CABALLA, from the Lat. caballus. Belonging to a horse. Dones-
day.

CABBAGES. See Turnips.

CABINET COUNCIL. See Privy Council.

CABLISH, cablicium. Signifies brush-wood, according to the
writers of the forest laws; but Sichelman thinks it more properly
windfall-wood, because it was written of old cadibulum, from cadere; or if de-
rivered from the Fr. chabiliis, it also must be windfall-wood.

CABLES. For shipping, made of old or damaged materials, liable
to forfeiture; and the regulations for manufacturing them settled by
stat. 25 Geo. III. c. 56.

CACHEPOLUS, or CACHERELLUS, An inferior bailiff, a catch-
pole. See Consuetud. domus de Farendon, MS. fol. 23. and Thorn.

CADE, Of herrings is 500, of sprats 1,000. But it is said, that an-
ciently, 600 made the cade of herrings, and six score to the hundred,
which is called Magnum Centum.

CADET, The younger son of a gentleman, particularly applied to
a volunteer in the army, waiting for some post.

CAEP GILDUM. See Scafgilde.

CAGIA, A cage or coop for birds. Rot. Claus. 38 Hen. III.

CALANGIUM AND CALANGIA, A challenge, claim, or dispute.

CALCETUM, CALCEA, A causey, or common hard way,
maintained and repaired with stones and rubbish, from the Lat. calx, chalk,
Fr. chaux, whence their chaussee and our causeway, or path raised with
earth, and paved with chalkstones, or gravel. Calcearium operations
were the work and labour done by the adjoining tenants; and calca-
gium was the tax or contribution paid by the neighbouring inhabitants
towards the making and repairing such common roads; from
which some persons were especially exempted by royal charter.

Kennel's Gloss.

CALEFAGIUM, A right to take fuel yearly. Blount.

CALENDAR. See stat. 24 Geo. II. c. 23. for the establishment
of the new style, and stat. 25 Geo. II. c. 30. which enacts, that the opening
of common lands, and other things depending on the moveable
feasts shall be according to the new calendar. See tit. Bissextile
Year.

CALENDAR MONTH, Consists of 30 or 31 days, (except Feb.
28, and in Leap Year 29,) according to the calendar. See the
preceding article, and stat. 16 Car. II. c. 7. See tit. Time, Month.

CALENDAR or PRISONERS, A list of all the prisoners' names,
in the custody of each respective sheriff. Where prisoners are capi-
tally convicted at the assises, the judge may command execution to
be done, without any writ. And the usage now is, for the judge to
sign the calendar, which contains all the prisoners' names, without
their several judgments in the margin, and this calendar is left with
the sheriff. As, for a capital felony, it is written opposite to the pri-
soner's name, "hanged by the neck." Formerly in the days of Latin
and abbreviation, "sus. per colli," for "suscendatur per collum."
CALENDS, calendar.] Among the Romans was the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together; and if pridie, the day before, be added to it, then it is the last day of the foregoing month, as pridie calend. Septemb. is the last day of August. If any number be placed with it, it signifies that day in the former month, which comes so much before the month named; as the tenth calend of October is the 20th day of September; for if one reckons backwards, beginning at October, the 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months. Hopton's Concord, p. 69. In the dates of deeds, the day of the month, by none, ides, or calends, is sufficient. 2 Inst. 675 See Ides.

CALIBURNE. The famous sword of the great King Arthur. Hoveden and Brompton in Vita R.

CALICO. No person shall wear in apparel any printed or dyed calico, on pain of forfeiting 51. And drapers selling any such calico, shall forfeit 20/. But this does not extend to calicoes dyed all blue, stat. 7 Geo. I. c. 7 Persons may wear stuff, made of linen yarn and cotton wool, manufactured and printed with any colours in Great Britain, so as the warp be all linen yarn, without incurring any penalty, by stat 9 Geo. II. c. 4. By stat. 14 Geo. III. c. 72 stuffs wholly made of raw cotton wool within this kingdom, are not to be considered as calicoes, and every person may use the same. These are distinguished by three blue stripes in the selavage. See tit. Linen, and Burn's Justice, tit. Excise X.

CALLING THE PLAINTIFF. It is usual for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or withdraw himself; whereupon the crier is ordered to call the plaintiff; when neither he nor any for him appears. See tit. Nonsuit, Trial.

CALLIS, The king's highway, mentioned in some of our ancient authors. Huntingdon, lib. 1.

CAMERICK. There were formerly several statutes against the importation and use of Cambricks, or French lawns, (stats. 18 Geo. II. c. 36. 21 Geo. II. c. 26.) but now by 43 Geo. III. c. 68. (consolidation of customs) the duty payable on the importation of cambricks and lawns, commonly called French lawns, is regulated; and French lawns (commonly called cambricks or French lawns) legally imported, and having paid duty, may be worn and sold in Great Britain. § 21. 

By stats. 4 Geo. III. c. 37. and 7 Geo. III. c. 43. several regulations are made concerning the manufacturing and stamping cambricks and lawns made in England; and forging or counterfeiting the stamp is felony without clergy. See further tit. Linen, Navigation Acts.

CAMERA. From the old Germ. Cam. Cammer, crooked; whence comes our English, kimbo, arms in kimbo. But camera at first signified any winding or crooked plat of ground; as uam cameram servit, i. e. a hook of land. Du Frac. Afterwards the word was applied to any vaulted or arched building; and it was used in the Latin law.
proceedings, for the judge's chamber, &c. Camera Stellata, the Star Chamber, &c.

CAMISIA, A garment belonging to priests, called the Alb-Pet. Blesensis.


CAMPARTUM, Any part or portion of a larger field or ground; which would otherwise be in gross or common. Prim. Hist. Col. vol. 3. p. 89.

CAMPETRUM, A corn-field. Pet. in Part. 30 Edw. I.

CAMP-FIGHT, The fighting of two champions or combatants in the field. 3 Inst. 221. See Acre-Fight, Battel, Champion.

CAMPUS MAI, or MARTII, An assembly of the people every year in March or May, where they confederated together to defend the country against all enemies. Leges Edw. Confessor, cap. 35. Sim. Dunelm. Anno 1094.

CANCELLING DEEDS AND WILLS, See those titles.

CANDLES AND CHANDLERS. If any wax-chandlers mix with their wares any thing deceitfully, &c. the candles shall be forfeited. Stat. 23 Eliz. c. 8. Tallow-chandlers and wax-chandlers, are by stat. 24 Geo. III. st. 2. c. 41. to take out annual licenses. And by stat. 25 Geo. III. c. 74. makers of candles shall be only such persons as are rated to the parish rates. The duties are regulated by stat. 27 Geo. III. c. 13. (1-2d. per lb. of which was repealed by stat. 32 Geo. III. c. 7.) These duties, and the various regulations to enforce them, form one of the numerous branches of the Excise Laws, and depend on a variety of statutes; a provision in one of which is not much known, though generally interesting, viz. "during the continuance of the duties upon candles, no person shall use in the inside of his house any lamp, wherein any oil or fat (other than oil made of fish within Great Britain) shall be burned for giving light, on pain of 40s. Stat. 8 Ann. c. 9. § 18. The makers of candles are not to use melting-houses without making a true entry, on pain of 100L. and to give notice of making candles to the Excise officer for the duties, and of the number, &c. or shall forfeit 50L. Stats. 8 Ann. c. 6. 11 Geo. I. cap. 50. Vide stat. 23 Geo. II. c. 21. 36 Geo. III. c. 5. prohibited the exportation of candles for a limited time.

CANDLEMAS-DAY, The feast of the purification of the Blessed Virgin Mary, being the second day of February, instituted in memory and honour of the purification of the virgin in the temple of Jerusalem, and the presentation of our blessed Lord. It is called Candelmas, or a Mass of Candles, because before mass was said that day, the Romish church consecrated and set apart, for sacred use, candles for the whole year; and made a procession with hallowed candles in remembrance of the divine light wherewith our Saviour illuminated the whole church at his presentation in the temple.

This festival is no day in court, for the judges sit not; and it is the grand day in that term of all the inns of court, whereon the judges anciently observed many ceremonies, and the societies seemed to vie with each other, in sumptuous entertainments, accompanied with music, and almost all kinds of diversions.
Canes Operitē, Dogs with whole feet, not lawed. Antiq.

Canes Operitē, Dogs with whole feet, not lawed. Custom, de Sutton Co/field.

Canestellus, A basket. In the inquisition of serjeancies, and nights' fees, anna 12 & 13 of King John, for Essex and Hertford, it appears that one John of Liston held a manor by the service of making the king's baskets. Ex Libro Rub. Scacc. fol. 157.

Canara, A trial by hot iron formerly used in this kingdom. See Ordeal.


Canon, A law or ordinance of the church; from the Greek word canon, a rule.

The Canon Law consists partly of certain rules taken out of the scripture; partly of the writings of the ancient fathers of the church; partly of the ordinances of general and provincial councils; and partly of the decrees of the Popes in former ages. And it is contained in two principal parts, the decrees and the decretals. The decrees are ecclesiastical constitutions made by the Popes and Cardinals, and were first gathered by Ivo bishop of Carnut, who lived about the year 1114, but afterwards perfected by Gratian, a Benedictine monk, in the year 1149, and allowed by Pope Eugenius, to be read in schools, and alleged for law. They are the most ancient, as having their beginning from the time of Constantine the Great, the first Christian Emperor of Rome.

The decretals are canonical epistles written by the Pope, or by the Pope and Cardinals, at the suit of one or more persons for the ordering and determining of some matter of controversy, and have the authority of a law; and of these there are three volumes, the first whereof was compiled by Raymundus Barcinus, chaplain to Gregory the Ninth, and at his command about the year 1231. The second volume is the work of Boniface the Eighth, collected in the year 1298. And the third volume, called the Clementines, was made by Pope Clement the Fifth, and published by him in the council of Vienna, about the year 1308. And to these may be added some novel constitutions of John XXII. and some other bishops of Rome.

As the decrees set out the origin of the canon law, and the rights, dignities and decrees of ecclesiastical persons, with their manner of election, ordination, &c. so the decretals contain the law to be used in the ecclesiastical courts; and the first title in every of them, is the title of the Blessed Trinity, and of the catholic faith, which is followed with constitutions and customs, judgments and determinations in such matters and causes as are liable to ecclesiastical cognisance, the lives and conversation of the clergy, of matrimony and divorces, inquisition of criminal matters, purgation, penance, excommunication, &c. But some of the titles of the canon law are now out of use, and belong to the common law; and others are introduced, such as trials of wills, bastardy, defamation, &c.

Trials of titles were anciently in all cases had by the ecclesiastical law; though at this time this law only takes place in some particular cases.

Thus much for the canon law in general; and as to the canon laws of this kingdom, by the stat. 25 Hen. VIII. c. 19. revived and confirmed by stat. 1 Ediz. c. 1. It is declared, that all canons not repugnant to the king's prerogative, nor to the laws, statutes and customs of the realm, shall be used and executed.
As for the canons enacted by the clergy under Jac. I. A. D. 1603, and never confirmed in parliament, it has been solemnly adjudged upon the principles of law and the constitution, that where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity; whatever regard the clergy may think proper to pay them. Stra. 1057.

Lord Hardwicke cites the opinion of Lord Holt, and declares it is not denied by any one, that it is very plain all the clergy are bound by the canons, confirmed by the king only; but they must be confirmed by the parliament to bind the laity. 2 Ark. 605. Hence if the Archbishop of Canterbury grants a dispensation to hold two livings distinct from each other, more than thirty miles, no advantage can be taken of it by lapse, or otherwise in the temporal courts; for the restriction to thirty miles was introduced by a canon made since the stat. 25 Hen. VIII. See 2 Black. Ref. 968.

There are four species of courts in which the canon laws (and the civil laws also, see tit. Civil Laws) are permitted under different restrictions to be used. 1. The courts of the archbishops and bishops, and their derivative officers; usually called in our law courts, Christian, or The Ecclesiastical Courts. 2. The Military Courts, or Courts of Chivalry. 3. The Courts of Admiralty. 4. The Courts of the two Universities. In all, the reception of those laws in general, and the different degree of that reception, are grounded entirely upon custom; corroborated as to the Universities by act of parliament, ratifying those charters which confirm their customary laws. 1 Comm. 83.

For the peculiar jurisdiction, &c. of these courts. See this Dict. tit. Courts. The following particulars relate to them all, and to this subject, in general.

1. The courts of common law have the superintendency over these courts, to keep them within their jurisdictions, to determine wherein they exceed them, to restrain and prohibit such excess; and in case of contumacy, to punish the officer who executes, and in some cases the judge who enforces the sentence, so declared to be illegal. See tit. Jurisdiction, Prohibition.

2. The common law has reserved to itself the exposition of all such statutes as concern either the extent of these courts, or the matters depending before them. And therefore if these courts either refuse to allow those acts of parliament, or will expound them in any other sense than what the law puts on them, the courts at Westminster will grant prohibitions to restrain and control them. See tit. Statutes.

3. An appeal lies from all these courts to the King in the last resort; which proves that the jurisdiction exercised in them, is derived from the crown of England, and not from any foreign potentate, or intrinsic authority of their own. See stat. 25 Hen. VIII. c. 21.

From these three strong marks and ensigns of superiority, it appears beyond a doubt that the canon (and civil) laws, though admitted in some cases by custom in some courts, are only subordinate, et leges sub graviora leges; and that thus admitted, restrained, altered, new-modelled and amended, they are by no means a distinct, independent species of laws, but inferior branches of the customary or unwritten laws of England, properly called the King's ecclesiastical, military, maritime, or academical laws. 1 Comm. 84.

CANON RELIGIOSORUM, A book wherein the Religious of convents had a fair transcript of the rules of their order, which were.
frequently read among them as their local statutes; and this book was therefore called Regula and Canon. The public books of the religious were the four following. 1. Missale, which contained all their offices of devotion. 2. Martyrologium, a register of their peculiar saints and martyrs, with the place and time of passion. 3. Canon or Regula, the institutions and rules of their order. 4. Necrologium or Obiurum, in which they entered the deaths of their founders and benefactors, to observe the days of commemoration of them. Kennet’s Gloss.

CAPET, cantellum.] Seems to signify the same with what we now call lump, as to buy by measure, or by the lump; but according to Blount, it is that which is added above measure. Stat. de Pistor. cap. 9. Also, a piece of any thing, as a cantel of bread, and the like.

CANTRED, cantredus, a British word from cant, or cantr, Brit. eentum, and tre, a town or village.] In Wales a hundred villages; for the Welsh divide their counties into cantreds, as the English do into hundreds. This word is used stat. 28 Hen. VIII. c. 3. See Mon. Angl. par. 1. fol. 319, where it is written Kantrez.

CAPACITY, capacityas.] An ability, or fitness to receive; and in law is where a man, or body politic, is able to give or take lands, or other things, or to sue actions. Our law allows the king two capacities; a natural and a politic. In the first, he may purchase lands to him and his heirs; in the latter, to him and his successors. An alien born hath sufficient capacity to sue in any personal action, and is capable of personal estate; but he is not capable of lands of inheritance. See tit. Alien. Persons attainted of treason or felony, idiots, lunatics, infants, feme coverts without their husbands, &c. are not capable to make any deed of gift, grant or conveyance, unless it be in some special cases. Co. Litt. 171, 172. See tit. Age, Infant, and other suitable titles.

CAPE, Lat. 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 concern things immoveable. Termes de la ley.

CAPE MAGNUM, or the Grand Cape, is a writ that lies before appearance to summon the tenant to answer the default, and also over to the demandant; and in the Old Nat. Brev. it is defined to be, where a man hath brought a præcepta 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, &c. See Reg. Jud. fol. 1. Bract. ab. 3. tract. 3. c. 1.

CAPE PARVUM, or petit cape, is where the tenant is summoned in plea of land, and comes on the summons, and his appearance is recorded; if at the day given him he prays the view, and having it granted makes default; then this writ shall issue for the king, &c. Old Nat. Brev. 162.

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 does not mention the particulars demanded; and the petit cape is after appearance or view granted; and whereas the grand cape summons the tenant to answer the default, and likewise over to the demandant; petit cape summons the
tenant to answer the default only; and therefore it is called petit caju, though some say it hath its name, not because it is of small force, but by reason it consists of few words. *Reg. Jud.* fol. 2. *Fleta*, lib. 2. c. 44. *Termes de la ley*.

**CAPE AD VALENTIAM.** This is a species of *cajus magnum*, and is where I am impleaded of lands, and vouch to warrant another, against whom the *summons ad warrantandum* hath been awarded, and he comes not at the day given; then if the demandant recover against me, I shall have this writ against the vouchee, and recover so much in value of the lands of the vouchee, if he hath so much; if not, I shall have execution of such lands and tenements, as shall afterwards descend to him in fee; or if he purchases afterwards, I shall have against him a resummons, &c. And this writ lies before appearance.  


**CAPELLA.** Before the word chapel was restrained to an oratory or depending place of divine worship; it was used also for any sort of chest, cabinet, or other repository of precious things, especially of religious reliques. *Kennet's Paroch. Antig.* p. 580.

**CAPELLUS,** A cap, bonnet, or other covering for the head. *Tenuere*, p. 32. *Cajellus ferreus*, a helmet or iron head-piece. *Hoveden*, p. 61. *Cajellus militis* is likewise a helmet or military head-piece.

**CAPIAS,** A writ or process of two sorts; one whereof in the court of *C. P.* is called *cajlias ad respondendum*, before judgment, where an original is sued out, &c. to take the defendant and make him answer the plaintiff; and the other a writ of execution, after judgment, being of divers kinds, as *cajlias ad satisfaciendum*, *cajias nilagatum*, &c.

The *CAPIAS AD RESPONDENDUM* in *C. B.* is drawn from the *procipe*, which serves both for the original and *cajlias*, and the return of the original is the teste of the *cajlias*. If a *cajlias* be special, in case, covenant, &c. the cause of action must be recited at large, and the substance of the intended declaration set forth, as also in the original.

This *cajlias* is a writ commanding the sheriff to take the body of the defendant, if he may be found in his bailiwick or county, 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, trespass, &c. as the case may be.

In cases of injury accompanied with force, the law, to punish the breach of the peace, and prevent its disturbance, provided a process against the defendant's *persona*, in case he neglected to appear on the process of attachment against his goods, or had no substance whereby to be attached, (see lit. *Attachmenta bonorum* and *Process*) subjecting his body to imprisonment by this writ of *cajias ad respondendum*. *5 Ref.* 12. But the immunity of the defendant's *persona*, in case of *peaceable* though fraudulent injuries, producing a great contempt of the law in indigent wrong-doers, a *cajlias* was also allowed to arrest the person in actions of *account*, though no breach of the peace be suggested by stat. *Marib. 52 Hen. III. c. 23. Westm. 2. 13 Edw. I. c. 11*. In actions of debt and detinue by stat. *25 Edw. III. c. 17*. And in all actions on the case by stat. *19 Hen. VII. c. 9.*

Before this last statute, 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 arrest-
ed 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 expense, 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 above and other statutes, a capias might be had upon almost every species of complaint. See tit. Common Pleas. Ac etiam. Process.

It is now also usual in practice to sue out the capias in the first instance, on a supposed return of the sheriff, (that the defendant being summoned or attached, made default, or that he had no substance whereby to be attached,) and afterwards a fictitious original is drawn up, if the party is called upon so to do, with a proper return thereupon, in order to give the proceedings a colour of regularity. When this capias is delivered to the sheriff, he, by his under-sheriff, grants a warrant to his bailiffs to execute it.

If the sheriff of the county in which the injury is supposed to be committed, and the action is laid, cannot find the defendant in his jurisdiction, he returns non est inventus; whereupon another writ issues, called a testatum capias, directed to the sheriff of the county where the defendant is supposed to reside, reciting the former writ, and that it is testified, testatum est, that the defendant lurks or wanders in his bailiwick, wherefore he is commanded to take him, as in the former capias. Here also when the action is brought in one county, and the defendant lives in another, it is usual for saving trouble, time and expense, to make out a testatum capias at the first; supposing not only an original, but also a former capias to have been granted. And this fiction being beneficial to all parties, is readily acquiesced in, and is now become the settled practice.

But where the defendant absconds, and the plaintiff would proceed to an outlawry against him, an original writ must then be sued out regularly, and after that a capias. And if the sheriff cannot find the defendant upon the first writ of capias, and returns a non est inventus, there issues out an alius writ, and after that a pluries, to the same effect as the former; only after these words, We command you, this clause is inserted, as we have formerly (alius) or often (pluries) commanded you. See further tit. Outlawry. On the subject also of process in C. P. see this Dict. tit. Common Pleas, and 3 Comm. 282. &c.

A capias is also in use in criminal cases. The proper process on an indictment for any petty misdemeanor, or on a penal statute, is a writ of venire facias, which is 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 non-appearance, a writ of capias shall issue, which commands the sheriff to take his body, and have him at the next assizes; and if he cannot be taken upon the first capias, an alius and a pluries shall issue. But on indictments for treason or felony, a capias is the first process; and for treason or homicide, only one shall be allowed to issue, or two in the case of other felonies, by stat. 25 Edw. III. c. 14. though the usage is to issue only one in any felony, the provisions of this statute being in most cases found impracticable. 2 Hale's P. C. 195. And so in the case of misdemeanors, it is now the usual practice for any judge of the court of K. B. upon certificate of an indictment found, to award a writ of capias immediately, in order
CAPIAS.

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to bring in the defendant. But in this, as in civil cases, if he absconds, and it is thought proper to pursue him to an outlawry, a greater exactness is necessary. \^ Comm. 318. See tit. Outlawry.

CAPIAS AD SATISFACTIENDUM, (shortly termed a Ca. Sa.) A judicial writ of execution which issues out on the record of a judgment, where there is a recovery in the courts at Westminster, of debt, damages, \&c. And by this writ the sheriff is commanded to take the body of the defendant in execution, and him safely to keep, so that he have his body in court at the return of the writ, to satisfy the plaintiff his debt and damages. Vide 1 Litt. Abr. 249. And if he does not then make satisfaction he must remain in custody till he does. When the body is taken upon a ca. sa. and the writ is returned and filed, it is an absolute and perfect execution of the highest nature against the defendant, and no other execution can be afterwards had against his lands or goods; except where a person dies in execution, then his lands and goods are liable to satisfy the judgment, by stat. 21 Jac. I. c. 24. See Roll. Abr. 904.

Properly speaking, this writ cannot be sued out against any but such as were liable to be taken upon the capias mentioned in the preceding article. 3 Rep. 12. Mo. 767. The intent of it is to imprison the body of the debtor, till satisfaction be made for the debt, costs and damages; this writ, therefore, doth not lie against any privileged persons, peers, or members of parliament; nor against executors or administrators; (except on a devastavit returned by the sheriff. 1 Litt. 250.) nor against such other persons as could not be originally held to bail.

This writ may be sued out (as may all other executory process) for costs, against a plaintiff as well as a defendant, where judgment is had against him.

In case two persons are bound jointly and severally, and prosecuted in two courts, whereupon the plaintiff had judgment, and execution by ca. sa. against one of them; if he after have an elegit against the other, and his lands and goods are delivered upon it, then he that is in prison shall have audita querela. Hob. 2. 57. Where one taken on a ca. sa. escapes from the sheriff, and no return is made of the writ, nor any record of the award of the capias; the plaintiff may bring a seire facias against him, and on that what execution he will. Roll. 904. And if the defendant rescue himself, the plaintiff shall have a new capias, the first writ not being returned. Ibid. 901.

If a defendant cannot be taken upon a ca. sa. in the county where the action is laid, there may issue a testatum ca. sa. into another county; and so of the other writs. See ante, tit. Capias.

For further matter, see tit. Execution, Fieri facias.

CAPIAS UTLAGATUM, Is a writ that lies against a person who is outlawed in any action, by which the sheriff is commanded to apprehend the body of the party outlawed, for not appearing upon the ex injunct, and keep him in safe custody till the day of return, and then present him to the Court, there to be dealt with for his contempt; who, in the Common Pleas, was in former times to be committed to the Fleet, there to remain till he had sued out the king's pardon, and appeared to the action. And by a special capias utlagatum, (against the body, lands, and goods in the same writ,) the sheriff is commanded to seize all the defendant's lands, goods and chattels, for the contempt to the king; and the plaintiff (after an inquisition taken thereupon, and returned into the Exchequer) may have the lands extended, and a grant of the goods, \&c. whereby to compel the defendant to appear; which,
when he doth, if he reverse the outlawry, the same shall be restored to him. *Old Nat. Brev.* 154. When a person is taken upon a *capitutatum*, the sheriff is to take an attorney's engagement to appear for him, where special bail is not required; and his bond with sureties to appear, where it is required. *Stat. 4 & 5 W. & M. c. 18.* See *Outlawry.*

**Capias pro Fine.** Anciently, when judgment was given in favour of the plaintiff, in any action in the king's courts, it was considered that the plaintiff be arrested for his wilful delay of justice, or *capitutur* be taken till he paid a *fine* to the king, considering it as a public misdemeanor coupled with the private injury. But now in cases of *trespass, ejectment, assault, and false imprisonment*, it is provided by *stat. 5 & 6 W. & M. c. 12.* that no writ of *capitut* shall issue for the fine, nor any fine be paid; but the plaintiff shall pay 6s. 8d. to the proper officer, and be allowed it against the defendant among his other costs. See *tit. Judgment.* See also *tit. Fines for Offences.*

**Capias in Withernam.** A writ lying (where a distress taken is driven out of the county, so that the sheriff cannot make deliverance in replevin) commanding the sheriff to take as many beasts of the distrainer, &c. *Reg. Orig.* 82, 83. See *tit. Distress, Withernam.*

**Capiatur.** See *tit. Capias pro fine.*

**Capita, distribution per.*] *I. e.* To every man an equal share of personal estate, when all the claimants claim in their own rights, as in equal degree of kindred, and not by representation. See *tit. Executor.*

**Capitale, A thing which is stolen, or the value of it.** *Leg. Hen. I. cap.* 59.

**Capitale vivens, Live cattle.** *Leg. Athelstan.*

**Capite, from capitut. *I. e.* Rex, unde tenere in capite, est tenere de rege, omnium terrarum capit.*] Tenure in *capite*, was an ancient tenure, whereby a man held lands of the king immediately as of the crown, whether by knight's service, or in socage. This tenure was likewise called, tenure holding of the person of the king; and a person might hold of the king; and not in *capite*; that is, not immediately of the crown, but by means of some honour, castle, or manor belonging to it. According to *Kitch.,* one might hold land of the king by knight's service, and not in *capite*; because it might be held of some honour in the king's hands descended to him from his ancestors, and not immediately of the king, as of his crown. *Kitch. 129. Dyer, 44. F. N. B. 5.*

The very ancient tenure in *capite*, was of two sorts; the one *principal and general,* and the other *special or subaltern.* The principal and general was of the king, as *capitut regni,* et *capitut generalissimum omnium feodorum,* the fountain whence all feuds and tenures have their main original; the *special* was of a particular subject, as *capitut feud!, in terra illius,* so called from his being the first that granted the land in such manner of tenure; from whence he was styled *capitall dominus,* &c. But tenure in *capite* is now abolished; and by *stat. 12 Car. II. c. 24,* all tenures are turned into *free and common socage,* so that tenures hereafter to be created by the king are to be in common socage only; and not by *capitut,* knight's service, &c. *Blount. See tit. Tenures.*

**Capilitium, Poll-money.** *Dict.*
CAPITITIUM, A covering for the head. It is mentioned in the stat. 1 Hen. IV. and other old statutes, which prescribe what dresses shall be worn by all degrees of persons.

CAPITULI AGRI, The head-lands, lands that lie at the head or upper ends of the lands or furrows. Kenne1's Paroch. Antiq. p. 137.

CAPITULA RURALIA, Assemblies, or chapters held by rural deans and parochial clergy within the precinct of every distinct deanery; which at first were every three weeks, afterwards once a month, and more solemnly once a quarter. Cowel.

CAPTAIN, capitanus.] One that leadeth or hath the command of a company of soldiers; and is either general, as he that hath the government of the whole army; or special, as he that leads but one band. There is also another sort of capitanus. Qui urbi:n prefecti sunt, &c. Blount.

CAPTION, captio.] That part of a legal instrument, as a commission, indictment, &c. which shows where, when, and by what authority it is taken, found, or executed. Thus, when a commission is executed, the commissioners subscribe their names to a certificate, declaring when and where the commission was executed. These kinds of captions relate chiefly to business of three kinds, i. e. to commissions to take fines of lands, to take answers in chancery, and depositions of witnesses; on the taking of a fine it is thus: Taken and acknowledged the — day of, &c. at, &c. The word caption is also used (rather vulgarly) for an arrest. See tit. Indictment.

CAPTIVES. An act was made for relief of captives, taken by Turkish, Moorish, and other pirates, and to prevent the taking of others in time to come. Stat. 16 & 17 Car. II. c. 24. See tit. Negro, Slavery.

CAPTURE, captura.] The taking of a prey, an arrest, or seizure; and it particularly relates to prize taken by privateers, in time of war. See tit. Admiral, Insurance, Navy, Privateer.

CAPUT ANNI, New-year's day, upon which of old was observed the festum stultorum.

CAPUT BARONIÆ, Is the castle or chief seat of a nobleman; which descends to the eldest daughter, if there be no son, and must not be divided amongst the daughters, like unto lands, &c. See tit. Coparceners, Dowry.

CAPUT JEJUNII, In our records is used for Ish Wednesday, being the head, or first day of the beginning of the Lent Fast. Paroch. Antiq. p. 132.

CAPUT LOCI. The head or upper end of any place; ad caput vilæ, at the end of the town.

CAPUT LUPINUM. Anciently an outlawed felon was said to have caput lupinum, and might be knocked on the head like a wolf. Now the wilful killing of such a one would be murder. 1 Hale's P. C. 497. Vide Bracton, fol. 125. See tit. Outlawry.

CAR AND CHAR, The names of places beginning with car and char signify a city, from the Brit. caer, Civitas; as Carlisle, &c.

CARAVANNA, A caravan, or joint company of travellers in the eastern countries, for mutual conduct and defence. Gufrid. Vinesau Richardi Regis, Iter Hierosol. lib. 5. cap. 52.

CARCAN, Is sometimes expounded for a pillory; as is carcannum for a prison. LL. Canuti Regis.
CARRIER I.

CARCATUS, Loading; a ship freighted. Pat. 10 Rich. II.

CARDS AND DICE. Duties, under the control of the stamp commissioners, are imposed in Great Britain, on cards, 2s. 6d. per pack, and dice 1s. per pair, by 44 Geo. III. c. 98. In Ireland, cards 2s. and dice 1s. under the Excise. 45 Geo. III. c. 19.

By stat. 10 Ann. c. 19, no playing cards or dice shall be imported. Selling second-hand cards incurs a penalty of 20l. stat. 29 Geo. II. c. 13. § 10. and of 5l. per pack by stat. 16 Geo. III. c. 34. Several other regulations are made by statute to prevent frauds in manufacturing the above articles. If cards or dice unstamped are used in any public gaming house, a penalty of 5l. attaches on the seller. 10 Ann. c. 19. § 162. See also stat. 5 Geo. III. c. 46. § 9—17. and the acts for imposing the duties.


CARETARIUS, or CARECTARIUS, A carter. Blount. See Carreta.

CHRISTIA, Dearth, scarcity, dearness. Pat. 8 Edw. I.

CARITAS, Ad caritatem, poenatum caritatis.] A grace-cup; or an extraordinary allowance of the best wine, or other liquor, wherein the religious at festivals drank in commemoration of their founders and benefactors. Cartular. Abat. Glaston. A. S. fol. 29. See Covet. It is sometimes written Carite.

CARK, A quantity of wool, whereof thirty make a sarpler. Stat. 27 Hen. VI. c. 2.

CARLE. See Karle.

CARNARIUM, A charnel-house, or repository for the bones of the dead.

CARNNO. This word hath been used for an immunity or privilege, as appears in Cromp. Jurisdict. fol. 191.

CARPEMEALS, Cloth made in the northern parts of England, of a coarse kind, mentioned in 7 Jac. I. cap. 16.

CARR, Is a kind of cart with wheels. Vide Caruca.

CARRAT, A weight of four grains in diamonds, &c. And this word, it is said, was formerly used for any weight or burden.

CARRETA, A carriage, cart or wain load; as Carreja sani is used in an old charter for a load of hay. Kennet's Gloss.

CARRELS, Closets, or apartments for privacy and retirement. Three pews or carrels, where every one of the old monks, after they had dined, did resort, and there study. Davie's Mon. of Durham, f. 31.

CARRICK, or CARRACK, carrucha.] A ship of great burden, so called of the Italian word carico or carco, which signifies a burden or charge. It is mentioned in the statute 2 Rich. II. c. 6. They were not only used in trade, but also in war. See Walsingh. in Hen. V. fol. 394.

CARRIER. A person that carries goods for others for his hire.

I. Who are to be considered as Carriers; and generally how chargeable.

II. For what Defaults answerable; and the Exceptions in their favour.

III. What Circumstances must concur to charge them.

I. All persons carrying goods for hire, as masters and owners of ships, lightermen, stage-coachmen, (but not hackney-coachmen in Lou-
and the like, come under the denomination of common carriers; and are chargeable on the general custom of the realm for their faults or miscarriages. See 1 Com. Ref. 25. Bull. N. P. 70. And as to the duty and engagement of a carrier, see tit. Bailment 5. and V.

In an action on the case upon the custom of the realm against the defendant, master of a stage-coach, the plaintiff set forth, that he took a place in the coach for such a town, and that in the journey the defendant, by negligence, lost the plaintiff's trunk; upon not guilty pleaded, the evidence was, that the plaintiff gave the trunk to the man who drove the coach, who promised to take care of it, but lost it; and the question was, whether the master was chargeable; and adjudged that he was not, unless the master takes a price for the carriage of the goods as well as for the carriage of the person, and then he is within the custom as a carrier; that a master is not chargeable for the acts of his servant; but when they are done in execution of the authority given by the master, then the act of the servant is the act of the master. 1 Salk. 282. But by the custom and usage of stages, every passenger pays for the carriage of goods above a certain weight; and there the coachman shall be charged for the loss of goods beyond such weight. 1 Com. Ref. 25.

If a common carrier loses goods he is entrusted to carry, a special action on the case lies against him, on the custom of the realm; and so of a common carrier by boat. 1 Roll. Abr. 6. An action will lie against a porter, carrier or bargeman, upon his bare receipt of the goods, if they are lost by negligence. 1 Sid. 36. Also a lighterman spoiling goods he is to carry, by letting water come to them, action on the case lies against him on the common custom. Palm. 528.

If one be not a common carrier, and takes hire, he may be charged on a special assumpti; for where hire is taken, a promise is implied. Cro. Jac. 262. So if a man who is not a common carrier, and who is not to receive a premium, undertakes to carry goods safely, he is answerable for any damages they may sustain through his neglect or default. This was the express point determined in Cogges v. Bernard, 1 Com. Ref. 133. &c. See tit. Bailment.

Where a carrier entrusted with goods, opens the pack, and takes away and disposes of part of the goods, this, showing an intent of stealing them, will make him guilty of felony. Hale's P. C. 61. And it is the same if the carrier receives goods to carry them to a certain place, and carrieth them to some other place, and not to the place agreed. 3 Inst. 367. That is, if he do it with intent to defraud the owner of them. If a carrier, after he hath brought goods to the place appointed, take them away privately, he is guilty of felony; for the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger. 1 Hawk. P. C. c. 33. § 5. See Larceny, &c.

If a common carrier, who is offered his hire, and who has convenience, refuse 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. 2 Show. Ref. 327. But a carrier may refuse to admit goods into his warehouse at an unseasonable time, or before he is ready to take his journey. Ld. Raym. 632.

A common carrier may have action of trover or trespass for goods taken out of his possession by a stranger; he having a special property in the goods, and being liable to make satisfaction for them to
the owner; and where goods are stolen from a carrier, he may bring an indictment against the felon as for his own goods, though he has only the possessory, and not the absolute property; and the owner may likewise prefer an indictment against the felon. Ket. 39.

By stat. 3 Car. I. c. 1. carriers are not to travel on the Lord's Day.

By the stat. 3 W. & M. c. 12. the justices are annually to assess the price of land-carriage of goods to be brought into any place within their jurisdiction, by any common carrier, who is not to take more, under the penalty of 5s. And by the stat. 21 Geo. II. c. 28. § 3 a carrier is not to take more, for carrying goods from any place to London, than is settled by the justices for the carrying goods from London to such a place, under the same penalty.

By stat. 24 Geo. II. c. 8. § 9. commissioners for regulating the navigation of the river Thames are to rate the price of water carriage.

By stat. 30 Geo. II. c. 22. § 3. justices of the city of London are to assess the rates of carrying goods between London and Westminster.

Carriers and waggoners are to write or paint on their wagons or carts their names and places of abode. See tit. Carts, Highways.

II. At common law a carrier is liable by the custom of the realm to make good all losses of goods entrusted to him to carry, except such losses as arise (1) from the act of God, or inevitable accident; or (2) from the act of the king's enemies; to which may be added (3) the fault of the party sending them. 1 Inst. 89. Coggs v. Bernard, 2 Ld. Raym. 509. Esq. N. P. 619.

1. Where the defendant's hoy in coming through London bridge, was by a sudden gust of wind driven against the arch and sunk, the owner of the hoy was held not to be liable, the damage having been occasioned by the act of God, which no care of the defendant could provide against or foresee. But in this case it was held that if the hoyman had gone out voluntarily in bad weather, so that there was a probability of his being lost, he would have been liable. Amies v. Stephens, 1 Stra. 128.

Upon this ground of its being the act of God, if a bargeman in a tempest, for the safety of the lives of his passengers, throws overboard any trunks or packages of value, he is not liable for the loss. 1 Roll. Rep. 79. and see Buist. 280. and 1 Vent. 190. 1 Wils. 281.

The defendant having lodged his waggon in an inn, an accidental fire broke out, which consumed it; he was adjudged liable, and it was held that negligence does not enter into the grounds of this action, for though the carrier uses all proper care, yet in case of a loss he is liable. Forward v. Pittard, 1 Term Rep. 27.

But where a common carrier, between two places, (Stourport and Manchester,) employed to carry goods from one place to the other, to be forwarded from thence to a third place, (Stockport,) carried them to Stourport, there put them in his warehouse, in which they were destroyed by an accidental fire, before he had an opportunity of forwarding them; in this case the carrier was held not to be liable, the keeping them in the warehouse in this case being not for the convenience of the carrier, but of the owner. 4 Term Rep. K. B. 581.

2. If a carrier is robbed, he shall be liable for the loss; not on the ground that he may charge the hundred under the statute of Winchester, but because if it were otherwise, he might by collusion with robbers, defraud the owner of the goods; and so in other cases, where the grounds are the same. 1 Roll. Abr. 338. 1 Salk. 143.
But if a carrier be robbed of goods, either he or the owner may bring an action against the hundred, to make it good. 2 Saund. 380.

Where in the case of a master of a ship it appeared there was a sufficient crew for the ship, but that at night eleven persons boarded the ship as pirates under the pretence of pressing, and plundered her of the goods, it was adjudged the master (the ship being infra corpus comitatus) was liable, for superior force shall not excuse him. Morse v. Shue, 1 Vent. 109. 2 Lev. 69. 1 Mod. 85. Barclay v. Higgins, E. 24 Geo. III. cited 1 Term Ref. 33.

3. In an action against a carrier, for negligently carrying a pipe of wine, which by that means burst, and the wine was spilt, it was good evidence for the defendant that the loss happened while he was driving gently, and arose from the wine being in a ferment; so that the loss was occasioned by its being sent in that state. Bull. N. P. 74. So if a carrier's waggon is full, and yet a person forces goods on him, and they are lost, the carrier is not liable. Lovett v. Hobbs, 2 Show. 127.

4. But the following exemptions by statute have been found necessary for the security of owners of ships.

By stat. 7 Geo. II. c. 15. no owners of any ship shall be liable to answer any loss by reason of embezzlement by the master or mariners, of any gold, silver, or other goods shipped on board, or for any act done by the master or mariners, without the owner's privity; beyond the value of the ship and freight.

By stat. 26 Geo. III. c. 86. no owners of any ship shall be subject to make good any loss by reason of any robbery embezzlement, secreting or making away with any gold, silver, jewels, diamonds, precious stones or other goods from on board; or for any act or forfeiture done or occasioned without the knowledge of such owner, beyond the value of the ship and freight, although the master or mariners shall not be concerned in, or privy to, such robbery, &c.

These acts do not impeach any remedy for fraudulent embezzlement, and if several proprietors or freighters sustain such loss, and the value of the ship and freight is not sufficient to make full compensation, the loss shall be averaged amongst them.

No owner shall be subject to answer for loss happening by fire on board ship. Stat. 26 Geo. III. c. 86. § 2.

No master or owners shall be subject to answer for any loss of gold, silver, diamonds, &c. by reason of any robbery, &c. unless the shipper of such goods insert the true nature, quality, and value of the gold, &c. in his bills of lading. Stat. 26 Geo. III. c. 86.

Previous to this last statute it was determined, that the owner of a ship was not liable beyond the value of the ship and freight, under stat. 7 Geo. II. c. 15. in the case of a robbery, (of dollars,) in which one of the mariners was concerned, by giving intelligence, and afterwards sharing the spoil; Sutton v. Mitchell, 1 Term Ref. 18. where it was said, the statute was made to protect the owners against all treachery in the master or mariners.

A carrier by water contracting to carry goods for hire, impliedly promises that the vessel shall be tight and fit for the purpose, and is answerable for damage arising from leakage. And this, though he had given notice "that he would not be answerable for any damage unless occasioned by want of ordinary care in the master or crew of the vessel, in which case he would pay 10 per cent. upon such damage, so as the whole did not exceed the value of the vessel and freight." For a loss happening by the personal default of the carrier himself, (such as the not providing a sufficient vessel,) is not within the scope
of such notice, which was meant to exempt the carrier from losses by accident or chance, &c. even if it were competent to a common carrier to exempt himself by a special exceptance from the responsibility cast upon him by the common law for a reasonable reward to make good all losses not arising from the act of God, or the king's enemies. Lyon v. Mella, 5 East, 428.

Where no lien exists at common law, it can only arise by contract with the particular party, either express or implied; it may be implied either from previous dealings between the same parties upon the footing of such a lien, or even from a usage of the trade so general as that the jury must reasonably presume that the parties knew of and adopted it in their dealing. But whereas in the case of a common carrier claiming a lien for his general balance, such a lien is against the policy of the common law and custom of the realm, which only gives him a lien for the carriage price of the particular goods, there ought to be very strong evidence of a general usage for such a lien to induce a jury to infer the knowledge and adoption of it by the particular parties in their contract, and the jury having negatived such a general usage, though proved to have been frequently exercised by the defendant and various other common carriers throughout the north for ten or 12 years before, and in one instance, so far back as 30 years, and not opposed by other evidence, the court refused to grant a new trial. Rushforth v. Handfield, 7 East, 224.

III. In order to charge the carrier, these circumstances are to be observed.

1. The goods must be lost while in the possession of the carrier himself, or in his sole care. Therefore, where the plaintiffs, the East India Company, sent their servants with the goods in question on board the vessel, who took charge of them, and they were lost, defendant was held not to be liable. 1 Stra. 690.

2. The carrier is liable only so far as he is paid, for he is chargeable by reason of his reward.

One brought a box to a carrier, in which there was a large sum of money, and the carrier demanded of the owner what was in it; he answered it was filled with silks, and such like goods; upon which the carrier took it, and was robbed; and adjudged, that the carrier was liable to make it good; but a special acceptance, as provided there is no charge of money, would have excused the carrier. 1 Vent. 238. 4 Rep. 83.

A person delivered to a carrier's book-keeper two bags of money sealed up, to be carried from London to Exeter, and told him that it was 200l. and took his receipt for the same, with promise of delivery for 10s. per cent. carriage and risk; though it be proved that there were 400l. in the bags, if the carrier be robbed, he shall answer only for 200l. because there was a particular undertaking for the carriage of that sum and no more, and his reward, which makes him answerable, extends no farther. Carr. h. 486.

3. Under a special or qualified acceptance the carrier is bound no further than he undertakes.

For where the owner of a stage-coach posts out an advertisement, "That he would not be answerable for money, plate or jewels above the value of 5l. unless he had notice, and was paid accordingly;" all goods received by that coach are under that special acceptance; and if money or plate be sent by it without notice, and being paid for, if
lost, the coach owner is not liable; Gibbon v. Paynton, 4 Burr. 298. Izet v. Mountain, 4 East, 371. Nicholson v. Willan, 5 East, 507. not even to the extent of the £1 or the sum paid for booking, Clay v. Willan, H. Black. Ref. 298. In these cases a personal communication is not necessary to constitute a special acceptance. Advertisements, notices in the warehouse, and handbills, which it is probable the plaintiff saw, or which he might have seen, are sufficient.

From these cases and the opinion of Lord Mansfield, it seems safest, that in all instances of sending things of value by a carrier, the carrier should have notice and be paid accordingly. See ante, II. 4.

4. A delivery to the carrier's servant is a delivery to himself, and shall charge him; but they must be goods, such as is his custom to carry, not out of his line of business. Salk. 282.

5. Where goods are lost which have been put on board a ship, the action may be brought, either against the master or against the owners. 2 Salk. 440. If one owner only is sued, he must plead abatement, that there are other partners; for he shall not be allowed to give it in evidence, and nonsuit the plaintiff. 5 Burr. 2611. See ante, II. 4.

6. It is not necessary in order to charge the carrier that the goods are lost in transitu, while immediately under his care; for he is bound to deliver them to the consignee, or send notice to him according to the direction, and though they are carried safely to the inn, yet if left there till they are spoiled, and no notice given to the consignee, the carrier is liable. 3 Will. 429. 2 Bl. Rep. 916.

As to the proof necessary in an action against a carrier, see tit. Bailment. 5. That a carrier may retain goods for his hire, see 1 Ld. Raym. 166. 752.

CART-BOTE. See tit. Bote.

CARTS. By the stat. 2 W. & M. stat. 2. c. 8. § 19, 20. and 18 Geo. II. c. 33. the wheels of every cart or dray for the carriage of any thing from and to any place where the streets are paved, within the bills of mortality, &c. shall contain six inches in the felloe, not to be shod with iron, nor be drawn with above two horses, under the penalty of 40s. By the stat. 18 Geo. II. c. 33. they may be drawn with three horses and not more, and the wheels being of six inches breadth, when worn, may be shod with iron, if the iron be of the full breadth of six inches, made flat, and not set on with rose-headed nails; and no person shall drive any cart, &c. within the limits aforesaid, unless the name of the owner, and number of such cart, &c. be placed in some conspicuous place of the cart, &c. and his name be entered with the commissioners of hackney-coaches, under the penalty of 40s. and every person may seize and detain such cart till the penalty be paid. By the stas. 1 Geo. I. st. 2. c. 57. and 24 Geo. II. c. 43. the driver of any such cart, &c. riding upon such cart, &c. not having a person on foot to guide the same, shall forfeit 10s. And by stat. 24 Geo. II. c. 43. the owner so guilty shall forfeit 20s. and any person may apprehend the offender.

On changing property, new owners' names to be affixed, 30 Geo. II. c. 22. § 2. and to be entered with the commissioners of hackney-coaches. And see stat. 24 Geo. III. st. 2. c. 27. to compel the entry of all carts driven, within five miles of Temple Bar.

CARMAG. See post, Caricature.

CARUCa, Fr. charrue.] A plough, from the old Gallic carr, which is the present Irish word for any sort of wheeled carriage. Hence chari and car, a ploughman or rustic. Vide Karle.
CARUCAGE, carucagium.] A tribute imposed on every plough, for the public service; and as hidage was a taxation by hides, so carucage was by carucates of land. *Mon. Angl. tom. 1. fol. 294.*

CARUCATE, or CARVE OF LAND, carucata terre. A plough-land; which in a deed of Thomas de Arden, 19 Edw. II. is declared to be one hundred acres, by which the subjects have sometimes been taxed; whereupon the tribute so levied was called carvarium, or carucagium. *Bract. lib. 2. c. 26.* But Skene says, it is as great a portion of land as may be tilled in a year and a day, or one plough; which also is called hilda, or hilda terre, a word used in the old English laws. And now by stat. 7 & 8 Wm. III. c. 29 a plough-land, which may contain houses, mills, pasture, meadow, wood, &c. is 50l. per annum.

Littleton, in his chapter of tenure in socage, saith, that socage and carucage are all one. *Stow’s Annals, p. 271.*

Rastall, in his exposition of words, says carvage is to be quit, if the king shall tax all the lands by carves; that is, a privilege whereby a man is exempted from carvage. The word carve is mentioned in the stat. 28 Edw. I. of wards and reliefs, and in *Magna Charta, c. 5.* And A. D. 1200, on peace made between England and France, King John, lent the King of France thirty thousand marks, for which carvage was collected in England, viz. iiis. for each plough. *Spelman v. Carva. Kennel’s Gloss.* 2 Inst. 69 and n.

CARUCATARIUS, He that held lands in carvage, or plough-tenure. *Parsch. Antiq. p. 354.*

CASE, Action on; see tit. *Action,* and also *Com. Dig. 1 V. tit. Action.*

CASES OR REPORTS. See *Law Books, Libel.*

CASSATUM AND CASSATA. By the Saxons called hide; by Bede, familia, is a house with lands sufficient to maintain one family; Rex Angl. Ethelred, de 310 Cassatis, unum trierem, &c. Hoveden, anno 1008. And Hen. Huntingdon, mentioning the same thing, instead of cassata, writes hilda.

CASHLITE, Sax. A mulct or fine. *Blount.*

CASSIDILE, A little sack, purse, or pocket. *Mat. Westm.*

CASK, An uncertain quantity of goods; and of sugar, contains from eight to eleven hundred weight. There are also casks for liquors, of divers contents; and by stat. 25 Eliz. c. 11. none were to transport any wine casks, &c. except for victualling ships, under a certain penalty.

CASSOCK, or CASSULA, A garment belonging to the priest, quasi minor cassa. See *Tassale.*

CASTEL, or CASTLE, castellum. A fortress in a town; a principal mansion of a nobleman. In the time of Hen. II. there were in England 1115 castles; and every castle contained a manor; but during the civil wars in this kingdom, these castles were demolished, so that generally there are only the ruins or remains of them at this day. 2 *Inst. 31.*

CASTELLAIN, castellanus. The lord, owner, or captain of a castle, and sometimes the constable of a fortified house. *Bract. lib. 5. tract. 2. c. 16. 3 Edw. I. c. 7.* It hath likewise been taken for him that hath the custody of one of the king’s mansion-houses, called by the Lombards curtes, in English, courts; though they are not
castles or places of defence. 2 Inst. 31. And Manwood, in his Forest
Laws, says, there is an officer of the forest called castellarius.

CASTELLARIUM, CASTELLARI, The precinct or jurisdiction
2. fol. 402.

CASTELLORUM OPERATIO, Castle-work, or service and labour
done by inferior tenants, for the building and upholding of castles
of defence; towards which some gave their personal assistance, and
others paid their contribution. This was one of the three necessary
charges, to which all lands among our Saxon ancestors were expressly
subject. And after the conquest an immunity from this burdens
was sometimes granted. As King Hen. II. granted to the tenants
within the honour of Wallingford, Ut sint aesti de operationibus
castellorum. Pursh. Antiq. f. 114. It was unlawful to build any
castle without leave of the king, which was called castellatio. Du
Presne.

CASTIGATORY for scolds. A woman indicted for being a com-
mon scold, if convicted, shall be sentenced to be placed on a certain
engine of correction, called the tre bucket, tumble, tymborella, casti-
gatory, or cucking stool, which in the Saxon language signifies the
scolding stool; though now it is frequently corrupted into ducking
stool, because the residue of the judgment is, that when she is so
placed therein, she shall be plunged in the water for her punishment.
3 Inst. 219. 4 Comm. 169. It is also termed goginstole and cokestole,
and by some is thought corrupted from choking stool. Though this
punishment is now disused, a former editor of Jacob's Dict. (Mr.
Morgan,) mentions that he remembers to have seen the remains of one,
on the estate of a relation of his in Warwickshire, consisting of a long
beam, or rafter moving on a fulcrum, and extending to the centre of
a large pond, on which end the stool used to be placed.

At Banbury in Oxfordshire, this punishment has been used towards
common whores, within the memory of persons now (1793) living;
and the pool for the purpose yet retains the name of the cucking pool,
but the engine was not long since removed. See Lamb. Eiren. lib.
1. c. 12.

In Domesday-book it is called Cathedra Stercoralis, and was used
by the Saxons for the same purpose, and by them called scewing stole.
It was ancescently also a punishment inflicted on brewers and bakers
transgressing the laws, who were ducked in Stercore, in sinking
water.


CASTLE-WARD, Castlegardum, vel wardum castri.] An imposi-
tion laid upon such persons as dwelled within a certain compass
of any castle, towards the maintenance of such as watch and ward the
castle. Magna Charta, cap. 15. 20. 32 Hen. VIII. cap. 48. It is
sometimes used for the circuit itself, which is inhabited by those that
are subject to this service. Castle guard rents were paid by persons
dwelling within the liberty of any castle, for the maintaining of watch
and ward within the same. By stat. 22 & 23 Car. II. c. 24. § 2. these
and other rents in the Duchy of Lancaster, payable to the king, were
vested in trustees to be sold.

CASTER, and CHESTER. The names of places ending in these
words are derived from the Lat. Castrum; for this termination at the
end was given by the Romans to those places where they built
castles.
CASTRATION. See tit. Maihem.

CASUAL EJECTOR. In ejectment, a nominal defendant, and who continues such until appearance by or for the tenant in possession. See tit. Ejectment.

CASUALTY of WARDS, Are the mails and duties due to the superiors in Ward-holdings. Scotch Dict.

CASPpository, In ejectment, a nominal defendant, and who continues such until appearance by or for the tenant in possession. See tit. Ejectment.

CASUALTY OF WARDS, Are the mails and duties due to the superiors in Ward-holdings. Scotch Diet.

CASSU CONSIMILI, Is a writ of entry granted where tenant by the courtesy, or tenant for life, aliens in fee, or in tail; or for another's life; and 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. 2. Edw. I. caesp. 24. which statute, as often as there happens a new case in Chancery something like a former, yet not specially fitted by any writ, authorizes them to frame a new form answerable to the new case, and as like the former as they may. 7 Rep. 4. See F. N. B. fol. 205, Termo de la ley. See 3 Comm. 51.

CASU PROVISO, A writ of entry, given by the statute of Gloucester, cap. 7, where a tenant in dower, aliens in fee, or for life, &c. and it lies for him in reversion against the alienee. F. N. B. 205. This writ and the writ of casu consimili supposes 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, &c. the heir in reversion must have this with the title included therein. F. N. B. 206, 207.

CASUS OMISSUS, Is where any particular thing is omitted out of, and not provided against by a statute, &c.

CATALS, Catalla, Goods and chattels. See Chattels.

CATALLIS CAPTIS NOMINE DISTRICIONIS, Anciently a writ that lay where a house was within a borough, for rent going out of the same; and which warranted the taking of doors, windows, &c. by way of distress for rent. Old Nat. Brev. 66. This writ is now obsolete.

CATALLIS REDDDENDIS, An ancient writ which lay where goods being delivered to any man to keep till a certain day, are not, upon demand, delivered at the day. It may be otherwise called a writ of detinue, and is answerable to actio dehsoiti in the Civil Law. See Reg. Orig. 139. and Old Nat. Brev. 63.

CAPTAPULTA, A warlike engine to shoot darts; or rather a cross-bow.

CATASCOPUS. An archdeacon. Du Cange.

CATCHLAND. In Norfolk there are some grounds which it is not known to what parish they certainly belong, so that the minister who first seizes the tithes, does by that right of preoccupation, enjoy them for that year; and the land of this dubious nature is there called catchland, from this custom of seizing the tithes. Cowel.

CATCHPOLE, See Cachepollus. Sheriffs' officers are commonly so called.

CATHEDRAL, ecclesia cathedralis. The church of the bishop, and head of the diocese; wherein the service of the church is performed with great ceremony. See tit. Church.

CATHEDRATICk, cathedra tium. A sum of 2s. paid to the bishop by the inferior clergy; in argumentum subjectionis et ob honorem cathedrae. Hist. procurat. et Synodal, p. 82.
CATZURUS, A hunting horse. Vide Chacurus.

CATTLE. Several ancient laws were made to regulate the number of sheep to be kept by any farmer. See tit. Sheep.

As to the importation of cattle. By stat. 5 Geo. III. c. 43. bestials may be freely imported from the Isle of Man. By the 6th article of the Union, 5 Ann. c. 8. no Scotch cattle carried into England shall be liable to any other duties than the cattle of England are. By stat. 5 Geo. III. c. 10. which was of temporary continuance, but made perpetual by stat. 16 Geo. III. c. 8. all sorts of cattle may be imported from Ireland, duty free. And this notwithstanding stat. 18 Car. II. c. 2. 20 Car. II. c. 7. and 32 Car. II. c. 2. See stat. 32 Geo. III. c. 32. by which stat. 6 Geo. III. c. 50. is revived, and stat. 28 Geo. III. c. 38. explained, and the conveyance of horses permitted between Cowes, Southampton and Portsmouth.

As to buying and selling cattle, &c. No person shall buy any ox, cow, calf, &c. and sell the same again alive in the same market or fair, on pain of forfeiting double the value. Stat. 3 & 4 Edw. VI. c. 19. 3 Car. I. c. 49. § 7, 8. And the said act 3 & 4 Edw. VI. c. 19. is not repealed by stat. 12 Geo. III. c. 71. which repeals the general forestalling act of 5 & 6 Edw. VI. c. 14. and other subsequent acts enforcing the same, but hath no reference to any preceding act. By stat. 31 Geo. II. c. 40. no salesman, broker, or factor employed in buying cattle for others, shall buy and sell for himself, in London, or within the bills of mortality, on penalty of double the value of the cattle bought or sold.

By several statutes made from time to time, the king has been empowered to make regulations to prevent the spreading of distempers among horned cattle; and by stat. 9 Geo. III. c. 39. he may prohibit the importation of hides, skins, horns, &c. By stat. 3 Car. I. cap. 1. no drovers are to travel with cattle on Sundays, on penalty of 20s.

By stat. 21 Geo. III. c. 67. several wholesome regulations are made, to prevent the cruelties of drovers and others, in driving cattle in London, Westminster, and the bills of mortality, by which a fine, from 20s. to 5s. is imposed on them for misbehaviour, or one month's imprisonment; and power is given to the lord mayor and aldermen of London, to make regulations to further the purposes of the act, and which was accordingly done.

As to killing, maiming, and stealing cattle. By stat. 37 Hen. VIII. c. 6. whoever shall cut out the tongue of any tame beast, the property of another person, the beast being alive, shall pay treble damages, and forfeit 10l.

By stat. 22 & 23 Car. II. c. 7. maliciously, unlawfully and willingly to kill any horses, sheep, or other cattle in the night-time, is felony; but the felon may make his election to be transported for seven years.

And if any shall maliciously maim, wound, or hurt such cattle in the night-time, he shall forfeit treble damages, by action of trespass, or on the case, to be tried before three justices of peace and a jury.

By stat. 14 Geo. II. c. 6. and 15 Geo. II. c. 34. feloniously driving away or stealing any oxen, bulls, cows, sheep, &c. or killing them with intent to steal the carcass, or any part of it, is made felony without benefit of clergy; and any person prosecuting an offender to conviction shall have a reward of 10l.

By the Black Act, (see that tit.) 9 Geo. III. c. 22. unlawfully and maliciously to maim or wound any cattle, is felony without clergy, and...
the hundred shall be answerable as far as 200l. and persons convicting offenders shall receive so. See 4 Comm. 240. n. 1.

To prevent the stealing of horses and other cattle for the purpose of selling them, merely for their skin, the stat. 26 Geo. III. c. 71. provides that every person keeping a slaughter-house for cattle, not killed for butchers’ meat, shall take out licenses and be subject to an inspector, and shall not slaughter, but at certain times, &c. &c. See tit. Horses.

CAVALRY, (provisional.) See Defence of the Realm.

CAUDA TERRÆ, A land’s end, or the bottom of a ridge in arable land. Caris. Abbat. Glaston. fol. 117.

CAVEAT, Is a kind of process in the spiritual courts to stop the institution of a clerk to a benefice, or probate of a will, &c. When a caveat is entered against an institution, if the bishop afterwards institutes a clerk, it is void; the caveat being a supersedeas; but a caveat has been adjudged void when entered in the life-time of the incumbent. Though if it is entered “dead or dying” it will last good one month, and if the incumbent dies, till six months after his death. So a caveat entered against a will stands in force for three months; and this is for the caution of the ordinary, that he do no wrong; though it is said the temporal courts do not regard these sort of caveats. 1 Roll. Ref. 191. 1 Nels. Abr. 416, 417.

CAVERS, Offenders relating to the mines in Derbyshire, who are punishable in the bergmote, or miners’ court.

CAULCEIS. See stat. 6 Hen. VI. cap. 5 respecting sewers. Ways pitched with flint, or other stones. See Calcetum.

CAURCINES, Caurcini.} Italians that came into England about the year 1235, terming themselves the Pope’s merchants, but driving no other trade than letting out money; and having great banks in England, they differed little from Jews, save (as history says) that they were rather more merciless to their debtors; Cowel says, they have their name from Caursium, Coarsi, a town in Lombardy, where they first practised their arts of usury and extortion; from whence spreading themselves, they carried their cursed trade through most parts of Europe, and were a common plague to every nation where they came. The then bishop of London excommunicated them; and King Henry III. banished them from this kingdom in the year 1240. But being the Pope’s solicitors and money-changers, they were permitted to return in the year 1250; though in a very short time after, they were driven out of the kingdom again for their intolerable exactions. Mat. Paris. 403.

CAUSA MATRIMONII PRELOCUTI, Is a writ which lies where a woman gives land to a man in fee-simple, &c. to the intent he should marry her, and he refuseth to do it in any reasonable time, being thereunto required. Reg. Orig. 66. If a woman makes a feoffment to a stranger of land in fee, to the intent to enfeoff her, and one who shall be her husband; if the marriage shall not take effect, she shall have the writ of causa matrimoni prœlocuti, against the stranger, notwithstanding the deed of feoffment be absolute. New Nat. Brev. 456. A woman enfeoffed a man upon condition that he should take her to wife; and he had a wife at the time of the feoffment; and afterwards the woman, for not performing the condition, entered again into the land, and her entry was adjudged lawful, though upon a second feoffment. Lib. Ass. anno 40 Edw. III. The husband and wife may sue the writ causa matrimoni prœlocuti against another who ought to have married her; but if a man give lands to a woman to
the intent to marry him, although the woman will not marry him, &c. he shall not have his remedy by writ causa matrimonii praecocii. New Nat. Brev. 435.

CAUSAM NOBIS SIGNIFICES, A writ directed to a mayor of a town, &c. who was by the king's writ commanded to give seisin of lands to the king's grantee, on his delaying to do it, requiring him to show causa why he so delays the performance of his duty.

CAUSES and EFFECTS. In most cases the law hath respect to the cause, or beginning of a thing, as the principal part on which all other things are founded; and herein the next, and not the remote cause is most looked upon, except it be in corinous and criminal things; and therefore that which is not good at first will not be so afterwards; for such as is the cause, such is the effect. Pловд. 208. 238. If an infant or feme covert make a will, and publish it, and after die of full age, or sole, the will is of no force, by reason of the original cause of infancy and coverture. Finch. 12. Where the cause ceaseth, the effect or thing will cease. Co. Lit. 15.

CAUTIONE ADMITTENDA, A writ that lies against a bishop, who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future. Reg. Orig. 66. And if a man be excommunicated, and taken by a writ of significavit, and after offers caution to the bishop to obey the church, and the bishop refuseth it; the party may sue out this writ to the sheriff to go against the bishop, and to warn him to take caution, &c. but if he stands in doubt whether the sheriff will deliver him by that writ, the bishop may purchase another writ, directed to the sheriff reciting the case and the end thereof: Tibi fræcepimus, quod ipsum A. B. à jprisona prædict. nisi in præsentia tua cauasionem præconis, ad minus eiderm ejjsejpræd. de satisfaciend. obtulitis, nullatenus deliberal absque mando nostro seu ejjsejpræd. in hac parte speciali, &c. When the bishop hath taken caution, he is to certify the same in the Chancery, and thereupon the party shall have a writ unto the sheriff to deliver him. New Nat. Brev. 142.

CEAPGILDE, From Sax. ceap, peca, cattle; and gild, i. e. solutio.] Hence it is solutio pecudis: from this Saxon word gild, it is very probable we have our English word yield; as yield, to pay. Cowel.


CELLERARIUS, The butler in a monastery. In the Universities, they are sometimes called muncijte, and sometimes caretér, and steward.

CENDULÆ, Small pieces of wood laid in form of tiles, to cover the roof of a house. Pet. 4 Hen. III. p. 1. m. 10.

CENEGILD, An expiatory mulct, paid by one who killed another, to the kindred of the deceased. Specim.

CENELLE, Acorns, from the oak. In our old writings, persona genellae, is put for the pannage of hogs, or running of swine, to feed on acorns.

CENNINGA, Notice given by the buyer to the seller, that the thing sold was claimed by another, that he might appear and justify the sale. It is mentioned in the laws of Athelstan, ait Wharton, cap. 4.

CENSARIA, A farm, or house and land, let ad censum, at a standing rent. It comes from the Fr. cense, which signifies a farm.
CELSARII, Farmers. Blount.

CENSUALES, A species or class of the oblati, or voluntary slaves of churches or monasteries, i.e. those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent out of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services. Robert. Hist. Emp. Charles V. 1 V. 271, 272. Potgiesserius de Statu Servorum, lib. 1. c. 1. § 6, 7.

CENSURE, from Lat. census.] A custom called by this name, observed in divers manors in Cornwall and Devon, where all persons residing therein above the age of sixteen are cited to swear fealty to the lord, and to pay 11d. per poll, and 1d. per ann. ever after; and these thus sworn are called censurs. Survey of the Duchy of Cornwall.

CENTENARII, Petty judges, under-sheriffs of counties, that had rule of a hundred, and judged smaller matters among them. 1 Vent. 211.

There were anciently inferior judges so called in France; who were set over every hundred freemen, and were themselves subject to the count or comoc. 1 Comm. 115.

CEOLA, A large ship. Malmesbury, lib. 1. c. 1.

CEPI CORPUS, A return made by the sheriff, upon a causias, or other process to the like purpose, that he hath taken the body of the party. F. N. B. 25.

CEPPAGIUM, The stumps or roots of trees which remain in the ground after the trees are felled. Flota, lib. 2. cap. 41.

CERAGIUM, Cerage, a payment to find candles in the church. Mat. Paris. See Waxeot.

CERTAINTY, Is a plain, clear, and distinct setting down of things so that they may be understood. 3 Rept. 121. A convenient certainty is required in writs, declarations, pleadings, &c. But if a writ abate for want of it, the plaintiff may have another writ. It is otherwise if a deed become void, by uncertainty, the party may not have a new deed at his pleasure. 11 Rept. 25. 121. Dyer, 84. That has certainty enough, that may be made certain; but not like what is certain of itself. 4 Rept. 97. See generally tit. Pleading, and particularly tit. Deed, Fine, Will.

CERTIFICANDO DE RECOGNIZON ESTAPULAE. 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 refuseth to bring in the same. Reg. Orig. 152. There is the like writ to certify a statute merchant, and in divers other cases. Ibid. 148. 151. &c.

CERTIFICATE, A writing made in any court to give notice to another court of any thing done therein, which is usually by way of transcript, &c. 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. The clerks of the crown, assise, and peace, are to make certificates into B. R. of the tenor of indictments, convictions, &c. under penalties, by the stat. 34 & 35 Hen. VIII. c. 14. 3 W. & M. c. 9. See tit. Clergy, benefit of. If a question of mere law arises in the course of a cause in Chancery, (as whether by the words of a will, an estate for life or in tail is created, or whether a future interest devised by a testator, shall operate as a remainder, or an executory devise,) it is the practice of that court, to refer it to the opinion of the judges of the court of K. VOL. I. 3 F
B. or C. P. upon a case stated for the purpose; wherein all the material facts are admitted, and the point of law is submitted to their decision, who thereupon hear it solemnly argued by counsel on both sides, and certify their opinion to the chancellor. And upon such certificate, the decree is usually founded. 3 Comm. 453.

**The Trial by Certificate.** Is allowed in such cases, where the evidence of the person certifying, is the only proper criterion of the point in dispute. Thus, 1. The question whether one were absent with the king in his army out of the realm, in time of war, might be tried by the certificate of the marshal of the king's host under seal. Litt. § 102. 2. If in order to avoid an outlawry, it be alleged the defendant was in prison, &c. at Bordeaux or Calais, this, when those places belonged to the crown of England, was allowed to be tried by the certificate of the mayor. 9 Rep. 31. 2 Roll. Abr. 583. And therefore, by parity of reason, it should now hold that in similar cases arising at Jamaica, &c. the trial should be by certificate from the governor. 3 Comm. 334.

3. For matters within the realm; the customs of the city of London shall be tried by the certificate of the mayor and aldermen, certified by the mouth of the recorder, upon a surmise from the party alleging it, that it should be so tried; else it must be tried by the country, as it must also if the corporation of London be a party, or interested in the suit. 1 Inst. 74. 4 Burr. 248. Bro. Abr. 1. Trial, pl. 96. Hob. 85. But see 1 Term Rep. 423. If the recorder has once certified a custom, the court are in future bound to take notice of it. Doug. 330.

4. In some cases the Sheriff of London's certificate shall be the final trial; as if the issue be whether the defendant be a citizen of London, or a foreigner, in case of privilege pleaded to be sued only in the city courts. 1 Inst. 74. Of a nature somewhat similar to which is the trial of the privilege of either university when the chancellor claims cognisance of the cause; in which case the charters confirmed by parliament, allow the question to be determined by the certificate of the chancellor under seal. But in case of an issue between two parties themselves, the trial shall be by jury. 2 Roll. Abr. 583. 3 Comm. 335.

5. In matters of ecclesiastical jurisdiction, as marriage, general bastardy, excommunication, and orders, these and other like matters, shall be tried by the bishop's certificate. See tit. Bastardy, &c. Ability of a clerk presented, admission, institution and deprivation of a clerk, shall also be tried by certificate from the ordinary or metropolitan. 2 Inst. 632. Show. P. C. 88. 2 Roll. Abr. 583. &c. But induction shall be tried by a jury; being the corporal investiture of the temporal profits. Dyer, 229. Resignation of a benefice may be tried either way, but seems most properly to fall within the bishop's cognisance: 2 Roll. Abr. 583. 3 Comm. 336.

6. The trial of all customs and practices of the courts shall be by certificate from the proper officer of those courts respectively; and what return was made on a writ by a sheriff or under sheriff, shall be only tried by his own certificate. 9 Rep. 31. 3 Comm. 336.

As to certificates in cases of Costs, of Bankrupts, or relative to the settlement of the Poor, see those titles in this Dictionary.

**CERTIFICATION, i.e. Assurance.** Scotch Dict.

**CERTIFICATION, Is when the judge doth ascertain the party called, and not comparing what he will do in that case.** Scotch Dict.
CERTIORARI 1.

CERTIFICATE, or CERTIFICATION OF ASSISE, certificatio assisae nova disserising, &c.] A writ anciently granted for the re-examining or retrial of a matter passed by assise before justices; used where a man appearing by his bailiff to an assise, brought by another, lost the day; and having something more to plead for himself, which the bailiff did not, or might not plead for him, desired a farther examination of the cause, either before the same justices, or others, and obtained letters patent to them to that effect; whereupon he brought a writ to the sheriff to call both the party for whom the assise passed, and the jury that was impanelled on the same, before the said justices at a certain day and place, to be re-examined. It was called a certificate, because therein mention is made to the sheriff, that upon the party's complaint of the defective examination, as to the assise passed, the king hath directed his letters patent to the justices for the better certifying of themselves, whether all points of the said assise were duly examined. Reg. Orig. 200. F. N. B. 181. Bracton, lib. 4. c. 15. Horn's Mirr. lib. 3. This writ is now entirely superseded by the remedy afforded by means of new trials. See 3 Comm. 389.

CERTIORARI.

This is an Original Writ, issuing out of the court of chancery or K. B. directed in the king's name to the judges or officers of the inferior courts, commanding them to certify, or to return the records of a cause depending before them; 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. See F. N. B. 145. 242.

This writ is either returnable in the king's bench, and then hath these words, "send to us," or in the common bench, and then has "to our justices of the bench," or in the chancery, and then hath "in our chancery," &c.

On this subject we may briefly consider, 1. In what cases this writ is grantable, or not. 2. In what manner. 3. The effect of it when granted. And, 4. Of the return, with the form of that and the writ.

1. A writ of certiorari may be had at any time before trial, to certify and remove indictments, with all the proceedings thereon from any inferior court of criminal jurisdiction, into the court of K. B. the sovereign ordinary court of justice in causes criminal. And this is frequently done for one of four purposes. 1. To consider and determine the validity of appeals and indictments, and the proceedings thereon, and to quash or confirm them accordingly. 2. To have the prisoner or defendant tried at the bar of the courts, or before justices of Nisi Prius where it is surmised that a partial or insufficient trial will probably be had in the inferior court. 3. To plead the king's pardon in the court of K. B. 4. To issue process of outlawry against the offender, in those counties or places where the process of inferior judges will not reach him. 2 Hale's P. C. 310. 4 Comm. 320.

A certiorari lies in all judicial proceedings, in which a writ of error does not lie; and it is a consequence of all inferior jurisdictions, erected by act of parliament to have their proceedings returnable in K. B. Ld. Raym. 469. 580.

But without laying a special ground before the court, it cannot be sued out to remove proceedings in an action from the courts of the counties palatine. Doug. 749. It does not lie to judges of oyer and terminer to remove a recognisance of appearance. Lucas, 278. Nor to remove a poor's rate. Stra. 932. 975. See Leach's Hawk. P. C. li. c. 27. § 23. in n.
A certiorari lies to justices of the peace and others, even in such cases, which they are empowered by statute, finally to hear and determine; and the superintendency of the court of K. B. is not taken away without express words. 2 Hawk. P. C. c. 27. § 22, 23.

If an order of removal be confirmed at the sessions, and both orders be removed into B. R. by certiorari on a case reserved, and that court disapprove of the orders, for want of jurisdiction of the removing magistrates, appearing on the face of the original order; the court will quash both orders, without remitting back to the sessions to quash the original order, for the purpose of enabling them to give maintenance according to stat. 9 Geo. I. c. 7. § 9, and at any rate they will not admit an application for amending their judgment for quashing both orders made in the term subsequent to the judgment so pronounced. Rex v. Moor Critchell Parish, 2 East, 222.

That a certiorari does not lie to remove any other than judicial acts, see Hard. 308. Say.

Where a certiorari is by law grantable for an indictment, at the suit of the king, the court is bound to award it, for it is the king's prerogative to sue in what court he pleases; but it is at the discretion of the court to grant or not, in case of private prosecutions, and at the prayer of the defendant; and the court will not grant it for the removal of an indictment before justices of gaol delivery, without some special cause; or where there is so much difficulty in the case, that the judge desires it may be determined in B. R. &c. Burr. 2456. Also on indictments of perjury, forgery, or for heinous misdemeanors, the court will not generally grant a certiorari to remove at the instance of the defendant. 2 Hawk. P. C. c. 27. § 27, 28. But see 2 Ld. Raym. 1452.

But in particular cases, the court will use their discretion to grant a certiorari; as if the defendant be of good character, or if the prosecution be malicious, or attended with oppressive circumstances. Leach's Hawk. P. C. ii. c. 27. § 28. n.

Where issue is joined in the court below, it is a good objection against granting a certiorari; and if a person doth not make use of this writ till the jury are sworn, he loses the benefit of it. Mod. Ca. 16. Stat. 43 Edw. c. 5. After conviction a certiorari may not be had to remove an indictment &c. unless there be special cause; as if the judge below is doubtful what judgment is proper to be given, when it may. See Stra. 1237. Burr. 749. And after conviction, &c. it lies in such cases where writ of error will not lie. 1 Salk. 149. The court on motion in an extraordinary case will grant a certiorari to remove a judgment given in an inferior court; but this is done where the ordinary way of taking out execution is hindered in the inferior court. 1 Litt. Abr. 253.

In common cases a certiorari will not lie to remove a cause out of an inferior court, after verdict. It is never sued out after a writ of error but where diminution is alleged; and when the thing in demand does not exceed $10 a certiorari shall not be had, but a writ of error or attaint. Stat. 21 Jac. I. cap. 23. See stat. 12 Geo. I. c. 23. A certiorari is to be granted on matter of law only; and in many cases there must be a judge's hand for it. 1 Litt. 232. Certioraris to remove indictments, &c. are to be signed by a judge; and to remove orders, the fiat for making out the writ must be signed by some judge. 1 Salk. 150.

Certiorari lies to the courts of Wales, and the cinque ports, counties palatine, &c. 2 Hawk. P. C. c. 27. § 24, 25.
CERTIORARI I.

Things may not be removed from before justices of peace, which cannot be proceeded in by the court where removed; as in case of refusing to take the oaths, &c. which is to be certified and inquired into, according to the statute. 1 Salk. 145. And where the court which awards the certiorari cannot hold plea on the record, there but a tenor of the record shall be certified; for otherwise if the record was removed into B. R. as it cannot be sent back, there would be a failure of right afterwards. 1 Danv. Abr. 792. But a record sent by certiorari into B. R. may be sent after by mittimus into C. B. Ibid. 789. And a record into B. R. may be certified into chancery, and from thence be sent by mittimus into an inferior court, where an action of debt is brought in an inferior court, and the defendant pleads that the plaintiff hath recovered in B. R. and the plaintiff replies, Nut tiet record, &c. 1 Saund. 97, 99.

The court of B. R. will grant a new certiorari to affirm a judgment, &c. though generally one person can have but one certiorari. Cro. Jac. 369.

A certiorari may not be had to a court superior, or that has equal jurisdiction, in which case day is given to bring in the record, &c.

Besides the statutes hereafter mentioned, there are several which restrain, and many which absolutely prohibit a certiorari, in order to avoid frivolous and unfounded delays in justice. For a complete list of these, if needed, the student should consult index to the statutes. The following seem to have deserved a mention, &c. though generally one person can have but one certiorari. Cro. Jac. 369.

By stat. 13 Geo. III. c. 78. (which see at large tit. Highways,) no presentment, &c. of any highway shall be removed from the sessions, until it be traversed, except the right to repair be the question. Or by stat. 5 & 6 W. & M. c. 11. may come in question. But this means on the part of the defendant only, for on the part of the prosecution it lies before. No other proceedings under the highway act may be removed by certiorari; but if the sessions manifestly exceed their authority in making orders, they may be removed into K. B. by certiorari and quashed. Leach's Hawk. P. C. ii. c. 27. § 37. and n. By stat. 16 Geo. III. c. 30. against deer-stealers, no certiorari shall issue, unless the party convicted shall become bound to the prosecutor in 100l. to pay full costs and damages within thirty days, and to the justice in 60l. to prosecute the certiorari with effect. But in appeal to the sessions, he may sue out a certiorari on six days' notice, to prosecute. And the like in effect is enacted by stat. 5 & 5 W. & M. c. 23. and 5 Ann. sess. 2. c. 14. concerning game. 2 Hawk. P. C. c. 27. § 60, 61.

Also by stat. 1 Ann. c. 18. concerning the repair of bridges, no certiorari shall be allowed. Nor by stat. 8 Geo. II. c. 20. for punishing destroyers of turnpikes. Nor by st. 12 Geo. II. c. 29. for assessing county rates. Nor on st. 19 Geo. II. c. 21. against cursing and swearing. Nor on st. 33 Geo. II. c. 13 against seducing artificers. Nor on st. 25 Geo. II. c. 36. against bawdy-houses. Nor on 29 Geo. II. c. 40. against stealing lead, iron, &c. Nor on 30 Geo. II. c. 21. for preserving fish in the Thames. Nor on 30 Geo. II. c. 24. for restraining gaming in public houses. Nor on 31 Geo. II. c. 29. for regulating bread. Nor on 2 Geo. III. c. 30. for preventing thefts in bumb-boats. Nor on 10 Geo. III. c. 18. against dog-stealers.

For a long detail of further matter on the subject of certiorari, see 2 Hawk. P. C. c. 27.
2. By stat. 1 & 2 P. & M. c. 13, no [habeas corpus or] certiorari shall be granted to remove any recognizance, unless signed by the Chief Justice, or in his absence by one of the other judges.

By stats. 5 & 6 W. & M. c. 11, and 8 & 9 Wm. III. c. 33, a certiorari may be granted in vacation time by any of the judges of B. R. and security is to be found before it is allowed. No certiorari is to be granted out of B. R. to remove any recognizance unless signed by the Chief Justice, or in his absence by one of the other judges.

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CERTIORARI 4.

before the jury be sworn for the trial of it, the justices may proceed. 2 Hawk. P. C. c. 27. § 64. And the justices may set a fine to complete their judgment after a certiorari delivered. Ld. Raym. 1515. See ante, 1.

A certiorari removes all things done between the teste and return. Ld. Raym. 835. 1305. And as it removes the record itself out of the inferior court, therefore if it remove the record against the principal, the accessory cannot be tried there. 2 Hawk. P. C. c. 27. § 64. And the justices may set a fine to complete their judgment after a certiorari delivered. Ld. Raym. 1515. See ante, 1.

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2 Hawk. P. C. c. 29. § 54. And if the defendant be convicted of a capital crime, the person of the defendant must be removed by habeas corpus, in order to be present in court, if he will move in arrest of judgment. And herein the case of a conviction differs from that of a special verdict. Burr. 930.

Although on a habeas corpus to remove a person, the court may bail or discharge the prisoner; they can give no judgment upon the record of the indictment against him, without a certiorari to remove it, but the same stands in force as it did, and new process may issue upon it. 2 Hale's Hist. P. C. 211. If an indictment be one, but the offences several, where four persons are indicted together; a certiorari to remove this indictment against two of them, removes it not as to the others, but as to them the record remains below. 2 Hale's Hist. 214.

If a cause be removed from an inferior court by certiorari, the pledges in the court below are not discharged; because a defendant may bring a certiorari, and thereby the plaintiff may lose his pledges. Star. Rep. 244. 245. A certiorari from K. B. is a supersedeas to restitution in a forcible entry. 1 Hawk. P. C. c. 64. § 62.

4. The return of a certiorari is to be under seal; and the person to whom a certiorari is directed may make what return he pleases, and the court will not stop the filing of it, on affidavit of its falsity, except where the public good requires it; the remedy for a false return is action on the case, at the suit of the party injured, and information, &c. at the suit of the king. 2 Hawk. P. C. c. 27. § 70.

If the person to whom the certiorari is directed, do not make a return, then an alias, then a pluralis, vel causam nobis signifícis quare, shall be awarded, and then an attachment. Cromp. 116.

FORM OF A CERTIORARI

To CERTIFY the RECORD of a JUDGMENT.

GEORGE the Third, &c. To the Mayor and Sheriffs of our city of E. and to every of them, in our court at the Guildhall there greeting: Whereas A. B. hath lately in our said court in the said city, according to the custom of the same court, imploïda C. D. late of, &c. in an action of debt upon demand of thirty pounds; and thereupon, in our said court before you, obtained judgment against the said C. for the recovery of the said debt; and we, being desirous for certain reasons, that the said record should by you be certified to us, Do command you, that you send under your seals the record of the said recovery, with all things touching the same, into our court before us at Westminster, on the day, &c. plainly and distinctly, and in as full and ample manner as it now remains before you, together with this writ; so that we on the part of the said A. may be able to proceed to the execution of the said judgment, and do what shall appear to us of right ought to be done. Witness, &c.
The return of certiorari may be thus: First, on the back of the writ endorse these or similar words—*The execution of this writ appears in a schedule to the same writ annexed.* Which schedule may be in the following form, on a piece of parchment, (not paper, 1 Barn. K. B. 113.) by itself, and filed to the writ.

Middlesex.—I, A. B. one of the keepers of the peace and justices of our lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses and other misdeavors in the same county committed, by virtue of this writ to me delivered, do under my seal certify unto his Majesty in his court of King’s Bench, the indictment, of which mention is made in the same writ, together with all matters touching the said indictment. In witness whereof, I the said A. B. have to these presents set my seal. Given at ——, in the said county, the —— day of ——, in the —— year of the reign of ——.

Then take the record of the indictment, and close it within the above schedule, and seal up, and send them both together with the certiorari.

CERT-MONEY, *quasi certain money.*] Head-money paid yearly by the resiants of several manors to the lords thereof, for the certain keeping of the leet; and sometimes to the hundred; as the manor of Hook, in Dorsetshire, pays cert-money to the hundred of Egerton. In ancient records this is called *certum leta.* See Common Fine.

CERVISARI. The Saxons had a duty called *drinkclean,* that is, *retributio posta,* payable by their tenants; and such tenants were in Domesday called *cervisari,* from *cervisia,* ale, their chief drink; though *cervisarius* vulgarly signifies a beer or ale brewer.

CERURA, A mound, fence, or enclosure. *Cart. priorat. de Thelus ford, MS.*

CESSA EXECUTIO. In trespass against two persons, if it be tried and found against one, and the plaintiff takes his execution against him, the writ will abate as to the other; for there ought to be a *cessat executio* till it is tried against the other defendant. 10 Edw. IV. 1. See tit. Execution, &c.

CESSAVIT, A writ which lies (by the stats. of Gloucester, 6 Edw. I. c. 4. and Westm. 2. 13 Edw. I. cc. 21. 41.) when a man who holds by rent or other services, neglects or *ceases* to perform his services for two years together; or where a religious house hath lands given it, on condition of performing some certain spiritual service, as reading prayers, or giving alms, and neglects it; in either of which cases if the *cesser* or neglect shall have continued for two years, the lord or donor and his heirs shall have a writ of *cessavit* to recover the land itself. *F. N. B. 208.* In some instances relating to religious houses, called *Cessavit de Cantariar.*

By the stat. of Gloucester, the *cessavit* does not lie for lands let upon fee-farm rents, unless they have lain fresh and uncultivated for two years, and there be not sufficient distress upon the premises, or unless the tenant hath so enclosed the land, that the lord cannot come upon it to distrain. *F. N. B. 209. 2 Inst. 298.* For the law prefers the simple and ordinary remedies, by distress, &c. to this extraordinary one of forfeiture; and therefore the same statute has provided farther, that on tender of arrears, and damages before judgment, and giving security for the future performance of the services, (that he
will no more cease,) the process shall be at an end, and the tenant, shall retain his land, to which the stat. of Westm. 2. conforms so far as may stand with convenience and reason of law. 2 Inst. 461. 460.

The stats. 4 Geo. II. c. 28. and 11 Geo. II. c. 19. seem evidently borrowed from the above ancient writ of cessavit. The former of these statutes permits landlords who have a right of re-entry for non-payment of rent, to serve an ejectment on their tenants when half a year's rent is due, and no sufficient distress on the premises. See tit. Ejectment. And the same remedy is in substance adopted by the stat. 11 Geo. II. c. 16. which enacts, that where any tenant at rack rent shall be one year's rent in arrear, and shall desert the demised premises, leaving the same uncultivated or unoccupied, so that no sufficient distress can be had, two justices of the peace (after notice affixed on the premises for fourteen days) may give the landlord possession thereof; and the lease shall be void. See tit. Distress, Lease, Rent.

By stat. Westm. 2. § 2. the heir of the demandant may maintain a cessavit against the heir or assignee of the tenant. But in other cases, the heir may not bring this writ for cessur in the time of his ancestor; and it lies not but for annual service, rent, and such like; not for homage or fealty. Terms de la ley. New Nat. Brer. 463, 464.

The lord shall have a writ of cessavit against tenant for life, where the remainder is over in fee to another; but the donor of an estate-tail shall not have a cessavit against the tenant in tail; though if a man make a gift in tail, the remainder over in fee to another, or to the heirs of the tenant in tail, there the lord of whom the lands are holden immediate, shall have a cessavit against the tenant in tail, because that he is tenant to him. &c. Ibid. If the lord distrains pending the writ of cessavit against his tenant, the writ shall abate.

The writ cessavit is directed to the sheriff, To command A. B. that, &c. he render to C. D. the messuage, which he holds by certain services, and which ought to come to the said C. by force of the statute, &c. because the said A. in doing those services had ceased two years, &c. Dict.

CESSIO BONORUM. A process in the law of Scotland, similar in effect to that under the statutes relating to Bankruptcy in England.

CESSIO, Cessio.] A ceasing, yielding up, or giving over. When an ecclesiastical person is created bishop, or a parson of a parsonage takes another benefice, without dispensation, or being otherwise not qualified, &c. in both cases their first benefices are become void, and are in the law said to be void by cessio; and to those benefices that the person had who was created bishop, the king shall present for that time, whoever is patron of them; and in the other case, the patron may present. Cowel.

But cession in the case of bishops does not take place till consecration. Dyce, 233. See tit. Commendam, Advowson II.

No person is entitled to dispensation, but chaplains of the king and others mentioned in the stat. 21 Hen. VIII. c. 13. the brethren, and the sons of lords and knights, (not of baronets,) and doctors and bachelors of divinity and law in the Universities of this realm. 1 Comm. 392. See tit. Chaplain.

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Both the livings must have care of souls; and the statute expressly excepts deaneries, archdeaconries, chancellorships, treasurerships, chanterships, prebends and sinecure rectories. See tit. Chajlain, Parson.

In case of a cession under the statute, the church is so far void upon institution to the second living, that the patron may take notice of it, and present if he pleases; but it seems that a lapse will not incur from the time of institution against the patron, unless notice be given him; but it will from the time of induction. 2 Wilk. 200.

CESSOR, Lat.] He who ceaseth, or neglects so long to perform a duty, that he thereby incurs the danger of the law.

CESSURE, or cesser; ceasing, giving over; or departing from.

CESTUI QUE TRUST, [or, cestui à que trust.] Is he in trust for whom, or to whose use or benefit, another man is enfeoffed or seised of lands or tenements. By Stat. 99 Car. II. c. 3. land of cestui que trust may be delivered in execution. See tit. Trusts, Uses.

CESTUI QUE USE, [more accurately as in old Law Tracts, cestui à que use, Fr. cestui à l'usage de qui.] He to whose use any other man is enfeoffed of lands or tenements. 1 Rep. 153. Feoffees to uses were formerly deemed owners of the lands; but now the possession is adjudged in cestui que use, and without any entry he may bring assise, &c. Stat. 27 Hen. VIII. c. 10. Cro. Eliz. 46. See tit. Use.

CESTUI [à] QUE VIE, He for whose life any lands or tenements are granted. Perk. 97. See tit. Occupant.

CHACEA, A station of game more extended than a park, and less than a forest; and is sometimes taken for the liberty of chasing or hunting within such a district. And according to Blount it hath another signification, i.e. the way through which cattle are drove to pasture, commonly called in some places a drove way. Bracton, lib. 4. c. 44. Vide Chase.


CHACURUS, from the Fr. chasseur.] A horse for the chase; or rather a hound or dog, a courser. Rot. 7 Johan.

CHAFE, from the Fr. chaufer, to heat, whence our chafing dish.

CHAFEWAX, An officer in Chancery, that fitteth the wax for sealing of the writs, commissions, and such other instruments as are there made to be issued out.

CHAFFERS, Seem to signify wares or merchandise; and chaffering is yet used for buying and selling, or rather a kind of bartering of one thing for another. The word is mentioned in the stat. 3 Edw. IV. c. 4.

CHAINS, Hanging in. See tit. Murder.

CHALDER or CHALDER of coals. See tit. Coals.

CHALKING, The merchants of the staple require to be eased of divers new impositions, as chalking, ironage, wharfage, &c. Rot. Parl. 50 Edw. III.

CHALLENGE, Calumnia, from the Fr. challenge.] An exception taken either against persons or things. Persons as to jurors, or any one or more of them: or in case of felony, by the prisoner at the bar against things, as a declaration, &c. Terms de la ley, 109.—The former is the most frequent signification in which this term is used, and
which shall here be shortly mentioned; referring for further matter to tit. Jury, Trial, in this Dictionary.

There are two kinds of challenge; 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 poll, by which are meant the several particular persons or heads in the array. 1 Inst. 156. 158.

Challenge to jurors is also divided into challenge principal or peremptory; and challenge for cause; i.e. upon cause or reason alleged: challenge principal or peremptory, is that which the law allows without cause alleged, or further examination; as a prisoner at the bar, arraigned for felony, may challenge peremptorily the number allowed him by law, one after another, alleging no cause, but his own dislike, and they shall be put off, and new taken in their places: but yet there is a difference between challenge principal, and challenge peremptory; the latter being used only in matters criminal, and barely without cause alleged; whereas the former is in civil actions for the most part, and by assigning some such cause of exception, as, being found true, the law allows. Staundf. P. C. 124. 157. Lamb. Eiren. lib. 4. cap. 14.

Challenge to the favour, which is a species of challenge for cause, is where the plaintiff or defendant is tenant to the sheriff, or if the sheriff's son hath married the daughter of the party, &c. and also when either party cannot take any principal challenge, but showeth cause of favour; and causes of favour are infinite. If one of the parties is of affinity to a juror, the juror hath manied the plaintiff's daughter, &c. If a juror hath given a verdict before in the cause, matter or title; if one labours a juror to give his verdict; if after he is returned, a juror eats and drinks at the charge of either party; if the plaintiff, &c. be his master, or the juror hath any interest in the thing demanded, &c. these are challenges to the favour. 2 Roll. Abr. 636. Hob. 294.

Challenge to Fight. 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, &c. 1 Hawk. P. C. c. 63. § 3.

By Stat. 9 Ann. c. 14. § 8. (See tit. Gaming;) "Whoever shall [assault and beat,] or challenge, or provoke to fight, any other person or persons whatsoever, upon account of any money won by gaming, playing, or betting at any of the games mentioned in that act, shall, on conviction by indictment or information, forfeit all their goods, chattels and personal estate, and suffer imprisonment without bail, in the county prison, for two years."

It is now every day's practice for the court of K. B. to grant informations against persons sending challenges to justices of the peace, and in other heinous cases.

For further matter, See tit. Murder.

CHAMBERDEKINS, or Chamber-deacons, were certain poor Irish scholars, clothed in mean habit, and living under no rule; or rather beggars banished England by stat. 1 Hen. V. cap. 7. 8.

CHAMBERLAIN, Camerarius.] Is variously used in our laws, statutes and chronicles: as first there is Lord Great Chamberlain of England, to whose office belongs the government of the palace at Westminster; and upon all solemn occasions the keys of Westminster-Hall, and the court of Requests are delivered to him; he disposes of the sword of state to be carried before the king when he comes to the parlia-
ment, and goes on the right hand of the sword next to the king's person; he has the care of providing all things in the House of Lords in the time of parliament; to him belongs livery and lodgings in the king's court, &c. And the gentleman usher of the black rod, yeoman usher, &c. are under his authority.

The office of Lord Great Chamberlain of England is hereditary; and where a person dies seised of this office, leaving two sisters, the office belongs to both sisters, and they may execute it by deputy: but such deputy must be approved of by the king, and must not be of a degree inferior to a knight. 2 Bro. P. C. 146. 8vo. ed.

The Lord Chamberlain of the Household has the oversight and government of all officers belonging to the king's chamber, (except the bed-chamber, which is under the groom of the stole,) and also of the wardrobe; of artificers retained in the king's service, messengers, comedians, revels, music, &c. The serjeants at arms are likewise under his inspection; and the king's chaplains, physicians, apothecaries, surgeons, barbers, &c. And he hath under him a vice-chamberlain, both being always privy counsellors.

There were formerly chamberlains of the king's courts. 7 Edw. VI. cap. 1. And there are chamberlains of the Exchequer, who keep a controlment of the pells, of receipts and exitus, and have in their custody the leagues and treaties with foreign princes, many ancient records, the two famous books of antiquity called Domesday, and the Black Book of the Exchequer; and the standards of money, and weights and measures, are kept by them. There are also under-chamberlains of the Exchequer, who make searches for all records in the treasury, and are concerned in making out the tallies, &c. The office of chamberlain of the Exchequer is mentioned in the stat. 34 & 35 Hen. VIII. cap. 16. Besides these, we read of a chamberlain of North Wales. Stowe, p. 641.

A chamberlain of Chester, to whom it belongs to receive the rents and revenues of that city, and when there is no Prince of Wales, and Earl of Chester, he hath the receiving and returning of all writs coming thither out of any of the king's courts. See tit. Counties Palatine.

The chamberlain of London who is commonly the receiver of the city rents payable into the chamber, and hath great authority in making and determining the rights of freemen; as also concerning apprentices, orphans, &c. See tit. London.

CHAMBERS OF THE KING, Regiae camerae.] The havens or ports of the kingdom are so called in our ancient records. Merc. Claus. fol. 242.

CHAMBRE DEPEINTE, Anciently St. Edward's chamber, now called the painted chamber. See tit. Parliament.

CHAMPIRTY or CHAMPERTY, campli paritio, because the parties in champerty agree to divide the land, &c. in question.] A bargain with the plaintiff or defendant in any suit, to have part of the land, debt, or other thing sued for, if the party that undertakes it prevails therein. Whereupon the Chaplery is to carry on the party's suit at his own expense. See 4 Comm. 395. 1 Inst. 368. It is a species of maintenance, and punished in the same manner. This seems to have been an ancient grievance in our nation; for notwithstanding the several statutes of Westm. 1. 3 Edw. I. cap. 25. Westm. 2. 13 Edw. I. c. 49. 28 Edw. I. stat. 3. c. 11. and 33 Edw. I. stat. 3. &c. and a form of a writ framed to them; yet stats. 4 Edw. III. c. 11. and 32 Hen. VIII. cap. 9. enacted, That whereas former statutes provided
redress for this evil in the King’s Bench only, from henceforth it should be lawful for justices of the Common Pleas, justices of assise, and justices of peace in their quarter sessions, to inquire, hear and determine this and such like cases, as well at the suit of the king, as of the party: and this offence is punishable by common law and statute; the stat. 33 Edw. I. stat. 3 makes the offenders liable to three years’ imprisonment, and a fine at the king’s pleasure. By the stat. 28 Edw. I. c. 11. it is ordained, that no officer, nor any other, shall take upon him any business in suit, to have part of the thing in plea; nor none upon any covenant, shall give up his right to another; and if any do, and be convicted thereof, the taker shall forfeit to the king so much of his lands and goods as amounts to the value of the part purchased.

In the construction of these statutes, it hath been adjudged, that under the word covenant, all kinds of promises and contracts are included, whether by writing, or parol: that rent granted out of land in variance, is within the statute of champerty: and grants of part of the thing in suit made merely in consideration of the maintenance, or champerty, are within the meaning of this statute; but not such as are made in consideration of a precedent honest debt, which is agreed to be satisfied with the thing in demand when recovered. F. N. B. 172. 2 Inst. 209. 2 Roll. Abr. 113.

It is said not to be material, whether he who brings a writ of champerty, did in truth suffer any damage by it; or whether the plea wherein it is alleged be determined or not. 1 Hawk. P. C. c. 84. A conveyance executed pending a plea, in pursuance of a bargain made before, is not within the statutes against champerty; and if a man purchase land of a party, pending the writ, if it be bona fide, and not to maintain, it is not champerty. F. N. B. 272. 2 Roll. Abr. 113. But it hath been held, that the purchase of land while a suit of equity concerning it is depending, is within the purview of the statute 28 Edw. I. stat. 3. c. 11. Moor, 663. A lease for life, or years, or a voluntary gift of land, is within the statutes of champerty; but not a surrender made by a lessee to his lessor; or a conveyance relating to lands in suit, made by a father to his son, &c. 1 Hawk. P. C. c. 84.

The giving part of the lands in suit, after the end of it, to a counsellor for his reward, is not champerty, if there be no precedent bargain relating to such gift; but if it had been agreed between the counsellor and his client before the action brought, that he should have part for his reward, then it would be champerty. Bro. Champert. 3. And it is dangerous to meddle with any such gift, since it carries with it a strong presumption of champerty. 2 Inst. 564. If any attorney follow a cause to be paid in gross, when the thing in suit is recovered, it hath been adjudged, that this is champerty. Hob. 117. Every champerty implies maintenance; but every maintenance is not champerty. Crom. Jur. 39. 2 Inst. 208.

To this head may be referred the provision of the stat. 32 Hen. VIII. c. 9. that no one shall sell or purchase any pretended right or title to land, unless the vendor hath received the profits thereof for one whole 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 land to the king and the prosecutor. See tit. Maintenance.

CHAMPERTORS, Are defined by statute to be those who move pleas or suits, or cause them to be moved, either by their own procurement or by others, and sue them at their proper costs, to have
part of the land in variance, or part of the gain. 33 Edw. I. stat. 2.

See the preceding article.

CHAMPION, campio.] Is taken in the law not only for him that fights a combat in his own case, but also for him that doth it in the place or quarrel of another. Bract. lib. 3. tract. 2. cap. 21. And in Sir Edward Bishé's notes on Upton, fol. 36. it appears, that Henry de Ferneberg, for thirty marks fee, did by charter covenant to be champion to Roger, abbot of Glastenbury. An. 42 Hen. III. These champions, mentioned in our law books and histories, were usually hired; and any one might hire them, except parricides, and those who were accused of the highest offences: before they came into the field, they shaved their heads, and made oath that they believed the persons who hired them, were in the right, and that they would defend their cause to the utmost of their power; which was always done on foot, and with no other weapon than a stick or club, and a shield; and before they engaged, they always made an offering to the church, that God might assist them in the battle. When the battle was over, the punishment of a champion overcome, and likewise of the person for whom he fought was various: if it was the champion of a woman for a capital offence, she was burnt, and the champion hanged; if it was of a man, and not for a capital crime, he not only made satisfaction, but had his right hand cut off; and the man was to be close confined in prison, till the battle was over. Bract. lib. 2. c. 35. See tit. Battle.

Victory in the trial by battle is obtained, if either champion proves recreant: that is, yields and pronounces the horrible word of craven: a word of disgrace and obloquy, rather than of any determinate meaning. But a horrible word it indeed is to the vanquished champion: since as a punishment to him for forfeiting the land of his principal, by pronouncing that shameful word, he is condemned as a recreant to become infamous, and not to be accounted über et legäis homo; being supposed by the event to be proved forsworn, and therefore never to be put upon a jury, or admitted as a witness in any cause. 3 Comm. 340.

CHAMPION OF THE KING, campio regis.] An ancient officer, whose office it is at the coronation of our kings, when the king is at dinner, to ride armed capa-jitie into Westminster Hall, and by the proclamation of a herald make a challenge, That if any man shall deny the king's title to the crown, he is there ready to defend it in single combat, &c. Which being done, the king drinks to him and sends him a gilt cup with a cover full of wine, which the champion drinks, and hath the cup for his fee. This office, ever since the coronation of Richard II., when Baldwin Freville exhibited his petition for it, was adjudged from him to Sir John Dyocke his competitor, (both claiming from Marmion,) and hath continued ever since in the family of the Dyockes; who hold the manor of Scrievsby (or Scrivelsbury) in Lincolnshire, hereditary from the Marmions, by great serjeancy, viz. That the lord thereof shall be the king's champion, as aforesaid. Accordingly Sir Edward Dyocke performed this office at the coronation of King Charles II. And a person of the name of Dyocke performed it at the coronation of his present Majesty George the Third.

CHANCE, where a man commits an unlawful act, by misfortune, or chance, and not by design, it is a deficiency of the will; as here it observes a total neutrality, and doth not cooperate with the deed; which therefore wants one main ingredient of a crime. Of this as it affects the life of another, See tit. Murder. It is to be observed, however, generally, that if any accidental mischief happens to follow from
the performance of a lawful act, the party stands excused from all
guilt; but if a man be doing any thing unlawful, and a consequence
ensues which he did not foresee or intend, as the death of a man or
the like, his want of foresight shall be no excuse; for being guilty of
one offence, in doing antecedently what is in itself unlawful, he is
criminally guilty of whatever consequence may follow the first misbe-

CHANCELLOR, Cancellarius.] Was at first only a chief notary
or scribe under the emperor, and was called cancellarius, because he
sat intra cancellis, to avoid the crowd of the people. This word is by
some derived from cancello, and by others from cancellis, an enclosed
or separated place, or chancel, encompassed with bars, to defend the
judges and other officers from the press of the public. And can-
cellarius originally, as Lujianus thinks, signified only the register in
court; Grapharius, scil. qui conscribendis et excipendis judicum actis
dant operam: but this name and officer is of late times greatly advan-
ced, not only in this, but in other kingdoms; for he is the chief admin-
istrator of justice, next to the Sovereign, who anciently heard equi-
table causes himself.

All other justices in this kingdom are tied to the strict rules of the
law, in their judgments; but the Chancellor hath power to moderate
the written law, governing his judgment by the law of nature and con-
science, and ordering all things juxta equam et bonum: and having
the king's power in these matters, he hath been called the keeper of
the king's conscience. It has been suggested, that the Chancellor
originally presided over a political college of secretaries, for the
writing of treaties, grants, and other public business; and that the
court of equity under the old constitution was held before the king
and his council in the palace, where one supreme court for business of
every kind was kept: and at first the Chancellor became a judge to
hear and determine petitions to the king, which were referred to him,
and in the end, as business increased, the people entitled their suits
to the chancellor and not to the king, and thus the chancellor's equi-
table power had by degrees commencement by prescription. Hist.
Chan. p. 3. 10. 44. &c.

Staunforde says, the Chancellor hath two powers; one absolute, the
other ordinary; meaning, that although by his ordinary power, in some
cases, he must observe the form of proceeding as other inferior
judges; in his absolute power he is not limited by the law, but by con-
science and equity, according to the circumstances of things. See
post, tit. Chancery.

And though Polydore Virgil, in his history of England, makes
William the First, called the Conqueror, the founder of our chancellors,
yet Dugdale has shown that there were many chancellors of England
long before that time, which are mentioned in his Origines Juridicae,
and catalogues of chancellors; and Sir Edward Coke, in his fourth In-
stitute, saith, it is certain, that both the British and Saxon kings had
their chancellors, whose great authority under their kings were in all
probability drawn from the reasonable custom of neighbouring nations
and the civil law.

He that bears this chief magistracy, is styled the Lord High Chan-
sellor of Great Britain, which is the highest honour of the long robe.
A chancellor may be made so at will, by patent, but it is said not for
life, for being an ancient office, it ought to be granted as hath been
acustomed. 2 Inst. 87. But Sir Edward Hyde, afterwards Earl of
Clarendon, had a patent to be lord chancellor for life, though he was dismissed from that office, and the patent declared void. 1 Sid. 338.

By the stat. 5 Eliz. cap. 18. the Lord Chancellor and Keeper have one and the same power; and therefore since that statute, there cannot be a Lord Chancellor and Lord Keeper at the same time; before, there might, and had been. 4 Inst. 78. King Henry V. had a great seal of gold, which he delivered to the Bishop of Durham, and made him Lord Chancellor, and also another of silver, which he delivered to the Bishop of London to keep. But the Lord Bridge was Lord Keeper, and Lord Chief Justice of the Common Pleas at the same time; which offices were held not to be inconsistent. Ibid. By stat. 1 W. & M. cap. 21. Commissioners appointed to execute the office of Lord Chancellor, may exercise all the authority, jurisdiction, and execution of laws, which the Lord Chancellor, or Lord Keeper, of right ought to use and execute, &c. since which statute this high office hath been several times in commission.

The office of Lord Chancellor or Lord Keeper, is now 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. And the act of taking away this seal by the king, or of its being resigned or given up by the Chancellor, determines his office. (See 1 Sid. 338.) He is a privy counsellor by his office; and according to Lord Chancellor Ellesmere, prolocutor of the House of Lords by prescription. To him belongs the appointment of all the Justices Of Peace throughout the kingdom. Being formerly usually an Ecclesiastic, (for none else were then capable of an office so conversant with writings,) and presiding over the Royal Chapel, he became keeper of the King’s conscience; 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 twenty marks a year in the king’s books. (38 Edw. III. 3. F. N. B. 35. though Hob. 214. extends this value to twenty pounds.) He is the 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 exercises in his judicial capacity in the Court of Chancery. 3 Comm. 47.

The stat. 25 Edw. III. c. 2. declares it to be treason to slay the Chancellor (and certain other judges) being in their places doing their offices; and it seems that the Lord Keeper and Commissioners of the great seal are within this statute by virtue of stats. 5 Eliz. c. 13. and 1 W. & M. c. 21. already mentioned. See tit. Treason.

The Lord Chancellor, when there is no Lord High Steward, is accounted the first officer in the kingdom; and he not only keeps the king’s great seal, but all patents, commissions, warrants, &c. from the king, are perused and examined by him before signed; and Lord Coke says the Lord Chancellor is so termed à cancellando, from cancelling the king’s letters patent, when granted contrary to law; which is the highest point of his jurisdiction. 4 Inst. 88. He by his oath swears well and truly to serve the king, and to do right to all manner of people, &c. In his judicial capacity, he hath divers assistants and officers, viz. the Master of the Rolls, the Masters in Chancery, &c. And in matters of difficulty, he calls one or more of the chief justices and judges to assist him in making his decrees; though in such cases they only give their advice and opinion, and have no share whatever.
of the judicial authority. See stat. 1 Geo. III. c. 1. 9. 6. whereby his majesty is empowered to grant 5,000l. a year out of the post-office revenue to the Lord Chancellor.

The Master of the Rolls, however, has judicial power, and is an assistant to the Lord Chancellor when present, and his deputy when absent; but he has certain causes assigned him to hear and decree, which he usually doth on certain days appointed at the chapel of the Rolls, being assisted by one or more masters in chancery: he is, by virtue of his office, chief of the masters of chancery, and chief clerk of the petty-bag office. See 3 Geo. II. c. 30. tit. Decree.

The Twelve Masters in Chancery sit some of them in court, and take notice of such references as are made to them, to be reported to the court, relating to matters of practice, the state of the proceedings, accounts, &c. and they also take affidavits, acknowledge deeds and recognisances, &c. See tit. Master in Chancery.

The Six Clerks in chancery transact and file all proceedings by bill and answer; and also issue out some patents that pass the great seal; which business is done by their under clerks, each of whom has a seat there, and whereof every sixth clerk has a certain number in his office, usually about ten; the whole body being called the sixty clerks.

The Cursitors of the court, four-and-twenty in number, make out all original writs in chancery, which are returnable in C. B. &c. and among these the business of the several counties is severely distributed.

The Register is a place of great importance in this court, and he hath several deputies under him, to take cognisance of all orders and decrees, and enter and draw them up, &c.

The Master of the Subpœna Office issues out all writs of subpœna.

The Examiners are officers in this court, who take the depositions of witnesses, and are to examine them, and make out copies of the depositions.

The Clerk of the Affidavits files all affidavits used in court, without which they will not be admitted.

The Clerk of the Rolls sits constantly in the rolls to make searches for deeds, offices, &c. and to make out copies.

The Clerks of the Petty-Bag Office, in number three, have great variety of business that goes through their hands, in making out writs of summons to parliament, congé d'elire for bishops, patents for customers, liberatæ upon extent of statute-staple, and recovery of recognisances forfeited, &c. And also relating to suits for and against privileged persons, &c. And the clerks of this office have several clerks under them.

The Usher of the Chancery had formerly the receiving and custody of all money ordered to be deposited in court, and paid it back again by order; but this business was afterwards assumed by the masters in chancery, till, by stat. 12 Geo. I. c. 32. a new officer was appointed, called The Accountant General, to receive the money lodged in court, and convey the same to the Bank, to be there kept for the suitors of the court.

There is also a Serjeant at Arms, to whom persons standing in contempt are brought up by his substitute as prisoners.

A Warden of the Fleet, who receives such prisoners as stand committed by the court, &c.

Besides these officers, there is a clerk of the crown in Chancery; clerk and controller of the hanaper; clerk for enrolling letters patent,
not employed in proceedings of equity, but concerned in making out commissions, patents, pardons, &c. under the great seal, and collecting the fees thereof. A clerk of the faculties, for dispensations, licenses, &c. clerk of the presentations, for benefices of the crown in the chancellor's gift; clerk of appeals, on appeals from the courts of the archbishop to the court of chancery; and divers other officers, who are constituted by the chancellor's commission. See for that, tit. Chancery, Judges.

Chancellor of a Diocese, or, of a Bishop. A person appointed to hold the Bishop's courts, and to assist him in matters of ecclesiastical law. This officer, as well as all other ecclesiastical ones, if lay or married, must be a Doctor of the civil law, so created in some university. Stat. 37 Hen. VIII. c. 17.

Chancellor of the Duchy of Lancaster. An officer before whom, or his deputy, the court of the Duchy Chamber of Lancaster is held. This is a special jurisdiction concerning all matter of equity relating to lands held of the king in right of the Duchy of Lancaster. Hob. 77. 2 Lev. 24. This is a thing very distinct from the county palatine, which hath also its separate chancery for sealing of writs and the like. 1 Vent. 257. This Duchy comprises much territory which lies at a vast distance from the county, as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as on the equity side in the courts of Exchequer and Chancery. 4 Inst. 206. So that it seems not to be a court of record; and it has been holden that those courts have a concurrent jurisdiction with the Duchy Court, and may take cognisance of the same causes. 1 C. R. 55. Toth. 145. Hard. 171. See tit. Equity.

This court is held in Westminster-Hall, and was formerly much used. Under the chancellor of the Duchy are an attorney of the court, one chief clerk or register, and several auditors, &c. See further tit. Counties Palatine.

Chancellor of the Exchequer. Is likewise a great officer, who, it is thought by many, was originally appointed for the qualifying extremities in the Exchequer. He sometimes sits in court, and in the Exchequer Chamber, and with the judges of the court, orders things to the king's best benefit. He is mentioned in stat. 25 Hen. VIII. c. 16. and hath, by the stat. 33 Hen. VIII. c. 39. power, with others, to compound for the forfeitures upon penal statutes, bonds and recognisances entered into to the king. He hath also great authority in the management of the royal revenue, &c. which seems of late to be his chief business, being commonly the first commissioner of the treasury. And though the court of equity in the exchequer chamber, was intended to be helden before the treasurer, chancellor, and barons, it is usually before the barons only. When there is a lord treasurer, the chancellor of the exchequer is under treasurer.

CHANCE-MEDLEY. From the Fr. chance, lapsus, and mélèr, miscere.] Such killing of a man as happens either [in self-defence] on a sudden quarrel; or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 Hawk. P. C. c. 30. § 1.

The self-defence here meant, is that whereby a man may protect himself from an assault or the like in the course of a sudden brawl or quarrel, by killing him who assaults him. And this is what the law expresses by this word chance-medley, or as some rather choose to write it, chaud-medley; the former of which, in its etymology signifies a casual affray, the latter an affray in the heat of blood or passion; both of them of pretty much the same import; but the former is in common speech too often erroneously applied to any manner of homicide, by misadventure; whereas it appears by stat. 24 Hen. VIII. c. 5. and in ancient law books, that it is properly applied to such killing as happens to self-defence, in a sudden rencontre. 4 Comm. 183. cites Stamf. P. C. 16. 3 Inst. 55. 57. Foster, 275, 276. This being in fact a species of excusable homicide, comes more properly under the division of Murder, and is therefore treated of in that place. See tit. Homicide. In chance-medley the offender forfeits his goods, but hath a pardon of course. See stat. 6 Edw. I. c. 9.

CHANCERY.

CANCELLARIA.] The highest court of judicature in this kingdom next to the parliament, and of very ancient institution. The jurisdiction of this court is of two kinds, ordinary and extraordinary. The ordinary jurisdiction is that wherein the Lord Chancellor, Lord Keeper, &c. in his proceedings and judgments, is bound to observe the order and method of the common law; and the extraordinary jurisdiction is that which this court exercises in cases of equity.

The Ordinary Court holds plea of recognisances acknowledged in the Chancery, writs of seire facias for repeal of letters patent, writs of partition, &c. and also of all personal actions, by or against any officer of the court, and by acts of parliament of several offences and causes. All original writs, commissions of bankrupts, of charitable uses, and other commissions, as idiots, lunacy, &c. issue out of this court, for which it is always open; and sometimes a supersedeas, or writ of privilege, hath been here granted to discharge a person out of prison. An habeas corpus, prohibition, &c. may be had from this in the vacation; and here a supersedeas may be had to force witnesses to appear in other courts, when they have no power to call them. 4 Inst. 79. 1 Danw. Abr. 776.

The Extraordinary Court, or Court of Equity, proceeds by the rules of equity and conscience, and moderates the rigour of the common law, considering the intention rather than the words of the law. Equity being the correction of that wherein the law, by reason of its universality, is deficient. On this ground, therefore, to maintain a suit in Chancery, it is always alleged that the plaintiff is incapable of obtaining relief at common law; and this must be without any fault of his own, as by having lost his bond, &c. Chancery never acting against, but in assistance of the common law, supplying its deficiencies, not contradicting its rules. A judgment at law not being reversible by a decree in chancery. Cro. Eliz. 220. But a bill in chancery may be brought to compel the discovery of the contents of a
letter which would discharge the plaintiff of an action at law, before verdict obtained. 3 Ch. Rep. 17.

A sensible modern writer remarks, that it is not a very easy task accurately to describe the jurisdiction of our courts of equity. They who have attempted it have generally failed. The following extract from that writer on the subject may perhaps prove more acceptable than any thing which could fall from the Editor's own pen.

Early in the history of our jurisprudence, the administration of justice by the ordinary courts, appears to have been incomplete. To supply the defect, the courts of equity have gained an establishment; assuming the power of enforcing the principles, upon which the ordinary courts also decide, when the powers of those courts or their modes of proceeding are insufficient for the purpose; of preventing those principles, when enforced by the ordinary courts, from becoming, contrary to the purpose of their original establishment, instruments of injustice; and of deciding on principles of universal justice, where the interference of a court of judicature is necessary to prevent a wrong, and the positive law is silent. The courts of equity also administer to the ends of justice, by removing impediments to the fair decision of a question in other courts; by providing for the safety of property in dispute, pending a litigation; by restraining the assertion of doubtful rights, in a manner productive of irreparable damage; by preventing injury to a third person from the doubtful title of others; and by putting a bound to vexations and oppressive litigations, and preventing unnecessary multiplicity of suits; and, without pronouncing any judgment on the subject, by compelling a discovery which may enable other courts to give their judgment; and by preserving testimony, when in danger of being lost, before the matter to which it relates can be made the subject of judicial investigation. This establishment has obtained throughout the whole system of our judicial policy; most of the inferior branches of that system having their peculiar courts of equity; [e.g. the court of chancery, the courts of Wiles, the counties palatine, five ports, &c.] and the Court of Chancery assuming a general jurisdiction in cases which are not within the bounds, or are beyond the powers, of other jurisdictions. Mitford's Treatise on the Pleadings in Chancery, 8vo. 1787, 2d edition. See further, as to the origin and jurisdiction of Courts of Equity in general, this Dictionary, tit. Equity.

It is not, therefore, to be expected, that all the cases within the jurisdiction of this court can be enumerated with any degree of accuracy in such a work as this. What confusedly follows may serve to show the leading principles of its decision. They who desire further and more precise information, will consult Viner's, and the other Abridgments and Digests, which enter so much more fully into the subject.

This Court gives relief for and against infants, notwithstanding their minority; and for and against married women, notwithstanding their coverture. In some cases a woman may sue her husband for maintenance; she may sue him when he is beyond sea, &c. and be compelled to answer without her husband. All frauds and deceits, for which there is no remedy at common law, may here be redressed; as also unreasonable and deceitful engagements and agreements entered into, without consideration. 1 Vern. 205. See tit. Fraud. All breaches of trust and confidence, and accidents; as to relieve obligors, mortgagors, &c. against penalties and forfeitures, where the intent was only to pay the debt. Titles to lands, where the deeds are lost.
or suppress, may by this court be confirmed; conveyances rendered defective by mistake, may be made perfect, &c.

In this court executors may be called upon to give security and pay interest for money that is to lie long in their hands. Here executors may sue one another, or one executor alone may be sued by the legatees or others without the rest. Order may be made for performance of a will. It may be decreed who shall have the tuition of a child, and other matters are regulated as to the disposal of the goods of testators and intestates. See 3 Comm. 437. Under this head it may be observed that money articulated to be laid out in land, shall be taken as land in equity, and descend to the heir. 1 Danv. 770. There shall be no bill in equity against an executor, to discover assets before a suit commenced at law. Hard. 115. Sed qu. Legal assets shall be applied in a course of administration; but equitable assets amongst all the creditors proportionably, on a bill brought, &c. 2 Vern. 187. See tit. Assets, Executor.

Mortgages are not relievable in equity after twenty years, where no demand has been made, or interest paid, or where other particular circumstances do not interfere, &c. 2 Vent. 340. See tit. Mortgage.

Copyhold tenants may be relieved against the lords of manors; enclosures of common lands may be decreed; assignments of choses in action for a good consideration, though not valid in law, may be carried into effect; accounts are compelled to be rendered; the limitation of actions by statute may be relieved against.

A deed appearing to be cancelled, has been decreed to be a good deed, on special circumstances. 1 Ch. Cas. 249. Articles of agreement upon marriage reduced in twowriting, though not signed by either party, being proved to be agreed to, were decreed to be performed. 2 Vern. 200. Also an agreement in writing made since the statute of frauds, has been decreed to be discharged by parol. 1 Vern. 240.

A release shall be avoided for fraud, where there is suppressio veri, or suggestio falsi; and a release may be set aside in chancery by reason of the misapprehension of the party that gave it. 1 Vern. 20. 32. A will concerning lands may be avoided in a court of equity when obtained by fraud, &c. 2 Ch. Ref. 97. Heirs may be relieved in equity against unconscionable contracts made during their fathers' lives, to pay large sums of money on their outliving their fathers, and the securities are frequently decreed to be delivered up, on payment of the sum actually advanced. 2 Ch. Ref. 397. 1 Vern. 467.

A purchaser of land, without notice of an encumbrance, shall not be hurt thereby in equity; and in pleading a purchase, the defendant ought to deny notice of encumbrances, &c. Indentures of apprenticeship have been decreed to be delivered up, and the money given with the apprentice to be paid back by the master, on ill usage of the apprentice, &c. Finch. Ref. 135. Charity lands being let at a great undervalue, as was found by inquisition, on a commission of charitable uses, the lease was avoided in equity, and the lessee decreed to pay the arrears in rent according to the first value, and to yield up the possession. 2 Vern. 415. Other cases of relief, with respect to public charities and charitable corporations, come also under the immediate direction of the Court of Chancery.

It is common to give relief in chancery notwithstanding there is an agreement between the parties that there shall be no relief in law or equity. 1 Mod. 141. 505. In cases which tend to restrain freedom,
or introduce corruption into marriage contracts, the court are always most ready to afford relief. If a portion be given to a woman, provided she marries not without the consent of a certain person, although she marries without such consent, she shall be relieved in Chancery, and have her portion; unless the portion, on such marriage, had been limited over to another, in which case it is otherwise. 1 Dav. 752. 1 Mod. 300. If a father, on the marriage of his son, take a bond of the son, that he shall pay him so much, &c. this is void in equity, being adjudged by coercion while he is under the awe of his father. 1 Salk. 158. Also where a son, without privy of the father, treating the match, gives bond, to return any part of the portion, in equity it is void. Ibid. 156. But a man is not bound to discover the consideration of a bond generally given, which in itself implies a consideration. Hard. 200. See tit. Fraud, Marriage, &c.

If a factor to a merchant hath money in his hands, it shall be accounted his own, for equity cannot follow money; but it may goods to make them the merchant's which may be known, though money cannot. 1 Salk. 260.

Where trustees convert money raised out of land for payment of debts, to their own use, the heir shall have the land discharged, which hath borne its burden, and the trustees are liable to the debts in equity. 1 Salk. 153. If lessee for years, without impeachment of waste, about the end of his term cuts down timber-trees, the court of chancery may stop him by injunction. 1 Roll. Abr. 380. And tenant after possibility of issue extinct, or for life, dispensable of waste, may be stopped in equity from pulling down houses, &c. 1 Dav. 761.

The following is a general and comprehensive view of the nature and reason of the pleadings in chancery, extracted and abridged from Mr. Misford's Treatise. See also 3 Comm. 446. &c.

Previous to entering on the subject, it should be remembered, that Chancery will not retain a suit for any thing under 40s. value, except in cases of charity, nor for lands under 40s. per annum.

A suit to the extraordinary jurisdiction of the court of chancery on behalf of a subject merely, is commenced by preferring a bill (signed by counsel) in the nature of a petition to the lord chancellor, lord keeper, or lords commissioners of the great seal; or to the king himself, in his Court of Chancery, in case the person holding the seal is a party, or the seal is in the king's hand. But if the suit is instituted on behalf of the crown, or of those who partake of its prerogative, or whose rights are under its particular protection, as the objects of a public charity, the matter of complaint is offered by way of information, given by the proper officer; [usually the attorney-general.] Except in some few instances, bills and informations have always been in the English language; and a suit thus preferred is therefore commonly termed a suit by English bill, by way of distinction from the proceedings in suits within the ordinary jurisdiction of the court, which till the statute of 4 Geo. II. c. 26. were entered and enrolled more anciently in the French or Roman tongue, and afterwards in the Latin, in the same manner as the pleadings in the other courts of common law.

Every bill must have for its object one or more of the grounds upon which the jurisdiction of the court is founded; and as that jurisdiction sometimes extends to decide on the subject, and in some cases is only ancillary to the decision of another court, or a future suit, the bill may. 1. Either complain of some injury which the person exhibiting it suffers, and pray relief according to the injury; or, 2.
Without praying relief, may seek a discovery of matter necessary to support or defend another suit; or, 3. Although no actual injury is suffered, it may complain of a threatened wrong; and, stating a probable ground of possible injury, may pray the assistance of the court to enable the plaintiff or person exhibiting the bill, to defend himself against the injury whenever it shall be attempted to be committed.

As the court of Chancery has general jurisdiction in matters of equity which are not within the bounds, or which are beyond the powers of inferior jurisdictions, it assumes a control over those jurisdictions, by removing from them suits which they are incompetent to determine. To effect this, it requires the party injured to institute a suit in the court of Chancery, the sole object of which is, the removal of the former suit, by means of the writ of certiorari; and the prayer of the bill used for this purpose is confined to that object.

The bill, except it merely prays the writ of certiorari, requires the answer of the defendant or party complained of, upon oath; unless the party is entitled to privilege of peerage, or as a lord of parliament, or unless a corporation aggregate is made a party. In the first case the answer is required upon the honour of the defendant, and in the latter under the corporation seal.

[In the case of exhibiting a bill against a peer, the Lord Chancellor writes a letter to him, called a letter missive, and if he does not put in his answer, a subpoena issues, and then an order to show cause why a sequestration should not issue, and if he still stands out, then a sequestration is granted; for there can be no process of contempt against the person of a peer. The process is the same against a member of the house of commons, except the letter missive.] See tit. Privilege III.

An answer is thus required in the case of a bill, seeking the decree of the court on the subject of the complaint, with a view, 1. To obtain an admission of the case made by the bill either in aid of proof; or, 2. To supply the want of it; 3. To obtain a discovery of the points in the plaintiff's case, controverted by the defendant; and, 4. Of the grounds on which they are controverted; 5. To gain a discovery of the case on which the defendant relies; and, 6. Of the manner in which he means to support it.

If the bill seeks only the assistance of the court to protect the plaintiff against a future injury, the answer of the defendant, upon oath, may be required to obtain an admission of the plaintiff's title, and a discovery of the claims of the defendant, and the grounds on which those claims are intended to be supported.

When the sole object of the bill is a discovery of matter necessary to support or defend another suit, the oath of the defendant is required to compel that discovery; which oath, however, the plaintiff may, if he thinks proper, dispense with, by consenting to, or obtaining an order of court for the purpose; and this is frequently done for the convenience of parties.

To the bill thus preferred, (unless it is merely for a certiorari,) it is necessary for the person or persons complained of to make defence, or to disclaim all rights to the matter in question.

As the bill calls upon the defendant to answer the several charges it contains, he must do so, unless he can dispute the right of the plaintiff to compel such answer; either, 1. From some impravity in requiring the discovery sought; or, 2. From some objection to the proceeding to which the discovery is proposed to be assistant; or, 3. Unless
by disclaiming all right to the matters in question, he shows a further
answer from him to be unnecessary.

The grounds on which defence may be made to a bill either by answer,
or by disputing the right of the plaintiff to compel such answer, are
various. 1. The subject of the suit may not be within the jurisdiction
of a court of equity; 2. Some other court of equity may have the
proper jurisdiction; 3. The plaintiff may not be entitled to sue, by
reason of some personal disability; 4. The plaintiff may not be the
person he pretends to be; 5. He may have no interest in the subject;
or, 6. Though he has such interest he may have no right to call upon
the defendant concerning it; 7. The defendant may not be the per-
son he is alleged to be by the bill; or, 8. He may not have that in-
terest in the subject to make him liable to the claims of the plaintiff.
And notwithstanding all these requisites concur; 9. Still the plaintiff
may not be entitled in the whole or in part to the relief or assistance
he prays; or, 10. Even if he is so entitled, the defendant may also
have rights in the subject which may require the attention of the
court, and call for its interference to adjust the rights of all parties.
The effecting complete justice, and finally determining, as far as possible,
all questions concerning the subject, being the constant aim of
courts of equity.

Some of these grounds may extend only to entitle the defendant
to dispute the plaintiff’s claim to the relief prayed by the bill; and
may not be sufficient to protect him from making the discovery sought
by it; and where there is no ground for disputing the plaintiff’s right
to relief, or if no relief is prayed, the impropriety or immateriality
of the discovery may protect the defendant from making it.

The form of making defence varies according to the foundation on
which it is made, and the extent in which it submit to the judgment
of the court. If it rests on the bill, and, on the foundation of the mat-
ter there apparent, demand the judgment of the court, whether the
suit shall proceed at all, it is termed A Demurrer. If on the founda-
tion of new matter offered, it demands judgment whether the defend-
ant shall be compelled to answer further, it assumes a different form,
and is termed A Plea. If it submits to answer generally the charges
in the bill, demanding the judgment of the court on the whole case
made on both sides, it is offered in a shape still different, and is
simply called An Answer. If the defendant disclaims all interest in the
matters in question, his answer to the complaint made is different
from all the others, and is termed A Disclaimer. And these several
forms, or any of them, may be used together, if applied to separate
and distinct parts of the bill.

A Demurrer being founded on the bill itself, necessarily admits the
truth of the facts contained in the bill, or in that part of it to which
the demurrer extends; and therefore as no fact can be in question
between the parties, the court may immediately proceed to pronounce
its definitive judgment on the demurrer; which if favourable to the
defendant, puts an end to so much of the suit as the demurrer extends
to. A demurrer thus allowed consequently prevents any further pro-
ceeding.

A Plea is also intended to prevent further proceeding at large,
by resting on some point founded on matter stated in the plea; and it
therefore admits, for the purposes of the plea, the truth of the facts
contained in the bill, so far as they are not controverted by facts stated
in the plea. Upon the sufficiency of this defence the court will also give
immediate judgment, supposing the facts stated in it to be true; but
the judgment, if favourable to the defendant, is not definitive; for the truth of the plea may be denied by a Replication, and the parties may then proceed to examine witnesses, the one to prove and the other to disprove the facts stated in the plea. The replication in this case concludes the pleadings, though, if the truth of the plea is not supported, further proceedings may be had, which will be noticed presently.

An Answer generally controverts the facts stated in the bill, or some of them; and states other facts to show the rights of the defendant, in the subject of the suit; but sometimes it admits the truth of the case made by the bill, and either with or without stating additional facts, submits the questions arising upon the case, thus made, to the judgment of the court. If an answer admits the facts stated in the bill, or such of them as are material to the plaintiff's case; and states no new facts, or such only as the plaintiff is willing to admit, no further pleading is necessary; the court will decide on the answer, considering it as true. So if the sole object of the suit is to obtain a discovery there can be no proceeding beyond an answer by which the discovery is obtained. But if necessary to maintain the plaintiff's case, or of any part of it, may be denied, and the sufficiency of the bill may be asserted by a replication, which in this case also concludes the pleadings, according to the present practice of the court.

If a Demurrer or Plea is overruled upon argument, the defendant must make a new defence. This he cannot do by a second demurrer of the same extent with that overruled; for although, by a standing order of the court, a cause of demurrer must be set forth in the pleading, yet if that is overruled, any other cause appearing on the bill may be offered on argument of the demurrer, and if valid, will be allowed, the rule of court affecting only the costs. But after a demurrer has been overruled, new defence may be made by a demurrer less extended, or by plea, or answer.—And after a plea has been overruled, defence may be made by demurrer, by a new plea, or by an answer, and the proceedings upon the new defence will be the same as if it had been originally made.

A Disclaimner neither asserting any fact, nor denying any right sought by the bill, admits of no further pleading.

Suits thus instituted are sometimes imperfect in their frame, or become so by accident before their end has been obtained; and the interests in the property in litigation may be changed, pending the suit, in various ways.—To supply the defects arising from any such circumstances, new suits may become necessary, to add to, or continue, or obtain the benefit of, the original suit. A litigation commenced by one party, sometimes renders necessary a litigation by another party, to operate as a defence, or to obtain a full decision on the rights of all parties. [And bills filed for this purpose are termed cross bills.]—Where the court has given judgment on a suit, it will in some cases permit that judgment to be controverted, suspended or avoided by a second suit; and sometimes a second suit becomes necessary to carry into execution a judgment of the court.—Suits instituted for any of these purposes are also commenced by bill; and hence arises a variety of distinctions of the kinds of bills necessary to answer the several purposes; [as bills of review, (which among other causes may be brought, where new matter is discovered, in time, after the decree made,) bills of revivor, &c.] See 3 Comm. 148. &c. and titles. See Review, Revivor; and on all the different kinds of bills there may Vol. I.
be the same pleadings as on a bill used for instituting an original suit.

It frequently happens, that pending a suit, the parties discover some error or defect in some of the pleadings; and if this can be rectified by amendment of the pleadings, the court will in many cases permit it. This indulgence is most extensive in the case of bills; which being often framed upon an inaccurate state of the case, it was formerly the practice to supply their deficiencies, and avoid the consequences of errors by special replications: but this tending to long and intricate pleading, the special replication, requiring a rejoinder, in which the defendant might in like manner supply the defects in his answer, and to which the plaintiff might surrejoin, the special replication is now disused, for this purpose: and the court will in general permit a plaintiff to rectify any error, or supply any defect in his bill, either by amendment or by a supplemental bill, and will also permit, in some cases, a defendant in like manner to complete his answer, either by amendment, or by a further answer.

If the plaintiff conceives a defendant's answer to be insufficient to the charges contained in the bill, he may take exceptions against it, on which it is referred to a master to report whether it be sufficient or not; to which report exceptions may be also made. The answer, replication, and rejoinder, &c. being settled, and the parties come to issue, witnesses are examined upon interrogatories, either in court, or by commission in the country, wherein the parties usually join; and when the plaintiff and defendant have examined their witnesses, publication is made of the depositions, and the cause is set down for hearing; after which follows the decree.

If, however, in the process of the cause, the parties come to an issue of fact, which by the common law is triable by a jury, the Lord Chancellor, in this case, delivers the record into the King's Bench, to be tried there; and after trial had, the record is remanded into Chancery, and judgment given there. Trials and issues at law are frequently directed by the court, which in that case makes an interlocutory decree or order, that after trial the parties shall resort to the court on the equity reserved.

Interlocutory orders and decrees are also made on other occasions; as for injunctions till a hearing, where the injury sustained by the plaintiff requires such immediate interference. See tit. Injunction.

If the plaintiff dismisses his own bill, or the defendant obtains the dismissal of it for want of prosecution, or if the decree is in behalf of the defendant, the bill is dismissed with the costs to be taxed by a master. Stat. 4 & 5 Ann. c. 16. If the defendant does not appear on being served with the process of subohn, in order to answer, upon affidavit of the service of the writ, an attachment issues out against him: and if a non est inventus is returned, an attachment with proclamation goes forth against him: and if he stands further out in contempt, then a commission of rebellion may be issued, for apprehending him, and bringing him to the Fleet prison; in the execution whereof the persons to whom directed may justly breaking open doors. If the defendant stands further in contempt, a serjeant at arms is to be sent out to take him; and if he cannot be taken, a sequestration of his land may be obtained till he appears. And if a decree, when made, is not obeyed, being served upon the party under the seal of the court, all the aforementioned processes of contempt may issue out against him, for his imprisonment till he yields obedience to it. The court of Chancery, notwithstanding its very extensive
power, binding the person only, and not the estate or effects of the defendant. And in this sense, we presume, it is said that it is no court of record. 


Where there is any error in a decree in matter of law, there may be a bill of review, which is in nature of a writ of error; or an appeal to the House of Lords. Old authorities have been quoted, that a writ of error lies returnable in B. R.—And that a judgment of Chancery may be referred to the twelve judges. 4 Inst. 80. 3 Bulst. 116. But it is now usual to appeal to the House of Lords; which appeals are to be signed by two counsel of eminence, and exhibited by way of petition; the petition of appeal is lodged with the clerk of the House of Lords, and read in the house, whereon the appellee is ordered to put in his answer, and a day fixed for hearing the cause; and after counsel heard, and evidence given on both sides, the Lords affirm or reverse the decree of the Chancery, and finally determine the cause by a majority of votes, &c. Though it is to be observed on an appeal to the Lords from a decree in Chancery, no proofs will be permitted to be read as evidence, which were not made use of in the Chancery. Preced. Canc. 212.

For further matter as to the jurisdiction of the court, its modes of proceeding, and the various cases wherein it relieves, &c. vide Com. Dig. (2 V.) tit. Chancery, and Mr. Mitford's Treatise before quoted.

There are several statutes relating to the court of Chancery. By stat. 23 Edw. I. c. 5. the court of Chancery is to follow the king. By stat. 18. Edw. III. stat. 5. the oaths of the clerks in Chancery are appointed. The chancellor and treasurer may correct errors in the Exchequer. Whosoever shall find himself grieved with any statute, shall have his remedy in Chancery. 36 Edw. III. c. 9. 31 Edw. III. stat. 1. c. 12. And see 15 Rich. II. c. 12. 17 Rich. II. c. 6. & 4 Hen. VIII. c. 9.

No subpoena, or other process of appearance, shall issue out of Chancery, &c. till after a bill is filed, (except bills for injunctions to stay waste, or to stay suits at law commenced,) and a certificate thereof brought to the subject's office. Stat. 4 & 5 Ann. c. 16. Persons in remainder, or reversion of any estate, after the death of another, on making affidavit in the court of Chancery, that they have cause to believe such other person dead, and his death concealed by the guardian, trustees, or others, may move the lord chancellor to order such guardian, trustees, &c. to produce the person suspected to be concealed; and if he be not produced, he shall be taken to be dead, and those in reversion, &c. may enter upon the estate: and if such person be abroad, a commission may be issued for his being viewed by commissioners. Stat. 6 Ann. c. 18.

Infants under the age of twenty-one years, seised of estates in trust, or by way of mortgage, are enabled by statute to make conveyances thereof; or they may be compelled thereto, by order of the court of Chancery, &c. upon petition and hearing of the parties concerned. 7 Ann. c. 9. And see the statute of 4 Geo. II. c. 10. whereby idiots and lunatics seised of estates in trust, &c. may make conveyances by order of the Chancery, &c. See tit. Infant, Lunatic.

By 12 Geo. I. c. 32 & 33. the power of the masters was abridged, with respect to the suitors' money, which is now to be paid into the Bank of England: and an additional stamp-duty, on writs, processes, &c. is granted for relief of the suitors, and as a common stock of the Court of Chancery.
All orders and decrees made and signed by the Master of the Rolls, shall be deemed and taken to be good and valid orders and decrees of the court of Chancery; but not to be enrolled till signed by the lord chancellor, and subject to reversal, &c. by him. Stat. 3 Geo. II. c. 30.

Where a defendant does not appear after sub judice issued, but keeps out of the way to avoid being served with the process; on affidavit that he is not to be found, and suspected to be gone beyond sea, or to abscond, &c. the court of Chancery will make an order for his appearance at a certain day; a copy of which order is to be published in the London Gazette, &c. and then, if he do not appear, the plaintiff's bill shall be taken juxta confesso, and the defendant's estate sequestered, &c. But persons out of the kingdom, returning in seven years, may have a rehearing in six months, and be admitted to answer; otherwise to be barred by final decree. 5 Geo. II. c. 25. See Pro Confesso.

By 12 Geo. II. c. 24. part of the suitors' cash is to be placed out at interest, for defraying the charges of the Accountant-General's office. And see 23 Geo. II. c. 25. for making good deficiencies to the clerk of the hanaper, and for augmenting the income of the Master of the Rolls.

By 1 Geo. III. c. 1. § 6. the king is empowered to grant a sum not exceeding 5,000l. per annum to the chancellor.

By 4 Geo. III. c. 32. part of the suitors' cash unclaimed to be placed at interest; to be applied to the Accountant-General's third clerk, and other purposes.

By 5 Geo. III. c. 28. 80,000l. of the suitors' cash was placed at interest; and 200l. per annum paid thereout half yearly, to each of the eleven masters of the court, and 400l. per annum additional, under 46 Geo. III. c. 128.

By 6 Geo. III. c. 19. 20,000l. more of the suitors' money was placed at interest; out of which 460l. per annum is paid in salaries, viz. 250l. to the accountant-general; 50l. to his first clerk; 40l. to his second clerk; and 120l. to his fourth clerk, in lieu of all fees. The residue being brought to account. By 46 Geo. III. c. 129. further claims and allowances are given out of the same fund, viz. to the first and second clerk 100l.; third clerk 200l.; fourth clerk 250l.; fifth and sixth clerks 180l.; seventh clerk 200l.; and also 180l. per annum each to four additional clerks, and 200l. per annum to the Accountant General for furniture, books, and stationery.

By 14 Geo. III. c. 43. 50,000l. more was in like manner placed out; and out of the interest thereof, and the surplus interest under 12 Geo. II. c. 24. 5 Geo. III. c. 28. and 9 Geo. III. c. 19. the Chancellor is by his order to direct the rebuilding of the six clerks' office, and apply 10,000l. (and by 20 Geo. III. c. 33. 3,000l. more) for building the Registrar's and Accountant-General's offices; to be vested in the Accountant-General and his successors.

By 15 Geo. III. c. 22. part of Lincoln's-Inn garden was vested in the Accountant-General, in trust, for the purposes in the last act, as to the Registrar's and Accountant-General's office.

By 15 Geo. III. c. 55. the Lord Chancellor may apply certain sums to be raised, as mentioned in 14 Geo. III. for the purposes of this and that act; the Six Clerks' office to be built on part of Lincoln's-Inn garden, and the same vested in the Six Clerks.

The stat. 17 Geo. III. c. 59. regulates the leases to be made from time to time, by the Master of the Rolls for the time being.
By Stat. 32 Geo. III. c. 42. 300,000l. further is to be employed in building offices for the Masters in Chancery, &c.

By 46 Geo. III. c. 128. § 2. the Lord Chancellor is empowered to order an annuity of 1,500l. to be paid (out of the suitors' money unapplied) to Masters in Chancery, on their resigning after twenty years standing; or in case of permanent infirmity.

For other parts of this subject, see tit. Injunctions, Interrogatories, &c.

CHANGER, An officer belonging to the king's mint, whose office consists chiefly in exchanging coin for bullion brought in by merchants or others; it is written after the old way, chaunger. Stat. 2 Hen. VI. c. 12.

CHANTER, cantator.] A Singer in the choir of a cathedral church; and is usually applied to the chief of the singers. This word is mentioned in 13 Eliz. c. 10. At St. David's cathedral in Wales, the chanter is next to the bishop; for there is no dean. Camb. Brittain.

CHANTRY, or CHAUNTRY, cantaria.] A little church, chapel, or particular altar, in some cathedral church, &c. endowed with lands, or other revenues, for the maintenance of one or more priests, daily to sing mass, and officiate divine service for the souls of the donors, and such others as they appointed. See Stat. 1 Edw. VI. c. 14. which in effect put an end to all these chantries, by declaring it not to be lawful for any person to enter for non-performance of the conditions on which they were founded.

Of these chantries, mention is made of forty-seven belonging to St. Paul's church in London, by Dugdale, in his history of that church.

CHAPEL, capella, Fr. chapelle.] Is either adjoining to a church, for performing divine service; or separate from the mother church, where the parish is wide, which is commonly called a chapel of ease. And chapels of ease are built for the ease of those parishioners who dwell far from the parochial church, in prayer and preaching only; for the sacraments [marriages] and burials ought to be performed in the parochial church. 2 Roll. Abr. 340.

These chapels are served by inferior curates, provided at the charge of the rector, &c. And the curates are therefore removeable at the pleasure of the rector or vicar; but chapels of ease may be parochial, and have a right to sacraments and burials, and to a distinct minister, by custom; (though subject in some respects to the mother church;) and parochial chapels differ only in name from parish churches, but they are small, and the inhabitants within the district are few. In some places chapels of ease are endowed with lands or tithes, and in other places by voluntary contributions; and in some few districts there are chapels which baptize and administer the sacraments, and have chapel-wardens; but these chapels are not exempted from the visitation of the ordinary, nor the parishioners who resort thither from contributing to the repairs of the mother church; especially if they bury there; for the chapel generally belongs to, and is as it were a part of the mother church; and the parishioners are obliged to go to the mother church, but not to the chapel. 2 Roll. Abr. 283. And hence it is said, that the offerings made to any chapel, are to be rendered to the mother church; unless there be a custom that the chaplain shall have them.

Public chapels annexed to parish churches, shall be repaired by the parishioners, as the church is, if any other persons be not bound
to do it. 2 Inst. 488. Besides the before-mentioned chapels, there are free chapels, perpetually maintained and provided with a minister, without charge to the rector or parish; or that are free and exempt from all ordinary jurisdiction; and these are where some lands or rents are charitably bestowed on them. Stat. 37 Hen. VIII. cap. 489. There are also private chapels, built by noblemen and others, for private worship, in or near their own houses, maintained at the charge of those noble persons to whom they belong, and provided with chaplains and stipends by them; which may be erected without leave of the bishop, and need not be consecrated, though they anciently were so, nor are they subject to the jurisdiction of the ordinary.

There are likewise chapels in the Universities, belonging to particular colleges, which, though they are consecrated, and sacraments are administered there, yet they are not liable to the visitation of the bishop, but of the founder. 2 Inst. 363. See tit. Marriage.

CHAPELRY, capellania.] Is the same thing to a chapel as a parish to a church; being the precinct and limits thereof.

CHAPERON, Fr.] A hood or bonnet, anciently worn by the knights of the garter, as a part of the habit of that noble order; but in heraldry it is a little escutcheon fixed in the forehead of the horses that draw a hearse at a funeral.

CHAPITERS, Lat. capitula, Fr. chapitres, i.e. chapters of a book.] Signify in our common law a summary of such matters as are to be inquired of, or presented before justices in eyre, justices of assize, or of peace, in their sessions. Britton, chap. 3. useth the word in this signification; and chapters are now most commonly called articles, and delivered by the mouth of the justice in his charge to the inquest; whereas, in ancient times, (as appears by Bracton and Britton,) they were, after an exhortation given by the justices for the good observation of the laws and the king’s peace, first read in open court, and then delivered in writing to the grand inquest, for their better observance; and the grand jury were to answer upon their oaths to all the articles thus delivered them, and not put the judges to long and learned charges to little or no purpose, for want of remembering the same, as they do now, when they think their duty well enough performed, if they only present those few of many misdemeanors which are brought before them by way of indictment.

It is to be wished that this order of delivering written articles to grand juries were still observed, whereby crimes would be more effectually punished: in some inferior courts, as the court leet, &c. in several parts of England, it is usual at this day for stewards of those courts to deliver their charges in writing to the jurors sworn to inquire of offences. Horne, in his Mirror of Justices, expresses what those articles were wont to contain. Lib. 3. cap. des Articles in Eyre.

And an example of articles of this kind, may be found in the book of assises. F. 138.

CHAPLAIN, capellanus.] Is most commonly taken for one that is depending upon the king, or other noble person, to instruct him and his family, and say divine service in his house, where there is usually a private chapel for that purpose. The King, Queen, Prince, Princess, &c. may retain as many chaplains as they please; and the king’s chaplains may hold any such number of benefices of the king’s gift, as the king shall think fit to bestow upon them.

An Archbishop may retain eight chaplains; a Duke, or a Bishop, six; Marquis or Earl, five; Viscount, four; Baron, Knight of the Garter,
Lord Chancellor, three; a Duchess, Marchioness, Countess, Baroness, (being widows,) the Treasurer, and Controller of the king’s house, the King’s Secretary, Dean of the Chapel, Almoner, and Master of the Rolls, each of them two; the Chief Justice of the King’s Bench, and Warden of the Cinque Ports, one; all which chaplains may purchase a license or dispensation, and take two benefices with cure of souls.


But both the livings must have cure of souls; and the statute expressly excepts deaneries, archdeaconries, chancellorships, treasurerships, prebends, and sinecure rectories. A license is excepted deaneries, archdeaconries, who are of the privy council, who may hold three by dispensation, without a dispensation; and in that case, if the first annum.

By the canon law, no person can hold a second incompatible benefice, sans another clerk, or the bishop may deprive; but till deprivation, no advantage can be taken by lapse. See fit. Addivson. But independent of the statute, a clergyman by dispensations may hold any number of benefices, if they are all under st. per annum, except the last, and then by a dispensation under the statute, he may hold one more.

Comm. 392 in n. See Plurality.

By the 41st canon of 1603, the two benefices must not be further distant from each other than thirty miles; and the person obtaining the dispensation, must at least be a master of arts in one of the Universities. But the provisions of this canon are not enforced or regarded in the temporal courts. 2 Bl. Rep. 968. See ente, tit. Canon Law.

Also every Judge of the King’s Bench and Common Pleas; and Chancellor and Chief Baron of the Exchequer, and the King’s Attorney and Solicitor-General, may each of them have one chaplain attendant on his person, having one benefice with cure, who may be non-resident on the same by stat. 25 Hen. VIII. cap. 16.

And the Groom of the stole, Treasurer of the king’s chamber, and Chancellor of the duchy of Lancaster, may retain each one chaplain. Stat. 33 Hen. VIII. cap. 28. But the chaplains under these two last statutes, are not entitled to dispensations under stat. 21 Hen. VIII.

If a nobleman hath his full number of chaplains allowed by law, and retains one more, who has dispensation to hold plurality of livings, it is not good. Cro. Eiz. 723.

If one person has two or more of the titles or characters mentioned in stat. 21 Hen. VIII. c. 13. united in himself, he can only retain the number of chaplains limited to his highest degree. 4 Co. 96.

The king may present his own chaplains, i. e. waiting chaplains in ordinary, to any number of livings in the gift of the crown, and even in addition to what they hold upon the presentation of a subject without dispensation; but a king’s chaplain being benefited by the king, cannot afterwards take a living from a subject, but by a dispensation according to the stat. § 29. 1 Salk. 161.

A person retaining a chaplain, must not only be capable thereof at the time of granting the instrument of retainer, but he must continue capable of qualifying till his chaplain is advanced; and therefore if a duke, earl, &c. retain a chaplain, and die; or if such a noble person be attainted of treason; or if an officer, qualified to retain a chaplain, is removed from his office, the retainer is determined; but where a chaplain hath taken a second benefice before his lord dieth or is attainted, &c. the retainer is in force to qualify him to enjoy the benefices.
And if a woman that is noble by marriage, afterwards marries under the degree of nobility, her power to retain chaplains will be determined; though it is otherwise where a woman is noble by descent if she marry under degree of nobility, for in such case her retainance before or after marriage is good. A Baronesse, &c. during the coverture, may not retain chaplains; if she doth, the lord, her husband, may discharge them, as likewise her former chaplains, before their advancement. 4 Rep. 118.

A chaplain must be retained by letters testimonial under hand and seal, or he is not a chaplain within the statute; so that it is not enough for a spiritual person to be retained by word only to be a chaplain, by such person as may qualify by the statutes to hold livings, &c. although he abide and serve as chaplain in the family. And where a nobleman hath retained and thus qualified his number of chaplains, if he dismisses them from their attendance upon any displeasure, after they are preferred, yet they are his chaplains at large, and may hold their livings during their lives; and such nobleman, though he may retain other chaplains in his family merely as chaplains, he cannot qualify any others to hold pluralities while the first are living for if a nobleman could discharge his chaplain when advanced, to qualify another in his place, and qualify other chaplains, during the lives of chaplains discharged, by these means he might advance as many chaplains as he would, whereby the statutes would be evaded. 4 Rep. 90. See further tit. Advowson, Parson. 3 Comm. 392. n.

CHAPTER, capitulum. A congregation of clergymen under the Dean in a cathedral church; congregatio clericorum in ecclesia cathedrali, conventuali, regulari, vel collegiata. This collegiate company is metaphorically termed capitulum, signifying a little head, it being a kind of head, not only to govern the diocese in the vacancy of the bishopric, but also in many things to advise and assist the bishop when the see is full, for which, with the dean, they form a council. Co. Litt. 103. The chapter consists of prebendaries or canons, which are some of the chief men of the church, and therefore are called capitulum; they are a spiritual corporation aggregate which they cannot surrender without leave of the bishop, because he hath an interest in them; they, with the dean, have power to confirm the bishop's grants; during the vacancy of an archbishopric, they are guardians of the spiritualities, and as such have authority by the statute 25 Hen. VIII. cap. 21. to grant dispensations; likewise as a corporation they have power to make leases, &c.

When the dean and chapter confirm grants of the bishop, the dean joins with the chapter, and there must be the consent of the major part; which consent is to be expressed by their fixing of their seal to the deed, in one place, and at one time, either in the chapter-house or some other place; and this consent is the will of many joined together. Dyer, 233. They had also a check on the bishop at common law; for till stat. 32 Hen. VIII. c. 23. his grant or lease would not have bound his successors, unless confirmed by the Dean and Chapter. 1 Inst. 103.

A chapter is not capable to take by purchase or gift, without the dean, who is the head of the body; but there may be a chapter without a dean, as the chapter of the collegiate church of Southwell; and grants by, or to them, are as effectual as other grants by dean and chapter. Yet where there are chapters without deans, they are not properly chapters; and the chapter in a collegiate church, where there is no episcopal see, as at Westminster and Windsor, is more properly called a college.
Chapters are said to have their beginning before deans; and formerly the bishop had the rule and ordering of things without a dean and chapter, which were constituted afterwards; and all the ministers within his diocese were as his chapter, to assist him in spiritual matters. 2 Roll. Rep. 454. 3 Comm. 75. The bishop hath a power of visiting the dean and chapter; but the dean and chapter have nothing to do with what the bishop transacts as ordinary. 3 Rep. 75. Though the bishop and chapter are but one body, yet their possessions are for the most part divided; as the bishop hath his part in right of his bishopric; the dean hath a part in right of his deanery; and each prebendary hath a certain part in right of his prebend; and each too is incorporated by himself.

Deans and Chapters have some of them ecclesiastical jurisdiction in several parishes, (besides that authority they have within their own body,) executed by their officials; also temporal jurisdiction in several manors belonging to them, in the same manner as bishops, where their stewards keep courts, &c. 2 Roll. Abrid. 229. It has been observed, that though the chapter have distinct parcels of the bishop's estate assigned for their maintenance, the bishop hath little more than a power over them in his visitations, and is scarce allowed to nominate half of those to their prebends, who were originally of his family; but of common right it is said he is their patron. Roll. Ibid. They are now sometimes appointed by the king, sometimes by the bishop, and sometimes they are elected by each other. 1 Comm. 383. See further tit. Dean, Prebend.

CHARACTER false. See Servants.


CHARGE and DISCHARGE. A charge is said to be a thing done that bindeth him that doth it, or that which is his, to the performance thereof; and discharge is the removal, or taking away of that charge. Terms de Ley. Land may be charged divers ways; as by grant of rent out of it, by statutes, judgments, conditions, warrants, &c. Lands in fee-simple may be charged in fee; and where a man may dispose of the land itself, he may charge it by a rent or statute, one way or other. Lit. sect. 648. Moor, Ca. 129. Dyer, 10. If one charge land in tail, and land in fee-simple, and die; the land in fee only shall be chargeable. Bro. Cha. 9.

Lands entailled may be charged in fee, if the estate-tail be cut off by recovery; if tenant in tail charge the land, and after levy a fine or suffer a recovery of the lands, to his own use; this confirms the charge and it shall continue. 1 Rep. 61. A tenant for life charges the land, and then makes a feoffment to a stranger, or doth waste, &c. whereby it is forfeited, he in reversion shall hold it charged during his (the tenant's) life; and if one have a lease for life or years of land, and grant a rent out of it; if after he surrenders his estate, yet the charge shall continue so long as the estate had endured, in case it had not been surrendered. 1 Rep. 67. 145. Dyer, 10.

If one joint-tenant charge land, and after release to his companion and die, the survivor shall hold it charged: but if it had come to him by survivorship, it would be otherwise. 6 Rep. 76. 1 Shef. Abrid. 325. He that hath a remainder or reversion of land may charge it; because of the possibility that the land will come into possession, and then the possession shall be charged. But where one leases land for life, and grants the reversion or remainder over to A. B. who charges the land, and dies, and the tenant for life is heir to the fee; in this case he...
shall hold it discharged, for he had the possession by purchase, though he had the fee by descent. Bro. 11. 16. 1 Rep. 62.

If a rent be issuing out of a house, &c. and it falls down, the charge shall remain upon the soil. 9 Edw. IV. 20. But when the estate is gone upon which the charge was grounded, there, generally, the charge is determined. Co. Lit. 349. And in all cases where any executory thing is created by deed, there by consent of all the parties it may be by deed defeated and discharged. 10 Rep. 49. See tit. Estate, Limitations, Mortgage, &c.

CHARITABLE CORPORATION. A society of persons in the late reign obtained a statute to lend money to industrious work, at 5l. per cent. interest on pawns and pledges, to prevent their falling into the hands of the pawn-brokers, and therefore they were called the Charitable Corporation; but they likewise took 5l. per cent. for the charge of officers, warehouses, &c. And in the fifth year of King Geo. II. the chief officers of this corporation, by connivance of the principal directors, absconded and broke, and defrauded the public proprietors of great sums; for relief of the sufferers wherein, as to part of their losses, several statutes were made and enacted. See stats. 5 Geo. II. cc. 31, 32. 7 Geo. II. c. 11.

CHARITABLE USES. The laws against devises in mortmain (see that tit.) do not extend to any thing but superstitious uses; it is therefore held, that a man may give lands for the maintenance of a school, an hospital, or any other charitable uses. But as it was apprehended, from recent experience, that persons on their death beds might make large and improvident dispositions, even for these good purposes, and defeat the political end of the statutes of mortmain, it is therefore enacted by stat. 9 Geo. II. c. 36. that no lands or tenements, or money to be laid out thereon, shall be given for, or charged with, any charitable uses whatsoever, unless by deed indented, executed in the presence of two witnesses, twelve calendar months before the death of the donor; and enrolled in the court of chancery within six months after its execution; (except stock in the public funds, and which must be transferred at least six calendar months previous to the donor's death;) and unless such gift be made to take effect immediately and be without power of revocation; and that all other gifts shall be void. The two Universities, their colleges, and the scholars on the foundation of the colleges of Eaton, Winchester and Westminster, are exempted out of this act; but with this proviso, that no college shall be at liberty to purchase more advowsons than are equal in number to one moiety of the fellows or students on their foundations.

Corporations are excepted out of the statutes of Wills, (32 Hen. VIII. c. 1. 34 Hen. VIII. c. 5. See tit. Devise, Wills,) to prevent the extension of gifts in mortmain; but now by construction of stat. 43 Eliz. c. 4. (see the next paragraph) it is held that a devise to a corporation for a charitable use is valid, as operating in the nature of the appointment, rather than of a bequest. And indeed the piety of the judges hath formerly carried them great lengths in supporting such charitable uses; (Pre. Ch. 272.) it being held that the stat. of Eliz. which favours appointments to charities, supersedes and repeals all former statutes; (Gilb. Ref. 45. 1 P. Wms. 248.) and supplies all defects of assurances. (Duke, 84.) And therefore not only a devise to a corporation, but a devise by a copyhold tenant, without surrender, to the use of his will, and a devise, nay, even a settlement by tenant in tail, without either fine or recovery, if made to a charitable use, is good by

The king as *pares patris* has the general superintendence of all charities, which he exercises by the Lord Chancellor. And therefore whenever it is necessary; the Attorney-General, at the relation of some informer, who is usually called the *relator*, files, *ex officio*, an information in the court of chancery; to have the charity properly established. Also by stat. 43 *Eliz.* c. 4. authority is given to the Lord Chancellor or Lord Keeper, and to the Chancellor of the *Duchy of Lancaster*, respectively, to grant commissions under their several seals, to inquire into any abuses of charitable donations, and rectify the same by decree; which may be reviewed in the respective courts of the several chancellors, upon exceptions taken thereunto. But, though this is done in the Petty-Bag Office in the court of Chancery, because the commission is there returned, it is not a proceeding at common law, but treated as an original cause in the court of equity. The evidence below is not taken down in writing; and the respondent in his answer to the exceptions may allege what new matter he pleases; upon which they go to proof, and examine witnesses in writing upon all the matters in issue; and the court may decree the respondent to pay all the costs, though no such authority is given by the statute. An appeal lies from the Chancellor's decree to the House of Peers, notwithstanding any loose opinion to the contrary. 3 *Comm.* 427.

Lands given to alms and aliened, may be recovered by the donor. 13 *Edw.* I. c. 41.

Lands, &c. may be given for the maintenance of houses of correction, or of the poor. Stat. 35 *Eliz.* c. 7. § 27. Commissioners to inquire of money given to poor prisoners. *Stats.* 22 & 23 *Car. II.* c. 20. § 11. 32 *Geo.* II. c. 28. § 9, 10. See tit. *Prisoners*.

Money given to put out apprentices, either by parishes or public charities, to pay no duty. 8 *Ann.* c. 9. § 40. See tit. *Apprentices*.

See this subject treated at length under tit. *Morimam;* and *Highmore's Law of Charitable Uses*.

**CHARKS.** Are pit-coal when charred or charkd; so called in *Worcester*, as sea-coal thus prepared at *Newcastle* is called coke.

**CHARRE OF LEAD.** A quantity of lead consisting of thirty *hils*, each pig containing six *stone* wanting two pounds, and every *stone* being twelve pounds. *Assisa de fonderibus*. *Rob.* 3. R. *Scot.* cap. 22.

**CHARTA**, a word made use of not only for a charter, for the holding an estate; but also a statute. See *Magna Charta*.

**CHARTE**, A cart, chart, or plan which mariners use at sea, mentioned in *stat.* 14 *Car. II.* cap. 33.

**CHARTEL, Fr. *cartel.***] A letter of defiance, or challenge to a single combat; in use hereunto to decide difficult controversies at law which could not otherwise be determined. *Blount*. A *Cartel* is now used for the instrument or writing for settling the exchange of prisoners of war; and a *cartel* for the ship used on such occasion, which is privileged from capture.

**CHARTER, Lat. *charta*, Fr. *chartres*, i. e. *instrumenta.*** Is taken in our law for written evidence of things done between man and man; whereof *Bracton*, lib. 2. cap. 26. says thus, *Flant aliquaando donationes in scriptis, sicut in chartis ad perpetuum rei memoriam, propter brevem hominum vitam, &c.* And *Britton*, in his 39th chapter, divides *charteres* into those of the king, and those of private persons. *Charters of the king* are those whereby the king passeth any grant to any person.
or body politic; as a charter of exemption, of privilege, &c. See tit. King.

Charter of pardon, whereby a man is forgiven a felony, or other offence committed against the king's crown and dignity; and of these there are several sorts. See tit. Pardon.

Charter of the forest, wherein the laws of the forest are comprised, such as the charter of Canatus, &c. Kitch. 314. Fleta, ubi 3. c. 14.

Charters of private persons are deeds and instruments for the conveyance of lands, &c. And the purchaser of lands shall have all the charters, deeds and evidences as incident to the same, and for the maintenance of his title. Co. Lit. 6. Charters belong to a feeoffice, although they be not sold to him, where the feeoffor is not bound to a general warranty of the land; for there they shall belong to the feeoffor, if they be sealed deeds or wills in writing; but other charters go to the tenant. Moor, Ca. 687. The charters, belonging to the feeoffor in case of warranty the heir shall have, though he hath no land by descent, for the possibility of descent after. 1 Rep. 1. See tit. Magna Charta.

CHARTERER. In Cheshire, a freeholder is called by this name. Sir P. Lely's Antiq. fol. 356.

CHARTER GOVERNMENTS in AMERICA. See tit. Plantations.

CHARTER LAND, terra per chartam.] See tit. Buckland.

CHARTER-PARTY, Lat. charta partita, Fr. chartre parti, i.e. a deed or writing divided.] Is what among merchants and sea-faring men is commonly called a pair of indentures, containing the covenants and agreements made between them, touching their merchandise and maritime affairs. 2 Inst. 673. Charter-parties of affreightment settle agreements, as to the cargo of ships, and bind the master to deliver the goods in good condition at the place of discharge, according to agreement; and the master sometimes obliges himself, ship, tackle and furniture, for performance.

The common law construes charter-parties, as near as may be, according to the intention of them, and not according to the literal sense of traders, or those who merchandise by sea; but they must be regularly pleaded. In covenant by charter-party, that the ship should return to the river of Thames, by a certain time, dangers of the sea excepted, and after, in the voyage, and within the time of the return, the ship was taken upon the sea by pirates, so that the master could not return at the time mentioned in the agreement; it was adjudged that this impediment was within the exception of the charter-party, which extends as well to any danger upon the sea by pirates and men of war, as dangers of the sea by shipwreck, tempest, &c. Stile, 132. 2 Roll. Abr. 248.

So where a charter-party of affreightment provided that in case of the "inability of the ship to execute or proceed on the service," certain persons should be at liberty to make such abatement out of the freight as they should think reasonable; held, that an inability of the ship to proceed to sea for want of men to navigate her, was within the proviso; although the want of such men proceeded from the ravages of the small-pox amongst the original crew, the death of some, and the desertion of others from the fear of the distemper, and an impossibility of procuring others on the spot in their room. Beason v. Shank. Stat. 43 Geo. III. 3 Rast, 233.

A ship is freighted at so much per month that she shall be out, covenanted to be paid after her arrival at the port of London; the
ship is cast away coming up from the Downs, but the lading is all preserved, the freight shall in this case be paid; for the money becomes due monthly by the contract, and the place mentioned is only to ascertain where the money is to be paid, and the ship is entitled to wages, like a mariner that serves by the month, who if he dies in the voyage, his executors are to be answered pro rata. Molloy de Jur. Maritim. 260. If a part owner of a ship refuse to join with the other owners in setting out of the ship, he shall not be entitled to his share of the freight; but by the course of the Admiralty, the other owners ought to give security if the ship perish in the voyage, to make good to the owner standing out, his share of the ship. Sir L. Jenkins, in a case of this nature, certified that by the Law Marine, and course of the Admiralty, the plaintiff was to have no share of the freight; and that it was so in all places, for otherwise there would be no navigation. Lex Mercat. See tit. Admiralty, Freight, Insurance.

CHARTIS REDDENDIS. An ancient writ which lay against one that had charters of feoffment entrusted to his keeping, and refused to deliver them. Reg. Orig. 159.

CHASE, Fr. chasse.] In its general signification is a great quantity of woody ground lying open, and privileged for wild beasts and wild fowl; and the beasts of chase properly extend to the buck, doe, fox, marten and roe; and in common and legal sense to all the beasts of the forest. Co. Lit. 233.

A chase differs from a park in that it is not enclosed; and also in that a man may have a chase in another man's ground, as well as in his own; being indeed the liberty of keeping beasts of chase or royal game therein, protected even from the owner of the land, with a power of hunting them thereon. 2 Comm. 38.

But if one have a chase within a forest, and he kill or hunt any stag or red deer, or other beast of the forest, he is finable. 1 Jones's Rep. 278.

A chase is of a middle nature between a forest and a park, being commonly less than a forest, and not endowed with so many liberties, as the courts of attachment, swainmote, and justice-seat; though of a larger compass, and stored with greater diversity both of keepers, and wild beasts or game, than a park.

A chase differs from a forest in this, because it may be in the hands of a subject, which a forest in its proper and true nature cannot; and from a park, in that it is not enclosed, and hath a greater compass, and more variety of game, and officers likewise. Crompt. in his Jurisd. fol. 148. says a forest cannot be in the hands of a subject, but it forthwith loseth its name, and becometh a chase; but, fol. 197. he says, a subject may be lord and owner of a forest, which though it seems a contradiction, yet both sayings are in some sort true; for the king may give or alienate a forest to a subject, so as when it is once in the subject, it loseth the true property of a forest, because the courts called the justice-seat, swainmote, &c. do forthwith vanish, none being able to make a Lord Chief Justice in Eyre of the forest but the King; yet it may be granted in so large a manner, as there may be attachment, swainmote, and a court equivalent to a justice-seat. Manwood, part 2. c. 3, 4.

A forest and a chase may have different officers and laws; every forest is a chase, et quiddam amplius; but any chase is not a forest. A chase is ed communem legem, and not to be guided by the forest laws; and it is the same of parks. 4 Inst. 314. A man may have a free chase as belonging to his manor in his own woods, as well as a warren and a
park in his own grounds; for a chase, warren and park are collateral
heritances, and not issuing out of the soil; and therefore if a person
hath a chase in other men's grounds, and after purchaseth the grounds,
the chase remaineth. Ibid. 318. If a man have freehold in a free
chase, he may cut his timber and wood growing upon it, without
view or license of any; though it is not so of a forest; but if he cut
so much that there is not sufficient for covert, and to maintain the
game, he shall be punished at the suit of the king; and so if a com-
mon person hath a chase in another's soil, the owner of the soil can-
ot destroy all the covert, but ought to leave sufficient thereof, and
also browse wood, as hath been accustomed. 11 Rep. 22. And it has
been adjudged, that within such chase, the owner of the soil by pre-
scription may have common for his sheep, and warren for his conies,
but he cannot surcharge with more than has been usual, nor make
cony-burrows in other places than hath been used. Ibid. If a free
chase be enclosed, it is said to be a good cause of seizure into the
king's hands.

It is not lawful to make a chase, park or warren, without license
from the king under the broad seal. See tit. Forest, Game, Park.

CHASOR, A hunting horse. Dederunt mihi unum chasorem, &c.
Leg. Vill. I. cst. 22. And in another chapter it is written
egorem.

CHASTELLAINE, A noble woman : quasi castelli domina.

CHASTITY. The Roman law (Ef. 48. 8. 1.) justifies homicide in
defence of the chastity either of one's self or relations; and so also, ac-
cording to Sedden, (de Legib. Hebræor. I. 4. c. 3.) stood the law in the
Jewish republic. The English law likewise justifies a woman, killing
one who attempts to ravish her. (Bac. Elem. 34. 1 Hawk. P. C. 71.)
So the husband or father may justify killing a man, who attempts a
rape upon his wife or daughter; but not if he takes them in adultery
by consent, for the one is forcible and felonious, but not the other.
1 Hal. P. C. 485, 486.

And without doubt the forcibly attempting a crime of a still more
detestable nature, may be equally resisted by the death of the unnatural
aggressor. For the one uniform principle, that runs through our own
and all other laws, seems to be this; that where a crime, in itself
capital, is endeavoured to be committed by force, it is lawful to refel that
force by the death of the party attempting. 4 Comm. 181. See tit.
Murder, Adultery.

CHATHAM CHEST. See Greenwich Chest.

CHATTELS, or CATALS, catala.] All goods moveable and im-
moveable, except such as are in nature of freehold, or parcel of it.
The Normans call moveable goods only, chattels; but this word by the
common law extends to all moveable and immoveable goods; and the
Civilians denominate not only what we call chattels, but also land, bona.
But no estate of inheritance or freehold, can be termed in our law
goods and chattels; though a lease for years may pass as goods.

Chattels are either personal or real; personal, as gold, silver, plate,
jewels, household stuff, goods and wares in a shop, corn sown on the
ground, carts, ploughs, coaches, saddles, &c. Cattle, &c. as horses,
oxen, kine, bullocks, sheep, pigs, and all tame fowls and birds, swans,
turkeys, geese, poultry, &c. and these are called personal in two re-
spects, one because they belong immediately to the person of a man;
and the other, for that being any way injuriously withheld from us,
we have no means to recover them but by personal action.
Chattels real, saith Coke, (1 Inst. 118.) are such as concern or savour of the reality; as terms for years of land, the next presentation to a church, estates by a statute merchant, statute staple, elegit, or the like. And these are called real chattels, as being interests issuing out of, or annexed to real estates; of which they have one quality, viz. immobility, which denominates them real; but want the other, viz. a sufficient, legal, indeterminate duration; and this want it is that constitutes them chattels. The utmost period for which they can last, is fixed and determinate, either for such a space of time certain, or till such a particular sum of money be raised out of such a particular income; so that they are not equal in the eye of the law to the lowest estate of freehold, a lease for another's life. 2 Comm. 386.

But deeds relating to a freehold, obligations, &c. which are things in action, are not reckoned under goods and chattels; though if writings are pawnsed they may be chattels; and money hath been accounted not to be goods or chattels; nor are hawks or hounds, such being ser nature. 8 Rept. 33. Terms de Ley, 103. Kitch. 32.

A collar of SS. garter of gold, buttons, &c. belonging to the dress of a knight of the garter, are not jewels to pass by that name in personal estate, but ensigns of honour. Dyer, 59. As to devises of chattels with remainder over, see tit. Devise.

Chattels personal are, immediately upon the death of the testator, in the actual possession of the executor, as the law will adjudge, though they are at never so great a distance from him; chattels real, as leases for years of houses, lands, &c. are in the possession of the executor till he makes an entry, or hath recovered the same; except in case of a lease for years of tithes, where no entry can be made. 1 Nels. Abr. 437.

Leases for years, though for a thousand years, leases at will, estates of tenants by elegit, &c. are chattels, and shall go to the executor; all obligations, bills, statutes, recognisances and judgments, shall be as a chattel in the executors, &c. Bro. Obl. 18. F. N. B. 120.

But if one be seised of land in fee on which trees and grass grow, the heir shall have these, and not the executor; for they are not chattels till they are cut and severed, but parcel of the inheritance. 4 Rept. 63. Dyer, 273. The game of a park, with the park, fish in the pond, and doves in the house with the house, go to the heir, &c. and are not chattels; though if pigeons, or deer, are tame, or kept alive in a room; or if fish be in a trunk, &c. they go to the executors as chattels. Noy, 124. 11 Rept. 50. Keir. 88. See tit. Heir, Executor.

An owner of chattels is said to be possessed of them; as of freehold the term is, that a person is seised of the same.

CHAUD-MEDLEY, See tit. Chance-Medley.

CHAUPTERT, a kind of tenure mentioned, Pat. 35 Edw. III. To the hospital of Bowes, in the isle of Guernsey. Blount.

CHANTER, a singer in a cathedral. See Chanter.

CHANTER-RENTS, Are rents paid to the crown by the servants, or purchasers of chantry-lands. See stat. 32 Car. II. c. 5.

CHEATS, Are 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; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a
judgment; or by suppressing a will; and such like. 1 Hawk. P. C. c. 71.

Changing corn by a miller, and returning bad corn in the stead, is punishable by indictment, being an offence against the public. 1 Sess. Ca. 217. So to run a foot-race fraudulently; and by a previous understanding with the seeming competitor to win money. 6 Mod. 42. So if an indented apprentice enters for a soldier, and having received the bounty is discharged on his master's demanding him, he may be indicted. 1 Hawk. P. C. c. 71. § 3. n. But selling beer short of the just and true measure, is not indictable as a cheat. 1 Wils. 301. Say. 146. 1 Black. Rep. 274. Nor selling gum of one denomination for that of another. Sayer, 205. Nor selling wrought gold, as and for gold of the true standard; the offender not being a goldsmith. Comp. 323.

The distinction laid down as proper to be attended to in all cases of the 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 redress of the injury done him; but where false weights and 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. Burr. 1125.

By stat. 33 Hen. VIII. cap. 1. sect. 2. if any person falsely and deceitfully get into his hands or possession any money or other things of any other persons by colour of any false token, &c. being convicted he shall have such punishment by imprisonment, setting upon the pillory, or by any corporal pain (except pains of death) as shall be adjudged by the persons before whom he shall be convict.

Lord Coke observes hereupon, that for this offence the offender cannot be fined, but corporal pain only inflicted. 3 Inst. 133. But in 1 Hawk. P. C. c. 71. § 6. it is said that a person has been fined 300l. for this offence.

In indictments on this stat. the false token made use of must be set forth. Stra. 1127. A counterfeit pass has been held such. Dalt. 91. or a pretended power to discharge soldiers. 1 Latch. 203.

By stat. 30 Geo. II. c. 24. persons convicted of obtaining money or goods by false pretences, or of sending threatening letters in order to extort money or goods, may be punished by fine and imprisonment, or by pillory, whipping, or transportation. In indictment on this stat. it must appear what the false pretences were. 2 Term Rep. 531.

As there are frauds which may be relieved civilly, and not punished criminally, (with the complaints whereof the courts of equity do generally abound,) so there are other frauds, which in a special case may not be helped civilly, and yet shall be punished criminally. Thus if a minor goes about the town, and pretending to be of age, defrauds many persons, by taking credit for a considerable quantity of goods, and then insisting on his nonage; the persons injured cannot recover the value of their goods, but they may indict and punish him for a common cheat. Bart. 100. 1 Hawk. P. C. c. 71. § 6. n.

CHECK-ROLL, A roll or book containing the names of such as are attendants on, and in pay to the king or other great personages, as their household servants. Stat. 19 Car. II. cap. 1. It is otherwise called the chequer-roll, and seems to take its etymology from the Exchequer. Stat. 14 Hen. VIII. c. 13.

CHELINDRA, A sort of ship. Mat. Par. anno 1238.

CHELSEA HOSPITAL. See tit. Soldiers.
CHELSEA WATER-WORKS. See stat. 7 Jac. I. c. 9.
CHEST OF CHATHAM. See Greenwich Chest.
CHEMISTRY. See Multiplication of Gold and Silver.
CHESTER. See general tit. County Palatine. Where felony, &c. is committed by any inhabitant of the Palatine of Chester, in another county, process shall be made to the exigent where the offence was done, and if the offender then fly into the county of Chester, the outlawry shall be certified to the officers there. 1 Hen. IV. c. 18. The sessions for the county palatine of Chester, is to be kept twice in the year, at Michaelmas and Easter; and justices of peace, &c. in Chester shall be nominated by the Lord Chancellor. Stats. 32 Hen. VIII. c. 43. 33 Hen. VIII. c. 13. Recognisances of statute-merchant may be acknowledged, and fines levied before the mayor of Chester, &c. for lands lying there. 2 & 3 Edw. VI. c. 31. But no writ of protection shall be granted in the county palatine.
CHEVAGE, chevagium, from the Fr. chef; cajmt. A tribute or sum of money formerly paid by such as held lands in villenage to their lords in acknowledgment, and was a kind of head or poll money. Of which Bracton, lib. I. cap. 10. says thus: Chevagium cognitio in signum subjectionis et dominii de capitii suo. Lambard writes this word chevage, but it is more properly chiefage; and anciently the Jews, whilst they were admitted to live in England, paid chevage or poll money to the king, as appears by Pat. 8 Edw. I. par. 1. It seems also to be used for a sum of money, yearly given to a man of power for his protection, as a chief head or leader; but Lord Coke says, that in this signification, it is a great misprision for a subject to take sums of money, or other gifts yearly of any, in name of chevage, because they take upon them to be their chief heads or leaders. Co. Lit. 140. Sjzelman in v. Chevagium says, it is a duty paid in Wales, pro filiabus maritandis.
CHEVERIL, cheverillus.] A young cock, or cockling. Pat. 15 Hen. III.
CHEVISANCE, from the Fr. chevir, i.e. Venir à chef de quelque chose, to come to the head or end of a business.] An agreement or composition made; an end or order set down between a creditor or debtor; or sometimes an indirect gain in point of usury, &c. In some ancient statutes it is often mentioned, and seems commonly used for an unlawful bargain or contract. In the stat. 13 Eliz. c. 7. (See tit. Bankrupts,) it is used simply, in the sense explained by Du Fresne, for making contracts.
CHIEF RENTS, The rents of freeholders of manors often so called; i.e. reditus capitales. They are also denominated quit rents, quieti reditus; because thereby the tenant goes quit and free of all other services. 2 Comm. 42. See tit. Rents.
CHIEF PLEDGE. See tit. Headborough.
CHIEF, (TENANTS in.) Tenants in capite, holding immediately under the king, in right of his crown and dignity. See tit. Capite, Tenure.
CHILDREN, As to devises to. See tit. Devise. See also tit. Descent, Heir, Limitation, Poor, Posthumous Child, &c.
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CHILDWIT, Sax.] A fine or penalty of a bond-woman unlawfully begotten with child. Cowel says it signifies a power to take a fine of your bond-woman gotten with child without your consent; and within the manor of Writtle in Com. Essex, every reputed father of a base child pays to the lord for a fine 3s. 4d. where it seems to extend as well to free as bond-women; and the custom is there called childwit to this day. See tit. Bastard.

CHIMIN, Fr. chemin, via.] In law phrase is a way; which is of two sorts, the king's highway, and a private way.

The King's Highway (chiminus regius) is that in which the King's subjects and all others under his protection, have free liberty to pass, though the property of the soil where the way lies, belongs to some private person.

A private way is that in which one man or more have liberty to pass, through the ground of another, by prescription or charter; and this is divided into chimin in gross and chimin appendant.

Chimin in gross is where a person holds a way principally and solely in itself.

Chimin appendant is that way which a man hath as appurtenant to some other thing; as if he rent a close or pasture, with covenant for ingress and egress through some other ground in which otherwise he might not pass. Kitch. 117. Co. Lit. 56. See tit. Highway, Trespass, Way.


CHIMNEY MONEY, otherwise called hearth money. A duty to the crown imposed by stat. 14 Car. II. cap. 2. of 2s. for every hearth in a house. Now long since repealed.

CHIMNEY-SWEEPERS. By stat. 23 Geo. III. c. 48. churchwardens and overseers with the consent of two justices may bind boys of eight years old or upwards; and who, themselves or their parents, are chargeable to the parish, or who shall beg; or with the consent of their parents, to be apprentices to chimney-sweepers until they are 16 years old. § 1.

The form of the indenture is settled by a schedule annexed to the statute. In that the master covenants to find the boy with decent clothing; to permit him to attend public worship, and to observe the statute in the several particulars mentioned. All other indentures and agreements are declared void; and any chimney sweeper keeping an apprentice under eight years old is to forfeit not more than 10l. nor less than 5l. for each. § 4.

One justice is authorized to settle all complaints of ill usage by the masters, or ill behaviour in the boys. § 6.

No chimney-sweeper shall keep more than six apprentices at once. The master's name and place of abode are to be inscribed on a brass plate in the front of a leathern cap to be provided by the master for each apprentice, to be worn by the boy when on duty. For every apprentice above six, and for neglecting to provide their caps, the master is to forfeit not exceeding 10l. nor less than 5l. § 7.

If the master shall misuse or evil-treat his apprentice, or be guilty of the breach of any of the covenants in his indenture, he shall forfeit not more than 10l. nor less than 5l. § 8.

The statute containing the foregoing and other humane regulations was obtained by the exertions of the benevolent Mr. Jonas Hanway,
whom the public and the poor are indebted for many laudable charities.


CHIPP, CHEAP, CHIPPING, Signifies the place to be a market town, as Chippingham, &c. Blount.

CHIPPINGAVEL, or cheapingavel, Toll for buying and selling.


CHIROGRAPH, chirografthum, or scripture chirographatun. Any public instrument or gift of conveyance, attested by the subscription and crosses of witnesses, was in the time of the Saxons called chirografthum; which being somewhat changed in form and manner by the Normans, was by them styled charta. In following times, to prevent frauds and concealments, they made their deeds of mutual covenant in a script and rescript; or in a part and 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 delivered to the two parties concerned, were proved authentic by matching with and answering to one another; and when this prudent custom had for some time prevailed, then the word chirografthum was appropriated to such bipartite writings or indentures.

Anciently when they made a chirograf or deed, which required a counterpart, they engrossed it twice upon one piece of parchment contrariwise, leaving a space between, in which they wrote in great letters the word CHIROGRAPH, and then cut the parchment in two, sometimes even and sometimes with indenture, through the midst of the word. This was afterwards called dividenda, because the parchment was so divided or cut; and it is said the first use of these chirografs was in Henry the Third’s time.

Chirograf was of old used for a fine; the manner of engrossing whereof, and cutting the parchment in two pieces, is still observed in the Chirographer’s Office; but as to deeds, that was formerly called a Chirograph, which was subscribed by the proper hand-writing of the vendor or debtor, and delivered to the vendee or creditor, and it differed from syngrafthus, which was in this manner, viz. Both parties, as well the creditor as debtor, wrote their names and the sum of money borrowed, on paper, &c. and the word SYNGRAPHUS in capital letters in the middle thereof, which letters were cut in the middle, and one part given to each party, that upon comparing them, (if any dispute should arise) they might put an end to the difference. The chirografs of deeds have sometimes concluded thus: Et in injustrei testimonium huic scripto, in modum chirographi confecit, victim sigilla nostra apposuitus. The chirografs were called charte divisae, scripta per chirographos divisae, charta per alphabetum divisae; as the chirografs of all fines are at this time. Kennet’s Antiq. 177. Mon. Angl. tom. 2. p. 94.

CHIROGRAPHER OF FINES, chirografthus finium et concordiarum, of the Greek χιρογράφος, a compound of χιρις, manus, a hand, and γραφειν, scribo, I write; a writing of a man’s hand.] That officer in the Common Pleas who engrosseth fines, acknowledged in that court into a perpetual record, after they are examined and passed in the other offices, and that writes and delivers the indentures of them to the party; and this officer makes out two indentures, one for the
buyer, another for the seller; and also makes one other indented piece, containing the effect of the fine, which he delivers to the custos brevium, which is called the foot of the fine. The chirographer likewise, or his deputy, proclaims all the fines in the court every term, according to the statute, and endorses the proclamations upon the backside of the foot thereof; and always keeps the writ of covenant, and note of the fine. The chirographer shall take but 4s. fee for a fine, on pain to forfeit his office, &c. Stats. 2 Hen. IV. c. 8. 23 Eliz. c. 3. 2 Inst. 468.

CHIRURGEON. See Surgeon.

CHIVALRY, servitium militare, from the Fr. chevalier.] A tenure of lands by knights' service; whereby the tenant was bound to perform service in war unto the king, or the mesne lord of whom he held by that tenure. See tit. Tenures.

Chivalry was of two kinds, either regal, held only of the King, or common, held of a common person. That which might be held only of the King was called servitium or serjeantia, and was again divided into grand and petit serjeanty. The grand serjeanty was where one held lands of the king by service, which he ought to do in his own person, as to bear the king's banner or spear, to lead his host, or to find a man at arms to fight, &c. Petit Serjeanty was when a man held lands of the king, to yield him annually some small thing towards his wars, as a sword, dagger, bow, &c. See tit. Serjeanty.

Of the Court of Chivalry, its power and jurisdiction, see host, tit. Court of Chivalry.

CHOCOLATE. See Coffee.

CHOP-CHURCH, ecclesiarum permutation.] Is a word mentioned in a statute of King Hen. VI. by the sense of which, it was in those days a kind of trade, and by the judges declared to be lawful; but Brooke, in his Abridgment says, it was only permissible by law. It was without a doubt a nickname given to those that used to change benefices; as to chop and change is a common expression. 9 Hen. VI. cap. 65. Vide Lit. missa omnibus episcopis, &c. contra Choppe-Churches, anno 1391. Sepulch. de Con. vol. 2. p. 642.

CHORAL, chorulis.] Signifies any person that by virtue of any of the orders of the clergy, was in ancient time admitted to sit and serve God in the chöre. Dugdale, in his History of St. Paul's Church, says, that there were formerly six Vicars Choral belonging to that church.

CHOREPISCOPI. See Suffragan.

CHOOSE, Fr. a thing.] Used in the common law with divers epithets; as chose local, chose transitory, and chose in action. Chose local is such a thing as is annexed to a place, as a mill, and the like; and chose transitory is that thing which is moveable, and may be taken away, or carried from place to place. Chose in action is a thing incorporeal, and only a right; as an annuity, obligation for debt, &c. And generally all causes of suit for any debt, duty, or wrong, are to be accounted choses in action; and it seems chose in action may be also called chose in suspensio, because it hath no real existence or being, nor can properly be said to be in our possession. Brow. tit. Chose in Action. 1 Litt. Abr. 264.

A person dissises me of land, or takes away my goods; my right or title of entry into the lands, or action and suit for it, and so for the goods, is a chose in action; so a debt on an obligation, and power and right of action to sue for the same. 1 Brownt. 33. And a condition and power of re-entry into land upon a fee-fement, gift or
grant, before the performance of the condition, is of the nature of a chose in action. Co. Lit. 214. 6 Rep. 50. Dyer, 244. If one have an advowson, when the church becomes void, the presentation is but as a chose in action, and not grantable, but it is otherwise before the church is void. Dyer, 296. Where a man hath a judgment against another for money, or a statute, these are choses in action. An annuity in fee to a man and his heirs, is grantable over; but it has been held, that an annuity is a chose in action, and not grantable. 5 Rep. 89. Fitz. Grant, 45. A chose in action cannot be transferred over, nor is it devisable; nor can a chose in action be a satisfaction, as one bond cannot be pleaded to be given in satisfaction for another; but in equity choses in action may be assignable; and the king’s grant of a chose in action is good. Cro. Jac. 170. 371. Chanc. Rep. 169.

Charters, where the owner of the land hath them in possession, are grantable. A possibility of an interest, or estate in a term for years, is near to a chose in action, and therefore may not be granted; but a possibility, joined with an interest, may be a grantable chattel. Co. Lit. 265. A Rep. 66. Mod. Ca. 1128. And this the law doth provide, to avoid multiplicity of suits, and the subversion of justice, which would follow if these things were grantable from one man to another. Dyer, 30. Plowd. 185.

But by release choses in action may be released and discharged for ever; but then it must be to parties and privies in the estate, &c. for no stranger may take advantage of things in action, save only in some special cases. Co. Lit. 214. Yetv. 9. 85. See tit. Assignment.

CHRISM, A confection of oil and balsam consecrated by the bishop, and used in the P放出 ceremonies of baptism, confirmation, and sometimes ordination.

CHRISMALE, Chrismal, chrisom, The face-cloth, or piece of linen laid over the child’s head at baptism, which in ancient times was a perquisite due to the parish priest. Statut. Aegid. Epts. Salisbur. An. 1256.

CHRISMATIS DENARII, Chrisom pense, money paid to the diocesan, or his suffragan, by the parochial clergy, for the chrisom consecrated by them about Easter, for the holy uses of the year ensuing. This customary payment being made in Lent near Easter, was in some places called Quadragesimalis; and in others Paschalis and Easter pense. The bishop’s exaction of it was condemned by Pope Pius XI. for simony and extortion; and thereupon the custom was released by some of our English bishops. See Cartular. Mon. de Bernedy, MS. Cotton.

CHRISTIANITATIS CURIA, The court christian, or ecclesiastical judicature. See Court Christian.

CHRISTIANITY. Of the punishment of offences against, see tit. Blasphemy, Heresy, and also tit. Religion.

CHURCH.

ECCLESIA. A temple or building consecrated to the honour of God and religion, and anciently dedicated to some saint, whose name it assumed; or it is an assembly of persons united by the profession of the same christian faith, met together for religious worship. A Church, to be adjudged such in law, must have administration of the sacraments and sepulture, annexed to it. If the king founds a church, he may
exempt it from the ordinary’s jurisdiction; but it is otherwise in case of a subject.

The manner of founding churches in ancient times was, after the founders had made their applications to the bishop of the diocese, and had his license, the bishop or his commissioners set up a cross, and set forth the church-yard, where the church was to be built; and then the founders might proceed in the building of the church, and when the church was finished, the bishop was to consecrate it; and then, and not before, the sacraments were to be administered in it. Stillingfleet’s Ecclesiast. Cases. But by the common law and custom of this realm, any person who is a good Christian, may build a church without license from the bishop, so as it be not prejudicial to any ancient churches, though the law takes no notice of it as a church, till consecrated by the bishop, which is the reason why church and no church, &c. is to be tried and certified by the bishop. And in some cases, though a church has been consecrated, it must be consecrated again; as in case any murder, adultery, or fornication be committed in it, whereby it is defiled; or if the church be destroyed by fire, &c.

The ancient ceremonies in consecrating the ground on which the church was intended to be built, and of the church itself after it was built, were thus: When the materials were provided for building, the bishop came in his robes to the place, &c. and having prayed, he then perfumed the ground with incense, and the people sung a collect in praise of that saint to whom the church was dedicated; then the corner stone was brought to the bishop, which he crossed, and laid for the foundation; and a great feast was made on that day, or on the saint’s day to which it was dedicated; but the form of consecration was left to the discretion of the bishop, as it is at this day.

A church in general consists of three principal parts; that is, the belfry or steeple, the body of the church with the aisles, and the chancel; and not only the freehold of the whole church, but of the church-yard, are in the parson or rector; and the parson may have an action of trespass against any one that shall commit any trespass in the church or church-yard; as in the breaking of seats annexed to the church, or the windows, taking away the leads, or any of the materials of the church, cutting the trees in the church-yard, &c. But churchwardens may by custom have a fee for burying in the church. The church-yard is a common place of burial for all the parishioners. Vent. 274. Keb. 504. 523. But see Cro. Jac. 367. Gibbs. 453. And post, Churchwardens, III. 2.

And it seems that actions for taking away the seats must be brought in the name of the churchwardens, the parishioners being at the expense of them. Raym. 246. 12 Co. 105. 3 Com. Dig. tit. Esqiiue, (F. 3.)

If a man erect a pew in a church, or hang up a bell, &c. therein, they thereby become church goods, though not expressly given to the church; and he may not afterwards remove them. Shaw. P. L. 79. The parson only is to give license to bury in the church, but for defacing a monument in a church, &c. the builder or heir of the deceased may have an action. Cro. Jac. 367. And a man may be indicted for digging up the graves of persons buried, and taking away their burial dresses, &c. the property whereof remains in the party who was the owner when used, and it is said an offender was found guilty of felony in this case, but had his clergy. Co. Lit. 113.
Though the parson hath the freehold of the church and church-yard, he hath not the fee-simple, which is always in abeyance; but in some respects the parson hath a fee-simple qualified. Lit. 644, 645. The chancel of the church is to be repaired by the parson, unless there be a custom to the contrary; and for these repairs, the parson may cut down trees in the church-yard, but not otherwise. See stat. 35 Edw. 1. st. 2. Ne Rector prosternt, &c. The churchwardens are to see that the body of the church and steeple are in repair; but not any aisle, &c. which any person claims by prescription, to him or his house; concerning which repairs the canons require every person who hath authority to hold ecclesiastical visitation to view their churches within their jurisdiction once in three years, either in person, or cause it to be done; and they are to certify the defects to the ordinary, and the names of those who ought to repair them; and these repairs must be done by the churchwardens, at the charge of the parishioners. Can. 86. 1 Mod. 236. See post, tit. Churchwardens, III. 2.

By the common law, parishioners of every parish are bound to repair the church; but by the canon law, the parson is obliged to do it; and so it is in foreign countries. 1 Salk. 164. In London the parishioners repair both the church and the chancel. The Spiritual Court may compel the parishioners to repair the church, and excommunicate every one of them till it be repaired; but those that are willing to contribute shall be absolved till the greater part agree to a tax, when the excommunication is to be taken off; but the Spiritual Court cannot assess them towards it. 1 Mod. 194. 1 Vent. 357. For though this Court hath power to oblige the parishioners to repair by ecclesiastical censures; yet they cannot appoint in what sum, or set a rate, for that must be settled by the churchwardens, &c. 2 Mod. 8.

If a church be down, and the parish is increased, the greater part of the parish may raise a tax for the necessary enlarging it, as well as the repairing thereof, &c. 1 Mod. 237. But in some of our books it is said, that if a church falls down, the parishioners are not obliged to rebuild it; though they ought to keep it in due repair. 1 Vent. 35. On rebuilding of churches, it is now usual to apply for, and obtain briefs, on the petition of the parishioners, to collect the charitable contributions of well-disposed Christians, to assist them in the expense. See post, tit. Churchwardens, III. 2.

For church ornaments, utensils, &c. the charge is upon the personal estates of the parishioners; and for this reason persons must be charged for these, where they live. But though generally lands ought not to be taxed for ornaments, yet by special custom, both lands and houses may be liable to it. 2 Inst. 489. Cro. Eliz. 843. Hotley, 131. It has been resolved that no man shall be charged for his land to contribute to the church reckonings, if he doth not reside in the same parish. Moor, 554.

By stat. 37 Hen. VIII. c. 21. churches not above six pounds a year in the king’s books, by assent of the ordinary, patron and incumbent, may be united; and by stat. 17 Car. II. c. 3. in cities and corporations, &c. churches may be united by the bishop, patrons, and chief magistrates, unless the income exceeds 100£ per annum, and then the parishioners are to consent, &c. See tit. Union.

For completing of St. Paul’s Church, and repairing Westminster Abbey, a duty of 2s. per chaldron on coals was granted; and the church-yard is to be enclosed, and no persons build thereon, except for the use of the church. 1 Ann. st. 2. c. 12.
Fifty new churches are to be built in or near London and Westminster, for the building whereof a like duty is granted upon coals, and commissioners appointed to purchase lands, ascertain bounds, &c. The rector of which churches were to be appointed by the crown, and the first churchwardens and vestrymen, &c. to be elected by the commissioners. Stat. 9 Ann. c. 22. and see stat. 10 Ann. c. 11. A duty is also granted on coals imported into London, to be appropriated for maintaining of ministers for the fifty new churches. Stat. 1 Geo. I. cap. 23.

By 43 Geo. III. c. 108, "to promote the building, repairing and providing of churches and chapels, and of houses for the residence of ministers, and church-yards and glebes," persons possessed of estates in their own right, may by deed enrolled, (in England, under stat. 27 Hen. VIII. c. 16. and in Ireland under 10 Car. 1. stat. 2. c. 1. § 17.) or by will executed three months before their decease, give lands not exceeding five acres, or goods and chattels not exceeding 500l. for the purposes of the act. This act does not extend to infants, feme covert, or incapacitated persons. Only one such gift shall be made by one person, and where the gift exceeds the legal amount, the chancellor may reduce it. § 12. Plots of land not exceeding one acre, held in mortmain may be granted by exchange or benefaction, for being annexed to a church. § 4. See further, tit. Clergy.

In all parochial churches and chapels to be hereafter erected, accommodation shall be provided for the poor. § 5.

No man shall cover his head in the church in time of divine service, except he have some infirmity, and then with a cap; and all persons are to kneel and stand, &c. as directed by the Common Prayer during service. Can. 18.

No fairs or markets shall be kept in church-yards. Stat. 13 Edw. I. st. 2. c. 6.

Any person may be indicted for indecent or irreverent behaviour in the church; and those that offend against the acts of uniformity, are punishable either by indictment upon the statute, or by the Ordinary, &c. See further, tit. Churchwardens, Parsons. And as to offences in not coming to church, see tit. Dissenters, Religion.

If any person shall, by words only, quarrel, chide, or brawl, in any church or church-yard, the ordinary of the place is empowered, on proof by two witnesses, to suspend the offender, if a layman, from the entrance of the church; and if a clerk, from the ministration of his office, so long as the said ordinary shall think meet, according to the fault. Stat. 5 & 6 Edw. VI. c. 4. § 1.

This offence was cognisable in the ecclesiastical court, before this statute, ratione loci; and the statute, though it provides a penalty, doth not alter the jurisdiction. Ld. Raym. 850.

If any person shall smite, or lay any violent hands upon another, the offender shall ipso facto be deemed excommunicate. 5 & 6 Edw. VI. c. 4. § 2. But previous to excommunication, there must be either a conviction at law, or a declaratory sentence, in the ecclesiastical court. See 1 Hawk. P. C. c. 63. 1 Burr. 240. Burm's Ecc. Law, tit. Church x.

If one be assaulted in the church, or in a church-yard, he may not beat the other, or draw a weapon there, although the other assaulted him, and it be therefore in his own defence; for it is a sanctified place, and he may be punished for that by the foregoing statute. And it is the same in any of the king's courts, or within view of the courts of justice; because a force in that case is not jus-
CHURCHWARDENS I. 1.

Anciently styled Church Reeves or Ecclesiæ Guardiani.] Officers instituted to protect the edifice of the church; to superintend the ceremonies of public worship; to promote the observance of religious duties; to form and execute parochial regulations; and to become, as occasion may require, the legal representatives of the body of the parish.

The office was originally confined to such matters only as concerned the church, considered materially as an edifice, building, or place of public worship; and the duty of suppressing profaneness and immorality was entrusted to two persons annually chosen by the parishioners, as assistants to the churchwardens, who from their power of inquiring into offences, detrimental to the interests of religion, and of presenting the offenders to the next provincial council, or ecclesiastical synod, were called quest-men or synods-men, which last appellation has been converted into the name of sides-men. But great part of the duty of these testes synodales, or ancillary officers, is now devolved upon the churchwardens; the sphere of whose duty has, since the establishment of the Overseers of the Poor, been considerably enlarged; and is also diverted into various channels by many modern acts of parliament. See Paroch. Antiq. 649. for a more particular account of the origin and progress of these Sides-men.

Under this head it will be proper to consider,

I. 1. Of the Election of Churchwardens. 2. Of Exemptions from being elected.

II. Of their Interest in the Things belonging to the Church.

III. 1. Of their Power; and, 2. Duty.

IV. Of their Accounts.

I. 1. They are generally chosen by the joint consent of the parishioners and minister; but by custom, (on which the right of choosing these officers entirely depends, 2 Atk. 650. 2 Sir. 1246.) the minister may choose one, and the parishioners another; or the parishioners alone may elect both. 1 Vent. 267. But where the custom of a parish does not take place, the election shall be according to the

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directions of the canons of the church. *Can. 89, 90.* which direct that all churchwardens or quest-men in every parish shall be chosen by the joint consent of the minister and the parishioners, if it may be; but if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another; and without such a joint or several choice, none shall take upon them to be churchwardens. *Gibs. Cod.* 241, 242. 1 *Str. 145.*

If the parson or vicar, who has, by custom, a right to choose one churchwarden, be under sentence of *deprivation,* the right of choosing both results to the parishioners. *Carth. 118.*

The parson cannot intermeddle in the choice of that churchwarden which it is the right of the parishioners by custom to elect. 2 *Str. 1045.* Under the word Parson a Curate is included. 2 *Str. 1246.*

In most of the parishes in London, the parishioners choose both churchwardens by custom; but in all parishes erected under stat. 9 *Ann. c. 22.* the canon shall take place; (unless the act, in virtue of which any church was erected, shall have specially provided that the parishioners shall choose both;) inasmuch as no custom can be pleaded in such new parishes. *Gibs. 215.* *Co. Lit.* 113. 1 *Roll. Abr.* 339. *Cro. Jac.* 533. 1 *Comm. 77.*

In the election of churchwardens by the parishioners, the majority of those who meet at the vestry, upon a written notice given for that purpose, shall bind the rest of the parish. *Lane, 21.*

By custom also, the choice of churchwardens may be in a select vestry, or a particular number of the parishioners, and not in the body of the parishioners at large. *Hard. 378.* 1 *Mod. 181.* See this Dict. tit. Vestry.

In some cases the lord of the manor prescribeth 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. 155.* 2 *Inst. 653.*

The validity of the custom of choosing churchwardens is to be decided, like all other customs of the realm, by the courts of common law, and not by the spiritual court. *Cro. Car.* 532. 6 *Mod. 89.* 2 *Ld. Raym.* 1008. 3 *Salk.* 83. 1 *Bac. Abr.* 371. So also the legality of the votes given on the election is to be determined by the Common Law. *Burr. 1420.* But the Spiritual Court may become the means of trying the validity of the election by a return of 'not elected,' 'not duly elected,' or any other return that answers the writ, and affords an opportunity of trying the right in an action for a false return. 1 *Ld. Raym.* 138. *Str. 610.* 2 *Ld. Raym.* 1379. 1405. 2 *Salk.* 433. 5 *Mod. 325.* *Cowp. 413.*

The parishioners are sole judges of what description of persons they think proper to choose as churchwardens; the Spiritual Court, therefore, cannot in any case, control or examine into the propriety of the election. 1 *Salk.* 166. See also the authorities immediately preceding. And the parishioners may, for misbehaviour, remove them. 1 *Co. 70.* *Com. Dig.* 3. tit. *Esglise,* (F. 1.) An indictment also lies against them for corruption and extortion in their office. 1 *Sid. 307.*

The court of King's Bench will not grant a *mandamus* to the churchwardens, to call a vestry to elect their successors. *Str. 686.* See vid. *Str. 32.* Nor will the Court grant a *quo warranto* to try the validity of an election to the office. 4 *Term Rep.* 382.

They are sworn into their offices by the Archdeacon or Ordinary of the diocese, and if he refuse, a *mandamus* shall issue to compel
him. Cro. Car. 551. 5 Com. Dig. tit. Mandamus, (A.) and the authorities there cited, and without, see. 1 Salk. 330. But the oath must be general, ‘to execute their duty truly and faithfully.’ Hard. 364. and under stats. 4 Jac. I. c. 5. 1 Jac. I. c. 9. and 21 Jac. I. c. 7. to execute the laws against drunkenness. See post, Ill. 2.

If a churchwarden properly appointed, refuse to take the oath, he may be excommunicated. Gibbs. Cod. 961. 1 Mod. 194. and he must not execute the office till he is sworn. Gibbs. 243. Shaw. P. L. 70.


No person living out of the parish, although he occupies lands within the parish, may be chosen churchwarden; because he cannot take notice of absences from church, or disorders in it, for the due presenting of them. Gibbs. 215.

II. Churchwardens are a corporation by custom, to sue and be sued for the goods of the church; and they may purchase goods, but not lands, except it be in London, by custom. Jones, 439. Cro. Car. 552. 552. 4 Vin. 525. n. 1 Ld. Raym. 337. Co. Lit. 3.

In the city of London, by special custom, the churchwardens, with the minister, make a corporation for lands as well as goods; and may, as such, hold, purchase and take lands for the use of the church, &c. And there is also a custom in London, that the minister is there excused from repairing the chancel of the church. 2 Cro. 325. Co. Lit. 3. 1 Roll. Abrid. 350. Churchwardens may have appeal of robbery for stealing the goods of the church. 1 Roll. Abrid. 393. Cro. Eliz. 179. And they may also purchase goods for the use of the church. Mar. 22. 67. Cro. Car. 552. 3 Bulst. 264. Yelv. 173. They may also take money or things (by legacy, gift, &c.) for the benefit of the church. 2 P. Wms. 123. And they may dispose of the goods of the church, with the consent of the parishioners. 1 Roll. Abrid. 393. 1 Vent. 89. Cro. Jac. 334. 4 Vin. 526.

But the churchwardens (except in London) have no right to, or interest in, the freehold and inheritance of the church, which alone belongs to the parson or incumbent. Comp. Incumb. 381. 1 Bac. Abr. 372. 1 Vent. 127. 4 Vin. 527.

They may bring an appeal of robbery for goods of the church feloniously stolen. Y. B. vol. II. p. 27. and ejectment for land leased to them for years. Runnington’s Ejectments, 59. 3 Com. Dig. Est. (F. 3.)

If they waste the goods of the church, the new churchwardens may have actions against them, or call them to account; though the parishioners cannot have an action against them for wasting the church goods, for they must make new churchwardens, who must prosecute the former, &c. 1 Danw. Abrid. 788. 2 Cro. 145. Bro. Account. 1.

They have a certain special property in the organ, bells, parish books, bible, chalice, surplice, &c. belonging to the church; of which they have the custody on behalf of the parish, whose property they really are; for the taking away, or for any damage done any of these,
the churchwardens may bring an action at law, and therefore the 
parson cannot sue for them in the Spiritual Court. 1 Bac. Abr. 372. 
1 Roll. Rep. 235. See Cro. Eliz. 179. 1 Vent. 89. 7 Mod. 116.

But they have not, virtute officii, the custody of the title deeds of 
the advowson, though they are kept in a chest in the church. 4 Term 
Ref. 351.

III. 1. Churchwardens have power and authority throughout 
the parish, though it extends into different hundreds and counties; being, 
though temporal officers, employed in ecclesiastical affairs, and must 
therefore follow the ecclesiastical division of the kingdom. Shaw. P. L. 86.

They have, with the consent of the minister, the placing the pa-
rishioners in the seats of the body of the church, appointing gallery-
keepers, &c. reserving to the Ordinary a power to correct the same; and in London, the churchwardens have this authority in themselves.

Particular persons may prescribe to have a seat, as belonging to 
them by reason of their estates, as being an ancient messuage, &c. and the seats having been constantly repaired by them. Also one 
may prescribe to any aule in the church, to sit and to bury there, al-
ways repairing the same. 3 Inst. 202. Cro. Jac. 366. If the Ordinary 
displaces a person claiming a seat in a church by prescription, a 
prohibition shall be granted, &c. 12 Rep. 106. The parson improp-
riate has a right to the chief seat in the chancel; but by prescription 
another parishioner may have it. Noy's Rep.

Besides their ordinary power, the churchwardens have the care of 
the benefice during its vacancy; and as soon as there is any avoidance, 
they are to apply to the chancellor of the diocese for a sequestra-
tion; which being granted, they are to manage all the profits and ex-
penses of the benefice for him that succeeds, plough and sow his 
egles, gather in tithes, thrash out and sell corn, repair houses, &c. and they must see that the church be duly served by a curate 
approved by the bishop, whom they are to pay out of the profits of 

The churchwardens have not originallly power to make any rate 
themselves, exclusive of the parishioners, their duty being only to 
summon the parishioners, to a vestry, who are to meet for that pur-
pose; and, when they are assembled, a rate made by the majority 
present shall bind the whole parish, although the churchwardens voted 
against it. Compt. Incumb. 389. 1 Vent. 367. 1 Bac. Abr. 373. 3 
Term Rep. 392.

But if the churchwardens give the parishioners due notice, that they 
intend to meet for the purpose of making a rate to repair the church, 
and the parishioners refuse to come, or being assembled, refuse to 
make any rate, they may make one without their concurrence; for 
they are liable to be punished in the ecclesiastical courts for not re-
pairing the church. Degge, 172. 1 Vent. 367. 1 Mod. 79. 194. 237.
See further on this subject, tit. Vestry.

A taxation by a pound-rate is the most equitable way, which if re-
fused to be paid, should be proceeded for in the Ecclesiastical Court; 
and Quakers are subject to such church rate, recoverable as their 

2. Their duty is extensive and various; the heads of it are therefore 
here ranged alphabetically.
Apprentices. See this Dictionary, tit. Apprentices, Chimney-Sweepers.

Bastards. The churchwardens are bound to provide for such for whose sustenance the parish have made no provision; and this without an order of justices. Hays v. Bryant, Trin. 29 Geo. III. in C. P.

Belfry. Churchwardens ought to keep the keys of, and take care the bells are not rung without proper cause. Can. 88.

Briefs. Churchwardens are, by stat. 4 Ann. c. 14, to collect the charity-money upon briefs; which are letters patent issuing out of Chancery, to rebuild churches, restore loss by fire, &c. which are to be read in churches; and the sums collected, &c. to be endorsed on the briefs in words at length, and signed by the minister and churchwardens; after which they shall be delivered, with the money collected, to the persons undertaking them, in a certain time, under the penalty of 20l. A register is to be kept of all money collected, &c. Also the undertakers, in two months after the receipts of the money, and notice to sufferers, are to account before a Master in Chancery, appointed by the Lord Chancellor.

Burial. The consent of the churchwardens must be had for burying a person in a different parish from that in which he dies. It is their duty not to suffer suicides, or excommunicated persons, to be buried in the church or church-yard, without license from the bishop. By stat. 30 Car. II. c. 3, they are to apply to the magistrates to convict offenders for not burying in woollen. See also post, Register.

Butter and Cheese. The penalties under stat. 13 & 14 Car. II. c. 26, for reforming abuses in, are payable to the churchwardens of the parish where the offence is committed.

Chimney-Sweepers. See that tit. in this Dictionary.

Church. Churchwardens or quest-men are to take care it be well aired, the windows glazed, the floors well paved, &c. If churchwardens erect or add a new gallery, &c. they must have the consent of the parishioners, and a license of the Ordinary, but not for occasional repairs. 2 Inst. 489. 1 Mod. 273. See ante, III. 1. They must also take care to have in the church a large bible, a book of common prayer, a book of homilies, a font of stone, a decent communion table, with bread and wine for the communion, a table-cloth, carpet, and flagon, plate, and bowl of silver, gold or pewter. Can. 20. Y. B. 8 Hen. V. pt. 4. Doct. & Stud. 118. Degge, 111. Churchwardens also are to sign certificates of persons taking the sacrament, to qualify for offices. They are to see that the ten commandments are set up at the east end of the church, and other chosen sentences upon the walls, with a reading desk and a pulpit, and a chest for alms, all at the charge of the parish. It is also the duty of churchwardens to prevent any irreverence or indecency from being committed in the church; and therefore they may pull off a person's hat in the church, or even turn him out if he attempts to disturb the congregation. The church being under the care of the churchwardens, they may refuse to open it at the instance of any person, except the parson, or any one acting under him. 1 Sand. 13. 1 Lec. 196. 1 Sid. 301. 3 Salk. 37. 12 Mod. 453. Can. 85. They are not to suffer any stranger to preach, unless he appears qualified, by producing a license, and such preacher is to register his name, and the day when he preached, in a book. Can. 50. 52. The pulpit is exclusively the right of the parson of the parish, and the churchwardens are punishable if they shut the door against him; and his consent is necessary to a stran-
CHURCHWARDENS III. 2.

Church-yard. By the canons of the church, it is ordained that the churchwardens, or quest-men shall take care that the church-yards be well and sufficiently repaired, found, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges, unto whom the same by law appertaineth; they are also to see that the church be well kept and repaired; and by a constitution of Archbishop Winchelsea, this charge is to be at the expense of the parishioners. 2 Inst. 489. (But one who has land adjoining to the church-yard may by custom be bound to keep the fences in repair.) Churchwardens shall suffer no plays, feasts, banquets, suppers, church-alms, drinkings, temporal courts or leets, lay-juries, musters, or any profane usage to be kept in the church or church-yard. Nor shall they suffer any idle persons to abide either in the church-yard or church-porch during the time of divine service or preaching, but shall cause them to come in or to depart. So also, by the common law, churchwardens may justify the removal of tumultuous persons from the church-yard, to prevent them from disturbing the congregation whilst the minister is performing the rites of burial. 1 Mod. 168. and by the canon law may prevent an excommunicated person from even entering into the church-yard at any time, or on any pretence.

Convents. Churchwardens are to levy the penalties by warrant of a justice, under stat. 22 Car. II. c. 1. Corn. See stat. 22 Car. II. c. 8. County Rate. See stat. 12 Geo. II. c. 29. Drunkenness. Churchwardens are to receive the penalties under stat. 4 Geo. I. c. 5. 21 Geo. II. c. 7. and 1 Jac. I. c. 9. See this Dict. tit. Constable.

Fast Days. See stat. 5 Eliz. c. 5. Fire. See this Dict. tit. Fire.

Game. Churchwardens are to receive the penalties under stat. 1 Jac. I. c. 27.

Greenwich Hospital. Churchwardens are to sign certificates of out-pensioners under stat. 3 Geo. III. c. 16.

Hawkers and Pedlars. Churchwardens are to apprehend, and receive the penalties under stat. 9 & 10 Wm. III. c. 27. and 9 Geo. II. c. 23.

Militia. See the Militia Act, 26 Geo. III. c. 107.

Nonconformists. Churchwardens to levy the penalty of 12d. on persons not coming to church each Sunday, under stat. 1 Eliz. c. 2.

Parson. Churchwardens are to observe whether he reads the articles twice a year, and the canons once in the year, preaches every Sunday good doctrine, reads the Common Prayer, celebrates the sacraments, preaches in his gown, visits the sick, catechises children, marries according to law, &c.

Parishioners. Churchwardens to see if they come to church, and duly attend the worship of God; if baptism be neglected; women not churched; persons marrying in prohibited degrees, or without banns or license; almshouses or schools abused; legacies given to pious uses, &c. Can. 117. Cro. Car. 291. 1 Vent. 114.

Poor. Churchwardens are to act in conjunction with the overseers; every churchwarden being an overseer, but not in contra. See this Dict. tit. Overseer, Poor.

Presentments. Churchwardens, by their oath, are to present or certify to the bishop or his officers, all things presentable by the
ecclesiastical laws, which relate to the church, to the minister, and to the parishioners. The articles which are delivered to churchwardens for their guidance in this respect, are, for the most part, founded on the book of canons, and on rubrics of the common prayer. They are also bound, by the 4 Jac. I. c. 5. to present tippling or drunkenness, and by 3 Jac. I. c. 4. recusants. They need not take a fresh oath upon each presentment they make, nor are they obliged to make presentments oftener than once a year; but they may do it as often as they please, except there is a custom in the parish to the contrary; and, upon default or neglect in the churchwardens, the minister may present; but such presentment ought to be upon oath.

Can. 117. 1 Sid. 463.

Rates. See ante, III. 1.

Recusants. See Presentments, Nonconformists.

Registers. Churchwardens shall provide a box wherein to keep the parish register, with three locks and three keys; two of the keys to be kept by them, and one by the minister; and every Sunday they shall see that the minister enter therein all the christenings, weddings and burials that have happened the week before; and at the bottom of every page, they shall, with the minister, subscribe their names; and they shall, within a month after the 25th day of March, yearly, transmit to the bishop a copy thereof for the year before, subscribed as above. By stat. 23 Geo. III. c. 67. upon the entry of any burial, marriage, birth, or christening in the register of any parish, place, a stamp duty of 3d. shall be paid; and therefore the churchwardens and overseers, or one of them, are directed to provide a book for this purpose, with proper stamps for each entry, and to pay for the same, and for the stamps contained therein, out of the rates under their management; and to receive back the moneys which shall be so paid from the persons authorized to demand and receive the said duties.

Sunday. Churchwardens to levy penalties for profaning, under stats. 1 Car. I. c. 1. and 29 Car. II. c. 7.

IV. At the end of the year the churchwardens are to yield just accounts to the minister and parishioners, and deliver what remains in their hands to the parishioners or to new churchwardens. In case they refuse, they may be presented at the next visitation, or the new officers may by process call them to account before the Ordinary, or sue them by writ of account at common law. Shaw. P. L. 76. 12 Mod. 9. 1 Bac. Abr. 375. Bro. Account, 71. But in laying out their money, they are punishable for fraud only, not indiscretion. Gibs. 196. 1 Burn's Just. 349. Shaw. P. L. 76. If their receipts fall short of their disbursements, the succeeding churchwardens may pay them the balance, and place it to their account. 1 Roll. Abr. 121. Can. 89. 109. &c. And the Court of Chancery on application will make an order for the purpose. 2 Eq. Abr. 293. Pre. Ch. 43. but see 4 Vin. (3vo.) 529.

By the stat. 3 & 4 W. & M. cap. 11. in all actions to be brought in the courts of Westminster, or at the assises, for money misspent by churchwardens, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted.

Churchwardens are comprehended within the purview of the stats. 7 Jac. I. cap. 5. and 21 Jac. I. cap. 12. as to pleading the general issue
to actions brought against them, and as to double costs when they have judgment.

But in an action on the case against a churchwarden for a false and malicious presentment, though there be judgment for him, yet he shall not have double costs; for the statute does not extend to spiritual affairs. *Cro. Car. 285. 467.* 1 *Sid. 463.* 1 *Vent. 86.* 2 *Hawk. P. C. 61.* *Hardw.* 123.

The Spiritual Court can only order the churchwardens' accounts to be audited, but cannot make a rate to reimburse them, because they are not obliged to lay out money before they receive it. *Hardw.* 381. 2 *Stra. 974.* *Cro. Car. 285, 286.*

But a custom that the churchwardens shall, before the end of their year, give notice to the parishioners to audit their accounts, and that a general rate shall be made, for the purpose of reimbursing them all money advanced, is good. 2 *Andr. 32.*

If there be a select committee or vestry elected by custom, and the churchwardens exhibit their accounts to such committee, who allow the same, this shall discharge them from being proceeded against in the Spiritual Court. 2 *Lutw.* 1927. So of allowance at a vestry in general. *Bunb. 247. 289.* 1 *Vent. 367.* 1 *Sid. 281.* *Reyn. 418.* 2 *Barn. K. B. 421.* *Andr. 11.* And if the Spiritual Court take any step whatever after the accounts are delivered in, it is an excess of jurisdiction for which a prohibition will be granted, even after sentence. 3 *Term Req.* 3.

Justices of peace have no jurisdiction over churchwardens with respect to their accounts as churchwardens. 1 *Keb. 574.* 4 *Vin. (3vo.) 532.*

**CHURCHESSET,** or *churchset, circescat.* A Saxon word used in *Domesday,* which is interpreted *quasi semen ecclesie,* corn paid to the church. *Fleta* says, it signifies a certain measure of wheat, which in times past every man on *St. Martin's* day gave to holy church, as well in the times of the Britons as of the English; yet many great persons, after coming of the Romans, gave that contribution according to the ancient law of *Moses,* in the name of *first fruits;* as in the writ of *King Canutus,* sent to the Pope, is particularly contained, in which they call it *churchset.* *Selden's Hist. Tithes,* jz. 216.

**CHURCH-SCOT,** Customary oblations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

**CHURLE,** *ceorl, earl.* Was in the Saxon times a tenant at will, of free condition, who held some land of the Thanes, on condition of rents and services; which *ceorles* were of two sorts; one that hired the lord's tenement at estate, like our farmers; the other that tilled and manured the *demesnes,* (yielding work and not rent,) and were thereupon called his *sockmen* or *ploughmen.* *Selm.*

**CINQUE PORTS,** *quinque portus.* Those havens that lie towards France, and therefore have been thought by our kings to be such as ought to be vigilantly guarded and preserved against invasion; in which respect they have an especial governor, called *Lord Warden of the Cinque Ports,* and divers privileges granted them, as a peculiar jurisdiction; their warden having not only the authority of an admiral amongst them, but sending out writs in his own name, &c. 4 *Inst. 222.*

Camden says, that Kent is accounted the key of England, and that William, called The Conqueror, was the first that made a Constable of Dover Castle, and Warden of the Cinque Ports, which he did to
bring that country under a stricter submission to his government; but King John was the first who granted the privileges to those ports, which they still enjoy; however, it was upon condition that they should provide a certain number of ships at their own charge for forty days, as often as the king should have occasion for them in the wars, he being then under the necessity of having a navy for passing into Normandy, to recover that dukedom which he had lost. And this service the Barons of the Cinque Ports acknowledged and performed, upon the king's summons, attended with their ships the time limited at their proper costs, and staying as long after as the king pleased at his own charge. Some of Roman Ports in Kent. See this Dictionary, tit. Navy.

The Cinque Ports, as we now account them, are, Dover, Sandwich, Romney, Winchelsea, and Rye; and to these we may add Hythe and Hastings, which are reckoned as part or members of the Cinque Ports; though by the first institution it is said that Winchelsea and Rye were added as members, and that the others were the Cinque Ports; there are also several other towns adjoining that have the privileges of the ports. These Cinque Ports have certain franchises to hold pleas, &c. and the king's writs do not run there; but on a judgment on any of the king's courts, if the defendant hath no goods, &c. except in the ports, the plaintiff may get the records certified into Chancery, and from thence sent by mittimus to the Lord Warden to make execution. 4 Inst. 223.

The constable of Dover castle is Lord Warden of the Cinque Ports. And there are several courts within the Cinque Ports; one before the constable, others within the ports themselves, before the mayors and jurats; another, which is called curia quinque portuum apud Shefway: there is likewise a court of Chancery, in the Cinque Ports, to decide matters of equity; but no original writs issue thence. 1 Danw. Abrid. 793. The jurisdiction of the Cinque Ports is general, extending to personal, real, and mixed actions; and if any erroneous judgment is given in the Cinque Ports before any of the mayors and jurats, error lies according to the custom, by bill in nature of error, before the Lord Warden of the Cinque Ports, in his court of Shefway. And in these cases the mayor and jurats may be fined, and the mayor removed, &c. 4 Inst. 334. Cron. Jurisd. 138. and error lies from the court of Shefway to the court of K. B. Jenk. 71. 1 Sid. 536. It has been observed, that the Cinque Ports are not jura regalia, like counties palatine, but are parcel of the county of Kent; so that if a writ be brought against one for land within the Cinque Ports, and he appears and pleads to it, and judgment is given against him in the Common Pleas, this judgment shall bind him; for the land is not exempted out of the county, and the tenant may waive the benefit of his privilege. Wood's Inst. 519.

The Cinque Ports cannot award process of outlawry. Cro. Eliz. 910. And a quo minus lies to the Cinque Ports. Ibid. 911. If a man is imprisoned at Dover by the Lord Warden, a habeas corpus may be issued; for the privilege that the king's writ lies not there is intended between party and party, and there can be no such privilege against the king; and a habeas corpus is a prerogative writ, by which the king demands an account of the liberty of the subject. Cro. Jac. 543. 1 Nels. Abr. 447. Certiorari lies to the Cinque Ports, to remove indictments; and the jurisdiction that brev. dom. regis non currit is only in civil causes between party and party. 2 Hawk. P. C. c. 27. § 24.
CIRCA, A watch; from which circuitus.

CIRCADA, A tribute anciently paid to the bishop or archdeacon for visiting the churches. Du Freene.

CIRCGEMOT, Vide Chirchgemot.

CIRCUITY OF ACTION, circuitus actionis. A longer course of proceeding to recover a thing sued for than is needful; as if a person grant a rent-charge of 10l. per annum out of his manor of B. and after the grantee disseiseth the grantor of the same manor, who brings an assise and recovers the land, and 20l. damages, which being paid, the grantee brings his action for 10l. of his rent due during the time of the disseisin, which he must have had if no disseisin had been: this is called circuity of action because as the grantor was to receive 20l. damages, and pay 10l. rent, he might have received but 10l. only for damages, and the grantee might have kept the other 10l. in his hands by way of retainer for his rent, and so saved his action, which appears to be needless. Terms de Ley. See tit. Action.

CIRCUITS, Certain divisions of the kingdom appointed for the Judges to go twice a year, for administering of justice in the several counties. These circuits are made in the respective vacations, after Hilary and Trinity terms. See tit. Assise, Nisi Prius.

The several counties of England are divided into six circuits, viz. 1. MIDLAND; containing the counties of Northampton, Rutland, Lincoln, Nottingham, Derby, Leicester, Warwick. 2. NORFOLK; Bucks, Bedford, Huntingdon, Cambridge, Norfolk, Suffolk. 3. HOME; Hertford, Essex, Kent, Sussex, Surrey. 4. OXFORD; Berks, Oxford, Hereford, Salop, Gloucester, Monmouth, Stafford, Worcester. 5. WESTERN; Southampton, Wilts, Dorset, Cornwall, Devon, Somerset. 6. NORTHERN; York, Durham, Northumberland, Cumberland, Westmorland, Lancashire.

CIRCUMSPECTE AGATIS, Is the title of a statute made anno 13 Edw. I. stat. 4. relating to prohibitions, prescribing certain cases to the judges, wherein the king's prohibition lies not. 2 Inst. 187. See tit. Prohibition.

CIRCUMSTANTIAL EVIDENCE. See tit. Evidence.

CIRCUMSTANTIBUS, By-stanchers; a word of art signifying the supplying or making up the number of jurors, if any impanelled appear not, or appearing are challenged by either party, by adding to them so many of those that are present, or standing-by (ales de circumstantibus) that are qualified as will serve the turn. See stat. 35 Hen. VIII. c. 6. and stat. 5 Eliz. c. 25. for Wales. See also tit. Jury.

Circumvention, is any act of fraud whereby a person is reduced to a deed by decreet. Scotch Dict.

CITATION, citatio,] A summons to appear, applied particularly to process in the spiritual court. The ecclesiastical courts proceed according to the course of the civil and canon laws, by citation, libel, &c. A person is not generally to be cited to appear out of the diocese, or peculiar jurisdiction where he lives; unless it be by the archbishop, in default of the ordinary; where the ordinary is party to the suit, in cases of appeal, &c. and by law a defendant may be sued where he lives, though it is for subtracting tithes in another diocese, &c. 1 Nels. 449. By the stat. 23 Hen. VIII. c. 9. every archbishop may cite any person dwelling in any bishop's diocese within his province for heresy, &c. If the bishop or other ordinary consents; or if the bishop or ordinary, or judge do not do his duty in punishing the offence. Where persons are cited out of their diocese, and live out of the jurisdiction
of the bishop, a prohibition or consultation may be granted; but where persons live in the diocese, if when they are cited they do not appear, they are to be excommunicated, &c. The above statute was made to maintain the jurisdiction of inferior dioceses; and if any person is cited out of the diocese, &c. where the civil or canon law doth not allow it, the party grieved shall have double damages. If one defame another within the peculiar of the archbishop, he may be punished there; although he dwell in any remote place out of the archbishop's peculiar. Godb. 190. See tit. Courts Ecclesiastical.

CITY, civitas.] According to Covel is a town corporate, which hath a bishop and cathedral church, which is called civitas, oppidum, and urbs; civitas, in regard it is governed by justice and order of magistracy; oppidum, for that it contains a great number of inhabitants; and urbs, because it is in due form begirt about with walls. But Cromton, in his Jurisdictions, where he reckons up the cities, leaveth out Ely, although it hath a bishop and cathedral church; and puts in Westminster, though it hath not at present a bishop; and Sir Edward Coke makes Cambridge a city; yet there is no mention that it was ever an episcopal see. Indeed it appears by the stat. 35 Hen. VIII. cap. 10. that there was a bishop of Westminster; see tit. Bishops; since which, in stat. 17 Eliz. cap. 5. it is termed a city or borough; and notwithstanding what Coke observes of Cambridge, in the stat. 11 Hen. VII. c. 4. Cambridge is called only a town.

Kingdoms have been said to contain as many cities as they have sees of archbishops and bishops; but according to Blount, City is a word which hath obtained since the conquest; for in the time of the Saxons there were no cities, but all great towns were called burgus, and even London was then styled London-Bourg; as the capital of Scotland is now called Edinburgh. And long after the conquest the word city is used promiscuously with the word burgus, as in the charter of Leicester it is called both civitas and burgus; which shows that those writers were mistaken, that tell us every city was or is a bishop's see. And though the word city signifies with us such a town corporate as hath usually a bishop and cathedral church; yet it is not always so.

A city, says Blackstone, is a town incorporated, which is or hath been the see of a bishop; and though the bishopric be dissolved, as at Westminster, yet still it remaineth a city. 1 Comm. 114. It appears, however, that Westminster retained the name of city, not because it had been a bishop's see, but because it was expressly created such, in the letters patent by king Hen. VIII. erecting it into a bishopric. See Burnet's Reform. Appx. There was a similar clause in favour of the other five new created cities, Chester, Peterborough, Oxford, Gloucester and Bristol; the charter for Chester is in Gib. Cod. 1449.; and that for Oxford in 14 Rym. Fad. 754. Lord Coke seems anxious to rank Cambridge among the cities. Mr Woodeson, late Vinerian professor, (see his Lectures, i. 302.) has produced a decisive authority that cities and bishops' sees had not originally any necessary connection with each other. It is that of Ingulphus, who relates, that at the great council assembled in 1072, to settle the claim of precedence between the archbishops, it was decreed that bishops' sees should be transferred from towns to cities.

The accidental coincidence of the same number of bishops and cities would naturally produce the supposition that they were connected together as a necessary cause and effect; it is certainly a strong confirmation of the above authority, that the same distinction is not paid to bishops' sees in Ireland.
Mr. Ha1·grave in his notes to 1 Inst. 110. proves, that although Westminster is a city and has sent citizens to parliament from the time of Edw. VI. it never was incorporated; and this is a striking instance in contradistinction of the learned opinions there referred to, viz. that the king could not grant within time of memory to any place the right of sending members to parliament without first creating that place a corporation. 1 Comm. edit. 1793, in u. See also tit. Parliament, Bishops, Borough, &c.


CIVIL LAW, Is defined to be that law which every particular nation, commonwealth or city, has established peculiarly for itself; jus civile est, quod quisque sibi constituit. Just. Inst. Now more properly distinguished by the name of municipal law; the term Civil Law being chiefly applied to that which the old Romans used; compiled from the laws of nature and of nations. The Roman law was founded first, upon the regal constitutions of their ancient kings; next upon the twelve tables of the Decemviri; then upon the laws or statutes enacted by the Senate or People; the edicts of the Prætor and the Responsa Prudentum, or opinions of learned lawyers; and, lastly, upon the imperial decrees or constitutions of successive Emperors. These had by degrees grown to an enormous bulk; but the inconvenience arising therefrom was in part remedied, by the collections of three private lawyers, Gregorius, Hermogenes and Pa·jlinius; and afterwards by the Emperor Theodosius the younger, by whose orders a Code was compiled A. D. 438. being a methodical collection of all the imperial constitutions then in force; which Theodosian Code was the only book of civil law received as authentic in the western part of Europe, till many centuries after. For Justinian commanded only in the Eastern remains of the empire; and it was under his auspices that the present body of Civil Laws was compiled and finished by Trebonian, about the year 533.

This consists of, 1. The Institutes; which contain the elements or first principles of the Roman Law in 4 books. 2. The Digests or Pandects in 50 books; containing the opinions and writings of eminent lawyers, digested in a systematical method. 3. A New code or collection of imperial constitutions in 12 books; the lapse of a century having rendered the former code of Theodosius imperfect. 4. The Novels or new constitutions posterior in time to the other books, and amounting to a supplement to the code, containing new decrees of successive emperors, as new questions happened to arise. These form the body of the Roman law or Corpus Juris Civilis, as published about the time of Justinian; which however soon fell into neglect and oblivion, till about the year 1130, when a copy of the Digests was found at Amalfi in Italy; which accident, concurring with the policy of the Roman ecclesiastics, suddenly gave a new vogue and authority to the Civil Law, and introduced it into several nations. 1 Comm. 80, 81.

The Digest or Pandects, was collected from the works and commentaries of the ancient lawyers, some whereof lived before the coming of our Saviour: The whole Digest is divided into seven parts; the first part contains the elements of the law, as what is justice, right, &c. The second part treats of judges and judgments. The third part of personal action, &c. The fourth part of contracts, pawns and pledges: The fifth part of wills, testaments, &c. The sixth part of the possession of goods: The seventh part of obligations, crimes, punishments, &c. The Institutes contain a system of the whole body of
law, and are an epitome of the Digest divided into four books; but
sometimes they correct the Digest; they are called Institutes, because
they are for instruction, and show an easy way to the obtaining a
knowledge of the Civil Law; but they are not so distinct and compre­
hensive as they might be, nor so useful at this time as they were at
first. The Novels or Authentics, were published at several times with­
out any method; they are termed Novels, as they are new laws, and
Authentics, being authentically translated from the Greek into the La­
tin tongue; and the whole volume is divided into nine Collations,
Constitutions or Sections; and they again into 168 Novels, which
also are distributed into certain chapters. The first collation relates to
heirs, executors, &c. the second, the state of the church: the third
is against lawds: the fourth concerns marriages, &c. the fifth for­
bids the alienation of the possessions of the church: the sixth shows
the legitimacy of children, &c. the seventh determines who shall
be witnesses: the eighth ordains wills to be good, though imperfect, &c.
and the ninth contains matter of succession in goods, &c.

To those tomes of the Civil Law we may add the Book of Feuds,
which contains the customs and services that the subject or vassal
oweth to his prince or lord, for such lands or fees as he holdeth of
him. The Constitutions of the Emperor, were either by a rescript,
which was the letter of the emperor in answer to particular persons
who inquired the law of him; or by edict, which the emperor estab­
lished of his own accord, that it might be generally observed by
every subject; or by decree, which the emperor pronounced between
plaintiff and defendant, upon hearing a particular cause. The power
of issuing forth rescripts, edicts and decrees, was given to the prince
by the lex regia, wherein the people of Rome wholly submit­
ted themselves to the government of one person, viz. Julius Cæsar, after
the defeat of Pompey, &c. And by this submission the prince could not
only make laws, but was esteemed above all coercive power of them.

How far the Civil Law is adopted and of force in this kingdom, see
tit. Canon Law.

Before the reformation, decrees were as frequent in the Canon Law
as in the Civil Law. Many were graduates in utroque jure or utri­
usque juris. J. C. D. or juris utriusque doctor, is still common in
foreign universities. But Henry VIII. in the 27th year of his reign,
when he had renounced the authority of the Pope, issued a mandate
to the university of Cambridge, to prohibit lectures and the granting
degrees in canon law in that university. Stat. Acad. p. 137. It is
probable that at the same time Oxford received a similar prohibi­
tion, and that degrees in canon law have ever since been disconti­
nued in England. 1 Comm. 392. in n.

CLIVIL LIST. See tit. King.

TO CLACK WOOL, Is to cut off the sheep's mark, which makes
it weigh lighter; as to force wool, signifies to clip off the upper and
hairy part thereof; and to bard it, is to cut the head and neck from
the rest of the fleece. Stat. 8 Hen. VI. cap. 22.

CLADES, Clidas, eteta, clicia, from the Brit. cicia, and the Irish clia.] A wattle or hurdle; and a hurdle for penning or folding of sheep is
575.

CLARENDON, Constitutions of: certain constitutions, made in the
reign of Hen. II. A. D. 1164, in a great council held at Clarendon,
whereby the king checked the power of the Pope, and his clergy, and
greatly narrowed the total exemption they claimed from the secular jurisdiction. 4 Comm. 432.

CLARETUM, A liquor made of wine and honey, clarified or made clear by decoction, &c. which the Germans, French, and English, called *hijzjwcras*: and it was from this, the red wines of France were called *claret*. Girald. Camb. ahud Wharton. Ang. Sax. par. 2. p. 480.

CLAIM, *clameum.*] A challenge of interest in any thing that is in the possession of another, or at least out of a man’s own possession; as claim by charter, by descent, &c.

In Plou, Com. 359. (a.) Dyer, C. J. is said to have defined claim to be, a challenge of the ownership or property that one hath not in possession, but which is detained from him by wrong.

Claim is either verbal, where one doth by words claim and challenge the thing that is so out of his possession; or it is by an action brought, &c. and sometimes it relates to lands, and sometimes to goods and chattels. Lit. Sec. 420. Where any thing is wrongfully detained from a person, this claim is to be made; and the party making it, may thereby avoid descents of lands, disseisins, &c. and preserve his title, which otherwise would be in danger of being lost.

Co. Lit. 250. A man who hath present right or title to enter, must make a claim; and in case of reversions, &c. one may make a claim where he hath right, but cannot make an entry on the land, for fear of being beaten or other injury, he may approach as near as he can to the land, and claim the same; and that shall be sufficient to vest the seisin in him. 1 Inst. 250. See tit. Entry.

If nothing doth hinder a man, having a right to land, from entering or making his claim, there he must do so, before he shall be said to be in possession of it, or can grant it over to another; but where the party who hath right, is in possession already, and where an entry or claim cannot be made, it is otherwise. 1 Rep. 157. A claim will vest an estate out of another, when the party must enter into some part of the land; but if it be only to bring him into possession, he may do it in view. By claim of lands, in most cases, is intended a claim with an entry into part of the lands, or by a near approach to it.

Co. Lit. 252. 254. Poph. 67. One in reversion after an estate for years, or after a statute-merchant, staple, or elegit, may enter and make a claim to prevent a descent, or avoid a collateral warranty. And claim of a remainder by force of a condition must be upon the land, or it will not be sufficient. Co. Lit. 202.

If a man seised of lands in right of his wife, make a feeoffment in fee on condition, and the husband dieth, and then the condition is broken, and the heir enters; in this case the wife need not claim to get possession of her estate, for the law doth vest it in her without any claim. Co. Lit. 202. 8 Rep. 43.

The claim of the particular tenant, shall be good for him in reversion or remainder; and of him in reversion, &c. for particular tenant; so claim of a copyholder, will be good for the lord, &c. But if tenant for years, in a court of record claim the fee of his land, it is a forfeiture of his estate. Plowd. 359. Co. Lit. 251. A claim may be made by the party himself; and sometimes by his servants or deputy; and a guardian in socage, &c. may make a claim, or enter, in the name of the infant that hath right, without any commandment. Co. Lit. 245.

Claim or entry should be made as soon as may be; and by the Com-
mon Law it is to be within a year and a day after the disseisin, etc. and if the party who hath unjustly gained the estate, do afterwards occupy the land, in some cases an assise, trespass, or forcible entry may be had against him. Litt. § 426. 430.

If a fine is levied of lands, strangers to it are to enter and make a claim within five years, or be barred; infants after their age, feme covert after the death of their husbands, etc. have the like time, by stat. 1 Rich. III. cap. 7. See tit. Fines.

Continual Claim, is where a man hath right and title to enter into any lands or tenements, whereof another is seised in fee, or in fee tail; if he who hath title to enter makes continual claim to the lands or tenements before the dying seised of him, who holdeth the tenements then, though such tenant die thereof seised, and the lands or tenements descend to his heir, yet may he who hath made such continual claim, or his heir, enter into the lands or tenements so descended by reason of the continual claim made, notwithstanding the descent. So (si come) in case a man be disseised, and the disseisee makes continual claim to the tenements in the life of the disseisor, although the disseisor dieth seised in fee, and the land descend to his heir, yet may the disseisee enter upon the possession of the heir, notwithstanding the descent. Litt. § 414.

But such claim must always be made within the year and the day before the death of the person holding the land; for if such tenant do not die seised within a year and a day, after such claim made, and yet he that hath right dares not enter, he must make another claim, within the year and the day after the first claim, and so toties quoties, that he may be sure his claim shall always have been made within a year and a day before the death of the tenant; and hence it seems it is called Continual Claim. See further tit. Entry; as also tit. Descent.

By stat. 32 Hen. VIII. c. 43. five years must elapse without entry or continual claim, in order that a descent on the disseisor's death should take away the entry of the disseisee, or his heir; but after the five years, the disseisee must make a continual claim, as before the statute. And by stat. 4 Ann. c. 16. § 16. no claim (or entry) shall be of effect to avoid a fine, unless an action shall be commenced thereon within a year, and prosecuted with effect. See tit. Fine, Entry, Disseisin, etc. And for further particulars, see 1 Inst. 150. and n.

Claim of Liberty, A suit or petition to the king in the court of Exchequer, to have liberties and franchises confirmed there by the king's Attorney-General. Co. Ent. 93.

Clamea admittenda in itinere per notariatum. An ancient writ by which the king commanded the justices in eyre to admit a person's claim by attorney who was employed in the king's service and could not come in his own person. Reg. Orig. 19.

Clap-board, is a board cut in order make casks or vessels, which shall contain three feet and two inches at least in length; and for every six ton of beer exported, the same cask, or as good, or 200 of clap-boards is to be imported. See tit. Navigation Acts.

Clavigarius armorum, A herald at arms. Blount.

Clario, A trumpet. Knighton, anno 1346.

Classarius, A seaman, or soldier serving at sea. Chart. Carol. 5. Imperator. Thomas Comit. Surr. dat. in urbe Londinensi, 8 Juni, 1522.

Claud, Brit.] A ditch; Claudere, to enclose, or turn open fields into enclosures. Paroch. Antiq. 236.
CLERGY.

CLAVES INSULÆ, a term used in the Isle of Man, where all ambiguous and weighty cases are referred to twelve persons, whom they call claves insulae, i.e. the keys of the island.

CLAVIA, In the inquisition of Serjeanties in the 12th and 13th years of King John, within the counties of Essex and Hertford; Boyd-in Aylet tenet quatuor lib. terre in Bradwell, per manum Willielmi de dono serjeantiam clavie, viz. By the serjeantry of the club or mace. Brady's Apend. Introduct. to Eng. Hist. 22.


Clause irritant, is any provision which makes a penalty be incurred, and the obligation to be null for the future; or upon any other account, makes the right to vacate or resolve. Scotch Dict.

Clause Resolutive, is a provision, whereby the contract to which it is affixed, is for not performance declared to have been null from the beginning. Scotch Dict.

CLAUSE ROLLS, rotuli clausi. Contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.


CLAUSUM PASCHÆ. Stat. Westm. 1. In crastino clausi paschæ, or In crastino octabis Paschæ, which is all one, that is the morrow of the utas (or eight days) of Easter. 2 Inst. 157. Clausum Paschae, i.e. Dominica in albis; sic dicitum, quod Pascha claudat. Blount. The end of Easter; the Sunday after Easter-Day.

CLAUSURA HEYÆ, The enclosure of a hedge. Rot. Plac. in itinere apud Cestriam, anno 14 Hen. VII.

CLAWA, A close, or small measure of land. Mon. Angl. tom. 2. f. 250.

CLEPTOR, A rogue or thief. Hoveden, anno 948.

CLERGY.

Clerus.] Signifieth the assembly or body of clerks or ecclesiastics, being taken for the whole number of those who are de clero Domini, of our Lord's lot or share, as the tribe of Levi was in Judea; and are separate from the noise and bustle of the world, that they may have leisure to spend their time in the duties of the christian religion.

The Clergy in general, were, heretofore divided into regular and secular; those being regular which lived under certain rules, being of some religious order, and were called men of religion, or The Religious; such as all Abbots, Priors, Monks, &c. The secular were those that lived not under any certain rules of the religious orders; as Bishops, Deans, Parsons, &c. Now, the word Clergy comprehends all persons in holy orders, and in ecclesiastical offices, viz. Archbishops, Bishops, Deans and Chafftars, Archdeacons, Rural Deans, Parsons, (who are either Rectors, or Vicars,) and Curates, to which may be added Parish Clerks, who formerly frequently were, and yet sometimes are, in orders. As to the law more peculiarly respecting each of these, see the several titles, particularly tit. Parson.

This venerable body of men have several privileges allowed them by our municipal laws, and had formerly much greater, which were abridged at the time of the reformation, on account of the ill use
which the popish clergy had endeavoured to make of them; for the laws having exempted them from almost every personal duty, they attempted a total exemption from every secular tie. The personal exemptions however for the most part continue; a clergyman cannot be compelled to serve on a jury, nor to appear at a Court Leet, or view of frank pledge, which almost every other person is obliged to do. 2 Inst. 4. (See tit. Court Leet.) But if a layman is summoned on a jury, and before the trial takes orders, he shall, notwithstanding, appear and be sworn. 4 Leon. 190. A clergyman cannot be chosen to any temporal office, as bailiff, reeve, constable, or the like, in regard of his own continual attendance on the sacred function. Finch. L. 88. During his attendance on divine service he is privileged from arrest in civil suits; for a reasonable time, eundo, redeundo et morando, to perform service. Stats. 50 Edw. III. c. 5. 1 Rich. II. c. 16. 12 Co. 100. In cases of felony he shall have benefit of his clergy, without being branded; and may likewise have it more than once. See post, Clergy, benefit of. Clergymen also have certain disabilities; they are not capable of sitting as members of the House of Commons. See tit. Parliament. By stat. 21. Hen. VIII. c. 13. the Clergy are not (in general) allowed to take any lands or tenements to farm, on pain of 10l. per month, and total avoidance of the lease; unless where they had not sufficient glebe, and the land is taken for the necessary expenses of their household. Stat. § 8. Nor, on like penalty to keep any tenant-house, or brew-house. Nor may they engage in any trade, or sell merchandise, on forfeiture of treble value. But see tit. Bankruptcy.

See now the stat. 43 Geo. III. c. 84. "for amending the laws relating to spiritual persons holding farms, and for enforcing their residence on benefices." By this act, spiritual persons are allowed in certain cases to take farms, and the penalties of non-residence are allowed. By 44 Geo. III. c. 2. compensation was made to curates, who suffered by the execution of this act. As to increasing of small livings, see 2 and 3 Am. c. 11. 1 Geo. I. c. 10. as explained by 43 Geo. III. c. 107, 45 Geo. III. c. 84. as to England; and as to Ireland, Irish act. 29 Geo. II. c. 48. enforced by 48 Geo. III. c. 60. As to erecting and repairing glebe houses in Ireland, see 43 Geo. III. c. 106. See further, tit. Parish.

By the statute called Articuli Cleri, 9 Edw. II. stat. 1. c. 3. if any person lay violent hands on a clerk, the amends for the peace broken (1) shall be before the king, (that is by indictment,) and the assallant may (2) also be sued before the bishop, that excommunication or bodily pence may be imposed; which if the offender will redeem by money, it may (3) be sued for by the bishop. See 4 Comm. 217.

Although the Clergy claimed an exemption from all secular jurisdiction, yet Mat. Paris tells us, that soon after William the First had conquered Harold, he subjected the bishoprics and abbeys who held per baroniam, that they should be no longer free from military service; and for that purpose he in an arbitrary manner registered how many soldiers every bishopric and abbey should provide, and send to him and his successors in time of war; and having placed these registers of ecclesiastical servitude in his treasury, those who were aggrieved, departed out of the realm; but the clergy were not till then exempted from all secular service; because, by the laws of king Edgar, they were bound to obey the secular magistrate in three cases, viz. upon any expedition to the wars, and to contribute to the building and repairing of bridges; and of castles for the defence of the kingdom. It is probable that by expedition to the wars, it was not at that time
intended they should personally serve, but contribute towards the charge: one they must do; as appears by the petition to the king, anno 1267, viz. ut omnes clericí tenentes per baroniam vel feudum laicum, personaliter armati procederent contra regis adversarios, vel tamen servitium in expeditione regis inventiret, quantum pertineret ad tiamium terram vel tenementum. But their answer was, that they ought not to fight with the military, but with the spiritual sword, that is, with prayers and tears; and they were to maintain peace and not war, and that their baronies were founded on charity; for which reason they ought not to perform any military service. Blount.

That the Clergy had greater privileges and exemptions at common law than the laity is certain; for they are confirmed to them by Magna Charta, and other ancient statutes; but these privileges are in a great measure lost, the clergy being included under general words in later statutes; so that clergymen are liable to all public charges imposed by act of parliament, where they are not particularly excepted as above stated. Their bodies are not to be taken upon statutes-merchant, or staple, &c. for the writ to take the body of the consor is si laicus sit; and if the sheriff or any other officer arrest a clergymen upon any such process, it is said an action of false imprisonment lies against him that does it, or the clergymen arrested may have a supersedeas out of Chancery. 2 Inst. 4.

In action of trespass, account, &c. against a person in holy orders, wherein process of capias lies, if the sheriff return that the defendant is clericus beneficiatus nullum habens laicum ubi summoneri potest; in this case the plaintiff cannot have a capias to arrest his body; but the writ ought to issue to the bishop, to compel him to appear, &c. But on execution had against such clergymen, a sequestration shall be had of the profits of his benefice. 2 Inst. 4. Degge; 157.

The foregoing are all the privileges remaining on civil accounts; though by the common law, they were to be free from the payment of tolls, in all fairs, and markets, as well for all the goods gotten upon their church livings, as for all goods and merchandises by them bought to be spent upon their rectories; and they had several other exemptions, &c.

**Clergy, Benefit of.**

This being, as Blackstone observes, a title of no small curiosity as well as use; the learned commentator's chapter on that subject (4 Comm. 365.) is here abridged; with such additions thereto as seemed requisite; in which inquiry is made,

I. Into its Original; and various Changes.
II. To whom it is now to be allowed.
III. In what Cases.
IV. The Consequences of allowing it.

I. Clergy, the privilegium clericale, or, in common speech, The Benefit of Clergy, had its original from the pious regard paid by Christian princes to the church in its infant state; and the ill use which the popish ecclesiastics soon made of that pious regard. The exemptions which they granted to the church were principally of two kinds; 1. Exemption of places consecrated to religious duties, from criminal
arrests, which was the foundation of sanctuaries; 2. Exemption of the persons of clergymen from criminal process before the secular judge, in a few particular cases; which was the true original and meaning of the privilegium clericale.

In England, however, a total exemption of the clergy from secular jurisdiction could never be thoroughly effected, though often endeavoured by the clergy: Keilw. 180. See stat. Westm. 1. 3 Edw. I. c. 2.; and, therefore, though the ancient privilegium clericale, was in some capital cases, yet it was not universally allowed. And in those particular cases, the use was for the bishop or ordinary to demand his clerks to be remitted out of the king's courts as soon as they were indicted; concerning the allowance of which demand there was for many years a great uncertainty; (2 Hal. P. C. 377.) till at length it was finally settled, in the reign of Henry VI. that the prisoner should first be arraigned; and might either then claim his benefit of clergy, by way of declinatory plea; or, after conviction, by way of arresting judgment. This latter way is most usually practised, as it is more to the satisfaction of the court to have the crime previously ascertained by confession, or the verdict of a jury; and also it is more advantageous to the prisoner himself, who may possibly be acquitted, and so need not the benefit of his clergy at all.

Originally the law was held, that no man should be admitted to the privilege of clergy, but such as had the habitum et tonsuram clericalem. 2 Hal. P. C. 372. M. Paris, A. D. 1259. But in process of time, a much wider, and more comprehensive criterion was established: every one that could read (a mark of great learning in those days of ignorance and superstition) being accounted a clerk, or clericus, and allowed the benefit of clerksip, though neither initiated in holy orders, nor trimmed with the clerical tonsure. But when learning, by means of the invention of printing and other concurrent causes, began to be more generally disseminated than formerly; and reading was no longer a competent proof of clerkship, or being in holy orders; it was found that as many laymen as divines were admitted to the privilegium clericale; and therefore, by stat. 4 Hen. VII. c. 13. a distinction was once more drawn between mere lay scholars, and clerks that were really in orders. And, though it was thought reasonable still to mitigate the severity of the law with regard to the former, yet they were not put upon the same footing as actual clergy; being subjected to a slight degree of punishment, and not allowed to claim the clerical privilege more than once. Accordingly the statute directs that no person, once admitted to the benefit of clergy, shall be admitted thereto a second time, unless he produces his orders; and in order to distinguish their persons, all laymen who are allowed this privilege shall be burnt with a hot iron in the between of the left thumb. This distinction between learned laymen, and real clerks in orders, was abolished for a time by the stats. 28 Hen. VIII. c. 1. and 32 Hen. VIII. c. 3, but it is held (Hob. 294. 2 Hal. P. C. 375.) to have been virtually restored by stat. 1 Edw. VI. c. 12. which statute also enacts, that lords of parliament, and peers of the realm, having place and voice in parliament, may have the benefit of their peerage, equivalent to that of clergy, for the first offence, (although they cannot read, and without being burnt in the hand,) for all the offences then clergyable to commoners; and also for the crimes of house-breaking, highway robbery, horse-stealing, and robbing of churches.

After this burning, the laity, and before it, the real clergy, were discharged from the sentence of the law in the king's court, and de-
livered over to the ordinary, to be dealt with according to the ecclesiastical canons. Whereupon the ordinary proceeded to make a purgation of the offender by a new canonical trial, by the oath of the offender and that of twelve compurgators, although he had been previously convicted by his country; or perhaps by his own confession. Staunf. P. C. 138. b. See also 3 P. Wms. 447. Hob. 289. 291.

But this purgation opening a door to a scandalous prostitution of oaths, and other abuses, it was enacted by stat. 18 Eliz. c. 7, that for the avoiding of such perjuries and abuses, after the offender has been allowed his clergy, he shall not be delivered to the ordinary as formerly; but upon such allowance, and burning in the hand, he shall forthwith be enlarged and delivered out of prison; with proviso, that the judge may, if he thinks fit, continue the offender in gaol for any time not exceeding a year. And thus the law continued for above a century, unaltered; except only that the stat. 21 Jac. I. c. 6, allowed, that women convicted of similitude larcenies under the value of 10s. should (not properly have the benefit of clergy, for they were not called upon to read; but) be burned in the hand, whipped, put in the stocks, or imprisoned for any time not exceeding a year. And a similar indulgence by stats. 3 & 4 W. & M. c. 9. 4 & 5 W. & M. c. 24. was extended to women guilty of any clergyable felony whatsoever; who were allowed to claim the benefit of the statute once, in like manner as men might claim the benefit of clergy, and to be discharged upon being burned in the hand, and imprisoned for any time not exceeding a year. The punishment of burning in the hand was changed by stat. 10 & 11 Wm. III. c. 25. into burning in the left cheek, near the nose; but this provision was repealed by stat. 5 Ann. c. 6. and till that period, all women, all peers of parliament, and peeresses, and all male commoners who could read, were discharged in all clergyable felonies; the males absolutely, if clerks in orders; and other commoners, both male and female upon branding; and peers and peeresses without branding, for the first offence; yet all liable, (except peers and peeresses,) at the discretion of the judge, to imprisonment not exceeding a year. And those men who could not read, if under the degree of peerage, were hanged.

But by the said stat. 5 Ann. c. 6. it was enacted, that the benefit of clergy should be granted to all those who were entitled to ask it, without requiring them to read. And it was further enacted by the same statute, that when any person is convicted of any theft or larceny, and burnt in the hand for the same, according to the ancient law, he shall also, at the discretion of the judge, be committed to the house of correction, or public work-house, to be there kept to hard labour for any time not less than six months, and not exceeding two years; with a power of inflicting a double confinement in case of the party's escape from the first. And by stats. 4 Geo. I. c. 11. 6 Geo. I. c. 23. when any persons shall be convicted any larceny either grand or petit, or any felonious stealing or taking of money or goods, either from the person, or the house of another, or in any other manner, and who by the law shall be entitled to the benefit of clergy, and liable only to burning in the hand, or whipping, the court may instead thereof direct such offenders to be transported; and by the stat. 19 Geo. III. c. 74. offenders liable to transportation, may in lieu thereof be employed, if males, (except in the case of petit larceny,) in hard labour, for the benefit of some public navigation, and in all cases might be confined to hard labour in certain penitentiary houses, then in contemplation to be erected; but this latter plan of the penitentiary houses was never car-
ried into execution. See further tit. Felons, Transportation. 2 Hawk.
P. C. c. 58. § 10.

By the same stat. 19 Geo. III. c. 74. instead of burning in the
hand, the court in all clergyable felonies may impose a pecuniary fine,
or (except in the case of manslaughter) may order the offender to
be once or oftener, but not more than thrice, either publicly or pri-
vately whipped; and in the latter case, certain provisions are added to
prevent collusion or abuse. The offender so fined or whipped, to be
equally liable to subsequent detainer or imprisonment. This part of
the act is made perpetual, by 39 Geo. III. c. 45.

II. 1. All Clerks in orders, are without any branding, and of course
without any transportation, fine, or whipping, (for those are only sub-
stituted in lieu of the other,) to be admitted to this privilege, or bene-
fit of clergy, and immediately discharged; and this as often as they
offend. 2 Hal. P. C. 375.

2. All Lords of Parliament, and peers of the realm, having place
and voice in parliament, by stat. 1 Edw. VI. c. 12. (which is likewise
held to extend to peeresses; Duchess of Kingston’s case, 11 State Tr.
198.) shall be discharged in all clergyable, and other felonies, pro-
vided for by the act, without any burning in the hand, or imprison-
ment, or other punishment substituted in its stead, in the same man-
ner as real clerks convict; but this only for the first offence.

3. All the Commons of the realm, not in orders, whether male or
female, shall for the first offence be discharged of the capital punish-
ment of felonies, within the benefit of clergy, upon being burnt in the
hand, whipped, or fined, or suffering the discretionary imprisonment
before stated; or in case of larceny, upon being transported for seven
years, if the court shall think proper.

It is a privilege peculiar only to the Clergy, that sentence of death can
never be passed upon them for any number of manslaughter, biga-
mies, simple larcenies, or other clergyable offences; but a layman, even
a peer, may be ousted of clergy, and will be subject to the judg-
ment of death, upon a second conviction of a clergyable offence.
Thus if a layman has once been convicted of manslaughter, upon pro-
duction of the conviction, he may afterwards suffer death for bigamy,
or any other clergyable felony; which would not therefore be a capi-
tal crime to another person not so circumstanced. See post, as to the
Counter-jure.

It has been said that Jews, and other infidels and heretics, were not
capable of the benefit of clergy, till after the stat. 5 Ann. c. 6. as
being under a legal incapacity for orders. 2 Hal. P. C. 373. 2 Hawk.
P. C. c. 33. § 5. Post. 306. But it does not seem that this was ever
ruled for law, since the reintroduction of the Jews into England,
in the time of the usurpation by Cromwell. For if that were the case,
the Jews are still in the same predicament; which every day’s expe-
rience contradicts; the stat. of Anne having made no alteration in
this respect, it only dispensing with the necessity of reading. 4
Comm. 373.

But a person having once had benefit of clergy, shall not be oust-
ed of his clergy, by the bare mark in his hand, or by a parol aver-
ment, without the record testifying it, or a transcript thereof, accord-
ing to the following statutes. 2 H. H. 373.

By stat. 34 & 35 Hen. VIII. cap. 14. the clerk of the crown, or of
the peace, or of assise, shall certify a transcript briefly of the tenor of
the indictment, outlawry or conviction, and attainder, into the King’s
Bench in forty days: and the clerk of the crown, when the judges of assise, or justices of the peace write to him for the names of such persons, shall certify the same, with the causes of the conviction or attainder.

Another method is given by the stat. 3 W. & M. c. 9. sect. 7. which enacts, that the clerk of the crown, clerk of the peace, or clerk of assise, where a person admitted to clergy under that act shall be convicted, shall at the request of the prosecutor, or any other on the king's behalf, certify a transcript briefly and in few words, containing the effect and tenor of the indictment and conviction, of his having the benefit of clergy, and the addition of the party, and the certainty of the felony and conviction, to the judges where such person shall be indicted for any subsequent offence.

Also it seems, that if the party deny that he is the same person, issue must be joined upon it, and it must be found upon trial that he is the same person, before he can be ousted of clergy. 2 H. H. 873.

Against the defendant's prayer of clergy, the prosecutor may file a COUNTER-PLEA; alleging some fact, which in law deprives the defendant of the privilege he claims.

It is a good counter-plea to the prayer of clergy, that the offender is not entitled to the benefit of the statute, because he was before convicted of an offence, and thereupon prayed the benefit of the statute, which was allowed to him; alleging the truth of the fact, and praying the judgment of the court, that he may die according to law; which fact is to be tried by the record in pursuance of the stat. 34 & 35 Hen. VIII. c. 14. above stated. Staunf. 135. Divers other counter-pleas also, by which an offender may be deprived of clergy, may be framed from a consideration of the persons to whom it is allowed or denied by the common law; and of the circumstances under which that allowance or denial of it has been placed by divers statutes. Ib. 138.

The use of this counter-plea, however, had long become obsolete, and out of practice; no traces of it appearing in any of the books since Stanniforde's time, who was chief justice of K. B. temp. Eliz. But the daring practices of some money-coiners occasioned its revival; and in the case of R. v. Marston Rothwell, and Mary Child, convicted for coining, at the Old Bailey, in September sessions, 1783, before Ashhurst, J. a counter-plea of record was filed on the part of the prosecution, alleging that the convicts had been before allowed the benefit of the statute, &c. And they were thereby ousted of their clergy. Leach's Hawk. P. C. ii. c. 33. § 19. n. and see Leach's Crown Law, 312.

III. Privilege of Clergy was not indulged at common law, either in high treason, or in petit larceny; nor in any mere misdemeanors; and therefore it may be laid down for a rule, that it was only allowable in petit treasons, and capital felonies; which for the most part became legally entitled to this indulgence by the stat. de Clero, 25 Edw. III. st. 3. c. 4. which provides, "that clerks convict for treasons or felonies, touching other persons than the king himself, shall have the privilege of Holy Church." But yet it was not allowable in all felonies whatsoever; for in some it was denied even by the common law, viz. insidiatio viarum, or lying in wait for one on the highway; depopulatio agrorum, or destroying and ravaging a country; (2 Hal. P. C. 333.) but in these two cases it was expressly remedied by stat. 4 Hen. IV.
CLERGY, BENEFIT OF IV. 1.

c. 2, as to clerks only;) and combustio domorum, or arson, the burning of houses. 1 Hal. P. C. 346. all which are a kind of hostile acts, and in some degree border on treason. And further, all these identical crimes, together with petit treason, and very many other acts of felony, are ousted of clergy by particular acts of parliament.

All the statutes for excluding clergy, are in fact nothing else but the restoring of the law to the same rigour of capital punishment in the first offence, that was exerted before the privilegium clericale was at all indulged; and so tender is the law of inflicting capital punishment, in the first instance, for any inferior felony, that notwithstanding, by the marine law, as declared in stat. 28 Hen. VIII. c. 15. benefit of clergy is not allowed in any case whatever; yet when offences are committed within the Admiralty jurisdiction, which would be clergy-able if committed by land, the constant course is to acquit and discharge the prisoner. Moor, 756. Post. 288.

As there is no necessity that the ordinary should demand the benefit of the clergy for a clerk; so neither is there any that the prisoner himself should demand it, where it sufficiently appears to the court that he hath a right to it, in respect to his being in orders, &c. In which case, if the prisoner does not demand it, it is left to the discretion of the judge, either to allow, or not to allow it him. 2 Hawk. P. C. c. 33. § 112.

Clergy may be demanded after judgment given against a person, whether of death, &c. and even under the gallows, if there be a proper judge there, who has power to allow it. 2 Hawk. P. C. c. 33. § 111.

To conclude this head of inquiry, it may be observed; 1. That in all felonies, whether new created or by common law, clergy is now allowable, unless taken away by express words of an act of parliament. 2 Hal. P. C. 330.—2. That where clergy is taken away from the principal, it is not of course taken away from the accessory; unless he be also particularly included in the words of the statute. 2 Hawk. P. C. c. 33. § 26. And where clergy is taken away expressly by any statute, the offence must be laid in the indictment to be against that very statute, and the words of it, or the offender shall have his clergy. Kel. 104. H. P. C. 231.—3. That when the benefit of clergy is taken away from the offence, (as in case of murder, robbery, rape, &c.) a principal in the second degree, being present aiding and abetting the crime, is excluded from his clergy equally with him that is principal in the first degree; but, 4. That where it is only taken away from the person committing the offence, (as in the case of stabbing, or larceny in a dwelling-house, or privately stealing from the person,) his aids and abettors are not excluded; as such statutes are to be taken literally. 1 Hal. P. C. 329. Post. 356, 357.

Clergy in cases of outlawry. 4 Comm. 320. n. 41.

IV. The consequences are such as affect the present interest and future credit and capacity of the party, as having been once a felon, but now purged from that guilt by the privilege of clergy, which operates as a kind of statute pardon.

1. By this conviction, the offender forfeits all his goods to the king; which being once vested in the crown, shall not afterwards be restored to the offender. 2 Hal. P. C. 388.—2. After conviction, and till he receives the judgment of the law by branding, or some of its substitutes, or else is pardoned by the king, he is to all intents and purposes a felon, and subject to all the disabilities and other incidents of
a felon. 3 P. Wms. 487.—3. After burning, or its substitute, or pardon, he is discharged for ever of that, and all other clergyable felonies before committed; but not of felonies, from which benefit of clergy is excluded; and this by stats. 8 Eliz. c. 4. and 18 Eliz. c. 7.—4. By the burning, or its substitute, or the pardon of it, he is restored to all capacities and credits, and the possession of his lands, as if he had never been convicted. 2 Hal. P. C. 389. 5 Reg. 110.—5. What is said with regard to the advantages of commoners and laymen, subsequent to the burning in the hand is equally applicable to all peers and clergymen, although never branded at all, or subjected to other punishment in its stead. 2 Hal. P. C. 389, 390.

It is holden, that after a man is admitted to his clergy, it is actionable to call him a felon; because his offence being pardoned by the statute, all the infamy and other consequences of it are discharged. 2 Hawk. P. C. c. 33. § 132.

As to what felonies are within, and what without clergy, see this Dictionary, tit. Felons; and more particularly the Index to 1 Hawk. P. C. As to the time of pleading clergy, see tit. Pleading; Judgment.

CLERICO ADMITTENDO, see Admittendo Clerico.

CLERICO INTRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM, A writ directed to those who have thrust a bailiwick, or other office, upon one in holy orders, charging them to release him. Reg. Orig. 143.

CLERICO CAPTO PER STATUTUM MERCATORUM, &c. A writ for the delivery of a clerk out of prison, who is taken and imprisoned upon the breach of a statute merchant. Reg. Orig. 147. See ante, tit. Clergy.

CLERICO CONVICTO COMMISSO GAOLE IN DEFECTU ORDINARII DELLERANDO, An ancient writ that lay for the delivery of a clerk out of prison, who is taken and imprisoned upon the breach of a statute merchant. Reg. Orig. 69. See ante, tit. Clergy.

CLERK, clericus.] The law term for a clergyman, and by which all of them who have not taken a degree are designated in deeds, &c. In the most general significatio, is one that belongs to the holy ministry of the church; under which, where the canon law hath full power, are not only comprehended sacerdotes and diaconi, but also subdiaconi, lectors, acolyti, exorcisti and ostiarii; but the word has been anciently used for a secular priest, in opposition to a religious or regular. Paroch. Antig. 171. And is said to be properly a minister or priest, one who is more particularly called in sortem Domini. Blount.

CLERK, in another sense, denotes a person who practises his pen in any court, or otherwise; of which clerks there are various kinds, in several offices, &c. The clergy, in the early ages, as they engrossed almost every other branch of learning, so were they peculiarly remarkable for their proficiency in the study of the law. Nullus clericus nisi causidicus, is the character given of them soon after the conquest by William of Malmesbury. The judges therefore were usually created out of the sacred order; and all the inferior offices were supplied by the lower clergy, which has occasioned their successors to be denominated clerks to this day. 1 Comm. 17.

CLERK of the Acts. An officer in the navy office, whose business it is to record all orders, contracts, bills, warrants, &c. transacted by the Lord High Admiral, or Lords Commissioners of the Admiralty, and Commissioners of the Navy. See stat. 22 & 23 Car. II. c. 11.
Clerk of Affidavits. In the court of Chancery, is an officer that files all affidavits made use of in court.

Clerk of the Assise, is he that writes all things judicially done by the justices of assises in their circuits. Cromwell, Jurid. 227. This officer is associated to the judge in commissions of assise, to take assises, &c. Clerk of the assise shall not be counsel with any person on the circuit. Stat. 33 Hen. VIII. c. 24. § 5. To certify the names of felons convict, see tit. Clergy, benefit of II. How punished for concealing, &c. any indictment, recognisance, fine or forfeiture. Stat. 22 & 23 Car. II. c. 22. § 9. 3 Geo. I. c. 15. § 12. See tit. Estreat, Sheriff. To take but 2s. for drawing an indictment, and nothing if defective. 10 & 11 W. III. c. 23. §§ 7, 8. Finaile for falsely recording appearances of persons returned on a jury. 3 Geo. II. c. 25. § 3. See tit. Jury.

Clerk of the Baits, An officer belonging to the court of King's Bench. He files the bail pieces taken in that court, and attends for that purpose.

Clerk of the Cheque, An officer in the king's court, so called because he hath the check and controlment of the yeomen of the guard, and all other ordinary yeomen belonging either to the King, Queen, or Prince; giving leave, or allowing their absence in attendance, or diminishing their wages for the same; he also by himself or deputy takes the view of those that are to watch in the court, and hath the setting of the watch. See stat. 33 Hen. VIII. c. 12. Also there is an officer of the same name in the court of the King's Bench at Plymouth, Deptford, Woolwich, Chatham, &c.

Clerk Controller of the King's House, whereof there are two: An officer in the King's court, that hath authority to allow or disallow charges and demands of Pursuivants, Messengers of the Green Cloth, &c. He hath likewise the oversight of all defects and miscarriages of any of the inferior officers; and hath a right to sit in the counting-house, with the superior officers, viz. The Lord Steward, Treasurer, Controller, and Cofferer of the Household, for correcting any disorders. See stat. 33 Hen. VIII. c. 12.

Clerk of the Crown, clericus corone. An officer in the King's Bench, whose function is to frame, read and record all indictments against offenders there arraigned or indicted of any public crime. And when divers persons are jointly indicted, the Clerk of the Crown shall take but one fee, viz. 2s. for them all. Stat. 2 Hen. IV. c. 10. He is otherwise termed Clerk of the Crown office, and exhibits informations, by order of the court, for divers offences. See tit. Information.

Clerk of the Crown in Chancery, An officer in that court who continually attends the Lord Chancellor in person or by deputy; he writes and prepares for the great seal, special matters of state by commission, or the like, either immediately from his majesty's orders, or by order of his council, as well ordinary as extraordinary, viz. commissions of lieutenancy, of justices of assise, oyer and terminer; gaol delivery, and of the peace, with their writs of association, &c. Also all general pardons, at the King's coronation; or in parliament, where he sits in the Lords' house in parliament time; and into his office the writs of parliament, with the names of knights and burgesses elected thereupon, are to be returned and filed. He hath likewise the making out of all special pardons; and writs of execution upon bonds of statute-staple forfeited; which was annexed to this office in the reign of queen Mary, in consideration of his chargeable attendance.
Clerk of the Declarations, An officer of the court of King's Bench, that files all declarations in causes there depending, after they are engrossed, &c.

Clerk of the Deliveries, an officer in the Tower of London, who exercises his office in taking of indentures for all stores, ammunition, &c. issued from thence.

Clerk of the Errors, clericus errorum.] In the court of Common Pleas, transcribes and certifies into the King's Bench the tenor of the records of the cause or action upon which the writ of error, made by the curiotor, is brought there to be heard and determined. The Clerk of the Errors in the King's Bench, likewise transcribes and certifies the records of causes, in that court, into the Exchequer; if the cause of action were by bill; if by original, the Lord Chief Justice certifies the record into the House of Peers in Parliament, by taking the transcript from the Clerk of the Errors, and delivering it to the Lord Chancellor, there to be determined, according to the stats. 27 Eliz. c. 8. and 31 Eliz. c. 1. The Clerk of the Errors in the Exchequer also transcribes the records, certified thither out of the King's Bench, and prepares them for judgment in the court of Exchequer Chamber, to be given by the justices of C. B. and barons there. Stats. 16 Car. II. c. 2. 20 Car. II. c. 4. See tit. Error.

Clerk of the Essoins, An officer belonging to the Court of Common Pleas, who keeps the essoin rolls; and the essoin roll is a record of that court: he has the providing of parchment, and cutting it out into rolls, marking the numbers thereon; and the delivery out of all the rolls to every officer of the court; the receiving of them again when they are written, and the binding and making up the whole bundles of every term; which he doth as servant of the Chief Justice. The Chief Justice of C. B. is at the charge of the parchment of all the rolls, for which he is allowed; as is also the Chief Justice of B. R. besides the penny for the seal of every writ in court under the green wax, or petit seal; the said Lord Chief Justices having annexed to their offices or places, the custody of the said seals belonging to each court.

Clerk of the Estreates, clericus extractorum.] A clerk or officer belonging to the Exchequer, who every term receives the estreates out of the Lord Treasurer's Remembrancer's Office, and writes them out to be levied for the King; and he makes schedules of such sums estreated as are to be discharged. See tit. Estreat.

Clerk of the Hanaper, or Hamper, An officer in Chancery, whose office is to receive all the money due to the king, for the seals of charters, patents, commissions and writs; as also fees due to the officers for enrolling and examining the same. He is obliged to attendance on the Lord Chancellor daily in the term time, and at all times of sealing, having with him leather bags, wherein are put all charters, &c. After they are sealed, those bags, being sealed up with the Lord Chancellor's private seal, are delivered to the Controller of the Hanaper, who, upon receipt of them, enters the effect of them in a book, &c. This hanaper represents what the Romans termed fascum, which contained the emperor's treasure; and the Exchequer was anciently so called, because in eo recondenter hanapet et sacrae ceteraque wear in censum et tributum fiero solenri; or it may be for that the yearly tribute which the princes received was in hampers or large vessels full of money. There being an arrear of 10,596l. 12s. 11d. of
several ancient fees and salaries, &c. payable out of this office; and there being a remainder of 13,698l. 1s. 11d. of the six-penny stamp duty on writs granted for relief of the suitors of the court of chancery; it was enacted, by the stat. 23 Geo. II. c. 25, that thereout the 10,590l. 12s. 11d. should be paid to the creditors of this office. That the said duty should be made perpetual; and thereout 3,000l. per annum should be paid to the Clerk of the Hanaper; that the residue of the 13,698l. 1s. 11d. should be laid out in government securities, and the interest paid to the Clerk of the Hanaper, who should pay 1,200l. to the Master of the Rolls. And that in case the revenue of this office, so augmented, should be more than sufficient to pay all fees, salaries, &c. the clerk should account for the surplus.

Clerk of the Enrolments, An officer of the Common Pleas, that enrolls and exemplifies all fines and recoveries, and returns writs of entry, summons and seisin, &c.

Clerk of the Juries, clericus juratorum. An officer belonging to the court of Common Pleas, who makes out the writs of habeas corpora and distringas, for the appearance of juries; either in that court, or at the assises, after the jury or panel is returned upon the venire facias; he also enters into the rolls the awarding of these writs; and makes all the continuances, from the going out of the habeas corpus until the verdict is given.

Clerk of the Market, clericus mercati hospitii regis.] Is an officer of the King's house, to whom it belongs to take charge of the King's measures, and keep the standards of them, which are examples of all measures throughout the land; as of ells, yards, quarts, gallons, &c. and of weights, bushels, &c. And to see that all weights and measures in every place be answerable to the said standard: as to which office see Fleta, lib. 2. cap. 8, 9, 10. &c. Touching this officer's duty, there are also divers statutes, as 13 Rich. II. cap. 4. and 16 Rich. II. c. 3. by which every clerk of the market is to have weights and measures with him when he makes essay of weights, &c. marked according to the standard; and to seal weights and measures, under penalties.

The stat. 16 Car. I. c. 19. enacts, That clerks of the market of the King's or Prince's household, shall only execute their offices within the verge; and head officers are to act in corporations, &c. The clerks of markets have generally power to hold a court, to which end they may issue out process to sheriffs and bailiffs to bring a jury before them; and give a charge, take presentments of such as keep or use false weights and measures; and may set a fine upon the offenders, &c. 4 Inst. 274. But if they take any other fee or reward than what is allowed by statute, &c. or impose any fines without legal trial, or otherwise misdemean themselves, they shall forfeit 5l. for the first offence, 10l. for the second, and 20l. for the third offence, on conviction before a justice of peace, &c. The court of the Clerk of the Market is incident to every fair and market in the kingdom, to punish misdemeanors therein; as a court of Pie powdre is to determine all disputes relating to private or civil property. It is the most inferior court of criminal jurisdiction in the kingdom. 4 Comm. 275. See also stats. 22 Car. II. c. 8. 23 Car. II. c. 12. and tit. Weights and Measures.

Clerk Marshal of the King's House, An officer that attends the Marshal in his court, and records all his proceedings.

Clerk of the Nichils, or Nihilis, clericus nihilorum.] An officer of the court of Exchequer, who makes a roll of all such sums as are ni-
hired by the sheriffs upon their estreats of green wax; and delivers the same into the Remembrancer's Office, to have execution done upon it for the king. See stat. 5 Rich. II. c. 13. Nihilo are issues by way of fine or amercement.

Clerk of the Ordnance, An officer in the Tower, who registers all orders touching the King's ordnance.

Clerk of the Outlawries, clericus utlagariarum.] An officer belonging to the court of Common Pleas, being the servant or deputy to the King's Attorney-General, for making out writs of capias utlagatum, after outlawry; the King's Attorney's name being to every one of those writs.

Clerk of the Paper Office, An officer in the court of King's Bench, that makes up the paper-books of special pleadings and demurrers in that court.

Clerk of the Papers, An officer in the Common Pleas; who hath the custody of the papers of the warden of the Fleet, enters commitments and discharges of prisoners, delivers out day-rules, &c.

Clerk of a Parish, See tit. Parish Clerk.

Clerk of the Parliament Rolls, clericus rotulorum parliamenti.] An officer who records all things done in the high court of parliament, and engrosseth them in parchment rolls, for their better preservation to posterity; of these officers there are two, one in the Lords' House, and another in the House of Commons.

Clerk of the Patents, Or of the letters patent under the great seal of England; an office erected 18 Jac. I.

Clerk of the Peace, clericus facis.] An officer belonging to the sessions of the peace; his duty is to read indictments, enrol the proceedings, and draw the process; he keeps the counterpart of the indenture of armour; records the proclamation of rates for servants' wages; has the custody of the register-book of licenses given to badgers of corn; of persons licensed to kill game, &c. And he registers the estates of papists and others not taking the oaths. Also he certifies into the King's Bench transcripts of indictments, outlawries, attainders and convictions, had before the justices of peace, within the time limited. See tit. Clergy, benefit of. And as to his duty respecting Estreats, see tit. Estreats.

The Custos Rotulorum of the county hath the appointment of the clerk of the peace, who may execute his office by deputy, to be approved of by the Custos Rotulorum, to hold the office during good behaviour. See stats. 37 Hen. VIII. c. 1. 1 W. & M. c. 21.

The following is the form of the oath prescribed by stat. 1 W. & M. c. 21. to be taken by the clerk of the peace in open sessions before he enters on his office.

I C. P. do swear, that I have not [said] nor will pay any sum or sums of money, or other reward whatsoever, nor given any bond or other assurance to pay any money, fee or profit, directly or indirectly, to any person or persons whomsoever for [my] nomination and appointment.

So help me God.

He is also to take the oaths of allegiance, supremacy and abjuration, and perform such requisites as other persons who qualify for offices.

By stat. 22 Geo. II. c. 46. § 14. no clerk of the peace, or his depu-
ty, shall act as solicitor, attorney or agent at the sessions where
he acts as clerk or deputy, on penalty of 50l. with treble costs.
Burns in his Justice, title Clerk of the Peace, hints how necessary it
is that all his fees should be regulated.
If a Clerk of the peace misdemeanours himself, the justices of
peace in quarter sessions have power to discharge him; and the Custos
Rotulorum is to choose another, resident in the county, or on his
default the sessions may appoint one: the place is not to be sold, on
pain of forfeiting double the value of the sum given by each party,
and disability to enjoy their respective offices, &c. Stat. 1 W. & M.
acc. 1. c. 21.
Clerk of the Pells, clericus pellis.] A clerk belonging to the Ex-
chequer, whose office is to enter every teller's bill into a parchment
roll or skin, called pellis receptorum, and also to make another roll of
payments, which is termed pellis exitium; wherein he sets down by
what warrant the money was paid; mentioned in the stat. 22 & 33 Car.
II. c. 22.
Clerk of the Petty Bag, clericus parva baga.] An officer of the
court of Chancery. There are three of these officers, of whom the
master of the rolls is the chief. Their office is to record the return
of all inquisitions out of every shire; to make out patents of custom-
ers, guagers, controllers, &c. all cogniz by others for bishops, the sum-
mons of the nobility and burgesses to parliament, commissions direct-
ed to knights and others of every shire, for assessing subsidies and
taxes; all offices found post mortem are brought to the clerks of the
petty bag to be filed; and by them are entered all pleadings of the
chancery concerning the validity of patents or other things which
pass the great seal: they also make forth libretas upon extents of
statutes staple, and recovery of recognizances forfeited, and all elegits
upon them; and all suits for or against any privileged person are pro-
secuted in their office, &c.
Clerk of the Pipe, clericus pipe.] An officer in the Exchequer who
having the accounts of debts due to the king, delivered and drawn out
of the Remembrancer's Offices, charges them down in the great roll,
and is called Clerk of the Pipe from the shape of that roll, which is
put together like a pipe; he also writes out warrants to the sheriffs to
levy the said debts upon the goods and chattels of the debtors; and if
they have no goods, then he draws them down to the Lord Treasu-
rer's Remembrancer, to write estreats against their lands. The an-
cient revenue of the crown stands in charge to him, and he sees the
same answered by the farmers and sheriffs: he makes a charge to all
sheriffs of their summons of the pipe, and green wax, and takes care
it be answered on their accounts. And he hath the drawing and en-
grossing of all leases of the king's lands; having a secondary and
several clerks under him. In the reign of King Henry VI. this
officer was called Ingrossator magni rotuli. See stat. 33 Hen. VIII.
c. 22.
Clerk of the Pleas, clericus placitorum.] An officer in the court of
Exchequer, in whose office all the officers of the court, upon special
privilege belonging unto them, ought to sue or be sued in any action,
&c. The clerk of the pleas has under him a great many clerks, who
are attorneys in all suits commenced or depending in the court of Ex-
chequer.
Clerks of the Privy Seal, clericus privati sigilli.] These are four
of the officers which attend the Lord Privy Seal; or if there be no
Lord Privy Seal, the principal Secretary of State; writing and ma-
king out all things that are sent by warrant from the Signet to the Privy Seal, and which are to be passed to the Great Seal; also they make out privy seals, upon a special occasion of his majesty's affairs, as for loan of money, and the like. He that is now called Lord Privy Seal, seems to have been in ancient times called Clerk of the Privy Seal; but notwithstanding to have been reckoned in the number of the great officers of the realm. Stats. 12 Rich. II. c. 11. 27 Hen. VIII. c. 11.

Clerk of the Remembrance, An officer in the Exchequer, who is to sit against the clerk of the pipe, to see the discharges made in the pipe, &c. Stat. 37 Edw. III. c. 4. The Clerk of the Pipe and Remembrancer, shall be sworn to make a schedule of persons discharged in their offices. Stat. 3 Rich. II. st. 1. c. 15.

Clerk of the Rolls. An officer of the Chancery, that makes search for, and copies deeds, offices, &c.

Clerk of the Rules. In the court of King's Bench, is he who draws up and enters all the rules and orders made in court; and gives rules of course on divers writs: this officer is mentioned in stat. 22 & 23 Car. II. c. 22.

Clerk of the Remembrancer, An officer belonging to the commissioners of sewers, who writes and records their proceedings, which they transact by virtue of their commissions, and the authority given them by stat. 13 Eliz. c. 9. See tit. Sewers.

Clerk of the Signet, clericus signeti. An officer continually attendant on his Majesty's Principal Secretary, who hath the custody of the privy signet, as well for sealing his Majesty's private letters, as such grants as pass the King's hand by bill signed; and of these clerks or officers there are four that attend in their course, and have their diet at the Secretary's table. The fees of the clerk of the signet, and privy seal, are limited particularly by statute, with a penalty annexed for taking any thing more. See 27 Hen. VIII. c. 11.

Clerk of the King's Silver, clericus argenti regis. An officer belonging to the court of Common Pleas, to whom every fine is brought after it hath passed the office of the custos brevium, and by whom the effect of the writ of covenant is entered into a paper-book; according to which all the fines of that term are recorded in the rolls of the court. After the king's silver is entered, it is accounted a fine in law, and not before. See tit. Fine.

Clerk of the Supersedeas, An officer belonging to the court of Common Pleas, who makes out writs of supersedeas, upon a defendant's appearing to the exigent on an outlawry, whereby the sheriff is forbidden to return the exigent. See tit. Outlawry.

Clerk of the Treasury, clericus thesaurarii. An officer of the Common Pleas, who hath the charge of keeping the records of the court, and makes out all the records of Nisi Prius; also he makes all exemplifications of records being in the Treasury; and he hath the fees due for all searches. He is the servant of the chief justice, and removable at pleasure; whereas all other officers of the court are for life; there is a Secondary, or Under clerk of the Treasury, for assistance, who hath some fees and allowances; and likewise an under keeper, that always keeps one key of the Treasury door, and the chief clerk of the secondary, another; so that the one cannot come in without the other.

Clerk of the King's Great Wardrobe. An officer of the King's household, that keeps an account or inventory of all things belonging to the royal wardrobe. Stat. 1 Edw. IV. c. 1.
Clerk of the Warrants, clericus warrantorum.] An officer belonging to the Common Pleas' Court, who enters all warrants of attorney for plaintiffs and defendants in suits; and enrols deeds of indentures of bargain and sale, which are acknowledged in the court, or before any judges out of the court. And it is his office to estreat into the Exchequer all issues, fines and amerciaments, which grow due to the king in that court, for which he hath a standing fee or allowance.

Cleronimus, An heir.


Clipping the Coin. See tit. Coin, Money, Treason.

Clitones, The eldest, and all the sons of Kings. See the charter of King Ethelred. Mat. Paris. pag. 138. Selden's notes upon Eadmerus.

Clive, Cliff. The names of places beginning or ending with these words, signify a rock, from the old Saxon.

Clocks and Watches. Dial-plates and cases not to be exported without the movement, stat. 9 & 10. W. III. c. 28. § 2. Makers shall engrave their names on clocks and watches, stat. 9 & 10. W. III. c. 28. § 2. Penalties on workmen, &c. embezzling materials of clocks and watches, stat. 27 Geo. II. c. 7. See tit. Manufacturers. By stat. 37 Geo. III. c. 108. a duty on clocks and watches was imposed, payable by the proprietors; but this was repealed by 38 Geo. III. c. 40. By 38 Geo. III. c. 24. the duty on gold and silver plates, under 24 Geo. III. st. 2. c. 53. & 37 Geo. III. c. 90. § 16. was repealed so far as related to plate used for watch-cases.

Cloere, A prison or dungeon; it is conjectured to be of British original; the dungeon or inner prison of Wallingford castle, temp. Hen. II. was called cloere brien, i.e. career brien, &c. Hence seems to come the Lat. cloaca, which was anciently the closest ward or nastiest part of the prison; the old cloacerius is interpreted carceris custos; and the present cloaceius, or keeper of a jakes, is an office in some religious houses abroad, imposed on an offending brother, or by him chosen as an exercise of humility and mortification. Cowel.

Close Rolls and Close Writs. Grants of lands, &c. from the Crown, are contained in charters or letters patent, that is, open letters, literas patentes, so called because they are not sealed up, but exposed to open view, with the great seal pendent at the bottom; and are usually addressed by the king to all his subjects at large. And therein they differ from other letters of the king, sealed also with his great seal, but directed to particular persons, and for particular purposes; which, therefore, not being fit 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 Comm. 346.

Closh, Was an unlawful game forbidden by stat. 17 Edw. IV. c. 3. and 33 Hen. VIII. c. 9. It is said to have been the same with our nine-fins; and is called closhayles by stat. 33 Hen. VIII. c. 9. At this time it is allowed, and called halles, or skittles. See tit. Gaming.

Cloth. No cloth made beyond sea shall be brought into the king's dominions, on pain of forfeiting the same, and the importers to be farther punished. Stat. 12 Edw. III. c. 3. See tit. Manufacturers, Wool.

Clothiers, Are to make broad cloths of certain lengths and breadths within the lists; and shall cause their marks to be woven in the cloths, and set a seal of lead thereunto, shewing the true length thereof. Stat. 4 Edw. IV. c. 1. 27 Hen. VIII. c. 12. Exposing to sale faulty
cloths, are liable to forfeit the same; and clothiers shall not make use of flocks, or other deceitful stuff, in making of broad cloth, under the penalty of 5l. Stat. 5 & 6 Edw. VI. c. 6. Justices of peace are to appoint searchers of cloth yearly, who have power to enter the houses of clothiers; and persons opposing them shall forfeit 10l. &c. Stats. 39 Eliz. c. 20. 4 Jac. I. c. 2. 21 Jac. I. c. 18. All cloth shall be measured at the fulling-mill by the master of the mill; who shall make oath before a justice for true measuring; and the millman is to fix a seal of lead to cloths, containing the length and breadth, which shall be a rule of payment for the buyer, &c. Stats. 10 Ann. c. 16. By stat. 1 Geo. I. c. 15. broad cloths must be put into water for proof, and be measured by two indifferent persons chosen by the buyer and seller, &c. And clothiers selling cloths before sealed, or not containing the quantity mentioned in the seals, incur a forfeiture of the sixth part of the value. Persons taking off, or counterfeiting seals, forfeit 20l. By stat. 12 Geo. I. c. 24. If any weavers of cloth enter into any combination for advancing their wages, or lessening their usual hours of work, or depart before the end of their terms agreed, return any work unfinished, &c. they shall be committed by two justices of the peace to the house of correction for three months; and clothiers are to pay their work-people their full wages agreed, in money, under the penalty of 10l. &c. Inspectors of mills and tenter-grounds to examine and seal cloths, are to be appointed by justices of peace in sessions; and millmen sending clothiers any cloths before inspected, forfeit 40s. The inspector to be paid by the clothiers 2d. per cloth. Stat. 13 Geo. I. c. 23. If any cloth remaining on the tenter, be stolen in the night, and the same is found upon any person, on a justice’s warrant to search, such offender shall forfeit treble value, leviable by distress, &c. or be committed to gaol for three months; but for a second offence he shall suffer six months imprisonment; and for the third offence be transported as a felon, &c. Stat. 15 Geo. II. c. 27. See tit. Draffery; and more particularly tit. Manufacturers, Servants, Wool.

CLOVE. The two-and-thirtieth part of a weight of cheese, i.e. eight pounds. Stat. 9 Hen. VI. c. 3.

CLOUGH, A word made use of for valley, in Domesday book. But among merchants, it is an allowance for the turn of the scale, on buying goods wholesale by weight. Lex Mercat.

CLUNCH. In Staffordshire, upon sinking of a coal-mine, near the surface they meet with earth and stone, then with a substance called blue clunch, and after that they come to coal.

CLUTA, Fr. clous. Shoes, clouted shoes; and most commonly horse shoes; it also signifies the streaks of iron or tire with which cart-wheels are bound. Consuetud. Dom. de Parend. MS. fol. 16. Hence clutarium, or clarium, a forge where the clous or iron shoes are made. Mon. Angl. tom. 2. pag. 598.


COACH, currus. A convenience well known. For the regulating of hackney-coaches and chairs in London, there are several statutes, viz. 9 Ann. c. 23. made perpetual by 3 Geo. I. c. 7. and enlarged as to the number of coaches, by 11 Geo. III. c. 24. 43 Geo. III. c. 78. so as to make the whole number to be licensed 1100, and enlarged also as to chairs, by 10 Ann. c. 19. and 12 Geo. I. c. 12. making the whole number of those 400.

The other statutes now in force are, 12 Ann. st. 1. c. 14. 1 Geo. I. c. 57. 39 Geo. II. c. 22 (See Cars.) 4 Geo. III. c. 36. 7 Geo. III. c. 44.
STAGE COACHES. By stats. 28 Geo. III. c. 57. 30 Geo. III. c. 36. 46 Geo. III. c. 136. drivers of stage coaches are not to admit more than one outside passenger on the box, nor more than a certain number on the outside of any part of any stage coach. Several wholesome regulations are made by these acts, but which, like other good laws, are seldom enforced.

As to the liability of masters, &c. of coaches as common carriers, see tit. Carrier.

All coaches and carriages kept for pleasure, and all stage-coaches, &c. are subject to certain duties under the management of the tax-office. See, for the assessed duties, 43 Geo. III. c. 161. &c.

COACHMAKERS. The wares of coachmakers shall be searched, by persons appointed by the saddlers' company. Stat. 1 Jac. I. c. 22. By stats. 25 Geo. III. c. 49. 27 Geo. III. c. 13. every maker of coaches, chariots, chaises, &c. must take out annual licenses from the Excise Office, and to pay a duty of 20s. for every four-wheeled carriage, and 10s. for every two-wheeled carriage, built by them for sale.

COADJUTOR, [Lat.] A fellow-helper or assistant; particularly applied to one appointed to assist a bishop, being grown old and infirm, so as not to be able to perform his duty.

COAL-MINES. Maliciously setting fire to coal-mines, or to any delph of coal, is felony. 10 Geo. II. c. 22. § 6. See tit. Black Act, Felony.

COALS. By stats. 7 Edw. VI. c. 7. 16 & 17 Car. II. c. 2. [made perpetual by 7 & 8 Wm. III. c. 36. § 2.] and 17 Geo. II. c. 35. the sack of coals is to contain four bushels of clean coals; and seacoals brought into the river Thames, and sold, shall be after the rate of 36 bushels to the chaldron, and 112 pounds to the hundred, &c. The lord mayor and court of aldermen in London, and justices of the peace of the several counties, or three of them, are empowered to set the price of all the coals to be sold by retail; and if any person shall refuse to sell for such prices, they may appoint officers to enter any wharves or places where coals are kept, and cause the coals to be sold at the prices appointed. The stat. 12 Ann. st. 2. c. 17. regulates the contents of the coal-bushel, which is to hold one Winchester bushel, and one quart of water. By stats. 9 Hen. V. st. 1. c. 10. 30 Car. II. c. 8. 6 & 7 Wm. III. c. 10. 11 Geo. II. c. 15. 15 Geo. III. c. 27. and 31 Geo. III. c. 36. commissioners are ordained for the measuring and marking of keels, and boats, &c. for carrying coals; and vessels carrying coals before measured and marked, shall be forfeited, &c. For the duties and drawbacks on coals and culm, see stat. 9 & 10 Wm. III. c. 13. 9 Ann. c. 6. 22. 28. 8 Geo. I. c. 14. 14 Geo. II. c. 41. 22 Geo. II. c. 37. 31 Geo. II. c. 15. 33 Geo. II. c. 15. and 27 Geo. III. c. 32.

For the duty on coals in London, see stats. 9 Ann. c. 22. and 5 Geo. I. c. 9. the duties payable under which, of 3s. per chaldron, are made perpetual by stat. 6 Geo. I. c. 4. § 1. and 1 Geo. II. st. 2. c. 8. See also stat. 27 Geo. III. c. 13. explained as to coals carried coastwise in Scotland, by 33 Geo. III. c. 69. as to the 1s. duty under stat. 19 Car. II. c. 3. § 36.

By stat. 9 Ann. c. 28. contracts between coal-owners and masters of ships, &c. for restraining the buying of coals are void, and the parties to forfeit 100L. And selling coals for other sorts than they are, shall forfeit 50L. Not above fifty laden colliers are to continue in the port.
of Newcastle, &c. And work-people in the mines there, shall not be employed who are hired by others, under the penalty of 5l.

By stat. 3 Geo. II. c. 26. containing several regulations as to lighter-men and coal buyers, and explained by st. 11 Geo. II. c. 15. coal-sacks shall be sealed and marked at Guildhall, &c. on pain of 20s. Also sellers of coals are to keep a lawful bushel, and put three bushels to each sack, which bushel and other measures shall be edged with iron, and sealed; and using others, or altering them, incurs a forfeiture of 50l. &c. The penalties above 5l. recoverable by action of debt, &c. and under that sum before justices of peace.

The offence of selling coals of a different description from those contracted for, upon the stat. 3 Geo. II. c. 26. § 4. is complete in the county where the coals are delivered, and not where they are contracted for, the contract not being for any specific parcel of coals, but for a certain quantity of a certain description. But though not justly measuring such coals is a local omission of a local act, required by the 13th section of the act to be performed at the place where the coals are kept for sale, at which place the bushel of Queen Anne is required to be kept and used, for the purpose of measuring the coals into sacks of a certain description, in which they are to be carried to the buyer; and therefore the offence is local, and must be laid in the county where the coals were put into the sacks without having been so justly measured. Butterfield, qui tam, v. Windle and another. 4 East, 385.

A dealer in coals by the chaldron, who sold to another by the chaldron, a certain quantity, as and for 10 chaldron of coals, fool measure, without justly measuring the same with the lawful bushel of Queen Anne, is liable to the penalty of 50l. imposed by the 13th section of the stat. 3 Geo. II. c. 26. upon such defaulters who sell coals by the chaldron, or lesser quantity, without measuring them. Parish, qui tam, v. Thompson, E. 43 Geo. III. 3 East, 523.

By stat. 4 Geo. II. c. 30. owners or masters of ships shall not enhance the price of coals in the river of Thames, by keeping of turn in delivering of coals there, under the penalty of 100l. &c.

Stat. 13 Geo. II. c. 21. inflicts penalty of treble damages on persons damaging or destroying coal-works.

See the stat. 6 Geo. III. c. 22. now in force, as to the loading coalships, at Newcastle and Sunderland, in turn, according to lists to be made there.

By the stat. 7 Geo. III. c. 23. explained and amended by 26 Geo. III. c. 83. and 38 Geo. III. c. 56 (see & pers.) (in force till June 1, 1812. See ante.) The Land Coal Meter's Office for London, and between the Tower and Limehouse-hole, is established and regulated. And the duty of that officer and the labouring coal-meters in measuring coals is ascertained. By the same stat. 26 Geo. III. c. 83. further regulations are made as to the coal-meters' sacks, which, when sealed, are to be four feet four inches long, and twenty-six inches broad. Penalties are imposed on the labouring meters and drivers for misbehaviour, and the mode of remeasurement settled, if required by the consumer.

Stat. 28 Geo. III. c. 53. was past to indemnify the London coal-buyers against certain penalties, which they had literally incurred under stats. 9 Ann. c. 28, and 3 Geo. II. c. 26. and also for the purpose of putting an end to the Society at the Coal-Exchange, formed to regulate (i.e. to monopolize) the trade; subjecting all persons, above five in number, entering into covenant or partnerships, to punishment by indictment or information in B. R.
A great number of acts, confined in the extent of the district within which they are to operate, (and therefore classed not in the general body of statutes, but in the list of local and personal acts,) have been from time to time passed to regulate the dealings, and prevent the frauds of dealers in coals. See 45 Geo. III. c. 128. (continued by subsequent acts,) for allowing a certain quantity of coals, &c. to be brought to London by inland navigation.

COAT-ARMOUR, Coats of arms were not introduced into seals, nor 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 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 Comm. 306.

It is the business of the court military, or the court of chivalry, according to Sir Matthew Hale, to adjust the right of armorial ensigns, bearings, crests, supporters, pennons, &c. and also rights of place or precedence, where the king's patent or act of parliament (which cannot be overruled by this court) have not already determined it. 3 Comm. 105.

COCHERINGS, An exaction or tribute in Ireland, now reduced to chief rents. See Bonaght.

COCHINEAL. The importation of cochineal from ports in Spain declared lawful. Stat. 6 Ann. c. 33. Any persons may import cochineal into this kingdom, in ships belonging to Great Britain, or other country in amity, from any place whatsoever, by stat. 7 Geo. II. cap. 18. See tit. Navigation Acts.

COCKET, cockettum.] A seal belonging to the king's custom-house; or rather a scroll of parchment sealed, and delivered by the officers of the custom-house to merchants, as a warrant that their merchandises are customized; which parchment is otherwise called littera de cocketto, or littere testimoniales de cocketto. Stat. 11 Hen. VI. c. 15. Reg. Orig. 179. 192. See also Mad. Exch. vol. 1. c. 18. The word cockettum or cocket, is also taken for the custom-house or office where goods to be transported were first entered, and paid their customs, and had a cocket or certificate of discharge; and cocketta lana is wool duly entered and cocketted, or authorized to be transported. Mem. in Stat. 23 Edw. I.

Cocket is likewise used for a sort of measure, Fleta, lib. 2. cap. 9. Panis nero integer quadrantis frumenti ponderabit unum cocket et dimidium; and it is made use of for a distinction of bread, in the statute of bread and ale, 51 Hen. III. stat. 1. ord. pro jistor; where mention is made of wastet bread, cocket bread, bread of treet, and bread of common wheat. The wastel bread being what we now call the finest bread, or French bread; the cocket bread the second sort of white bread; bread of treet, and of common wheat, brown, or household bread, &c. See Bread.

COCKSETUS, A boatman, cockswain, or coxon. Cowel.

COCULA. A cogue, or little drinking-cup, in form of a small boat, used especially at sea, and still retained in a cogue [cag or kegure] of brandy. These drinking-cups are also used in taverns to drink new sherry, and other white wines which look foul in a glass.

CODICIL, codicillus, from codex, a book, a writing.] A schedule, or supplement to a will, where any thing is omitted which the testa-
tor would add, or where he would explain, alter or retract what he hath done. See tit. Will, Devise.

CO-EXECUTORS. See Executors.

COFFEE, TEA, CHOCOLATE, and COCOA NUTS.
The duties on these articles form a branch of the public revenue, under the head of Customs and Excise; and like all other subjects of those jurisdictions, are liable to a variety of penal regulations by acts of parliament, necessary to prevent the numerous frauds and evasions daily endeavoured to be practised, to the impoverishment of government, and the injury of the fair trader. See tit. Excise, Customs, and also tit. Navigation Acts.

COFRA, A coffer, chest, or trunk. Munimenta Hospit. SS. Trinit. de Pontefracto, MS. fol. 50.

COFFERER OF THE KING'S HOUSEHOLD, Is a principal officer of the king's house, next under the controller, who, in the counting-house, and elsewhere, hath a special charge and oversight of other officers of the household, to all which he pays their wages. This officer passes his accounts in the Exchequer. See stat. 39 Eliz. c. 7.

COGGLE, A small fishing boat upon the coasts of Yorkshire; and cogs, (cogones,) are a kind of little ships or vessels used in the rivers Ouse and Humber, stat. 23 Hen. VIII. c. 18. See Mat. Paris, anno 1066. And hence the cogmen, boatmen or seamen, who, after shipwreck or losses by sea, travelled and wandered about to defraud the people by begging and stealing, till they were restrained by divers good laws. Du Fresne.

COGNATI, Relations by the mother, as the agnati are relations by the father.

COGNATIONE, A writ of Cousenage. See Cousenage.

COGNISANCE, or cognizance, Fr. connusance, Lat. cognitio.] Is used diversely in our law; sometimes for an acknowledgment of a fine. See tit. Fine. In replevin, cognisance, or consuance, is the answer given by a defendant, who hath acted as bailiff, &c. to another, in making a distress. See tit. Distress, Replevin.

The most usual sense in which this term is now used, is relative to the claim of Cognisance of Pleas. This is a privilege granted by the king to a city or town, to hold plea of all contracts, &c. within the liberty of the franchise; and when any man is implored for such matters in the courts of Westminster, the mayor, &c. of such franchise may ask cognisance of the plea, and demand that it shall be determined before them; but if the courts at Westminster are possessed of the plea before cognisance be demanded, it is then too late. Terms de Ley. See stats. 9 Hen. IV. c. 5. 8 Hen. VI. c. 26. 3 Comm. 298, 4 Comm. 277. See tit. Pleading.

Cognisance of Pleas extends not to assises; and when granted, the original shall not be removed. It lies not in a quare impedit, for they cannot write to the bishop, nor of a plea out of the county court, which cannot award a resummons, &c. Jenk. Cent. 31. 34. This cognisance shall be demanded the first day; and if the demandant in a plea of land counterpleads the franchise, and the tenant joins with the claim of the franchise, and it is found against the franchise, the demandant shall recover the land; but if it be found against the demandant, the writ shall abate. Ibid. 18.

There are three sorts of inferior jurisdictions, one whereof is tenere placita, 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 *conusance of plea,* and by this a right is vested in the lord of the franchise to hold the plea, and he is the only person who can take advantage of it. 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 court of *K. B.* if there be a court within that city which can hold plea of the cause, and nobody can take advantage of this privilege but a defendant; for if he will bring *certiorari,* that will remove the cause, but he may waive it if he will, so that the privilege is only for his benefit. 3 Salk. 79, 80. pl. 4. Hist. 1 Ann. B. R. Crosse v. Smith.

King Henry VIII. by letters patent of the 14th of his reign, and confirmed by parliament, granted to the University of Oxford *conusance of plea,* in which a scholar or servant of a college should be party, *ita quod justiciarii de utroque banco se non intromittant.* An attorney of C. B. sued a scholar in C. B. for battery. By the court, this general grant does not extend to take away the special privilege of any court without special words. Lit. Ref. 304. Mich. 5. C. C. B. Oxford (University’s) Case.

If a scholar of Oxford or Cambridge be sued in chancery for a special performance of a contract to lease lands in Middlesex, the University shall not have *conusance,* because they cannot sequester the lands. Gilb. Hist. of C. P. 194. cites 2 Vent. 363.

*Conusance* must be demanded before an imparlance, and the same term the writ is returnable, after the defendant appears; because, till he appears, there is no cause in court, otherwise there would be a delay of justice; for if after imparlance, when the defendant has a day already allowed him, he would have two days, since when the conusance is allowed, the franchise prefixes a day to both parties to appear before them; and it is the lord’s *laches* if he does not come soon enough not to delay the parties. Gilb. Hist. of C. P. 196.

Conusance was granted to the University of Oxford, (no cause being shown to the contrary,) in Easter Term, 9 Geo. II. in the case of Woodcooke and Brookes. Hardw. 241. See further, under tit. Courts of the University.

*Cognisance* also signifies 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. Dict.

**COGNISOR AND COGNISEE.** Cognisor, is he that passeth or acknowledgeth a fine of lands or tenements to another; and cognisess is he to whom the fine of the said lands, &c. is acknowledged. Stat. 32 Hen. VIII, c. 5.

*Cognition,* Is the process, whereby molestation is determined. Scotch Dict.

**COGNITIONES,** Ensigns and arms, or a military coat painted with arms. Mat. Paris, 1250.

**COGNITIONIBUS MITTENDIS,** A writ to one of the king’s justices of the Common Pleas, or other that hath power to take a fine, who, having taken the fine, defers to certify it, commanding him to certify it. Reg. Orig. 68.

**COGNOVIT ACTIONEM,** Is where a defendant acknowledges or confesses the plaintiff’s cause against him to be just and true; and before or after issue, suffers judgment to be entered against him without trial. And here the confession generally extends no further than to what is contained in the declaration; but if the defendant will confess more, he may. 1 Roll. 929. Hob. 178.
COIN.

COGWARE, Is. said to be a sort of coarse cloth, made in divers parts of England, of which mention is made in the stat. 13 Rich. II. cap. 10.

COHUAGIUM, A tribute paid by those who met promiscuously in the market or fair; choua signifying a promiscuous multitude of men in a fair or market. Quieti ab omni thelonio, passagio, portagio, cohuagio, pallagio, &c. Du Cange.

COIF, coifa. 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 tonaram clericalem, 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. Blount. See tit. Clerk.

COIN, cuna pecunia. Seems to come from the Fr. coin, i.e. angulus, a corner, whence it has been held, that the ancientest sort of coin was square with corners, and not round as it now is. It is any sort of money coined. Cramp. Jurid. 220. Coin is a word collective, which contains in it all manner of the several stamps and species of money in any kingdom; and this is one of the royal prerogatives belonging to every sovereign prince, that he alone in his own dominions may order and dispose the quantity, value, and fashion of his coin. But the coin of one king is not current in the kingdom of another, unless it be at great loss; though our king by his prerogative may make any foreign coin lawful money of England at his pleasure, by proclamation. Terms de Ley. If a man binds himself by bond to pay one hundred pounds of lawful money of Great Britain, and the person bound, the obligor, pays the obligee the money in French, Spanish, or other coin, made current either by act of parliament or the king's proclamation, the obligation will be well performed. Co. Lit. 207. But it is said a payment in farthings is not a good payment. 2 Inst. 517. See post.

When a person has accepted of money in payment from another, and put the same into his purse, it is at his peril after his allowance; and he shall not then take exception to it as bad, notwithstanding he presently reviews it. Terms de Ley.

Of Offences relating to the Coin.

Two offences respecting the coin, are made treason by the stat. 25 Edw. III. c. 2. These are, the actual counterfeiting the gold and silver coin of this kingdom; or the importing such counterfeit money with an intent to utter it, knowing it to be false. But these not being found sufficient to restrain the evil practices of coiners and false moneyers, other statutes have been since made for that purpose.

By stat. 1 M. st. 2. e. 6. if any person shall falsely forge or counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, but shall be current within this realm by consent of the crown; such offence shall be deemed high treason. And by stat. 1 & 2 P. & M. c. 11. if any person do bring into this realm such false or counterfeit foreign money, being current here, knowing the same to be false, with intent to utter the same in payment, they shall be deemed offenders in high treason. The money, referred to in these statutes, must be such as is absolutely current here, in all payments, by the king's proclamation; of which there is none at present, Por-
COIN.

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tugal money being only taken by consent, as approaching the nearest to our standard, and falling in well enough with our divisions of money into pounds and shillings; therefore to counterfeit that is not high treason, but another inferior offence; but see as to counterfeiting Spanish dollars, made current coin, 44 Geo. III. c. 71. and 45 Geo. III. c. 42. by which persons counterfeiting dollars, or tokens issued by Banks of England or Ireland, are declared guilty of felony, and may be transported for seven years. So bringing the same into the kingdom counterfeited. Persons vending and uttering the same, shall suffer for first offence six months imprisonment, and second offence two years; third offence, transportation.

Clipping or defacing the genuine coin was not hitherto included in these statutes; but by stat. 5 Eliz. c. 11. clipping, washing, rounding, or filing for wicked gains’ sake, any of the money of this realm, or other money suffered to be current here, shall be adjudged high treason; and by stat. 18 Eliz. c. 1. the same species of offence is described in other more general words; viz. impairing, diminishing, falsifying, sealing, and lightening, are made liable to the same penalties.

By stat. 8 & 9 Wm. III. c. 26. (made perpetual by 7 Ann. c. 25.) whoever, without proper authority, shall knowingly make or mend, or assist in so doing, or shall buy, sell, conceal, hide, or knowingly have in his possession any implements of coinage specified in the act, or other tools or instruments proper only for the coinage of money; or shall convey the same out of the king’s mint; he, together with his counsellors, procurers, aiders, and abettors, shall be guilty of high treason, which is much the severest branch of the coinage law. The statute farther enacts, that to mark any coin on the edges with letters, or otherwise, in imitation of those used in the mint; or to colour, gild, or case over any coin resembling the current coin, or even round blanks of base metal, shall be construed high treason. But all prosecutions on this act are to be commenced within three months after the commission of the offence; except those for making or mending any coinage tool or instrument, or for the making letters on money round the edges; which are directed to be commenced within six months after the offence committed. See stat. 7 Ann. c. 25.

And, lastly, by stat. 15 & 16 Geo. II. c. 28. If any person colours or alters any shilling or sixpence, either lawful or counterfeit, to make them respectively resemble a guinea or half guinea; or any halfpenny or farthing, to make them respectively resemble a shilling or sixpence; this is also high treason; but the offender shall be pardoned, in case (being out of prison) he discovers and convicts two other offenders of the same kind.

Offences relating to the coin, not amounting to treason, and under which may be ranked some inferior misdemeanors not amounting to felony, are thus declared by a series of statutes, here recited in the order of time. By stat. 27 Edw. I. c. 3. none shall bring pollards and crockards (which were foreign coins of base metal) into the realm, on pain of forfeiture of life and goods. By stat. 9 Edw. III. st. 2. no sterling money shall be melted down, upon pain of forfeiture thereof. By stat. 17 Edw. III. none shall be so hardy to bring false and ill money into the realm, on pain of forfeiture of life and members of the persons importing, and the searchers permitting such importation. By stat. 3 Hen. V. st. 1. to make, coin, buy, or bring into the realm any gally-halfpence, suskins, or dotkins, in order to utter them, is felony; and knowingly to receive or pay them, or blanks,
(stat. 2 Hen. VI. c. 9.) incurs a forfeiture of a hundred shillings. By stat. 14 Eliz. c. 3. such as forge any foreign coin, although it be not made current here by proclamation, shall (with their aiders and abetters) be guilty of misprision of treason. See tit. Misprision. By stat. 13 & 14 Car. II. c. 31. the offence of melting down any current silver money shall be punished with forfeiture of the same, and also the double value; and the offender, if a freeman of any town, shall be disfranchised; if not, shall suffer six months' imprisonment. By stat. 6 & 7 Wm. III. c. 17. if any person buys or sells, or knowingly has in his custody, any clippings or filings of the coin, he shall forfeit the same and 500/. one moiety to the king, and the other to the informer; and be branded in the cheek with the letter R. [But see tit. Clergy.] By stat. 8 & 9 Wm. III. c. 26. no person shall blanch, or whiten, copper for sale, (which makes it resemble silver,) nor buy or sell, or offer for sale, any malleable composition, which shall be heavier than silver; and look, touch, and wear like gold, but beneath the standard; nor shall any person receive or pay at a less rate than it imports to be of, (which demonstrates a consciousness of its baseness, and a fraudulent design,) any counterfeit or diminished milled money of this kingdom, not being cut in pieces; an operation which is expressly directed to be performed when any such money shall be produced in evidence, and which any person, to whom any gold or silver money is tendered, is empowered (by stats. 9 & 10 Wm. III. c. 21. 13 Geo. III. c. 71. and 14 Geo. III. c. 70.) to perform at his own hazard; and the officers of the Exchequer, and the receivers-general of the taxes, are particularly required to perform; and all such persons so blanching, selling, &c. shall be guilty of felony, and may be prosecuted for the same at any time within three months after the offence committed.

But these precautions not being found sufficient to prevent the uttering of false or diminished money, which was only a misdemeanor at common law, it is enacted by stats. 15 & 16 Geo. II. c. 28. that if any person shall utter or tender in payment any counterfeit coin, knowing it to be so, he shall for the first offence be imprisoned six months, and find sureties for his good behaviour for six months more; for the second offence shall be imprisoned two years, and find sureties for two years longer; and for the third offence, shall be guilty of felony without benefit of clergy. Also if a person knowingly tenders in payment any counterfeit money, and at the same time has more in his custody; or shall, within ten days after, knowingly tender other false money; he shall be deemed a common utterer of counterfeit money, and shall for the first offence be imprisoned one year, and find sureties for his good behaviour two years longer; and for the second be guilty of felony without benefit of clergy. By the same statute it is also enacted, that if any person counterfeits the copper coin, he shall suffer two years' imprisonment, and find sureties for two years more.

By stat. 11 Geo. III. c. 40. persons counterfeiting copper halfpence or farthings, with their abettors; or buying, selling, receiving or putting off any counterfeit copper money, (not being cut in pieces or melted down,) at a less value than it imports to be of, shall be guilty of single felony. And by stat. 14 Geo. III. c. 42. (made perpetual by 39 Geo. III. c. 75.) if any quantity of money exceeding the sum of five pounds, being or purporting to be the silver coin of this realm, but below the standard of the mint in weight or fineness, shall be imported into Great Britain or Ireland, the same shall be forfeited, in equal moieties, to the crown and prosecutor.
By 43 Geo. III. c. 139. counterfeiting foreign copper coin, &c. is punishable by imprisonment; and for second offence, transportation; and houses of suspected persons may be searched, and counterfeited coin seized, &c.

The coining of money is in all states the act of the sovereign power; that its value may be known on inspection. And with regard to coinage in general, there are three things to be considered therein; the materials, the impression, and the denomination. With regard to the materials, Sir Edward Coke lays it down (2 Inst. 577.) that the money of England must either be of gold or silver; and none other was ever issued by the royal authority till 1672, when copper farthings and halfpence were coined by Charles II. and ordered by proclamation to be current in all payments, under the value of sixpence, and not otherwise. But this copper coin is not upon the same footing with the other in many respects, particularly with regard to the offence of counterfeiting it, as has been already noticed. And as to the silver coin, it was enacted by stat. 14 Geo. III. c. 42. that no tender of payment in silver money, exceeding twenty-five pounds at one time, shall be a sufficient tender in law for more than its value by weight, at the rate of 5s. 2d. an ounce. This was a clause in a temporary act, which was continued till 1783, since which time it does not appear to have been revived.

As to the impression, the stamping thereof is the unquestionable prerogative of the Crown; for though divers bishops and monasteries had formerly the privilege of coining money, yet, as Sir Matthew Hale observes, (1 Hist. P. C. 191.) 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 the power of instituting either the impression or denomination; but had usually the stamp sent them from the Exchequer.

The denomination, or the value for which the coin is to pass current, is likewise in the breast of the king; and if any unusual pieces are coined, that value must be ascertained by proclamation. In order to fix the value, the weight and the fineness of the metal are to be taken into consideration together. When a given weight of gold or silver is of a given fineness, it is then of the true standard, and called Esterling or sterling metal; a name for which there are various reasons given, but none of them entirely satisfactory. See Syst. Gloss. 203. Du Fresne, 3. 165. The most plausible opinion seems to be that adopted by those two etymologists, that the name was derived from the Esterlings or Easterlings, as those Saxons were anciently called who inhabited that district of Germany now occupied by the Hanstowns and their appendages; the earliest traders in modern Europe. Of this sterling or esterling metal, all the coin of the kingdom must be made, by stat. 25 Edw. III. c. 13. So that the king’s prerogative seemeth not to extend to the debasing or enhancing the value of the coin, below or above the sterling value; 2 Inst. 577. though Sir Matthew Hale (1 Hale’s P. C. 194.) appears to be of another opinion. The king may also, by his proclamation, legitimate foreign coin, and make it current here; declaring at what value it shall be taken in payments. 1 Hale’s P. C. 197. But this it seems ought to be by comparison with the standard of our own coin, otherwise the consent of parliament will be necessary. The king may also at any time decry, or cry down.
any coin of the kingdom, and make it no longer current. 1 Hale's P. C. 197.

This standard hath been frequently varied in former times; but hath for many years past been thus invariably settled. The pound troy of gold, consisting of twenty-two carats (or 24th parts) fine, and two of alloy, is divided into forty-four guineas and a half of the present value of 2½s. each. And the pound troy of silver, consisting of eleven ounces and two penny weights fine, and eighteen pennyweights alloy, is divided into sixty-two shillings. See Folkes on English Coins.

In the 7th year of King William III. an act was made for calling in all the old coin of the kingdom, and to melt it down and recoin it; the deficiencies whereof were to be made good at the public charge; and in every hundred pound coined, 4½l. was to be shillings, and 10½l. sixpences, under certain penalties.

Persons bringing plate to the Mint to be coined, were to have the same weight of money delivered out as an encouragement; and receivers-general of taxes, &c. were to receive money at a large rate per ounce. Our guineas have been raised and fallen, as money has been scarce or plenty, several times by statute; and anno 3 Geo. I. guineas were valued at 2½s. at which they now pass.

A duty of 10s. per ton was imposed on wine, beer, and brandy imported, called the coinage duty, granted for the expense of the king's coinage, but not to exceed 3,000l. per annum. Stat. 18 Car. II. cap. 5. This duty for coinage hath been continued and advanced, from time to time by divers statutes; and by stat. 27 Geo. II. c. 11. (explained by stat. 27 Geo. III. c. 13. § 64.) the treasury is to apply 15,000l. a year to the expenses of the mints in England and Scotland. Stat. 14 Geo. III. c. 92. regulates the stamping of money-weights, the fees for which are settled by stat. 15 Geo. III. c. 39. at 1½d. for every 12 weights.

Colliberti, colliberti.] Were tenants in socage; and particularly such villeins as were manumitted or made freemen. Loménay. But they had not an absolute freedom; for though they were better than servants, yet they had superior lords, to whom they paid certain duties, and in that respect they might be called servants, though they were of middle condition, between freemen and servants. Libertate carenae colliberti dicitur esse. Du Cange.

Collateral, collateralis.] From the Lat. literati, 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 land, besides those granted by the deed of mortgage; and if a man covenants with another, and enters into bond for performance of his covenant, the bond is a collateral assurance, because it is external, and without the nature and essence of the covenant. If a man hath liberty to pitch booths or standings for a fair or market, in another person'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 license; it being a prerogative collateral to the soil. And to be subject to the feeding of the king's deer, is collateral to the soil of a forest. Cronsh. Jurisd. 185. Mansi. t. 66.

Collateral Consanguinity or Kindred. Collateral relations agree with the lineal in this, that they descend from the same stock or ancestor; but differ in this, that they do not descend from each other. Collateral kinsmen, therefore, are such as lineally spring from one and the same ancestor, who is the stirpes or root, the stiftes, trunk, or com-
mon stock, from whence these relations are branched out. 2 Comm. 204. See tit. Descent.

Collateral Descent, and Collateral Warranty. See Descent and Warranty.

Collateral Issue, Is where a criminal convict pleads any matter, allowed by law, in bar of execution, as pregnancy, the king's pardon, an act of grace, or diversity of person, viz. that he or she is not the same that was attainted, &c. whereon issue is taken, which issue is to be tried, by a jury, instanter.

Collatio Bonorum, Is in law where a portion or money advanced by the father to a son or daughter, is brought into hotchpot, in order to have an equal distributory share of his personal estate, at his death, according to the intent of the stat. 22 & 23 Car. II. c. 10. Abr. Cas. Eq. p. 254. See tit. Hotchpot, Executor.

Collation to a Benefice, collatio beneficii.] Signifies the bestowing of a benefice by the bishop, or other ordinary, when he hath right of patronage. See tit. Advowson.

Collatione facta uni post Mortem alterius, A writ directed to the Justices of the Common Pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the king; who died during the suit between the king and the bishop's clerk; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another. Reg. Orig. 31.

Collatione Heremitagii, A writ whereby the king conferred the keeping of a hermitage upon a clerk. Reg. Orig. 303. 308.

Collation of Seals. This was when upon the same label, one seal was set on the back or reverse of the other.

Collative Advowsons. See tit. Advowson.

Collectors, Of money due to the king. Stat. 20 Car. II. See Receivers.

College, collegium.] A particular corporation, company or society of men, having certain privileges founded by the king's license; and for colleges in reputation, see 4 Refl. 106. 108.

The establishment of Colleges or Universities, is a remarkable era in literary history. The schools in Cathedrals and Monasteries confined themselves chiefly to the teaching of grammar. There were only one or two masters employed in that office. But in colleges, professors were appointed to teach all the different parts of science. The first obscure mention of academical degrees in the University of Paris, (from which the other Universities in Europe have borrowed most of their customs and institutions,) occurs A.D. 1215. Vide Roberts. Hist. Emft. C. V. 1 p. 323.

See the power of visitors of Colleges well explained in Dr. Walker's case. Hardw. 212. See further, tit. Corporations, Leases, Universiti.e.

Collegiate Church, Is that which consists of a Dean and secular canons; or more largely, it is a church built and endowed for a society, or body corporate, of a dean or other president, and secular priests, as canons or prebendaries in the said church. There were many of these societies distinguished from the religious or regulars, before the reformation; and some are established at this time; as Westminster, Windsor, Winchester, Southwell, Manchester, &c. See tit. Chapter, Dean.

Colligendum Bona Defuncti, (Letters ad.) In defect of representatives and creditors to administer to an intestate, &c. the
ordinary may commit administration to such discreet person as he approves of, or grant him these letters, to collect the goods of the deceased, which neither make him executor nor administrator; his only business being to keep the goods in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased. 2 Comm. 505. See tit. Executor.

COLLOQUIUM, à colloquendo.] A talking together, or affirming of a thing laid in declarations for words in actions of slander, &c. Mod. Cas. 203. Carthew, 90.

COLLUSION, collusio.] Is a deceitful agreement or contract between two or more persons, for the one to bring an action against the other, to some evil purpose, as to defraud a third person of his right, &c. This collusion is either apparent, when it shows itself on the face of the act; or, which is more common, it is secret, where done in the dark, or covered over with a show of honesty. And it is a thing the law abhors; wherefore, when found, it makes void all things dependent upon the same, though otherwise in themselves good. Co. Lit. 109. 360. Plowd. 54. Collusion may sometimes be tried in the same action wherein the covin is, and sometimes in another action, as for lands aliened in mortmain by a quale jus; and where it is apparent there needs no proof of it, but when it is secret it must be proved by witnesses, and found by a jury like other matters of fact. 9 Rep. 33. The statute of Westm. 2. 13 Edw. I. c. 33. gives the writ quale jus, and inquiry in these cases; and there are several other statutes relating to deeds, made by collusion and fraud. The cases particularly mentioned by the statute of Westm. 2. are of quale imperit, assise, &c. which one corporation brings against another, with intent to recover the land or advowson, for which the writ is brought, held in mortmain, &c. See tit. Fraud.

COLONIES. See tit. Plantation.

COLONUS, A husbandman or villager, who was bound to pay yearly a certain tribute; or at certain times in the year to plough some part of the lord's lands. And from hence comes the word Clown.

COLOUR, color.] Signifies a probable plea, but which is in fact false; and hath this end, to draw the trial of the cause from the jury to the judges; and therefore colour ought to be matter in law, or doubtful to the jury.

It is a rule in pleading, that no man be allowed to plead, specially, such a plea as amounts only to the general issue; but in such case he shall be driven to plead the general issue in terms, whereby the whole question is referred to a jury. But if a defendant, in an assise or action of trespass, be desirous to refer the validity of his title to the court rather than the jury, he may state his title specially, and at the same time give colour to the plaintiff, or suppose him to have an appearance or colour of title, bad indeed in point of law, but of which the jury are not competent judges. As if his own true title be that he claims by feoffment with livery from A, by force of which he entered on the lands in question, he cannot plead this by itself, as this plea amounts to no more than the general issue. But he may allege this specially, provided he goes farther, and says, that the plaintiff claiming by colour of a prior deed of feoffment, without livery, entered, upon whom he entered; and may then refer himself to the judgment of the court, which of the two titles is the best in point of law. Doctor & Stud. 2. c. 53.
Every colour ought to have these qualities following: 1. It is to be doubtful to the lay gens, as in case of a deed of seoffment pleaded, and it is a doubt whether the land passeth by the seoffment, without livery, or not. 2. Colour ought to have continuance, though it wants effect. 3. It should be such colour, that, if it were effectual, would maintain the nature of the action; as in assise, to give colour of freehold, &c. 10 Rep. 88. 90. a. 91. Colour must be such a thing, which is a good colour of title, and yet is not any title. Cro. Jac. 122. If a man justifies his entry for such a cause as binds the plaintiff or his heirs for ever, he shall not give any colour; but if he pleads a descent in bar, he must give colour, because this binds the possession, and not the right; so that when the matter of the plea bars the plaintiff of his right, no colour must be given. When the defendant entitles himself by the plaintiff; where a person pleads to the writ, or to the action of the writ; he who justifies for titles, or where the defendant justifies as servant; in all these cases no colour ought to be given. 10 Rep. 91. 

Lautr. 1343. Where the defendant doth not make a special title to himself, or any other, he ought to give colour to the plaintiff. 
Cro. Eliz. 76. In trespass for taking and carrying away twenty loads of wood, &c. the defendant says, that A. B. was possessed of them, ut de bonus propriis, and that the plaintiff claiming them by colour of a deed after made, took them, and the defendant retook them; and adjudged that the colour given to the plaintiff, makes a good title to him, and confesseth the interest in him. 1 Lit. Abr. 275. See tit. Pleading.

COLOUR or OFFICE, color officii.] Is when an act is evilly done by the countenance of an office; and always taken in the worst sense, being grounded upon corruption, to which the office is a shadow and colour. Plowd. Comment. 64. See Bribery, Extortion.

COLPICES, colpicium, colpiciis.] Young poles, which being cut down, make levers or lifters; and in Warwickshire, they are called colpices to this day. Blount.

COLPO, A small wax candle, à capo de cere. Hoveden says, that when the King of Scots came to the English court, as long as he staid there, he had every day, De liberatione triginta sol. et duodecim vassallos dominioc, et quadragesimo grosso longos colpones de dominica candela regis, &c. anno 1194.

COMBARONES, The fellow barons, or commonalty of the Cinque Ports. Placit. ten. & Edw. II. But the title of Barons of the Cinque Ports is now given to their representatives in parliament; and the word combaron is used for a fellow member, the baron and his combaron. See tit. Parliament.

COMBATERRÆ, from Sax. cumbe, Brit. kum, Eng. comb.] A valley or low piece of ground or place between two hills; which is still so called in Devonshire and Cornwall. Hence many villages in other parts of England have their names of comb, as Wickcomb, &c. from their situation. Kennett's Gloss.

COMBAT, Trial by. See Battel.

COMBINATIONS, To do unlawful acts, are punishable before the unlawful act is executed. This is to prevent the consequence of combinations and conspiracies, &c. 9 Rep. 57. See tit. Confederacy, Conspiracy.

COMBUSTIO PECUNIÆ, The ancient way of trying mixed and corrupt money, by melting it down upon payments into the Exchequer. In the time of King Henry II. a constitution was made, called the trial by combustion; the practice of which differed little or nothing from the present method of assaying silver. But whether this exa-
mination of money by combustion, was to reduce an equation of money only of sterling, viz. a due proportion of alloy with copper; or to reduce it to a fine, pure silver without alloy, doth not appear. On making the constitution for trial, it was considered, that though the money did answer numero et pondere, it might be deficient in value; because mixed with copper or brass, &c. Vide Lownde's Essay upon Coin, p. 5. See tit. Coin.

COMITATUS, A county. Ingulphus tells us, that England was first divided into counties by King Alfred; and counties into hundreds, and these again into tithings; and Fortescue writes, that regnum Angliae per comitatus ut regnum Franciae per ballivatus distinguitur. It is also taken for a territory or jurisdiction of a particular place, as in Mat. Paris, anno 1234. and divers old charters. See tit. County, Sheriff.

According to Lord Littleton, in his History of Henry II. lib. 2. fol. 217. each county was anciently an earldom; so that, previous to the reign of King Stephen, there were not any titular earls, nor more earls than counties, though there might be fewer. As to the divisions of counties into hundreds and tithings, see Ld. Lit. lib. 2. fol. 259. Also see Bract. lib. 3. c. 10.

COMITATU Commissio, Is a writ or commission whereby a sheriff is authorized to take upon him the charge of the county. Reg. Orig. 295.

COMITATU ET CASTRO Commissio, A writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff. Reg. Orig. 295.

COMITIVA, A companion or fellow traveller. It is mentioned in Bromf. Regn. Hen. II. And sometimes it signifies a troop or company of robbers, as in Wals. anno 1365.

COMMANDERY, praebitoria.] Was any manor or chief messuage, with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem in England; and he who had the government of such a manor or house, was styled the commanders, who could not dispose of it but to the use of the priory, only taking thence his own sustenance, according to his degree. New Eagle in Lincolnshire, was, and still is, called the Commandery of Eagle, and did anciently belong to the said priory of St. John. So Selbach in Pembrokeshire, and Shingay in Cambridgeshire, were commanderies in the time of the knights templars, says Camden; and these in many places of England are termed Temples, because they formerly belonged to the said templars. See stat. 26 Hen. VIII. c. 2. The manors and lands belonging to the priory of St. John of Jerusalem, were given to King Henry VIII. by stat. 32 Hen. VIII. c. 20. about the time of the dissolution of abbies and monasteries; so that the name only of commanderies remains, the power being long since extinct.

COMMANDMENT, praecipitum.] Is diversely taken; as the commandment of the king, when upon his own motion he had cast any man into prison. Commandment of the justices, absolute or ordinary; absolute, where upon their own authority they commit a person for contempt, &c. to prison, as a punishment; ordinary is when they commit one rather for safe custody, than for any punishment; and a man committed upon such an ordinary commandment is replevisable. Starndf. P. C. 72, 73. Persons committed to prison by the special command of the king, were not formerly bailable by the court of King's Bench; but at this day the law is otherwise. 2 Hawk. P. C. c. 15. § 36. See tit. Bail.
In another sense of this word, magistrates may command others to assist them in the execution of their offices, for the doing of justice; and so may a justice of peace to suppress riots, apprehend felons; an officer to keep the king's peace, &c. Bro. 3. A master may command his servant to drive another man's cattle out of his ground, to enter into lands, seize goods, distress for rent, or do other things; if the thing be not a trespass to others. Fitz. Abr. The commandment of a thing is good, where he that commands hath power to do it; and a verbal command in most cases is sufficient; unless it be where it is given by a corporation, or when a sheriff's warrant is to a bailiff to arrest, &c. Bro. 288. Dyer, 202.

Commandment is also used for the offence of him that willeth another man to transgress the law, or do any thing contrary to it; and in the most common signification, it is taken where one willeteth another to do an unlawful act, as murder, theft, or the like; which the civilians called mandatum. Bract. lib. 3. c. 19. See tit. Accessory.

In forcible entries, &c. an infant or fence covert may be guilty in respect of actual violence done by them in person; though not in regard to what shall be done by others at their command, because all such commands of theirs are void. Co. Lit. 357. 1 Hawk. P. C. c. 64. § 35. See tit. Infant. In trespass, &c. the master shall be charged criminally for the act of the servant, done by his command; but servants shall not be excused for committing any crime, when they act by command of their masters, who have no authority over them to give such command. Decr. & Stud. c. 42. Hale's P. C. 66. Ket. 15. And if a master commands his servant to distress, and he abuseth the distress, the servant shall answer it to the party injured, &c. Kitch. 372. See tit. Servant.

COMMARCHIO, The confines of the land; from whence probably comes the word marches. Inprimis de nostris landineris, commarchiobus. Du Cange.

COMMENDAM, ecclesia commendata, vel custodia ecclesiae alieni commissa.] Is the holding of a benefice or church-living, which being void, is commended to the charge and care of some sufficient clerk, to be supplied until it may be conveniently provided with a pastor. And he to whom the church is commended, hath the profits thereof only for a certain time, and the nature of the church is not changed thereby, but is as a thing deposited in his hands in trust, who hath nothing but the custody of it, which may be revoked. When a parson is made bishop, there is a cession or voidance of his benefice, by the promotion; but if the king, by special dispensation, gives him power to retain his benefice notwithstanding his promotion, he shall continue parson, and is said to hold it in commendam. Hob. 144. Latch. 295. As the king is the means of avoidances on promotions to dignities, and the presentations thereon belong to him, he often on the creation of bishops grants them licenses to hold their benefices in commendam; but this is usually where the bishopricks are small, for the better support of the dignity of the bishop promoted; and it must be always before consecration; for afterwards it comes too late, because the benefice is absolutely void. A commendam, founded on the stat. 25 Hen. VIII. c. 21. is a dispensation from the supreme power, to hold or take an ecclesiastical living contra jus positivum; and there are several sorts of commendam, as a commendam semestris, which is for the benefit of the church without any regard to the commendatory, being only a provisional act of the ordinary, for supplying the vacation of six months, in which time the patron is to present his clerk, and is but a
The commendam retinere, which is for a bishop to retain benefices, on his preferment; and these commendams are granted on the king's mandate to the archbishop, expressing his consent, which continues the incumbency, so that there is no occasion for institution. A commendam recipere is to take a benefice de novo in the bishop's own gift, or in the gift of some other patron, whose consent must be obtained. *Dyer*, 228. *3 Lev*. 381. *Hob*. 143. *Darwin*. 79.

A commendam may be temporary for six or twelve months, two or three years, &c. or it may be perpetual, i.e. for life; when it is equal to a presentation, without institution or induction. But all dispensations beyond six months were only permissive at first, and granted to persons of merit. The commendam retinere is for one or two years, &c. and sometimes for three or six years, and doth not alter the estate which the incumbent had before. A commendam recipere as long as the commendatory should live and continue bishop, hath been held good. *Vaugh*. 18.

The commendam recipere must be for life, as other parsons and vicars enjoy their benefices; and as a patron cannot present to a full church, so neither can a commendam recipere be made to a church that is then full. *Show*. 414. A benefice cannot be commended by parts, any more than it may be presented unto by parts; as that one shall have the glebe, another the tithes, &c. Nor can a commendatory have a juris utrum, or take to him and his successors, sue or be sued, in a writ of annuity, &c. But a commendatory in perpetuum may be admitted to do it. 11 *Hen*. IV.

These commendams are now, in fact, seldom or never granted to any but bishops; and in that case the bishop is made commendatory of the benefice while he continues bishop of such diocese; as the object is to make an addition to a small bishoprick; and it would be unreasonable to grant it to a bishop for life, who might afterwards be translated to one of the richest sees. See the case of Commendams, *Hob*. 140. and *Collier's Eccl. Hist*. 2. 710.

**COMMENDATARY, commendatarius.** He that holdeth a church living or preferment in commendam.

**COMMENDATORS.** Are secular persons, upon whom ecclesiastic benefices are bestowed, called so, because the benefices were commended and intrusted to their oversight; they are not proprietors, but only trustees or tutors. *Scotch Dict.*

**COMMENDATORY LETTERS.** Are such as are written by one bishop to another in behalf of any of the clergy, or others of his diocese, travelling thither, that they may be received among the faithful; or that the clerk may be promoted; or necessaries administered to others, &c. Several forms of these letters may be seen in our historians, as in *Bede*, lib. 2. c. 18.

**COMMENDATUS.** One that lives under the protection of a great man. *Spenius*. Commendati homines were persons who by voluntary homage, put themselves under the protection of any superior lord; for ancient homage was either *predial*, due for some tenure; or personal, which was by compulsion, as a sign of necessary subjection; or voluntary, with a desire of protection; and those, who, by voluntary homage, put themselves under the protection of any men of power, were sometimes called *hominum ejus commendati*; and sometimes only *commendati*, as often occurs in *Domesday*. *Commendati dimidii* were those who depended on two several lords, and paid one half of their homage to each; and *subcommendati* were like under-tenants, under
the command of persons that were dependants themselves on a superior lord; also there were *dimidii sub-commendati*, who bore a double relation to such depending lords. *Domesday.* This phrase seems to be still in use, in the usual compliment, commend me to such a friend, &c. which is to let him know, I am his humble servant. *Spetu* of *Feud*., cap. 20.

**COMMERCE, commercium.** Traffic, trade or merchandise in buying and selling of goods.

There is a distinction between commerce and trade; the former relates to our dealings with foreign nations, or our colonies, &c. abroad; the other to our mutual traffic and dealings among ourselves at home.

No municipal laws can be sufficient to order and determine the very extensive and complicated affairs of traffic and merchandise; neither can they have a proper authority for this purpose; for, as these are transactions carried on between subjects of independent states, the municipal laws of one will not be regarded by the other. For this reason, the affairs of commerce are regulated by a law of their own, called the Law-merchant, or *lex mercatoria*, which all nations agree in and take notice of. And in particular it is held to be part of the law of England, which decides the causes of merchants by the general rules which obtain in all commercial countries. See further tit. Merchant. See also tit. Bill of Exchange.

**COMMISSARY, commissarius.** A title in the ecclesiastical law, belonging to one that exerciseth spiritual jurisdiction, in places of a diocese which are so far from the episcopal city that the chancellor cannot call the people to the bishop's principal consistory court, without their too great inconvenience. This commissary was ordained to supply the bishop's jurisdiction and office in the out-places of the diocese; or in such places as are peculiar to the bishop, and exempted from the jurisdiction of the archdeacon; for where, either by prescription or composition, archdeacons have jurisdiction within their archdeaconries, as in most places they have, this commissary is superfluous, and ought not to be; yet in such cases, a commissary is sometimes appointed by the bishop, he taking pretension money of the archdeacon yearly *pro exteriori jurisdictione*, as it is ordinarily called. But this is held to be a wrong to archdeacons and the poorer sort of people. *Cowell's Interj.* 4 Inst. 338.

There are also commissaries in time of war. Persons sent abroad to take care of the supply and distribution of provisions for the army.

**COMMISSION, commissio.** The warrant or letters patent, which all persons exercising jurisdiction either ordinary or extraordinary, have to authorize them to hear or determine any cause or action; as the commission of the judges, &c. Commission is with us as much as delegatio with the civilians; and this word is sometimes extended farther than to matters of judgment; as the commission of purveyance, &c. Commissions of inquiry shall be made to the justices of one bench or the other, &c. and to do lawful things, are grantable in many cases: also most of the great officers, judicial and ministerial, of the realm, are made by commission. And by such commissions, treasons, felonies, and other offences, may be heard and determined; by this means, likewise, oaths, cognisances of fines, and answers are taken, witnesses examined, offices found, &c. *Bro. Abr.* 12. Rep. 39. See *stat. 42 Edw. III.* c. 4. And most of these commissions are appointed by the king under the great seal of England; but a commission granted under the great seal may be determined by a privy seal; and by granting
another new commission to do the same thing; the former commission determines; and on the death or demise of the king, the commissions of judges and officers generally cease. Bro. Commis. 2 Dyer, 289. There was formerly a High-Commission Court founded on 1 Eliz. c. 1, but it was abolished by stats. 16 Car. I. c. 11, and 13 Car. II. c. 2. Of commissions divers may be seen in the table of the Register of Writs. See also stats. 4 Hen. IV. c. 3, 7 Hen. IV. c. 11, 6 Ann. c. 7. By which last act, § 27, it is provided that no greater number of commissioners shall be made for the execution of any office than had been previously usual.

Commission of Anticipation, Was a commission under the great seal to collect a tax or subsidy before the day. 15 Hen. VIII.


Commission of Association, A commission to associate two or more learned persons with the justices in the several circuits and counties of Wales, &c. See tit. Assize, Circuit.

Commission of Bankrupt, See tit. Bankrupt.

Commission of Charitable Uses, Goes out of the Chancery to the bishop and others, "Where lands given to charitable uses are missemployed, or there is any fraud or disputes concerning them, to inquire of and redress the abuse, &c. Stat. 45 Eliz. c. 4. See tit. Charitable Uses, Mortmain.

Commission of Delegates, Is a commission under the great seal to certain persons, usually two or three temporal lords, as many bishops, and two judges of the law, to sit upon an appeal to the king in the court of Chancery, where any sentence is given in any ecclesiastical cause by the archbishop. Stat. 25 Hen. VIII. c. 19. Now generally three of the common law judges, and two civilians, sit as delegates.

Commission to inquire of Faults against the Law, Was an ancient commission set forth on extraordinary occasions and corruptions.

Commissions of the Peace, See tit. Justices of Peace.

Commission of Lunacy, A commission out of Chancery to inquire whether a person represented to be a lunatic be so or not; that if lunatic, the king may have the care of his estate, &c. See tit. Lunatic.

Commission of Oyer and Terminer, An English term, is a commission especially granted to some eminent persons of the hearing and determining one or more causes; and it is the first and largest of the five commissions, by which the English judges of assise do sit in their several circuits. Scotch Dict. See tit. Oyer and Terminer.

Commission of Rebellion, Otherwise called a writ of rebellion, issues when a man after proclamation made by the sheriff, upon a process out of the Chancery, on pain of his allegiance, to present himself to the court by a day assigned, makes default in his appearance; and this commission is directed to certain persons, to the end they, three, two, or one of them, apprehend the party, or cause him to be apprehended as a rebel and contemner of the king's laws, wheresoever found within the kingdom, and bring or cause him to be brought to the court on a day therein assigned: this writ or commission goes forth after an attachment returned, non est inventus, &c. Terms de Ley. See tit. Attachment, Chancery.

Commission of Sewers, Is directed to certain persons to see drains and ditches well kept and maintained in the marshy and fenny parts of England, for the better conveyance of the water into the sea, and
COMMITTEE.

preserving the grass upon the land. Stat. 23 Hen. VIII. c. 5. 13 Eliz. c. 9. See tit. Sevens.

COMMISSION OF TREATY WITH FOREIGN PRINCES, Is where leagues and treaties are made and transacted between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance.

COMMISSION TO TAKE UP MEN FOR WAR, Was a commission to press or force men into the king’s service. This power of impressing has been heretofore doubted, but the legality of it is now fully established. Vide Post. Rep. 154. 1 Comm. 419. Breadfoot’s case, Comb. 245. Tubbs’s case, Cowp. 517. See tit. Mariner, Navy.

COMMISSIONER, commissionarius.] He that hath a commission, letters patent, or other lawful warrant to examine any matters, or to execute any public office, &c. And some commissioners are to hear and determine offences, without any return made of their proceedings; and others to inquire and examine, and certify what is found. Stat. 4 Hen. IV. c. 9. Commissioners, by the common law, must pursue the authority of the commission, and perform the effect thereof; and they are to observe the ancient rules of the courts whence they come; and if they do anything for which they have not authority, it will be void. 2 Co. Rep. 25. Co. Lit. 157. The office of commissioners is to do what they are commanded; and it is necessarily implied, that they may do that also, without which what is commanded cannot be done; their authority, when appointed by any statute law, must be used as the statutes prescribe. 12 Rep. 32. If a commission is given to commissioners to execute a thing against law, they are not bound to accept or obey it: commissioners not receiving a commission may be discharged, upon oath before the Barons of the Exchequer, &c. and the king by supersedeas out of Chancery, may discharge commissioners. Besides commissioners relating to judicial proceedings, there are Commissioners of the Treasury, of the Customs, Wine-licenses, Alienations, &c. of which there are an infinite number.

COMMISSIONERS FOR VALUATION OF TEINDS., Are those appointed by the parliament to value Teinds. Scotch Diet.

COMMITTEE, Are those to whom the consideration or ordering of any matter is referred, by some court, or by consent of parties to whom it belongs; as in parliament, a bill either consented to and passed, or denied, or neither, but being referred to the consideration of certain persons appointed by the house farther to examine it, they are thereupon called a committee. And when a parliament is called, and the speaker and members have taken the oaths, and the standing orders of the house are read, committees are appointed to sit on certain days, viz. the committee of privileges, of religion, of grievances, of courts of justice, and of trade; which are the standing committees. But though they are appointed by every new parliament, they do not all of them act; only the committee of privileges; and this being not of the whole house, is first called in the speaker’s chamber, from whence it is adjourned into the house, every one of the house having a vote therein, though not named, which makes the same usually very numerous; and any member may be present at any select committee; but is not to vote unless he be named. The chairman of the grand committee, who is always some leading member, sits in the clerk’s place at the table, and writes the votes for and against the matter referred to them; and if the number be equal he has a casting voice, otherwise he hath no vote in the committee; and after the chairman hath put the question for reporting to the house, if that be carried, he leaves the chair,
and the speaker being called to his chair, (who quits it in the beginning, and the mace is laid under the table,) he is to go down to the bar, and so bring up his report to the table. After a bill is read a second time in the house of commons, the question is put, whether it shall be committed to a committee of the whole house, or a private committee; and the committees meet in the speaker's chamber, and report their opinion of the bill, with the amendments, &c. And if there be any exceptions against the amendments reported, the bill may be recommitted; eight persons make a committee, which may be adjourned by five, &c. Lex Constitutionis, 147. 150. See tit. Parliament.

There is a Committee of the King, mentioned in West's Synb. tit. Chancery, sect. 144. And this hath been used, though improperly, for the widow of the king's tenant being dead, who is called the committee of the king, that is, one committed by the ancient law of the land to the king's care and protection. Kitch. fol. 160.

The Committee of a lunatic, idiot, &c. is the person to whom the care and custody of such lunatic is committed by the court of Chancery. See tit. Lunatic.

Most corporations have their committees of select members to perform the general routine of business. See tit. Corporation.

COMMITMENT.

The sending of a person to prison, by warrant or order, who hath been guilty of any crime.

Anciently more felons were committed to gaol without a mittimus in writing, than were with it; such were commitments by watchmen, constables, &c. See 1 H. H. 610. But now since the habeas corpus act, a commitment in writing seems more necessary than formerly, otherwise a prisoner may be admitted to bail under that act, whatsoever his offence may have been. Burn's Justice, tit. Commitment.

I. What kind of Offenders may be committed; and by whom; and in what manner.

II. To what Prison they may be committed, and at whose Charge.

III. How they may be removed and discharged.

I. There is no doubt but that persons apprehended for offences which are not bailable, and also all persons who neglect to offer bail for offences which are bailable, must be committed. 2 Hawk. P. C. c. 16. § 1. It is said, that wheresoever a justice of peace is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the gaol to remain there till he shall comply. Id. ib. § 2.

It seems agreed by all the old books, that wheresoever a constable, or private person may justify the arresting another for a felony or treason, he may also justify the sending or bringing him to the common gaol; and that every private person hath as much authority in cases of this kind, as the sheriff, or any other officer; and may justify such imprisonment by his own authority, but not by the command of another. 2 Hawk. P. C. c. 16. § 3.

But inasmuch as it is certain, that a person lawfully making such an arrest may justify bringing the party to the constable, in order to
be carried by him before a justice of peace; and inasmuch as the statutes of 1 & 2 P. & M. cap. 13. and 2 & 3 P. & M. cap. 10. which direct in what manner persons brought before a justice of the peace for felony, shall be examined by him, in order to their being committed or bailed, seem clearly to suppose, that all such persons are to be brought before such justice for such purpose; and inasmuch as the statute of 31 Car. II. c. 2. commonly called the 
Habeas-corpus act, seems to suppose that all persons, who are committed to prison, are there detained by virtue of some warrant in writing, which seems to be intended of a commitment by some magistrate, and the constant tenor of the late books, practice and opinions, are agreeable hereto; it is certainly most advisable at this day, for any private person who arrests another for felony, to cause him to be brought, as soon as conveniently he may, before some justice of peace, that he may be committed or bailed by him. 2 Hawk. P. C. c. 16. § 3.

It is certain, that the Privy Council, or any one or two of them, or Secretary of State, may lawfully commit persons for treason, and for other offences against the state, as in all ages they have done. 2 Hawk. P. C. 117.

As to commitments by the Privy Council, two cases in Leonard (1 Leon. 71. 2 Leon. 175.) presuppose some power for this purpose, without saying what; and the case in 1 Anders. 297. plainly recognises such a power in high treason. But as to the jurisdiction of Privy Councillors in other offences, it does not appear to have been either claimed or exercised. But see post, as to commitments by the Secretary of State for libel; the cases of Derby and Earbury; which Lord Camden said are established, and the court has no right to overturn them. 11 S. T. 323.

As to commitments by the Secretary of State; in the case of Entick v. Carrington, C. B. Mich. Geo. III. upon a special verdict, respecting the validity of a Secretary of State's warrant to seize persons and papers in the case of libels, a very critical inquiry was made into the source of this power in that officer, in cases of libels and other State crimes. 2 Wils. 275. 11 S. T. 317. 319. It appears that the king being the principal conservator of the realm, the Secretary of State has so much of the royal authority transferred to him, as justifies commitment for these crimes, but not the seizure of papers.

The following instances of commitments by the Privy Council and Secretary of State, will further explain the nature of this power. 1. Howell was committed in the 28 Eliz. and Holyard in the 30th Eliz. by Secretary Walsingham, Privy Councillor; and it was determined that where the commitment is not by the whole council, the cause must be expressed in the warrant. 1 Leon. 71. 2 Leon. 175. Sed vide stat. 31 Car. II. c. 2. Lord Raym. 55.—2. Anno 34 Eliz. the judges remonstrated against the exercise of this power, and declared that all prisoners may be discharged, unless committed by the queen's command, or by her whole council, or by one or two of them for high treason. 1 And. 297.—3. Melvin was committed an. 4 Car. I. by Secretary Conway, on suspicion of high treason; but the court thought the cause of the suspicion should have been expressed. Palm. 538.—4. Crofton was committed by the council, an. 14 Car. II. for high treason generally. Vaugh. 142. 1 Sick. 78. 1 Kebo. 305.—5. Fitzpatrick by the Privy Council, an. 7 W. III. for high treason, in aiding an escape; and bailed for neglect of prosecution. 1 Sick. 103.—6. Yaxley was committed, an. 5 W. & M. by the Secretary of State, Lord Nottingham, for refusing to declare if he was a Jesuit. 3 Irish. 291. Skin. 369.
7. Kendal and Rae were committed, an. 7 W. III. by Secretary Trumbull for high treason, in assisting the escape of Montgomery; and by Holt, C. J. held good, but the prisoners were bailed. \textit{4 S. T. 599. 5 Mod.} 78. \textit{Skin.} 596. \textit{Holt.} 144. \textit{Lord Raym.} 61, 65. \textit{Comb.} 543. 12 Mod. 82. 1 Salk. 347.—9. Derby was committed, \textit{10 Ann.} for publishing a libel, \textit{(querre for felony. 11 S. T. 311.)} called the Observator; and the court held the warrant good and legal. \textit{Fortesc.} 140. 11 S. T. 309.—9. Sir W. Wyndham was committed, an. 4 Geo. I. by Secretary Stanhope for high treason; and by Parker, C. J. held good. \textit{Str.} 3. 3 \textit{Vin.} 516.—10. Lord Sturston, and Dighton, and Harvey were committed, an. 2 Geo. I. by Lord Townshend, Secretary of State, for treasonable practices, and admitted to bail. \textit{3 Vin.} 554.—11. Earbury was arrested and committed by warrant from the Secretary of State, for being the author of a seditious libel, and his papers seized, and he continued on his recognisance, an. 7 Geo. II. 8 \textit{Mod.} 177. 11 S. T. 309.—12. Henley was committed, an. 31 Geo. II. by the Earl of Holderness, Secretary of State, for high treason, in adhering to the king's enemies. 1 \textit{Burr.} 642.—13. Shebbeare was committed, 31 Geo. II. on two warrants from the Secretary of State, for a libel. 1 \textit{Burr.} 469.—14. Wilkes was committed, an. 3 Geo. III. by warrant from the Earl of Halifax, Secretary of State, for a libel; but discharged by his privilege of parliament. 2 \textit{Wits.} 150. 11 S. T. 392.—15. Sayer was apprehended, 18 Geo. III. by warrant from the Earl of Rochford, Secretary of State, for high treason, and bailed by Lord Mansfield. \textit{Black. Ref.} 1165. See further, \textit{tit.} \textit{Bail II.} and also \textit{tit.} \textit{ Arrest.}

As to the manner of commitment, it is enacted by \textit{2 & 3 P. & M.} 10, that justices of peace shall examine persons brought before them for felony, &c. or suspicion thereof, before they commit them to prison, and shall bind their accusers to give evidence against them. See \textit{2 Hawk. P. C.} c. 16. § 11.

A justice of the peace may detain a prisoner a reasonable time, in order to examine him; and it is said, that three days is a reasonable time for this purpose. \textit{2 Hawk. P. C.} c. 16. § 12. \textit{Dalt. c. 125. 2 Inst.} 52, 591.

Every commitment must be in writing, and under the hand and seal, and show the authority of him that made it, and the time and place, and must be directed to the keeper of the prison. It may be either in the king's name, and only tested by the justice, or in the justice's name. It may command the gaoler to keep the party in safe and close custody; for this being what he is obliged to do by law, it can be no fault to command him so to do. \textit{2 Hawk. P. C.} c. 16. §§ 13, 14, 15.

It ought to set forth the crime with convenient certainty, whether the commitment be by the Privy Council, or any other authority; otherwise the officer is not punishable by reason of such \textit{mittimus,} for suffering the party to escape; and the court, before whom he is removed by \textit{habeas corpus,} ought to discharge or bail him; and this doth not only hold where no cause at all is expressed in the commitment, but also where it is so loosely set forth, that the court cannot judge whether it were a reasonable ground for imprisonment or not. \textit{2 Hawk. P. C.} c. 16. § 17. See \textit{tit.} \textit{Arrest.} \textit{Bail.}

A commitment for high treason or felony in general, without expressing the particular species, has been held good. \textit{2 Hawk. P. C.} c. 16. § 16. But now, since the \textit{habeas corpus} act, it seems that such a general commitment is not good; and, therefore, where \textit{A.} and \textit{B.} were committed for aiding and abetting Sir James Montgomery to make his escape, who was committed by a warrant of a Secretary of State for high
COMMITMENT II.

Commitment II.

It is safe to set forth that the party is charged upon oath; but this is not necessary, for it hath been resolved, that a commitment for treason, or for suspicion of it, without setting forth any particular accusation or ground of the suspicion, is good. 2 Hawk. P. C. c. 16. § 17.

This resolution was in the case of Sir W. Wyndham, 2 Geo. I. who was committed by the Secretary of State for high treason generally.

Str. 2. 3 Vin. 313. at large. It was confirmed by Pratt, C. J. in Wilkes's case, committed by a similar warrant for a libel. 2 Wils. 158. 11 S. T. 304. And Mr. J. Foster says, in cases wherein the justice of the peace hath jurisdiction, the legality of his warrant will never depend on the truth of the information whereon it is grounded. Curtis's Ca. 155. See also Datt. c. 125. Cormp. 233. 2 Inst. 52. Palm. 558. 1 Salk. 347. 5 Mod. 78. 10 Mod. 334. 1 H. P. C. 583.

Every such mittimus ought to have a lawful conclusion, viz. that the party be safely kept till he be delivered by law, or by order of law, or by due course of law; or that he be kept till further order, (which shall be intended of the order of law,) or to the like effect; and if the party be committed only for want of bail, it seems to be a good conclusion of the commitment, that he be kept till he find bail; but a commitment till the person who makes it shall take further order, seems not to be good; and it seems that the party committed by such or any other irregular mittimus may be bailed. 2 Hawk. P. C. c. 16. § 18.

Also a commitment grounded on an act of parliament ought to be conformable to the method prescribed by such statute; as where the churchwardens of Northampton were committed on the 43 Eliz. cap. 2. and the warrant concluded in the common form, viz. Until they be duly discharged according to law; but the statute appointing, that the party should there remain until he should account, for want of such conclusion they were discharged. Carth. 152, 153. And where a man is committed as a criminal, the conclusion must be, until he be delivered by due course of law; if he be committed for contumacy, it should be until he comply.

II. All commitments must be to some prison within the realm of England. For,

By the stat. 31 Car. II. cap. 2. the habeas corpus act, it is enacted, "That no subject of this realm, being an inhabitant or resident of this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into any parts, garrisons, islands or places beyond the seas, which then were, or at any time after should be, within or without the dominions of his majesty."

By Stat. 14 Edw. III. c. 10. sheriffs shall have the custody of the gaols as before that time they were wont to have, and they shall put in such under-keepers for whom they will answer. And this is confirmed by stat. 19 Hen. VII. cap. 10. Also by stat. 5 Hen. IV. cap. 10. it is enacted, "That none be imprisoned by any justice of the peace, but only in the common gaol, saving to lords, and others who have gaols, their franchise in this case." It seems that the king's grant since the statute, 5 Hen. IV. c. 10. to private persons to have the custody of prisoners committed by justices of peace, is void. And it is said, that none can claim a prison as a franchise, unless he have also a gaol delivery. 2 Hawk. P. C. c. 16. § 7. See stat. 11 & 12.
COMMITMENT III.

III. c. 19. § 3. made perpetual by stat. 6 Geo. I. c. 19. to enable justices of peace to build and repair gaols in their respective counties where a clause like that in stat 5 Hen. IV. c. 10. is inserted.

Also it hath been held, that regularly no one can justify the detaining a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as if the party be so dangerously sick, that it would apparently hazard his life to send him to the gaol; or there be evident danger of a ravous from rebels, &c. yet constant practice seems to authorize a commitment to a messenger; and it is said that it shall be intended to have been made in order for the carrying of the party to gaol. 2 Hawk. P. C. c. 16. § 8, 9.

And it is said, that if a constable bring a felon to gaol, and the gaoler refuse to receive him, the town where he is constable ought to keep him till the next gaol delivery. H. P. C. 114. 2 Hawk. P. C. c. 16. § 9.

A prisoner in the custody of the king's messenger, on a warrant from the Secretary of State, who is brought into K. B. by habeas corpus to be bailed, but has not his bail ready, cannot be committed to the same custody he came in; but must be committed to the custody of the marshal, which will prevent the necessity of suing out a new habeas corpus; as he may be brought up from the prison of the court, by a rule of court, whenever he shall be prepared to give bail. 1 Burr. 460.

If a person arrested in one county for a crime done in it, fly into another county, and be retaken there, he may be committed by a justice of the first county to the gaol of such county. H. P. C. 93. But by the better opinion, if he had before any arrest fled into such county, he must be committed to the gaol thereof by a justice of such county. 2 Hawk. P. C. c. 16. § 8. Dalt. c. 118. Also it seems to be laid down as a rule by some books, that any offender may be committed to the gaol next to the place where he was taken, whether it lie in the same county or not. 2 Hawk. P. C. c. 16. § 8. See post. Stat. 24 Geo. II. c. 55.

By stat. 6 Geo. I. c. 19. vagrants and other criminals, offenders, and persons charged with small offences, may, for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper.

By stat. 24 Geo. II. c. 55. if a person is apprehended upon a warrant endorsed in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed, or, if bailable, bailed by the justices in such first county.

As to the charges of commitment, it is enacted by stat. 3 Jac. I. c. 10. that offenders committed are to bear their own charges, and the charges of those who are appointed to guard them; and if they refuse to pay, the charges may be levied by sale of their goods. And by stat. 27 Geo. II. c. 3. if they have no goods, &c. within the county where they are apprehended, the justices are to grant a warrant on the treasurer of the county for payment of the charges. But in Middlesex the same shall be paid by the overseers of the poor of the parish where the person was apprehended.

By the stat. 3 Hen. VII. c. 3. the sheriff shall certify the names of all prisoners in his custody to the justices of gaol delivery.

III. As prisoners ought be committed at first to the proper prison, so ought they not to be removed thence, except in some special
cases; and to this purpose it is enacted by 31 Car. II. cau. 2. "That if any subject of this realm shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal, or supposed criminal matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers, unless it be by habeas corpus, or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some gaol; or where any person is sent by order of any judge of assise, or justice of the peace, to any common workhouse, or house of correction; or where the prisoner is removed from one prison or place to another within the same county, in order to a trial or discharge by due course of law; or in case of sudden fire or infection, or other necessity; upon pain that he who makes out, signs, or countersigns, or obeys, or executes such warrant, shall forfeit to the party grieved 100l. for the first offence, 200l. for the second, &c. 2 Hawk. P. C. c. 16. § 10.

A person legally committed for a crime, certainly appearing to have been done by some one or other, cannot be lawfully discharged by any other but by the king, till he be acquitted on his trial, or have an ignoramus found by the grand jury, or none to prosecute him on a proclamation for that purpose, by the justices of gaol delivery. But if a person be committed on a bare suspicion, without any appeal or indictment, for a supposed crime, where afterwards it appears that there was none; as for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may be safely dismissed without any farther proceeding; for that he who suffers him to escape, is properly punishable only as an accessory to his supposed offence; and it is impossible there should be an accessory where there can be no principal; and it would be hard to punish one for a contempt founded on a suspicion appearing in so uncontested a manner to be groundless. 2 Hawk. P. C. c. 16. § 22. But the safest way for the gaoler, is to have the authority of some court, or magistrate, for discharging the prisoner.

If the words of a statute are not pursued in a commitment, the party shall be discharged by habeas corpus. See tit. Arrest, Bail, Imprisonment, Prisoner, &c.

COMMOIGNE, Fr.] A fellow monk; one that lives in the same convent. 3 Inst. 15.

COMMONALTY, [populus, plebs, communitates.] In Art. super chartas, 23 Edw. I. c. 1. the words Tout le Commune d'Engleterre, signify all the people of England. 2 Inst. 539. But this word is generally used for the middle sort of the king's subjects, such of the commons as are raised beyond the ordinary sort, and coming to have the managing of offices, by that means are one degree under burgesses, which are superior to them in order and authority; and companies incorporated are said to consist of masters, wardens, and commonalty, the first two being the chief, and the others such as are usually called of the livery. The ordinary people and freeholders, or at best knights and gentlemen, under the degree of baron, have been of late years called communitias regni, or tota terre communitas; yet anciently, if we credit Brady, the barons and tenants in capite, or military men, were the community of the kingdom; and those only were reputed as such in our most ancient histories and records. Brady's Gloss. to his Intr. to Eng. Hist.
COMMON

Communia.] A right or privilege, which one or more persons claim to take or use, in some part or portion of that which another man's lands, waters, woods, &c. do naturally produce; without having an absolute property in such land, waters, wood, &c. It is called an incorporeal right, which lies in grant, as if originally commencing on some agreement between lords and tenants, for some valuable purposes; which by age being formed into a prescription, continues, although there be no deed or instrument in writing which proves the original contract or agreement. 4 Co. 37. 2 Inst. 65. 1 Vent. 387.

I. Of the several Kinds of Commons.

II. The Interest of the Owner of the Soil; wherein, of Approvement and Enclosure.

III. The Commons' Interest in the Soil; and herein, of Apportionment and Extinguishment.

I. There is not only common of pasture, but also common of piscary or fishing; common of estovers; common of turbary; which see under their several heads. The word common, however, in its most usual acceptation, signifies common of pasture. This is a right of feeding one's beasts on another's land: for in those waste grounds, usually 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. This kind of common is divided into common in gross, common appendant, common appurtenant, and common for cause de vicinage.

Common in gross, is a liberty to have common alone, without any lands or tenements, in another person's land, granted by deed to a man and his heirs, or for life, &c. 1 Fitz. N. B. 31. 37. 4 Refl. 30. Common appendant, is a right belonging to a man's arable land, of putting beasts commonable into another's ground. And common appurtenant is belonging to an estate for all manner of beasts commonable or not commonable. 4 Refl. 37. Plowd. 161.

Common appendant and appurtenant, are in a manner confounded, as appears by Fitzherbert; and are by him defined to be a liberty of common appertaining to, or depending on, a freehold; which common must be taken with beasts commonable, as horses, oxen, kine, and sheep; and not with goats, hogs, and geese. But some make this difference, that common appurtenant may be severed from the land whereto it pertains; but not common appendant: which, according to Sir Edward Coke, had this beginning: When a lord enfeoffed another of arable land, to hold of him in socage, the feoffee, to maintain the service of his plough, had at first, by the curtesy or permission of the lord, common in his wastes for necessary beasts to eat and compost his land, and that for two causes; one, for that it was tacitly implied in the feoffment, by reason the feoffee could not till or compost his land without cattle, and cattle could not be sustained without pasture; so by consequence the feoffee had, as a thing necessary and incident, common in the waste and lands of the lord; and this may be collected from the ancient books and statutes; and the second reason of this common was, for the maintenance and advantage of tillage, which is much regarded and favoured by the law. 4 Refl. 37.
Common juris causa de vicinage; common by reason of neighbourhood; is a liberty that the tenants of one lord in one town have to common with the tenants of another lord in another town. It is where the tenants of two lords have used, time out of mind, to have common promiscuously in both lordships lying together, and open to one another. 8 Rep. 76. And those that challenge this kind of common, which is usually called intercommuning, may not put their cattle in the common of the other lord, for then they are distrainable; but they may turn them into their own fields, and if they stray into the neighbouring common, they must be suffered. Terms de Ley. The inhabitants of one town or lordship may not put in as many beasts as they will, but with regard to the freehold of the inhabitants of the other; for otherwise it were no good neighbourhood, upon which all this depends. Ibid.

If one lord encloses the common, the other town cannot then common; but though the common of vicinage is gone, common appurtenant remains. 4 Rep. 38. 7 Rep. 5. Every common juris causa de vicinage is a common appurtenant. 1 Danv. Abr. 799.

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 enclose and bar out the other, though they have intercommuned time out of mind. 2 Comm. 34.

Common appurtenant is only to ancient arable land; not to a house, meadow, pasture, &c. It is against the nature of common appurtenant to be appurtenant to meadow or pasture. But if in the beginning land be arable, and of late a house hath been built on some part of the land, and some acres are employed to meadow and pasture, in such case it is appurtenant; though it must be pleaded as appurtenant to the land, and not to the house, pasture, &c. 1 Nels. Abr. 457. This may be common appurtenant, though it belongs to a manor, farm, or ploughland; and common appurtenant is of common right; but it is not common appurtenant, unless it has been appurtenant time out of mind. 1 Danv. 746. It may be upon condition; be for all the year, or for a certain time, or for a certain number of beasts, &c. by usage; though it ought to be for such cattle as plough and compost the land, to which it is appurtenant. Ibid. 797. Common appurtenant may be to common in a field after the corn is severed, till the ground is resown; so it may be to have common in a meadow after the hay is carried off the same, till Candlemas, &c. Yelv. 185.

This common, which is in its nature without number, by custom may be limited as to the beasts. Common appurtenant ought always to be for those levant and couchant, and may be sans number. Plowd. 161. A man may prescribe to have common appurtenant for all manner of cattle, at every season in the year. 25 Ass. 8. Common by prescription for all manner of commonable cattle as belonging to a tenement, &c. must be for cattle levant and couchant upon the land, (which is so many as the land will maintain,) or it will not be good; and if a person grants common sans number, the grantee cannot put in so many cattle, but that the grantor may have sufficient common in the same land. 1 Danv. Abr. 798, 799. He who hath common appurtenant or appurtenant, 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 is able to maintain. 3 Salk. 93. Common appurtenant may be to a house, pasture, &c. though common appurtenant cannot; but it ought to be prescribed for as against common right; and uncommisable cattle, as hogs, goats, &c.
COMMON II.

are appurtenant. This common may be created by grant at this day; so may not common appendant. 1 Inst. 122. 1 Roll. Abr. 398.

Common appurtenant for a certain number of beasts may be granted over. 1 Danv. 802.

In Scotland, in those districts where there is no coal, the inhabitants are chiefly supplied with fuel from the mosses with which the country abounds. Where one estate has only a small quantity of this moss, it is not unusual for the proprietor of a neighbouring estate, where there is a superfluity, to sell to the proprietor of the defective estate a perpetual liberty to his tenants to cut moss for fuel, on a certain annual rent, per fine or finnity, (which terms are synonymous,) and this is called “a heritable moss tolerance.” See Dingwall v. Farquharson. Dom. Proc. Journals, sub. an. 1797.

II. The property of the soil in the common is entirely in the lord; and the use of it jointly in him and the commoners.

Lords of manors may depasture in commons where their tenants put in cattle; and a prescription to exclude the lord is against law. 1 Inst. 122.

The lord may agist the cattle of a stranger in the common by prescription; and he may license a stranger to put in his cattle, if he leaves sufficient room for the commoners. 1 Danv. 795. 2 Mod. 5. Also the lord may surcharge, &c. an overplus of the common; and if, where there is not an overplus, the lord surcharges the common, the commoners are not to distrain his beasts; but must commence an action against the lord. Fitz. N. B. 125. But it is said, if the lord of the soil put cattle into a close, contrary to custom, when it ought to lie fresh, a commoner may take the cattle damage-feasant; otherwise it is a general rule that he cannot distrain the cattle of the lord. 1 Danv. 807.

The lord may distraint where the common is surcharged; and bring action of trespass for any trespass done in the common. 9 Rept. 113.

A lord may make a pond on the common; though the lord cannot dig pits for gravel or coal; the statutes of afforestation extending only to enclosure. 3 Inst. 204. 9 Rept. 112. 1 Sid. 106. If the lord makes a warren on the common, the commoners may not kill the conies; but are to bring their action, for they may not be their own judges. 1 Roll. 90. 405.

By stat. 20 Hen. III. c. 4. (stat. of Merton,) lords may approve against their tenants, viz. enclose part of the waste, &c. and thereby discharge it from being common, leaving common sufficient; and neighbours as well as tenants claiming common of pasture, shall be bound by it. If the lord encloses on the common, and leaves not common sufficient, the commoners may not only break down the enclosures; but may put in their cattle, although the lord ploughs and sows the land. 2 Inst. 88. 1 Roll. Abr. 406.

Where the tenants of the manor have a right to dig gravel on the wastes, or to take estovers, there the lord has no right; under the statute of Merton, to enclose and approve the wastes of the manor. Yet a custom in a manor that any person, being desirous of enclosing, may apply to the court, &c. first obtaining the consent of the lord, does not abridge the lord’s common law right of enclosing without any such application, provided he leave common sufficient for the tenants. 2 Term Rept. 391, 392.
By stat. 29 Geo. II. c. 36. owners of common, with the consent of the majority, in number and value, of the commoners; the majority of the commoners, with consent of the owners; or any persons with the consent of both, may enclose any part of a common for the growth of wood. If the wood is destroyed, the offender may be punished according to stat. 1 Geo. I. c. 48. If not convicted in six months, the owner shall have satisfaction from the adjoining parishes, &c. as for fences overthrown, by stat. Westm. 2.—Persons cutting wood on commons should incur the same penalty. And by Stat. 31 Geo. II. c. 41. the recompense is to be paid to persons interested, in proportion to their interest. Tenants for life, or for years determinable on lives, may consent for their term; but that binds not, after determination of their estate.

By stat. 13 Geo. III. c. 81. § 21. rams are not to remain on commons from the 25th of August to the 25th of November.

III. A commoner hath only a special and limited interest in the soil, but yet he shall have such remedies as are commensurate to his right, and therefore may distrain beasts damage-feasant, bring an action on the case, &c. but not being absolute owner of the soil, he cannot bring a general action of trespass for a trespass done upon the common. See Bridge. 10, 11. Gobd. 123, 124. 12 Leon. 201, 202.

A commoner cannot regularly do any thing on the soil which tends to the melioration or improvement of the common, as cutting down of bushes, fern, &c. 1 Sed. 251. 12 Hen. VIII. 2. 13 Hen. VIII. 15. Therefore if a common every year in a flood is surrounded with water, the commoner cannot make a trench in the soil to avoid the water, because he has nothing to do with the soil, but only to take the grass with the mouth of the cattle. 1 Roll. Abr. 405. 2 Bulst. 116. But see ante, II. and post.

Every commoner may break the common if it be enclosed; and although he does not put his cattle in at the time, yet his right of commonage shall excuse him from being a trespasser. Lit. Ref. 38. See 1 Roll. Abr. 406. That is, supposing the enclosure made by the lord, and that there is not sufficient common; or that the enclosure is made by any other person than the lord.

If a tenant of the freehold ploughs it, and sows it with corn, the commoner may put in his cattle, and therewith eat the corn growing upon the land: so if he lets his corn lie in the field beyond the usual time, the other commoners may, notwithstanding, put in their beasts. 2 Leon. 202, 203.

The commoner cannot use 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 use the common with them; for by the loan, they are in a manner made his own cattle. 1 Danv. 798. Grantee of common appurtenant, for a certain number of cattle, cannot common with the cattle of a stranger. He that hath common in gross, may put in a stranger’s cattle, and use the common with such cattle. Ibid. 803. Common appendant or appurtenant, cannot be made common in gross; and approvement extends not to common in gross. 2 Inst. 86.

A commoner may distrain beasts put into the common by a stranger, or every commoner may bring action of the case, where damage is received. 9 Ref. 11. But one commoner cannot distrain the cattle of another commoner, though he may those of a stranger, who hath no right to the common. 2 Lutw. 1238.
Wherever there is colour of right for putting in cattle, a commoner cannot distraint; where there is no colour he may. So he may distraint a stranger's cattle, but not those of a commoner, though he exceeds his number. Where writ of admeasurement lies, he cannot distraint. Quere, whether he may distraint cattle surcharged, where the right of common is for a number certain. 4 Burr. 2426. 1 Black. Rep. 673.

The usual remedies for surcharging the common, are either by distraint 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 lastly, by a special action on the case for damages, in which any commoner may be plaintiff. 4 Burr. 273. But the ancient and most effectual method of proceeding, is by writ of admeasurement of pasture. This lies, either where a common appurtenant, or in gross, is certain as to number; or where a man has common appurtenant, or appurtenant to his land, the quantity of which common has never yet been ascertained. In either of these cases, as well the lord as any of the commoners, is entitled to this writ of admeasurement; which is one of those writs that are called vicontiel, (2 Inst. 369. Finch. L. 314.) being directed to the sheriff, (vicecomiti,) and not to be returned to any superior court, till finally executed by him.

It recites a complaint, that the defendant hath surcharged (superoneravit) the common; and therefore commands the sheriff to admeasure and apporrition 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 all the commoners shall be admeasured, as well those who have not, as those who have, surcharged the common; as well the plaintiff as defendant. Fitz. N. B. 125. The execution of this writ must be by a jury of twelve men, who are upon their oaths to ascertain, under the superintendence of the sheriff, what and how many cattle each commoner is entitled 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; or, as our ancient law expressed it, such cattle as only are levant and cochant upon his tenement; (Bro. Abr. 1. Prescription, 28.) 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 sans nombre; (Hardr. 117,) a thing, which though possible in law, does in fact very rarely exist. Ed. Raym. 407.

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 secundâ superonerations,) which is given by the stat. Westm. 2. 13 Edw. I. 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 also shall pay damages to the plaintiff. Fitz. N. B. 126. 2 Inst. 370. This process seems highly equitable, for the first offence is held to be committed through mere inadvertence, and therefore there are no damages or forfeiture on the first writ, which was only to ascertain the right which was disputed; but the second offence is a wilful contempt and injustice; and therefore punished, very properly, with not only damages, but also forfeiture. And herein, the right, being once settled, is never again disputed; but only
the fact is tried, whether there be any second surcharge or no; which gives this neglected proceeding a great advantage over the modern by action on the case, wherein the quantum of common belonging to the defendant must be proved upon every fresh trial, for every repeated offence.

This injury, by surcharging, can, properly speaking, only happen where the common is appendant or appurtenant, and of course limited by law; or where, when in gross, it is expressly limited and certain; for where a man hath common in gross, sans nombre, 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. 1 Roll. Abr. 399. For the law will not suppose that, at the original grant of the common, the lord meant to exclude himself.

There is yet another disturbance of common, when the owner of the land, or other person, so encloses or otherwise obstructs it, that the commoner is precluded from enjoying the benefit, to which he is by law entitled. This may be done either by erecting fences, or by driving the cattle off the land, or by ploughing up the soil of the common. Cro. Eliz. 198. 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 has given him his remedy by action against the owner. Cro. Jac. 195. This kind of disturbance does indeed amount to a disseisin, and if the commoner chooses to consider it in that light, the law has given him an assise of novit disseisin, against the lord, to recover the possession of his common. Fitz. N. B. 179. Or it has given a writ of quod permittat, against any stranger as well as the owner of the land, in case of such a disturbance to the plaintiff as amounts to a total deprivation of his common; whereby the defendant shall be compelled to permit the plaintiff to enjoy his common as he ought. Finch. L. 275. Fitz. N. B. 123. But if the commoner does not choose to bring a real action to recover seisin, or to try the right, he may (which is the easier and more usual way) bring an action on the case for his damages, instead of an assise, or a quod permittat. Cro. Jac. 195. See 3 Comm. 238—240.

If any commoner encloses, or builds on the common, every commoner may have an action for the damage. Where turf is taken away from the common, the lord only is to bring the action; but it is said the commoners may have an action for the injury, by entering on the common, &c. 1 Roll. Abr. 399. 398. 2 Leon. 201.

If a commoner who hath a freehold in his common be ousted of, or hindered therein, that he cannot have it so beneficially as he used to do; whether the interruption be by the lord or any stranger, he may have an assise against him; but if the commoner hath only an estate for years, then his remedy is by action on the case. And if it be only a small trespass, that is little or no loss to the commoner, but he hath common enough besides, the commoner may not bring any action. 4 Rep. 37. 6 Rep. 79. Dyer, 316.

A commoner cannot dig clay on the common, which destroys the grass, and carrying it away doth damage to the ground; so that the other commoners cannot enjoy the common, in tam amplo modo, as they ought. Godb. 344. Also a commoner may not cut bushes, dig trenches, &c. in the common, without a custom to do it. 1 Nels. 462.
If he makes any thing de novo, he is a trespasser. He can do nothing to impair the common, but may reform a thing abused, fill up holes, &c. 1 Brownt. 208.

A commoner may abate hedges erected on a common; for though the lord hath an interest in the soil, by abating the hedges, the commoner doth not meddle with it. 2 Mod. 65. Any man may by prescription have common and feeding for his cattle in the king's highway, though the soil doth belong to another. But the occupation of common by usurpation, will not give title to him that doth occupy it, unless he hath had it time beyond memory.

Upon agreement between two commoners to enclose a common, a party having interest not privy to the agreement, will not be bound; but one or two wilful persons shall not hinder the public good. Chan. Rep. 48. Commons must be driven yearly at Michaelmas, or within fifteen days after. Infected horses, and stone horses under size, &c. are not to be put into commons, under forfeiture, by stat. 32 Hen. VIII. c. 13. New erected cottages, though they have four acres of ground laid to them, might not to have common on the waste. 2 Inst. 740. In law proceedings, where there are two distinct commons, the two titles must be shown. Cattle are to be alleged commonable, and common ought to be in lands commonable; and the place is to be set forth where the messuage and lands lie, &c. to which the common belongs. 1 Nels. 462, 463.

Common appendant, because it is of common right, shall be apportioned by the commoner's purchase of part of the land in which he hath such common; but common appurtenant shall be extinct by the commoner's purchase of part of the land, in which, &c. Both common appendant and appurtenant shall be apportioned by alienation of part of the land to which the common is appendant or appurtenant. Co. Lit. 122. Hob. 233. 8 Co. 78. Owen, 122. 4 Co. 37. Cro. Eliz. 494.

A release of common in one acre, is an extinguishment of the whole common. See 4 Co. 37.

If A. hath common in the lands of B., as appurtenant to a messuage, and after B. enfeoffs A. of the said lands, whereby the common is extinguished; and then A. leases to B. the said messuage and lands, with all commons, &c. used or occupied with the said messuage; this is a good grant of a new common for the time. Cro. Eliz. 570. If several persons are seised of several parts of a common, and a commoner purchases the inheritance of one part, his entire common is extinct. 1 And. 159. When a man hath common appurtenant, for a certain number of cattle, and to a certain parcel of land, if he sell part of it, the common is not extinguished; for the purchaser shall have common pro rata; but it is otherwise in common appurtenant. 8 Rep. 78. 1 Nels. 450. See Fitz. Abr. title Comm. per tot.

By stat. 13 Geo. III. c. 81. in every parish where there are common field lands, all the arable lands lying in such fields, shall be cultivated by the occupiers, under such rules as 3-4ths of them in number and value (with the consent of the land and tithe owners, [the latter not to receive any fines, only rents, § 23.]) shall appoint by writing under their hands; the expense to be borne proportionably, § 1, 2, 4, 7. Under the management of a field-master, or field-receiv, to be appointed annually in May, § 3, 5, 6.

Persons having right of common, but not having land in such fields, and persons having sheep-walks, may compound for such right, by
written agreement, or may, with their consent, have parts allotted to them to common upon, § 8—10. And the bulks, slades and meres may be ploughed up, § 11—14.

Lords of manors with the consent of 3-4ths of the commoners, on the wastes and commons within their manors, may demise (for not more than four years) any part of such wastes &c. not exceeding 1-12th part; and the clear rents reserved for the same, shall be applied in improving the residue of such wastes, § 14.

In every manor where there are stinted commons, in lieu of demising part thereof, assessments on the lords of such manors, and the owners and occupiers of such commons may be made, and the money employed in the improvement of the commons, under the direction of the majority; which (or in some instances 2-3ds) may regulate the depasturing, opening, shutting up, breaking and unstocking the commons, and the kind of cattle to be allowed the commoners, § 16—21.

All rights relative to commons, previous to this act, are saved: except as against persons who become subject to regulations made under the statute, § 27.

As to Common in general, see further, Com. Dig. tit. Common.

Common of Estovers, or estouvers, that is necessaries, from estoffer to furnish.] A liberty of taking necessary wood for the use or furniture of a house, or farm, from off another's estate. 2 Comm. 35. Or in the language of the law, for house-bote, plough-bote, and hay-bote. See tit. Bote. What botes are necessary, tenants may take, notwithstanding no mention be made thereof in their leases; but if a tenant take more house-bote than is needful, he may be punished for waste. Terms de Lcy. Tenant for life may take upon the land demise reasonable estovers, unless restrained by special covenant; and every tenant for years hath three kinds of estovers incident to his estate. 1 Inst. 41. When a house, having estovers appendant or appurtenant, is blown down by wind, if the owner rebuilds it in the same place and manner as before, his estovers shall continue; so if he alters the rooms and chambers, without making new chimneys; but if he erect any new chimneys, he will not be allowed to spend any estovers in such new chimneys. 4 Rep. 87. 4 Leos. 383. If one have a dwelling-house wherunto common of estovers doth belong, and the house by fire is burnt down, and a new one built near to the place, or in the place in another form, the estovers are gone; but if the old house be only some of it down, it is otherwise; and in all cases where the alterations to a house do no prejudice to the tenant or owner of the land or wood, the estovers will remain. Fitz. N. B. 180. Where a man hath estovers for life, if the owner cut down all the wood, that there is none left for him, he may bring an assise of estovers; and if the tenant have but an estate for years, or at will, he may have an action on the case. Moor Ca. 65. 9 Rep. 112. If the tenant who hath common of estovers, shall use them to any other purpose than he ought, he that owns the wood may bring trespass against him; as where one grants twenty loads of wood to be taken yearly in such a wood, ten loads to burn, and ten to repair pales; here he may cut and take the wood for the pales, though they need no amending, but then he must keep it for that use. 9 Rep. 113. Fitz. N. B. 58. 159.

Common of Pasturage, is the right of pasturing the goods and cattle of the dominant tenement, upon the ground of the servient. Scotch Dict

Common of Fishery, is a liberty of fishing in another man's water. Common of piscary to exclude the owner of the soil, is contrary to Vol. I.
law: though a person by prescription may have a separate right of fishing in such water, and the owner of the soil be excluded; for a man may grant the water, without passing the soil; and if one grant sepulchrum, neither the soil nor the water pass, but only a right of fishing. 1 Inst. 4. 122. 5 Rep. 34. See Fish and Fishery.

COMMON OF TURBARY, Is a license to dig turf upon the ground of another, or in the lord's waste. This common is appendant or appurtenant to a house, and not to lands; for turfs are to be burnt in the house; and may be in gross; but it does not give any right to the land, trees, or mines. It cannot exclude the owner of the soil. 1 Inst. 4. 122. 4 Rep. 37.

There is also a common of digging for coals, minerals, stones and the like. All these bear a resemblance to the common of pasture in many respects; though in one point they go much farther; common of pasture being only a right of feeding on the herbage or vesture of the soil which renews annually; but common of turbary and those just mentioned, are a right of carrying away the very soil itself. These several species of common do, however, all originally result from the same necessity as common of pasture; viz. for the maintenance and carrying on of husbandry; common of piscary being given for the sustenance of the tenant's family; common of turbary and fire-bote for his fuel; and house-bote, plough-bote, cart-bote and hedge-bote for repairing his house, his instruments of tillage, and the necessary fences of his grounds. 2 Comm. 34, 35.

COMMON BENCH, buncus communis, from the Sax. banc, bank, and thence metaphorically a bench, high seat or tribunal. The court of Common Pleas was anciently called Common Bench, because the pleas of controversies between common persons were there tried and determined. Camden. Britan. 113. In law books and references the court of Common Pleas is written C. B. from Communis Banco, (or C. P.) and the justices of that court are styled Justiciarii de Banco. See tit. Common Pleas.

COMMON DAY OF PLEA IN LAND, Signifies an ordinary day in court, as Octabis Hilarii, Quindena Pasche, &c. It is mentioned in the stat. 51 Hen. III. stat. 2. and 3. Concerning general days in bank, see tit. Days in Bank.

COMMON FIELD LAND, See tit. Common.

COMMON FINE, finis communis. A small sum of money, which the resiants within the liberty of some leets pay to the lords, called in divers places head silver or head fence, in others cart money; and was first granted to the lord, towards the charge of his purchase of the court-leet, whereby the resiants have the ease to do their suit within their own manors, and are not compellable to go to the sheriff's term in the manor of Shoebakhead in the county of Leicester, every resident pays 1d. per poll to the lord at the court held after Michaelmas, which is there called common fine. For this common fine the lord may distrain; but he cannot do it without a prescription. 11 Rep. 44. There is also common fine of the county. See Pleta, lib. 7. c. 48, and stat. 3 Edw. I. c. 18.

COMMONS HOUSE or PARLIAMENT, Is the Lower House of Parliament, so called, because the Commons of the realm, that is the knights, citizens, and burgesses returned to parliament, representing the whole body of the Commons do sit there. Cronp. Jurisd. See tit. Parliament.

COMMON INTENDMENT, Is common meaning or understand-
COMMON LAW, lex communis.] Is taken for the law of this kingdom simply, without any other laws; as it was generally holden before any statute was enacted in parliament to alter the same; and the king's courts of justice are called the Common Law Courts. The Common Law is grounded upon the general customs of the realm; and includes in it the law of nature, the law of God, and the principles and maxims of the law: it is founded upon reason; and is said to be the perfection of reason, acquired by long study, observation and experience, and refined by learned men in all ages. And it is the common birth-right, that the subject hath for the safeguard and defence, not only of his goods, lands and revenues; but of his wife and children, body, fame, and life also. Co. Litt. 97. 142. Treatise of Laws, p. 2.

According to Hale, the Common Law of England, is the common rule for administering justice, within this kingdom, and asserts the king's royal prerogatives, and likewise the rights and liberties of the subject; it is generally that law, by which the determinations in the king's ordinary courts are guided; and this directs the course of descents of lands; the nature, extent, and qualification of estates; and therein the manner and ceremonies of conveying them from one to another; with the forms, solemnities and obligation of contracts; the rules and directions for the exposition of deeds, and acts of parliament; the process, proceedings, judgments, and executions of our courts of justice; also the limits and bounds of courts, and jurisdictions; the several kinds of temporal offences and punishments, and their application, &c. Hale's Hist. of the Common Law, p. 24. 44, 45.

As to the rise of the Common Law, this account is given by some ancient writers: After the decay of the Roman empire, three sorts of the German people invaded the Britons, viz. the Saxons, the Angles, and the Jutes; from the last sprung the Kentish men, and the inhabitants of the Isle of Wight; from the Saxons came the people called East, South, and West Saxons; and from the Angles, the East Angles, Mercians, and Northumbrians. These people having different customs, they inclined to the different laws by which their ancestors were governed; but the customs of the West Saxons and Mercians, who dwelt in the midland counties being preferred before the rest, were for that reason called jus Anglorum; and by these laws those people were governed for many ages; but the East Saxons having afterwards been subdued by the Danes, their customs were introduced, and a third law was substituted, which was called Dane lage; as the other was then styled West Saxon lage, &c. At length the Danes being overcome by the Normans, William called the Conqueror, upon consideration of all those laws and customs, abrogated some and established others; to which he added some of his own country laws, which he judged most to conduce to the preservation of the peace; and this is what we now call the Common Law.

But though we usually date our Common Law from hence, this was not the original of the Common Law; for Ethelbert, the first christian king of this nation, made the first Saxon laws, which were published
by the advice of some wise men of his council; and king Alfred, who lived 300 years afterwards, collected all the Saxon Laws into one book, and commanded them to be observed through the whole kingdom, which before only affected certain parts thereof; and it was therefore properly called the Common Law, because it was common to the whole nation; and soon after it was called, the jole-right, i.e. the people’s right.

Alfred was styled Anglicarum legum conditor; and when the Danes, on the conquest of the kingdom, had introduced their laws, they were afterwards destroyed; and Edward the Confessor out of the former laws composed a body of the Common Law; wherefore he is called by our historians, Anglicarum legum restitutor. Blount. In the reign of Edw. I Britton wrote his learned book of the Common Law of this realm; which was done by the king’s command, and runs in his name, answerable to the Institutions of the Civil Law, which Justinian assumes to himself though composed by others. Staunf. Prerog. 6. 21. But Justinian ought to be entitled to the honour, as the Institutions were composed by his direction. This Britton is mentioned by Grani to have been bishop of Hereford.

Bracton, a great lawyer, in the time of Hen. III. wrote a very learned treatise of the Common Law of England, held in great estimation; and he was said to be Lord Chief Justice of the kingdom. Also the famous and learned Glanvil, Lord Chief Justice in the reign of Hen. II. wrote a book of the Common Law, which is said to be the most ancient composition extant on that subject. Besides these, in the time of Edw. IV. the renowned lawyer Littleton wrote his excellent book of English Tenures. In the reign of King James the First, the great oracle of the law, Sir Edward Coke, published his learned and laborious Institutes of our law, and commentary on Littleton. About the same time likewise Dr. Cowel, a civilian, wrote a short Institute of our Laws. In the reign of King George the First, Dr. Tho. Wood, a civilian and common lawyer; and at last a divine, wrote an Institute of the laws of England, which is something after the manner of the Institutes of the Civil Law.

To conclude the whole of this head, the late learned Judge Blackstone in the reign of George the Third, published his Commentaries on the Laws of England, the best analytic and most methodic system of our laws which ever was published. It is equally adapted for the use of students, and of those gentlemen who choose to acquire that knowledge of our laws, which is, in fact, essentially necessary for every one. See particularly those Commentaries, vol. 1. p. 637. and vol. 4. p. 411. on this subject.

COMMON PLEAS, communia placita.] Is one of the king’s courts now constantly held in Westminster-Hall; but in ancient times was moveable, as appears by Magna Charta, cap. 11. Before this charter of king John & Hen. III. there were but two courts called the king’s courts, viz. the King’s Bench and the Exchequer, which were then styled Curia Domini Regis, and Aula Regis, because they followed the court of the king; and upon the grant of the great charter, the court of Common Pleas was erected and settled in one certain place, i.e. Westminster-Hall; and after that, all the writs ran Quod sit coram justiciarius meus apud Westm. whereas before, the party was required by them to appear Coram me vel justiciarius meus, without any addition of place, &c. But Sir Edward Coke is of opinion in his preface to the eighth report, and 1 Inst. 71. b. that the court of Common Pleas existed as a distinct court before the conquest; and was not created by Magna
At which time there were Justiciarii de Banco, &c. Though before this act, Common Pleas might have been held in Banco Regis; and all original writs were returnable there.

According to Madox, the origin of the court of Common Pleas is of a much later date than that assigned by Lord Coke. He so far agrees with Lord Coke as to admit that the Magna Charta of Hen. III., rather confirmed than erected the Bank or Common Pleas; and that such a court was in being several years before the Magna Charta of 17 of King John, though it was then first made stationary; but in other respects Lord Coke and Mr. Madox differ widely; for the latter thinks that some time after the conquest there was one great and supreme judicature, called the Curia Regis, which he supposes to have been of Norman, and not Anglo-Saxon original, and to have exercised jurisdiction over common as well as other pleas; that the Common Pleas and Exchequer were gradually separated from the Curia Regis, and became jurisdictions wholly distinct from it; and that the separation of the Common Pleas began in the reign of Richard I. or early in the reign of king John, and was completed by Hen. III. See Madox, Hist. Exc. 63. 549. fo. ed. 3 Comm. 37. 4 Inst. 99. 1 Inst. 71. b. and the note there.

Writs returnable in this court, are now coram justiciariis nostris ejud Westm. But original writs, &c. returnable in B. R. are Coram nosibus ubicunque sacruimus in Anglia. The jurisdiction of the court of C. P. is general, and extends itself throughout England; it holds plea of all civil causes at common law, between subject and subject, in actions real, personal and mixed; and it seems to have been the only court for real causes. In personal and mixed actions it hath a concurrent jurisdiction with the King's Bench; but it hath no cognizance of pleas of the crown; and Common Pleas are all pleas that are not such.

The court of Common Pleas does not possess any original jurisdiction; nor has it, like the court of King's Bench, any mode of proceeding in common cases peculiar to itself. Its authority is founded on original writs issuing out of the court of Chancery; which original writs are the king's mandates for the court to proceed in the determination of the causes mentioned therein. The reason of original writs issuing out of Chancery is, because when the courts were united, which was formerly the case, the chancellor held the seal; therefore, when they were divided, he still keeping the seal, sealed all original writs. Gilb. H. C. P. 3. In all personal actions therefore brought by and against common persons, the only way of proceeding in this court, is by original.

There is indeed one other way of proceeding in this court, in common cases, which is sometimes used; and which is called proceeding by original quare clausum fregit. This method of proceeding is grounded, in point of law, upon the same kind of original writ as the usual proceeding by capias is, the only difference between them being in the means process after the original is sued out; or at least supposed so to be. Instead of the process to compel the appearance of the defendant being by capias against his person, it is in this case by summons and distress against his goods. In a word, it is the same as the ancient mode of proceeding in this court before the general introduction of the capias. (See this Dict. tit. Capias.) The advantage and use of this mode of proceeding by original q. c. f. is where a defendant has effects which can be distrained, but he himself cannot be met with to be personally served; the process by capias re-
requiring personal service, which is not required in the process by sum-
mons.

All actions belonging to this court, come hither either by original,
as arrests and outlawries; or by privilege or attachment, for or
against privileged persons; or out of inferior courts not of record, by
habeas probo, recordare, accedas ad curiam, writ of false judgment, &c. Ac-
tions popular, and actions penal, of debt, &c. upon any statute, are cog-
nizable by this court; and besides having jurisdiction for punishment
of its officers and ministers, the court of Common Pleas may grant
prohibitions, to keep temporal and ecclesiastical courts within due
bounds. 4 Inst. 99, 100. 118. In this court are four judges, created
by letters patent; the seal of the court is committed to the custody of
the Chief Justice.

The other officers of the Common Pleas are the Custos Brevium,
three Prothonotaries and their Secondaries, the Clerk of the War-
rants, Clerk of the Essoins, fourteen Filazers, four Exigentes, a
Clerk of the Juries, the Chirografter, Clerk of the King’s Silver, the
Clerk of the Treasury, Clerk of the Seal, of Outlawries, and the
Clerk of the Enrolment of Fines and Recoveries, Clerk of the Errors,
&c. The Custos Brevium is the chief clerk in this court, who re-
cieves and keeps all writs returnable therein; and all records of Nisi
Prima, which are delivered to him by the clerks of the assise of
every circuit, &c. and he files the rolls together, and carries them
into the treasury of records; he also makes out exemplifications, and
copies of all writs and records, &c. The Prothonotaries enter and
enrol all declarations, pleadings, judgments, &c. and they make out
all judicial writs, writs of execution, writs of privilege, procedendos, &c.
The Secondaries are assistants to the Prothonotaries in the execution
of their offices; and they take minutes, and draw up all orders and
rules of court. The Filazers, who have the several counties of En-
gland divided among them, make out all mesne process, as capias,
alias, juries, &c. between the original writ and the declaration; and
they make all writs of view, &c. The Exigentes, appointed for sev-
ceral counties, make out all exigents and proclamations in order to
outlawry. The Clerk of the Warrants enters all warrants of attor-
ney; enrolls deeds of bargain and sale, and estreats all issues. The
Clerk of the Essoins keeps the roll of the essoins, wherein he enters
them, and nonsuits, &c. The Clerk of the Juries makes out all writs
of habeas corpus; for juries to appear; and he enters the continuances till the verdict given. The Clerk of the Treasury
keeps the records of the court, and makes exemplifications of records,
copies of issues, judgments, &c. The Clerk of the Seals seals all
writs and mesne process; also writs of outlawry and supersedeas, and
all patents. The Clerk of the Outlawries makes out the writs of
supplication; The Clerk of the Errors is for the allowance of
writs of error, &c. The Clerk of the Enrolments of fines and recover-
ies, returns all writs of covenant, writs of entry and seisin, and enrolls
and exemplifies fines, &c. The Clerk of the King’s Silver enters the
substance of the writ of covenant; and the Chirografter engrosseth all
fines, and delivers the indentures to the parties, &c.

To these officers may be added a Proclamator; a Keeper of the
court; Cryer; and Tiptoff; besides the Warden of the Fleet. There
are also Attorneys of this court, whose number is unlimited; and
none may plead at the bar of the court, in term-time, or sign any
special pleadings but Serjeants at law.
COMMON PRAYER, *plica sunt publica.* The liturgy or prayers used in our church. It is the particular duty of clergymen every Sunday, &c. to use the public form of prayer, prescribed by the Book of Common Prayer; and if any incumbent be resident upon his living, as he ought to be, and keep a curate, he is obliged by the act of uniformity, once every month, at least, to read the common prayers of the church, according as they are directed by the book of common prayer, in his parish church, in his own person; or he shall forfeit 5l. for every time he fails therein. Stat. 13 & 14 Car. II. cap. 4. Also by that statute the book of common prayer is to be provided in every parish, under the penalty of 5l. a month; and the common prayer must be read before every lecture; the whole appointed for the day, with all the circumstances, and ceremonies, &c. Ministers, before all sermons, are to move the people to join in a short prayer for the catholic church; and the whole congregation of Christian people, &c. for the king and royal family; the ministers of God's word, nobility, magistrates, the whole commons of the realm, &c. and conclude with the Lord's Prayer, Can. 55. Refusing to use the Common Prayer, or using any other open prayers, &c. is punishable by stat. 1 Eliz. c. 2. See tit. Church, Churchwarden, Parson, Service, and Sacrament.

COMMON WEAL, is understood in our law to be homun publicum, and is a thing much favoured; and therefore the law doth tolerate many things to be done for common good, which otherwise might not be done; and hence it is, that monopolies are void in law; and that bonds and covenants to restrain free trade, tillage, or the like, are adjudged void. 11 Co. Rep. 50. Plowd. 25. Shep. Epist. 270.

COMMORANCY, commoranitia from commoro.] An abiding, dwelling or continuing in any place; as an inhabitant of a house in a vill, &c. And commorancy for a certain time, may make a settlement in a parish. Dall. See tit. Poor. Commorancy consists in usually lying in a certain place. 4 Comm. 273.

COMMORTH, or COMORTH, comortha.] From the Brit. commorth, i. e. subsidium; a contribution which was gathered at marriages, and when young priests said or sung the first masses, &c. See stat. 4 Hen. IV. c. 27. But stat. 26 Hen. VIII. c. 6. prohibits the levying any such in Wales, or the Marches, &c. Cowel.

COMMOTE, In Wales, is half a cantred or hundred, containing fifty villages. Stat. Wallia, 12 Edw. I. Wales was anciently divided into three provinces; and each of these were again subdivided into cantreds, and every cantred into commotes. Doderige's Hist. Wat. fol. 2. Commote also signifies a great seigniory or lordship, and may include one, or divers manors. Co. Lit. 5.

COMMUNANCE. The commoners, or tenants and inhabitants, who had the right of common, or communing in open field, &c. were formerly called communance. Cowel.

COMMUNE CONCILIUM REGNI ANGLE. The common council of the king and people assembled in parliament.

COMMUNI PLACITA NON TENenda IN SCACCARIO. An ancient writ directed to the treasurer and barons of the Exchequer, forbidding them to hold plea between common persons (i. e. not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belong to the same. Reg. Orig. 187. But little obedience would perhaps be now paid to such a writ, was any officer to dare to issue it; for the court of Exchequer, seems by prescription, to have attained a concurrent jurisdiction in civil suits, with the other courts in Westminster-Hall. See tit. Courts, Exchequer.
COMMUNI CUSTODIA, A writ which anciently lay for the lord, whose tenant holding by knight's service died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. Fitz. N. B. 89. Reg. Orig. 161. Since the statute 12 Car. II. c. 24. hath taken away wardships, this writ is become of no use.

COMMUNITY of the kingdom. Vide Commonalty.

COMPANAGE, Fr.] All kind of food, except bread and drink; and Speelman interprets it to be quicquid cibi cum pane sumitur. In the manor of Feskerton in the county of Nottingham, some tenants, when they performed their boons or work-days to the lords, had three boon loaves with compagnage allowed them. Reg. de Thurgarton, cited in Antiq. Nottingham.

COMPANION OF THE GARTER, is one of the knights of that most noble order, at the head of which is the king, as sovereign. See stat. 24 Hen. VIII. c. 13. and tit. Garter.

COMPASS, An instrument used in navigation, by the direction and assistance whereof vessels are steered to the most distant parts of the world. It was invented soon after the close of the holy war, and thereby navigation was rendered more secure as well as more adventurous, the communication between remote nations was facilitated, and they were brought nearer to each other. See Roberts. Hist. Emp. C. V. 1. v. 78. See tit. Longitude.

COMPELLATIVUM, An adversary or accuser. Leg. Athelstan.

COMPERTORIUM, A judicial inquest in the Civil Law, made by delegates, or commissioners, to find out and relate the truth of a cause. Paroch. Antiq. 575.

COMPOSITION, compositio.] An agreement or contract between a parson, patron and ordinary, &c. for money or other thing in lieu of tithes. Land may be exempted from the payment of tithes, where compositions have been made; and real compositions for tithes are to be made by the concurrent consent of the parson, patron and ordinary. Real compositions are distinguished from personal contracts; for a composition called a personal contract is only an agreement between the parson and the parishioners, to pay so much instead of tithes; and though such agreement is confirmed by the ordinary, yet, if the parson is not a party, that doth not make it a real composition, because he ought to be a party to the deed of composition. March's Ref. 87. The compositions for tithes made by the consent of the parson, patron and ordinary, by virtue of stat. 13 Eliz. c. 10. shall not bind the successor, unless made for twenty-one years or three lives, as in case of leases of ecclesiastical corporations, &c. Compositions were at first for a valuable consideration, so that though, in process of time, upon the increase of the value of the lands such compositions do not amount to the value of the tithes, yet custom prevails, and from hence arises what we call a modus decimandi. Hob. 29. See further, tit. Tithes.

The word composition hath likewise another meaning, i.e. decision litis. Compositions were in ancient times allowed for crimes and offences, even for murder. An expedient employed by the civil magistrate, in order to set some bounds to the violence of private revenge. This custom may be traced back to the ancient Germans. Tacit. de Morib. Ger. c. 21. Lord Kain's Hist. Law Tr. 1. p. 41; 42. &c.

COMPOSITIO MENSURARUM, is the title of an ancient ordinance for measures, not printed.
COMPOUNDING FELONY, or theft-bote, is where the party robbed not only knows the felon, but also takes his goods again, or other amends upon agreement not to prosecute. It was formerly held to make a man an accessory; but is now punished only with fine and imprisonment. 1 Hawk. P. C. c. 59. § 6. To take any reward for helping a person to stolen goods, is made felony by stat. 4 Geo. I. c. 11. And to advertise a reward for the return of things stolen, incurs a forfeiture of 50l. by stat. 25 Geo. III. c. 36. See tit. Advertisement; and also Felony, Misdirection.

COMPRINT, A surreptitious printing of another bookseller's copy to make gain thereby, which was contrary to common law, and is now restrained by statute. See tit. Literary Property.

COMPROMISE, compromissum.] A mutual promise of two or more parties at difference, to refer the ending of their controversy to arbitrators; and West says, it is the faculty or power of pronouncing sentence between persons at variance, given to arbitrators by the parties' private consent. West's Symb. § 1. Matters compromised are also matters of law referred, or made an end of. See tit. Award.

Comptroller, is one who observes and examines the accounts of collectors of public money. Scotch Dict.

Comptroller of the Pipe, Is an officer of the Exchequer, that writeth out summons twice every year to the sheriffs, to levy the farms and debts of the Pipe, and also keepeth a contra-rollment of the Pipe. Scotch Dict.

COMPURGATOR, One that by oath justifies another's innocence. Compurgators were introduced as evidence in the jurisprudence of the middle ages. Their number varied according to the importance of the subject in dispute, or the nature of the crime with which a person was charged. Du Cenge, voc. Juramentum, vol. 3. p. 1399. See Oath, and 3 Comm. 342. 4 Comm. 351. 407. See also tit. Clergy.

COMPUTATION, computatio.] The true account and construction of time; and to the end neither party to an agreement, &c. may do wrong to the other, nor the determination of time be left at large, it is to be taken according to the just judgment of the law. A deed dated the 20th day of August, to hold from the day of the date, shall be construed to begin on the 21st day of August; but if in the habendum it be to hold from the making, or from thenceforth, it shall begin on the day delivered. 1 Inst. 45. 5 Rep. 1. If an indenture of lease dated the 4th day of July, made for three years from thenceforth, he delivered at four of the clock in the afternoon of the said 4th day of July, the lease shall end the 3d day of July in the third year; and the law in this computation rejects all fractions or divisions of the day. See Day, Month, Year, Time, Age, &c. &c.

Computation of miles after the English manner, is allowing 5,280 feet, or 1,760 yards to each mile; and shall be reckoned not by straight lines, as a bird or arrow may fly, but according to the nearest and most usual way. Cro. Eliz. 212. See Mile.

COMPUTO, Lat.] A writ to compel a bailiff, receiver or accountant, to yield up his accounts. It is founded on the statute of Westm. 2. c. 12. And also lies against guardians, &c. Reg. Orig. 135.

CONCEALERS, concealatores, so called a concealo, as nous à movendo, by an antiphraesis.] Such as were used to find out concealed lands, i.e. such lands as are privily kept from the king by common per-
sons, having nothing to show for their title or estate therein. See stat. 39 Eliz. cap. 22. There are also concealers of crimes; and as to concealing treason, &c. see tit. Misprision.

CONGRESS, I have granted. A word of frequent use in conveyances, creating a covenant in law; as dedi (I have given) makes a warranty. Co. Lit. 384. This word is of a general extent, and said to amount to a grant, feoffment, lease and release, &c. 2 Saund. 96.

CONCESSIT SOLVERE. This is an action of debt upon simple contract, and lies by custom in the courts of the cities of London and Bristol, and the great sessions in Wales. Sti. 198. Pauchatt v. Sporing. The present form of declaring in this action in London is, that the defendant in consideration of divers sums of money before that time due, and owing from the said defendant to the said plaintiff, and then in arrear and unpaid, granted and agreed to pay (concessit solvere) to the said plaintiff, 100l, where and when the same should afterwards be demanded, yet, &c. And this general form has been held good upon a writ of error. 1 Roll. Abr. 584, pl. 21. 2 Ld. Raym. 1. 32. Story v. Atkins. In the courts of great sessions in Wales, the form of declaring in this action is still more general, for there it is sufficient merely to state that the defendant, on, &c. at, &c. granted to pay to the plaintiff such a sum of money, without adding anything more. But to prevent a surprise upon the defendant from this very general way of declaring, it is necessary for the plaintiff to give notice in writing of the particular cause of action. It is observable, however, that in a case, 39 Hen. VI. 29. abridged Bro. London, 15. it is said that it was agreed for law, that in debt in London upon a concessit solvere by the custom, the declaration shall be, that for merchandises to him before sold, he granted to pay 100l. so that the merchant must be mentioned in this action of debt, the defendant may wage his law. Bro. Ley Gager, 69. It does not lie against executors or administrators, because, as they are presumed to be ignorant of the contract made by their testator or intestate, they cannot wage their law. 9 Refl. 87. b. Pinchon's case. Sti. 199. Hodges v. Jones. Ibid. 228. Oswestry v. Amery. However, if the action be brought against an executor or administrator, he must demurr; for it cannot be taken advantage of in arrest of judgment, or upon error. Plowd. 183. Northwood v. Read. Vaugh. 97. 100. and the authorities there cited. By the custom of London, indeed, a defendant cannot wage his law in this action. 1 Wils. 277. Gray v. Maclennan, and therefore it lies there against an executor or administrator, upon a contract made with the deceased. 8 Refl. 126. a. The City of London's case. 5 Refl. 82. b. Snelling's case, Cro. Eliz. 409. 8. C. See Williams v. Saunders, 1 Co. n. 2.

CONCIONATORES, Common-council men, freemen, called to the hall or assembly, as most worthy. Quodam tempore cum convenissent concionatores apud London, &c. Histor. Eliz. edit. Gale, c. 46.

CONCLUSION, conclusion.] Is when a man by his own act upon record hath charged himself with a duty or other thing, or confessed any matter whereby he shall be concluded; as if a sheriff returns that he hath taken the body upon caipias, and hath not the body in court at the day of the return of the writ; by this return, the sheriff is concluded from plea of escape, &c. Term de Ley. In another sense, this word conclusion signifies the end of any plea, replication, &c. and a plea to the writ is to conclude to the writ; a plea in bar, to conclude to the action, &c. See tit. Pleading. And as to the conclusion of deeds, see tit. Deeds.
CONCORD, concordia.] Is an agreement made between two or more, upon a trespass committed; and is divided into Concord executory, and Concord executed. Plowd. 5, 6. 8. These concords and agreements are by way of satisfaction for the trespass, &c. See tit. Accord, Satisfaction.

Concord is also an agreement between parties, who intend the levying of a fine of lands one to the other, how and in what manner the lands shall pass. It is the foundation and substance of the fine, taken and acknowledged by the party before one of the judges of C. B. or by commissioners in the country. See tit. Fine.

CONCUBARIA. A fold, pen, or place where cattle lie. Cowel.


CONCUBINAGE, concubinatus.] In common acceptance, the keeping of a harlot or concubine; but in a legal sense, it is used as an exception against her that sueth for dower, alleging thereby that she was not a wife lawfully married to the party, in whose land she seeks to be endowed, but his concubine. Brit. c. 107. Bract. lib. 4. tract. 6, cap. 8. There was a concubinage allowed in scripture to the Patriarchs, secundum legem matrimonii, &c. Blount.

CONDERS, from the Fr. conduire, to conduct.] Such as stand upon high places near the sea-coast, at the time of herring-fishing, to make signs with boughs, &c. to the fishermen at sea, which way the shoals of herrings pass; for this may be better discovered by such as stand upon some high cliff on the shore, by reason of a kind of blue colour which the herrings cause in the water, than by those that are in the ships or boats for fishing. These are otherwise called huers and balters, directors and guiders. See stat. 1 Jac. I. c. 23.