there have been frequent interruptions, no cuſtom or preſcription can be obtained. But after it hath been once duly obtained, a diſturbance for ten or twenty years ſhall not deſtroy it.

9. When a common is divided and incloſed, a modus ſhall only extend to ſuch tithes as the common yielded before incloſure; ſuch as the tithes of wool, lambs, or agiſtment; but not to the tithes of hay and corn, which the common, whilſt it was common, did never produce. *Burr. Manſf.* 1375.

10. The perſon cannot come himſelf and ſet out his tithes, without the conſent of the owner; but he may attend and ſee it ſet out; yet the owner is not obliged to give him notice when he intends to ſet it out, unleſs it be by ſpecial cuſtom. *Id.* 1891.

11. After

11. After it is ſet out, the care thereof, as to waſting or ſpoiling, reſts upon the parſon, and not upon the owner of the land; but the parſon may ſpread, dry, and prepare his corn, hay, or the like, in any convenient place upon the ground, till it be ſufficiently weathered and fit to be carried into the barn.

12. And he may carry his tithes from the ground, either by the common way, or ſuch way as the owner of the land uſes to carry away his nine parts.

If the parſon ſuffers his tithe to ſtay too long upon the land, the owner may diſtrain the ſame as doing damage; or he may have an action upon the caſe: but he cannot put in his cattle and deſtroy the corn or other tithe, for that would be to make himſelf judge what ſhall be deemed a convenient time for taking it away. *L. Raym.* 189.

13. In the eccleſiaſtical court, the parſon may ſue for and recover the tithes themſelves, or an equivalent for the ſame, and alſo double value. In the courts of common law, he cannot recover the tithes themſelves, but may ſue for and recover treble value, which is tantamount to the tithes, and double value in the eccleſiaſtical court.

But it rarely happens, that tithes are ſued for at all in the eccleſiaſtical court; for if the defendant pleads any cuſtom, modus, compoſition, or other matter, whereby the right of the tithe comes in queſtion, this takes it out of the juriſdiction of the eccleſiaſtical judges; for the law will not ſuffer the exiſtence of ſuch a right to be decided without the verdict of a jury.

But where the tithes are any thing conſiderable, they are frequently ſued for in the courts of equity.

Small tithes, not exceeding the value of 40*s.* and Quakers tithes, great or ſmall, not exceeding the value of 10*l.* may be recovered before the juſtices of the peace.

TITHING. Anciently, for the better conſervation of the peace, and more eaſy adminiſtration of juſtice, every hundred was divided into ten diſtricts or tithings, conſiſting of ten men with their families: and at the head of each tithing was appointed an officer, called the *tithingman*, being much of the nature of what is now called the *conſtable*.

TITHINGMAN, was anciently at the head of the tithing or decennary, which conſiſted of ten men with their families, and is now in the nature of conſtable. But, in ſome places, there is both a tithingman and conſtable, where the tithingman is as it were a deputy to execute the office in the conſtable's abſence: but there are ſome things which a conſtable hath power to do, that tithingmen cannot intermeddle with; for the conſtable may do whatever the tithingman may do; but not on the contrary, the tithingman not having an equal power with the conſtable. But in

in places where there is no conſtable, the office and authority of tithingman ſeems to be all one under a different name.

TITLE, BUYING OF. It is an high offence at common law to buy or ſell any doubtful title to diſputable lands, to the intent that the buyer may carry on the ſuit, which the ſeller doth not think it worth his while to do; all which practices ought by all means to be diſcountenanced, as manifeſtly tending to oppreſſion. 1 *Haw.* 261.

And by the ſtatute 32 *H.* 8. *c.* 9. no perſon ſhall ſell or purchaſe any pretended right or title to land, unleſs the vendor hath received the profits thereof for a year before ſuch grant, or hath been in actual poſſeſſion of the land, or of the reverſion or remainder; on pain that both purchaſer and vendor ſhall each forfeit the value of ſuch lands to the king and the proſecutor.

When a perſon will recover any thing from another, he muſt make out and prove a better title than the other hath; otherwiſe it will not be enough to deſtroy his title. For it is not allowed for the party to forſake his own title, and fly upon the other's; for he muſt recover by his own ſtrength, and not by the other's weakneſs. *Hob.* 103.

TOBACCO AND SNUFF. No perſon ſhall plant any tobacco, on forfeiture thereof; and alſo 12*l.* for every rod or pole. 12 *C.* 2. *c.* 34. 15 *C.* 2. *c.* 7.

And by the 29 *G.* 3. *c.* 68. every manufacturer of, or dealer in tobacco or ſnuff, ſhall take out a licence annually from the officers of exciſe.

And by ſeveral ſtatutes, regulations are made reſpecting the manufacturing of tobacco and ſnuff, which are alſo put under the management of the officers of exciſe.

TOFT, a meſſuage, or rather a place or piece of ground where a houſe formerly ſtood, but is decayed or caſually burned, and not rebuilt.

TOLERATION, act of. See DISSENTERS.

TOLL, *tolnetum*, ſignifies generally a payment in markets and fairs, for goods ſold therein.

But there are alſo divers other kinds of tolls: as,

Turn toll, where toll is paid for beaſts that are driven to be ſold at market, and *return* unſold.

Toll travers, where one claimeth to have toll for every beaſt that *traverſeth*, or is driven over his ground.

Thorough toll, where a town preſcribes to have toll for every beaſt that goeth *through* the town, or over a ferry, or bridge, maintained at their coſt.

There is alſo *in-toll* and *out-toll*, mentioned in ancient charters.

Toll muſt have a reaſonable cauſe of commencement, as in conſideration

consideration of repairs or the like; otherwise the franchise is illegal and void. 2 *Black.* 38.

To TOLL AN ENTRY, is to defeat or *take away* the right of entry into lands and tenements.

TOLT, is a precept from the sheriff for removing a writ of right from the court baron into the county court; and is so called, because it takes *(tollit)* the cause out of the court of the lord of the manor. And from the county court it may be removed into the king's courts, by writ of *pone* or *recordari facias*, at the suggestion of either party that there is a defect of justice.

TOMBSTONES. See MONUMENTS.

TONNAGE, *tunnage*, a duty on goods imported or exported, at the rate of so much a ton.

TOR, Sax. a mount or hill.

TORRALE, (from *torreo*, to roast or dry,) a kiln or malthouse. So *secta ad torrale*, was suit to the lord's kiln with a prohibition to the tenants to dry their corn or malt elsewhere.

TORT, from the Latin, *tortus*, is a French word for injury or wrong; as *de son tort*, of his own wrong. It is properly called *tort*, because it is *wrested* or crooked. So *tort feasor*, is a wrong doer or trespasser.

TOURN. The sheriff's tourn is the king's court of record, holden before the sheriff, for the redressing of common grievances within the county. 2 *Haw.* 55.

And because the sheriff did go in circuit twice every year, throughout every hundred within the county, it was called the *tourn*, which signifies a circuit or perambulation. 2 *Inst.* 70.

The times for performing this perambulation are to be within a month after *Easter*, and a month after *Michaelmas*. At which courts, all persons, (except peers, clergymen, tenants in ancient demesne, and those who have hundreds or leets of their own,) being above the age of twelve years, are bound to attend, in order to make inquiry of all common grievances, and to take the oath of allegiance to the king.

The estate to qualify a juryman in the tourn, is 20*s.* a year freehold, or 26*s.* 8*d.* customary or copyhold.

It seems to be settled, that a distress is incident of common right to every fine and amerciament in the tourn, and that the offender's goods may be distrained in any lands within the precinct of the court, or in the highway; and that the goods distrained may be sold; or the fine may be recovered by action of debt. 2 *Haw.* 60, 1.

But the sheriff by several statutes is restrained from trying indictments found in the tourn; but he must deliver them to the next session of the peace. Since which restrictions, the business of the tourn hath declined, and is now almost wholly develvod upon the quarter sessions.

TOUT TEMPS PRIST, is a plea to an action, whereby, after tender and refusal of a debt, the defendant acknowledges the debt, and pleads the tender; adding, that he has always been ready, *tout temps prist*, and still is ready, *uncore prist*, to discharge it. For a tender by the debtor, and refusal by the creditor, will discharge the costs, though not the debt itself. 3 *Black.* 303.

TOWN, villa, or *vicus*, was a precinct anciently of ten families, upon which account they are sometimes called *tithings*. There ought to be in every town a petty constable, or tithingman, or both. If a town is decayed, so that it hath no house left, yet it is a town in law. *Wood. Introduction.*

TRANSITORY ACTION, is an action that is not confined to the proper county; as for debt, detinue, slander, or the like, which are injuries that might happen any where; whereas a *local* action is restricted to that particular county where the injury was actually done; as for waste, trespass, or the like. See LOCAL ACTION.

TRANSPORTATION of offenders, is the banishing or sending them away into another country. By the 4 *G. c.* 11. 6 *G. c.* 23. and 8 *G.* 3. *c.* 15. persons convicted of felony within the benefit of clergy, may, instead of burning in the hand or whipping, be ordered to be transported into some of his majesty's plantations in *America*, [and by the 19 *G.* 3. *c.* 74. and 24 *G.* 3. *c.* 56. to any place beyond the seas,] for seven years. And persons convicted of offences excluded from the benefit of clergy, to whom the king shall be pleased to extend mercy on condition of transportation, may be transported for fourteen years, or such other term as shall be made part of the condition.

And by the 19 *G.* 3. *c.* 74. instead of transportation, penitentiary houses may be erected in *Middlesex*, *Essex*, *Kent*, or *Surry*, for confining and employing in hard labour, six hundred male, and three hundred female convicts. And also ships may be provided for the more effectual punishment of atrocious offenders, to be employed in hard labour in raising sand, soil, or gravel, from and cleansing the river *Thames*, or any other navigable river, or any port or haven, or in any other public work upon the banks thereof; and such offenders are to be fed during the time with bread, and any coarse or inferior food, and water, or small beer; with power to the king, on their good behaviour, to shorten the term of their confinement.

TRAVERSE, took its name from the French *de traverse*, which is no other than *de transverso* in Latin, signifying *on the other side*; because as the indictment on the one side charges the party, so he on the other side cometh in to discharge himself To traverse an indictment therefore, is to take issue upon the chief matter thereof; which is the same as if one shall say, *to make contradiction*, or *to deny the point of the indictment*; as in a presentment

ſentment againſt a perſon for a highway overflowed with water, for default of ſcouring a ditch which he and they whoſe eſtate he hath in certain lands there have uſed to ſcour or cleanſe; ſuch perſon may traverſe either the matter; namely, that there is no highway there, or that the ditch is ſufficiently ſcoured; or otherwiſe he may traverſe the cauſe; namely, that he hath not that land, or that he and they whoſe eſtate he hath, have not uſed to ſcour the ditch. *Lamb.* 540.

A plea will be ill which neither traverſeth nor confeſſeth the plaintiff's title. And every matter of fact, alleged by the plaintiff, may be traverſed by the defendant, but not matter of law, or where it is part matter of law, and part matter of fact: nor may a record be traverſed which is not to be tried by a jury. *Cro. Eliz.* 755.

A traverſe muſt be always made to the ſubſtantial part of the title. Where an act may indifferently be intended to be at one day or another, there the day is not traverſable. In an action of treſpaſs, generally the day is not material; though if a matter be to be done upon a particular day, there it is material and traverſable. 2 *Roll's Rep.* 37.

TREASON, is a word borrowed from the French, and imports a *betraying*, *treachery*, or breach of faith and allegiance. 4 *Black.* 75.

Treaſon, generally ſpeaking, is intended not of petit treaſon, but of high treaſon only. 1 *Hale's Hiſt.* 316.

By the ſtatute 25 *Ed.* 3. *ſt.* 5. *c.* 2. all treaſons, which had been uncertain before, were ſettled. Which ſtatute by 1 *Mar. ſt.* 1. *c.* 1. is reinforced, and again made the only ſtandard of treaſon; and all ſtatutes between the ſaid ſtatutes of 25 *Ed.* 3. and 1 *Mary*, which made any offences high or petit treaſon, or miſpriſion of treaſon, are abrogated; ſo that no offence is at this day to be eſteemed high treaſon, unleſs it be either declared to be ſuch by the ſaid ſtatute of 25 *Ed.* 3. or made ſuch by ſome ſtatute ſince the 1 *Mary*.

The ſtatute of 25 *Ed.* 3. is to the following effect:—Where divers opinions have been before this time, in what caſe treaſon ſhall be laid, and in what not; the king, at the requeſt of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to ſay, 1. When a man doth compaſs or imagine the death of our lord the king, or of our lady his queen, or of their eldeſt ſon and heir. 2. If a man do violate the king's companion, (that is, his wife, 3 *Inſt.* 9.) or the king's eldeſt daughter unmarried, or the wife of the king's eldeſt ſon and heir. 3. If a man do levy war againſt our lord the king in his realm. 4. If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elſewhere 5. If a man counterfeit the king's great or privy ſeal. 6. If a man counter-

counterfeit the king's money; or bring falſe money into the realm counterfeit to the money of *England*. 7. If a man ſlay the chancellor, treaſurer, or the king's juſtices of the one bench or the other, juſtices in eyre, or juſtices of aſſize, and all other juſtices aſſigned to hear and determine, being in their places doing their offices. And if any other caſe, ſuppoſed to be treaſon, which is not above ſpecified, doth happen before any judge, he ſhall tarry, without going to judgment, till the cauſe be declared before the king and parliament, whether it ought to be treaſon or other felony.

New treaſons, created ſince the ſtatute 1 *Mary*, may be comprehended under three heads: 1. Such as relate to the *coin*, by way of inforcement of the ſtatute of the 25 *Ed.* 3. 2. Such as relate to *papiſts*. 3. Such as relate to the ſecurity of the *proteſtant ſucceſſion* in the houſe of *Hanover*.

In high treaſon there are no acceſſaries, but all are principals; and therefore whatſoever act or conſent will make a man acceſſary to a felony before the act done, the ſame will make him a principal in high treaſon. 3 *Inſt.* 9. 21.

A perſon indicted for high treaſon whereby corruption of blood ſhall be made, or for miſpriſion of ſuch treaſon, (except for counterfeiting the coin, the great ſeal, privy ſeal, privy ſignet, or ſign manual,) ſhall have a copy of the indictment, a liſt of the jurors, and alſo of the witneſſes, delivered to him ten days before the trial. 7 *An.* c. 21.

The treaſon ought to be manifeſted by an *overt act*, or open deed. How far *words* ſhall amount to ſuch overt act hath formerly been doubted; but now it ſeems to be agreed, that words ſpoken amount only to a high miſdemeanor, and no treaſon. 4 *Black.* 80.

In order to convict an offender, there muſt be two witneſſes, either to the ſame overt act, or one to one overt act, and the other to another overt act of the ſame treaſon. 7 *W.* c. 3.

The judgment for high treaſon, (not relating to the coin,) is, that he be carried back to the place from whence he came, and from thence be drawn (that is, not to be carried, or walk, though uſually a ſledge or hurdle is allowed, to preſerve the offender from the torment of being dragged on the ground or pavement,) to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burned before his face, and his head cut off, and his body divided into four quarters, and his head and quarters diſpoſed of at the king's pleaſure. The judgment of a woman for high treaſon, is to be drawn and burned. 3 *Inſt.* 211. 2 *Haw.* 443.

In which judgment is implied forfeiture of lands and goods to the king, loſs of dower, and corruption of blood. But by the ſtatute 17 *G.* 2. c. 39. after the death of the pretender, and of

of his eldeſt and every other ſon, no attainder for treaſon ſhall diſinherit or prejudice any heir or other perſon, other than the offender during his life.

Petit treaſon.

By the ſame ſtatute 25 *Ed.* 3. there is another manner of treaſon; when a ſervant ſlayeth his maſter, or a wife her huſband, or a man, ſecular or religious, ſlayeth his prelate: the judgment in which caſe is, that the offender ſhall be drawn to the place of execution, and there hanged by the neck till he be dead. The judgment againſt a woman is, that ſhe ſhall be drawn to the place of execution, and there burned. The conſequence of this attainder is, forfeiture of lands (to the lord of the fee) and of goods; loſs of dower; and corruption of blood. Although there can be no acceſſaries in high treaſon, yet in petit treaſon there may be acceſſaries both before and after. And acceſſaries before the fact are ouſted of clergy by ſeveral ſtatutes; but acceſſaries after the fact, have their clergy in all caſes of petit treaſon, for no ſtatute takes it from them. 2 *Haw.* 444. 2 *Hale's Hiſt.* 342.

Miſpriſion of treaſon.

MISPRISION of treaſon, is when one knows of any treaſon, though no party nor conſenting to it, yet conceals it, and doth not reveal it in convenient time. The judgment in which caſe, is impriſonment for life, forfeiture of goods for ever, and the profits of lands during life. But miſpriſion of petit treaſon is puniſhable only by fine and impriſonment. 3 *Inſt.* 36. 1 *Hale's Hiſt.* 375.

TREASURER. By ſtatute 12 *G.* 2. *c.* 29. the juſtices of the peace in ſeſſions may appoint treaſurers from time to time of the county rates, and allow them ſalaries not exceeding 20*l.* a year; which treaſurers ſhall keep books of entries of all receipts and diſburſements by them made, and account for the ſame to the ſaid juſtices in ſeſſions.

TREASURE TROVE, (from the French *trover*, to find,) is where any money or coin, gold, ſilver, plate, or bullion, is found hidden in the earth, or other private place, the owner thereof being unknown; in which caſe, the treaſure belongs to the king: but if he that hid it be known, or afterwards found out, the owner and not the king is intitled to it. 1 *Black.* 295.

Alſo if it be found in the ſea, or *upon* the earth, it doth not belong to the king, but to the finder, if no owner appears. *Id.*

So that it ſeems it is the *hiding*, not the *abandoning* of it, that gives the king a property. And the difference ariſes from the

different intentions which the law implies in the owner. A man that hides his treaſure in a ſecret place, doth not mean to relinquiſh his property, but reſerves a right of claiming it again when he ſees occaſion; and if he dies, and the ſecret alſo dies with him, the law gives it to the king. But a man that ſcatters his treaſure into the ſea, or upon the public ſurface of the earth, is conſtrued to have abſolutely abandoned his property, and returned it into the common ſtock, without any intention of reclaiming it: and therefore it belongs, as in a ſtate of nature, to the firſt occupant or finder; unleſs the owner appears and aſſerts his right, which then proves that the loſs was by accident, and not with an intent to renounce his property. *Id.*

Larceny cannot be committed of ſuch things whereof no man hath any determinate property; though the things themſelves are capable of property; as of treaſure trove, or wreck till ſeized; though he that has them in point of franchiſe, may have a ſpecial action againſt him that takes them. 1 *Hale's Hiſt.* 510.

And on a criminal proſecution, the puniſhment for concealment of treaſure trove is by fine and impriſonment. 3 *Inſt.* 133.

Therefore when a man has found any treaſure, he ought to make it known to the coroner; who has juriſdiction given to inquire thereof by the ſtatute of 14 *Ed.* 1. called the ſtatute *de officio coronatoris.*

TREBUCKET, (a *bucket* at the end of a tree or piece of timber,) ſignifieth a ſtool that falleth down into a pit of water, for the puniſhment of the party placed therein, being the ſame as the *cucking ſtool.*

TRESAYLE, Fr. the grandfather's father: it is a writ that lies, where the grandfather's grandfather was ſeized on the day on which he died, of lands or tenements in fee ſimple; and after his death a ſtranger entereth the ſame day upon him and keeps out the heir.

TRESPASS, in its largeſt ſenſe, ſignifies any tranſgreſſion or offence againſt a man's perſon or property; but in its uſual and more reſtrained ſenſe, it ſignifies properly, an entry on another man's ground without a lawful authority, and doing ſome damage, however inconſiderable, to his real property. 3 *Black.* 208.

One muſt have a property (either abſolute or temporary) in the ſoil, and actual poſſeſſion by entry, to be able to maintain an action of treſpaſs; or at leaſt, it is requiſite that the party have a leaſe and poſſeſſion of the veſture and herbage of the land. *Id.* 210.

A man is anſwerable for not only his own treſpaſs, but that of his cattle alſo; for, if by his negligent keeping, they ſtray upon the land of another, (and much more if he permits, or drives them on,) and they there tread down his neighbour's herbage,

bage, and ſpoil his corn or his trees, this is a treſpaſs for which the owner muſt anſwer in damages. *Id.* 211.

And the law gives the party injured a double remedy in this caſe; by permitting him to diſtrain the cattle thus doing damage, till the owner ſhall make him ſatisfaction; or elſe by leaving him to the common remedy by action. *Id.*

And the action that lies in either of theſe caſes, of treſpaſs committed upon another's land, either by a man himſelf, or his cattle, is the action of *treſpaſs with force and arms*; for the law always couples the idea of force with that of intruſion upon the property of another. And herein, if any unwarrantable act of the defendant or his beaſts in coming upon the land be proved, it is an act of treſpaſs, for which the plaintiff muſt recover ſome damages; ſuch, however, as the jury ſhall think proper to aſſeſs. *Id.*

In ſome caſes, treſpaſs is juſtifiable; or rather, entry on another's land or houſe, ſhall not in thoſe caſes be accounted treſpaſs; as if a man comes there to demand or pay money there payable, or to execute, in a legal manner, the proceſs of the law. Alſo, a man may juſtify entering into an inn or alehouſe without the leave of the owner firſt ſpecially aſked; becauſe, when a man profeſſes the keeping of ſuch inn or alehouſe, he thereby gives a general licence to any perſon to enter his doors. So a landlord may juſtify entering to diſtrain for rent; a commoner to tend his cattle commoning on another's land; and a reverſioner, to ſee if any waſte be committed on the eſtate; from the apparent neceſſity of the thing. In like manner, the common law warrants the hunting of ravenous beaſts of prey, as badgers and foxes, in another's land; becauſe the deſtroying them is profitable to the public; but not to break the ſoil in order to dig them out. *Id.* 212.

Alſo a man may juſtify a treſpaſs, where it was merely accidental and involuntary; as where ſheep were treſpaſſing in the defendant's ground, he chaſed them out with his dog; the dog purſued them into his next neighbour's adjoining ground, though as ſoon as they were out of his own ground, he called back his dog and chid him. The owner of the ſheep brought an action of treſpaſs, for chaſing his ſheep. But the court were of opinion, that an action did not lie in this caſe, as it appeared to be an involuntary treſpaſs; whereas a treſpaſs that may not be juſtified ought to be done voluntarily. *Bur. Manſf.* 2094.

A man may alſo juſtify in an action of treſpaſs, on account of the freehold and *right* of entry being in himſelf; and this defence brings the title of the eſtate in queſtion. This is therefore one of the ways deviſed, ſince the diſuſe of real actions, to try the property of eſtates; though it is not ſo uſual as that by *ejectment*; becauſe

becauſe *ejectment* being now a mixed action, not only gives damages for the ejection, but alſo poſſeſſion of the land; whereas in *treſpaſs*, which is merely a perſonal ſuit, the right can be only aſcertained, but no poſſeſſion delivered; nothing being recovered but damages for the wrong committed. *Id.* 214.

If a man has a way over my lands for his beaſts to paſs: if the beaſts ſnatch the graſs by morſels in paſſing, it is juſtifiable; it being againſt his will, as muſt be intended. 2 *Roll's Abr.* 567.

If a ſervant, without his maſter's knowledge, puts beaſts in another man's land, the ſervant is the treſpaſſer, and not the maſter; becauſe the ſervant doing it without the maſter aſſent, gains as it were a ſpecial property for the time; and ſo to this purpoſe they are his beaſts. 2 *Roll's Abr.* 553.

But it ſeems, if a man's wife put beaſts into another's land, the huſband is the treſpaſſer; becauſe the wife cannot gain a property diſtinct from her huſband. 2 *Roll's Abr.* 55.

If ſeveral come, and one does the treſpaſs, and the others do nothing but come in aid, they are all principal treſpaſſers; for in treſpaſs there is no acceſſary. *Br. Treſp.*

If in cutting my thorns, ſome of them fall into another man's land, when I did all I could to prevent it, I may enter upon that land to take them. *Id.*

So if trees are blown down by the wind, it is no treſpaſs to enter the land into which they are blown down, to take them. *Latch.* 13.

So if trees grow in my hedge, hanging over another man's land, and the fruit of them falls into the other's land, I may juſtify my entry to gather up the fruit, if I make no longer ſtay there than is convenient, nor break his hedge. *Id.* 120.

If a man ſeiſed in fee of lands, hath certain loads of timber upon the land, and dies, his executor may juſtify the entry into the land to take the timber. 2 *Roll's Abr.* 564.

So if the executor ſell it to another, the vendee may juſtify the entry into the land to take it. *Id.*

If the ſheriff upon an execution ſells corn growing, the vendee, when the corn is ripe, may enter and reap, and carry it away. 1 *Ventr.* 222.

In order to prevent trifling and vexatious actions of treſpaſs, it is enacted by the 43 *Eliz. c.* 6. and 8 & 9 *W. c.* 11. that where the jury who try an action of treſpaſs give leſs damages than 40*s.*, the plaintiff ſhall be allowed no more coſts than damages, unleſs the judge ſhall certify on the back of the record that the freehold or title of the land came chiefly in queſtion. But if it ſhall appear, that the treſpaſs was wilful and malicious, the plaintiff ſhall have his full coſts. Note, every treſpaſs is *wilful*, where the defendant hath notice, and is eſpecially forewarned not

not to come on the land; and every treſpaſs is *malicious*, where the intent of the defendant plainly appears to be to haraſs and diſtreſs the plaintiff. 3 *Black.* 214.

TRIAL, is the examination of the matter of fact in iſſue; of which there are many different ſpecies, according to the difference of the ſubject or thing to be tried. 3 *Black.* 330.

TRINODA NECESSITAS, ſignifies a threefold neceſſary tax, to which all lands in the Saxon times were liable; that is, for repairing of bridges, the maintaining of caſtles or garriſons, and for expeditions to repel invaſions. And in the king's grants of privileges and immunities, theſe three things were commonly excepted.

TRITHING. When the kingdom was firſt divided into hundreds and tithings, an officer was ſet at the head of each tithing, commonly called the *tithingman*, or ſometimes the *headborough*; except that in ſome places, one officer only preſided over three tithings; and theſe joined together conſtituted the *trithinga*; and the ſaid officer was denominated the *thirdborrow*, or *trithingman*.

TRONAGE, *tronagium*, is a cuſtomary duty or toll for weighing of wool. *Trone* is a beam to weigh with; and *tronage* was uſed for the weighing wool in a ſtaple or public mart, by a common trone or beam; which, for the tronage of wool in *London*, was fixed at *Leaden-hall*. The mayor and commonalty of *London* are ordained keepers of the beams and weights for weighing merchants commodities, with power to aſſign clerks and other officers of the great beam and balance; and no ſtranger ſhall buy any goods in *London*, before they are weighed at the king's beam, on pain of forfeiture. *Chart. Hen.* 8.

TROVER, is a French word, and ſignifies to *find*. Action of *trover and converſion* was in its original an action of treſpaſs upon the caſe, for recovering of damages againſt ſuch perſon as had *found* another's goods, and refuſed to deliver them on demand, but *converted* them to his own uſe; from which finding and converting it is called an action of *trover and converſion*. 3 *Black.* 151.

By a fiction of law, actions of trover are now permitted to be brought againſt any perſon who hath got into his poſſeſſion by any means whatſoever the goods of another, and ſold them or uſed them without the conſent of the owner, or refuſed to deliver them when demanded. *Id.* 152.

The injury lies in the converſion; for any man may take the goods of another into poſſeſſion, if he finds them; but no finder is allowed to acquire a property therein, unleſs the owner is unknown. And therefore he muſt not convert them to his own uſe, which the law preſumes him to do, if he refuſes to reſtore them

them to the owner; for which reaſon, ſuch refuſal alone is, *prima facie*, ſufficient evidence of the converſion. *Id.*

The fact of finding or trover, is therefore now totally immaterial, for the plaintiff needs only to ſuggeſt, as words of form, that he loſt ſuch goods, and that the defendant found them; and if he proves that the goods are his (the plaintiff's) property, and that the defendant had them in his poſſeſſion, it is ſufficient. But a *converſion* muſt be fully proved; and then in this action the plaintiff ſhall recover damages, equal to the value of the thing converted, but not the thing itſelf; which nothing will recover but an action of detinue or replevin. *Id.*

In this action, the plaintiff muſt firſt prove a right or property in the goods, or at leaſt a lawful poſſeſſion or ſpecial property for ſome time, as in the caſe of a carrier. Secondly, he muſt prove a poſſeſſion in the defendant. And thirdly, he muſt prove a demand, and refuſal to deliver them, which refuſal is allowed to be good evidence to the jury that he converted the ſame, unleſs the contrary be made appear. *Wood. b.* 4. *c.* 4.

In trover for a bond, the plaintiff need not ſhew the date; for the bond being loſt or converted, he may not know the date; and if he ſhould ſet out the date, and miſtake it, he would fail in his action. *Cro. Car.* 262.

Trover for a bank bill will lie againſt a perſon who found it, becauſe the finding gave him no title, though payment to him would have indemnified the bank; but if the finder hath aſſigned it over to another for a valuable conſideration, trover will *not* lie againſt the aſſignee, by reaſon of the courſe of trade. 1 *Salk.* 126.

Trover lies for a wager againſt him who holds the ſtakes. 1 *Com. Dig.* 237.

A man put out cattle to paſture at ſo much a week, and then ſold them to the plaintiff, who demanded the cattle, but the defendant refuſed to deliver them to the plaintiff, unleſs he would pay for the paſturage of them. On trover brought for the cattle, it was adjudged, that this denial upon demand was a converſion, and that the defendant might not detain the cattle againſt him who bought them, until the paſturage was paid, but can only bring his action againſt him who put them to paſturage; and that it is not like to the caſe of an innkeeper or taylor; they may retain the horſe or garment delivered to them until they be ſatisfied; but not, where one receives cattle to paſturage, unleſs there be ſuch an agreement between the parties. *Cro. Car.* 271.

TROY WEIGHT, is a weight of twelve ounces to the pound; having its name from *Troyes*, a city in *Champain*; from whence it firſt came to be uſed here.

TRUSTS

TRUSTS:

1. Trusts are of the ſame nature that uſes were at the common law. It is only a new name given to an uſe. And conveyances by way of truſt were invented to evade the ſtatute of uſes. 21 *Vin.* 493. 2 *Black.* 336.

2. If a perſon, in whom a truſt is repoſed, breaks or doth not perform the ſame, the remedy is by bill in equity, the common law generally taking no notice of truſts. 2 *Atk.* 612.

And, now, truſts are governed by very nearly the ſame rules in a court of equity, as would govern the ſame in a court of law, if no truſtee were interpoſed; and by a regular poſitive ſyſtem eſtabliſhed in the courts of equity, the doctrine of truſts is now reduced to as great certainty as that of legal eſtates in the courts of common law. 3 *Black.* 439.

3. By the ſtatute of frauds and perjuries, 29 *C.* 2. *c.* 3. All "declarations of truſts of lands ſhall be in writing, except where "the truſt ſhall ariſe by conſtruction of law, or be transferred "or extinguiſhed by operation of law. And the ſheriff may have "execution of the truſt eſtate, in like manner as if the *ceſtuy que truſt (that is, he for whoſe uſe the truſt is created)* had himſelf been ſeiſed"

And foraſmuch as the ſtatute doth not extend to truſts by conſtruction or operation of law, therefore if a man buys land in another perſon's name, and pays the money for the land, this will be a truſt for him that paid the money, though there be no deed declaring the truſt, for the truſt in this caſe ariſes from conſtruction of law. 2 *Ventr.* 361. 2 *Vern.* 294.

4. In a deviſe to truſtees, it is not neceſſary the word *heirs* ſhould be inſerted to carry the fee at law; for if the purpoſes of the truſt cannot be ſatisfied without having a fee, the court will ſo conſtrue it. 1 *Vez.* 491.

5. Where executors are made truſtees, they can take nothing for their own benefit, unleſs it be particularly given to them; for there is a difference between a truſtee and an executor. A truſtee hath a mere legal right only, but an executor has more; for if there is a ſurplus, he may have a beneficial intereſt. 2 *Atk.* 643. 3 *Atk.* 96.

But if there be a direction in the will, that the truſtees ſhall be paid for their *trouble*, this ſhall be conſidered as a legacy to the truſtees: and herein there can be no inconvenience; becauſe it can carry it no farther than the particular words of the will do direct. 1 *Vez.* 115.

Though there are no negative words in a deed, that the truſtees ſhall not be liable for the acts of one another, yet the court will not make them liable for more than each hath received. 3 *Atk.* 584.

And

And although they all join in a receipt for money, yet the court will make that truſtee liable only who received it; for they are all obliged to join in the receipt: but otherwiſe it is as to executors, for there is no neceſſity for their joining, but they may act ſeverally if they will. 3 *Atk.* 584.

But if the truſtees will bind themſelves to be liable for the acts of each other, the court will not relieve them. *Id.*

6. If a truſtee compounds a debt with conſent of *ceſtuy que truſt*, this is no breach of truſt. 21 *Vin.* 525. *Cha. Ca. Finch.* 58.

Therefore where a truſtee errs in the management of the truſt, yet if he goes out of the truſt with the approbation of the *ceſtuy que truſt*, it muſt be firſt made good out of the eſtate of the perſon who conſented to it. 3 *Atk.* 444.

7. In equity, truſts are ſo regarded that no act of a truſtee will prejudice the *ceſtuy que truſt*; for though a purchaſer for valuable conſideration, without notice, ſhall not have his title any way impeached, yet the truſtee muſt make good the truſt: but if he purchaſes with notice, then he is the truſtee himſelf, and ſhall be accountable. *Abr. Caſ. Eq.* 384.

A truſtee having broken his truſt, by delivering up a bond, and taking ſecurity to ſave him harmleſs, was decreed to pay the money and intereſt ever ſince the bond was due. *Cha. Ca. Finch.* 241.

If one deviſeth lands to truſtees until his debts be paid, with remainder over, and the truſtees miſapply the profits, they ſhall hold the land only till they might have paid the debts, if the rents had been duly applied; and after that, the land ſhall be diſcharged, and the truſtees only are anſwerable. 1 *P. W.* 519.

In the caſe of *Whelpdale* and *Cookſon*, *E.* 1747. on a deviſe of lands in truſt for payment of debts, the truſtee himſelf purchaſed part. Lord *Hardwicke* ſaid he would not allow it to ſtand good, although another perſon, being the beſt bidder, bought it for him at a public ſale; for he knew the dangerous conſequence. Nor is it enough for the truſtee to ſay, you cannot prove any fraud, as it is in his own power to conceal it. But if the majority of creditors agreed to allow it, his lordſhip ſaid, he ſhould not heſitate to make it a precedent. 1 *Ves.* 9.

The truſtees of an infant, having ſaved money out of the eſtate, purchaſed lands with it, which lay near to the infant's eſtate, with the conſent of his grandmother, declaring the truſt for the benefit of the infant, if he, when of age, ſhould agree to it. The infant died within age. It was decreed that the truſtees ſhould account to the executors of the infant for the money, but the profits of the land ſhould be ſet againſt the intereſt. 1 *Vern.* 435.

8. If a truſtee lets out money to ſuppoſed able men, though they fail, he ſhall not be charged for more than he received. 12 *Mod.* 509.

9. A breach of truſt is conſidered but a ſimple contract debt, and can only fall upon the perſonal eſtate of the truſtee; and the particular circumſtances of a caſe ought not to vary the rule. 2 *Atk.* 119.

10. A *fine* with proclamation and non-claim will bar a truſt. 1 *Cha. Ca.* 268.

11. There ſhall be a tenant by *curteſy* of a truſt eſtate; but of ſuch an eſtate a widow ſhall not have *dower*. 1 *P. W.* 109. *Caſ. Talb.* 139.

12. A truſt is not within the *ſtatute of limitations*. 2 *Atk.* 612.

TUMBREL, is an engine of puniſhment for correction, chiefly of ſcolding women. Lord *Coke* ſays, it properly ſignifies a dung cart. *Bracton* writes it *tymborella*. In Domeſday, it is called *cathedra ſtercoris*. It was in uſe in the Saxon times by whom it was deſcribed to be *cathedra in quæ rixoſæ mulieres ſedentes aquis demergebantur*; and ſeems to be no other than what is now called the *ducking ſtool*. Perhaps it might receive the appellation of *tymborella*, and by corruption *tumbrel*, as alſo the name of *trebucket*, (as it was ſometimes called,) from the ſtool or bucket being fixed at the end of a *tree* or piece of *timber*, whereby to let down the ſeat into the water.

It was anciently alſo a puniſhment inflicted upon brewers, bakers, and others tranſgreſſing the laws; who were thereupon in ſuch a ſtool immerged *in ſtercore*; that is in ſtinking water. By the 51 *Hen.* 3. *ſt.* 6. intitled, the Statute of the Pillory and Tumbrel, a baker or brewer, grievouſly offending againſt the aſſize of bread or ale, ſhall ſuffer bodily puniſhment; that is, to wit, a baker to the pillory, and a brewer to the tumbrel, or other caſtigation (*piſtor patiatur colliſtrigium, braciatrix trebucketum vel caſtigacionem*).

Every lord of a leet or market ought to have a pillory and tumbrel. 3 *Inſt.* 219.

TURN. See TOURN.

TURNPIKES, in aid of the ſtatute duty, have of late years been introduced in moſt places; and for the ſecurity thereof, it is enacted by the 13 *G.* 3. *c.* 84. that if any perſon ſhall pull down, or otherwiſe deſtroy, any turnpike gate, poſt, chain, bar, or other fence, or any houſe erected for the uſe of ſuch gate, he ſhall be guilty of felony, and tranſported for ſeven years.

VACATION,

V A C

VACATION, in the courts of law, is all the time between the end of one term, and the beginning of another. So there is the vacation of an office, the vacation of a benefice, and the like.

VACCARY, a place to keep cows in.

VADIARE DUELLUM, to wage combat, is, where two contending parties, on a challenge, do give and take a mutual *pledge* of fighting. *Cowel.*

VADIUM, *(vas, vadis,)* a pledge or surety. So *vadium ponere* is to give security, bail, or pledges, for the appearance of a defendant in a court of justice.

VADIUM MORTUUM, a *mortgage* or dead pledge; which is, where a man borrows money of another, and grants him an estate in fee, on condition that if the money is not repaid, the estate so put in pledge shall continue to the lender as dead and gone from the mortgagor. 2 *Black.* 157.

VADIUM VIVUM, a living pledge, is, where a man borrows of another a sum of money, and grants him an estate, to hold until the rents and profits shall repay the sum borrowed. 2 *Black.* 157.

VAGRANTS, by 17 *G.* 2. *c.* 5. are described to be of three kinds:

1. *Idle and disorderly persons:* being (1.) such as threaten to run away and leave their wives and children to the parish. Or, (2.) who having been removed by order of two justices, return without a certificate. Or, (3.) who not having wherewith to maintain themselves, refuse to work for the usual and common wages. Or, (4.) who go about from door to door, and beg in the parish where they dwell. All these may be punished by one month's imprisonment in the house of correction.

2. *Rogues and vagabonds;* who are, (1.) persons going about begging, under pretence of loss by fire or other casualty. (2.) Persons going about as collectors for prisoners, goals, or hospitals. (3.) Fencers. (4.) Bearwards. (5.) Common players of interludes, not being licensed thereto. (6.) Minstrels. (7.) Jugglers. (8) Gypsies, or persons wandering in the habit or form of Egyptians. (9.) Persons pretending to tell fortunes. Or, (10.) using any subtil craft to impose on his majesty's subjects. Or, (11.) playing or betting at any unlawful games. (12.) Persons running away and leaving their wives or children to the parish. (13.) Petty chapmen and pedlars unlicensed. (14.) Per-

(14.) Perſons wandering abroad, and lodging in alehouſes, barns, outhouſes, or in the open air, and not giving a good account of themſelves. (15.) Perſons wandering and begging, pretending to be ſoldiers or marriners. (16.) Pretending to go to work in harveſt, without a certificate from the miniſter and church-wardens from whence they came. (17.) All other perſons wandering abroad and begging. Theſe may be puniſhed by whipping, and impriſonment in the houſe of correction not exceeding ſix months.

3. *Incorrigible rogues*; who are, (1.) perſons going about and collecting ends of yarn, thrums, or other refuſe of cloth, in prejudice of the woollen manufacture. (2.) Perſons apprehended as rogues and vagabonds, and eſcaping, or refuſing to be examined, or knowingly giving a falſe account of themſelves. (3.) Rogues or vagabonds eſcaping out of the houſe of correction. (4.) All perſons who having been puniſhed as rogues and vagabonds, and diſcharged, ſhall again commit any of the ſaid offences. All theſe may be puniſhed with whipping and impriſonment in the houſe of correction, not exceeding two years; and if they ſhall eſcape or offend again in like manner, they ſhall be guilty of felony, and tranſported for ſeven years.

And if any perſon ſhall ſuffer any rogue, vagabond, or incorrigible rogue, to lodge in his houſe, outhouſe, or other building, and ſhall not apprehend him and carry him before a juſtice, or give notice to the conſtable ſo to do, he ſhall forfeit not exceeding 40*s*. nor leſs than 10*s*.; and if any charge ſhall be brought on the pariſh by means of ſuch offence, the ſame ſhall be anſwered to the pariſh by ſuch offender.

VALET, *vadelet*, was anciently a name ſpecially denoting young gentlemen in the ſervice of a perſon of quality, but afterwards attributed to thoſe of lower rank.

VALUABLE CONSIDERATION, is an equivalent given for a thing purchaſed. There is a difference between a *good* and a *valuable* conſideration. A *good* conſideration, is ſuch as that of blood or of natural love and affection, when a man grants an eſtate to a near relation; but deeds or grants, upon good conſideration only are conſidered in law as merely voluntary, and are frequently ſet aſide in favour of creditors and *bona fide* purchaſers. 2 *Black*. 297.

VARIANCE, 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. If there is a variance between the declaration and the writ, it is error; and the writ ſhall abate. And if there appear to be a material variance between the matter pleaded, and the manner of pleading it, this is not a good plea; for the manner and matter of pleading ought to agree in ſubſtance, otherwiſe there will be no

no certainty in it. 2 *Lill. Abr.* 629. But when the pleading is good in ſubſtance, a ſmall variation ſhall not hurt. 3 *Mod.* 227.

VASSAL, originally ſignified a tenant or holder of the lands generally; but in after-times, it was brought to ſignify a ſlave or bondſman: ſo *vaſſalage* (*vaſcelerìa*) ſignifies the ſtate of a vaſſal, or ſervitude and dependency on a ſuperior lord. 2 *Black.* 53.

VAVASOR, *valvaſor*, was a title next in dignity to a baron; but vavaſors are now quite out of uſe, inſomuch, that antiquarians are not agreed even upon their original and ancient office.

VELLUM AND PARCHMENT. By the 24 *G.* 3. *c.* 41. every maker of vellum or parchment, ſhall take out a licence annually from the officers of exciſe.

VENIRE, (ſo called from thoſe words in the writ, *venire facias,*) is the common proceſs on an indictment or preſentment for any miſdemeanor under the degree of treaſon, felony, or maim; being in the nature of a *ſummons* to cauſe the party to appear. And if by the return to ſuch *venire* it appears that the party hath lands in the county, whereby he may be diſtrained, then a *diſtreſs infinite*, ſhall be iſſued from time to time till he appears. But if the ſheriff returns that he hath no lands in his bailiwick, then (upon his nonappearance) a writ of *capias* ſhall iſſue to take his body. 4 *Black.* 313.

Alſo when a cauſe is brought to iſſue, a writ of *venire* is directed to the ſheriff, to ſummon a jury to appear, at the time and place appointed, to try the cauſe.

VENTRE INSPICIENDO, is a writ to ſearch a woman that ſaith ſhe is with child, and thereby withholds lands from the next heir. As if a man, having lands in fee ſimple, dies, and his widow ſoon after marries again, and ſays, ſhe is with child by her former huſband; in this caſe, this writ *de ventre inſpiciendo* lies for the heir againſt her. By which writ the ſheriff is commanded, that, in preſence of twelve men, and as many women, he cauſe examination to be made, whether the woman is with child or not; and if with child, then about what time it will be born; and that he certify the ſame to the juſtices of aſſize, or at *Weſtminſter*, under his ſeal, and under the ſeals of two of the men preſent. *Cro. Eliz.* 506.

VENUE, (*viſne*, *vicinetum*,) the *neighbourhood*, from whence juries are to be ſummoned for trial of cauſes. In *local* actions, as of treſpaſs and ejectment, the venue is to be from the neighbourhood of the place where the lands in queſtion lie; and in all real actions, the venue muſt be laid in the county where the thing is for which the action is brought. But in *tranſitory* actions, for injuries that may have happened any where, as debt, detinue, ſlander, or the like, the plaintiff may declare in what county

county he pleaſes; and then the trial muſt be in that county in which the declaration is laid. Though if the defendant will make affidavit, that the cauſe of action, if any, aroſe not in that but in another county, the court will direct a *change of the venue*, and oblige the plaintiff to declare in the proper county. And the court will ſometimes remove the venue from the proper juriſdiction, (eſpecially of the narrower and limited kind,) upon a ſuggeſtion, duly ſupported, that a fair and impartial trial cannot be had therein. 3 *Black.* 294.

VERDERER, *viridarius*, is an officer in the king's foreſt, whoſe office is properly to look after the *vert*, for food and ſhelter of the deer. He is alſo ſworn to keep the aſſizes of the foreſt, and receive and inroll the attachments and preſentments of treſpaſſes within the foreſt, and certify them to the ſwainmote or juſtice-ſeat.

VERDICT. See JURORS.

VERT, Fr. *verd*, *viridis*, in the foreſt laws, ſignifies every thing that beareth a *green* leaf within the foreſt, that may be covert for the deer. Vert alſo ſometimes is taken for that power which a man hath by the king's grant to cut green wood in the foreſt.

VESTED *legacy*. If a legacy be given to one, *to be paid* at a future day, this is a veſted legacy, an intereſt which commences *in præſenti*, although it be *ſolvendum in futuro*: and if the legatee dies before the day of payment, his repreſentatives ſhall receive it at the ſame time that it would have become payable in caſe the legatee had lived. But if the legacy be given to one *when* he attains, or *if* he attains ſuch an age, and he dies before that time, in ſuch caſe the legacy is lapſed. 2 *Black.* 513.

A *veſted remainder*, is where the eſtate is invariably fixed, to remain to a determinate perſon, after the particular eſtate is ſpent. As if one be tenant for twenty years, remainder to another in fee; here the remainder is fixed, which nothing can defeat or ſet aſide. But where an eſtate in remainder is limited to take effect either to a dubious and uncertain perſon, or upon a dubious and uncertain event, this is a *contingent* remainder, ſo as the particular eſtate may chance to be determined, and the remainder never take effect. 2 *Black.* 168.

VESTRY, is an aſſembly of the whole pariſh met together in ſome convenient place, for the diſpatch of the affairs and buſineſs of the pariſh; and this meeting being commonly held in the veſtry adjoining to, or belonging to the church, it thence takes the name of veſtry, as the place itſelf doth, from the prieſt's veſtments, which are uſually depoſited and kept there.

On the *Sunday* before a veſtry is to meet, public notice ought to be given, either in the church, or after divine ſervice is ended, or elſe at the church door as the pariſhioners come out; both of

the calling of the ſaid meeting, and alſo the time and place of the aſſembling of it: and it is reaſonable then alſo to declare for what buſineſs the ſaid meeting is to be held, that none may be ſurprized, but that all may have full time before to conſider of what is to be propoſed at the ſaid meeting. *Watſ. c.* 39.

In every ſuch meeting the miniſter uſually preſides, for regulating and directing the buſineſs.

Out-dwellers, occupying land in the pariſh, have a vote in the veſtry as well as the inhabitants. *Johnſ.* 19.

When they are met, the major part preſent will bind the whole pariſh. *Watſ. c.* 39.

The right of adjourning is not in the miniſter or any other perſon as chairman, nor in the churchwardens, but in the whole aſſembly, who are all upon an equal footing; and the ſame muſt be decided, as other matters there, by a majority of votes. *Str.* 1045.

It is convenient that every veſtry act be entered in the pariſh book of accounts; and that every man's hand conſenting to it, be ſet thereto.

The *veſtry clerk* is choſen by the veſtry; whoſe buſineſs it is, to attend at all pariſh meetings, and to draw up and copy all orders and other acts of the veſtry, and to give out copies thereof when neceſſary; and therefore he has the cuſtody of all books and papers relating thereto.

By cuſtom there may be a *ſelect veſtry*, or a certain number of perſons choſen to have the government of the pariſh, to make rates, and take the churchwardens accounts, and the like. In the city of *London* in particular, there are ſelect veſtries in moſt of the pariſhes.

VETITUM NAMIUM, (*vetitum*, forbidden, and *namium*, from *naam*, a diſtreſs,) ſignifies properly when the bailiff of the lord diſtraineth beaſts or goods, and the lord *forbiddeth* his bailiff to deliver them when the ſheriff comes to replevy them, and to that end to drive them to places unknown, or to take ſuch a courſe as they ſhould not be replevied: but it is alſo called *vetitum namium*, a forbidden diſtreſs, when without any words they are eloigned, or ſo handled by a forbidden courſe, as they cannot be replevied, for then they are forbidden in law to be replevied. 2 *Inſt.* 140.

VICAR, *vicarius*, is one that ſupplies the place of another. On the appropriation of a church to any of the religious houſes, the monks generally ſupplied the cure by one of their own fraternity, and received the revenues of the church to their own uſe. Afterwards it became eſtabliſhed in moſt of the appropriated churches, that they ſhould be ſupplied by a ſecular clerk, and not by a member of their own houſe; from whence he received the name of *vicarius*, as it were *vicem gerens*, ſupplying the place

place of the religious ſociety. And for the maintenance of this vicar, was ſet apart a certain portion of the tithes, commonly about a third part of the whole, which are now what are called the vicarial tithes; the reſt being reſerved to the uſe of thoſe houſes, which for the like reaſon are denominated the rectorial tithes. And after theſe houſes were diſſolved, and the king was become poſſeſſed of that ſhare which had belonged to the religious houſes, thoſe poſſeſſions were granted by the crown to divers perſons, chiefly among the laity, who are therefore now ſtyled *lay impropriators*, the whole rectory belonging to them; that is the whole tithes and other revenues of the church, except what the vicar can claim by endowment or preſcription.

VICAR GENERAL, is an officer under the biſhop, having cognizance of ſpiritual matters, as correction of manners, and the like; as the *official principal* hath juriſdiction of temporal matters, as of wills and adminiſtrations; and both of theſe are commonly united under the general name of *chancellor*.

VICINAGE, *common of*: this is, where the inhabitants of two townſhips, which lie contiguous, have uſually intercommoned with one another, the beaſts of the one ſtraying mutually into the other's fields without any moleſtation from either. This is indeed only a permiſſive right, intended to excuſe what in ſtrictneſs is a treſpaſs in both, and to prevent a multiplicity of ſuits; and therefore either townſhip may incloſe and bar out the other, though they have intercommoned time out of mind. Neither hath any perſon of one town a right to put his beaſts originally into the other's common; but if they eſcape and ſtray there of themſelves, the law winks at the treſpaſs. 2 *Black.* 34.

VICONTIEL, belonging to the ſheriff; as *vicontiel writs* are ſuch as are triable in the county or ſheriff's court. So *vicontiel rents* are ſuch as were received by the ſheriff, and for which he accounted in the exchequer.

VIDAME, *vice-dominus*, was an ancient officer, in degree next unto a baron.

VIEW, *jury of*. In any action brought in the courts at *Weſtminſter*, where it ſhall appear to the court, that it is neceſſary for the jurors to have a view of the place in queſtion, they may order ſpecial writs of *diſtringas*, or *habeas corpora*, to iſſue; by which the ſheriff ſhall be commanded to have ſix or more of the jurors in the panel, who ſhall be conſented to by the parties, or if they cannot agree, by the proper officer or judges of the court, at the place in queſtion, ſome convenient time before the trial; who ſhall have the matters in queſtion ſhewn to them by two perſons in the ſaid writs named. And upon the trial, thoſe who have had the view ſhall be firſt ſworn, or ſuch of them as ſhall appear, before any drawing, and others ſhall be drawn to make up the number. 4 *An. c.* 16. 3 *G.* 2. *c.* 25.

Upon the view, the thing in queſtion ſhall only be ſhewn to the jury, but no evidence ſhall be given on either ſide. 2 *Lill. Abr.* 656.

VIEW OF FRANKPLEDGE. See FRANKPLEDGE.

VIGIL, *vigilia*, the eve or day next before any ſolemn feaſt; becauſe then chriſtians were wont to *watch*, faſt, and pray in their churches. *Ken. Par. Ant.* 609.

VI LAICA REMOVENDA, is a writ that lies where a clerk intrudes into an eccleſiaſtical benefice, and holds the ſame with ſtrong hand and great power of the laity. By this writ the ſheriff is commanded to remove the force, and to arreſt and impriſon the perſons that make reſiſtance, ſo as to have their bodies before the king at a certain day, to anſwer the contempt. The writ is returnable into the king's bench, where the offenders ſhall be fined and puniſhed for the force, and from thence reſtitution ſhall be awarded to the party intruded upon. *Watſ. c.* 30.

VILL, *villa*, or *vicus*, was anciently a precinct conſiſting of ten families; upon which account they are ſometimes called *tithings*.

VILLEINS, *villani*, were ſo called, becauſe they lived in *villages*, and were employed in ruſtic work; whilſt the free tenants, who held by knights ſervice, attended their lord to the wars. 1 *Inſt.* 116.

Villeins were either villeins *regardant*; that is, annexed to the manor or land; or elſe they were *in groſs*, or at large; that is, annexed to the perſon of the lord, and transferrable by deed from one owner to another. They could not leave their lord without his permiſſion; but if they ran away, or were purloined from him, might be claimed and recovered by action, like beaſts or other chattels. They held indeed ſmall portions of land, by way of ſuſtaining themſelves and families; but it was at the mere will of the lord, who might diſpoſſeſs them whenever he pleaſed. 2 *Black.* 93.

A villein could acquire no property either in lands or goods; but if he purchaſed either, the lord might enter upon him, and ſeize them to his own uſe. *Id.*

The children of villeins were in the ſame ſtate of bondage with their parents, whence they were called *nativi*, which gave riſe to the female appellation of a villein, who was called a *neiſe*. In caſe of a marriage between a freeman and a neiſe, or a villein and a free woman, the iſſue followed the condition of the father, being free if he was free, and villein if he was villein. *Id.* 94.

The lord might not kill or maim his villein, but he might beat him with impunity. *Id.*

But partly by manumiſſion or infranchiſement, and partly by the

the indulgence of the lords in permitting their villeins and their children to enjoy their poſſeſſions without interruption in a regular courſe of deſcent, the common law, of which cuſtom is the life, gave them title to preſcribe againſt their lords; for though, in general, they are ſtill ſaid to hold their eſtates at the will of the lord, yet it is ſuch a will as is agreeable to the cuſtom of the manor; and from hence have ſprung up many of the copyhold tenures at this day. *Id.* 95.

VILLENOUS JUDGMENT, is that which caſts the reproach of villany upon him againſt whom it is given; and it was an ancient judgment given by the common law in attaint, or in caſes of conſpiracy, whereby the offender loſt his *liberam legem*, and became infamous, diſabled to be a juror or witneſs, forfeited his goods and chattels, and his lands during life, and to have thoſe lands waſted, his houſes raſed, his trees rooted up, and his body committed to priſon. But this judgment ſeems to be now obſolete, there being no inſtance of it ſince the reign of *Edward* the third. *Burr. Manſf.* 996. 1027.

VINEGAR. By the 24 *G.* 3. *c.* 41. every maker of vinegar for ſale, ſhall take out a licence annually.

And by the 27 *G.* 3. *c.* 13. a duty is impoſed on all vinegar imported; and alſo on all vinegar made in *Great Britain*, which is to be under the management of the officers of exciſe.

VIRGA, a rod or white ſtaff, ſuch as ſheriffs, bailiffs, and others, carry as a badge or enſign of their office. *Cowell.*

VIRGATE of land, is ſaid to conſiſt of twenty-four acres; four virgates make a hide, and five hides a knight's fee. *Ken. Gloſſ.*

VIRGE, tenant by. A ſpecies of copyholders, who are ſaid to hold by the virge or rod.

VISCOUNT, *vice-comes*, is a title of nobility, above a baron, and next below an earl. He was originally the earl's deputy in the government of the ſhire. But in after-times, it became a mere title of honour, without any ſhadow of office belonging to it. The firſt inſtance whereof was, in the 18 *Hen.* 6. when *John Beaumont* was created a peer by the name of viſcount *Beaumont*. 1 *Black.* 398.

VISITOR, is an inſpector of the government of corporations or bodies politic, eccleſiaſtical or civil. With reſpect to all eccleſiaſtical corporations, the ordinary is their viſitor, ſo conſtituted by the canon law, and from thence derived to us. The pope formerly, and now the king, as ſupreme ordinary, is the viſitor of the archbiſhop; the archbiſhop, of the biſhops; and the biſhops, in their ſeveral dioceſes, are in eccleſiaſtical matters the viſitors of all deans and chapters, parſons and vicars, and all other ſpiritual corporations. With reſpect to all lay corporations, the founder, his heirs or aſſigns, are the viſitors,

whether the foundation be civil or eleemoſynary. Eleemoſynary corporations are chiefly hoſpitals, and colleges in the univerſities; which colleges are lay corporations, although the particular members thereof may be clergymen. 1 *Black.* 482.

VISNE, *vicinetum*, a neighbouring place. See VENU.

VIVARY, a place by land or water, where *living* creatures were kept; and, in law, is moſt commonly uſed for a park, warren, or fiſhery.

VIVUM VADIUM, a living pledge, (in oppoſition to *mortgage*, or dead pledge,) is when a man borrows a ſum of money, and grants an eſtate to the lender, to hold till the rents and profits ſhall repay the ſum borrowed. In which caſe, the land or pledge is ſaid to be *living*, and ſurvives to the borrower on diſcharge of the debt. 2 *Black.* 157.

UMPIRE, is one choſen to decide between the parties; which is uſually when the parties in difference ſubmit the matters in diſpute to the arbitration of certain perſons, and if they cannot agree, or are not ready to deliver their award before ſuch a time, then to the judgment of another as umpire *(imperator)* between them. See ARBITRATION.

UNCORE PRIST, (Fr. *yet is ready,*) is where, after tender and refuſal of a debt, and an action brought for the debt, the debtor acknowledges the debt, and pleads the tender; adding, that he has been always ready, *tout temps priſt*, and ſtill is ready, *uncore priſt*, to diſcharge it: for a tender by the debtor, and refuſal by the creditor, will in all caſes diſcharge the coſts, but not the debt itſelf; though in ſome particular caſes the creditor will totally loſe his money. 3 *Black.* 303.

UNCOUTH, Sax. unknown.

UNION of *England* and *Scotland*, was made by the parliaments of both kingdoms in the year 1707, comprized in a number of articles; the principal of which are, that the united kingdom ſhall be repreſented by one parliament; that the laws relating to trade, cuſtoms, and the exciſe, ſhall be the ſame in both kingdoms; that when *England* raiſes 2,000,000*l.* by a land tax, *Scotland* ſhall raiſe 48,000*l.*; that ſixteen peers ſhall be choſen to repreſent the peerage of *Scotland* in parliament, and forty-five members to ſit in the houſe of commons; that all peers of *Scotland* ſhall be peers of *Great Britain*, and rank next after thoſe of the ſame degree at the time of the union, and ſhall have all privileges of peers, except ſitting in the houſe of lords, and voting on the trial of a peer.

Union of two churches. By ſtatute 37 *H.* 8. *c.* 21. an union or conſolidation of two churches in one, or of a church and chapel in one, and one of them not being above 6*l.* a year in the king's books, and not diſtant from the other above one mile, may be made by the aſſent of the reſpective ordinaries, patrons, and incumbents.

cumbents. And further provisions are made concerning the same, by the subsequent statutes of 17 *C.* 2. *c.* 3. and 4 *W.* & *M.* 12.

UNIVERSITY. See COLLEGES.

UNLAWFUL ASSEMBLY, is where three or more persons assemble together, with intent mutually to assist each other in the execution of some enterprize of a private nature, with force or violence. If they move forward towards the execution thereof, it is then a *rout*; and if they execute it in deed, it is a *riot*. 1 *Haw.* 155.

VOIR DIRE, *veritatem dicere*, is where the party is examined upon oath, to *make true answer* to such questions as the court shall demand of him: so where it is prayed upon a trial at law, that a witness may be sworn whether he shall get or lose by the matter in controversy, this is called a *voir dire*; and if it appears that the witness is disinterested, his testimony is allowed, otherwise not. 3 *Black.* 332.

VOLUNTARY, as applied to a deed, is where any conveyance is made without a consideration, either of money, marriage, or other valuable thing; which kind of conveyances, in favour of creditors, and *bona fide* purchasers, are frequently set aside. 2 *Black.* 297.

A *voluntary oath*, is where a man takes an oath in an extrajudicial matter, of which the law takes no notice; for no oath incurs the punishment of perjury, unless it is taken in some court of justice having power to administer an oath, or before some magistrate or proper officer invested with a like authority. 4 *Black.* 137.

VOUCHER, *(vocatio,)* is a word of art made of the Latin, *voco*; and is, when the tenant in a *real* action calleth another into the court that is bound to him in warranty; that is, either to defend the right against the demandant, or to yield him other land in value; and extendeth to lands or tenements of an estate of freehold of inheritance, and not to any chattel real, personal, or mixed: for in those cases, the party, if he hath a warranty, shall not vouch, but have his action of covenant, if he hath a deed: or if it be by parol, then an action upon his case, or an action of deceit, as the case shall require. 1 *Inst.* 101.

It is generally used in suffering recoveries called a *single* voucher, where there is but only one voucher; and a *double* voucher, when the vouchee voucheth over; and so a treble voucher, or further, as occasion may be. 1 *Inst.* 102.

He that voucheth, is called the *voucher*; and he that is vouched, is called the *vouchee*.

USAGE, differs from *custom* and *prescription*: no man may claim a rent, common, or other inheritance, by usage, though he may by prescription. 6 *Co.* 65. See PRESCRIPTION.

USANCE,

USANCE, is a word among merchants in bills of exchange, and denotes a calendar month; as from *May* 20, to *June* 20: ſo double uſance is two ſuch months.

USE, is a truſt and confidence repoſed in another who is tenant of the land, that he ſhall diſpoſe of the land according to the intention of *ceſtuy que uſe*, or him to whoſe uſe it was granted, and ſuffer him to take the profits; as if a feoffment was made to *A.* and his heirs, to the uſe of (or in truſt for) *B.* and his heirs; here, at the common law, *A.* the tenant had the legal property and poſſeſſion of the land; but *B.* (*the ceſtuy que uſe,*) was in conſcience and equity to have the profits and diſpoſal of it. 2 *Black.* 328.

This notion was firſt introduced by the eccleſiaſtics, to evade the ſtatutes of mortmain; by obtaining grants of lands, not to their religious houſes directly, but to the *uſe* of the religious houſes. *Id.*

But, however fraudulently introduced, this idea afterwards continued to be often innocently, and ſometimes laudably, applied to a number of civil purpoſes, as it enabled the owner of lands to make various deſignations of the profits thereof, as prudence, or juſtice, or family convenience, might require. 2 *Black.* 328, 9.

But this opening the way to frauds, ſtatutes were made from time to time to remedy the ſeveral inconveniences; and finally, by the 27 *H.* 8. *c.* 10, which is commonly called the *ſtatute of uſes*, or the *ſtatute for transferring uſes into poſſeſſion*, the *ceſtuy que uſe* is conſidered as the real owner of the eſtate; whereby it is enacted that, "when any perſon is ſeiſed of lands to the uſe of another, the perſon intitled to the uſe in fee ſimple, fee tail, for life, or years, or otherwiſe, ſhall ſtand and be ſeiſed or poſſeſſed of the land, in the like eſtate as he hath of the uſe, truſt, or confidence;" and thereby the act makes *ceſtuy que uſe* complete owner both at law and in equity. 2 *Black.* 332.

And this introduced the preſent and moſt uſual form of conveyance of a freehold by leaſe and releaſe, in order to ſave the trouble of making livery of ſeiſin upon the lands. The *leaſe* makes the leſſor ſtand ſeiſed to the *uſe* of the leſſee, and veſts in the leſſee the uſe of the term; and then the ſtatute immediately annexes the poſſeſſion. And being thus in poſſeſſion, he is capable of receiving a *releaſe* of the freehold and reverſion. 2 *Black.* 339.

And foraſmuch as the uſe now governs the poſſeſſion, hence in conveyances, it is ſet down in the *habendum* to whoſe uſe the lands are conveyed; as, to the only proper uſe and behoof of him the ſaid *A. B.* (the purchaſer) his heirs and aſſigns for ever.

But copyhold lands are not within this ſtatute of uſes; becauſe

cauſe the transferring of the poſſeſſion by the ſole operation of the ſtatute, without allowance of the lord and agreement of the tenant, would tend to the prejudice of both lord and tenant. *Coke's Copyh. f.* 54.

USUFRUCTUARY, is one that has the uſe, and reaps the profits of a thing.

USURPATION, is the uſing that which is another's; an interruption or diſturbing a man in his right and poſſeſſion.

An uſurpation of a *church benefice* is, when a ſtranger, that hath no right, preſents a clerk, who is thereupon admitted and inſtituted. In which caſe, by the common law, the patron loſt not only his turn of preſenting for that time, but alſo the abſolute and perpetual inheritance of the advowſon, ſo that he could not preſent again upon the next avoidance, unleſs in the mean time he recovered his right by a real action, upon a *writ of right of advowſon*. But by the 13 *Ed.* 1. *c.* 5. the patron ſhall not be driven to the difficulties of a *real* action upon a *writ of right*, but he ſhall recover the preſentation upon a *poſſeſſory* action by *darrein preſentment* or *quare impedit*, provided he brings ſuch action within ſix months after the avoidance: but if he neglected to bring his action within the ſix months, he was driven about to his writ of right as before. But now finally, by the 7 *An. c.* 18. no uſurpation ſhall diſplace the eſtate or intereſt of the patron, or turn it to a mere right; but the true patron may preſent upon the next avoidance, as if no ſuch uſurpation had happened. 3 *Black.* 243.

There is alſo an uſurpation of *franchiſes* and *liberties*; which is, when a ſubject unjuſtly uſes any royal franchiſes or liberties, which is ſaid to be an uſurpation upon the king; who ſhall have a writ of *quo warranto* againſt the uſurper.

USURY, properly conſiſts in extorting an unreaſonable rate for money, beyond what is allowed by ſtatute.

By the 12 *An. c.* 26. no perſon ſhall upon any contract, take, directly or indirectly, for loan of any money, wares, merchandize, or other commodities whatſoever, above the value of 5*l.* for the forbearance of 100*l.* for a year; and ſo in proportion: and all contracts to the contary ſhall be void. And perſons taking more, ſhall forfeit treble value of the money, or other things lent. And any ſcrivener, broker, or ſolicitor, who ſhall take for brokage, ſoliciting, or procuring the loan, above 5*s.* for the loan, or above 12*d.* (above ſtamp duties) for making or renewing the bond or bill, ſhall forfeit 20*l.* with coſts, and be impriſoned half a year. Which ſaid forfeiture ſhall be half to the king, and half to the proſecutor.

But if a contract, which carries intereſt, be made in a foreign country, our courts will direct the payment of intereſt according to

to the law of that country in which the contract was made. Thus, *Iriſh*, *American*, *Turkiſh*, and *Indian* intereſt, have been allowed in our courts, to the amount of even twelve *per cent.* For the moderation or exorbitance of intereſt depends upon local circumſtances; and the refuſal to inforce ſuch contracts would put a ſtop to all foreign trade. 2 *Black.* 463.

UTLAGATUS, a perſon outlawed. See OUTLAW.

W A G

WAGER OF LAW, *vadiare legem*, is where an action of *debt* is brought againſt a man upon a ſimple contract between the parties, without deed or record; and the defendant ſwears in court, that he owes the plaintiff *nothing* in manner and form as he hath declared; and his compurgators ſwear that they believe what he ſwears is true. And the reaſon of waging law is, becauſe the defendant may pay the plaintiff his debt in private, or before witneſſes which may be dead, and therefore the law allows him to wage his law in his diſcharge; and his oath ſhall be rather accepted to diſcharge himſelf, than the law will ſuffer him to be charged upon the bare allegation of the plaintiff. 2 *Inſt.* 45.

It is called *wager* of law, becauſe of ancient time he put in *gages*, pledges or ſureties, to make his law at ſuch a day. And it is called *making* of his law, becauſe the law doth give ſuch a ſpecial benefit to the defendant to bar the plaintiff for ever in that caſe. But he ought to bring with him eleven perſons of his neighbours, that will avow upon their oath, that in their conſciences he ſaith truth. 1 *Inſt.* 295.

The manner of waging law is thus:—He that hath waged or given ſecurity to make his law, brings with him into court his eleven compurgators; and, ſtanding towards the end of the bar, the ſecondary aſks him, whether he will wage his law? If he anſwer that he will, the judges admoniſh him to be well adviſed, and tell him the danger of a falſe oath. If he ſtill perſiſts, the ſecondary ſays, and he that wageth his law repeats after him; *Hear this, ye juſtices, that I,* A. B. *do not owe to* C. D. *the ſum of* , *nor any part thereof, in manner and form as the ſaid* C. D. *hath declared againſt me; So help me God.* And thereupon his compurgators ſhall make their oaths in manner aforeſaid. 3 *Black.* 343.

Wager

Wager of law lieth not where there is any ſpecialty, as a bond or deed, to charge the defendant; but when the debt groweth by word only. A man outlawed, attainted for falſe verdict, or for conſpiracy, or perjury, or otherwiſe become infamous, ſhall not be permitted to wage his law. So alſo where a contempt, treſpaſs, deceit, or any injury with force is alledged againſt the defendant, he ſhall not be permitted; for it is impoſſible to preſume he hath ſatisfied the plaintiff his demand in ſuch caſes, where the damages are uncertain, and left to be aſſeſſed by a jury. Likewiſe executors and adminiſtrators, when charged for the death of the deceaſed, ſhall not be admitted to wage their law; for no man can ſwear of another man's contract, either that he never made ſuch contract, or that he privately diſcharged it. *Id.* 345.

At length it being conſidered that this waging of law offered too great a temptation to perjury, by degrees new remedies were deviſed, and new forms of action introduced, wherein no defendant is at liberty to wage his law. So that now, inſtead of an action of *debt* upon a ſimple contract, an action of *treſpaſs upon the caſe* is brought for the *breach of a promiſe* or *aſſumpſit*, wherein, though the ſpecific debt cannot be recovered, yet damages may, equivalent to the ſpecific debt; and this being an action of treſpaſs, no law can be waged therein. So inſtead of an action of *detinue* to recover the very thing detained, an action of *treſpaſs upon the caſe in trover and converſion* is uſually brought; wherein, though the ſpecific thing cannot be had, yet the defendant ſhall pay damages for the converſion, equal to the value thereof; and for this treſpaſs alſo no wager of law is allowed. In the place of actions of *account*, a bill in equity is uſually filed; wherein, though the defendant anſwers upon his oath, yet ſuch oath is not concluſive to the plaintiff; but he may prove every article by other evidence, in contradiction to what the defendant hath ſworn. So that wager of law is now quite out of uſe, being avoided by the mode of bringing the action, but ſtill it is not out of force. And therefore when a new ſtatute inflicts a penalty, and gives an action of debt to recover it, it is uſual to add, *in which no wager of law ſhall be allowed.* 3 *Black.* 347.

WAGGONS, WAINS, AND CARTS, are by the 23 *G.* 3. *c.* 66. ſubjected to annual duties; which, by the 25 *G.* 3. *c.* 47. are put under the management of the commiſſioners of the window duties.

WAIFS, are goods ſtolen and *waived* or thrown away by the thief in his flight, for fear of being apprehended. Theſe are given to the king by the law, as a puniſhment upon the owner for not himſelf purſuing the felon, and taking away his goods from him. And therefore, if the party robbed do his diligence immediately to follow and apprehend the thief (which is called making

making freſh ſuit), or do convict him afterwards, or procure evidence to convict him, he ſhall have his goods again. 1 *Black.* 296.

Waived goods do alſo not belong to the king until ſeiſed by ſome perſon to his uſe; for if the owner ſeiſe them firſt, though at the diſtance of twenty years, the king ſhall never have them. *Id.* 297.

If the goods are hid by the thief, or left any where by him, ſo that he had them not with him when he fled, and therefore did not throw them away in his flight, they are not waived, but the owner may have them again when he pleaſes. *Id.*

Waifs have moſt commonly been granted by the king to the lords of manors reſpectively.

WAINAGE. The reaſonableneſs of fines or amercements having been regulated by *magna charta*, that no perſon *ſhall* have a larger amercement impoſed upon him than his circumſtances of perſonal eſtate will bear, it is added, "ſaving to the free-"holder his contentment or land; to the trader his merchan-"dize; and to the countryman his *wainage* or team and inſtru-"ments of huſbandry." 4 *Black.* 379. See GAINAGE.

WAKE, is the ancient cuſtomary feſtival annually celebrated on the day of that ſaint to which the church was dedicated. It received the name of *vigil* or *wake*, from the people reſorting to the church on the evening before, and their *waking* and performing their devotions. *Ken. Par. Ant.* 609.

WALES. By the 27 *Hen.* 8. *c.* 26. and other ſubſequent ſtatutes, the dominion of *Wales* ſhall be incorporated with and part of the realm of *England*; and all perſons born in *Wales* ſhall enjoy all liberties and privileges as the ſubjects in *England* do. And the lands in *Wales* ſhall be inheritable after the *Engliſh* tenure, and not after any *Welch* laws or cuſtoms. And the proceedings in all the law courts ſhall be in the *Engliſh* tongue. A ſeſſion is alſo to be held twice a year in every county, by judges appointed by the king, to be called the great ſeſſions of the ſeveral counties in *Wales*; in which all pleas of real and perſonal actions ſhall be held, with the ſame form of proceſs, and in as ample manner as in the court of common pleas at *Weſtminſter*; and writs of error ſhall lie from judgments therein to the court of king's bench at *Weſtminſter*. But the ordinary original writs, or proceſs of the king's courts at *Weſtminſter*, do not run into the principality of *Wales*; though proceſs of execution does, as alſo do all prerogative writs; as writs of *certiorari*, *quo minus*, *mandamus*, and the like. 3 *Black.* 77.

Murders and felonies in any part of *Wales* may be tried in the next adjoining *Engliſh* county; the judges of aſſize having a concurrent juriſdiction throughout all *Wales* with the juſtices of the grand ſeſſions. *Str.* 553.

And

And all local matters arising in *Wales* triable in the king's bench, are by the common law to be tried by a jury returned from the next adjoining county in *England. Bur. Manf.* 859.

By the 11 & 12 *W. c.* 9. no sheriff or other officer within the principality of *Wales*, shall upon any process out of the courts at *Westminster*, hold any person to special bail, unless an affidavit be first made in writing, signifying that the cause of action is 20*l.* or upwards.

WAPENTAKE, (Sax. from *weapon*, and *tac*, *tactus*,) is all one with what we call a hundred, specially so used in some of the northern counties. The word seems to have had its origin from hence: When first this kingdom, or part thereof, was divided into hundreds, he who was the chief of the hundred, whom we now call the high constable, as soon as he entered upon his office, appeared in the field on a certain day on horseback, 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 touching of their weapons. *Hoveden. Fleta, b.* 3.

WAR, time of. 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 by our law to be a time of peace: but when, by invasion, insurrection, rebellion, or the like, the peaceable course of justice is stopped, this is adjudged to be a time of *war*. And this shall be tried by the records and judges, whether justice at such a time had her equal course of proceeding or not. For time of war gives privilege to them that are in war, and all others within the kingdom. So if a man be disseised in time of peace, and a descent is cast in time of war, this shall not take away the entry of the disseisee. 1 *Inst.* 249.

WARDSHIP. When the tenant died, and his heir was under the age of twenty-one, being a male, or fourteen, being a female, the lord was intitled to the wardship of the heir, and was called the guardian in chivalry. This wardship consisted in having the custody of the body and lands of such heir, without any account of the profits, till the age of twenty-one in males, and fourteen (which was afterwards advanced to sixteen) in females. For the law supposed the heir male unable to perform knight's service till twenty-one; but as for the female, she was supposed capable at fourteen to marry, and then her husband might perform the service. 2 *Black.* 67.

WARDS AND LIVERIES, court of, was established by the statute 32 *H.* 8. *c.* 46. to inquire of wardships, liveries, and all the numerous incidents of knights service; from the burden

den whereof the ſubject was delivered by the ſtatute. 12 C. 2 c. 24.

WARRANT, is a power and charge to a conſtable or other officer to apprehend a perſon accuſed of any crime. It may be iſſued in extraordinary caſes by the privy council, or ſecretaries of ſtate; but moſt commonly it is iſſued by juſtices of the peace. This they may do in any caſes where they have a juriſdiction over the offence, in order to compel the perſon accuſed to appear before them; for it would be abſurd to give them power to examine an offender, unleſs they had alſo a power to compel him to attend and ſubmit to ſuch examination. And this extends to all treaſons, felonies, and breaches of the peace; and alſo to all ſuch offences as they have power to puniſh by ſtatute. 4 *Black.* 290.

Before the granting of the warrant, it is fitting to examine upon oath the party requiring it, as well to aſcertain that there is a felony or other crime actually committed, without which no warrant ſhould be granted; as alſo to prove the cauſe and probability of ſuſpecting the party againſt whom the warrant is prayed. *Id.*

This warrant ought to be under the hand and ſeal of the juſtice; ſhould ſet forth the time and place of making, and the cauſe for which it is made; and ſhould be directed to the conſtable, or other peace officer, or it may be to any private perſon by name. 4 *Black.* 291.

A *general* warrant to apprehend all perſons ſuſpected, without naming or particularly deſcribing any perſon in ſpecial, is illegal and void for its uncertainty; for it is the duty of the magiſtrate, and ought not to be left to the officer, to judge of the ground of ſuſpicion. Alſo a warrant to apprehend all perſons guilty of ſuch a crime, is no legal warrant; for the point upon which its authority reſts, is a fact to be decided on a ſubſequent trial; namely, whether the perſon apprehended thereupon be guilty or not guilty. *Id.*

When a warrant is received by the officer, he is bound to execute it, ſo far as the juriſdiction of the magiſtrate and himſelf extends. A warrant from any of the juſtices of the court of king's bench extends over all the kingdom, and is teſted or dated *England:* but a warrant of a juſtice of the peace in one county, muſt be backed, that is, ſigned, by a juſtice of another county, before it can be executed there. And a warrant for apprehending an Engliſh or a Scotch offender, may be indorſed in the oppoſite kingdom, and the offender carried back to that part of the united kingdom in which the offence was committed. 4 *Black.* 291.

WARRANT TO CONFESS JUDGMENT. The courſe for one to acknowledge a judgment for debt, is for him that doth

doth acknowledge it, to give a general warrant of attorney to any attorney, or to ſome particular attorney of that court where the judgment is to be acknowledged, to appear for him at his ſuit, againſt the party who is to have the judgment acknowledged unto him, and thereupon to confeſs judgment for the ſum demanded, together with coſts of ſuit.

WARRANTY. By the civil law, every man is bound to warrant the thing that he ſelleth or conveyeth, although there be no expreſs warranty; but the common law bindeth him not, unleſs there be a warranty either in deed or in law. 1 *Inſt.* 102.

Warranty of *lands*, is whereby the grantor doth, by an expreſs clauſe in the deed, for himſelf and his heirs, warrant and ſecure to the grantee the eſtate ſo granted: and this the heir is bound to perform, provided that he hath aſſets by deſcent. 2 *Black.* 300. 302.

With reſpect to *goods and chattels*, the purchaſer may have a ſatisfaction from the ſeller, if he ſells them as his own, and the title proves deficient, without any expreſs warranty for that purpoſe: but with regard to the *goodneſs* of the wares ſo purchaſed, the vendor is not bound to anſwer, unleſs he expreſsly warrants them to be ſound and good; or unleſs he knew them to be otherwiſe, and hath uſed any art to diſguiſe them; or unleſs they turn out to be different from what he repreſented to the buyer; for in ſuch caſes, this artifice ſhall be equivalent to an expreſs warranty, and the vendor ſhall be anſwerable for their goodneſs. 2 *Black.* 452. 3 *Black.* 169.

In contracts for proviſions, there is an *implied* warranty, that they are wholeſome; and if they be not, an action on the caſe lies to recover damages for this deceit. 2 *Black.* 165.

And in all caſes, where he that ſelleth any thing doth upon the ſale warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not ſo, he ſhall make compenſation to the buyer. *Id.*

But ſuch warranty muſt be upon the ſale; for if it be made after, and not at the time of the ſale, it is a void warranty; for then the buyer doth not take the goods upon the credit of the vendor. 3 *Black.* 165.

WARREN, is a franchiſe erected for preſervation or *cuſtody* (as the word *warren* properly ſignifies) of beaſts and fowls of warren.

The beaſts of warren, are hares, conies, and roes: the fowls of warren, are either field-fowl, as partridges, rails, and quails; or wood-fowl, as pheaſants and woodcocks; or water-fowl, as mallards and herons. 1 *Inſt.* 233.

Theſe were looked upon as royal game, and the franchiſe of free warren was invented to protect them, by giving the grantee a ſole and excluſive power of killing ſuch game, ſo far as his

his warren extended, on condition of his preventing other perſons. For by the common law, no man, not even a lord of a manor, could juſtify killing game on another man's ſoil, or even on his own, unleſs he had the liberty of free warren. 2 *Black.* 39.

But now this franchiſe is almoſt fallen into diſregard, ſince the modern ſtatutes for preſerving the game; the name being now chiefly preſerved in grounds that are ſet apart for breeding hares and conies. *Id.*

A perſon may have a warren in another man's land; for one may aliene the land, and reſerve the franchiſe: but none can make a warren, and appropriate thoſe creatures that are *feræ naturæ*, without licence from the king, or where a warren is claimed by preſcription. *Id.*

WASTE:

1. WASTE, *vaſtum*, is a ſpoil or deſtruction of houſes, gardens, trees, or other corporeal hereditaments, to the diſheriſon of him that hath the remainder or reverſion in fee ſimple or fee tail. 2 *Black.* 281.

2. Waſte is either *voluntary*, which is a crime of *commiſſion*, as by pulling down an houſe; or *permiſſive*, which is a matter of *omiſſion* only, as by ſuffering it to fall for want of neceſſary reparations. *Id.*

3. Waſte may be done in *houſes*, by pulling them down, or by ſuffering the ſame to be uncovered, whereby the ſpars, rafters, or other timber of the houſe, are rotted. 1 *Inſt.* 53.

But if the houſe be uncovered when the tenant cometh in, it is no waſte in the tenant to ſuffer the ſame to fall down. But though the houſe be ruinous at the tenant's coming in, yet if he pull it down, it is waſte, unleſs he build it again. *Id.*

Alſo if glaſs windows, though glazed by the tenant himſelf, be broken down, or carried away, it is waſte; for the glaſs is part of the houſe. And ſo it is of wainſcot, benches, doors, windows, furnaces, and the like, annexed or fixed to the houſe, either by him in reverſion, or by the tenant. *Id.*

4. If waſte be done by the enemies of the king, the tenant ſhall not anſwer for the waſte done by them. The ſame law it is, if the waſte be done by tempeſt, lightning or the like, the tenant ſhall not anſwer for it. 2 *Inſt.* 303.

And by the 6 *An. c.* 31. *ſ.* 6. no action ſhall be had againſt any perſon in whoſe houſe or chamber any fire ſhall accidentally begin; nor any recompence be made by ſuch perſon for any damage ſuſtained thereby.

But in ſuch caſes of accident, the tenant for his habitation may, if he will, build the premiſſes again with ſuch materials as remain, and with other timber which he may take growing on the ground; but he muſt not make the houſe larger than it was before. 1 *Inſt.* 53.

So

So if a leſſee throws down a wall or partition between one chamber and another, it is waſte; for it is not intended for the benefit of the leſſor, nor is it in the power of the leſſee to tranſpoſe the houſe. 2 *Roll's Abr.* 815.

5. If the tenant of a dove houſe, warren, park, fiſhpond, or the like, do take ſo many of the animals therein, as ſuch ſufficient ſtore be not left as he found when he came in, this is waſte. 1 *Inſt.* 53.

Burning the ſoil, in order to convert it to tillage, is waſte; for thereby the ſoil is conſumed. 22 *Vin.* 441.

6. Waſte may be committd in timber trees; to wit, oak, aſh, and elm, (and theſe are timber trees in all places,) either by cutting them down, or topping them, or doing any act whereby the timber may decay. Alſo in countries where timber is ſcarce, and beeches, or the like, are converted to building, they alſo are accounted timber. 1 *Inſt.* 53.

7. If a houſe be ruinous at the time of the leaſe made, if the leſſee ſuffer the houſe to fall down, he is not puniſhable for waſte; for he is not bound by law to repair the houſe in that caſe; but yet if he cut down timber upon the ground ſo letten, and repair it, he may well juſtify it; and the reaſon is, for that the law doth favour the ſupportation and maintenance of houſes of habitation for mankind. 1 *Inſt.* 54.

So if the leſſor by his covenant undertakes to repair the houſe, yet the leſſee (if the leſſor doth it not) may with the timber growing upon the ground repair it, though he be not compellable thereto. *Id.*

But the tenant cannot ſell trees, and with the money cover the houſe, for the ſale is waſte. 1 *Inſt.* 53.

And if after cutting down the timber, the tenant ſuffer the young germins to be deſtroyed by the eating of beaſts, it is waſte; and although they grow again, yet it is waſte: for after ſuch eating, they never will be great trees, but ſhrubs. 2 *Roll's Abr.* 815.

8. The tenant, unleſs reſtrained (which is uſual) by particular covenants or exceptions, may take ſufficient houſebote, hedgebote, firebote and ploughbote, and it is no waſte. 1 *Inſt.* 53.

But he may not cut off the top boughs, for that will cauſe the putrefaction of the whole tree. *Cro. Eliz.* 361.

9. Digging for gravel, lime, clay, brick, earth, ſtone or the like, or for mines of metal, coal, or the like, hidden in the earth, and which were not open when the tenant came in, is waſte; but the tenant may dig for gravel or clay for the reparation of the houſe, as well as he may take convenient timber trees. 1 *Inſt.* 53.

10. It is waſte to ſuffer a wall of the ſea to be in decay, ſo

as by the flowing and reflowing of the ſea, the ground be ſurrounded, whereby it becomes unprofitable: but if it be ſurrounded ſuddenly by the rage and violence of the ſea, occaſioned by wind or tempeſt, without any default in the tenant, this is no waſte puniſhable. So it is, if the tenant repair not the banks or walls againſt rivers or other waters. 1 *Inſt.* 53.

11. All tenants for life, or for any leſs eſtate, are puniſhable or liable to be impeached for waſte, both voluntary and permiſſive; unleſs their leaſes be made, as ſometimes they are, without impeachment of waſte; that is, with a proviſion that no one ſhall impeach or ſue him for waſte committed. 2 *Black.* 283.

But tenant in tail after poſſibility of iſſue extinct, is not impeachable for waſte, becauſe the inheritance was once in him.

12. He who has the remainder for life only, is not intitled to ſue for waſte, becauſe his intereſt may never perhaps come into poſſeſſion, and then he hath ſuffered no injury. 3 *Black.* 225.

But a parſon, vicar, archdeacon, prebendary, and the like, who are ſeiſed in right of their churches of any remainder or reverſion, may have an action of waſte; for they, in many caſes, have, for the benefit of the church and of the ſucceſſor, a fee ſimple qualified. *Id.*

13. By the ſtatute of 13 *Ed.* 1. *c.* 22. where two or more hold wood, turf land, or fiſhing, or other ſuch thing, *in common*, where none knoweth his ſeveral, and ſome of them do waſte againſt the minds of the other, an action ſhall lie by a writ of waſte. And this extends alſo to *jointenants*. 2 *Inſt.* 403.

But it doth not extend to *coparceners*, becauſe they were compellable to make partition by the common law. *Id.*

14. The redreſs for this injury of waſte is of two kinds, *preventive* and *corrective*: the former whereof is by writ of *eſtrepement*, the latter by writ of *waſte*. 3 *Black.* 225.

Eſtrepement is an old French word, ſignifying *extirpation*, which is the ſame as waſte. And this writ lay at common law, after judgment obtained in any real action, and before poſſeſſion was delivered by the ſheriff, to ſtop the vanquiſhed party from committing any waſte in the mean time; and by the ſtatute of *Glouceſter*, 6 *Ed.* 1. *c.* 5. it may be had to prevent any waſte pending the ſuit. *Id.*

And by virtue hereof, the ſheriff may reſiſt them that do or offer to do waſte; and if otherwiſe he cannot prevent them, he may lawfully impriſon the waſters, or make a warrant to others to impriſon them: or if neceſſity require, he may take the power of the county to his aſſiſtance. *Id.*

But now the moſt uſual way of preventing waſte, is by *injunction*

junction out of a court of equity, upon a bill exhibited. 3 *Black.* 227.

15. Where a *mortgagor* commits waſte, the court will reſtrain him by injunction, becauſe the whole eſtate is a ſecurity. 3 *Atk.* 210.

So if a *mortgagee* in fee in poſſeſſion, commits waſte by cutting down timber, and the money ariſing by the ſale of the timber is not applied in ſinking the intereſt and principal of his mortgage; the court, on a bill brought by the mortgagor to ſtay waſte, will grant an injunction. 3 *Atk.* 723.

16. Though a perſon be tenant for life without impeachment of waſte, yet the court will grant an injunction to reſtrain him from cutting down trees in lines, or avenues, or ridges in a park, which are for ſhelter or ornament: and it is the ſame thing whether they were planted for that purpoſe, or grow natural. 3 *Atk.* 215, 216.

17. Alſo tenant for life without impeachment of waſte, ſhall be obliged to keep tenants houſes in repair, unleſs the charge is exceſſive, and ſhall not ſuffer them to run to ruin. 2 *Atk.* 383.

18. Truſtees to preſerve contingent remainders, may bring a bill to ſtay waſte in the tenant for life. 3 *Atk.* 95.

19. The court will grant an injunction to ſtay waſte, in favour of an infant *in ventre ſa mere.* 2 *Atk.* 117.

20. If a parſon or vicar waſte the trees of the parſonage or vicarage, the patron may have a prohibition. 2 *Roll's Abr.* 813.

And lord *Coke* ſays, waſte by the incumbent in houſes and buildings is a good cauſe of deprivation. 3 *Inſt.* 204.

21. *A writ of waſte*, to puniſh the offence after it has been committed, is an action partly founded upon the common law, and partly upon the ſtatute of *Glouceſter* aforeſaid; and may be brought by him that has the immediate eſtate of inheritance in reverſion or remainder, againſt the tenant for life, tenant in dower, tenant by the curteſy, or tenant for years. 3 *Black.* 227.

This action of waſte is a mixed action; partly real, ſo far as it recovers land; and partly perſonal, ſo far as it recovers damages: for it is brought for both thoſe purpoſes; and if the waſte be proved, the plaintiff ſhall recover the thing or place waſted, and alſo treble damages by the ſaid ſtatute of *Glouceſter*, 6 *Ed.* 1. *c.* 5.

The writ of waſte calls upon the tenant to appear and ſhew cauſe why he hath committed waſte and deſtruction in the place named, to the diſheriſon of the plaintiff. And if the defendant makes default, or doth not appear at the day aſſigned him, then the ſheriff is to take with him a jury of twelve men, and go in perſon to the place alledged to be waſted, and there inquire of the waſte done, and the damages; and make a return or report

of the ſame to the court, upon which report the judgment is founded. 3 *Black.* 228.

But if the defendant appears to the writ, and afterwards ſuffers judgment to go againſt him by default, or not putting in an anſwer, this amounts to a confeſſion of the waſte; ſince, having once appeared, he cannot afterwards pretend ignorance of the charge. In this caſe, therefore, the ſheriff ſhall not go to the place to inquire of the fact, whether any waſte has or has not been committed, for this is already aſcertained by the tacit confeſſion of the defendant; but he ſhall only, as in defaults upon other actions, make inquiry of the *quantum* of damages. 3 *Black.* 228.

When the waſte and damages are thus aſcertained, either by confeſſion, verdict, or inquiry of the ſheriff, judgment is given, in purſuance of the ſaid ſtatute of *Glouceſter*, that the plaintiff ſhall recover the place waſted, for which he ſhall have a writ of ſeiſin, (provided the particular eſtate be ſtill ſubſiſting,) and alſo that the plaintiff ſhall recover treble the damages aſſeſſed by the jury; which he muſt obtain in the ſame manner as all other damages, in actions perſonal and mixed, are obtained, whether the particular eſtate be expired or ſtill in being. *Id.* 229.

WASTEL BOWL, a large ſilver cup or bowl, wherein the Saxons at their entertainments drank *heal (health)* to one another. In the religious houſes this bowl was ſet at the upper end of the table for the abbot, who began the health, or *paulum charitatis*. Hence fine white bread, or cakes, commonly uſed therewith, were called *waſtel bread*.

WATCH AND WARD. One of the principal duties of both high and petty conſtables; ariſes from the ſtatute of *Wincheſter*, which appoints them to keep watch and ward in their reſpective juriſdictions. Ward is chiefly intended of the daytime, in order to apprehend rioters and robbers on the highways. Watch is properly applicable to the night only, and begins at the time when ward ends, and ends when ward begins, to apprehend all rogues, vagabonds, and night walkers, and make them give account of themſelves. 1 *Black.* 356.

The ſeveral hundreds into which the counties are divided, are ſometimes called *wards*, as being the diſtricts of the high conſtables for the aforeſaid purpoſes.

WATER, in legal acceptation, is conſidered under the notion of land, in reſpect of the land that lies underneath it; and may be ſued for under that name, as ſo many acres of land covered with water. 2 *Black.* 18.

WATER ORDEAL. The moſt ancient ſpecies of trial was by *ordeal*, which was of two ſorts, *fire* ordeal and *water* ordeal. *Fire ordeal* was performed either by taking up in the hand, unhurt, a piece of red-hot iron; or elſe by walking barefoot and blind-

blindfold over nine red-hot plough-ſhares. *Water ordeal* was performed, either by plunging the bare arm up to the elbow in boiling water, and eſcaping unhurt thereby; or by caſting the perſon ſuſpected into a river or pond of cold water, and if he floated, it was deemed an evidence of his guilt, but if he ſunk he was acquitted. But this ſuperſtition hath been long ſince aboliſhed by act of parliament. It is eaſy from hence to trace out the barbarity ſtill remaining in ſome countries to diſcover witches, by caſting them into a pool of water, and by their ſinking to prove their innocence. 4 *Black.* 342.

WAY, conſidered as a ſpecies of incorporeal hereditaments, is the right of going over another man's ground, in which a particular perſon may have an intereſt and a right, though another be the owner of the ſoil. This may be grounded on a ſpecial permiſſion; as when the owner of the land grants to another a liberty of paſſing over his grounds, to go to the church, or market, or the like; in which caſe, the gift or grant is particular, and confined to the grantee alone, and dies with the perſon. A way may be alſo by preſcription; as if all the owners and occupiers of ſuch a farm have immemorially uſed to croſs another's ground; for this immemorial uſage ſuppoſes an original grant. A right of way alſo may ariſe by act and operation of law; for if a man grants to another a piece of ground in the middle of his field, he at the ſame time tacitly and impliedly gives him a way to come at it: for where the law gives any thing to any one, it gives impliedly whatever is neceſſary for enjoying the ſame. 2 *Black.* 35.

WEIGHTS AND MEASURES. The ſtandard of *meaſures* was originally kept at *Wincheſter*; and we find in the laws of king *Edgar*, near a century before the conqueſt, an injunction that the one meaſure which was kept at *Wincheſter* ſhould be obſerved throughout the realm. Moſt nations have regulated the ſtandard of meaſures of *length* by compariſon with the parts of the human body; as the thumb, the palm, the hand, the foot, the cubit, the ell, (*ulna*, or arm,) the pace, and the fathom: but as theſe are of different dimenſions in men of different proportions, our ancient hiſtorians inform us, that a new ſtandard of longitudinal meaſure was aſcertained by king *Henry* the firſt, who commanded that the yard ſhould be made of the exact length of his own arm. And one ſtandard of meaſures of length being gained, all others are eaſily derived from thence; thoſe of greater length by multiplying, thoſe of leſs by ſubdividing, that original ſtandard. Thus, by the ſtatute called *compoſitio ulnarum et perticarum*, five yards and an half make a perch; and the yard is ſubdivided into three feet, and each foot into twelve inches; which inches will be each of length of three grains of barley. *Superficial* meaſures are derived by ſquaring thoſe of

length; and meaſures of capacity by cubing them. 1 *Black.* 274.

The ſtandard of *weights* was originally taken from corns of wheat, whence the loweſt denomination of weights that we have is ſtill called a *grain*; thirty-two of which are directed, by the ſtatute called *compoſitio menſurarum*, to compoſe a penny-weight, whereof twenty make an ounce, and twelve ounces a pound. *Id.* 275.

And upon theſe principles the firſt ſtandards were made, and by a variety of ſubſequent ſtatutes were directed to be kept in the exchequer, and all weights and meaſures to be made conformable thereto. But, as Sir *Edward Coke* obſerves, though this hath ſo often by authority of parliament been enacted, yet it never could be effected; ſo forcible is cuſtom with the multitude. For notwithſtanding the many ſtatutes which have been enacted, that there ſhall be but one weight and one meaſure throughout the realm, there always have been, and ſtill are, two kinds of weights uſed in *England*, the one by law, and the other by cuſtom; but they are for ſeveral ſorts of wares or commodities; for there is *troy* weight and *avoirdupois*. *Troy* weight is by law; and thereby are weighed ſilk, gold, ſilver, pearl, and precious ſtones: and this hath to the pound twelve ounces. *Avoirdupois* is by cuſtom, yet confirmed by ſtatute; and thereby are weighed all kinds of grocery wares, drugs, butter, cheeſe, fleſh, wax, pitch, tar, tallow, wool, hemp, flax, iron, ſteel, lead, and all other commodities which bear the name of garble, and whereof iſſueth a refuſe or waſte (and alſo bread, by 31 *G.* 2. *c.* 29.); and this hath to the pound ſixteen ounces; and twelve pounds over are allowed to every hundred. *Dalt. c.* 112.

By ſtatute 8 *Hen.* 6. *c.* 5. and 11 *Hen.* 7. *c.* 4. in every market town a common balance ſhall be kept, with common weights ſealed, according to the ſtandard of the exchequer; at which all the inhabitants may weigh without paying any thing; taking nevertheleſs of foreigners for every draught between 40*lb.* and 100*lb.* an halfpenny; between 100*lb.* and 1000*lb.* a farthing. And the clerk of the market or other proper officer ſhall ſeal all meaſures duly gaged brought unto him, by the ſtandard in his poſſeſſion; and may take for the ſame one penny for every buſhel; an halfpenny for every half buſhel or peck; and a farthing for every gallon, pottle, quart, pint, or half pint.

WEREGILD, was a pecuniary ſatisfaction paid to the party injured, or to his kindred, to expiate enormous offences. In the Saxon laws, particularly thoſe of king *Athelſtan*, we find the ſeveral weregilds in the caſe of homicide eſtabliſhed in progreſſive order, from the death of the ceorl, or peaſant, up to that of the king himſelf. The weregild of a ceorl was 266 thrymſas, that of the king 30,000; each thrymſa being equal to about a ſhilling of

of our preſent money. The weregild of a ſubject was paid intirely to the kindred of the party ſlain; but that of the king was divided, one half being paid to the public, the other to the royal family. 4 *Black.* 313.

WESE-SAXON LAGE. Weſt-Saxon *law*, was a code of laws compiled by king *Alfred* from the laws introduced by the Saxons into this kingdom; as the *Danelage* was that introduced by the Danes; and the *Mercenlage* was that which was uſed in the ancient kingdom of *Mercia*. Andtheſe ſeem partly to have compoſed what is now known by the name of the common law. 1 *Black.* 65. 4 *Black.* 412.

WHARFAGE, is money paid for landing goods at a wharf, or for ſhipping and taking goods into a boat or barge from thence.

WHITE RENTS, *redditus albi*, were ſo called, becauſe they were paid in ſilver, to diſtinguiſh them from rent cummin, rent corn, rent cattle, and the like. 2 *Inſt.* 19.

WIDOW's CHAMBER, is the widow's apparel and furniture of a bed chamber, which, throughout the province of *York*, and in the city of *London*, the widow is intitled to, over and above her diſtributive ſtare of the perſonal eſtate of her huſband dying inteſtate.

WIFE. See HUSBAND.

WILL:

1. *Who may make a will.*
2. *Will of lands.*
3. *Will of goods.*
4. *Nuncupative will.*
5. *Revocation of a will.*
6. *Rules concerning the conſtruction of wills.*

1. *Who may make a will.*

IT is generally ſaid, that an *infant* male at the age of fourteen years, and a female at the age of twelve years, may make a teſtament of goods and chattels. And this is by the rule of the civil law, which fixes the age of puberty and conſent to marriage at thoſe years. 2 *Black.* 497.

Madmen, idiots, or natural fools, perſons grown childiſh by age or infirmity, and ſuch as have their ſenſes beſotted with drunkenneſs; ſo perſons born deaf and dumb; perſons under fear or reſtraint; or circumvented by fraud; perſons outlawed, excommunicate, attainted of treaſon or felony; are incapable to make a will, ſo long as ſuch diſability continues. So alſo a married woman, unleſs by the expreſs conſent of her huſband.

2. *Will of lands.*

BEFORE the conqueſt, lands were deviſeable by will: but upon the introduction of the military tenures, the reſtraint of deviſing lands

lands neceſſarily took place, as a branch of the feudal doctrine of non-alienation, without the conſent of the lord. And therefore, by the common law ſince the conqueſt, no eſtate greater than for term of years, could be diſpoſed of by will; except only in *Kent*, and in ſome ancient boroughs, and a few particular manors, where the Saxon immunities by ſpecial indulgence ſubſiſted. And though the feudal reſtraint on alienation by *deed* vaniſhed very early, yet this on wills continued for ſome centuries after. But when eccleſiaſtical ingenuity had invented *the* doctrine of uſes, as a thing diſtinct from the land, uſes began to be deviſed very frequently, and the deviſee of the uſe could in chancery compel its execution. But when the ſtatute of uſes, 2 *Hen.* 8. *c.* 10. had annexed the poſſeſſion to the uſe, theſe uſes, being now the very land itſelf, became no longer deviſeable; which might have occaſioned a great revolution in the law of deviſes, had not the ſtatute of wills been made about five years after, *viz.* 32 *Hen.* 8. *c.* 1. explained by 34 *Hen.* 8. *c.* 5. which enacted, that all perſons being ſeiſed in fee ſimple (except femes covert, infants, idiots, and perſons of nonſane memory) might by will in writing deviſe to any other perſon two thirds of their lands held in chivalry, and the whole of thoſe held in ſocage; which now, by turning the tenure in chivalry into free and common ſocage by the ſtatute 12 *C.* 2. *c.* 24. amounts to the whole of their landed property, except their copyhold, or other tenements in the nature of copyhold. And to prevent frauds in this private and leſs ſolemn way of paſſing lands, the ſtatute 29 *C.* 2. *c.* 3. directs, that "all deviſes of lands ſhall be in writing and ſigned by the teſta-"tor, or ſome other perſon in his preſence, and by his direction; "and atteſted by three or four credible ſubſcribing witneſſes." In the conſtruction of which ſtatute, it hath been adjudged, that the teſtator's name, written with his own hand, at the beginning of his will, as, "I, *John Stanley*, make this my laſt will and "teſtament," is a ſufficient ſigning, without any name at the bottom; though the other is the ſafer way. It has alſo been determined, that although the witneſſes muſt all ſee the teſtator ſign, or at leaſt acknowledge the ſigning, yet they may do it at different times; but they muſt all ſubſcribe their names as witneſſes in his preſence, leſt by any poſſibility they ſhould miſtake the inſtrument. Alſo it hath been determined, that it is not neceſſary that the teſtator ſhould declare the inſtrument he executes to be his will; nor that the witneſſes ſhould know the contents; nor that they ſhould atteſt every page, folio, or ſheet; nor that each page, folio, or ſheet, ſhould be particularly ſhewn to them; but it may be material if one of the ſheets was not in the room, when the other was executed and atteſted. 2 *Black.* 373. *Burr. Manſf.* 1775.

By the 25 *G.* 2. *c.* 6. a *legatee* may be a witneſs; and in order to

to take off the bias of intereſt, the ſtatute makes void all legacies given to witneſſes. And by the ſame ſtatute, *creditors* are admitted to be witneſſes, leaving their credit to be conſidered, on a view of all the circumſtances, by the court and jury before whom ſuch will ſhall be conteſted.

3. *Will of goods.*

A WRITTEN will of goods and chattels is not altered by the ſtatute; and therefore it is not of neceſſity to have any ſubſcribing witneſſes to it; witneſſes ſubſcribing their names being firſt introduced by that ſtatute. And if a teſtament of chattels is written in the teſtator's own hand, though it hath neither his name nor ſeal to it, nor witneſſes preſent at its publication, it is good in law, provided ſufficient proof can be had that it is his hand-writing. And though written in another man's hand, and never ſigned by the teſtator, yet if proved to be according to his inſtructions, and approved by him, it hath been held a good teſtament of the perſonal eſtate. Yet it is the ſafer and more prudent way, and leaves leſs in the breaſt of the eccleſiaſtical judge, if it be ſigned and ſealed by the teſtator, and publiſhed in the preſence of witneſſes. 2 *Black.* 502.

4. *Nuncupative Will.*

No nuncupative will ſhall be good, where the eſtate bequeathed exceeds 30*l.*, unleſs proved by three witneſſes preſent at the making thereof, and unleſs they or ſome of them were ſpecially required to bear witneſs thereto by the teſtator himſelf; and unleſs it was made in his laſt ſickneſs, in his own dwelling houſe, or where he had been reſident ten days at the leaſt, except he be ſurpriſed with ſickneſs on a journey, or from home, and dies without returning. And it ſhall not be proved after ſix months from the making, unleſs it were put in writing in ſix days; nor until fourteen days after the death of the teſtator; nor till proceſs hath iſſued to call in the widow, or next of kin, to conteſt it if they think proper. 29 *C.* 2. *c.* 3.

5. *Revocation of Wills.*

No will of lands ſhall be revocable, otherwiſe than by another will or writing declaring the ſame, ſigned in the preſence of three witneſſes; or by obliterating the ſame by the teſtator himſelf, or in his preſence and by his direction. And no will of perſonal eſtate ſhall be revocable by any words or will by word of mouth only, except the ſame be in the life of the teſtator committed to writing and read to the teſtator and approved by him, and proved to be ſo done by three witneſſes. 29 *C.* 2. *c.* 3.

6. *Rules*

6. *Rules concerning the conſtruction of Wills.*

In conſtruing wills, the intention of the teſtator ought to prevail, if agreeable to the rules of law.

No particular form is neceſſary to convey the teſtator's meaning, but it muſt be collected from the will itſelf, by attending to the ſeveral parts of it, and comparing and conſidering them together. *Bur. Manſf.* 770.

Every clauſe in a will ſhall be conſtrued ſo as to take effect according to the teſtator's intent, if it conſiſts with the rules of law. 1 *Atk.* 416.

A court of equity is as much bound by poſitive rules and general maxims concerning property, as a court of law is. 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. *Burr. Manſf.* 1108.

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, as a court of equity can be. *Id.*

If the name of a deviſee be miſtaken in a will, yet if the perſon is clearly made out by averment to be the perſon intended, and there can be no other to whom it may be applied, the deviſe to him is good. 1 *Atk.* 410.

Deviſe in reſtraint of marriage ought to be conſtrued ſtrictly againſt ſuch reſtraint, and in favour of the perſon attempted to be reſtrained; for ſuch conditions are odious, and contrary to ſound policy. *Burr. Manſf.* 2055.

An executory deviſe, to take place at a future time, ought not to exceed the compaſs of a life or lives in being, and twenty-one years after at the furtheſt. *Burr. Manſf.* 879.

By an ancient maxim of law, although 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 deſcent, and the fee ſhall veſt in the anceſtor. *Id.* 1106.

But where it is deviſed to one *for life only* or *for life and not otherwiſe*, it ſhews the intention of the teſtator clearly; and the conſtruction ſhall be made ſo as to effectuate that intention. *Id.* 1107.

WILL:

1. Tenant *at will* is, where lands or tenements are let by one man to another, to have and to hold to him at the will of the leſſor; by force of which leaſe, the leſſee is in poſſeſſion, in this caſe, the leſſee is called tenant at will, becauſe he hath no certain nor ſure eſtate; for the leſſor may put him out at what time it pleaſeth him. *Litt. ſect.* 68.

Yet if the leſſee ſows the land, and the leſſor, after it is ſown, and before the corn is ripe, put him out, the leſſee ſhall have the corn; and ſhall have free entry, egreſs and regreſs, to cut and carry

carry away the corn; becauſe he knew not at what time the leſſor would enter upon him. *Id.*

For when the law giveth any thing, it giveth impliedly whatſoever is neceſſary for the taking and enjoying it. And the law in this caſe doth not drive him to an action for the corn, but giveth him a ſpeedy remedy to enter into the land, and to take and carry the corn away; and doth not compel him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giveth all that is convenient; to wit, free entry, egreſs and regreſs, as much as is neceſſary. 1 *Inſt.* 56.

So if a houſe be let to one, to hold at will, by force whereof the leſſee entereth into the houſe, and brings his houſehold ſtuff into the ſame, and afterwards the leſſor puts him out; yet he ſhall have free entry, egreſs and regreſs, into the ſaid houſe, by reaſonable time, to take away his goods and utenſils. So if a man ſeiſed of an houſe in fee ſimple, fee tail, or for life, hath certain goods within the ſaid houſe, and maketh his executors, and dies; whoever after his deceaſe hath the houſe, his executors ſhall have free entry, egreſs and regreſs, to carry out of the ſame houſe the goods of the teſtator by reaſonable time. *Litt. ſect.* 69.

Alſo, if a man make a deed of feoffment to another, of certain lands, and delivereth to him the deed, but not livery of ſeiſin; in this caſe, he to whom the deed is made, may enter into the land, and hold and occupy it at the will of him who made the deed; becauſe it is proved by the words of the deed that it is his will that the other ſhould have the land: but he who made the deed may put him out when he pleaſes. *Litt. ſect.* 70.

2. The leſſor may, by actual entry into the ground, determine his will in the abſence of the leſſee; but by words ſpoken from the ground, the will is not determined, until the leſſee hath notice; no more than the diſcharge of a factor, attorney or ſuch like, in their abſence, is ſufficient in law, until they have notice thereof. 1 *Inſt.* 55.

And it is regularly true, that every leaſe at will muſt in law be at the will of both parties; and therefore when the leaſe is made to have and to hold at the will of the leſſor, the law implies it to be at the will of the leſſee alſo; and conſequently, the leſſee hath the ſame power to determine the leaſe at his will as the leſſor hath. *Ibid.*

And it ſeems to be now ſettled, that (beſides the expreſs determination of the leſſor's will, by declaring that the leſſee ſhall hold no longer) the exertion of any act of ownerſhip by the leſſor, as entering upon the premiſes and cutting timber, taking a diſtreſs for rent and impounding it thereon, or making a feoffment, or leaſe for years, of the land, to commence immediately; or any act of deſertion by the leſſee, as aſſigning his eſtate to another, or committing waſte; or the death, or

or outlawry of either leſſor or leſſee; puts an end to, or determines, the eſtate at will. 2 *Black.* 146.

Finally, the courts at law have of late years leaned againſt conſtruing demiſes, where no certain term is mentioned, to be tenancies at will; but have rather held them to be tenancies from year to year, ſo long as both parties pleaſe, eſpecially where an annual rent is reſerved; in which caſe, they will not ſuffer either party to determine the tenancy, even at the end of the year, without reaſonable notice to the other. 2 *Black.* 147.

And in *Timmins* and *Rowlinſon*, *H.* 5. *G.* 3. it was ſaid by Mr. Juſtice *Wilmot*, in the country, leaſes at will being found in the ſtrict legal notion of a leaſe at will extremely inconvenient, exiſt only *notionally*; and were ſucceeded by another ſpecies of contract leſs inconvenient. At firſt it was indeed ſettled to be for a year certain, and then the landlord might turn out the tenant at the end of the year. It is now eſtabliſhed, that if a tenant takes from year to year, either party muſt give a *reaſonable* notice before the end of the year, though that *reaſonable* notice varies according to the cuſtom of different counties. *Burr. Mansf.* 1603.

3. Tenant at will, in like manner as tenant for years, hath incident to, and inſeparable from his eſtate, unleſs by ſpecial agreement, reaſonable eſtovers of houſebote, firebote, plough-bote, and haybote. 1 *Inſt.* 41.

WINCHESTER MEASURE, a ſtandard of eight gallons originally kept at *Wincheſter*, according whereunto regulations ought to be made of all meaſures throughout the kingdom. But ſo prevalent is cuſtom, that although it has been enacted by divers ſtatutes, that there ought to be only one weight and one meaſure throughout the realm, yet this could never be effected; but the weights and meaſures continue different ſtill in different places. 1 *Black.* 274.

WINDOW DUTY. By ſeveral ſtatutes a duty is impoſed on every dwelling-houſe inhabited; and alſo on windows and lights according to the number thereof; and on houſes of 5*l.* a year and upwards, according to their value; which are to be under the management of the commiſſioners of the land tax. For which duties, ſee *Burn's Juſtice*, tit. HOUSE.

WINE. By the 26 *G.* 3. *c.* 59. every wholeſale dealer in foreign wine ſhall take out a licence annually from the officers of exciſe.

And by the 30 *G.* 3. *c.* 38. every retailer of foreign wine ſhall alſo take out a licence annually in like manner.

WIRE. By the 24 *G.* 3. *c.* 41. every wire-drawer ſhall take out a licence annually from the officers of exciſe.

And by 27 *G.* 3. *c.* 13. ſeveral duties are impoſed on wire imported;

imported; and alſo on all wire made in *Great Britain*, to be paid by the maker.

WITCHCRAFT. By the 9 *G.* 2. *c.* 5. no proſecution ſhall be commenced or carried on againſt any perſon for witchcraft, ſorcery, inchantment, or conjuration, or for charging another with any ſuch offence But if any perſon ſhall pretend to exerciſe or uſe any kind of witchcraft, ſorcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend, from his ſkill or knowledge in any occult or craſty ſcience, to diſcover where, or in what manner, any goods, ſuppoſed to have been ſtolen or loſt, may be found; he ſhall be impriſoned for a year, and once in every quarter of that year ſtand openly on the pillory for an hour, and further ſhall be bound to the good behaviour as the court ſhall award.

WITE, Sax. a puniſhment or penalty. So *witefree* is an immunity from fines and amercements. *Witeleſs*, free from cenſure or blame.

WITHERNAM, (from the Saxon *weder*, which common ſpeech hath turned to *oder*, *other*; and *naam*, a caption or taking, is where a diſtreſs is driven out of the county, and the ſheriff upon a replevin cannot make deliverance to the party diſtrained; in this caſe, the writ of *withernam* is directed to the ſheriff for the taking as many of his beaſts or goods that did thus unlawfully diſtrain, into his keeping, till the party make deliverance of the firſt diſtreſs. 2 *Inſt.* 140, 1.

WITNESS. See EVIDENCE.

WITNESSMAN, was a man dwelling out of the limits of the foreſt, ſummoned to attend the foreſt courts, as a witneſs, or to be ſworn on an inqueſt; and it was par of the tenure of ſeveral of the meſne lords holding under the lord of the foreſt, that they ſhould *find unto the foreſters witneſſman*; that is, compel ſuch their tenants to appear there, and be ſworn for the purpoſes aforeſaid.

WITTENA-GEMOT, was a convention or aſſembly of wiſe men, to aſſiſt the king in their counſel in the nature of our preſent parliament.

WOOD. If any offender ſhall wilfully and maliciouſly, without the conſent of the owner, cut down, deſtroy, break, bark, burn, deface, ſpoil, or carry away, any wood, or ſprings of wood, underwood or coppice wood, he ſhall be impriſoned three months in the houſe of correction, and be publicly whipped once a month. 6 *G. c.* 16.

And every perſon who ſhall wilfully cut or break down, bark, burn, pluck up, lop, top, crop, deface, damage, ſpoil, or deſtroy, or carry away, any timber tree without conſent of the owner, ſhall forfeit not exceeding 20*l.*: and for a ſecond offence, 30*l.* 6 *G.* 3. *c.* 48.

WOOD-

WOODGELD, a fine for cutting wood in the foreſt.

WOODMOTE, is the old name of that court of the foreſt which is now called the *court of attachments*, for looking after the wood or covert for the deer.

WOOL. By the 28 *G.* 3. *c.* 38. wool is prohibited to be exported, on forfeiture of 3*s.* a pound, or 50*l.* in the whole, at the option of the perſon who ſhall ſue; and the offender ſhall alſo ſuffer ſolitary impriſonment, for three calendar months, and until the penalty be paid, not exceeding twelve calendar months; and the wool ſhall be forfeited, and the veſſels, carriages, horſes, or other beaſts, uſed in conveying the ſame.

WRECK, of the ſea, in legal underſtanding, is applied to ſuch goods, as, after ſhipwreck at ſea, are by the ſea caſt upon the land. 2 *Inſt.* 167.

By the ancient common law, where any ſhip was loſt at ſea, and the goods or cargo were thrown upon the land, theſe goods, ſo wrecked, were adjudged to belong to the king; for it was held, that, by the loſs of the ſhip, all property was gone out of the original owner; but the rigour of this hath been mitigated in after times. And by the 3 *Ed.* 1. *c.* 4. if a man, a dog, or a cat, eſcape alive, the veſſel ſhall not be adjudged a wreck. Which animals are only put for examples; for it is now held, that not only if any live thing eſcape, but if proof can be made of the property of any of the goods or lading which come to ſhore, they ſhall not be forfeited as wreck. 1 *Black.* 290.

The ſtatute further ordains, that the ſheriff ſhall be bound to keep the goods a year and a day; that if any perſon can prove a property in them, either in his own right, or by right of repreſentation, they ſhall be reſtored to him without delay; but if no ſuch property be proved within that time, they then ſhall belong to the king, or to him unto whom the king hath granted the ſame. But if the goods are of a periſhable nature, the ſheriff may ſell them; and the money ſhall be liable in their ſtead. *Id.* 292.

In order to conſtitute a legal wreck, the goods muſt come to land: if they continue at ſea, the law diſtinguiſhes them by the appellations of *jetſam*, *flotſam*, and *ligan*. *Jetſam*, is where goods are *caſt* into the ſea, and there ſink and remain under water: *flotſam*, is where they continue *floating* on the ſurface of the water: *ligan*, is where they are ſunk in the ſea, but *tied* to a cork or buoy, in order to be found again. Theſe are alſo the king's, if no owner appears to claim them; but they are ſo far a diſtinct thing from the former, that they do not paſs in a general grant of wreck. *Id.*

By the 27 *Ed.* 3. if any ſhip be loſt on the ſhore, and the goods come to land, (which do not come under the denomination

tion of wreck,) they ſhall be preſently delivered to the merchants, paying only a reaſonable reward to thoſe that ſaved and preſerved them, which is intitled ſalvage.

By the 12 *An. ſt.* 2. *c.* 18. and 26 *G.* 2. *c.* 19. all head officers, and others of towns near the ſea, ſhall, on application to them made, ſummon as many hands as are neceſſary, and ſend them to the relief of any ſhip in diſtreſs; and, in caſe of aſſiſtance given, ſalvage ſhall be paid by the owners, to be aſſeſſed by three neighbouring juſtices. And if any perſon ſhall plunder, ſteal, or deſtroy, any goods belonging to a ſhip in diſtreſs, (whether they be wrecked or not,) or any tackle, proviſion, or part of ſuch ſhip; or ſhall beat or wound, or otherwiſe wilfully obſtruct the eſcape of any perſon endeavouring to ſave his life from ſuch ſhip, or the wreck thereof; or ſhall put out any falſe light with intent to bring any veſſel into danger; or ſhall make any hole in any ſuch ſhip in diſtreſs; or ſteal any pump belonging thereto; or wilfully do any thing tending to the immediate loſs of ſuch ſhip; he ſhall be guilty of felony without benefit of clergy. Provided, that when goods of ſmall value ſhall be ſtranded or caſt on ſhore, and ſtolen without circumſtances of cruelty, outrage, or violence, the offenders may be proſecuted for petit larceny only.

WRIT:

A WRIT is the king's precept in writing under ſeal, iſſuing out of ſome court, to the ſheriff or other perſon; and commanding ſomething to be done, touching a ſuit or action, or giving commiſſion to have it done. *T. L.*

Writs, in civil actions, are either *original* or *judicial*. *Original* writs are iſſued out of the court of chancery, for the ſummoning a defendant to appear, and are granted before the ſuit is begun, in order to begin the ſame; and *judicial* writs iſſue out of the court where the original is returned after the ſuit is begun.

WRIT OF ERROR:

A WRIT of error lies for ſome ſuppoſed miſtake in the proceedings of a court of record; for, to amend errors in an inferior court, not of record, a writ of falſe judgment lies. 3 *Black.* 405.

The writ of error only lies upon matter of *law*, ariſing upon the face of the proceedings; ſo that no evidence is required to ſubſtantiate or ſupport it: the method of reverſing an error in the determination of *facts*, is commonly by a new trial, to correct the miſtakes of the former verdict. *Id.*

He that brings the writ of error, muſt in moſt caſes find ſubſtantial pledges of proſecution, to prevent delays by frivolous pretences, and for ſecuring payment of coſts and damages, if the determination ſhall go againſt him. *Id.* 410.

WRIT

WRIT OF INQUIRY:

A WRIT of inquiry of damages, is a judicial writ, that iſſues out to the ſheriff, commanding him to ſummon a jury, to inquire what damages the plaintiff hath ſuſtained; and when this is returned with the inquiſition, judgment is thereupon entered. 2 *Lill. Abr.* 721.

This writ lies on a judgment by default, in an action of the caſe, covenant, treſpaſs, trover, or the like, or on a demurrer; but not on a verdict; for, in that caſe, the quantum ſhall be determined by the verdict. *Id.*

It is executed before the ſheriff or his deputy (after due notice to the defendant); at the execution whereof, both parties have liberty to be heard before the ſheriff, by their counſel or attornies, and evidence may be given on both ſides. *Id.*

If the plaintiff gives no evidence before the jury, yet they muſt find *ſome* damages, becauſe the defendant hath confeſſed the action, and conſequently hath admitted that there is damage. *Id.*

WRIT OF RIGHT OF ADVOWSON, was ſo called from the ſpecial words in the writ, requiring the party to *do right concerning the advowſon*. By this, the inheritance of the advowſon might have been recovered againſt an uſurper; but the incumbent could not be removed for that turn. But afterwards it was provided, that if the true patron brought a poſſeſſory action of *darrein preſentment*, or *quare impedit* within ſix months after the avoidance, he ſhould recover the intire preſentation.

Y E A

YARDLAND, *virgata terræ*, is a quantity of land conſiſting (according to ſome) of twenty four acres, whereof four yardlands make an hide, and five hides a knight's fee.

YEAR. By the ſtatute 24 *G.* 2. *c.* 23. the year ſhall begin on the firſt day of *January*, and not as heretofore on the twenty-fifth of *March*.

And in legal proceedings, the year muſt be computed according to the calendar, and not according to twenty-eight days to the month. 2 *Inſt.* 320.

So a legacy payable within ſo many months, ſhall be underſtood to ſignify calendar months. 3 *Atk.* 346.

YEAR AND DAY, is a time that determines a right, or works a preſcription in many caſes by law; as in caſe of an eſtray,

tray, if the owner challenge it not within that time, it belongs to the lord; ſo in like manner a wreck; ſo if a man be wounded or poiſoned, and dieth thereof within a year and a day, it is murder. 1 *Inſt.* 254.

YEAR, DAY, AND WASTE, is a part of the king's prerogative, whereby he hath the profits of lands and tenements for a year and a day, of thoſe that are attainted of petit treaſon or felony, whoſoever is lord of the manor whereto the lands or tenements do belong; and the king may cauſe waſte to be made on the tenements, by deſtroying the houſes, ploughing up the paſtures and meadows, and rooting up the woods, except the lord of the fee agree with him for the redemption of ſuch waſte, afterwards reſtoring it to the lord of the fee. *Stamf. Pr.* 44.

YEARS (eſtate for):

1. TENANT for term of years, is where a man letteth lands or tenements to another, for a certain term of years agreed upon between the leſſor and the leſſee; and when the leſſee entereth by force of the leaſe, then is he tenant for term of years. *Litt. ſect.* 58.

If tenements be let to a man for term of half a year, or for a quarter of a year, or any leſs time; this leſſee is reſpected as a tenant for years, and is ſtyled ſo in ſome legal proceedings: a year being the ſhorteſt term which the law in this caſe takes notice of. *Litt. ſect.* 67. 2 *Black.* 140.

2. Generally, every eſtate which muſt expire at a period certain and prefixed, by whatever words created, is an eſtate for years; and therefore this eſtate is frequently called a *term*; becauſe its duration or continuance is bounded, limited and determined. 2 *Black.* 143.

For every ſuch eſtate muſt have a certain beginning, and certain end. If no day of commencement is named in the creation of this eſtate, it begins from the making, or delivery of the leaſe. A leaſe for ſo many years as ſuch an one ſhall live, is void from the beginning; for it is neither certain, nor can ever be reduced to a certainty, during the continuance of the leaſe. *Ibid.*

And the ſame doctrine holds, if a parſon make a leaſe of his glebe for ſo many years as he ſhall continue parſon of ſuch a church, for this is ſtill more uncertain. But a leaſe for twenty or more years, if the parſon ſhall ſo long live, or if he ſhall ſo long continue parſon, is good; for there is a certain period fixed, beyond which it cannot laſt, though it may determine ſooner, on the parſon's death, or his ceaſing to be parſon there. 2 *Black.* 143.

3. An eſtate for years, though never ſo many, is inferior to an eſtate for life. For an eſtate for life, though it be only for the life of another perſon, is a freehold; but an eſtate, though

it be for a thouſand years, is only a chattel, and reckoned part of the perſonal eſtate. *Ibid.*

Hence it follows, that a leaſe for years may be made to commence *in futuro*, though a leaſe for life cannot. As if I grant lands to one from *Michaelmas* next for twenty years, this is good; but to hold from *Michaelmas* next for the term of his natural life, is void. *Ibid.*

For no eſtate of freehold can commence *in futuro*, becauſe it cannot be created at common law without livery of ſeiſin, or corporal poſſeſſion of the land; and corporal poſſeſſion cannot be given of an eſtate now, which is not to commence now, but hereafter. And becauſe no livery of ſeiſin is neceſſary for a leaſe for years, ſuch leſſee is not ſaid to be *ſeiſed*, or to have true legal ſeiſin of the lands. Nor indeed doth the bare leaſe veſt any eſtate in the leſſee, but only gives him a right of entry on the tenement, which right is called his *intereſt in the term*: but when he hath actually ſo entered, and thereby accepted the grant, the eſtate is then, and not before, veſted in him; and he is *poſſeſſed*, not properly of the land, but of the term of years, the poſſeſſion or ſeiſin of the land remaining ſtill in him who has the freehold. 2 *Black.* 144.

4. Tenant for term of years hath incident to, and inſeparable from his eſtate, unleſs by ſpecial agreement, the ſame eſtovers that tenant for life is intitled to; namely, houſebote, firebote, ploughbote, and haybote. 1 *Inſt.* 41.

5. With regard to emblements, or profits of lands ſowed by tenant for years, there is this difference between him and tenant for life; that where the term of tenant for years depends upon a certainty, as if he holds from *Midſummer* for ten years, and in the laſt year he ſows a crop of corn, and it is not ripe and cut before *Midſummer*, which is the end of his term, the landlord ſhall have it; for the tenant knew the expiration of his term, and therefore it was his own folly to ſow what he never could reap the profits of. 2 *Black.* 144.

But where the leaſe for years depends upon an uncertainty; as upon the death of the leſſor, being himſelf only tenant for life, or being a huſband ſeiſed in right of his wife; or if the term of years be determinable upon a life or lives: in all theſe caſes, the eſtate for years not being certainly to expire at a time foreknown, but merely by the act of God, the tenant, or his executors, ſhall have the corn, in the ſame manner that a tenant for life or his executors ſhall be intitled thereto. 2 *Black.* 145.

But he ſhall not have the graſs, or other fruits, if they are not ſevered, becauſe they are parcel of the inheritance.

6. A leaſe for *life* is not ſaleable by the ſheriff upon execution for debt; but he may extend the yearly profits to pay the debt. But he may ſell a term for *years* for debt, by writ of execution

execution upon a judgment in the life-time of the owner, or when it is in the hands of executors or adminiſtrators.

YEOMAN, is a *Saxon* word, *geman*, (the *g* being turned into *y*, as in many like caſes,) and ſignifies *land-man*; and is defined to be one that hath free land of 40*s*. a year; who was thereby heretofore qualified to ſerve on juries, and can yet vote for knights of the ſhire, and do any other act where the law requires one that is *probus et legalis homo*. Below yeomen are ranked tradeſmen, artificers, and labourers. 2 *Inſt.* 668.

YORK, YORKSHIRE:

1. In the county of *York*, only one panel of forty-eight jurors ſhall be returned to ſerve on the grand jury at the aſſizes; and at the quarter ſeſſions not above forty, either upon the grand jury or other ſervice there, 7 & 8 *W. c.* 32. And no perſon, having 150*l.* a year, ſhall be ſummoned to the ſeſſions, but only perſons leſs able to be at the expence of attending at the aſſizes. 1 *An. ſt.* 2. *c.* 13.

2. In order to render it more eaſy to borrow money upon land ſecurity, within the ſeveral ridings in the ſaid county, there are ſeveral acts of parliament directing memorials of all deeds and wills of lands to be regiſtered within the ſaid ridings reſpectively: viz. 2 & 3 *An. c.* 4. 5 *An. c.* 18. 6 *An. c.* 35. 8 *G.* 2. *c.* 6.

3. By the 4 *W. c.* 2. the inhabitants of the province of *York* have power to diſpoſe of their whole perſonal eſtate by will; which before they had not, further than the teſtator's own proportionable part, called the *dead man's*, or *death's part*. For if the teſtator had a wife, and a child or children, the wife ſhould have one third, the child or children another third, and the remaining third was all that the teſtator had to diſpoſe of. If he had a wife and no child, then ſhe ſhould have one moiety, and the other moiety remained to him to diſpoſe of by his teſtament: ſo if he left a child or children, and no wife. But if he had neither wife nor child, then he might diſpoſe of the whole. In caſe of inteſtacy, the ſame proportions continue to the wife and children to this day; but the deadman's part ſhall be diſtributed according to the ſtatute of diſtribution, 22 & 23 *C.* 2. *c.* 10.

FINIS.