A MODERN LAW DICTIONARY;
CONTAINING
THE PRESENT STATE OF THE LAW
IN THEORY AND PRACTICE;
WITH
A DEFINITION OF ITS TERMS, AND THE HISTORY OF ITS
RISE AND PROGRESS.

CONDITION.

Conditio. A restraint annexed to a thing, so that by the non-performance, the party to it shall receive prejudice and loss; and by the performance, commodity and advantage. Or it is a restriction of men's acts, qualifying or suspending the same, and making them uncertain whether they shall take effect or not. Also it is defined to be what is referred to an uncertain chance, which may happen or not happen. West's Symb. part 1. lib. 2. § 156.

A condition is also defined to be a kind of law or bridle, annexed to one's act, staying or suspending the same, and making it uncertain whether it shall take effect or no; or it is a modus, a quality, annexed by him that hath estate, interest or right to the land, &c. whereby an estate, &c. may either be created, defeated, or enlarged, upon an uncertain event. This differs from a limitation, which is the bounds or compass of an estate, or the time how long an estate shall continue. Shep. Touch. 117. See tit. Limitation.

A condition may be also considered as one of the terms upon which a grant may be made. In this sense a condition in a deed is a clause of contingency, on the happening of which, the estate granted may be defeated. 2 Comm. 299.

Of conditions there are divers kinds, viz. conditions in deed, or express; and in law, or implied; conditions precedent and subsequent; conditions inherent and collateral, &c.
A condition in a deed or express, is that which is joined by express words to a feoffment, lease, or other grant; as if a man makes a lease of lands to another, reserving a rent to be paid at such a feast, upon condition if the lessee fail in payment, at the day, then it shall be lawful for the lessor to enter. Condition in law or implied is when a person grants another an office, as that of keeper of a park, steward, bailiff, &c. for term of life; here, though there be no condition expressed in the grant, yet the law makes one; which is, if the grantee do not justly execute all things belonging to the office, it shall be lawful for the grantee to enter and discharge him of his office. *Lit. lib. 3. c. 5.*

Condition precedent is when a lease or estate is granted to one for life, upon condition that if the lessee pay to the lessor a certain sum at such a day, then he shall have fee-simple; in this case the condition precedes the estate in fee, and on performance thereof gains the fee-simple. Condition subsequent is when a man grants to another his manor of Dale, &c. in fee, upon condition that the grantee shall pay to him at such a day such a certain sum, or that his estate shall cease. Here the condition is subsequent, and following the estate, and upon the performance thereof continues and preserves the same; so that a condition precedent doth get and gain the thing or estate made upon condition by the performance of it; as a condition subsequent keeps and continues the estate by the performance of the condition. *1 Inst. 201. 327. Terms de Ley.* If one agree with another to do such an act, and for the doing thereof the other shall pay so much money; here the doing the act is a condition precedent to the payment of the money, and the party shall not be compelled to pay till the act is done; but where a day is appointed for the payment of money, which day happens before the thing contracted for can be performed, there the money may be recovered before the thing is done; for here it appears that the party did not intend to make the performance of the thing a condition precedent. *3 Salk. 95.* See post, I. IV.

Inherent conditions are such as descend to the heir with the land granted, &c.

A collateral condition is that which is annexed to any collateral act.

Conditions are likewise affirmative, which consist of doing; negative, and consist of not doing. Some are further said to be restrictive, for not doing a thing; and some compulsory, as that the lessee shall pay the rent, &c.

Also, some conditions are single, to do one thing only; some copulative, to do divers things; and others disjunctive, where one thing of several is required to be done. *Co. Lit. 201.* See further *Shep. Touch. 117.* &c.

As to certain estates on condition expressed or implied. See more particularly tit. *Mortgage, Statute Merchant, Elegit.*

Among these several kinds of conditions, the cases which most frequently occur fall under the distinctions of conditions precedent and subsequent. We shall therefore speak of them more at large under the following divisions; wherein shall be considered, in the first place, generally,
CONDITION I. 1, 2.

I. Of Estates on Conditions implied; and 2. On Condition expressed. Then more particularly,

II. To what Conditions may be annexed; what Conditions are good; and by what Words they may be created.

III. What shall be a good Performance of a Condition; and in what manner the Breach of it must be taken Advantage of.

IV. Of Conditions precedent and subsequent.

I. 1. Estates upon condition implied in law, or where a grant of an estate has a condition annexed to it inseparably, from its essence and constitution; although no condition be expressed in words. As if a grant be made to a man of an office, generally, without adding other words; the law tacitly annexes hereto a secret condition, that the grantee shall duly execute his office; (Lit. § 378.) on breach of which condition it is lawful for the grantor, or his heirs, to oust him, and grant to another person. Lit. § 379. For, an office, either public or private, may be forfeited by misuser or nonuser, both of which are breaches of this implied condition. By misuser or abuse; as if a judge takes a bribe, or a park-keeper kills deer without authority. By non-user, or neglect, which in public offices that concern the administration of justice, or the commonwealth, is of itself a direct and immediate cause of forfeiture; but nonuser of a private office is no cause of forfeiture, unless some special damage is proved to be occasioned thereby. Co. Lit. 233. For in the one case delay must necessarily be occasioned in the affairs of the public, which require a constant attention; but, private offices not requiring so regular and unremitted a service, the temporary neglect of them is not necessarily productive of mischief, upon which account some special loss must be proved, in order to vacate these. Franchises also, being regal privileges in the hands of a subject, are held to be granted on the same condition of making a proper use of them, and therefore they may be lost and forfeited, like offices, either by abuse or by neglect. 9 Rep. 50.

Upon the same principle proceed all the forfeitures which are given by law of life-estates and others; for any acts done by the tenant himself, that are incompatible with the estate which he holds. As if tenant for life or years enfeoff a stranger in fee-simple; this is, by the Common Law, a forfeiture of their several estates; being a breach of the condition which the law annexes thereto, viz. that they shall not attempt to create a greater estate than they themselves are entitled to. Co. Litt. 215. So if any tenants for years, for life, or in fee, commit a felony; the king or other lord of the fee is entitled to have their tenements, because their estate is determined by the breach of the condition, “that they shall not commit felony,” which the law tacitly annexes to every feudal donation.

2. An estate on condition expressed in the grant itself, is, where an estate is granted either in fee-simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition. Co. Litt. 201.
These conditions are therefore either precedent or subsequent. Precedent are such as must happen or be performed before the estate can vest or be enlarged; subsequent are such, by the failure or non-performance of which an estate already vested may be defeated. Thus, if an estate for life be limited to A. upon his marriage with B. the marriage is a precedent condition, and till that happens no estate is vested in A. See P. C. 83. &c. Or if a man grant to his lessee for years, that upon payment of a hundred marks within the term, he shall have the fee, this also is a condition precedent, and the fee-simple passeth not till the hundred marks be paid. Co. Lit. 217. But if a man grant an estate in fee-simple, reserving to himself and his heirs a certain rent, and that, if such rent be not paid at the times limited, it shall be lawful for him or his heirs to re-enter, and avoid the estate; in this case the grantee and his heirs have an estate upon condition subsequent, which is defeasible, if the condition be not strictly performed. Lit. § 524. See post, IV.

To this class may also be referred all base fees and fee-simples conditional at the common law. Thus an estate to a man and his heirs, tenants of the manor of Dale, is an estate on condition that he and his heirs continue tenants of that manor. And so, if a personal annuity be granted at this day to a man and the heirs of his body; as this is no tenement within the statute of Westminster. 2. it remains as at common law, a fee-simple on condition that the grantee has heirs of his body. Upon the same principle depend all determinable estates of freehold, as during vita, etc. These are estates upon condition that the grantee do not marry and the like. And on the breach of any of these subsequent conditions by the failure of the contingencies, by the grantee not continuing tenant of the manor of Dale, by not having heirs of his body, or by not continuing sole, the estates which were respectively vested in each grantee are wholly determined and void.

A distinction is however made between a condition in deed and a limitation, which Lit. § 380. 1 Inst. 234. denominates also a condition in law. For when an estate is so expressly confined and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail, this is denominated a limitation; as when land is granted to a man so long as he is parson of Dale, or while he continues unmarried, or until out of the rents and profits he have made 500l. and the like; in such case the estate determines as soon as the contingency happens; (when he ceases to be parson, marries a wife, or has received the 500l.) and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy. See 10 Rep. 41. But when an estate is, strictly speaking, upon condition in deed (as if granted expressly upon condition to be void upon the payment of 40l. by the grantor, or so that the grantee continues unmarried, or provided he goes to York, etc.) the law permits it to endure beyond the time when such contingency happens, unless the grantor, or his heirs or assigns take advantage of the breach of the condition, and make either an entry or a claim, in order to avoid the estate.

Lit. § 347. Stat. 3 Hen. VIII. c. 31. See 10 Rep. 42. Yet,
though strict words of condition be used in the creation of the
estate, if on breach of the condition the estate be limited over to
a third person, and does not immediately revert to the grantor
or his representatives; (as if an estate be granted by A. to B. on
condition that within two years B. intermarry with C. and on
failure thereof, then to D. and his heirs;) this the law construes
to be a limitation and not a condition; 1 Vent. 202. because if it
were a condition, then, upon the breach thereof, only A. or his
representatives could avoid the estate by entry, and so D.'s re-
mainder might be defeated by their neglecting to enter; but,
when it is a limitation, the estate of B. determines, and that of
D. commences, and he may enter on the lands, the instant that the
failure happens. So also, if a man by his will devises lands to
his heir at law, on condition that he pays a sum of money, and
for non-payment, devises it over, this shall be considered as a
limitation; otherwise no advantage could be taken of the non-
payment, for none but the heir himself could have entered for a

In all these instances, of limitations or conditions subsequent,
it is to be observed, that so long as the condition either express
or implied, either in deed or in law, remains unbroken, the
grantee may have an estate of freehold; provided the estate upon
which such condition is annexed be in itself of a freehold nature;
as if the original grant express either an estate of inheritance,
or for life, or no estate at all, which is constructively an estate
for life. For the breach of these conditions being contingent and
uncertain, this uncertainty preserves the freehold; Co. Lit. 42.
because the estate is capable to last for ever, or at least for the
life of the tenant, supposing the condition to remain unbroken.
But where the estate is at the utmost, a chattel-interest, which
must determine at a time certain, and may determine sooner, (as
a grant for ninety-nine years, provided A. B. and C., or the sur-
vivor of them, shall so long live,) this still continues a mere chattel,
and is not, by such its uncertainty, ranked among estates of
freehold.

These express conditions, if they be impossible at the time of
their creation, or afterwards become impossible by the act of God,
or the act of the feoffor himself, or if they be contrary to law, or
repugnant to the nature of the estate, are void. In any of which
cases, if they be conditions subsequent, that is, to be performed
after the estate is vested, the estate shall become absolute in the
tenant. As if a feoffment be made to a man in fee-simple, on
condition, that unless he goes to Rome in twenty-four hours; or
unless he marries with A. B. by such a day; (within which time
the woman dies, or the feoffor marries her himself;) or unless he
kils another; or in case he aliens in fee; that then and in any of
such cases the estate shall be vacated and determined; here
the condition is void, and the estate made absolute in the feoffee.
For he hath by the grant the estate vested in him, which shall
not be defeated afterwards, by a condition either impossible, ille-
gal, or repugnant Co. Lit. 206. But if the condition be present,
or to be performed before the estate vests, as a grant to a
man that, if he kills another or goes to Rome in a day, he shall
have an estate in fee; here, the void condition being precedent,
the estate which depends thereon is also void, and the grantee shall take nothing by the grant; for he hath no estate until the condition be performed. Ibid. 2 Comm. 152—157.

II. Conditions may be annexed to any estate, whether in fee-simple, fee-tail, for life or years. They run with the estate, and bind in the hands of whomsoever they come. Lit. Rep. 128. But a condition may not be made but on the part of the lessor, donor, &c. for no man may annex a condition to an estate, but he that doth create the estate itself. Conditions are good to enlarge or limit estates. There are four incidents, which conditions to create and increase an estate ought to have: 1. They should have a particular estate, as a foundation whereupon the increase of the greater estate shall be built. 2. Such particular estate shall continue in the lessee or grantee, until the increase happens. 3. It must vest at the time the contingency happens, or it shall never vest. 4. The particular estate and increase must take effect by the same deed, or by several deeds delivered at the same time. 8 Reph. 75.

Conditions to create estates shall be favourably construed; but conditions which tend to destroy, or restrain an estate, are to be taken strictly. A feoffment upon condition that the feoffee shall not alien, is void; but a condition in a feoffment not to alien for a particular time, or to a particular person, may be good. Hob. 13. 261. And if a condition is, that tenant in tail shall not alien in fee, &c. or tenant for life or years not alien during the term, these conditions are good. Where the reversion of an estate is in the donor, he may restrain an alienation by condition. 10 Reph. 39. 1 Inst. 223. If one make a gift in tail, on condition that the donee or his heirs shall not alien, this is good to some intents, and void to others; for if he make a feoffment in fee, or any other estate by which the reversion is discontinued tortiously, the donor may enter; but it is otherwise if he suffer a common recovery. 1 Inst. 223.

A liberty inseparable from an estate cannot be restrained; and therefore a condition that a tenant in tail shall not levy a fine, within the stat. 4 Hen. VII. c. 24. or suffer a recovery; or not make a lease within the stat. 33 Hen. VIII. r. 36. is void and repugnant. But if the condition restrain levying a fine at common law, it may be good. 2 Danv. Air. 22. A gift in tail, or in fee, upon condition that a feme shall not be endowed; or baron be tenant by the curtesy, is repugnant and void. So is a condition in a lease, &c. that the lessee shall not take the profits; and where a man grants a rent-charge out of land, provided it shall not charge the lands. Co. Lit. 146.

Conditions repugnant to the estate, impossible, &c. are void; and if they go before the estate, the estate and condition are void; if to follow it, the estate is absolute, and the condition void. 1 Inst. 206. 9 Reph. 128. But if at the time of entering into a condition, a thing be possible to be done and become afterwards impossible by the act of God, the estate of a feoffee (created by livery) shall not be avoided. 2 Mod. 204. See ante, I. 9.

Where a condition is of two parts, one possible, and the other not so, it is a good condition for performing that part which
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is possible. Cro. Eliz. 780. Though if a condition is of two parts disjunctive, and one part becomes impossible, by the act of God, the person bound is not obliged to perform the other. 1 Roll. Abr. 446. 16b. 45. 2 Mod. 202, 203. If a condition be in the conjunctive, and is not possible to be performed, it is said it may be taken in the disjunctive. 1 Danv. Abr. 73.

Where an estate is to be wholly created upon a condition impossible to be performed, there the estate shall never come into existence. 1 Leon. c. 311. A woman makes a feoffment to a man that is married, upon condition that he shall marry her; this condition is not impossible, for the man’s wife may die, and then he may marry her. 2 Danv. 25. A reversion may be granted in tail upon condition, that if the grantee pays so much, he shall have the fee.

§ Rep. 73. But if a man grants lands, &c. for years, upon condition that if the lessee pay 20s. within one year, that he shall have it for life; and that if he after the year pay 20s. he shall have the fee; though both sums are paid, he shall have but an estate for life; the estate for life, at the time of the grant, being only in contingency, and a possibility cannot increase upon a possibility, nor can the fee increase upon the estate for years. 3 Rep. 76.

If a lease be made to two, with condition to raise a fee, and one dies, the survivor may perform the condition, and have the fee; but if they make partition, the condition is destroyed. 3 Rep. 75, 76. If a feoffee grant the reversion of part of the land, on a lease for years, on which a rent upon condition is reserved, all the condition is confounded and gone; though if the lessee assign part, the condition remains, for he cannot discharge the estate of the condition. 2 Danv. Abr. 119. A man makes a feoffment upon condition, and after levies a fine to a stranger, the condition is gone. Ibid. 120. If a feoffee upon condition to enfeoff another, enfeoff a stranger; or if it be to re-enfeoff the feoffor, and he grant the land to another person, upon condition to perform the condition, the condition is broken, because the feoffee hath disabled himself to do it. So where such feoffee, upon condition to re-enfeoff, &c. takes a wife, that the land is subject to the dower of the wife; and so if the land is recovered, and execution sued out by another, the condition is broken. Co. Lit. 221. 1 Danv. 79.

If one disseise the feoffee, or any other who hath land by just title, and thereof enfeoff a stranger on condition, and the land is lawfully recovered from him that hath the title; by this the condition is destroyed; and if a disseisor make a feoffment in fee upon condition, and after the disseisee doth enter upon the feoffee, this doth extinguish the condition. Perk. § 821. If the feoffee makes a feoffment of all or part of the land to the feoffor, before the condition is broken, the condition is gone for ever; and if he make a lease for life or years only, then the condition will be suspended for that time. Co. Lit. 218. But it is otherwise where the feoffment or lease for life or years, are made to any other but the feoffor. Ibid. Where the condition of a feoffment is, that if the feoffor or his heir pay a certain sum of money to the feoffee such a day, and before that day the feoffor dieth without heir; or if the feoffment be made by a woman on condition to pay her 10l. or that the feoffee enfeoff her by a cer-
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tain day, and they intermarry before the day, and the marriage
doth continue till after it; in these cases the condition is gone.
Perk. § 763, 764.

A condition that would take away the whole effect of a grant is
void; and so it is if it be contrary to the express words of it.
Conditions against law are void; but what may be prohibited by
law, may be prohibited by deed. 1 Inst. 206. 220. He that taketh
an estate in remainder, is bound by condition in a deed, though
he doth not seal it.

Conditions in restraint of marriage have not generally been fa-
voured, as contrary to sound policy; but where a legacy has
been given over to another, there the condition has always been
held good; and it seems that such conditions, as only reasonably re-
strain children from imprudent marriages, will be always sup-
ported; that is to say, where they operate only as particular,
not as universal restrictions. In the case of Scott v. Tyler, 2 Bro.
C. R. 451. &c. it was determined after very long arguments, that
a condition annexed to a legacy, that the legatee should not marry
under twenty-one, without consent of her mother, (or rather that
the legacy should vest previous to twenty-one, if the legatee mar-
ried with such consent,) was a valid condition. And upon mar-
riage without such consent, it was determined to go to the mother
under a gift of a general residue. See the first paragraph of
Div. III. of this title. And the case of Peyton v. Bury, 2 P.
Wms. 626. and the following cases cited in Mr. Cox's note there,
Wheeler v. Bingham, 3 Atk. 364. 1 Wils. 135. Long v. Dennis,
where a legacy is given on consideration that the legatee should
not marry without consent, and there is no devise over, the
condition is void. See 4 Burr. 2055. Com. Rep. 739. and the
cases there cited. The case of Scott v. Tyler, above mentioned;
and Amos v. Horner, 1 Eq. Abr. 112. p. 9. have determined that
a bequest of the residue, notwithstanding some contradictory au-
thorities, is equivalent to a limitation over, where the condition
is precedent and never performed. As to the invalidity of a le-

gacy in perfect restraint of marriage, see Kraft v. Noyes, Ambl.
662. and Elton v. Elton, 1 Wils. 159. And the rule of the eccle-
siastical law is, that where a portion is given in consideration
that a daughter should never marry, the condition is void.
Swins. See also Rose's notes on Com. Rep. 728. and the cases there cited;
and at large on this subject, Fonblanque's Treatise of Equity, i.
245. &c. and this Dict. tit. Marriage.

The word "if" will not always make a condition; but some-
times it makes a limitation, as where a lease is made for years,
if A. B. lives so long. And this is contrary to a condition; for
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a stranger may take advantage of an estate determined thereby, &c. Co. Litt. 236. Dyer, 300. *Sub conditione* is the most proper word to make a condition; *proviso* is as good a word, when not dependent upon another sentence; but in some cases, the word *proviso* may make no *condition*, but be only a qualification or explanation of a covenant. 2 Danv. 1, 2. And neither the word *proviso*, nor any other makes a condition, unless it is *restrictive*. Plov. 34. 1 Nels. 466.

Regularly the word "for" does not import a condition, though it has the force of a condition when *the thing granted is executory*, and the consideration of the grant is a service, or some such thing, for which there is no remedy, but the stopping the thing granted; as in the case of an annuity granted *pro condito*, or for executing the office of a steward of a court, or the service of a captain or keeper of a fort, here the failure of giving counsel, or performing the service, is a kind of eviction of that which is to be done for the annuity, the grantor having no means either to exact the counsel, or recompense for it, but by stopping the annuity; and in these cases the condition is *not precedent*, and therefore the *performance* thereof *need not be overruled* when the annuity is demanded. Per Hobart, Ch. J. Hob. 41. Mich. 10 Jac. in the case of Cowper v. Andrews.

As the intent of the testator chiefly governs in wills, such condition is always made of the words, as will best support his intent, and therefore these words, *ad faciendum, faciendo, ea inten tiene, ad effectum*, &c. in a will, create a condition. Co. Litt. 304. a. See tit. Devise, Will.

A grant to one to the intent he shall do so and so, is no *condition*, but a *trust* and *confidence*. Dyer, 133. Some words in a lease do not make a condition but a *covenant*, upon which the lessor may bring his action. A lease being the deed of lessor and lessee, every word is spoken by both; and a condition may be therein, though it sounds in *covenant*. 1 Nels. 464. A *covenant* not to grant, sell, &c. *may be a condition*; and *covenant* that, paying the rent, the lessee shall enjoy the land, is *conditional*. 2 Danv. 2. 6. Where words are indefinite, and proper to defeat an estate, they shall be taken to have the force of a condition. Palm. 305.

III. A condition may be well performed, when it is done as near to the intent as may be; for if the condition of a *feoffment* be that the *feoffee* shall make an estate back to the *feoffor* and his wife, and the heirs of their two bodies, remainder to the right heirs of the *feoffor*; in this case, if the *feoffor* die before, the estate shall be made to the wife without impeachment of *waste*, the remainder to the heirs of the body of the husband begotten on the wife, &c. Co. Litt. 219. 8 Refi. 69. If a condition be performed in *substance and effect*, it is good although it differs in words; as where it is to deliver letters patent, and the party bound having lost them, delivers an exemplification, &c. 2 Danv. 40. Though payment of the money before the day, is payment at the day, in performance of a condition; yet a *feoffor*, &c. cannot re-enter, and re vest his old estate by force of the condition, till the day whereon the condition gives him *power* to re-
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enter. Ibid. 121. If a man seised of land in right of his wife, make a feoffment in fee on condition, and dies; if the heir of the feoffor enters for the condition broken, and defeats the feoffment, his estate vanishes, and presently it is vested in the wife. Co. Litt. 202. And if a person seised of land, as heir on the part of his mother, makes a feoffment on condition and death; though the heir on the part of the father, who is heir at Common Law, may enter for the condition broken, the heir on the part of the mother shall enter upon him, and enjoy the land. Ibid. 12.

Where there is a condition in a feoffment or lease, that if no distress can be found, the feoffor, &c. shall re-enter; if the place is not open to the distress, as if there be only a cupboard in the house, which is locked, &c. it is all one as if there was no distress there, and the feoffor, &c. may enter. 2 Danv. 46. When a rent is to be paid upon condition at a certain day, the lessor cannot enter for the condition broken, before demand of the rent. Ibid. 98. And the lessor ought to demand the rent at the day, or the condition shall not be broken by the non-payment of the rent. A re-entry may be given on a feoffment, &c. though none be reserved: if one make a lease for life or feoffment upon condition, that if the feoffee or lessee does such act, the estate shall be void: now although the estate cannot be void before entry, this is a good condition, and shall give an entry to the lessor, &c. by implication. 1 Roll. Abr. 408. A lease for life on condition, being a freehold, cannot cease without entry; but if it be a lease for years, the lease is void ipso facto, on breach of the condition without any entry. 1 Inst. 214. If a lease for years is, that on breach of the condition, the term shall cease, the term is ended without entry: but where the words are, that the lease shall be void, it is otherwise. Cro. Car. 511. 5 Rep. 64. Regularly, where one will take advantage of a condition, if he may enter, he must do it; and if he cannot enter, he must make a claim. Co. Litt. 218. Where on condition broken, lessor brings an ejectment, entry is not necessary; if tenant defends, he is bound by the rule to confess entry.

No one can reserve the power or benefit of re-entry, on breach of a condition to any other but himself, his heirs, executors, &c. parties and privies, in right and representation; privies in law, grantees of reversions, &c. are to have no advantage by it. But by the stat. 32 Hen. VIII. c. 28. grantees of reversions may take advantage against lessees, &c. by action. 1 Inst. 214, 215; Plovrd. 175. Where one doth enter for a condition broken, it generally makes the estate void ab initio, and the party comes in of his first estate; and he shall have the land in the same manner it was when he parted with it; and his possession at the time of making the condition; therefore he shall avoid all subsequent charges on the lands. 4 Rep. 120. Plovrd. 185. Co. Litt. 233. If one enters on a condition performed, he shall avoid all encumbrances upon the land after the condition made; and a condition when broken, or performed, &c. will defeat the whole estate. So that if there be a lease for life, remainder in fee, on condition that the lessee for life shall pay 20l. to the lessor; if he pay not this money, the estate in remainder will be avoided also. Dyer, 127. 8 Rep. 90. But this may be otherwise by special limitation to a use: and if tenant for life, and he in remainder, join in
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a feoffment on condition, that if, &c. then the tenant for life shall re-enter, this may be good without defeating the whole estate; though regularly a condition may not avoid part of an estate, and leave another part entire, nor can the estate be void as to some persons, and good as to others. 8 Rep. 190. 1 Inst. 214.

Lessee for life makes a feoffment on condition, and enters for the condition broken; by this he shall be restored to his estate for life, and reduce the reversion to the lessor; and the rent due to the lessor shall be revived; but in this case the lessee will not be in the same course as he was before, for his estate is subject to a forfeiture, though he be tenant for life still. Roll. 474. Shep. Abrid. 405.

Tenants by the curtesy, tenant in tail after possibility of issue extinct, tenant in dower, for life, or years, &c. hold their estates subject to a condition in law, not to grant a greater estate than they have, nor to commit waste, &c. 1 Inst. 233. And estates made by deed to infants, and femes covert, upon condition, shall bind them, because the charge is on the land. 2 Danre. 30. A release of all a man's right may be upon condition; a lessee may surrender upon condition; a contract may be upon condition, &c. But a parson cannot resign upon condition, any more than be admitted upon condition; and a condition cannot be released on condition. 9 Rep. 85.

No person shall defeat any estate of freehold upon condition without showing the deed wherein the condition is contained; but of chattels real or personal, &c. a man may plead that such grants or leases were made upon condition, without showing the deeds; and in the case of a condition to avoid a freehold, though it may not be pleaded without the deed, it may be given in evidence to a jury, and they may find the matter at large. Litt. 374. 5 Rep. 40. A condition may be apportioned by act of law, or of the lessee. 4 Rep. 120. But a man cannot by his own act divide or apportion a condition, which goes to the destruction of an estate. 1 Nels. Abrid. 474. A condition in a will is a thing odious in law, which shall not be created without sufficient words. 2 Leon. 40. A devise to the heir at law, provided he pay to A. B. 20l. is a void condition, because there is no person to take advantage of the non-performance. 1 Litt. 797. Yet conditional devises, as well of lands as of goods, are allowed by our law, and not being performed, the heir or executors shall take advantage of them. 1 Nels. 467.

Where there are negative and affirmative conditions, the pleader must show, not only that he has not broke the negative ones, but also that he has performed the affirmative ones. Fletcher v. Richardson. Hardw. 323.

As to relief against the breach of conditions. Some say that in all cases of penalty or forfeiture that lie in compensation, Equity will relieve; for where they can make compensation, no harm is done. So that although an express time be appointed for the performance of a condition, the judge may, after that day is past, allow a reasonable space to the party, making reparation for the damage, if it be not very great, nor the substance of the covenant destroyed by it. See Fonblanque's Treat. Eq. I. 387. and the cases there cited.
The substantial distinction which governs the interference of Courts of Equity in cases of conditions broken, is not whether the condition be precedent or subsequent, but whether compensation can or cannot be made; and therefore, where A. conveyed lands to B. &c. upon trust, that if C. the son of A. within six months after the death of A. should secure to trustees 500l. for the younger children of C. then after such security given, to convey to C. and his heirs; and until the time for giving such security, in trust for the eldest son of C. and in default of such security, to convey to such eldest son and his heirs; C. died before such security given; yet this condition precedent being only in the nature of a penalty, the intent of the trust shall be regarded, which was to secure 500l. to the younger children. Wallis v. Crimes. 1 C. C. 89. See Glasscock v. Brownell, Finch. 178. Pittaine v. Bruce, Finch. 405. Woodman v. Blake, 2 Vern. 222. Bertie v. Falkland, 2 Vern. 339. Hayward v. Angel, 1 Vern. 222. Bland v. Middleton, 2 C. C. 1. Francis's Maxims, p. 49.

But though Equity will, under some circumstances, relieve against the breach of a condition precedent, where damages are certain; yet it seems, that they will not where the damages accrued are contingent, and cannot be estimated. Sweet v. Anderson, 5 Vin. 93. *p.l. 15. See Treatise of Equity, pp. 209. 387. 391.

IV. There are no precise technical words required in a deed, to make a stipulation a condition precedent or subsequent; neither does it depend on the circumstance whether the clause is placed prior or posterior in the deed, so that it operates as a proviso or covenant; for the same words have been construed to operate as either the one or the other, according to the nature of the transaction, *per* Ashurst, Justice, 1 Term Rep. 645. Further, as to the nature of conditions precedent and subsequent, see 3 Ash. 364. 2 P. Wms. 419. 626. 1 Vern. 83. 3 C. C. 130. 3 Lev. 153. Pearce on Cont. Rem. 2 Burr. 899. 4 Burr. 1930. 1 Will. 195. 136. 2 Br. C. R. 67. and Id. 431. 489. as to a condition annexed to a legacy, that the legatee should marry with consent of her mother, which was held to be valid. In 1 Eq. Abr. 108. It is said that conditions precedent are such as are annexed to estates, and must be punctually performed before the estate can vest. A condition subsequent, is when the estate is executed; but the continuance of such estate depends on the breach or performance of the condition. The two most material points of discussion respecting the doctrine and different operations at law, and in equity, of conditions precedent and subsequent, arise, 1. From cases where conditions are annexed to devises, making them void on the marriage of the devisee without consent; see ante, II. and tit. Marriage; and, 2. From cases arising on the vesting of portions and legacies made payable at a future time. See tit. Devis, Legacy, Portions.

Conditions precedent are such as must be punctually performed before the estate can vest; but on a condition subsequent, the estate is immediately executed; yet the continuance of such estate dependeth on the breach or performance of the condition. Co. Litt. 218. Eq. Abr. 108. As if I grant, that if A. will go to
such a place, about my business, that he shall have such an estate, or that he shall have 10l. &c. this is a condition precedent. 1 Roll. Abr. 414. So if I retain a man for 40s. to go with me to Rome, this is a condition precedent, for the duty commences by going to Rome. 1 Roll. Abr. 914. So if a man, by will, devises certain legacies, and then devises all the residue of his estate to his executor, after debts, legacies, &c. paid and discharged, this is a condition precedent; so that the executor cannot have the residue of the estate before the debts and legacies are discharged. 1 Roll. Abr. 415. 1 Jones, 327. Cro. Car. 335.

But if a man devises a term to A. and that if his wife suffers the devisee to enjoy it for three years, that she shall have all his goods as executrix; but if she disturbs A. then he makes B. executor, and dies, his wife is executrix presently; for though in grants the estate shall not vest till the condition precedent is performed, yet it is otherwise in a will, which must be guided by the intent of the parties; and this shall not be construed as a condition precedent, but only as a condition to abridge the power of being executrix, if she perform it not. Cro. Eliz. 219.

Where the one promise is the consideration of the other, and where the performance and not the promise is, must be gathered from the words and nature of the agreement, and depends entirely thereupon; for, if there was a positive promise, that one should release his equity of redemption, and on the other side, that the other would pay 7l. then the one might bring his action without any averment of performance; but where the agreement is, that the plaintiff should release his equity of redemption, in consideration whereof the defendant was to pay him 7l. so that the release is the consideration, and therefore, being executory, it is a condition precedent, which must be averred. 12 Mod. 455. 460. Thorp v. Thorp.

So in an action against the hundred on the stat. 9 Geo. I. c. 22. for damage sustained by the wilful burning of the party’s barn, it is a precedent condition that the party grieved should, within the time limited, give in his examination on oath before a magistrate, whether or not he knew the offender or offenders, or any of them; and an examination on oath, in which the party only swore that he suspected that the fact was done by some person or persons to him unknown, is not sufficient within the statute; still less in support of an averment in the declaration, that he gave in such examination, &c. in and by which it appeared that the plaintiff did not know the person or persons who committed the fact. For non constat by the terms of such examination, that the plaintiff did not know some of the offenders if there were several. Thurtell v. Mutford, and Lothingland Hundred. 3 East, 400.

By the proposals of the Phoenix Company, it is stipulated that “persons insured shall give notice of the loss forthwith, deliver in an account, and procure a certificate of the minister and churchwardens, &c. importing that they knew the character, &c. of the assured, and believe that he really sustained the loss, without fraud; the procuring such certificate, is a condition precedent to the right of the assured, to recover on the policy;” and it is immaterial that the minister, &c. wrongfully refused to sign the certificate. Hardy v. Wood, in error, 5 Term Rep. 720.
CONDITION IV.

If there be a day set for the payment of money, or doing the thing which one promises, agrees or covenants to do for another thing, and that day happens to occur before the time the thing for which the promise, agreement or covenant is made, is to be performed by the tenor of the agreement; there, though the words be, that the party shall pay the money, or do the thing for such a thing, or in consideration of such a thing; after the day is past the other shall have action for the money, or other thing, though the thing for which the promise, agreement, or covenant was made be not performed; for it would be repugnant for there to make it a condition precedent; and therefore they are in that case left to mutual remedies, on which, by the express words of the agreement, they have depended. Per Holt, Ch. Justice. 12 Mod. 461. Pasch. 13 W. III. Thorp v. Thorp.

M. agrees to give A. so much for the use of a coach and horses for a year, and A. agreed further with M. to keep the coach in repair; it was averred the coach and horses were delivered to M. but nothing of the repair; and Holt, Ch. Justice, held upon this evidence, that repairing was not a condition precedent, and therefore need not be averred. Per Holt, Ch. Justice, at Guildhall, and judgment pro querente. 12 Mod. 503. Pasch. 13 W. III. Atkinson v. Morris.

But if the agreement had been, that A. had agreed to give M. a coach and horses for a year, and to repair the coach, and that for that M. promised so much money, then the repairing had been a condition precedent necessary to be averred. Per Holt, Ch. Justice. 12 Mod. 503. Pasch. 13 W. III. in S. C.

Condition that A. shall do, and for the doing B. shall pay, is a condition precedent, but time fixed for payment will verify the condition; per Holt, Ch. Justice. 1 Salk. 171. Pasch. 13 W. III. B. R. Thorp v. Thorp. See this Dictionary, tit. Award.

If A. makes a lease for five years to B. upon condition that if B. pays him 10l within two years, that then he shall have a freehold immediately, and B. has a fee conditional; because if the freehold was not to vest in B. till the condition performed, it would be difficult to determine in whom the freehold lay; for conditions may be inserted in such deeds as are perfected privately, which might prove greatly prejudicial to strangers. Litt. sect. 350. Co. Litt. 216, 217.

But in case of a lease for life, with such a condition, the freehold passes not before the condition performed, because the livery may presently work upon the freehold. But if a man grants an advowson, &c. (which lie in grant) for years, upon such condition, the grantee shall have no fee till the condition performed. Co. Litt. 217.

If A. leases to B. for years, upon condition, that if B. pays money to A. or his heirs, at a day, that B. shall have the fee, and before the day A. is attainted of treason and executed; now though the condition became impossible by the act and offence of A. yet B. shall not have the fee, because a precedent condition to increase an estate must be performed; and if it becomes impossible, no estate shall rise. Co. Litt. 210. Also in equity, with respect to conditions precedent and subsequent, the prevailing dis
tinction seems to be, to relieve against the breach or non-perform-
ance, not so much whether the condition be precedent or subse-
quently, as whether a compensation can be made. 1 Vern. 79. 167.
As if A. conveys lands to B. &c. and their heirs, upon trust, that
if C. the son of A. within six months after the death of A. should
secure to the trustees 500l. for the younger children of C. then
after such security given, to convey to C. and his heirs, and until
the time for giving such security, in trust for the eldest son of
C. and in default of such security, to convey to such eldest son
and his heirs, if C. dies before any such security given, yet this
condition, though precedent, being only in nature of a penalty,
the intent of the trust shall be regarded, which was to secure
500l. for the younger children. 1 Chan. Ca. 89.

If a feme covert, having power by will to devise lands, devises
them to her executors, to pay 500l. out of them to her son; pro-
vided, that if the father gives not a sufficient release of certain
goods to her executors, that then the devise of the 500l. should
be void, and go to the executors; and after her death a release is
tendered to the father, and he refuses, yet upon making the re-
lease after, the money shall be paid to the son; for it was said to
be the standing rule of the court, that a forfeiture should not
bind, where a thing may be done after, or a compensation made
for it; as where the condition is to pay money, &c. and though it
is generally binding, where there is a devise over, yet here, it
being to go to the executors, it is no more than the law implies.
2 Vent. 252.

See more concerning Conditions under tit. Bond. See also
2 Com. Dig. tit. Condition. And 1 Inst. 201. 203. 206. 237. in
the notes.

CONDUITS, For water in London, shall be made and repair-
ed, and the Lord Mayor and Aldermen may inquire into de-
faults therein, &c. Stat. 35 Hen. VIII. c. 10. See further, tit.
London.

CONE AND KEY. A woman at the age of fourteen or fifteen
years might take the charge of her house, and receive cone and
key: cone or cone in the Sax. signifying computus; so that she
was then held to be of competent years, when she was able to
keep the accounts and keys of the house. Bract. lib. 2. cap. 37.
And there is something to the same purpose in Glanv. lib. 7.
cap. 9.

CONY-BURROWS, Places where conies or rabbits breed
and haunt, &c. Commoners cannot lawfully dig up cony-bur-
rows in the common. 2 Wils. 51. See tit. Common.

CONFEDERACY, confederatio.] Is when two or more com-
bine together to do any damage or injury to another, or to do
any unlawful act. And false confederacy between divers persons
shall be punished, though nothing be put in execution; but this
confederacy, punishable by law before it is executed, ought to
have these incidents: first, it must be declared by some matter
of prosecution, as by making of bonds, or promises the one to the
other; secondly, it should be malicious, as for unjust revenge;
thirdly, it ought to be false against an innocent person; and last-
ly, it is to be out of court voluntarily. Terms de Ley. Where
a writ of conspiracy doth not lie, the confederacy is punishable; and inquiry shall be made of conspirators and confederators, who bind themselves together, &c. See post, tit. Conspiracy.

CONFESSION, confession.] Is where a prisoner is indicted of treason or felony, and brought to the bar to be arraigned; and his indictment being read to him, the court demands what he can say thereunto; then he either confesses the offence, and the indictment to be true, or pleads Not Guilty, &c.

Confession may be made in two kinds, and to two several ends; the one is, that the criminal may confess the offence whereof he is indicted openly in the court, before the judge, and submit himself to the censure and judgment of the law; which confession is the most certain answer, and best satisfaction that may be given to the judge to condemn the offender; so that it proceeds freely of his own accord, without any threats or extremity used; for if the confession arise from any of these causes, it ought not to be recorded: as a woman indicted for the felonious taking of a thing from another, being thereof arraigned, confessed the felony, and said that she did it by commandment of her husband; the judges in pity would not record her confession, but caused her to plead Not guilty to the felony; whereupon the jury found that she did the fact by compulsion of her husband, against her will, for which cause she was discharged. 27 Assis. pl. 50.

The other kind of confession is, when the prisoner confesses the indictment to be true, and that he hath committed the offence whereof he is indicted, and then becomes an approver or accuser of others, who are guilty of the same offence whereof he is indicted, or other offences with him; and then prays the judge to have a coroner assigned him, to whom he may make relation of those offences, and the full circumstances thereof. See tit. Accessory.

There was also a third sort of confession, formerly made by an offender in felony, not in court before the judge, but before the coroner in a church, or other privileged place, upon which the offender, by the ancient law of the land, was to abjure the realm. 3 Inst. 129. See tit. Adjuration.

Confession is likewise in civil cases, where the defendant confesses the plaintiff’s action to be good; by which confession there may be a mitigation of a fine against the penalty of a statute; though not after verdict. Finch. 387. 2 Keb. 408.

There is also a confession indirectly implied, as well as directly expressed, in criminal cases; as if the defendant, in a case not capital, doth not directly own himself guilty of the crime, but by submitting to a fine owns his guilt; whereupon the judge may accept of his submission to the king’s mercy. Lamb. lib. 4. c. 9.

By this indirect confession, the defendant shall not be barred to plead not guilty to an action, &c. for the same fact; the entry of it is, that the defendant puts himself on the king’s mercy. And of the direct confession, that he acknowledges the indictment. And this last confession carries with it so strong a presumption of guilt, that being entered on record, on indictment of trespass, it estops the defendant to plead not guilty to an action brought afterwards against him for the same matter; but such entry of a confession of an indictment of a capital crime, it is said, will not
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estop a defendant to plead not guilty to an appeal, it being in case of life. And where a person upon his arraignment actually confesses himself guilty, or unadvisedly discloses the special manner of the fact, supposing that it doth not amount to felony, where it doth; the judges, upon probable circumstances, that such confession may proceed from fear, weakness, or ignorance, may refuse such a confession, and suffer the party to plead not guilty. 2 Hawk. P. C. c. 31. § 2.

A confession may be received, and the plea of not guilty be withdrawn, though recorded. Kel. 11. The confession of the defendant, whether taken upon an examination before justices of peace, in pursuance of the 1 & 2 P. & M. c. 13. or 2 & 3 P. & M. c. 10. upon an offender's being bailed or committed for felony; or taken by the common law, upon an examination before a Secretary of State, or other magistrate, for treason or other crimes, is allowed to be given in evidence against the person confessing; but not against others. Also two witnesses of a confession of high treason, upon an examination before a justice of peace, were sufficient to convict the person so confessing, within the meaning of 1 Edw. VI. caph. 12. and 5 & 6 Edw. VI. caph. 11. which required two witnesses in high treason, unless the offender should willingly confess, &c. But the stat. 7 W. III. caph. 3. requires two witnesses, except the party shall willingly without violence confess, &c. in open court. 2 Hawk. P. C. c. 46. § 3. See tit. Evidence.

It has been held, that wherever a man's confession is made use of against him, it must all be taken together, and not by parcels. 2 Hawk P. C. c. 46. § 5. And no confession shall, before final judgment, deprive the defendant of the privilege of taking exceptions in arrest of judgment, to faults apparent in the record. Ibid. c. 32. § 4. A demurrer amounts to a confession of the indictment as laid, so far, that if the indictment be good, judgment and execution shall go against the prisoner. Bro. 86. S. P. C. 150. H. P. C. 246. And in criminal cases, not capital, if the defendant demur to an indictment, &c. whether in abatement, or otherwise, the court will not give judgment against him to answer over, but final judgment. 2 Hawk. c. 32. § 7. See tit. Abatement. Where a prisoner confesses the fact, the court has nothing more to do than to proceed to judgment against him. Confessus in judicio pro judicato habetur. 11 Rep. 30. 4 Inst. 66. See further, 2 Hawk. P. C. c. 32. and this Dict. tit. Evidence.

CONFESSOR, Lat. confessor, confessionarius.] Hath relation to private confession of sins, in order to absolution; and the priest who received the auricular confession, had the title of confessor, though improperly; for he is rather the confessee being the person to whom the confession is made. This receiving the confession of a penitent, was in old English to shrieve or shrive; whence comes the word beshrieved, or looking like a confessed or shrived person, on whom was imposed some uneasy penance. The most solemn time of confessing was the day before Lent, which from thence is still called Shrove-Tuesday. Cowel. See tit. Papist.

CONFIRMATION, confirmatio, from the verb confirmare,
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firmum facere.] A conveyance of an estate, or right in esse, that one hath in or to lands, &c. to another that hath the possession thereof, or some estate therein; whereby a voidable estate is made sure and unavoidable; or a particular estate is increased, or a possession made perfect. 1 Inst. 295. See Shep. Touch. 311. It is a strengthening of an estate formerly made, which is voidable, though not presently void: as for example; a bishop granteth his chancellorship by patent, for term of the patentee's life; this is no void grant, but voidable by the bishop's death, except it be strengthened by the confirmation of the dean and chapter.

Confirmation is also defined to be the approbation or assent to an estate already created; which as far as is in the confirmor's power, makes it good and valid; so that the confirmation doth not regularly create an estate, but yet such words may be mingled in the confirmation as may create and enlarge an estate; but that is by force of such words as are foreign to the business of confirmation, and by their own force and power, tend to create the estate. Gilb. Ten. 75.

A Confirmation is of a nature nearly allied to a release; the words of making it are these, Have given, granted, ratified, approved, and confirmed. Litt. § 515. 531.

The words dedi et concessi, are as strong as the word confirmation, for they amount to a grant of the right of the person in possession; and if he has any right, I can never after impeach his estate. Gilb. Ten. 79. See further, what words shall enure as a confirmation, in Vin. Abr. it. Confirmation, (X.)

Madox, in p. 19. of the Dissert. annexed to the Formul. Angl. says, that most ancient confirmations made after the Conquest, often run like feoffments; and are distinguishable from them, chiefly by some words importing a former feoffment or grant.

In ancient times, when feoffees were frequently disseised of their lands upon some suggestion or other, charters of confirmation seem to have been in great request. For in the early times after the Conquest, so many confirmations may be met with, successively made to the same persons, or their heirs or successors, of the same lands and possessions, that it looks as if they did not think themselves secure in their possessions against the king; or the great lords who were their feoffors, or in whose fees their lands lay, unless they had repeated confirmations from them, their heirs, or successors. And these confirmations very ancienly seem to have been sometimes made, either by precept or writ from the king, or other lords, to put the feoffees, or their heirs or successors, into seisin, after they had been disseised, or to keep them in their seisin undisturbed, or else by charter of express confirmation. Shep. Touch. edit. 1791. p. 314. in n.

And on this subject of confirmation in general, see Sheppard's whole chapter.

Confirmation, aut est perficiens, crescens aut diminuens: Perficiens, as if feoffee upon condition make a feoffment, and the feoffor confirm the estate of the second feoffee: Crescens, that doth always enlarge the estate of a tenant; as tenant for years, to hold for life; &c. Diminuens, as when the lord of whom the
land is holden, confirms the estate of his tenant, to hold by a less rent. 9 Rep. 142.

The lord may diminish the services of his tenant by confirmation; but not reserve new services, so long as the former estate in the tenancy continues; and therefore if he confirm to the tenant, to yield him a hawk, &c. yearly, it is void. Litt. sect. 539.

1 Co. Inst. 296. Leases for years may be confirmed for part of the term, or part of the land, &c. but it is otherwise of an estate of freehold, which being entire, cannot be confirmed for part of the estate. 3 Rep. 81. There may be a confirmation implied by law, as well as express by deed; where the law by construction makes a confirmation of a grant made to another purpose; and a confirmation may enlarge an estate, from an estate held at will to term of years, or a greater estate; from an estate for years to an estate for life; from an estate for life, to an estate in tail, or in fee; and from an estate in tail to an estate in fee-simple. 1 Inst. 305. 9 Rep. 142. Dyer, 363. But if the confirmation be made to lessee for life or years, of his term or estate, and not of the land, this doth not increase the estate, though if the lesser confirm the land, to have and to hold the land to the lessee and his heirs, this will enlarge the estate, and so of the rest. Co. Litt. 299. Plowd. 40.

In every good confirmation, there must be a precedent right; but a wrongful estate in him to whom made, or he must have the possession of the thing as a foundation for the confirmation to work upon; the confirmer must have such an estate and property in the land, that he may be thereby enabled to confirm the estate of the confireree; the precedent estate must continue till the confirmation come, so that the estate to be increased comes into it; and it is required that both these estates be lawful. Co. Litt. 296. 1 Rep. 146. Dyer, 109. 5 Rep. 15. If one have common of pasture in another's land, and he confirms the estate of the tenant of the land, nothing passes of the common, but it remains as it was before; so if a man have a rent out of the land, and he doth confirm the estate which the tenant hath in the land, the rent remaineth. Litt. sect. 537.

Tenant for life makes a lease for years to a man, and after leases the land to another person for years; and he in reversion confirms the last lease, and after that the first lease, this is not good; the second lessee hath an interest before by the confirmation of him in reversion. But in a like case, confirmation of the first lease, after the second was confirmed, was held good; for the lease takes no interest by the confirmation, but only to make it durable and effectual. Moor, c. 186. 1 Inst. 296. Plowd. 16.

If a disseisee confirm the land to the disseisor but for one hour, one week, a year, or for life, &c. it is a good confirmation of the estate for ever; and if he confirms the estate of the disseisor without any word of heirs, he hath a fee-simple; and if a disseisor make a gift in tail, and the disseisee doth confirm the estate of the donee, it shall endure to the whole estate; also if the disseisor enfeoffs A. and B. and the heirs of B., and the disseisee confirms the estate of B. for his life; this shall extend to his companion, and for the whole fee-simple. Co. Litt. 291. 297. 299.
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But where the estate is divided, it is otherwise; as if there be an estate for life, the remainder over, there the confirmation may be of either of the estates; and if the lessee of a disseisor of a lease for twenty years, make a lease for ten years; the disseissee may confirm to one of them, and not to the other. 1 Cro. 472. 5 Rep. 81. If a disseisor or any other make a lease for years to begin at a day to come, a confirmation to the lessee before the lease begins will not be good; for there is no estate in him. Co. Litt. 296.

The tenant in tail of land hath a reversion in fee expectant; in this case, the confirmation of the estate-tail will not extend to the reversion. And if my disseisor make a lease for life, the remainder in fee, and I confirm the estate of the tenant for life, this shall not confirm the estate of him in remainder; but if I confirm the remainder estate, without any confirmation to tenant for life, it shall enure to him also. Co. Litt. 297, 298. If lands are given to two men, and the heirs of their two bodies begotten, and the donor confirms their estate in the lands, to have and to hold to them two and their heirs; this shall be construed a joint estate for their lives, and after they shall have several inheritances. Co. Litt. 299. Tenant in tail, or for life, of land, lets it for years, if after he makes a confirmation of the land to the lessee for years, to hold to him and his heirs for ever; the lessee hath only an estate for the life of the tenant in tail, &c. and therein his lease for years is extinct. Litt. sect. 606.

A freehold for life, and term for years, it is said, cannot stand together of the same land, in the same person. 1 Nels. Abr. 480. If a feme lessee for years marries, and the lessor confirms the estate of husband and wife, to hold for their lives, by such a confirmation the term will be drowned; and the husband and wife are joint-tenants for their lives. Co. Litt. 300. But if the feme were lessee for life, then by the confirmation to husband and wife for their lives, the husband holdeth only in right of his wife for her life; but shall take a remainder for his life. Ibid. 299. Confirmation to lessee for life, and a stranger to hold for their lives, is void, for there is no privity; but it is otherwise, if for years. 2 Danw. Abr. 141. If tenant for life grant a rent-charge, &c. to one and his heirs, he in reversion is to confirm it, otherwise it is good only for the life of tenant for life. Litt. 529. A tenant for life, and remainder-man in fee, join in a lease, this shall be taken to be the lease of tenant for life, during his life, and confirmation of him in remainder; though after the death of tenant for life, it is the lease of him in remainder and confirmation of tenant for life. 6 Rep. 15. 1 Nels. Abr. 481.

If lessee for years, without impeachment for waste, accepts a confirmation of his estate for life; by this he hath lost the privilege annexed to his estate for years. 8 Rep. 76. Acceptance of rent in some cases makes a confirmation of a lease: As if a man leases for life, reserving rent upon a condition of re-entry; if after the condition is broken, by non-payment of the rent, the lessor distrains for the said rent, this act shall be a confirmation of the lease, so as he cannot enter. 2 Danw. 128, 129.

What a person may defeat by his entry, he may make good by his confirmation. Co. Litt. 300. But none can confirm, un-
CONFIRMATION.

less he hath a right at the time of the grant; he that hath but a right in reversion cannot enlarge the estate of a lessee. 2 Danv. 140, 141. And where a person hath but interesse termini, he hath no estate in him upon which a confirmation may enure. Co. Litt. 290.

As confirmation is to bind the right of him who makes it, but not alter the nature of the estate of him to whom made, it shall not discharge a condition. Poqth. 51. If A. enfeoff B. upon condition, and after A. confirms the estate of B., yet the condition remains; though if B. had enfeoffed C. so that the estate of C. had been only subject to the condition of another deed, and after A. had confirmed the estate of C., this would have extinguished the condition, which was annexed to the estate of B. 1 Rep. 147. A confirmation will take away a condition annexed by law; and by confirmation, a condition after broken in a deed of feoffment is extinguished. 1 Co. Rep. 146. Confirmations may make a defeasible estate good; but cannot work upon an estate that is void in law. Co. Litt. 295.

A confirmation of letters patent, which are void as they are against law, is a void confirmation. 1 Lit. ABR. 295. If there be lord and tenant, and the tenant having issue, is attainted of felony, if the king pardons him, and the lord confirms his estate, and the tenant dies, his issue shall not inherit, but the lord shall have it against his own confirmation; for that could not enable him to take by descent, who by the attainder of his father was disabled. 9 Rep. 141.

Grants and leases of bishops not warranted by the stat. 32 Hen. VIII. c. 28. must be confirmed by dean and chapter; and grants and leases of parsons, &c. by patron and ordinary. 1 Inst. 297. 300, 301. Bishops may grant leases of their church-lands for three lives or twenty-one years, having the qualities required by 32 Hen. VIII. c. 28. and concurrent leases for twenty-one years, with confirmation of dean and chapter. See 1 Eliz. cc. 4. 19. If a prebend leases parcel of his prebendary, and the bishop, who is patron, confirms it; this shall not bind the succeeding bishop, without confirmation of dean and chapter, because the patronage is parcel of the possessions of the bishopric; but it shall bind the present bishop, &c. 2 Danv. 139. If a parson grants a rent, the confirmation of the patron and bishop is sufficient without the dean and chapter, and shall be good against the succeeding bishop. Ibid. 140. The dean of Wells may pass his possessions, with the assent of the chapter, without any confirmation of the bishop. Ibid. 135. Leases of bishops are affirmed ex assensu et consensu decani et toitis capituli. See further, tit. Leases.

To the grants of a Sole Corporation, as parson, prebendary, vicar, and the like, the patron must give his consent; because such sole corporation has not the absolute fee; but a corporation aggregate, as dean and chapter, master, fellows and scholars of a college, &c. or any sole corporation that has the absolute fee, as a bishop with consent of the dean and chapter, may by the common law make any grant of their possessions without their founder or patron. 1 Inst. 300 b. See further, in what cases the confirmation of the patron and ordinary is necessary; and as to confirmation—
tion by dean and chapter of the grant of the bishop; *Vit. Abr.*


A confirmation, as has been already said, is in nature of a re-
lease, and in some things is of greater force; and in this deed, it
is good to recite the estate of the tenant, as also of him that is to
confirm it; and to mention the consideration, the words *ratify*
and *confirm*, are commonly made use of; but the words *give, grant,*
demise, &c. by implication of law, may ensue as a confirmation.


CONFISCATE, or CONFISCATED. From the Lat. *confiscare,* and that from *fiscus,* which signifies metonymically the em-
peror’s treasury; and, as the Romans say such goods as are for-
feited to the emperor’s treasury for any offence are *bona confiscata,* so we say of those that are forfeited to our King’s *Exchequer.*

And the *title* to have these goods is given to the king by the law,
when they are *not claimed* by some other; as if a man be indicted for
stealing the goods of another person, when they are in truth his
own proper goods, and when the goods are brought into court
against him, and he is asked what he says to the said goods, if he *disclaims* them, he shall lose the goods, although that after-
wards he be acquitted of the felony, and the king shall have them
as *confiscated*; but it is otherwise if he do not disclaim them.

It is the same where goods are found in the possession of a
felon, if he *disavowes* them, and afterwards is attainted for other
goods, and not for them; for there the goods which he *disavowes*
are *confiscate* to the king; but had he been attainted for the
same goods, they should have been said to be *forfeited* and not
*confiscate.* So if an appeal of robbery be brought, and the plaintiff
leaves out some of his goods, he shall not be received to enlarge
his appeal; and forasmuch as there is none to have the goods
so left out, the king shall have them as *confiscate,* according to the
rule, *Quod non capit Christus, capit fiscus.* *Statut.* P. C.
lib. 3. cap. 24.

Goods confiscated are generally such as are arrested and seiz-
ed for the king’s use; but *confiscare* and *forisfacere* are said to be
*synonyma;* and *bona confiscata* are *bona forisfacta.* 3 Inst. 227.

See tit. *Forfeiture.*

CONFORMITY To the church of England. See stat. 1 *Eliz.*

CONFRATIRIE, confraternitas.] A fraternity, brotherhood, or
society; as the *confratiria* of St. George, or *les chevaliers* de
la bleu garnier, the honourable society of the Knights of the
Garter.

CONFRERES, confratres.] Brethren in a religious house; fel-

CONFUSION, property by.—Where goods of two persons are
so intermixed, that the several portions can no longer be distin-
guished: if the intermixture be by consent, it is supposed the
proprietors have an interest in common, in proportion to their
respective shares; but, if one wilfully intermixes his money, corn,
or hay, with that of another man without his approbation or
knowledge, or cast gold in like manner into another’s melting
pot or crucible, our law does not allow any remedy in such case;
but gives the entire property, without any account, to him, whose
original dominion (or property) is invaded, and endeavoured to be rendered uncertain, without his own consent. 2 Comm. 405.

CONGEABLE, From the Fr. congé, leave or permission.] Signifies in our law as much as lawful, or lawfully done, or done with permission; as entry congéable, &c. Litt. sect. 420.

CONGE D'ACCORDER, Fr.] Leave to accord or agree, mentioned in the statute of fines, 18 Edw. I. in these words,— When the original writ is delivered in the presence of the parties before justices, a fileader shall say this, Sir justice, conge d'accorder; and the justice shall say to him, What saith Sir R. and name one of the parties, &c.

CONGE D'ESLIRE, Fr. i. e. leave to choose.] The King's license or permission sent to a dean and chapter to proceed to the election of a bishop, when any bishopric becomes vacant. See tit. Bishop.

CONGIUS, An ancient measure containing about a gallon and a pint. Charia Edmond Regis, anno 946.

CONINGERIA, A cony-burrow, or warren of conies. Inquis. anno 47 Hen. III.

CONJUGAL RIGHTS, A suit for restitution of conjugal rights, is one of the species of matrimonial causes; and is brought when either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the ecclesiastical jurisdiction will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other. 3 Comm. 94. See tit. Baron and Feme.

Conjunct Fiere, is when several people are conjunctly enfeoffed, or otherwise have a joint fee. Scotch Dict.

CONJURATIO, An oath; and conjurator, the same with conjurator, viz. one who is bound by the same oath. Conjuraris is where several affirm a thing by oath. Mon. Angl. tom. 1. p. 207.

CONJURATION, conjuratio.] Signifies a plot or compact made by persons, combining by oath, to do any public harm: but was more especially used for the having (as was supposed) personal conference with the devil, or some evil spirit, to know any secret, or effect any purpose. The difference between conjuration and witchcraft was said to be, that a person using the one endeavoured by prayers and invocations to compel the devil to say or do what he commanded him, the other dealt rather by friendly and voluntary conference, or agreement with the devil or familiar, to have his desires served, in lieu of blood or other gift offered. Both differed from enchantment or sorcery; because the latter were supposed to be personal conferences with the devil, and the former were but medicines and ceremonial forms of words usually called charms, without apparition. Cowel.

Hawkins, in his Parias of the Crown, lib. 1. c. 3. says, that conjurers are those who, by force of certain magic words, endeavour to raise the devil, and oblige him to execute their commands. Witches are such who by way of conference bargain with an evil spirit, to do what they desire of him: and Sorcerers are those who by the use of certain superstitious words, or by the means of images, &c. are said to produce strange effects above the ordi-
nary course of nature. All which were anciently punished in the same manner as heretics, by the writ de hereito comburendo, after a sentence in the ecclesiastical court; and they might be condemned to the pillory, &c. upon an indictment at common law. 3 Inst. 44. H. P. C. 38.

The stats. 33 Hen. VIII. c. 8. and 1 Jac. I. c. 12. against conjuration and witchcraft are repealed, by stat. 9 Geo. II. c. 5. which enacts, that no prosecution shall be commenced on the same: but where persons pretend to exercise any kind of witchcraft or conjuration, &c. or undertake to tell fortunes, or from pretended skill in any crafty science to discover where goods stolen or lost may be found; upon conviction, they shall be imprisoned a year, and stand in the pillory once in every quarter, in some market-town, and may be ordered to give security for their good behaviour. See 4 Comm. 60.

CONQUEST, Conquestus, the feodal term for purchase. As to countries granted by conquest, see tit. Plantations. And also tit. King.

CONSANGUINEO, A writ mentioned in Reg. Orig. de avo, proavo et consanguineo, &c. f. 226. See Cosinage.

CONSANGUINEUS FRATER, A brother by the father's side. 2 Comm. 232.

CONSANGUINITY, consanguinitas.] Is a kindred by blood or birth; as affinity is a kindred by marriage; and it is considerable in the descent of lands, who shall take it as next of blood, &c. and also in administrations, which shall be granted to the next of kin. See tit. Descent, Executor.

CONSCIENCt, Courts or. These are courts for recovery of small debts, constituted by act of parliament, in London and Westminster, &c. and other trading and populous districts. See tit. Courts, Arrest, Process, &c.

CONSECRATION. See tit. Bishops, Church.

CONSENT. In all cases when any thing executory is created by deed, it may, by consent of all persons that were parties to the creation of it by their deed, be defeated and annulled, and therefore it was said, that warrants, recognisances, rents, charges, annuities, covenants, leases for years, uses at common law, &c. may, by a defeasance made with the mutual consent of all that were parties to the creation of them by deed, be annulled, discharged, and defeated. 1 Rep. 113. Albany's Case.

A consent ex post facto is not of any signification; for it cannot be had for things which cannot be otherwise. Per Vaughan, Ch. J. Mod. 312. Fry v. Porter.

The consent of the heir makes good a void devise. Chene. Cases, Trin. 23 Cor. II. Ld. Corsham v. Middleton. 1 C. C. 208. Consent of remainder-man for life, though but verbal, is binding, and decreed to confirm building leases accordingly. 2 Chene. Cases, 28. Pasch. 32 Cor. II. Sidney v. The Earl of Leicester. Consent to a trial of a title to land in another county than where the land lies, will not help, it being an error, though such consent be of record; agreed per cur. 2 Show. 98, pl. 97. Pasch. 32 Cor. II. B. R. Ld. Clare v. Reach.

A burgess of a corporation consenting to be turned out from his burgess's place, and the common council of the corporation
removing him accordingly, does not amount to a resignation; and a peremptory mandamus was granted to restore him. Holt, 450. Mayor of Gloucester’s case.

CONSEQUENTIAL LOSSES OR DAMAGES. It is a fundamental principle in law and reason, that he who does the first wrong, shall answer for all consequential damages. 12 Mod. 639. Roswell v. Prior. But this admits of limitation. Though a man does a lawful thing, yet if any damage do thereby befall another, he shall answer if he could have avoided it; and this holds in all civil cases. As if a man lopts a tree, and the boughs fall upon another invito, yet an action lies. So if a man shoots at butts, and hurts another unawares. So if I have land through which a river runs to your mill, and I lop the sallows growing on the river side, which accidentally stop the water so as your mill is hindered. So if I am building my own house, and a piece of timber falls on my neighbour’s house, and breaks part of it. So if a man assaults me, and I lift up my staff to defend myself, and strike another in lifting it up; but it is otherwise in criminal cases, for there actus non facit reum nisi mens sit rea. Raym. 429, 423. See tit. Chance Medley.

If I have a pond, I cannot so let it out that it shall drown my neighbour’s land. Arg. Het. 119. cites 6 Edw. IV. 6. If a stranger drives his cattle upon your land, whereby they are distressed by you, I shall recover against the stranger for this distress by you. Lane, 67. cites 9 Edw. IV. 4. A smith pricks the horse of a servant, being on his journey to pay money for his master, to save the penalty of a bond, both the master and servant may have their several action on the case, for the several wrongs they have thereby sustained. Per Coke, Ch. J. 2 Bulst. 344.

Where one is party to a fraud, all which follows by reason of that fraud shall be said as done by him. Arg. Cro. Jac. 469. Action lies for threatening workmen to maim and prosecute them, whereby the master loses the selling of his goods, the men not daring to go on with their work. Cro. Jac. 567. Garret v. Taylor. A. breaks the fence of B. by which cattle get into C.’s ground, C. shall have case against A. but not trespass. Per Roll. Syl. 131. Cowper v. St. John. If A. beats my horse, by which he runs on B. A. is the trespasser, and not B. 2 Salk. 631.

He that makes a fire in his field, must see that it does no harm, and answer the damage if it does; but if a sudden storm riseth which he cannot stop, it is a matter of evidence, and he must show it. 1 Salk. 13. pl. 4. Turlerit v. Stampa. If a man keeps a beast of a savage nature, as a lion, &c. it is at his peril to keep him up, and he is answerable for all the consequences of his getting loose. Per Raym. Ch. J. Gilb. 187. The King v. Huggins. See tit. Action.

CONSERVATOR, Lat.] A protector, preserver, or maintainer; or a standing arbitrator, chosen and appointed as a guarantee to compose and adjust differences that should arise between two parties, &c. Paroch. Antiq. pl. 513.

CONSERVATOR OF THE PEACE, conservator vel custos pacis.] Is he that hath an especial charge to see the king’s peace kept; and of these conservators Lombard saith, that before the
reign of Edw. III. who first created Justices of the Peace, there were divers persons that by the common law had interest in keeping the peace; some whereof had that charge by tenure, as holding lands of the king by this service, &c. And others as incident to their offices which they bore, and so included in the same, that they were nevertheless called by the name of their office only; also some had it simply, as of itself, and were therefore named custodes pacis, wardens or conservators of the peace. The Chamberlain of Chester is a conservator of the peace in that county, by virtue of his office. 4 Inst. 212. Sheriffs of counties at common law are conservators of the peace; and constables by the common law were conservators, but some say they were only subordinate to the conservators of the peace, as they are now to the justice.

The King's Majesty is, by his office and dignity royal, the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the king's peace. The Lord Chancellor or Keeper, the Lord Treasurer, the Lord High Steward of England, the Lord Mareschal, and Lord High Constable of England, (when any such officers are in being,) and all the Justices of the Court of King's Bench, (by virtue of their offices,) and the Master of the Rolls, (by prescription,) are general conservators of the peace throughout the whole kingdom, and may commit all breakers of it, or bind them in recognisances to keep it: the other judges are only so in their own courts. The coroner is also a conservator of the peace within his own county; as is also the sheriff, and both of them may take a recognisance or security for the peace. Constables, tithingmen, and the like, are also conservators of the peace within their own jurisdictions, and may apprehend all breakers of the peace, and commit them till they find sureties for their keeping it. 1 Comm. 550. See tit. Justices of Peace, Commitment.

Conservator of the Truce and Safe Conducts, conservator indiciarum et salvorum regis conductuum.] Was an officer appointed by the king's letters patent, whose charge was to inquire of all offenses done against the king's truce and the safe conducts upon the main sea, out of the liberties of the five ports, as the admirals customably were wont to do, and such other things as are declared in stat. 2 Hen. V. c. 1. c. 6. Two men learned in the law were joined to conservators of the truce as associates; and masters of ships sworn not to attempt any thing against the truce, &c. And letters of request and of marque were to be granted when truce was broken at sea to make restitution. Stat. 4 Hen. V. c. 7. See tit. Truce.

There was anciently a Conservator of the privileges of the Hospitalers and Templars. Westm. 2. c. 43. And the corporation of the great level of the fens consists of a governor, six bailiffs, twenty conservators, and commonalty. Stat. 15 Car. II. c. 17.

Consideratio Curiae, Is often mentioned in law pleadings, and where matters are determined by the court. Ideo consideratum est per curiam, i.e. therefore it is considered and adjudged by the court; consideratio curiae is the judgment of the court.
CONSIDERATION, consideratio.] The material cause, quid or pro quo, of any contract, without which it will not be effectual or binding. This consideration is either expressed, as when a man bargains to give so much for a thing bought; or to sell his land for 100l. or grants it in exchange for other lands; or where I promise that if one will marry my daughter, or build me a house, &c. I will give him a certain sum of money; or one agrees for a certain sum to do a thing. Or it is implied, when the law itself enforces a consideration; as where a person comes to an inn, and there stays eats and drinks, and takes lodging for himself and horse, the law presumes he intends to pay for both, though there be no express contract for it; and therefore, if he discharge not the house, the host may stay his horse. And so, if a tailor makes a garment for another, and there is no express agreement what he shall have for it, he may keep the clothes till he is paid, or sue the party for the same. 5 Rep. 19. Plowd. 308. Dyer, 30. 337.

Considerations may be considered either as relating to contracts generally or to deeds in particular, and further relating thereto, see tit. Assumpsit, Deced.

As to contracts, a consideration may be defined to be the reason which moves the contracting party to enter into the contracts. This consideration must be a thing lawful in itself, or else the contract is void. A good consideration is that of blood or natural affection between near relations; the satisfaction accruing from which the law esteems an equivalent for whatever benefit may move from one relation to another. 3 Rep. 83. 1 Inst. 271. 1 Rep. 176. This consideration may sometimes however be set aside, and the contract become void, when it tends in its consequences to defraud creditors or other third persons of their just rights. But a contract for any valuable consideration, as for marriage, for money, for work done, or for other reciprocal contracts, can never be impeached at law; and if it be of a sufficient adequate value, is never set aside in equity; for the person contracted with has then given an equivalent in recompense, and is therefore as much an owner or a creditor as any other person. 2 Comm. 444, 444. Noy's Mar. 87. Hob. 230. See tit. Fraud, Fraudulent Conveyance.

These valuable considerations are divided by the civilians into four species: Do ut des—Facio ut facias—Facio ut des—Do ut facias, the bare mention of which is here sufficient.

A consideration of some sort or other is so absolutely necessary to the forming of a contract, that a nolum faciur or bare agreement to do or pay any thing on one side without any compensation on the other, is totally void in law; and a man cannot be compelled to perform it. Doct, and Stud. d. 2, c. 24. As if one man promises to give another 100l. here there is nothing contracted for or given on one side, and therefore there is nothing binding on the other. And however a man may or may not be bound to perform it in honour or conscience, which the municipal laws do not take upon them to decide, certainly those laws will not compel the execution of what he had no visible inducement to engage for; and therefore our law has adopted the maxim of the civil law, ex nudo pacto non oritur actio. But any degree of reciprocity
CONSIDERATION.

will prevent the pact from being nude: nay, even if the promise be founded on a prior moral obligation, (as a promise to pay a just debt, though barred by the statute of limitations,) it is no longer nudum pactum. And as this rule was principally established to avoid the inconvenience that would arise from setting up mere verbal promises, for which no good reason could be assigned, it therefore does not hold in some cases where such promise is authentically proved by written documents. 2 Comm. 445, 446. Blackstone instances voluntary bonds and notes; as to which latter, see Ponktonque's observations in Treat. Eq. 334. n.

Deeds also must be founded upon good and sufficient consideration, not upon a usurious contract. Stat. 13 Eliz. c. 8. Nor upon fraud or collusion either to deceive purchasers, bona fide, or just and lawful creditors. Stats. 13 Eliz. c. 5, 27 Eliz. c. 4. Any of which bad considerations will vacate the deed, and subject such persons as put the same in use, to forfeitures, and often to imprisonments. A deed also, or other grant, made without any consideration is, as it were, of no effect; for it is construed to enure, or to be effectual, only to the use of the grantor himself. Perk. § 533. The consideration of deeds also, like that of contracts, may be either a good or valuable one. Deeds made upon good consideration only, are considered as merely voluntary, and are frequently set aside in favour of creditors, and bona fide purchasers. 2 Comm. 296. See further, tit. Deeds.

A consideration ought to be matter of profit and benefit to him to whom it is done; by reason of the charge or trouble of him who doth it. Cro. Car. 8. If a person hath disbursed several sums for another, without his request, and afterwards such other says, that in consideration he hath paid the said sums for him, he promises to pay them; this is no consideration, because it was executed before. But it will be otherwise, if the sums were paid at the request of the other. Moor, 220. Cro. Eliz. 282. A mere voluntary curtesy will not be a good consideration of a promise; but the value and proportion of the consideration is not material, to maintain an action; for a shilling or a penny is as much binding as 100L. Though in these cases, the jury will give damages proportionally to the loss. Hob. 5. 10 Rop. 76.

A consideration that is void in part, is void in the whole; and if two considerations be alleged, and one of them is found false by the jury, the action fails. Hob. 126. Cro. Eliz. 848. But if there be a double consideration for the grounding of a promise, for the breach whereof an action is brought; though one of the considerations be not good, yet if the other be good, and the promise broken, the action will lie upon that breach; for one consideration is enough to support the promise. 1 Litt. 297. A consideration must be lawful, to ground an assumptae. 2 Leav. 161. Where considerations are valuable, and consist of two or more parts, there the performance of every part ought to be shown. Cro. Eliz. 579. In case a deed of feoffment be made of lands; or a fine and recovery be passed, and no consideration is expressed in the deed, &c. for the doing thereof, it shall be intended by the law, that it was made in trust, for the use of the feoffor orconsor; for it shall be presumed he would not part with his
CONSIGN, Is a word used by merchants, where goods are assigned, delivered over, or transmitted from beyond sea, or elsewhere, to a factor, &c.

Consignor, and consignee, signify among merchants, the shipper of merchandise, and the person to whom they are addressed. Where the consignor of goods abroad advised the consignee by letter, that he had chartered a certain ship on his account, and enclosed him an invoice of the goods laden on board, which were therein expressed to be for account and risk of the consignee; and also a bill of lading in the usual form, expressing the delivery to be made to order, &c. he paying freight for the said goods according to charter-party, and the letter of advice also informed the consignee, that the consignor had drawn bills on him at three months, for the value of the cargo; held, that the invoice and bill of lading sent to the consignee, and the delivery of the goods to the captain, vested the property in the consignee, subject only to be devested by the consignor's right to stop the goods in transitu, in case of the insolvency of the other. And the consignor's agent having obtained possession of the cargo under another bill of lading, and having refused to deliver it up unless the consignee would make immediate payment, which he declined doing, but offered his acceptances at three months, in the manner before stipulated; held that the consignee might maintain trover against such agent without having tendered payment of the freight either to him, or the captain, the defendant having possessed himself of the goods wrongfully. Walley v. Montgomery, E. 43 Geo. III. East. 585. See further, tit. Merchant, Factor, Transitu.

CONSILIUM, dies consili.] A time allowed for one accused to make his defence, and answer the charge of the accuser. It is now used for a speedy day appointed to argue a demurrer; which the court grants after the demurrer joined, on reading the record of the cause, &c.

CONSIMILI CASU, Writ of entry in. A writ of entry. This and the writ in casu proviso lay not at common law, but are given by statute Gloc. 6 Edw. I. c. 7. and Westm. 2. 13 Edw. I. c. 24. for the reversioner after alienation; but during the life of the tenant in dower, or other tenant for life. See Fitz. N. B. 205, 206. 3 Comm. 183. n.

CONSISTOR, A magistrate so called; testamentus Roger de Gant, William constor Consistore, &c. Blount.

CONSISTORY, consistorium.] Signifies as much as praetorium, or tribunal. It is commonly used for a council-house of ecclesiastical persons, or place of justice in the spiritual court; a session or assembly of prelates. And every archbishop and bishop of every diocese hath a consistory court, held before his chancellor, or commissary, in his cathedral church, or other convenient place of his diocese, for ecclesiastical causes. 4 Inst. 338. The bishop's chancellor is the judge of this court, supposed to be skilled in the civil and canon law; and in places of the diocese, far remote from the bishop's consistory, the bishop appoints a commissary (commissarius forancus) to judge in all causes within a certain
district, and a register to enter his decrees, &c. 2 Roll. Abr. 285. 
Seld. Hist. of Tithes, 413, 414. From the sentence of this consistory court an appeal lies by virtue of stat. 24 Hen. VIII. c. 12, to the archbishop of each province respectively.

CONSOLIDATION, consolidatio.] Is used for the uniting of two benefices into one. Stat. 37 Hen. VIII. c. 21. Which union is to be by the assent of the ordinary, patron and incumbent, &c. and to be of small churches lying near together. Vide tit. Church, Union. This word is taken from the civil law, where it signifies properly a uniting of the possession, occupancy or profit of lands, &c. with the property. See also Extinquishment, Insurance.

CONSPIRACY, conspiratio.] This word was formerly used almost exclusively for an agreement of two or more persons falsely to indict one, or to procure him to be indicted of felony; who, after acquittal, shall have writ of conspiracy. See 33 Edw. I. stat. 2. 7 Hen. V. 18 Hen. VI. c. 12. See post, tit. Conspirator. Now, it is no less commonly used for the unlawful combination of journeymen to raise their wages, or to refuse working, except on certain stipulated conditions; an offence particularly provided for by stat. 2 & 3 Edw. VI. c. 15. (revised, continued and confirmed, by stat. 22 & 23 Car. II. c. 19, now expired,) which enacts among other things, that "if any artificer do conspire, that they shall not do their works but at a certain price, or shall not take upon them to finish that another hath begun, or shall do but a certain work in a day, or shall not work but at certain times; every person so conspiring, shall forfeit for the first offence 10l. or be imprisoned 20 days, for the second 30l. or be pilloried, and for the third 40l. or be pilloried, lose an ear, and become infamous." This stat. 2 & 3 Edw. VI. c. 15. appears to be yet in force, though not frequently resorted to for remedy in this case; the proceeding being usually by indictment for conspiracy.

By the common law there can be no doubt but that all confederates whatsoever, wrongfully to prejudice a third person, are highly criminal. 1 Hawk. P. C. c. 72. § 2. See further, stat. 5 Eliz. c. 5, particularly §§ 18—20, and this Dict. tit. Labourers, Servants.

Journeymen confederating and refusing to work unless for certain wages, may be indicted for a conspiracy; notwithstanding the statutes which regulate their work and wages do not direct this mode of prosecution; for this offence consists in the conspiring and not in the refusal, and all conspiracies are illegal, though the subject matter of them may be lawful. See the case of The Tub-women v. The London Brewers, 8 Mod. 11. 320. So also a bare conspiracy to do a lawful act to an unlawful end is a crime; though no act be done in consequence thereof. 8 Mod. 321. The fact of conspiring need not be proved on the trial, but may be collected by the jury from collateral circumstances. 1 Black. Rep. 392. Stra. 144. And if the parties concur in doing the act, although they were not previously acquainted with each other, it is conspiracy. Lord Mansfield, in the case of the prisoners in the King's Bench, Hil. T. 26 Geo. III. 1 Hawk. P. C. c. 72. § 2, in a.
CONSPIRACY.

Unlawful combinations of workmen were prohibited and punished by the act 39 Geo. III. c. 81, which was repealed, and more effectual provision enacted by 39 and 40 Geo. III. c. 106.

By this latter act all contracts (except those between masters and men) for obtaining advance of wages, altering the usual time of working, decreasing the quantity of work, &c. are declared illegal. Workmen making such illegal contracts are punishable by imprisonment; and the like punishment is inflicted on workmen entering into combinations to procure advance of wages, or preventing other workmen from hiring themselves, or procuring them to quit their employ, &c. All meetings and combinations for effecting such illegal purposes are punishable in like manner; and offenders giving evidence against each other are indemnified.

The same act provides for settling all disputes between masters and workmen by arbitration, with an appeal to the quarter sessions.

By 43 Geo. III. c. 86. similar provisions are made for preventing combinations of workmen, artificers, journeymen, and labourers, in Ireland.

Writ of conspiracy lies for him that is indicted of a trespass, and acquitted, though it was not felony; also upon an indictment for a riot. 2 Mod. 306. 5 Mod. 405. Where a man is falsely indicted of any crime, which may prejudice his fame or reputation; and though it doth not import slander, if it endangers his liberty; or if the indictment be injurious to his property, &c. writ of conspiracy lieth. 3 Salk. 97. But though a conspiracy to charge falsely be indictable, yet the party ought to show himself to be innocent; and the writ of conspiracy lies not without an acquittal. Mod. Cas. 137. 185. 186. Not only writ of conspiracy, which is a civil action at the suit of the party; but also action on the case in the nature of a writ of conspiracy, doth lie for a false and malicious accusation of any crime, whether capital or not capital, even of high treason; and this though the bill of indictment is found ignarus, or it does not go so far as an indictment. And the same damages may be recovered in such action, as in a writ of conspiracy, where the party is lawfully acquitted by verdict. 1 Roll. Abr. 111, 112. 9 Rep. 56. See Gilb. Cas. 185. 10 Mod. 148. 214. Salk. 15. An action on the case is preferable, as being more in use, and the proceedings easier, and not attended with such niceties as the writ of conspiracy. See tit. Malicious Prosecution, Action.

If one falsely and maliciously procure another to be arrested, and brought before a justice of peace to be examined concerning a felony, &c. on purpose to vex and disgrace him, and put him to charges and trouble, although he is not indicted for the same, yet he may have an action on the case, in which he need not aver that he was lawfully acquitted, as he ought to do in a writ of conspiracy; but he must aver that the accusation was falsa et malitia, which words are necessary in the declaration; and it must appear that there was no ground for it. And as an action on the
CONSPIRACY.

Case may be prosecuted, against one person, where the writ of conspiracy or indictment doth not lie but against two, this action is most commonly brought. 1 Davy. Abr. 208. 2 Inst. 562. 638.

Conspirators may be indicted at the suit of the king; and at the common law, one may prefer an indictment against conspirators, who only conspire together, and nothing is executed; though the conspiracy ought to be declared by some act, or promise to stand by one another, &c. But a bare conspiracy will not maintain a writ of conspiracy, at the suit of the party, because he is not damaged by it; though it is a ground for an indictment. 9 Rep. 56. 2 Roll. Abr. 77. If the defendants can show any foundation or probable cause of suspicion, they shall be discharged; and if a man hath good cause of suspicion that a person is guilty of felony, and causes him to be indicted, in prosecution of justice, action of conspiracy will not lie; but it is otherwise if the prosecutor imposes the crime of felony, where no felony was committed. 4 Rep. 115. 4 Rep. 438.

An action lies not against a justice of peace, who sends out his warrant upon a false accusation; but it lies if he makes it out without any accusation. 1 Leov. 187. Conspiracies ought to be out of court; for if a prosecution be ordered in a course of justice, and witnesses appear against a party, &c. there shall be no punishment; and if persons acted only as jurors in a criminal matter, or judges in open court, there is no ground for prosecution. S. F. C. 173. 12 Rep. 24. If all the defendants but one are acquitted on indictment for conspiracy, that one must be acquitted also; because one person alone cannot be indicted for this crime; and husband and wife being but one person, may not be indicted alone for a conspiracy. 2 Roll. Abr. 708. The acquittal of one person is the acquittal of another upon indictment of conspiracy. 3 Mod. 229. (i.e. where only two are indicted, and it is not laid or proved that they conspired with others, unknown.) Though where one is found guilty, according to the opinion of the Lord Chief Justice Hale, if the other doth not come in upon process, or if he dies pending the suit, judgment shall be had against the other. 1 Vent. 234. Writ of conspiracy was brought against two persons, and one found not guilty, the other shall not have judgment; but in action on the case, it had been good. Cro. Eliz. 701. And action on the case in the nature of a conspiracy may be brought against one only. 1 Hawk. P. C. c 72. § 8. If the parties are found guilty of the conspiracy, upon an indictment of felony, at the king’s suit; the judgment is, that they shall lose their frank law, (which disables them to be put upon any jury, to be sworn as witnesses, or to appear in person in any of the king’s courts,) and that their lands, goods and chattels be seized as forfeited, and their bodies committed to prison, which is called a villainous judgment. 2 Inst. 143. 222. Crompt. Just. 156. 1 Hawk. P. C. c 72. § 9. There has been no instance of the villainous judgment since the reign of Edw. III. The usual mode of punishment at present is, by pillory, fine, imprisonment, and surety for good behaviour. Burr. 996. 1027. Stra. 196. The quarter sessions have jurisdiction over this offence. Finch, 30. 8 Mod. 321. And on motion in arrest of judgment, tho
The defendant must be personally present in court. *Stru. 1227.*

The matter of the conspiracy ought to touch a man's life, where the villainous judgment is imposed. 1 *Hawk. P. C.* c. 72. For conspiring to charge a person with poisoning another, &c. one of the parties was fined 1,000l. and some others had judgment of the pillory, and to be burnt in the cheek with the letters P. and C. to signify false conspirators. *Moor.* 816. As fine and imprisonment is the usual punishment at this day on indictment for conspiracy, so on writ of conspiracy, &c. the party shall be fined, and render damages. See further, 1 *Hawk. P. C.* c. 72. at large.

**Conspirators, conspiratores.**] By stat. 33 *Edw. I.* st. 2. are defined to be those that do bind themselves by oath, covenant, or other alliance, that every of them shall aid the other falsely and maliciously to indict persons; or falsely to move or maintain pleas, &c. And such as retain men in the country, with liveries, or fees, to maintain their malicious enterprises, which extends as well to the takers as the givers; and stewards and bailiffs of great lords, who, by their office or power, undertake to bear and maintain quarrels, pleas or debates, that concern other parties than such as relate to the estate of their lords or themselves. 2 Inst. 324. 562. Against conspirators, false informers and imbracers of inquest, the king hath provided a writ in the *Chancery*; and the justices of either bench, and justices of assise shall, on every plaint, award inquest thereupon. *Stat. 28 Edw. I.* st. 3. c. 10. From the description of conspirators, in several of our old law books, conspiracy is taken generally, and confounded with *maintenance* and *chamfrery*; see those titles. Besides these, there are *conspirators* in treason; by plotting against the government, &c. See tit. *Treason.*


**Constable.**

On this subject, recourse has been had to a very useful, accurate and ingenious performance on "*The Office of a Constable;*" [8vo Pamphlet, 1791.] which appears, though published without the author's name, to come from the pen of a gentleman intimately versed in *English* antiquities; and to whom the public are indebted for many more amusing, and other equally instructive performances. If it should be objected, that a little too much asperity is attached to some of his *remarks* on this subject, he may plead in his excuse, that as in the body natural, so also in the body politic, where lenitives have been applied in vain, it is sometimes painfully necessary to recur to corrosives. The effect of this kind of observations, is, it is hoped, preserved in the following abridgment; though the "hard words, jealousies and fears" are conveyed in gentler language.

The *origin* of the word *Constable,* erroneously sought for in the *Saxon* language, is undoubtedly to be found in the *comes stabuli* of the* Eastern* empire; who was at first, as his title imports, no more than superintendent of the imperial stables; or in *Vol. II.*
other words, the emperor's master of the horse; but having in process of time obtained the command of the army, his name (corrupted into constabulus and constabularius, see Spelman) began to signify a commander; and with this signification appears to have been introduced into England at the Norman Conquest; or perhaps sooner.

The Constable of England, or Lord High Constable, was anciently an officer of the highest dignity and importance in the realm. He was the leader of the king's armies; and had the cognisance of all contracts and other matters touching arms or war. 13 Rich. II. st. 1. c. 2. and see Madox's History of the Exchequer, p. 27. He sate as judge with the Earl Marshal, having precedence of him in the court of chivalry; and he is by some of our books also called Marshal. See cit. Marshal.

This office, which appears to have been granted by William the Conqueror to Walter Earl of Gloucester, or, according to others, to William Fitzosborne or Roger de Mortimer, became hereditary in two different families, as annexed to the earldom of Hereford; and in that right after a lapse of near two centuries, was revived by judgment of law, in the person of Edward Stafford, Duke of Buckingham; who being attained of high treason, &c. 13 Hen. VIII. this office became forfeited to the crown. Since this period there has been no Lord High Constable, except pro hac vice at a coronation or on other solemn occasions.

Constables of Castles, were keepers or governors of the castles of the king; or of great barons, and who were frequently hereditary or by feudal tenure; such were the Constable of the Tower, the Constable of London, or Baynard's Castle, the Constables of the castles of Dover, Windsor, Chester, Flint, &c. some of which offices, though not now hereditary, are remaining to this day. These are the constables intended in Magna Charta, cc. 17. 20. and who, in the stat. of Westm. 1. (3 Edw. I.) c. 15. are called Constables of Fees, and there considered as keepers of prisons; a constituent part indeed of all ancient castles. See 2 Inst. 31. The statute of 5 Hen. IV. c. 10. rectifying the oppressions of these constables, and enacting that none be imprisoned but in the common gaol, seems to have put an end to a race of tyrants, who by their misconduct had rendered themselves odious to the people.

A Constable of the Exchequer is mentioned in the Dialogus Scaccarii, l. 1. c. 5. in the stat. de distrinctione Scaccarii, 51 Hen. III. st. 5. in Fleta, l. 2. c. 31. and in Madox's History of that Court, p. 274.

The Constable of the Staple is also mentioned in some old statutes. See 27 Edw. III. c. 8. 15 Rich. II. c. 9. 23 Hen. VIII. c. 6.

The Constable of the Hundred, or the High, Chief, or Head Constable, (as he is otherwise called,) is next to be spoken of. By the stat. of Winchester, 13 Edw. I. (c. 6.) it is ordained that in every hundred or franchise there shall be chosen two constables to make the view of armour, and to present the defects of the armour, and of suits of town and of highways, &c.

Lambard, (on Constables, p. 3.) Coke, (4 Inst. 267.) and Hale, (2 P. C. 96.) all agree in declaring, that constables of the hundred were first introduced by this statute. (And see Cro. Eliz. 375.)
And though it has been asserted that they were officers and conservators of the peace at common law, and that the stat. of Winton only enlarged their authority, yet no evidence has hitherto been produced to that purpose. See Salk. 175. 381. 11 Mod. 215. 2 Ld. Raym. 1193. 1195. The first mention made of the High Constable in any statute subsequent to that of Winton, is in stat. 3 Edw. IV. c. 1.

Nothing, however, can be more certain than that the Constable of the hundred, or High Constable, whether he be allowed an officer at the Common Law, or not, was instituted long before the stat. of Winton. This curious fact is ascertained by a writ or mandate of 36 Hen. VIII. preserved in the Adversaria to Watts's edition of Matthew Paris, and from which cc. 4 & 6 of the stat. of Winton are evidently taken; though it has hitherto escaped the notice of every writer or speaker upon the subject. By this writ it is provided, "that in every hundred there should be constituted a Chief Constable, at whose mandate all those of his hundred sworn to arms, should assemble and be observant to him, for the doing of those things which belong to the conservation of the king's peace." No mention of this officer, it is believed, can be any where found prior to the date of this instrument; which perhaps may no more determine the question as to his original creation than the stat. of Winton. Be this as it will, the discovery ought at least to teach those who are desirous of explaining the antiquities of our law, to look into matters of record, and to trust very little to opinion.

The Constable of the Vill (or Petty Constable, as he is frequently called, to distinguish him from the officer last mentioned) is he who is generally understood by the term constable, when mentioned without any peculiar addition.

This CONSTABLE has been repeatedly acknowledged by the law, to be "one of the most ancient officers in the realm for the conservation of the peace." Poeph. 13. 4 Inst. 255. It must be confessed, however, that no mention of him by this identical name, is anywhere found to occur anterior to the writ or mandate of king Henry III. already mentioned; whereby it is also provided that in every village or township, there should be constituted a constable or two, according to the number of the inhabitants. But it is pretty certain that Lord Coke's idea is right, and that this officer is actually owing to the institution of the frank-pledge, usually attributed to King Alfred, and was in fact originally the senior or chief pledge of the tithing or decima. See the stats. 2 Edw. III. c. 3. 20 Hen. VI. c. 14. 28 Hen. VIII. c. 19.

Thus it appears that the ordinance of Hen. III. far from instituting the office, merely enlarged the number of officers, placing them in towns and villages, instead of franchises; since it might frequently happen that a manor of great extent, had only a single constable for several townships; a case exactly similar, indeed, sometimes occurring at this day, where a township, comprehending several hamlets, equally populous, it may be, with itself, has only one constable for the whole. [For a constablewick cannot be created at this day, unless by act of parliament.

1 Mod. 13.]

We find the Constable beginning to be familiarly known by that
name, in the time of King Edward I. but not previously. In some articles of inquiry at the Eyre, perhaps, or Trailbaston, certainly in the time of Edward I. are items in which this officer is mentioned. Coll. Madox, Mus. Brit. iii. 285. He seems also to be meant in the two chapters of the Eyre, as given in Fleta, lib. 1. c. 20. §§ 126. 133.

He is named in the stat. of 2 Edw. III. c. 3. for the first time; as also in those of 4 Edw. III. c. 10. 5 Edw. III. c. 14. 25 Edw. III. st. 1. c. 6. and 36 Edw. III. st. 1. c. 2. and in several statutes now repealed or obsolete, in the reigns of Rich. II. Hen. IV. and Hen. VI. 1 Hen. VII. c. 7. &c.

Notwithstanding any thing that has been said or omitted in the course of this inquiry, it seems highly probable, that at the common law, and before the mandate of Henry III. the constable of the hundred, and the constable of the manor, were officers of the same nature and authority, originating at the same time, and differing only as to the extent of their several districts; in short, that they bore to each other the same analogy as subsisted between the bailiff of the hundred and the bailiff of the manor. It follows that the constable of the hundred neither possessed nor could have exercised any more authority within the precinct of the latter, than the constable of one manor possessed or could have exercised in another; the manor being to all intents and purposes exempt from, and excluded out of the hundred.

Lord Bacon observes, that though the High Constable's authority hath the more ample circuit, "yet I do not find," says he, "that the petty constable is subordinate to the high constable, or to be ordered or commanded by him." Those cases wherein it has been adjudged, that the being subject to a particular leet, shall not excuse a man from serving the office of constable of the hundred, seem therefore to have been decided upon a wrong principle. See 3 Keb. 197. 230, 231. Freem. 348. 11 Mod. 215.

All this is spoken with an exception, not of acts of parliament only, but also of the powers and pretensions exercised or asserted by the quarter sessions, which latter has now usurped so much and so long, with respect to the election and control, both of the constable of the hundred and the constable of the vill, that it is become difficult, if not impossible, to determine, with any degree of precision, the actual rights of either.

In considering the powers and duties of this important officer, we may divide our researches, according to the treatise already quoted, under the following heads.

I. 1. His Quality; and, 2. Qualifications.
II. 1. His Election; and, 2. Who are exempted.
III. His Power and Authority.
IV. His Duty. [These two are in many instances coextensive, and are therefore carefully to be compared together.]
V. His Protection, Indemnity and Allowances; and, lastly,
VI. His Responsibility and Punishment.

But first it may be necessary to state a few particulars as to the High Constable, or constable of the hundred or similar division; who is as much the officer of the justices of the peace as the constable of the vill. Fort, 128. He is elected at the leet or
constable I. 1. 37

I. 1. The constable was ordained to repress felons and to keep the peace, of which he is conservator by the common law. 10 Edw. IV. 18. Cromp. Just. 201. 4 Inst. 265.

His office is, therefore, First, original or primitive as conservator of the peace; and secondly, ministerial and relative to justices of the peace, coroners, sheriffs, &c. whose precepts he is to execute. 1 Hale's P. C. 83.

He is however an officer only for his own precinct, and cannot execute a warrant directed to the constable of the vill, or to all constables, generally, of that particular jurisdiction: for he is a constable nowhere else; nor is he compellable to do it, though the warrant be directed to him by name; but he may, if he will, and so indeed may any other person. 1 Hale's P. C. 459. Comb. 446. Carth. 508. 1 Salk. 176. 3 Salk. 99. 2 Ld. Raym. 1300. 12 Mod. 316. Fost. 312. n. 2 Black. Rep. 1135. 1 H. Black. 13. See stat. 24 Geo. II. c. 55. under which a constable may execute a warrant in any other county, &c. if endorsed by a justice of such other county; &c. and carry the offender before a justice of such other county, &c. and if the offender shall give bail, the constable is to deliver the recognizance, examination or confession of the offender, and all other proceedings relating thereto, to the clerk of assises, or clerk of the peace of the county, &c.
where the offence was committed, under the penalty of 10L. But if the offence shall not be bailable, or the offender shall not give bail, the constable shall carry the offender before a justice of the county where the offence was committed.

He is an officer of the court of quarter sessions, over whom they have power. Comb. 264.

2. The common law requires, that every constable should be idoneus homini, i.e. apt and fit to execute the said office; and he is said in law, to be idoneus, who has these three things, honesty, knowledge and ability; honesty to execute his office truly, without malice, affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as body, that he may intend and execute his office when need is, diligently; and not for impotence or poverty neglect it. 8 R. 41. b. And if one be elected constable who is not idoneus, he by the law may be discharged of his office, and another who is idoneus, appointed in his place.

He must be an inhabitant of the place for which he is chosen. 12 Mod. 236.

He ought not to be the keeper of a public house. 6 Mod. 42. And this is made an express disqualification in Westminster, by stat. 29 Geo. II. c. 25.

II. 1. The Constable is chosen by the Common Law, at the leet; or where there is no leet, at the tourn; sometimes by the suitors, and sometimes by the Steward; and now in many towns and parishes by the parishioners; all according to ancient and particular usage. If he be present when chosen, he is to take the oath in court; if absent, he may be sworn before a (single) justice of the peace. But in the latter case he ought to have special notice of his election, and a time and place should be appointed for his taking the oath. [well and truly to serve the office.]

4 Inst. 263. 2 Salk. 302. Comb. 416. 2 Jones, 212. Salt. 175. Ld. Raym. 70, 71. 2 Stra. 1119, 1149. 5 Mod. 130, 131. 2 Hawk. P. C. c. 10. § 46.

Constables of London, (which city is divided into twenty-six wards, and every ward into precincts, in each whereof is a constable,) are nominated by the inhabitants of each precinct on St. Thomas's day, and confirmed, or otherwise, at the court of wardmote; and after they are confirmed, they are sworn into their offices at a court of Aldermen, on the next Monday after Twelfth day; their oath is long and particular, and goes to duties now seldom performed, but regulated by articles of the wardmote inquest, which directs the several matters to be observed by the constable; who is in the nature of a general superintendant of the morals of the inhabitants; and he ought to notice all newcomers, who, if of bad character, may be required to give security for their good behaviour, or be imprisoned; and see Carth. 139. 158. Every constable may execute warrants through the whole city.

In case a constable die, or quit the precinct, two justices may make and swear a new one, till the lord of the manor shall hold a court leet, or till the next quarter sessions, who may either approve of the constable so made, or appoint another. Also, if
he continue above a year in office, the quarter sessions may
discharge him, and put another in his place until the lord shall
hold a court. But justices of the peace, either in or out of the
quarter sessions, cannot in any other case discharge a constable

A mandamus may be granted to the steward of a court leet to
swear a constable. Comb. 283.

A person may be indicted for not taking upon him the office
of constable. Str. 920. See 3 Mod. 96. for the form of the in-
dictment.

In the leet or tourn where one is elected constable, and ref-
fuses to be sworn, he may, if present, be fined for the contempt;
if absent, amerced or subjected to a penalty for non-acceptance of
the office according to the order. 5 Mod. 130.

Though the justices of the peace have not originally the mak-
ing of the constable, it is matter of the peace within their ge-
neral jurisdiction, and they may examine it in their sessions.
2 Jon. 212. see 1 Mod. 13. And on just cause remove them.
4 Inst. 267. And by warrant compel them to appear and be
sworn. 5 Mod. 128. All. 78.

An information in the nature of a quo warranto is grantable
against one to show by what authority he exercises the office of
constable. 2 Stra. 1513.

2. Exemptions from serving the office.—1. Aged Persons, in-
capacitated by weakness, should never be elected; and in West-
minster those of sixty-three years old are expressly exempted by
1 Jon. 462. Cro. Car. 593.—3. Apothecaries practising in, or with-
in seven miles of London, free of the apothecaries’ company, or
in the country having served seven years. Stat. 6 & 7 W. III. c.
6. Practising Barristers. 2 H. P. C. 103. 1 Mod. 22.—7. Dis-
senters being teachers and preachers, but not others, by stat. 1
W. & M. c. 18. See post.—8. Foreigners naturalized, 5 Burr.
2790, who may rather be said to be incapacitated.—9. Militia, ser-
jeants or private men serving in. 26 Geo. III. c. 107. § 130.—
10. Parliament, servants to members of 1 Mod. 13. but this seems
doubtful.—11. Physicians, President and Fellows of the college in
London, by stat. 32. Hen. VIII. c. 40. but no other physicians, nor
they elsewhere. See 1 Mod. 22. and contra, 1 Sid. 431. 2 Keb. 578.
2 H. P. C. 190.—12. Prosecutors of Felons; the original proprie-
tor, or first assignee of a certificate, (commonly called a Tyburn-
ticket,) if a parish or ward office; within the parish or ward in
which the felony happened; to be only once used, by stat. 10 &
11 W. III. c. 25. but this is no exemption from serving the of-
face for a manor; nor, as it should seem, for a vill or township;
nor where the office is to be executed out of the privileged dis-
trict. 2 Burr. 1182.—13. Surgeons, free of the surgeons’ com-
pany in London, examined, approved and exercising the science;
by stats. 5 Hen. VIII. c. 6. 52 Hen. VIII. c. 42. 18 Geo. II. c. 15.
and by custom all surgeons. Comb. Rep. 312. and it seems by the
same statutes, barbers free of that company in London.—A col-
lege barber at Oxford. Doug. 531.—But not Masters of Arts. 5 Vin. 429.—Nor justices of peace in another county. Stra. 698. But see ante, Aldermen.—Nor Officers of the Guards. 1 Lev. 233. 1 Sid. 272. 355. 2 H. P. C. 100.—Nor Officers or Watchmen at the Custom-House. 1 Sid. 272.—Nor tenants in ancient demesne. 1 Vent. 344.—Nor a younger brother of the Trinity-House. 1 Term. Rep. 679.

If, however, a gentleman of quality, or a physician, officer, &c. be chosen constable, where there are sufficient persons beside, and no special custom concerning it; it is said such persons may be relieved in B. R. 2 Hawk. P. C. 100. c. 10. § 41.

A constable may make a Deputy; but the constable is answerable, and his deputy ought to be sworn, though it is not in all cases necessary. Sid. 355. and see 1 Burr. 129. 3 Burr. 1262. Stra. 912. Crompt. J. P. 201. Bacon's L. T. 187. Moore. 845. 3 Bulst. 78. 1 Roll. Rep. 274. 1 Roll. Abr. 591. 1 Term. Rep. 682. But if the deputy is duly allowed and sworn, the principal is not answerable. Wood, b. 1. c. 7. Dissenter chosen to the office of constables, &c. scrupling to take the oaths, may execute the office by deputy, who shall comply with the law in this behalf, stat. 1 W. & M. c. 18. Constables may appoint a deputy, or person to execute a warrant, when by reason of sickness, &c. they cannot do it themselves. A woman made constable, by virtue of a custom, that the inhabitants of a town shall serve by turns, on account of their estates, or houses, may procure another to serve for her; and the custom is good. Cro. Car. 389. 2 Term. Rep. 395. See 2 Hawk. P. C. c. 10. § 37.

III. The constable hath as good authority in his place, as the Chief Justice of England hath in his. 1 Roll. Rep. 238.

It may save much trouble to the inquirer to class the objects of his power and authority, as well as those of his duty in alphabetical order; a method in some measure formerly pursued in Law Dictionaries, but not with sufficient care and accuracy.

1. Affray.—If he see one making affray, or assaulting another, or breaking the peace, or hear or know one to menace, or threaten to kill, wound, maim, or beat another, the constable may take and set him in the stocks, or commit him to prison, (as he may persons about to make an affray, and commanded to disperse,) till the offender find surety to keep the peace, or for his good behaviour. Crompt. J. P. 130. 131. 155. 201. Dalt. 33. Lamb. 135. 141. But he may not set one who hath broken the peace in the stocks, if he can have him to the next gaol for the night. 23 Edw. IV. 35. Neither may he commit a party after an affray to compel him to find surety of the peace, as he cannot take any man's oath that he is in fear of his life. But he may upon complaint arrest the party, and bring him before a justice of peace (which indeed is always the safest way) to find surety. Cro. Eliz. 375. Bro. Tit. Faux. Imp. 6. 2 Hale's P. C. 88. 90. If men be making affray in a house, and the doors are shut, or persons making affray, run into a house, the constable may enter to see the peace kept. And if manslaughter, or bloodshed is likely to ensue, and entrance upon demand is refused, he may break open the doors to keep the
peace and prevent the danger. *Cromp. J. P.* 130. b. 2 Hale's *P. C.* 95. 135. See *post, 2.* Aid of the subject; requiring; see next division, Arrest. *Aelouses.* See 3. and *post, IV.*

2. Arrest of felon, &c. Where a felony is committed, though out of his precinct, the constable may, *ex officio,* without a warrant, arrest the felon, (if found within his precinct;) and imprison him till he can be conveyed to a justice of peace, or to the common gaol. 2 Hale's *P. C.* 90. 95. 120. If the felon in any case resists or flies, whether after arrest or before, and cannot be taken, the constable may kill him, and such killing is justifiable. 1 Hale's *P. C.* 481. 489. 2 Hale's *P. C.* 90. Where a felony has been actually committed, the constable, (or any person,) upon probable grounds of suspicion, may lawfully be seized; (and it is the constable's duty to) apprehend the suspected person, and carry him before a magistrate. *Cromp. J. P.* 133. b. 201. b. 2 Hale's *P. C.* 9. 11 Mod. 248. *Doug. 345.* Ledwich v. *Catchpole,* *Pasch.* 23 Geo. III. B. R. Hawk. *P. C.* c. 11. § 15. *n.* Stat. 22 Geo. III. c. 58. empowers constables and watchmen to arrest persons suspected of conveying away stolen goods by night. Probable grounds are very much, *e.g.* common fame; hue and cry levied; goods found on a person, &c. *Cromp. J. P.* 87. 154. *Wv.* 121. 12 Reph. 92. 2 Hale's *P. C.* 81. 3 Bulst. 287. In case of a felony committed, or in danger to be committed, (as if one beat or wound another dangerously,) the constable, either upon complaint, or hue and cry, may break open the doors to take the offender, if *upon demand and notice,* he will not yield himself, or *entrance be refused,* or if the constable act under the justice's warrant for treason or felony. And he may imprison the offender till the injured party is out of danger. 2 Hale's *P. C.* 82. 90. 94. *Cromp. J. P.* 141. *Brewsl. 211.* 1 Bulst. 146. The constable may officially imprison for a time to prevent felony; as if he see two with weapons drawn ready to fight; or if a man in a fury be purposed to kill, mains, or beat another. He may also arrest and imprison one for a felonious intent, as if a man bring a helpless infant into a field or elsewhere, and leave it to perish for want; and the constable see this himself. *Moore,* 284. *Poth. 13.* Though no felony has actually been committed, constable and his assistants are justified in arresting on a given charge of felony. *Doug.* 359, 360. and in this case constable may discharge the person suspected. *Cro. Ediz. 302. 752.* *Dalt.* 272. He may arrest persons coming before the king's justices with force and arms, or who bring force in affray of the peace, or go or ride armed in a warlike and unnecessary manner. Stat. 2 *Edw. III.* c. 3. And see the stat. 5 *Edw. III.* c. 14. as to his arresting of Roberdesmen, Wastours, and Draw-latches. He may take aid of his neighbours to arrest another, or in execution of any part of his duty at common law, and under several statutes, and they are compelled to assist him; upon affray or such like he may raise the people of the realm to cause the peace to be observed. *Cromp. J. P.* 141. 201. b. *Comb 309.* He may carry one that he has arrested for felony to the common gaol, and the gaoler is bound to receive him. 1 Hale's *P. C.* 595.
As to what constable shall do with a prisoner when taken, if for an affray, see Affray above. In other offences he may convey his prisoners to the sheriff, or his gaoler of the county; or to the gaoler of the franchise in which they are taken, who are bound to receive them. Stat. 4 Edw. III. c. 10. See stats. 5 Hen. IV. c. 16. 23 Hen. VIII. c. 2. But the best way in all cases is, to take him to a justice of peace, to bail or discharge him; till when it is the duty of the constable to keep and imprison an offender. 2 H. P. C. 93. 120. If a felon fly, a constable ought to seize his goods, and keep them for the king’s use, and send hue and cry after him. Stat. 27 Eliz. c. 13. Dalt. 289. 340. Comp. J. P. 201. b. and on notice of robbery, is to make hue and cry.

Stat. 8 Geo. II. c. 16.

Armed going. See ante, 2.
Assault. See ante, 1, 2.

3. Breaking open Doors. See this division passim. Other occasions not yet mentioned which justify so doing, are—A capias utiagatum, or capias pro fine. On forcible entry and detainer found by inquisition, or view of justices. On escape from a lawful arrest. On warrant to search for stolen goods if found. 2 Hale’s P. C. 151. 117. It is best always, and generally requisite, first to signify the cause of the constable’s coming, and to demand that the door should be opened. 2 Hawk. P. C. c. 14. Fos. 156. 320.

4. Deserters: Constable may apprehend persons suspected to be such, and take them before a justice; under the annual mutiny acts; and he is allowed 20s. for each.

5. Disorderly Houses and Persons. If there be disorderly drinking or noise at an unseasonable time of night, especially in inns, taverns, or ale-houses, the constable or his watch demanding entrance, and being refused, may break open the doors to see and suppress the disorder; as is constantly done in London and Middlesex. 2 Hale’s P. C. 95. He or his watchmen, (or indeed any men,) may apprehend indecent night-walkers, and commit them till morning; 2 Hale’s P. C. 98. And he may arrest and commit lewd persons frequenting bawdy-houses, to make them find security for their good behaviour. Comp. J. P. 153. b. See tit. Bawdy-Houses, and Stat. 5 Edw. III. c. 14.

Felons. Arrest, imprisonment, and flight of; see ante, 2.
Hue and Cry. See ante, 2. ad finem; and IV.

6. Husbandry. He may grant testimonials under seal to servants in licensing them to change their masters. Stat. 5 Eliz. c. 4. And by the same statute, he is to cause all persons to be for labour, to serve by the day, in mowing, reaping, &c. or on refusal, set them in the stocks. By stats. 43 Eliz. c. 7. and 15 Car. II. c. 2. persons unlawfully cutting corn growing, robbing orchards or gardens, breaking fences, pulling up fruit trees, spoiling woods, &c. (not being felony,) not satisfying the damages, shall be committed to the constable to be whipped.

Imprisonment. See this division passim.


8. Insult, to himself; He may imprison any one insulting, as-

9. Lunatics or Madmen. The constable may take and imprison; and he shall not be charged if they die there. Ow. 98. and see stat. 17 Geo. II. c. 5. § 20. and this Dictionary, tit. Lunatics.


12. Warrants. Where constable has a warrant, he is tied up thereby to act only as it directs. 11 Mod. 248. If he arrests on a general warrant, (before some justice,) he may carry his prisoner to what justice he will. 5 Rep. 59. See stat. 24 Geo. II. c. 55. as to endorsed warrants, by which offenders may be taken in any county; ante, I. 1.

Though the constable is not named in 3 & 4 W. & M. c. 10. nor appointed to be the officer to execute the warrants, yet the justices may command him to execute them. 1 Salk. 381. And a constable need not return his warrant, but should keep it for his own justification. See stat. 24 Geo. I. c. 44. 1 Salk. 381. 2 Edw. Reg. 1196.

The Constable is the proper officer to a justice of peace, and bound to execute his lawful warrants; and therefore where a statute authorizes a justice to convict a person of any crime, and to levy the penalty, &c. without saying to whom such warrant shall be directed, the constable is the officer to execute the warrant, and must obey it. 5 Mod. 130. 1 Salk. 381. Constable must at his peril take notice that his warrant is by one in the commission of the peace. 12 Mod. 347. and that the matter is within the justice’s jurisdiction. 2 Hawk. P. C. c. 15. § 11. And if guilty of misdemeanor in executing a lawful warrant, he becomes a trespasser. 12 Mod. 344. But a warrant properly penned, (even though the magistrate who issues it should execute his jurisdiction,) will by stat. 24 Geo. II. c. 44. at all events indemnify the officer who executes it ministerially. 4 Comm. 288.

13. Watch. Constable hath power ex officio to keep a watch for the purpose to raise or pursue hue and cry upon robberies committed, by the statute of Winton, c. 1. to search for lodgers in suburbs of cities that are suspicious persons, which is to be done every week, or at least once in fifteen days, by the same statute c. 4. for such as ride or go armed, by the statute of 2 Edw. III. c. 3. for night walkers and persons suspicious, either by night or day, by the statute of 5 Edw. III. c. 4. And it is in his power to hold such watches as often as he pleases, and the watchmen are his ministers and assistants, and are under the same protection with him, and may act as he doth, and regularly he ought to be in company with them in their walk and watch. 2 Hale’s P. C. 97.
A watchman hath a double protection of the law, viz. 1. As an assistant to the constable when he is present or in the watch. 2. Purly as a watchman set by order of the law; and the law takes notice of his authority; and the killing of a watchman in the execution of his office is murder. 2 Hale's P. C. ubi sup. If an inhabitant refuse to watch in his turn, constable may set him in the stocks. 3 Lev. 208. See stat. 14 Geo. III. c. 90. for regulating the nightly watch, and duty of constables in Westminster; 10 Geo. II. c. 22. for London, and other acts only of very local importance, and which those who are to act under should diligently consult. See this Dictionary, tit. Watchmen.

IV. The constable's duty and office continues till his successor be sworn. 12 Mod. 256. Though he may for just cause be removed by the authority which elected him. Bulst. 174. 2 Hawk. P. C. c. 10. § 37, 38.

Affray. See III. 1.

Ale-houses. Constables are to enforce the penalties against the keepers of. See ante, III. and this Dict. tit. Alehouses. And stats. 1 Jac. I. c. 9. and 3 Car. I. c. 4. And by stat. 26. Geo. II. c. 31. constable is to give notice of the days appointed for licensing.

Armed going. See ante, III. 2. and this Dict. tit. Arms.

Bawdy-houses. See III.

Bridges. By stat. 22 Hen. VIII. c. 5. constable and two most able inhabitants in the parish are to make an assessment for the repairs of bridges, to be allowed by Justices. See I Hawk. P. C. c. 77. § 7.

Burglary. If constable have notice that one is committed, it is his duty to pursue the felon immediately though in the night. Cro. Eliz. 16.

Customs. By several statutes, constables are to be assisting to all persons appointed for the collecting and management of the customs; and to persons having a warrant from the lord treasurer, &c. to make search for goods that have not paid the customs. See int. al. stats. 12 Car. II. c. 19, 23. and 13 & 14 Car. II. c. 11.

Distress, for rent. Constables are to assist in. See this Dictionary, tit. Distress. He is to make distresses under justices' warrants. Stat. 27 Geo. II. c. 20. under which constable may take his own reasonable charges.

Drunkenness. To assist the justices in punishing; under stat. 4 Jac. I. c. 5.

Escape. See foot, VI.

Felons. See ante, III. 2. Felons' goods, constable must keep goods found on the felon till trial, and then return them according to the directions of the court.

Fires, constables to assist at. See this Dictionary, tit. Fires. Fishing unlawful, constable is to assist in enforcing acts against.

Forcible entry, constable is to give assistance to justices of the peace, in removing; or shall be committed and fined. 5 Rep. 2. Game acts, to enforce. See this Dictionary, tit. Game.
Gunpowder. Under stat. 12 Geo. III. c. 61, constable may by warrant search for gunpowder. See tit. Gunpowder.

Hawkers and Pedlars. By stat. 8 & 9 W. III. c. 25, constable is to assist in putting the laws in execution against hawkers and pedlars, that travel without licenses, and by stat. 11 Geo. II. c. 26, against hawkers of spirits.

Highways, constable is to be aiding and assisting in putting the acts in execution relating to; and to return lists of persons qualified for the office of surveyor, &c. but he is not bound to present them if out of repair. 1 Vent. 336. See this Dictionary, tit. Highway.

Horses. Constable is to be assisting in driving off commons, forests, &c. horses and cattle, on pain of 40s. Stat 32 Hen. VIII. c. 13, but see stats. 8 Eliz. c. 8, and 21 Jac. I. c. 28. And in levying duties on horses, under stat. 25 Geo. III. c. 49.

Hue and Cry. By stats. 13 Edw. I. st. 2. c. 6. 27 Eliz. c. 13. 8 Geo. II. c. 16. to make hue and cry after offenders where a felony or robbery is committed; to call upon the parishioners to assist in the pursuit; and if the criminal be not found in the precinct of the first constable, he is to give notice to the next, and thus continue the pursuit from town to town, and from county to county. And where offenders are not taken, constables shall levy the tax to satisfy the execution, on recovery against a hundred, and pay the same to the sheriffs, &c. and neglecting to make hue and cry, shall forfeit 5s. See this Dictionary, tit. Hue and Cry.

Husbandry, see ante, III.

Inn-keepers, see ante, III.

Juries. Under stats. 4 & 5 W. & M. c. 24. 7 & 8 W. III. c. 32. 8 & 9 W. III. c. 10. 3 & 4 Ann. c. 18. 3 Geo. II. c. 25. constables are to give in to the justices at Michaelmas sessions yearly, a list of persons qualified to serve on juries. These lists are to be made from the rates of each parish; and constables wilfully omitting persons qualified, or inserting wrong persons, shall forfeit 20s. See this Dictionary, tit. Jury.

Labourers, see III.

Land-tax Acts, to assist operations of.

Lead, see Thieves.

Lottery Offices illegal, constable is to endeavour to suppress. Stat. 27 Geo. III. c. 1.

Malt, see this Dictionary, tit. Malt.

Measures. By stat. 22 Car. II. c. 3. constable is to search and examine if any persons use other measures than such as are Winchester measure, and agreeable to the standard; and to seize and break the same; and see stat. 31 Geo. II. c. 17. for Westminster.

Militia, constable's duty as to; see the statutes relating to The Militia.

Night Walkers, see III.

Physicians, college of. By stats. 14 & 15 Hen. VIII. c. 5, and 32 Hen. VIII. c. 40. in the city of London, constable is to be assisting to them in putting their laws in execution.

Plague, see ante, III.

Poor's Rate. Under the stat. 43 Eliz. c. 2, § 12. the weekly
rate for the relief of the poor is to be assessed, in case the parishioners disagree, by the churchwardens and constables, who are in either case to levy the rate; and by § 35. the churchwardens and constables of every parish are to collect the sums rated, and pay the same over to the High Constable. And see stat. 12 Geo. II. c. 29. and this Dictionary, tit. Poor.

Postage. Under stat. 9 Ann. c. 10. to levy money due for postage of letters under st. § 30.

Presentments. Constable is at the quarter sessions to make presentment of all things against the peace, and belonging to his office. Dall. J. P. 474. Fitz. J. P. 6. And they are usually summoned by the sheriff to attend the quarter sessions and assises to make presentments; which seems justified by no express law, though perhaps by usage.

Riot. Constables are to suppress, and they may ex officio commit offenders, &c. See stat. 1 Geo. I. c. 5. and this Dictionary, tit. Riot.

Robbery. See Hue and Cry.

Scavenger’s rates in London shall be made by constables and churchwardens under stat. 2 W. & M. st. 2. c. 8.

Scolds. Under a presentment in the leet and the steward’s warrant, constable and his assistant may put them in the cucking stool. Moore, 847.

Servants, see III. Constables to assist in levying duty on, under stat. 25 Geo. III. c. 43.

Soldiers. Constables are to quarter soldiers in inns, ale-houses, victualling-houses, &c. Not to receive any reward to excuse quartering them. To give in lists to the justices, of the houses and persons obliged to quarter soldiers, and to provide carriages for troops on their march. See the annual statutes concerning Soldiers, and Warrs, III.

Statutes, or Acts of Parliament; constables are called upon to assist in the execution of these, on almost innumerable occasions.

Sunday. Constable is to enforce acts, 1 Car. I. c. 1. and 29 Car. II. c. 7. against the profanation of. See this Dictionary, tit. Holidays.

Swearing. By stat. 19 Geo. II. c. 21. constable is to levy the penalty for profane swearing; which is 1s. for a servant, labourer, &c. 2s. for others under the degree of a gentleman; and 5s. for a gentleman; and as the crime is repeated, the penalty is to be doubled.

Thieves petty, of lead, iron, copper, &c. constable, watchmen and beadles are to apprehend. Stat. 29 Geo. II. c. 30.

Turnpikes. Constables to assist in enforcing the act, 13 Geo. III. c. 84.

Vagrants, constables to assist in enforcing the laws against. See this Dictionary, tit. Vagrants.

Warrants of Justices. It is part, and a great part of constable’s duty to execute these, which are issued under an amazing variety of acts of parliament; in all which cases constable’s office is chiefly ministerial. See ante, III.

Watch. See ante, III.

Weavers, Kidderminster, constable is to assist, by stats. 22 & 23 Car. II. c. 8.
Weights. Under stats. 8 Hen. VIII. c. 5. and 16 Car. I. c. 19. constables, being head officers of places, shall have in their custody sealed weights, &c. under penalties: persons buying or selling by false weights or measures, forfeit 5s. leviable by constables.

Wreck. Under stat. 12 Ann. st. 2. c. 18. constables may call together assistance to save ships from wreck; and see this Dictionary, tit. Wreck.

V. If a constable doth not his duty, he may be indicted and fined by the justices of the peace; on the other hand, he is protected by law, in the execution of his duty.

It has been already mentioned that he shall have aid of the county to pacify affrays.

By stats. 7 Jac. I. cap. 5. if any action is brought against a constable, for any thing done by virtue of his office, he, and also all others who in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers he shall have double costs. But this must be certified on the record by the judge. 2 Vent. 45. Doug. 294. And see stat. 19 Geo. II. c. 21. against prefance swearing, which gives treble costs.

By stat. 24 Geo. II. c. 44. no action shall be brought against any constable, or other officer, or any person acting by his order, and in his aid, for any thing done in obedience to any warrant of a justice of peace, until demand of the perusal and copy of such warrant, and the same hath been refused or neglected by the space of six days; and in case after such demand and compliance therewith, any action shall be brought against such constable, &c. without making the justice a defendant; then on producing and proving such warrant, the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction in such justice; and if such action be brought jointly against such justice, and also against such constable, &c. then on proof of such warrant, the jury shall find for such constable, &c. and if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed so as to include costs plaintiff shall be liable to pay to such defendant, &c. No action shall be brought against any constable, &c. unless commenced within six calendar months after the act committed. This statute extends only to actions of tort. See Butler's N. P. 24.

The charges of sending malefactors to gaol, were at common law to be borne by the vill in which they were apprehended. 1 Hale's P. C. 96. But now under stats. 3 Jac. I. c. 10. and 27 Geo. II. c. 3. where a malefactor has not sufficient property in the county where he is taken, on application by the constable or officer conveying him, a justice of peace may on oath examine into and ascertain the reasonable expenses to be allowed; and by warrant without fee, order the treasurer of the county to pay the same; except in Middlesex, where such expenses are to be paid by the overseers of the place where the offender was taken.

By 41 Geo. III. (U. K.) c. 73. when special constables are appointed (in England) to execute warrants in cases of felony, two justices may order proper allowances for their expenses, &c.
whether allowed, or disallowed, by the sessions. In like manner, allowances may be made to high-constables for extraordinary expenses in the execution of their duty, in cases of Riot, Felony, &c.

If in the execution of his office, and acting within his own district, after competent notice that he is constable, he, or any that come to his assistance, be killed, it is murder; although the party killing do not know his person. 1 Hale's P. C. 9. 459, 460, 461. 2 Ld. Raym. 1300. But see Leach's cases in Crown Law, 211.

If two men are combating, and the constable come to part them and is hurt, he shall have action of trespass; and if he hurt them, they shall not have action against him. And so of those who aid him; every man who is assisting to the constable in the execution of his office having the same protection that the law gives to the constable. Comyns. J. P. 130. 2 Hale's P. C. 97.

If he be removed without just cause, the court of King's Bench will by rule of court order him to be restored to his place: Bulst. 174.

A justice of peace's warrant is a sufficient justification of a constable in a matter within the jurisdiction of such justice. Str. 711. See ante, III. 12.

By stat. 18 Geo. III. c. 19. every constable is every three months, and within fourteen days after he goes out of office, to deliver to the overseers of the poor an account entered in a book, kept for the purpose, and signed by him, of all sums by him expended and received on account of the parish, &c. which overseers are within fourteen days to lay the same before the inhabitants, and if approved, are to pay the money due out of the poor rates; but, if disallowed, are to deliver the book back to the constable, who may produce it before a justice of peace, giving reasonable notice to the overseers; which justice is to examine the account, determine objections, settle the sum due, and enter it in, and sign the account; and the overseers are to pay such sum out of the poor's rate; but may appeal (giving notice) to the quarter sessions.

VI. A constable arresting one possessed of money who dies, is chargeable with the money. And so where he takes from a felon, money of which he had robbed another, even though he should be afterwards robbed of it himself. Ow. 121.

Neglecting a duty incumbent on him, either by common law, or by statute, he is for his default indictable. 1 Salk. 381. 2 Roll. Refs. 78.

If he will not return his warrant, or certify what he has done under it, he may be fined. 6 Mod. 83. 1 Salk. 381. but see 5 Mod. 96. Gib. 192.

If he wilfully lets a felon escape out of the stocks, and go at large, it is felony. 1 Hale's P. C. 396. And it seems generally agreed, that all voluntary escapes in the officer, amount to the same crime as the offender was guilty of, whether treason or felony. 2 Hawk. P. C. c. 19. § 22. et seq.

It is a misdemeanor in him to discharge an offender brought to the watch-house, by a watchman in the night. 2 Burr. 867. But see III. 2.
He is liable to various pecuniary and sometimes personal punishments, on neglecting the duty imposed on him by several statutes.

The Constable’s Oath.

YOU shall swear, that you will well and truly serve our Sovereign Lord the King in the office of Constable for the township of C. within this manor, [hundred or county] for the year now next ensuing, or until you shall be thereof discharged by due course of law. You shall see the King’s peace kept, and keep all such watch and ward as are usually accustomed and ought to be kept; and you shall well and truly do and execute all other things belonging to the said office according to the best of your knowledge.

So help you God.

Form of an Obligation to be taken by a Constable for keeping the Peace.

KNOW ALL MEN by these presents, That I, A. B. of C. in the county of D. labourer, am held and firmly bound unto E. F. yeoman, constable of the township [manor, &c.] of C. aforesaid, in the sum of forty pounds, to be paid to the said E. F. or his certain attorney, executors, administrators or assigns; for which payment to be well and faithfully made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated this ___ of ____, in the thirtieth year of the reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, and in the year of our Lord 1790.

The condition of the above written obligation is such, That if the above bounden A. B. shall [personally appear at the next general quarter sessions of the peace, to be holden in and for the county of D. to do and receive what shall be there and then enjoined him by the court; and in the mean time shall] keep the peace, [and be of the good behaviour] towards the King and all his liege people, and especially towards G. R. of C. in the said county, yeoman, then the said obligation to be void; or else to remain in full force and virtue.

Signed, sealed and delivered.

Oath of the Appraisers of Goods distrained for Rent; to be administered by the Constable.

YOU shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shown, as between buyer and seller, according to the best of your skill and understanding.

So help you God.
Appointment of a Deputy.

I, A. B. Constable of C. in the county of D. do hereby make, substitute and appoint E. P. of the same place, yeoman, my true and lawful Deputy in the office aforesaid, as long as I shall hold the same; or thus, during the continuance of my will and pleasure, [or for any particular purpose.] dated, &c.

For a command or Proclamation for Rioters to disperse, See tit. Riot.

CONSTAT, [Lat.} The name of a certificate, which the clerk of the pipe, and auditors of the Exchequer, make at the request of any person who intends to plead or move in that court, for the discharge of any thing; and the effect of it is the certifying what constat (appears) upon record, touching the matter in question. See stats. 3 & 4 Edw. VI. c. 4. 13 Eliz. c. 6. A constat is held to be superior to an ordinary certificate, because it contains nothing but what is evident on record. An exemplification under the great seal, of the enrolment of any letters patent is called a constat. Co. Lit. 223.

CONSTRUCTIVE TREASON. The stat. 25 Edw. III. c. 2. was made to define treason, and prevent the subject from being condemned for constructive treason. See title Treason.

CONSUEVIDIAERIUS, A ritual or book, containing the rites and forms of divine offices, or the customs of abbeys and monasteries; it is mentioned in Brampton.

CONSUEVIDIAERIUS ET SERVICIUS, Is a writ of right, close, which lies against the tenant that defrosth his lord of the rent or service due to him. Reg. Orig. 159. Fitz. N. B. 151. When the writ is brought by the party in the right only, he shall count of the seisin of his ancestor, and the writ be in the debet; but when he counts of his own seisin, then the writ is in the debet et soleat, &c. And if the party say in the writ us in redditiis et averragis, these words prove that the demandant himself was seised of the services; and then if he count in such writ of seisin of his ancestors, and not of his own seisin, the writ shall abate; so that if he will bring a writ of customs and services of the seisin of his ancestors, he ought to leave these words, ut in redditiis, &c. out of the writ. Where a person brings a writ of customs and services against any tenant, and by count demands homage, the writ ought to make special mention thereof; as ut in homaggio, &c. or the writ shall abate. New Nut. Brev. 338. Fitz. N. B. 151. If this writ be brought against tenant for life, where the remainder is over in fee, there the tenant may pray in aid of him in the remainder, &c.

CONSUL, [Lat.] In our law books signifies an earl. Bract. lib. 1. c. 8. tells us, that as comes is derived from comitatu, so consul is derived from consulendo; and in the laws of Edward the Confessor, mention is made of vicemones and viceconsuls. Blount. Consul among the ancient Romans, were chief officers, of which two were yearly chosen, to govern the city of Rome. Those who now pass under the name of consuls residing in England, sent from
foreign nations, and in foreign ports, sent from England, are mer-
chants, or persons of eminence and knowledge, appointed to take
care of the affairs and interests of merchants. See Lex Mercat.
CONSULTA ECCLESIA, A church full, or provided for.

CONSULTATION, consultant.] A writ whereby a cause hav-
ing been removed by prohibition from the Ecclesiastical Court to
the King's Court, is returned thither again; for if the judges of the
King's Court, upon comparing the libel with the suggestion of the
party, find the suggestion false, or not proved, and therefore
the cause to be wrongfully called from the Ecclesiastical Court, then
upon this consultation or deliberation, they decree it to be returned;
whereupon the writ in this case obtained, is called a consultation.
Reg. Orig. 44. &c. Stat. of Writ of Consultations, 24 Edw. I.

This writ is in nature of a procedendo; but properly a consulti-
ation ought not to be granted, but in case where a man cannot
recover at the common law, in the King's Courts. New Nat. Brev. 119.
Causes of which the Ecclesiastical or Spiritual Courts have
jurisdiction, are of administrations, admissions of clerks, adultery,
appeals in ecclesiastical causes, apostacy, general bastardy, blas-
phemy, solicitation of chastity, dilapidations and church repairs,
celebration of divine service, divorces, fornication, heresy, incest,
institution of clerks, marriage rites, oblations, omissions, ordi-
nations, commutation of penance, pensions, procurations, schism,
simony, tithes, probate of wills, &c. and where a suit is in the
Ecclesiastical Court, for any of these causes, or the like, and not
mixed with any temporal thing, if a suggestion is made for a pro-
hibition, a consultation shall be awarded. 3 Rep. 9.

To move for a prohibition in another court, after motion in the
chancery, &c. on the same libel which is granted, is merely vexa-
tious, for which a consultation shall be had. Cro. Eliz. 277.
Where a consultation is granted upon the right of the thing in
question, there a new prohibition shall never be granted on the
same libel; but where granted upon any default of the prohibition
in form, &c. there a prohibition may be granted upon the same

CONTEMPT, contemptus.] A disobedience to the rules, or-
ders, or process of a court, which hath power to punish such off-
ence; and one may be imprisoned for a contempt done in court,
but not for a contempt out of court, or a private abuse. Cro. Eliz. 689. But for contempt out of court, an attachment may
be granted. Attachment also lies against one for contempt to the
court, to bring in the offender to answer on interrogatories, &c.
and if he cannot acquit himself, he shall be fined. 1 Litt. 305.
If a sheriff, being required to return a writ directed to him, doth not
return the writ, it is a contempt; and this word is used for a kind
of misdemeanor, by doing what one is forbidden; or not doing
what he is commanded. 12 Rep. 36. And as this is sometimes
a greater, and sometimes a lesser offence, so it is punished with
greater or less punishment, by fine, and sometimes imprisonment.
Dyer, 128. 177. 1 Bulst. 85.

If a defendant in chancery, on service of a subpoena, does not
appear within the time limited by the rules of the court, and
plead, demur or answer to the bill against him, he is then said
to be in contempt; and the respective processes of contempt are in successive order awarded against him. These are attachment; attachment with proclamations; a commission of rebellion; and, finally; a sequestration. 3 Comm. 443.

An attachment of contempt may issue against a bishop, or other peer; but for not returning a fieri facias de bonis ecclesiasticis, it is proper to move against the chancellor, commissary, or official. Rex v. Bishop of St. Asaph, 1 Wils. 332.

It is a contempt to institute a suit fictitiously, though the demand is real, either to hurt any person, or to get the opinion of the court. Coxe v. Phillips, Hardw. 237. 239. See further tit. Attachment, and 4 Comm. 283.

Contempts against the King's prerogative, are by refusing to assist him for the good of the public; either in his councils, by advice, if called upon; or in his wars, by personal service; for defence of the realm, against a rebellion or invasion 1 Hawk. P. C. r. 22.

Under this class may be ranked the neglecting to join the fosses comitatus, or power of the county, being thereunto required by the sheriff or justices, according to the stat. 2 Hen. V. r. 8. (see tit. Riots,) which is a duty incumbent upon all that are 15 years of age, under the degree of nobility, and able to travel. Lamb. Eliz. 315.

Contempts against the prerogative may also be by preferring the interests of a foreign potentate to those of our own; or doing or receiving any thing that may create an undue influence, in favour of such extrinsic power; as by taking a pension from any foreign prince without the consent of the king. 3 Inst. 144.

Or by disobeying the king's lawful commands; whether by writs issuing out of his courts of justice, or by a summons to attend his privy council; or by letters from the king to a subject, commanding him to return from beyond the sea; (for disobedience to which his lands shall be seized till he doth return, and himself afterwards punished;) or by his writ of ne exeat regno; or proclamation commanding the subject to stay at home.

Disobedience to any of these commands is a high misprision and contempt; and so, lastly, is disobedience to any act of parliament, where no particular penalty is assigned; for then it is punishable, like the rest of these contempts, by fine and imprisonment, at the discretion of the king's courts of justice. 4 Comm. 122. See also 1 Hawk. P. C. cc. 22, 23, 24. and this Dict. tit. Oaths, King.

CONTENEMENT, contenementum.] Is said to signify a man's countenance or credit, which he hath together with, and by reason of, his freehold: in which sense it is used in statute of 1 Edw. III. and other statutes; and Selden in his Glossary says, contenementum est aslimatio et conditionis forma, qua quis in republica subsistit. But contenement is, more properly, that which is necessary for the support and maintenance of men, agreeable to their several qualities, or states of life. See Magna Charta, c. 14. and Gianvill, lib. 9. c. 8. and this Dict. tit. Distress.

CONTINGENT LEGACY See tit. Legacy.

CONTINGENT REMAINDER. Contingent or executory remainders, (whereby no present interest passes,) and where the es-
tate in remainder is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event; so that the particular estate may chance to be determined, and the remainder never take effect. 3 Rep. 20. 2 Comm. 169. And see 10 Rep. 85. See this Dict. tit. Estate, Limitation, Remainder, and also tit. Executory Device.

CONTINGENT USE. Is a use limited in a conveyance of land, which may or may not happen to vest, according to the contingency expressed in the limitation of such use. A use in contingency is such which by possibility may happen in possession, reversion or remainder. 1 Rep. 121.

CONTINUAL CLAIM. See tit. Claim.

CONTINUANCE. Is the continuing of a cause in court, by entry upon the records there for that purpose. There is a continuance of the assize, &c. And continuance of a writ or action is from one term to another, in case where the sheriff hath not returned a former writ, issued out in the said action. Kitch. 262. Continuances and essoins are amendable upon the roll, at any time before judgment. They are the acts of the court, and at common law they may amend their own acts before judgment, though in another term, but their judgments are only amendable in the same term wherein they are given. 3 Lev. 491. Upon an original, a term, or two, or three terms may be mesne between the testate and the return; and this shall be a good continuance; for the defendant is not at any prejudice by it, and the plaintiff may give a day to the defendant beyond the common day, if he will.

But a continuance by capias ought to be made from term to term, and there cannot be any mesne term, because the defendant ought not to stay so long in prison. 2 Danv. Abr. 150. If a man recover upon demurrer, or by default, &c. and a writ of inquiry of damages is awarded, there ought to be continuances between the first and second judgment, otherwise it will be a discontinuance; for the first is but an award, and not complete, till the second judgment, upon the return of the writ of inquiry of damages. Ibid. 153. If the plaintiff be nonsuit, by which the defendant is to recover costs, if the plaintiff will not enter his continuances, on purpose to save the costs, the defendant shall be suffered to enter them. Cro. Jac. 316, 317. The course of the court of King’s Bench is to enter no continuance upon the roll, till after issue or demurrer, and then to enter the continuance of all upon the back, before judgment; and if it is not entered, it is error. Trin. 16 Jac. B. R. Vide tit. Discontinuance, Process.

CONTINUANDO. A word used in a special declaration of trespass, when the plaintiff would recover damages for several trespasses in the same action; and to avoid multiplicity of suits, a man may in one action of trespass recover damages for many trespasses, laying the first to be done with a continuando to the whole time in which the rest of the trespasses were done; which is in this form, Continuando (by continuando the trespass aforesaid, &c. from the day aforesaid, &c.) until such a day, including the last trespass. Terma de Ley.

In trespass with a continuando of divers things, though of some of those things there could be no continuando, yet it shall be good for those things for which the continuando could be, and not for
the others; but if the continuando had been particularly of such
things whereof a continuando could not be, then it had been nought.
6 Lev. 94. Every day's trespass is said to be a several trespass;
though a continuando may not be of men's continuing a trespass
day and night, for some time together, for mankind must take
some rest. Where cattle do trespass upon ground, they are con-
tinually trespassing night and day, and therefore the continuando
in that case is good. 1 Lill. Abr. 307. Trespass for breaking a
house with a continuando is good; and until a re-entry is made,
the continuation of the possession is a continuing of the trespass.
Lutw. 1312. See tit. Trespass.

CONTRABAND GOODS, From contra, and the Italian bando,
an edict or proclamation.] Are those which are prohibited by
act of parliament, or the king's proclamation, to be imported
into, or exported out of, this into any other nation. See tit. Navi-
gation Acts, Customs.

CONTRACUSAATOR, A criminal, or one prosecuted for a
crime. This word is mentioned in Leg. Hen. I. cap. 61.

CONTRACT, contractus.] A covenant or agreement between
two or more persons, with a lawful consideration or cause. West's
Symb. part 1. As if a man sells his horse or other thing to an-
other, for a sum of money; or covenants in consideration of 20l.
to make him a lease of a farm, &c. these are good contracts,
because there is a quid pro quo, or one thing for another; but
if a person make promise to me, that I shall have 20s. and that
he will be debtor to me therefor, and after I demand the 20s. and
he will not give it me, yet I shall never have any action to recover
this 20s. because this promise was no contract, but a bare prom-
ise, or nudem pactum; though if any thing were given for the
20s. if it were but to the value of a penny, then it had been a
good contract. See tit. Consideration.

Every contract doth imply in itself an assumpsit in law, to
perform the same; for a contract would be to no purpose, if
there were no means to enforce the performance thereof.
1 Lill. Abr. 308. Where an action is brought upon a con-
tract, and the plaintiff mistakes the sum agreed upon, he will
fail in his action; but if he brings his action on the promise
in law, which arises from the debt, there, although he mis-
takes the sum, he shall recover. Aleyn, 29. See tit. Action,
Assumpsit.

There is a diversity where a day of payment is limited on a
contract, and where not; for where it is limited, the contract is
good presently, and an action lies upon it, without payment,
but in the other not. If a man buys 20 yards of cloth, &c. the
contract is void, if he do not pay the money presently; but if
day of payment be given, there the one may have an action
for the money, and the other trover for the cloth. Dyer,
30. 293. Where a seller says to a buyer, he will sell his horse
for so much, and the buyer says he will give it; if he pre-
sently tell out the money, it is a contract; but if he do not, it is
no contract. Noy's Max. 87. Hob. 41. The property of any
thing sold is in the buyer immediately by the contract; though
regularly it must be delivered to the buyer, before the seller can
bring his action for the money. Noy, 88. If one contract to
buy a horse or other thing of me, and no money is paid, or ear-
nest given, nor day set for payment thereof, nor the thing deli-
vered; in these cases, no action will lie for the money, or the
thing sold, but it may be sold to another. Plowd. 128. 309.

All contracts are to be certain, perfect, and complete: for an
agreement to give so much for a thing as it shall be reasonably
worth, is void for uncertainty; so a promise to pay money in a
short time, &c. or to give so much, if he likes the thing when
he sees it. Dyer, 91. 1 Bulst. 92. But if I contract with an-
other to give him 10l. for such a thing, if I like it on seeing
the same; this bargain is said to be perfect at my pleasure,
though I may not take the thing before I have paid the money.
If I do, the seller may have trespass against me; and if he sell
it to another, I may bring an action on the case against him.
Noy's 104. If a contract be to have for cattle sold 10l. if the
buyer do a certain thing, or else to have 20l. it is a good contract,
and certain enough. And if I agree with a person to give him
so much for his horse as J. S. shall judge him worth, when he
hath judged it, the contract is complete, and an action will lie
on it; and the buyer shall have a reasonable time to demand the
judgment of J. S. But if he dies before the judgment is given,

In contracts, the time is to be regarded, in and from which the
contract is made. The words shall be taken in the common and
usual sense, as they are taken in that place where spoken; and
the law doth not so much look upon the form of words, as on the
substance and mind of the parties therein. 5 Rep. 83. 1 Bulst.
175. A contract for goods may be made as well by word of
mouth, as by deed in writing; and where it is in writing only,
not sealed and delivered, it is all one as by word. But if the con-
tract be by writing sealed and delivered, and so turned into a
deed, then it is of another nature; and in this case generally the
action on the verbal contract is gone, and some other action lies

Contracts, not to be performed in a year, are to be in writing,
signed by the party, &c. or no action may be brought on them;
but if no day is set, or the time is uncertain, they may be good
without it. Stat. 29 Car. II. c. 3. And by the same statute, no
contract for the sale of goods for 10l. or upwards, shall be good,
unless the buyer receive part of the goods sold, or give something
in earnest to bind the contract, or some note thereof be made in
writing, signed by the person charged with the contract, &c. See
t. Frauds. Agreement III. IV.

If two persons come to a draper, and one says, let this man
have so much cloth, and I will pay you; there the sale is to the
underaker only, though the delivery is to another by his appoint-
ment; but if a contract be made with J. B. and the vendor scrup-
plies to let the goods go without money, and C. D. comes to him
and desires him to let J. B. have the goods, and undertakes that
he shall pay him for them, that will be a promise within the stat.
29 Car. II. c. 3. and ought to be in writing. Mod. Cas. 249.

A contract made and entered into upon good consideration, may
for good considerations be dissolved. See Agreement and Sale.
As to Usurious Contracts, see tit. Usury.
CONTRAFACTION, contrafactio.] A counterfeiting. Contrafactio sigilli regis, a counterfeiting the king's seal. Blount.

CONTRA FORMAM COLLATIONIS, A writ that lay where a man had given lands in perpetual alms, to any late houses of religion, as to an abbot and convent, or to the warden or master of any hospital and his convent, to find certain poor men with necessaries, and do divine service, &c. If they aliened the land, to the disherison of the house and church, then the donor or his heirs, should bring this writ to recover the lands. It was had against the abbot or his successor; not against the aliencee, though he were tenant of the land; and was founded upon the statute of Westm. 2. c. 1. Reg. Orig. 238. Fitz. N. B. 210.

CONTRA FORMAM FEOFFAMENTI, A writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain services and suits to his court, who was afterwards restrained for more services than were mentioned in the charter. Reg. Orig. 176. Old Nat. Brev. 162.

CONTRA FORMAM STATUTI, contrary to the form of the statute in such case made and provided.] The usual conclusion of every indictment, &c. laid on an offence created by statute.

If one statute be relative to another, as where the former making the offence, the latter adds a penalty, the indictment ought to conclude contra formam statutorum. 2 Hale's P. C. 173. cap. 24.

Where there are several statutes, and it does not appear on which the information is founded, the concluding contra formam statuti is ill. Cro. Jac. 142. pl. 19. Broughton v. Moor, cited as adjudged in Talbot et al. Where one act makes the offence, and another gives the penalty, an information must be contra formam statutorum; in the case of Talbot and Sheldon, indicted for recusancy contra formam statuti, 25 Eliz. c. 1. and the judgment reversed because the penalty was demanded; for the 10 Eliz. made the offence, and the 23d gave the penalty; but if the information had been for the offence only, it had been good. Per Coke. Obs. 135. Trin. 9 Jac. See 5 Vin. Abr. 552. 556. See further tit. Statutes, Indemnity.

CONTRAMANDATIO PLACITI, A respitting or giving a defendant further time to answer; or a countermand of what was formerly ordered. Leg. Hen. I. c. 59.

CONTRAMANDATUM, Is said to be a lawful excuse when the defendant in a suit by attorney allegeth for himself, to show that the plaintiff hath no cause of complaint. Blount.

CONTRAPOSITIO. A plea or answer. Leg. Hen. I. c. 34.

CONTRARIENTS. In the reign of King Edward II. Thomas Earl of Lancaster, taking part with the Barons against the king, it was not thought fit, in respect of their great power, to call them rebels or traitors, but contrarients; and hence we have a record of those times, called Rotulum Contrarientium.


CONTRAVENTION, Is the action founded on the breach of law-burrows. Scotch Dict.

CONTRIBULAE, contribunales.] Kindred or cousins. Lamb. p. 75.
CONTRIBUTION, contributio.] Is where every one pays his share, or contributes his part to any thing. One parcerer shall have contribution against another; one heir have contribution against another heir, in equal degree; and one purchaser shall have contribution against another. Also conusors in a statute shall be equally charged, and not one of them solely extended. 3 Rep. 12, 13. &c. On a statute or recognisance, there is a contribution and stay till the full age of the heir, &c. and this doth extend to the lessee for life or years, of the conusor, who has part of the land liable, and the heir within age the residue: for the land of every one of them ought to be charged equally, because the whole is liable to the judgment; and this cannot be, if during the non-age, the burden shall fall upon one only. Jenk. Cent. 36. If lands are mortgaged, and then devised to one person for life, with remainder to another, both devisees shall make contribution to payment of the mortgage-money. Chan. Cas. 224. 271. See tit. Mortgage.

Where goods are cast into the sea, for the safeguard of a ship, or other goods, &c. aboard in a tempest; there is a contribution among merchants, towards the loss of the owners. See tit. Insurance. And where a robbery is committed on the highway, and damages are recovered against one or a few persons, in an action against the hundred, the rest of the inhabitants shall make contribution to the same. 27 Eliz. c. 13. See tit. Robbery.

CONTRIBUTIO FACIENDA. A writ that lieth where there are tenants in common, that are bound to do one thing; and one is put to the whole burden. As where they jointly hold a mill pro indiviso, and take the profits equally, and the mill falling into decay, one of them will not repair the mill; now the other shall have a writ to compel him to contribute to the reparations. And if there be three coparceners of land, that owe suit to the lord's court, and the eldest performs the whole; then may she have this writ to compel the others to make their contribution. So where one suit is required for land, and that land being sold to divers persons, suit is demanded of them all, or some of them by distress, as entirely as if all the land were still in one. Reg. Orig. 175. Fitz. N. B. 162.

CONTROLLER, Fr. contrerolleur, Lat. contrarotulator.] An overseer or officer relating to public accounts, &c. And we have divers officers of this name; as Controller of the King's Household, of the Navy, of the Customs, of the Excise, of the Mint, &c. And in our courts, there is the Controller of the Hamper, of the Pipe, and of the Pell, &c. The office of Controller of the Household, is to control the accounts of the Green Cloth; and he sits with the Lord Steward and other officers in the counting-house, for daily taking the accounts of all expenses of the household. The Controller of the Navy controls the payment of wages; examines and audits accounts, and inquires into rates of stores for shipping, &c. Controllers of the Customs and Excise, their office is to control the accounts of those revenues. And the Controller of the Mint controls the payment of wages, and accounts relating to the same. Controller of the Hamper is an officer in the chancery attending the Lord Chancellor daily in term time, and upon seal-days; Vol. II.
whose office is to take all things sealed from the Clerk of the
Hamper, enclosed in bags of leather, and to note the just num-
ber and effect of all things so received, and enter the same in a
book, with all the duties appertaining to his majesty, and other
officers for the same. The Controller of the Pipe is an officer of
the Exchequer, who writes out summons twice every year to the
sheriffs, to levy the farms and debts of the Pipe; and keeps a
controlment of the Pipes, &c. Controller of the Pell is also an
officer of the Exchequer; of which sort there are two, who are
the Chamberlain’s clerks, that do or should keep a controlment
of the Pell, of receipts and goings out; and this officer was origin-
ally such as took notes of other officers accounts or receipts,
to the intent to discover if they dealt amiss, and was ordained
for the prince’s better security. Fleta, lib. 1. cap. 18. Stat. 12
Edw. III. cap. 3. This last seems to be the original use and de-
sign of all Controllers.

CONTROVER, controueur.] Signifies in our law one that
of his own head devises or invents false news. 2 Inst. 227.

CONTROVERTED ELECTION. See Parliament VI. (B.) 3.

See Covenable.

CONVENIENT, conveniens.] Of the use of this word, Sir
Edw. Coke, in his Institute, says, Non solum quod licet sed quod
est conveniens est considerandum, nihil quod est inconveniens est
dictum. 1 Inst. 66.

CONVENT, conventus.] Signifies the fraternity of an abbey
or priory; as societas doth the number of fellows in a college.
Bract. lib. 2. c. 35. See tit. Monastery, Mortmain.

CONVENTICILE, conveniculum.] A private assembly or
meeting for the exercise of religion; first used as a term of
disgrace for the meetings of Wickliffe in this nation, above two hun-
dred years since; and now applied to the illegal meetings of the
Nonconformists. It is mentioned in the statutes 2 Hen. IV. c. 15.
1 Hen. VI. c. 3. and 16 Car. II. c. 4. which statute was made to
prevent and suppress conventiciles; and by stat. 22 Car. II. cap. 1. it
is enacted, that if any persons of the age of sixteen years, subjects
of this kingdom, shall be present at any conventicle, where there
are five or more assembled, they shall be fined 5s. for the first
offence, and 10s. for the second; and persons preaching incur a
penalty of 20l. Also suffering a meeting to be held in a house,
&c. is liable to 20l. penalty. Justices of peace have power to
enter such houses, and seize persons assembled, &c. And if they
neglect their duty, they shall forfeit 100l. And if any constable,
&c. know of such meetings, and do not inform a justice of peace,
or chief magistrate, he shall forfeit 5s. But the stat. 1 W. & M.
st. 1. c. 18, ordains, that Protestant Dissenters shall be exempted
from penalties; though if they meet in a house, with the doors
locked, barred, or bolted, such dissenters shall have no benefit
from that statute. By stat. 10 Ann. c. 2. officers of the govern-
ment, &c. present at any conventicle, at which there shall be ten
persons, if the royal family be not prayed for in express words,
shall forfeit 40l. and be disabled. See tit. Heresy, Nonconformists,
Religion.
CONVENTIO, A word used in ancient law pleadings, for an agreement or covenant; as A. B. queritur, &c. de C. D. &c. pro eo quod non teneat conventionem, &c. There is a strange record of the court of the manor of Hatfield, in Com. Ebor. held anno 11 Edw. III. relative to a convention to sell the Devil, and on earnest given, and non-delivery, action brought; which on hearing was adjudged in infernum.

CONVENTIONE, A writ that lies for the breach of any covenant in writing, whether real or personal; and it is called a Writ of Covenant. Reg. Orig. 115. Fitz. N. B. 145.

CONVENTION, A parliament assembled, but in which no act is passed, or bill signed. Dict.

The term convention is rather applied to the meeting of the Lords and Commons, without the assent of, or being called together by, the King; and which can only be justified ex necessitate ret.

Of this nature was the Convention-Parliament, which restored King Charles II. and which met above a month before his return: the Lords by their own authority, and the Commons in pursuance of writs issued in the name of the keepers of the liberty of England by authority of parliament. And if this convention had not so met, it was morally impossible that the kingdom should have been settled in peace.

In a similar manner, at the time of the Revolution, A. D. 1688, the Lords and Commons by their own authority, and upon the summons of the Prince of Orange, (afterward William III.) met in a convention, and therein disposed of the crown and kingdom. And it is declared by stat. 1 W. & M. st. 1. c. 1. that this convention was really the two houses of parliament, notwithstanding the want of writs or other defects of form.

If we may be allowed to suppose a possible case, that the whole royal line should at any time fail and become extinct, which would indisputably vacate the throne; in this situation it seems reasonable to presume that the body of the nation, consisting of Lords and Commons, would have a right to meet and settle the government; otherwise there must be no government at all. But whenever the throne is full, no national meeting, nor any meeting pretending to be such, can be legal, but the parliament assembled by command of the king. See tit. Parliament, and 1 Comm. 131, 152.

The constitution of Great Britain having placed the representation of the nation, and the expression of the national will, in the parliament, no other meeting or convention even of every individual in the kingdom, would be a competent organ to express that will; and meetings of such a nature, tending merely to sedition, and to delude the people into an imaginary assertion of rights, which they had before delegated to their representatives in parliament, could only tend to introduce anarchy and confusion, and to overthorn every settled principle of government. An act of parliament was passed in Ireland, in the year 1795, to prevent any such meetings or conventions; and a few ignorant individuals, who in the same year had dared to assemble under that title in Scotland, were quickly dispersed, and their leaders convicted of seditious practices; for which they were

CONVENTUALS. Religious men united together in a convent or religious house. Conv. 2.

CONVENTUAL CHURCH. A church that consists of regular clerks, professing some order of religion; or of Dean and Chapter, or other societies of spiritual men.

CONVERSION, Is where a person finding or having the goods of another in his possession, converts them to his own use, without the consent of the owner, and for which the proprietor may maintain an action of trover and conversion against him. And refusal to restore goods is, prima facie, sufficient evidence of a conversion, though it does not amount to a conversion. 10 Rep. 56. 3 Comm. 132. See tit. Trover.

CONVERSOS. The Jews here in England were formerly called Conversos, because they were converted to the Christian religion. King Hen. III. built a house for them in London, and allowed them a competent provision or subsistence for their lives; and this house was called Domus Conversorum. But by reason of the vast expenses of the wars, and the increase of those conversis, they became a burden to the crown; so that they were placed in abbeys and monasteries for their support and maintenance. And the Jews being afterwards banished, King Edw. III. in the 51st year of his reign, gave this house, which had been used for the converted Jews, for the keeping of the Rolls; and it is said to be the same which was till lately enjoyed by the Master of the Rolls. Bloume. Harg. Co. Lit. 291. b.

CONVEYANCE. A deed which passes or conveys land from one man to another. Conveyance by feoffment, and livery, was the general conveyance at common law; and if there was a tenant in possession, so that livery could not be made, then was the reversion granted, and the tenant always attorned; also upon the same reason, a lease and release was held to be a good conveyance to pass an estate; but the lessee was to be in actual possession, before the release. But the lease is now considered as operating so as to give the possession, which it does in point of law.

By the common law, when an estate did not pass by feoffment, the vendor made a lease for years, and the lessee actually entered; and the lessor granted the reversion to another, and the lessee attorned; afterwards, when an inheritance was to be granted, then likewise was a lease for years usually made, and the lessee entered (as before) and then the lessor released to him; but after the statute of uses, it became an opinion, that if a lease for years was made upon a valuable consideration, a release might operate upon it, without an actual entry of the lessee; because the statute did execute the lease, and raised a use presently to the lessee; and Serjeant Moor was the first who practised this way. 2 Mod. 231, 232.

The most common conveyances now in use are deeds of gift, bargain and sale, lease and release, fines and recoveries, settlements to uses, &c.

The following further observations on conveyances at common law, and those which derive their effect from the statute of uses, are abridged from the long and learned note on 1 Inst. 271. b, to
which the curious inquirer is referred for a more particular investigation of the subject. See also this Dict. tit. Deed, Estate, Lease and Release, Limitation, Trusts, Uses.

**Feoffments and Grants** were the two chief modes used in the common law for transferring property. The most comprehensive definition which can be given of a feoffment seems to be, a conveyance of corporeal hereditaments, by delivery of the possession, upon, or within view of, the hereditaments conveyed. This delivery was thus made, that the lord and the other tenants might be witnesses to it. No charter of feoffment was necessary; it only served as an authentication of the transaction; and when it was used, the lands were supposed to be transferred, not by the charter, but by the livery which it authenticated. Soon after the Conquest, or perhaps towards the end of the Saxon government, all estates were called fees; the original and proper import of the word feoffment is, the grant of a fee. It came afterwards to signify a grant with livery of seisin of a free inheritance to a man and his heirs; more respect being had to the perpetuity, than to the feudal tenure, of the estate granted. In early times, after the conquest, the charters of feoffment were various in point of form. In the time of Edw. I. they began to be drawn up in a more uniform style. The more ancient of them generally run with the words dedi, concessi, or donavi. It was not till a later period that feoffavisse came into use. The more ancient feoffments were also usually made in consideration of, or for the homage and service of the feoffee, and to hold of the feoffor and his heirs. But after the stat. Quia empiros, (18 Edw. I. st. 1.) feoffments were always made to hold to the chief lords of the fee, without the words pro homaggio et servitio. See further, 1 Inst. 6 a. 271 b.

The proper limitation of a feoffment is to a man and his heirs; but feoffments were often made of conditional fees, (or of estates tali as they are now called,) and of life-estates; to which may be added, feoffments of estates given in frank marriage and frankalmoine. To make the feoffment complete, the feoffor used to give the feoffee seisin of the lands: this is what the feudists call Investiture. It was often made by symbolical tradition, but it was always made upon or within view of the lands. When the king made a feoffment, he issued his writ to the sheriff, or some other person, to deliver seisin; other great men did the same; and this gave rise to powers of attorney. See Mad. Form. pref.

A **Grant**, in the original signification of the word, is a conveyance or transfer of an incorporeal hereditament. As livery of seisin could not be had of these, the transfer of them was always made by writing, in order to produce that notoriety, which in the transfer of corporeal hereditaments was produced by delivery of the possession. But in other respects a feoffment and a grant did not materially differ.

Such was the original distinction between a *feoffment* and a *grant*; but from this real difference in their subject matter only, a difference was supposed to exist in their operation. A *feoffment* visibly operated on the possession; a *grant* could only operate on the *right* of the party conveying. Now as possession and freehold were synonymous terms, no persons being considered to have the possession of the lands but he who had at least an estate of free-
hold in them, a conveyance which was considered as transferring the possession, must necessarily be considered as transferring an estate of freehold; or, to speak more accurately, as transferring the whole fee. But this reasoning could not apply to grants; their essential quality being that of transferring things which did not lie in possession: they therefore could only transfer the right; that is, could only transfer that estate which the party had a right to convey. It is in this sense the expressions are to be understood, that a feoffment is a tortious, and a grant a rightful, conveyance. See tit. Disseisin.

This appears to have been the outline of conveyances at common law. The introduction of uses produced a great revolution in this respect. Uses at the common law, were in most respects what trusts are now. When a feoffment was made to uses, the legal estate was in the feoffee. He filled the possession, did the feudal duties, and was in the eye of the law the tenant of the fee. The person to whose use he was seised, called the cestuy que use, had the beneficial property of the lands; had a right to the profits; and a right to call upon the feoffee to convey the estate to him, and to defend it against strangers. This right at first depended on the conscience of the feoffee; if he withheld the profits from the cestuy que use, or refused to convey the estate as he directed, the feoffee was without remedy. To redress this grievance the writ of subhæna was devised, or rather adopted from the common law courts, by the court of Chancery, to oblige the feoffee to attend in court and disclose the trust; and then the court compelled him to execute it.

Thus uses were established: they were not considered as issuing out of, or annexed to, the land, as a rent or condition, or a right of common; but as a trust reposed in the feoffee, that he should dispose of the lands at the discretion of the cestuy que use, permit him to receive the rents, and in all other respects have the beneficial property of the lands. To all other persons except the cestuy que use, the feoffee was as much the real owner of the fee, as if he did not hold it to the use of another; his wife was entitled to dower; his infant heir was in wardship to the lord; and upon his attainer the estate was forfeited.

To remedy these inconveniences, the stat. 27 Hen. VIII. c. 10. was passed; by which the possession was devested of the persons seised to the use, and transferred to the cestuy que use. For by that statute it is enacted, "that when any person shall be seised of any lands to the use, confidence, or trust of any other person or persons, by reason of any bargain, sale, feoffment, fine, recovery, contract, agreement, will, or otherwise; in such case the persons having the use, confidence, or trust, should from henceforth be deemed and adjudged in lawful seisin, estate and possession of and in the lands, in the same quality, manner and form as they had before in the use." There seems to be little doubt but that the intention of the legislature in passing this act, was utterly to annihilate the existence of uses considered as distinct from the possession. But they have been preserved under the appellation of trusts. The courts hesitated much before they allowed them under this new name. And at length secret modes of transferring the possession itself, have been discovered, and
have totally superseded that notorious and public mode of transferring property, which the common law required, and the statute intended to restore; and many modifications or limitations of real property have been allowed, which the common law did not admit. See tit. Lease and Release.

A son did give and grant lands to his mother, and her heirs; though this was a defective conveyance at common law, yet it was adjudged good by way of use, to support the intention of the donor, and therefore by these words a use did arise to the mother by way of covenant to stand seised. 2 Lev. 225. A fee simple without delivery and seisin, will not enure as a grant; but where made in consideration of a marriage, &c. it has been adjudged, that it did enure as a covenant to stand seised to uses. 2 Lev. 213.

Tenant in fee, in consideration of marriage, covenant and granted, and agreed all that message to the use of himself for life, then to his wife for life, for her jointure, then to their first son in tail male, &c. Now by these words it appeared, that the husband intended some benefit for his wife, wherefore the court supplied other words to make the conveyance sensible. 1 Lutw. 782. 1 Inst. 371 b. n.

A conveyance cannot be fraudulent in part, and good as to the rest; for if it be fraudulent and void in part, it is void in all, and it cannot be divided. 1 Lill. Abr. 311. Fraudulent conveyances to deceive creditors, defraud purchasers, &c. are void, by stats. 13 Eliz. cap. 5. 27 Eliz. cap. 4. See tit. Fraud.

CONVICT AND CONVICTION.

Convict, convictus.] He that is found guilty of an offence by verdict of a jury. Straud. P. C. 166. Crompton saith, That conviction is either when a man is outlawed, or appeareth and confesseth, or is found guilty by the inquest: and when a statute excludes from clergy persons found guilty of felony, &c. it extends to those who are convicted by confession. Crompt. Just. 9. The law implies that there must be a conviction, before punishment, though it is not so mentioned in a statute; and where any statute makes a second offence felony, or subject to a heavier punishment than the first, it is always implied that such second offence ought to be committed after a conviction for the first. 1 Hawk. P. C. c. 10. § 9. c. 41. § 8.

Judgment amounts to conviction; though it doth not follow, that every one who is convict, is adjudged. A conviction at the king's suit may be pleaded to a suit by an informer, on a penal statute; because while in force it makes the party liable to the forfeiture, and no one ought to be punished twice for the same offence: but conviction may not be pleaded to a new suit by the king. 1 Hawk. P. C. c. 10. A person convicted or attainted of one felony, may be prosecuted for another, to bring accessories to punishment, &c. Fitz. Coron. 379.

Persons convicted of felony by verdict, &c. are not to be admitted to bail, unless there be some special motive for granting it; as where a man is not the same person, &c. for bail ought to be
before trial, when it stands indifferent whether the party be guilty, or not. 2 Hawk. P. C. c. 15. § 45. 80. In our books, conviction and attainder are often confounded.

SUMMARY PROCEEDINGS are directed by several acts of parliament for the conviction of offenders, and the inflicting of certain penalties imposed by those acts. In these there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only, as the statute has appointed for his judge.

Of this summary nature are all trials for offences and frauds contrary to the laws of the Excise, and other branches of the Revenue; which are to be inquired into and determined by the commissioners of the respective departments, or by justices of peace in the country. And experience has shown, that such convictions are absolutely necessary for the due collection of the public money; and are in fact a species of mercy to the delinquents, who would be ruined by the expense and delay of frequent prosecutions by action or indictment.

Another branch of summary proceedings, is that before justices of the peace, in order to inflict divers petty pecuniary mulcts, and corporal penalties, denounced by act of parliament, for many disorderly offences; such as common swearing, drunkenness, vagrancy, idleness, and a vast variety of others subjected to their jurisdiction. See tit. Justice of Peace, and the titles of the various offences throughout this Dictionary. These offences used formerly to be punished by the verdict of a jury in the court feets, and sheriff's tourn, the king's ancient courts of law; and which were formerly much revered and respected, but are now fallen very much into disuse and contempt.

The process of these summary convictions is extremely speedy. Though the courts of common law have thrown one check upon them, by making it necessary to summon the party accused before he is condemned; which is now held an indispensable requisite, and is highly consonant to the principles of justice. See Stra. 261. 678. 3 Att. 181. 2 Ld. Raym. 1405. After this summons, the magistrate may go on to examine one or more witnesses, as the statute may require, upon oath; and then make his conviction of the offender in writing; upon which he usually issues his warrant either to apprehend the offender, in case corporal punishment is to be inflicted on him; or else to levy the penalty incurred by distress and sale of his goods, according to the directions of the several statutes which create the offence, or inflict the punishment; and which usually chalk out the method by which offenders are to be convicted in such particular cases.

See further, this Dictionary, tit. Justice of Peace. Burn's Justice, tit. Conviction; and 4 Comm. c. 20. as to the policy of extending this summary mode of proceeding.

CONVICT RECUSANT, According to the statutes. See tit. Recusant, Papist.

CONVIVIUM. Signifies the same thing among the laity, as procuratio doth with the clergy, viz. When the tenant by reason
of his tenure is bound to provide meat and drink for his lord once or oftener in the year. Blount.

**CONVOCATION, convocaio.**] The assembly of the representatives of the clergy, to consult of ecclesiastical matters in time of parliament. As there are two houses of parliament, so there are two houses of convocation; the one called the **Higher or Upper House,** where the archbishops and all the bishops sit severally by themselves; and the other, the **Lower House of Convocation,** where all the rest of the clergy sit, i.e. all deans and archdeacons, one proctor for every chapter, and two proctors for all the clergy of each diocese, making in the whole number one hundred and sixty-six persons. Each convocation house hath a prolocutor chosen from among themselves, and that of the lower house is presented to the bishops, &c.

The Archbishop of Canterbury is the president of the Convocation, and prorogues and dissolves it by mandate from the king. The convocation exercises jurisdiction in making of canons, with the king’s assent; for by the stat. 25 Hen. VIII. c. 19. the convocation is not only to be assembled by the king’s writ; but the canons are to have the royal assent; they have the examining and censuring of heretical and schismatical books, and persons, &c. But appeal lies to the king in chancery, or to his delegates. But appeal lies to the king in chancery, or to his delegates. 4 Inst. 322. 2 Roll. Abr. 225. But in case the king himself be a party, the appeals lies, by stat. 24 Hen. VIII. c. 12. to all the bishops assembled in the Upper House of Convocation. See 3 Comm. 67.

Mr. Christian, in his note on 1 Comm. 280, remarks, that from the statement there given, the student would perhaps be apt to suppose that there is only one convocation at a time. But the king before the meeting of every new parliament, directs his writ to each archbishop to summon a convocation in his peculiar province.

Godolphin says, that the convocation of the province of York, constantly corresponds, debates and concludes the same matters with the provincial synod of Canterbury. God. 99. But they are certainly distinct and independent of each other; and when they used to tax the clergy, the different convocations sometimes granted different subsidies. In 22 Hen. VIII. the convocation of Canterbury had granted the king 100,000l. in consideration of which an act of parliament was passed granting a free pardon to the clergy for all spiritual offences; but with a proviso, that it should not extend to the province of York, unless its convocation would grant a subsidy in proportion; or unless its clergy would bind themselves individually to contribute as bountifully. This statute is recited at large in Gib. Cod. 17.

All deans and archdeacons (as has been already observed) are members of the convocation of their province; each chapter sends one proctor or representative, and the parochial clergy in each diocese of Canterbury, two proctors; but on account of the small number of dioceses in the province of York, each archdeaconry elects two proctors. In York the convocation consists only of one house; but in Canterbury there are two houses, of which the twenty-two bishops form the upper house; “wherein the archbishop presides with regal state,” (says Blackstone, 1 Comm. 279.)
and before the reformation, abbots, priors, and other mitred prelates sat with the bishops. The lower house of convocation, in the province of Canterbury, consists of twenty-two deans, fifty-three archdeacons, twenty-four proctors for the chapters, and forty-four proctors for the parochial clergy. Total 144.

By stat. 8 Hen. VI. c. 1 the clergy in their attendance on the convocation, have the same privilege in freedom from arrest as the members of the house of commons, in their attendance on parliament.

CONVOY, See Insurance, I. 3.

CONUSANCE OF PLEAS, A privilege that a city or town hath to hold pleas. See Cognisance.

CONUSANT, Fr. connoissant.] Knowing or understanding: as if the son be conusant, and agreed to the feoffment, &c. Co. Litt. 158.

COOPERS, Shall make their vessels of seasonable wood, and mark them with their own marks, on pain of 3s. 4d. forfeiture; and the contents of vessels are appointed to be observed under like penalty; as the beer barrel shall contain thirty-six gallons, a kilderkin eighteen, a firkin nine, &c. The wardens of the Coopers' Company in London, with an officer of the mayor, are to search all vessels for ale, beer, and soap to be sold there; and to mark them that are right, and they may burn those that be not so; and if any cooper, &c. diminish a vessel by taking out the head, or a stave thereof, it shall be burnt and the offender forfeit 3s. 4d. Stat. 23 Hen. VIII. c. 4.

COOPERTIO. The head or branches of a tree cut down; though Cooperio Arborum is rather the bark of timber trees felled, and the chumps and broken wood. Cowel.

COOPERUTRA, A thicket or covert of wood. Chart. de Foresta, cap. 12.

COPARCENERS, participes.] Otherwise called Parceners, are such as have equal portion in the inheritance of an ancestor; and by law are the issue female, which, in default of heirs male, come in equality to the lands of their ancestors. Bract. lib. 2. cap. 50. They are to make partition of the lands; which ought to be made by coparceners of full age, &c. And if the estate of a coparcener be in part exicted, the partition shall be avoided in the whole. Litt. 243. Inst. 173. 1 Rep. 87. The crown of England is not subject to coparcenary; and there is no coparcenary in dignities, &c. Co. Litt. 27. Stat. 25 Hen. VIII. c. 22. See tit. Descent, Parceners.

COPARTNERSHIP. See tit. Partners and Partnership.

COPE, A custom or tribute due to the king, or lord of the soil, out of the lead mines in some part of Derbyshire; of which Mantlove saith:

Egress and regress to the King's highway,
The miners have; and lot and cope they pay:
The thirteenth dish of ore within their mine,
To the lord, for lot, they pay at measuring time
Six-pence a load for cope the lord demands,
And that is paid to the bergmester's hands, &c.
COPYHOLD.

See also Sir John Pettus's Fodinte Regales, where he treats on this subject. This word, by Domesday Book, as Mr. Hagar hath interpreted it, signifies a hill: and Cope is taken for the supreme cover, as the cope of heaven. Also it is used for the roof and covering of a house; the upper garment of a priest, &c.

COPIA LIBELLI DELIBERANDA, A writ that lay where a man could not get the copy of a libel at the hand of a judge ecclesiastical, to have the same delivered to him. Reg. Orig. 51.

COPPA, A cop or cock of grass, hay or corn divided into titheable portions; as the tenth cock, &c. This word, in strictness, denotes the gathering or laying up the corn in copes, or heaps, as the method is for barley or oats, &c. not bound up, that it may be the more fairly and justly tithed; and in Kent they still retain the word, a cop or cap of hay, straw, &c. Thorn in Chron.

COPPER AND COPPER ORE, Copper plates and copper fully wrought, to what duties liable, 4 & 5 W. & M. c. 5. sect. 2. All copper may be exported paying the lawful duties and customs, 5 W. & M. c. 17. See 41 Geo. III. (U. E.) c. 68. and 43 Geo. III. c. 153. § 11. regulating the exportation of copper; by the latter act the exportation of copper applicable to naval purposes may be prohibited by proclamation during the then existing war. See further, tit. Navigation Act.

COPPER-PLATE ENGRAVINGS. See ut. Literary Property, &c.

COPY, copy.] In a legal sense the transcript of an original writing; as the copy of a patent, of a charter, deed, &c. A clause out of a patent, taken from the chapel of the rolls, cannot be given in evidence; but there must be a true copy of the whole charter examined: it is the same of a record. And if upon a trial some part of an office copy is given in evidence to prove a deed, which deed is to prove the party's title to the land in question, that gives it in evidence; if that part of the office copy given in evidence, be not so much of it as doth any ways concern the land in question, the court will not admit of it; for the court will have a copy of the whole given, or no part of it shall be admitted. 1 Litt. Abr. 312, 313. Where a deed is enrolled, certifying an attested copy is proof of the enrolment; and such copy may be given in evidence. 3 Lev. 387. A common deed cannot be proved by a copy or counterpart, when the original may be procured. 10 Rep. 92. And a copy of a will of lands, or the probate, is not sufficient; but the will must be shown as evidence. 2 Roll. Abr. 74. Copies of court rolls admitted as evidence. See at large, tit. Evidence.

COPYHOLD.

Tenura per capiam rotuli curiae.] A tenure for which the tenant hath nothing to show but the copy of the rolls, made by the steward of the lord's court; on such tenant's being admitted to any parcel of land or tenement belonging to the manor. 4 Rep. 25. It is called base tenur, because held at the will of the lord:
and Fitzherbert says, it was anciently tenur e in villenage, and that copyhold is but a new name. See this Dict. tit. Tenures III. 13. Some copyholds are held by the verge in ancient demesne; and though they are by copy, yet are they a kind of freehold; for if a tenant of such copyhold commit felony, the king hath the year, day and waste, as in the case of freeholders: some other copyholds are such as the tenants hold by common tenure, called mere copyhold, whose land, upon felony committed, escheats to the lord of the manor. Kitch. 81. But copyhold land cannot be made at this day; for the pillars of a copyhold estate are, That it hath been demised time out of mind by copy of court-roll; and that the tenements are parcel of, or within, the manor. 1 Inst. 58. 4 Rep. 24.

A copyhold cannot be created by operation of law: and therefore where wastes are severed from the manor, by a grant of the latter, with the exception of the former, though the copyholders continue to have a right of common in the wastes by immemorial usage; yet if afterwards a grant of the soil of those wastes be made to trustees for the use of the copyholders in free socage, the lands, when enclosed, will be freehold; and not copyhold. 2 Term Rep. 415. 705.

A copyhold tenant had originally in judgment of law but an estate at will; yet custom so established his estate that by the custom of the manor it was descendible, and his heirs inherited it; and therefore the estate of the copyholder is not merely at the will of the lord, but at the will of the lord, according to the custom of the manor; so that the custom of the manor is the life of copyhold estates; for without a custom, or if copyholders break their custom, they are subject to the will of the lord; and as a copyhold is created by custom, so it is guided by custom. 4 Rep. 21. A copyholder, so long as he doth his services, and doth not break the custom of the manor, cannot be ejected by the lord; if he be, he shall have trespass against him; but if a copyholder refuses to perform his services, it is a breach of the custom, and forfeiture of his estate.

It appears that estates held by copy of court-roll, but not at the will of the lord, have been deemed freehold by Lord Coke (see 1 Inst. 59. b.) and others; and in order to distinguish them from the ordinary kind, have been denominates customary freeholds. In consequence of the prevalence of this notion, a considerable number of such tenants claimed a right of voting as freeholders at the election of knights of the shire. This gave occasion to a short treatise on this subject, in which the origin of lands held in this peculiar way is traced, and it is proved, that though these tenures in some respects resemble freeholds, they are in truth nothing more than a superior kind of copyhold. Soon after the publication of this treatise, the stat. 31 Geo. II. c. 14, was past, declaring that no person holding by copy of court-roll should be entitled to vote at the election of knights of the shire.

In some manors where the custom hath been to permit the heir to succeed the ancestor in his tenure, the estates are styled copyholds of inheritance; in others, where the lords have been more vigilant to maintain their rights, they remain copyholds for life only. For the custom of the manor has in both cases so far
Copyhold.

superseded the will of the lord, that provided the services be performed or stipulated for by fealty, he cannot in the first instance refuse to admit the heir of his tenant upon his death; nor in the second can he remove his present tenant so long as he lives, though he holds nominally by the precarious tenure of his lord's will. 2 Comm. 97, 147. And see tit. Ancient Demesne.

If the lord refuses to admit he shall be compelled in Chancery. 2 Cro. 368. And if the lord refuse to admit a surrender, on account of a disagreement about the fine to be paid, the court of B. R. will grant a mandamus to compel the lord to admit without examining the right to the fine. 2 Term Rep. 484. But that court will not grant a mandamus to admit a copyholder by descent; because without admittance he has a complete title against all the world but the lord. 2 Term Rep. 198.

Copyholds descend according to the rules and maxims of the common law, (unless in particular manors, where there are contrary customs, of great antiquity,) but such customary inheritances shall not be assets, to charge the heir in an action of debt, &c. 4 Ref. 22. Kitch. Though a lease for one year of copyhold lands, which is warranted by the common law, shall be assets in the hand of an executor. 1 Vent. 153. Copyholders hold their estates free from charges of dower, being created by custom, which is paramount to title of dower. 4 Ref. 24. Copyhold inheritances have no collateral qualities, which do not concern the descent; as to make them assets; or whereof a wife may be endowed; a husband be tenant by the curtesy, &c. But by particular custom, there may be dower and tenancy by the curtesy. Cro. Eliz. 361. There may be an estate-tail in copyhold lands by custom, with the cooperation of the stat. W. II. And as a copyhold may be entailed by custom, so by custom the tail may be cut off by surrender. 1 Inst. 60.

Where by special custom a descent of copyholds may be, contrary to the rules of the common law, such custom shall be interpreted strictly: thus, where there is a custom within a manor, that lands shall descend to the eldest sister, where there is neither a son nor a daughter; this shall not extend to an eldest niece; but in default of such son, daughter and sister, the lands must descend according to the rules of the common law. 1 Term Rep. 466.

A copyhold may be barred by a recovery, by special custom; and a surrender may bar the issue by custom. A fine and recovery at common law will not destroy a copyhold estate; because common law assurances do not work upon the assurance of the copyhold; though copyhold lands are within the stat. 4 Hen. VII. c. 24, of fines and proclamations, and five years non-claim, and shall be barred. 1 Rell. Abr. 506. See tit. Fines.

A plaint may be made in the court of the manor, in the nature of a real action, and a recovery shall be had in that plaint against tenant in tail, and such a recovery shall be a discontinuance to the estate-tail. 1 Brownt. 121. And the suffering a recovery by a copyholder tenant for life in the lord's court is no forfeiture, unless there is a particular custom for it. 1 Nits. Abr. 507. Copyholders may entail copyhold lands, and bar the entails and remainders, by committing a forfeiture, as making lease without license, &c. and
then the lord is to make three proclamations, and seize the copyhold, after which the lands are granted to the copyholder, and his heirs, &c. This is the manner in some places, but it must be warranted by custom. 2 Danw. Abr. 191. Sid. 314.

Customs ought to be time out of memory, to be reasonable, &c. And a custom in deprivation or bar of a copyhold estate, shall be taken strictly; but when for making and maintaining, it shall be construed favourably. Comp. Cop. sect. 33. Cro. Eliz. 879. An unreasonable custom, as for a lord to exact exorbitant fines; for a copyholder for life to cut down and sell timber-trees, &c. is void. A copyholder for life pleaded a custom, that every copyholder for life might, in the presence of two other copyholders, appoint who should have his copyhold after his death and that the two copyholders might assess a fine, so as not to be less than had been usually paid; and it was adjudged a good custom. 4 Lec. 228. But a custom to compel a lord to make a grant, is said to be against law; though it may be good to admit a tenant. Moor, 788.

By the custom of some manors, where copyhold lands are granted to two or more persons for lives, the person first named in the copy may surrender all the lands. 1 Nels. Abr. 497. There are customs ratione loci, different from other places: but though a custom may be applied to a particular place; yet it is against the nature of a custom of a manor to apply it to one particular tenant. 1 Nels. 504. 1 Littw. 126.

There are usually custom-rolls of manors exhibited on oath by the tenants; setting forth the bounds of the manor, the royalties of the lord, services of the copyholds tenants, the tenures granted, whether for life, &c. concerning admittances, surrenders, and the rights of the copyholders, as to taking timber for repairs, firebote, &c. Common belonging to the tenants, payment of rent, suiting in the court of the manor, taking heriots, &c. All which customs are to be observed. Comp. Court Keeper, 21.

When an act of parliament altereth the service, customs, tenure, and interest of land, in prejudice of the lord or tenant, there the general words of such an act shall not extend to copyholds. 3 Rep. 7. Copyholds are not within the stat. 27 Hen. VIII. c. 10. of jointures; nor stat. 32 Hen. VIII. c. 28. of leases, copyholds being in their nature demisable only by copy: they are not within the statute of uses; nor are copyholds extensible in execution: but copyholds are within the statute of limitation of actions; and the statutes against bankrupts. The lord shall have the custody of the lands of idiots, &c. And a copyholder is not within the act 12 Car. II. c. 24. to dispose of the custody and guardianship of the heir: for if there be a custom for it, it belongs to the lord of the manor. 3 Lev. 395. 1 Nels. Abr. 492. 522.

Copyholders shall neither impleaded nor be impleaded for their tenements by writ, but by plaint in the lord's court held within the manor; and if on such plaint, erroneous judgment be given, no writ of false judgment lies, but petition to the lord in nature of a writ of false judgment, wherein errors are to be assigned, and remedy given according to law. Co. Litt. 60.

Where a man holds copyhold lands in trust to surrender to another, &c. if he refuses to surrender to the other accordingly,
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he may be compelled by bill exhibited in the lord's court, who as chancellor, has power to do right. 1 Leon. 2. A copyholder may have a formedon in descender in the lord's court. Lessee of a copyholder for life, for one year, shall maintain an ejectment. 4 Rep. 26. Moor, 579. It is every day's practice to bring ejectments, to recover the possession of copyholds; for defendant by the rule, obliging himself to confess lease, entry, and ouster, the title only can come in question on the trial. But the lessor of plaintiff, before he brings his ejectment should be admitted. See tit. Ejectment.

A manor is lost when there are no customary tenants or copyholders: and if a copyhold comes into the hands of the lord in fee, and the lord leases it for one year, or half a year, or for any certain time, it can never be granted by copy after; but if the lord aliens the manor, &c. his alienee may regrant land by copy. If the lord keeps the copyhold for a long time in his hand, it is no impediment but that he may after grant it again by copy. 2 Danw. Abr. 176, 177. A copyholder in fee accepts of a lease, grant, or confirmation of the same land from the lord, this determines his copyhold estate. 2 Cro. 16. Cro. Jac. 253. If a copyholder bargains and sells his copyhold to a lessee for years, &c. of the manor, his copyhold is extinguished. 2 Danw. 205. A copyholder may grant his estate to his lord, by bargain and sale, release, &c. for between lord and tenant the conveyance need not be according to custom. 1 Nels. 594. A copyholder in other cases cannot alienate by deed, though he that hath a right only to a copyhold may release it by deed. And if a copyholder surrenders upon condition, he may afterwards release the condition by deed. 2 Danw. 205. Cro. Jac. 36. Also one joint copyholder may release to another, which will be good without any admittance, &c. Ibid.

A copyholder cannot convey or transfer his copyhold estate to another, otherwise than by surrender; which is the yielding up of the land by the tenant to the lord, according to the custom of the manor, to the use of him that is to have the estate; or it is in order to a new grant, and further estate in the same.

As to copyhold grants: which are made either in fee, or for three lives, &c. the lord of the manor that hath a lawful estate therein, whether he be tenant for life or years, tenant by statute-merchant, &c. or at will, is dominus pro tempore, and may grant lands, herbage of lands, a fair, mill, tithes, &c. and any thing that concerns lands, by copy of court-roll, according to custom; and such grants shall bind those in remainder: the rents and services reserved by them shall be annexed to the manor, and attend the owner thereof after their particular estates are ended. 4 Rep. 23. 11 Rep. 18. And if a lord of the manor for the time being, lease for life, years, &c. take a surrender, and before admittance he dieth, or the years or interest determine, though the next lord comes in above the lease for life or years, or other particular interest, yet he shall be compelled to make admittance according to the surrender. Co. Litt. 59. But a lord at will, of a copyhold manor, cannot license a copyhold tenant to make a lease for years; though he may grant a copyhold for life according to the custom: if a lord for life gives license to a tenant to make a lease for years,
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this lease shall continue no longer than the life of the lord. 2 Danv. Abr. 302.

If he that is lord of the manor for the time being admits one to a copyhold, he dispenses with all precedent forfeitures; not only as to himself, but also as to him in reversion; for such grant and admittance amount to an entry for the forfeiture, and a new grant; but a lord by tort cannot by such admittance purge the forfeiture as to the rightful lord. 1 Lev. 26. Grants by copy of court-roll by infants, &c. will be binding; and if a guardian in socage grants a copyhold in reversion, according to the custom of the manor; this shall be a good grant. 2 Roll. Abr. 41. If baron and feme seised of a manor in right of the feme grant a copyhold, this shall bind the feme notwithstanding her coverture. 4 Rep. 23. An executor may make grants of copyhold estates, according to the custom of the manor, where a devise is made that the executor shall grant copies for payment of debts. 2 Danv. 178.

A manor may be held by copy of court-roll, and the lord of such manor may grant copies; and such customary manor may pass by surrender and admittance, &c. A customary manor may be helden of another manor, and such customary lord may grant copies and hold courts; but a copyholder, lord of such a manor, cannot hold a court baron to have forfeitures, and hold pleas in a writ of right, &c. 1 Nels. Abr. 524.

All grants of copyhold estates are to be according to the custom of the manor; and rents and services customary must be reserved; for what acts of the lord in granting copyholds are not confirmed by custom, but only strengthened by the power and interest of the lord, have no longer duration than the lord’s estate continues. Comp. Court Keeper, 421. If by the custom, a copyhold may be granted for three lives, and the lord grants it to one for life, remainder to such woman as he shall marry; and to the first son of his body; both these remainders are void: and a remainder limited upon a void estate in the creation, will be likewise void. But if by custom it is demisable in fee, a surrender may be to the use of one for life, remainder in tail, remainder in fee. 2 Danv. Abr. 203. Cro. Eliz. 373. It is held, where by the custom of a manor the lord can grant a copyhold for three lives, he may grant it for an estate coming within the intent of the custom; as to A. B. and his assigns, to hold to him and his assigns for the lives of three others, and of the longer liver of them successively. &c. 2 Ld. Raym. 994. 1000.

The lord of a manor may himself grant a copyhold estate at any place out of the manor; but the steward cannot grant a copyhold at a court held out of the manor. 4 Rep. 26. Though the steward may take surrenders out of the manor, as well as the lord. 2 Danv. Abr. 181. A steward is in place of the lord, and without a command to the contrary may grant lands by copy, &c. But if a lord command a steward that he shall not grant such a copy, if he grants it, it is void: and if the steward diminishes the ancient rents and services, the grant will be void. Cro. Eliz. 699.

Things of necessity done by a steward, who is but in reputed authority, are good if they come in by presentment of the jury; as
the admittance of an heir upon presentment, &c. Though acts voluntary, as grants of copyhold, &c. are not good by such stewards. Cro. Eliz. 699. If an under-steward hold a court without any disturbance of the lord of the manor, though he hath no patent nor deputation to hold it, yet it is good; because the tenants are not to examine what authority he hath, nor is he bound to give them an account of it. Moor, 110. A deputy steward may authorize another to do a particular act; but cannot make a deputy to act in general. 2 Salk. 95.

In admittances, in court upon voluntary grants, the lord is proprietor; in admittances upon surrender, the lord is not proprietor of the lands, but only a necessary instrument of conveyance; and in admittances by descent, the lord is a mere instrument, not being necessary to strengthen the heir's title, but only to give the lord his fine. 4 Rep. 21, 22. The heir of a copyholder may enter, and bring trespass, before admittance, being in by descent; and he may surrender before admittance; but he is not complete tenant to be sworn of the homage, or to maintain a plaint in the lord's court. And if the heir do not come in and be admitted, on the death of his ancestor, where the same is presented and proclamation made, he may forfeit his estate. Cro. Eliz. 90. 4 Rep. 22. 27.

On surrender of a copyhold, the surrendorer, or person making the same, continues tenant till the admittance of the surrenderee; and the surrenderee may not enter upon the lands, or surrender before admittance, for he hath no estate till then; though it is otherwise of the heir by descent, who is in by course of law, and the custom casts the possession upon him. Comp. Court Keeper, 436. A surrenderee is not of any effect until admittance, and yet the surrenderee cannot be defrauded of the benefit of the surrender; for the surrendorer cannot pass away the land to another, or make it subject to any other encumbrances; and if the lord refuse the surrenderee admittance, he is compellable in Chancery. Comp. Coif. sect. 39. A grantee hath no interest vested in him till he is admitted; but admittance of a copyholder for life is an admittance of him in remainder, for they are but one estate; and the remainder-man may, after the death of tenant for life, surrender without admittance. 3 Lev. 308. Cro. Eliz. 504.

Every admittance upon a descent or surrender may be pleaded as a grant, and a person may allege the admittance of his ancestor as a grant, and show the descent to him, and that he entered, &c. But he cannot plead that his father was seised in fee, &c. and that he died seised, and the land descended to him. 2 Danv. 208. Admittance on surrenders must, in all respects, agree with the surrender; the lord having only a customary power to admit secundum formam et effectum sursum-redditionis. 4 Rep. 26. If any are admitted otherwise, they shall be seised according to the surrender; yet where a voluntary surrender is general, without saying to whose use, a subsequent admittance may explain it. 2 Danv. 187. 204.

In voluntary admittances, if the lord admits any one contrary to custom, it shall not bind his heir or successor. If a copyholder surrenders without the use of another, and after the lord, having knowledge of it, accepts the rent of such other out of court, this is an
admittance in law; and any act implying the consent of the lord to the surrender, shall be adjudged a good admittance. 1 Nels. Abr. 495. If the steward accept a fine of a copyholder, it amounts to an admittance. 2 Danv. 189. But delivering a copy is no admittance.

Where a widow's estate is created by custom, that shall be an admittance in law; and her estate arising out of that of her husband's, his admittance is the admittance of her. Hut. 18. And she who hath a widow's estate by the custom of the manor, upon the death of her husband, need not pay a fine to the lord for the estate; for this is only a branch of the husband's. Hob. 181. When a custom is, that the wife of every copyholder for life shall have her free bench, after the death of the baron, the law casts the estate upon the wife, so that she shall have it before admittance, &c. 2 Danv. 184. But if a wife is entitled to her free bench by custom, and a copyholder in fee surrenders to the use of another, and then dies; it has been adjudged, that the surrenderee should have the land, and not the wife; because the wife's title doth not commence till after the death of her husband; but the plaintiff's title begins with the surrender, and the admittance relates to that.

1 Inst. 59. 1 Salk. 185.

The widow's title commenced not by the marriage; if it did, then the husband could do nothing in his life-time to prejudice it; but it is plain he may alien or extinguish his right, so as to bind the estate of the widow: the free bench grows out of the estate of the husband; and it is his dying seised which gives the widow a title, and as the husband has a defeasible estate, so the wife may have her free bench defeated. 4 Mod. Refs. 452, 453.

Admittances are never by attorney, for the tenant ought to do fealty; though surrenders are oftentimes by attorney. 2 Danv. 189. A copyholder in fee may surrender in court, by letter of attorney; but not out of court, without a special custom. 9 Refs. 75, 76. If one cannot come into court to surrender in person, the lord may appoint a special steward to go to him, and take the surrender. 1 Leon. 36. A copyholder being in Ireland, the steward of a manor here made a commission to one to receive a surrender from him there, and it was held good. 2 Danv. 181.

The intent of surrender is, that the lord may not be a stranger to his tenant, and the alteration of the estate. As a copyholder cannot transfer his estate to a stranger by any other conveyance than surrender; so if one would exchange a copyhold with another, both must surrender to each other's use, and the lord admit accordingly; and if any person would devise a copyhold estate, he cannot do it by his will; but he must surrender to the use of his last will and testament, and in his will declare his intent. Comp. Cap. 8. 59. Also where a copyholder surrenders to the use of his will, the lands do not pass by the will; but by the surrender; the will being only declaratory of the uses of the surrender. 1 Bulst. 200.

In case of a will, the chancery will supply the defect of a surrender, in the behalf of children, if not to disinherit the eldest son; and for the benefit of creditors, where a copyhold estate is charged by will with the payment of debts, though there is no
surrender to those uses, it will be good in equity. 4 Rep. 25. 1 Salk. 187. 3 Salk. 84. Yet it is held, that equity shall not sup-
ply the want of such surrender in favour of a grandchild; or bastard, who is not considered as a child; or a wife against the
heir; nor in behalf of legatees: but where the surrender is re-
fused, a will of copyhold may be sufficient without it. Abr. Cas. 
Eq. 122. 124.

There is no doubt but that the courts of equity will supply
the surrender of a copyhold. It is said, however, to be now settled that, unless there be a valuable consideration, they will not
interpose for such purpose, but in favour of three descriptions of
persons only; creditors, wife and children; and even in such cases they proceed subject to several restrictions. For though they
will supply the surrender of copyholds in favour of creditors, if
the other estates, liable to the payment of debts, are not sufficient;
(Drake v. Robinson, 1 P. Wms. 444. Bixby v. Eley, 2 Bro. C. R. 325.) yet if there be both freehold and copyhold estates de-
vised for the payment of debts, and the freehold be sufficient for
such purpose, they will not supply the surrender of the copyhold. 
Trin. 1791; and see 3 P. Wms. 98 in n.

In supplying a surrender in favour of a wife, or younger chil-
dren, courts of equity, as has been already observed, respect the
claims of the heir at law; and therefore will not interpose, if the
heir would thereby be left unprovided for. Kettle v. Townsend, 
1 Salk. 187. Hawkins v. Leigh, 1 Atk. 387. But the heir whose
claim is to be thus respected, must be one for whom the testator
was under as strong a moral obligation to provide, as for the devi-
sec. Chapman v. Gibson, 3 Bro. C. R. 229. And if the supply-
ning of the surrender would not disinherit such heir, courts of
equity will supply it in favour of the wife, though she be other-
wise provided for. Smith v. Baker, 1 Atk. 386. But it was held
in Ross v. Ross, 1 Eq. Abr. 124, that they ought not to supply a
surrender for younger children against an elder, to make them in a
better situation than the elder. Yet see Cook v. Arnom, 3 P. 
Wms. 283. Forrestor, 35.

If the heir is provided for, though not by the testator, but from
another quarter, a surrender shall be supplied for a wife or young-
Bro. C. C. 229. the master of the rolls said it was settled that
the court will not inquire in the quantum of the provision, and
that a younger child being put in better condition than an elder
is no objection. See also Vesey's Cases in Ch. 67. Coxe's P. 
Wms. 60. for supplying the want of a surrender to the uses of a
will.

In those cases in which the court will supply a surrender, it is
to be understood that the effect of the surrender is bounded by
the motive which induces the court to supply it; therefore where
the testator devised a copyhold to trustees, in trust, to sell and to
pay the interest of the produce to the wife during her life, and
after her death to a stranger; the court, though it supplied the
surrender in favour of the wife, decreed that the customary heir
should be at liberty to apply after her death. Marston v. Gowen,
3 Bro. C. R. 170. Courts of equity will in supplying the surren-
der of a copyhold estate in favour of a purchaser for a valuable consideration, go still further; for they will not only supply it against the party himself and his heir; (Barker v. Hill, 2 Ch. Rep. 113.) but will also supply it against his assignees and creditors, if he become a bankrupt. Taylor v. Wheeler, 2 Vern. 565.

In the case of copyholds devised to charitable uses, the want of surrender in such cases is made good, not by discretion of the court, but by the strong and general words of stat. 43 Ediz. c. 4. Attorney-General v. Burdett, 2 Vern. 755. Duke's Char. Uses, 64. Attorney-General v. Andrews, 1 Vez. 225.

A cestui que trust may devise an interest in land, &c. without surrender; and if copyhold lands are in mortgage, the mortgagor can dispose of the equity of redemption by will, without any surrender made; because he hath at that time no estate in the land, whereof to make a surrender. Preced. Chanc. 320. 329. One joint-tenant may surrender his part in the lands to the use of his will, &c. And where there are two joint-tenants of a copyhold in fee, if one of them make a surrender to the use of his will, and die, and the devisee is admitted, the surrender and admittance shall bind the survivor. 2 Cro. 100.

A surrender may not be to commence in future; as after the death of the surrenderee, &c. though copyholds may be surrendered to the use of a man's will. March, 177. A copyholder cannot surrender an estate absolutely to another, and leave a particular estate in himself; though he may surrender to uses, &c. A copyholder surrendered to the use of his wife and younger son, without mentioning what estate; and adjudged, that they had an estate for life. 4 Rep. 29. If a man having bought a copyhold to himself, his wife and daughter, and their heirs, afterwards surrenders it to another and his heirs, for securing a sum of money; after his death the surrenderee shall not be entitled to the land, it being an advancement for the wife and daughter. 2 Vern. 120.

A feme covert may receive a copyhold estate, by surrender from her husband, because she comes not in immediately by him, but by the admittance of the lord, according to the surrender. 4 Rep. 29. b. A feme covert is to be secretly examined by the steward, on her surrendering her estate. Co. Litt. 59. An infant surrendered his copyhold, and afterwards entered at full age, and it was held lawful, though the surrenderee was admitted. Moor, 597.

By the general custom of copyhold estates, copyholders may surrender in court, and need not allege any particular custom to warrant it; but where they surrender out of court, into the hands of the lord by customary tenants, &c. custom must be pleaded. 9 Rep. 75. 1 Roll. Abr. 500. Surrenders out of court are to be presented at the next court; for it is not an effectual surrender, till presented in court. Where a copyholder in fee surrenders out of court, and dies before it is presented; yet the surrender, being presented at the next court, will stand good, and cestui que use shall be admitted; so if cestui que use dies before it is presented, his heir shall be admitted. But if the surrender be not presented at the next court it is void. Co. Litt. 62. 2
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Danv. 188. If the tenants by whose hands the surrender was made shall die, and this upon proof is presented in court, it is well enough. 4 Ref. 29.

Tenants refusing to make presentment, are compellable in the lord's court. And by surrender of copyhold lands to the use of a mortgagee, the lands are bound in equity, though the surrender be not presented at the next court. 2 Stat. 449. When a copyholder surrenders upon condition, and this is presented absolutely, the presentment is void; but where a conditional surrender is presented, and the steward omits entering the condition, on proof thereof the condition shall not be avoided; but the rolls shall be amended. 4 Ref. 25. A copyholder may surrender to the use of another, reserving rent with a condition of re-entry for non-payment, and in default of payment may re-enter. Ib. 21.

If a copyholder of inheritance takes a lease for years of his copyhold estate, it is a surrender in law of his copyhold. Where there is a tenant for life, and remainder in fee, he in remainder may surrender his estate, if there be no custom to the contrary. 3 Leon. 329. If a surrender is made with remainders over, case lies for him in remainder against a copyholder for life, who commits waste, &c. 3 Lev. 128. A surrenderee of a reversion of a copyhold is an assignee within the equity of the stat. 32 Hen. VIII. c. 34. to bring action of debt or covenant against lessee, &c. 1 Stat. 135. A copyholder in fee surrenders to the use of one for life, with remainder to another for life, remainder to another in fee; as the particular estates and remainders make but one estate, there is but one fine due to the lord. 2 Danv. 191.

The fruits and appendages of a copyhold tenure, that it hath in common with free tenures, are Realty, Services, (as well in rents as otherwise,) Reliefs, and Escheats. The two latter belong only to copyholds of inheritance; the former to those for life also. But besides these, copyholds have also Heriots, Wardship and Fines. Heriots are incident to both species of copyhold; but wardship and fines to these of inheritance only. Wardship in copyhold estates partakes both of that in chivalry, and that in socage. Like that in chivalry the lord is the legal guardian, who usually assigns some relation of the infant tenant to act in his stead; and he, like guardian in socage, is accountable to his ward for the profits. Of fines, some are in the nature of primer remains due on the death of each tenant; others are mere fines for the alienation of the lands. In some manors only one of these sorts can be demanded; in some both, and in others neither. They are sometimes arbitrary and at the will of the lord, sometimes fixed by custom; but even when arbitrary, the courts of law, in favour of the liberty of copyholders have tied them down to be reasonable in their extent; otherwise they might amount to a disherison of the estate. No fine therefore is allowed to be taken upon descents or alienations (unless in particular circumstances) of more than two years' improved value of the estate. 2 Ch. Ref. 134. See 2 Comm. 97.

Fines are paid to the lord on admittances; and may be due on every change of the estate by lord or tenant: The lord may have
an action of debt for his fine; or may distrain by custom. 4 Rep.
27. 13 Rep. 2.
A heriot is a duty to the lord, rendered at the death of the ten-
ant, or on a surrender and alienation of an estate; and is the
best beast or goods, found in the possession of the tenant deceased,
or otherwise, according to custom. And for heriots, reliefs, &c. the lord may distrain, or bring action of debt. Plowd. 96.
See tit. Heriot.
Relief is a sum of money which every copyholder in fee, or
freeholder of a manor pays to the lord, on the death of his ancestor;
and is generally a year's profits of his land. See tit. Tenure, Relief.
Services signify any duty whatsoever accruing unto the lord
from tenants; and are not only annual, and accidental; but corporal, as homage, fealty, &c. Comp. Court Keeper, 7, 8, 9.
Copyholds escheat, and are forfeited in many cases; escheat of
a copyhold estate, is either where the lands fall into the hands of
the lord for want of an heir to inherit them; or where the
copyholder commits felony, &c. But before the lord can enter on
an estate escheated, the homage jury ought to present it. Forfeitures
proceeding from treasons, felonies, alienation by deed, a present-
ment of them must be also made in court, that the lord may
have notice of them. A copyholder refusing to do suit of court,
being sufficiently warned, is a forfeiture of his estate; unless he
be prevented by sickness, inundations of water, &c. If the lord
demandeth his rent, and the copyholder being present, denies to
pay it at the time required, this is a forfeiture; but if the tenant
be not upon the ground when demanded, the lord must continue
his demand upon the land, so that by continual denial in law, it
may amount to a denial in fact; though it is said there must
be a demand from the person of the copyholder, and a wilful de-
nial, to make a forfeiture.
If a copyholder do not perform the services due to his lord;
or if he sue a replevin against the lord, upon the lord's lawful
distress for his rent or services, these are forfeitures. If the
lord upon admittance of a copyholder, the fine by the custom of
the manor being certain, demandeth his fine, and the copyholder
denieth to pay it upon demand, this is a forfeiture.
Upon the descent of any copyhold of inheritance, the heir by
the general custom is tied, upon three solemn proclamations,
made at three several courts, to come in and be admitted to his
copyhold; or if he faileth therein, this failure worketh a forfei-
ture; but if an infant come not in to be admitted at three pro-
clamations, it is no forfeiture. So of one beyond sea, &c.
An idiot, lunatic, &c. though able to take copyholds, they
yet are unable to forfeit them; and in respect to others, forfei-
tures may be mitigated by custom, and the copyholder only amerced.
By stat. 9 Geo. I. c. 29. on default of infants and feme coverts
appearing to be admitted tenants to copyhold lands, the lord or
his steward may name a person to be guardian or attorney for
them, and by such guardian, &c. admit them; and if the usual
fine thereon be not paid in three months, being demanded in
writing, the lord may enter on the copyhold, receive the rents,
&c. till the fine is paid with all charges. And by this statute no
infant or *feme covert* shall forfeit any copyhold lands for their neglect to come to court to be admitted, or refusal to pay any fine.

The general custom of copyholds allows a copyholder to make a lease for one year of his copyhold estate, and no more, without incurring a forfeiture; but a copyholder may make a lease for one year, and covenant with the lessee, that, after the end of that year, he shall have the same for another year, and so from year to year during the space of seven years, &c. and be no forfeiture. *Cro. Jac.* 300. For this does not amount to a lease, but is only a covenant, subjecting the covenantor to an action for damages. Though a copyholder may not make a lease to hold for one year, and so from year to year during his life, excepting one day yearly, &c. which will be a forfeiture, being a mere evasion. But a license to lease may be bad. A woman who was a copyholder in fee married, her husband made a lease for years, not warranted by the custom, which was a forfeiture; the husband died; and adjudged that the lord shall not take advantage of this forfeiture after his death, but the wife shall enjoy the estate. *Cro. Car.* 7. And see 4 Rep. 21 to 25. &c.

Livery upon any conveyance of a copyhold estate amounts to a forfeiture. And yet if a copyholder for life surrender to another in fee, this is no forfeiture; for it passeth by the surrender to the lord, and not by livery.

If copyholder for life cut down timber-trees, it is a forfeiture of his copyhold; though such copyholder may take house-bote, hedge-bote, and plough-bote, upon his copyhold, of common right, as a thing incident to the grant; if he be not restrained by custom to take them by the assignment of the lord or his bailiff. Where a copyholder for life falls timber-trees, the lord may take them, and the estate is forfeited; but if under-lessee for years of a copyholder cut down timber, this shall not be a forfeiture of the copyhold estate, but the lord is put to his action on the case against the lessee. *1 Bulst.* 150. *Style.* 233. A copyhold granted to two for their lives successively, where the custom of the manor is, that they shall not fell trees; if the first copyholder for life cut down trees, &c. it is not only a forfeiture of his own estate for life, but of him in remainder. *Moor.* 49.

In other cases, a copyholder for life, committing waste, shall not forfeit the estate of him in remainder. *Cro. Eliz.* 880. If copyholder for life, where the remainder is over for life, commits a forfeiture by waste, &c. he in remainder shall not enter, but the lord. 2 *Danv.* 198. A copyholder committing waste voluntary, or permissive, this is a forfeiture; voluntary, as if he pull down any house, though built by himself; lop trees, and sell them, plough up meadow, whereby the ground is made worse, &c. Permissive, if he suffer the roof of the house to let in rain, or the house to fall; or if he permit his meadow ground to be surrounded with water, so that it becomes marshy; or his arable land to be thus surrounded and become unprofitable, &c. these and the like are forfeitures. See 2 *Danv.* *Abr.* 192, 193, 196. &c. 1 *Nels.* *Abr.* 509, 510. &c.

If a *feme* copyholder for life takes husband, who commits waste and dies, the estate of the *feme* is forfeited; though not if a stranger commits the waste, without the assent of the husband. 4
COPYHOLD.

Rep. 37. Sed qu. the difference between copyholder for life, and copyholder in fee, in this respect; unless waste is distinguished from other forfeitures?

Most forfeitures are caused by acts contrary to the tenure; but a succeeding lord of a manor shall not have any advantage of a forfeiture, by waste done by a copyholder in the time of his predecessor 2 Sid. 8. And if a present lord doth any thing whereby he acknowledges the person to be his tenant after forfeiture, this acknowledgment is a confirmation of his estate. Coke's Cof. 61.

The court of chancery will sometimes relieve against a forfeiture for waste, and compel the lord to readmit, on receiving satisfaction for the injury he has sustained. Such relief is particularly given where the waste is committed through ignorance; or where the waste is merely permissive, and there has not been an obstinate perseverance, in neglecting to repair after notice. 1 C. C. 95. Pre. Ch. 568. Another instance in which relief against forfeiture for waste, is said to be proper, is where the lessee of a copyholder commits waste without his direction or privity. Toth. 257. But in this latter case it may be doubted whether the waste is a forfeiture. See Mod. 49.

Also, when the estate is forfeited for non-payment of rent, a fine, or such things, where a value may be set on them, and compensation made the lord on any laches of time, the tenant may be relieved; for there the land is but in nature of a security for those sums. Pre. Chan. 569. 572.

In case of making a lease for years, without license, and not warranted by custom, found to be a forfeiture at law, equity has nothing to do with it, to give any remedy; it is like to a feoffment made, or fine levied by particular tenants, against which there can be no relief. Ibid. 574. Where copyhold lands are purchased in fee, in trust for an alien, the lands are not seizable by the king; nor is the trust forfeited to him; for if the lands were forfeited as purchased for such alien, then the lord of the manor would lose his fines and services, &c. Hard. 436.

By stat. 10 Geo. II. c. 26. copyhold estates of poor prisoners may be assigned to creditors, and the assignees admitted by the lord, on paying the usual fine due on a surrender, &c. and see stat. 1 Geo. III. c. 17. § 14. as to Insolvent.

By stat. 31 Geo. II. c. 14. § 1. already mentioned, copyholders are not to vote for Knights of the Shire. The admission of infants and feme coverts entitled by descent, or surrender to the use of a will is regulated by stat. 9 Geo. I. c. 29. And the stat. 5 Geo. III. c. 45. (explained by 6 Geo. III. c. 49.) compels the steward to receive the stamp duty on admission, &c. at the same time he receives the fees of court.


COPYRIGHT. The exclusive right of printing and publishing copies of any literary performance; extended also to music, engravings, &c. See tit. Literary Property.

CORAAGE, coraagium.] A kind of extraordinary imposition, growing upon some unusual occasion, and seems to be of certain

CORACLE, A small boat used by fishermen on some parts of the river Severn, made of an oval form, of split sallow twigs interwoven, and on that part next the water covered with leather, in which one man, being seated in the middle, will row himself swiftly with one hand, while with the other he manages his net or fish-tackle; and coming off the water, he will take the light vessel on his back, and carry it home. This boat is of the same nature as the Indian canoes, though not of the same form, or employed to the like use. But quare if not long out of use.

CORAM NON JUDICE, Is when a cause is brought and determined in a court whereof the judges have not any jurisdiction; then it is said to be coram non judice, and void. 2 Cro. 351.

CORBEL STONES, Are stones wherein images stand. The old English corbel was properly a niche in the wall of a church, or other structure in which an image was placed for ornament or superstition; and the corbel stones were the smooth, polished stones, laid for the front and outside of the corbels or niches. The niches remain on the outside of very many churches and steeples in England, though the little statues and reliques are most of them broken down. Paroch. Antiq. 375.

CORD or WOOD, Is a quantity of wood eight feet long, four feet broad, and four feet high, ordained by the statute.

CORDAGE, Fr.] Is a general appellation for all stuff to make ropes, and for all kind of ropes belonging to the rigging of a ship. It is mentioned in 15 Car. II. c. 13. and see stat. 25 Geo. III. c. 56. against frauds in the manufacture of cordage for shipping. See Sail Cloth.

CORDINER. See Cordwainer.

CORDUBANARIUS, A cordwainer, a shoemaker, Cowel, from the Fr. corduanier, a shoemaker. We call him vulgarly a cordwainer; and so this word is used in divers statutes; as 3 Hen. VIII. c. 10. 5 Hen. VIII. c. 7. 27 Hen. VIII. c. 14. 5 & 6 Edw. VI. c. 13. 1 Jac. I. c. 22. &c. By which last statutes the Masters and Wardens of the Cordwainers' Company in London, &c. are to appoint searchers and triers of leather; and leather is not to be sold before searched and sealed, &c.

CORETES, From the Brit. cored, pools, ponds, &c.] Et cum suis piscibus et coretum anguillarum et cum toto territorio suo. Du Fresne.

CORIUM FORISFACERE, Was where a person was condemned to be whipped; which was anciently the punishment of a servant. Corium perdere, the same; and corium redimere is to compound for a whipping.

CORN. As to the general provisions relative to the importation and exportation of corn, see tit. Navigation Acts. And as to the exportation of corn to enemies in time of war, see stat. 33 Geo. III. c. 27. and tit. Treason.

No corn was formerly to be exported, without the king's license; except for the victualling of ships, and in some special cases, from some ports only; and none might by stat. 5 Eliz. c. 12. buy corn to sell again, without license from justices. But now
corn, as wheat, barley, oats, &c. may be exported to states in amity, when they exceed not certain prices, regulated by many statutes; and the exporters of it shall pay no duty or custom, but be entitled to bounty-money, or a certain allowance for exportation.

By stat. 11 Geo. II. c. 22, if any person use violence on another person to hinder him from buying or carrying corn to any seaport town to be transported, &c. he shall be imprisoned by two justices not exceeding three months, and be publicly whipped, &c. and committing a second offence, or destroying granaries, or corn in any boat or vessel, to be adjudged a felon, and transported for seven years; and the hundred to make good the damage, if not above 100L as in cases of robbery, where an offender is not apprehended and convicted within twelve months; but notice must be given to the constable in two days. Stat. 24 Geo. II. c. 56. ordains the bounty on ground corn to be regulated by weight; and stat. 26 Geo. II. c. 15. appoints interest to be paid on debentures for the bounty of corn exported. A corn-market established at Westminster by stat. 31 Geo. II. c. 25. § 1. Forms of the certificates of prices of grain, to regulate the price of bread are settled by stat. 31 Geo. II. c. 29. See tit. Bread.

The principal acts now in force to regulate the returns of the prices of grain, are stats. 31 Geo. III. c. 30. 33 Geo. III. c. 65. by the former of which, several statutes, viz. 1 Jac. II. c. 19. 1 W. & M. c. 12. 5 Geo. II. c. 12. 10 Geo. III. c. 39. 13 Geo. III. c. 43. 21 Geo. III. c. 50. and 29 Geo. III. c. 58. are all repealed; as also every provision in any other act for regulating the importation of wheat, &c. except such as relate to the making of malt for exportation and the exportation thereof. So much of stat. 15 Car. II. c. 7. as prohibits the buying of corn to sell again, and the laying it up in granaries, is also repealed.

By the stat. 31 Geo. III. c. 30. 33 Geo. III. c. 65. bounties are granted on exportation at certain prices, and the exportation prohibited when at higher prices—the quantity of corn to be exported to foreign countries is settled; (as to which see also 34 Geo. III. c. 71.) The maritime counties of England are divided into districts. The exportation of corn to be regulated in London, Kent, Essex, and Sussex, by the prices at the Corn Exchange, the proprietors of which are to appoint an inspector of corn returns, to whom weekly returns are to be made by the factors; and he is to make up weekly accounts, and transmit the average price to the receiver of the returns, to be transmitted to the officers of the customs, and inserted in the London gazette. The exportation in other districts, and in Scotland, to be regulated by the prices at different appointed places, for which mayors, justices, &c. are to elect inspectors. Declarations are to be truly made by factors of the corn sold by them. Orders of council may be made to regulate importation or exportation, from time to time. Such orders to be laid before parliament. See also stat. 32 Geo. III. c. 50. and 33 Geo. III. c. 8, as to the exportation of wheat, and as to transshipping of corn brought coastwise. By 44 Geo. III. c. 109. 45 Geo. III. c. 86. the mode of ascertaining the average price, to regulate the importation and exportation of corn to and from Great Britain, is further provided for. By the latter
act, such average is to result from the prices in the 12 maritime districts of England and Wales. See also 46 Geo. III. c. 11.

By several acts, made from time to time with a view to relieve the public against the scarcity or dearness of corn, the exportation and importation of corn and provisions are allowed to be prohibited and regulated by order of the king (or lord lieutenant of Ireland) and council. See 35 Geo. III. c. 4. 36 Geo. III. c. 3. 37 Geo. III. c. 7. 39 Geo. III. c. 87. (continued by various subsequent acts) 39, 40 Geo. III. c. 9. and c. 38. 41 Geo. III. (G. B.) c. 2. c. 5. 41 Geo. III. (U. K.) c. 36. (for Ireland, continued by several subsequent acts.) By others of these temporary acts, bounties are given on the importation of corn, flour, &c. See 36 Geo. III. c. 21. c. 56. 37 Geo. III. c. 7. c. 33. 38 Geo. III. c. 10. 39, 40 Geo. III. c. 29. c. 35. c. 53. 41 Geo. III. (G. B.) c. 10. 41 Geo. III. (U. K.) c. 13. 45 Geo. III. c. 88. 46 Geo. III. c. 11. By some acts of a like nature, corn is prohibited to be used in distilleries. 35 Geo. III. c. 11. c. 119. 35 Geo. III. c. 20. 39, 40 Geo. III. c. 8. 41 Geo. III. (G. B.) c. 3. 41 Geo. III. (U. K.) c. 16. Or in making Starch, 39, 40 Geo. III. c. 25. 41 Geo. III. (G. B.) c. 3. Or in making Malt, 41 Geo. III. (U. K.) c. 16. (in Ireland.) And in like manner the manufacture of flour and bread has been occasionally regulated. See 41 Geo. III. (G. B.) c. 16. 48 Geo. III. (U. K.) c. 1. 2. And see tit. Bread.

To preserve the markets of corn uninterrupted, it is enacted by 36 Geo. III. c. 9. that persons hindering the buying of corn, or seizing it in its progress from place to place shall be punished by imprisonment in the house of correction. § 1. Persons convicted of such offence a second time, and persons destroying store-houses or carrying corn away therefrom unlawfully, are punishable by seven years transportation. § 2. The hundred is made liable to damages, (not exceeding 100l.) in case the offender is not convicted within twelve months. § 3, 4, 5.

The intercourse of corn between Great Britain and Ireland has been regulated by various acts since the Union. See 42 Geo. III. c. 35. 43 Geo. III. c. 14. continued by various acts, till 46 Geo. III. c. 97. by which last act the free interchange of every species of grain (the produce of either country, 47 Geo. III. c. 7.) is permitted between the two countries without respect to the prices, and without any duties or bounties.

With respect to the exportation of certain quantities of corn annually to Guernsey, Jersey, &c. see 36 Geo. III. c. 21. 38 Geo. III. c. 29. 43 Geo. III. c. 103. (made perpetual by 45 Geo. III. c. 68. § 4.) 46 Geo. III. c. 98. § 4.

[The above is a short abstract of the law on a very fluctuating subject at the time this part of the work was passing through the press. January, 1794.]

CORNAGE, Cornagium, from the Lat. cornu, a horn.] A kind of tenure in grand serjeancy; the service of which was to blow a horn when any invasion of the Scots was perceived; and by this tenure many persons held their lands northward, about the wall commonly called the Piets' Wall. Cambd. Britan. 609. This old service of horn-blowing was afterwards paid in money, and the sheriffs accounted for it under the title of Cornagium. Sir Edward Coke in his first Institute, pt. 107. says cornage is also
called in the old books, Horngeld; but they seem to differ much. See Horngeld.


CORN RENTS. By stat. 18 Eliz. c. 6. on college leases, one third of the old rent to be reserved in wheat or malt, &c. the invention of Lord Treasurer Burleigh, and Sir Thomas Smith, who observed the value of money to sink much, and the price of provisions to rise greatly, on our communication with the Indies; and therefore devised this method for upholding the revenues of the colleges. 2 Comm. 322.

CORNWALL, A royal duchy belonging to the Prince of Wales, abounding with mines, and having Statmary courts, &c. It yields a great revenue to the prince. How leases are to be made of lands in the duchy of Cornwall, for three lives, or thirty-one years, under the ancient rents, &c. see stat. 13 Car. II. c. 4. and 12 Ann. c. 22. 24 Geo. II. c. 50. and 1 Geo. III. c. 11. Assises for Cornwall not confined to Launceston, 1 Geo. I. c. 45. Leases by Prince of Wales, of lands in Cornwall, where good, 10 Geo. II. c. 29. § 9, 10, 11. What leases and grants by the king shall be good, 33 Geo. II. c. 10. See tit. King.

CORODY, corodiun.] Signifies a sum of money or allowance of meat, drink, and clothing due to the king from an abbey, or other house of religion, whereof he was founder, towards the sustentation of such a one of his servants as he thought fit to bestow it upon. The difference between a corody and a pension seems to be, that a corody was allowed towards the maintenance of any of the king's servants in an abbey: a pension is given to one of the king's chaplains, for his better maintenance, till he may be provided of a benefice. And as to both these, see Fitz. N. B. fol. 250. where are set down all the corodies and pensions that our abbeys, when they were standing, were obliged to pay to the king.

Corody is ancient in our laws; and it is mentioned in Statndfs. Prerog. 44. And by the stat. of Westm. 2. c. 25. it is ordained, that an assise shall lie for a corody. It is also apparent by stat. 34 & 35 Hen. VIII. cap. 26. that corodies belonged sometimes to bishops, and noblemen, from monasteries; and in the New Terms of Law, it is said, that a corody may be due to a common person, by grant from one to another; or of common right to him that is a founder of a religious house, not held in Frankalmoigne; for that tenure was a discharge of all corodies in itself. By this book it likewise appears, that a corody is either certain or uncertain, and may be not only for life or years, but in fee. Terms de Ley. 2 Inst. 630. See the Monasticon Anglicanum, for the form of a grant of a corody.

CORODIO HABENDO, A writ to exact a corody of an abbey or religious house. Reg. Orig. 264.

CORONA MALA, or MALA CORONA. The clergy who abused their character, were formerly so called. Blount.

CORONARE FILIUM, To make one's son a priest. Anciently, lords of manors, whose tenants held by viltenage, did prohibit them coronare filios, lest such lords should lose a viltein by their entering into holy orders; for ordination changed their condition, and gave them liberty, to the prejudice of the lord,
who could before claim them as his natives, or born servants. Homo Coronatus was one who had received the first tonsure, as preparatory to superior orders; and the tonsure was in form of a corona, or crown of thorns. Cowel.

CORONER, Coronator, à corona.] An ancient officer at the common law. Mention is made of him in King Athelstan's charter to Beverley. Anno 925.

He is called coroner, coronator, because he hath principally to do with pleas of the crown, or such wherein the king is more immediately concerned. 2 Inst. 31. 4 Inst. 271. And in this light the Lord Chief Justice of the King's Bench is the principal coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm. 4 Rep. 57. But there are also particular coroners for every county of England; usually four, but sometimes six, and sometimes fewer. Fitz. N. B. 165. This office is of equal antiquity with that of sheriff, and was ordained together with him to keep the peace, when the earls gave up the wardship of the county. Mirror, c. 1. § 3.

I. His Election, and Removal.

II. 1. His Power and Duty; 2. His Fees for the Execution of his Duty; and, 3. His Punishment for the Breach of it.

I. He is still chosen by all the freeholders in the county court; as by the policy of our ancient laws, the sheriff and conservators of the peace, and all other officers were, who were concerned in matters that affected the liberty of the people. 2 Inst. 558. And as verderors of the forest still are, whose business it is to stand between the prerogative and the subject in the execution of the forest laws. For this purpose there is a writ at common law de coronatore eligendo, Fitz. N. B. 163, in which it is expressly commanded the sheriff, "quod talen eligi faciat, qui metus et sciat, et velit, et possit, officio illi intendere." See post. And in order to effect this the more surely, it was enacted by stat. Westm. 1. 3 Edw. I. c. 10. that none but lawful and discreet knights should be chosen; and there was an instance in the 5 Edw. III. of a man being removed from this office because he was only a merchant. 2 Inst. 32. But it seems it is now sufficient if a man hath lands enough to be made a knight; (which by the statutum de militibus, 1 Edw. II. were lands to the amount of 20l. per annum;) whether he be really knighted or not. Fitz. N. B. 163, 164. For the coroner ought to have an estate sufficient to maintain the dignity of his office, and answer any fines that may be set upon him for his misbehaviour. Ibid. And if he hath not enough to answer, his fine shall be levied on the county, as the punishment for electing an insufficient officer. Mirror, c. 1. § 3. 2 Inst. 175. Now, indeed, through the culpable neglect of gentlemen of property, this office has been suffered to fall into disrepute, and get into low and indigent hands; so that although formerly no coroners would condescend to be paid for serving their country, and they were by the aforesaid stat. Westm. 1. expressly forbidden to take a reward, under pain of great forfeiture to the king; yet for many years past they have only desired to be
chosen for the sake of their perquisites; being allowed fees for their attendance. See post, II. 2.

By stat. 28 Edw. III. c. 6, it is enacted, "That all coroners of the counties shall be chosen in the full counties of the most mete and lawful people that shall be found in the same counties, to execute the said office; saved always to the king, and other lords, who ought to make such coroners, their seignories and franchises."

The oaths of allegiance, supremacy and abjuration, are to be taken, and then the oaths of office. When the coroner is elected, and sworn into his office, he is to remember the qualification acts, and in due time, to take the sacrament, and oaths of abjuration.

Impey's Sheriff.

In the case of election by freeholders, where the majority cannot be determined by the view, upon the holding up of hands, the sheriff upon the demand of a poll to be taken of the numbers, ought not to deny it; nor ought he to deny a scrutiny into the polls, when properly required, upon a suggestion that non-freeholders have polled; for how otherwise can the majority of freeholders be ascertained? It is an election at common law, and this scrutiny is as incident to inquire into the polls, as numbering of the polls is incident to the holding up of hands; nor can the just majority be otherwise duly discovered or declared.

Freedm. 17. 2 Vent. 25. 1 Vent. 206. 2 Lev. 50.

The coroner is chosen for life; but may be removed, by either being made sheriff, or chosen verderor, which are offices incompatible with the other; or by the king's writ de coronario exonerando, for a cause to be therein assigned; as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. Fitz. N. B. 163, 164. See post. And by stat. 25 Geo. II. c. 29, extortion, neglect, or misbehaviour, are also made causes of removal. See post, II. 3.

There are Special Coroners, within divers liberties, as well as the ordinary officers in every county; as the Coroner of the Verge, which is a certain compass about the king's court; who is likewise called Coroner of the King's Household. Crompt. Jursid. 102.

The king's coroner shall execute his office within the verge. Stat. 32 Hen. VIII. c. 20, § 7. Some corporations and colleges are licensed by charter to appoint their coroners within their own precincts. 4 Inst. 271. For what arises on the high sea, we read of coroners appointed by the king or his admiral. 2 Hale's P. C. 53. See post, Coroner of the King's Household.

It is said coroners are of three kinds. 1. By virtue of an office. 2. By charter or commission. 3. By election.

1. The Chief Justice of K. B. 2. The Lord Mayor of London is, by charter 18 Edw. IV. coroner of London. See post. The Bishop of Ely also hath power to make coroners, by a charter of Hen. VII. and there are coroners of particular lords of franchises and liberties, who by charter have power to create their own coroners, or to be coroners themselves, especially in the jurisdiction of the Admiralty, as well as that of the verge above referred to. 3. The general coroners of counties. See 1 Hale, 52. 4 Ref. 57. 1 Comm. 384.
The coroner of Portsmouth has jurisdiction on board a man of war lying in Portsmouth harbour; for though the Admiralty have a coroner of their own, he never takes inquisitions of *feo de se*.

II. The Office of Coroners especially concerns the pleas of the crown; and they are conservators of the peace in the county where generally elected. Their authority is *judicial* and *ministerial*. *Judicial*, where one comes to a violent death, and to take and enter appeals of murder, pronounce judgment upon outlawries, &c. And to inquire of lands and goods, and escapes of murderers, treasure-trove, wreck of the sea, deodands, &c. The *ministerial* power is where the coroners execute the king's writs, on exception to the sheriff, as by his being party to a suit, kin to either of the parties, on default of the sheriff, &c. 4 Inst. 271. 1 Plovw. 73. And the authority of coroners does not determine by the demise of the king. 2 Inst. 174.

Where coroners are empowered to act as judges, as in taking an inquisition of death, or receiving an appeal of felony, &c. the act of one of them is of the same force as if they had all joined; but after one of them has proceeded to act, the act of another of them will be void; and where they are authorized to act only *ministerially*, in the execution of a process directed to them upon the incapacity of the sheriff, their acts are void, if they do not all join. 2 Hawk. P. C. c. 9. § 45. Hob. 70.

So that coroners as *ministers* must all join; but as *judges*, they may divide. But two coroners ought to be judges in redisseisin; and though one serves to pronounce an outlawry, the entry ought to be in the name of all of them. And so of all processes directed to the coroners. Staunf. 50. Jenk. Cent. 85.

If the sheriff is either plaintiff or defendant, or one of the cognisees, the writ must be directed to the coroner. Cro. Car. 300. But the coroner is not the officer of B. R. but where the sheriff is improper; not where there is no sheriff; for if the sheriff die, the coroner cannot execute a writ. In case of two coroners, if one is challenged, the other may execute the writ, &c. yet both make but one officer. It is the same with two sheriffs of a city, &c. 1 Salk. 144. *A venire facias* shall go to the coroner, where the sheriff is a party, or the defendant is a servant to the sheriff, &c. But it ought to be on a principal challenge to the favour. Moor, 470.

On defaults of sheriffs, coroners are to empanel juries, and return issues on juries not appearing, &c. As the sheriff in his turn might inquire of all felonies by the common law, saving the death of a man; so the coroner can inquire of no felony but of the death of a person, and that *suiter visum corporis*. 4 Inst. 271. But in Northumberland, the coroner, by custom, may inquire of other felonies. 35 Hen. VI. 27. But without custom, no coroner is authorized to take any other inquisition than on death. 2 Hale, 65. See Leach's Hawk. P. C. ii. c. 9. § 35. n. By Magna Charta, cap. 17. no sheriff, &c. or coroner shall hold pleas of the crown; but by stat. Westm. 1. 3 Edw. I. c. 10. it is enacted, that the coroners shall lawfully attach and present pleas of the crown; and
that sheriffs shall have counter-rolls with the coroners, as well of appeals, as of inquests, &c.

Coroners, before the stat. Magna Charta, might not only receive accusations against offenders, but might try them; but since that statute, they cannot proceed so far; and appeals before them are removable into B. R. &c. by certiorari, directed to the coroners and sheriffs, &c. Though process may be awarded by the sheriff and coroner, or the coroner only, in the county court on appeals, till the exigent, &c. 2 Hawk. P. C. c. 9. § 41.

By the stat. De officio coronatoris, 4 Edw. I. st. 2. the coroner is to go to the place where any person is slain or suddenly dead, and shall by his warrant to the bailiffs, constables, &c. summon a jury out of the four or five neighbouring towns, to make inquiry upon view of the body; and the coroner and jury are to inquire into the manner of killing, and all circumstances that occasioned the party's death; who were present, whether the dead person was known, where he lay the night before, &c. examine the body if there be any signs of strangling about the neck, or of cords about the members, &c. Also all wounds ought to be viewed, and inquiry made with what weapons, &c. And the coroner may send his warrant for witnesses, and take their examination in writing; and if any appear guilty of the murder, he shall inquire what goods and lands he hath, and then the dead body is to be buried. A coroner may likewise commit the person to prison who is by his inquisition found guilty of the murder, and the witnesses are to be bound by recognisance to appear at the next assizes, &c.

When the jury have brought in their verdict, the coroner is to enrol and return the inquisition, whether it be brought in murder, manslaughter, &c. to the justices of the next gaol delivery of the county, or certify it into B. R. where the murderers shall be proceeded against. 2 Roll. Abr. 32. Upon an inquisition taken before the coroner, he must put into writing the effect of the evidence given to the jury before him; and bind them to appear, &c. which is to be certified to the court with the inquisition, and neglecting it, the coroner shall be fined. 1 and 2 P. & M. c. 13. 1 Litt. Abr. 327.

The word Murdravit is not necessary in a coroner's inquisition, though it is in an indictment for killing another person. 1 Saulk. 377. It is not necessary that the inquisition be taken in the place where the body was viewed. 2 Hawk. P. C. c. 9. § 23. But a coroner has no authority to take an inquisition of death without a view of the body; and if the inquest be taken by him without such view, it is void. 2 Lev. 140.

The coroner may in convenient time take up a dead body that hath been buried, in order to view it; but if it be buried so long that he can discover nothing from the viewing it, or if there be danger of infection, the inquest ought not to be taken by the coroner, but by the justices of peace, by the testimony of witnesses; for none can take it on view, but the coroner. Bro. Coron. 167. 173. If the body is buried, the town shall be amerced; as it shall be if the body is suffered to lie so long that it stinks. 2 Danu. Abr. 209. &c. Where the body hath lain for some time, that it cannot be judged how it came by its death, that must be record-
ed; that at the coming of the justices of assise, the town where, 
&c. may be amerced on sight of the coroner's rolls.

A coroner may find any nuisance by which the death of a man
happens; and the township shall be amerced on such finding.
1 Nels. Abr. 336. If one is slain in the day, and the murderer
escapes, the town where done shall be amerced, and the coroner
is to inquire thereof on view of the body. Stat. 3 Hen. VII. c. 1.
A coroner may take an indictment upon view of the body; as
also an appeal, within a year after the death of one slain. Wood's
Inst. 491. But a coroner, super visum corporis, cannot make an
inquisition of an accessory after the murder; though he may of ac-
cessaries before the fact. Moor, 29.

Coroners ought to sit and inquire on the body of every prisoner
that dies in prison. They have no jurisdiction within the verge
of the king's courts; nor of offences committed at sea, or between
high and low water mark when the tide is in; though they have
in arms and creeks of the sea 3 Inst. 134. See ante, I. ed. post.
If a body is drowned, and cannot be found to be viewed, the inqui-
sition must be taken by justices of peace, on the examination of
witnesses, &c. 5 Rep. 110.

Where a coroner's inquest is quashed, he must make a new
one super visum corporis: And a coroner may attend and amend
his inquisition in matters of form: But if he misbehaves himself,
and a meitus inquirendum is granted upon it, that inquisition must
be taken by the sheriffs or commissioners, upon affidavits, and
not super visum corporis; because none but a coroner can take in-
quition super visum, &c. and he is not to be trusted again. 1

A coroner's inquisition being final, the coroner ought to hear
counsel and evidence on both sides. 2 Sid. 90. 101. The coro-
ner must admit evidence, as well against the king's interest, as
for it; but it hath been held, that if a person be killed by an-
other, and it is certainly known that he did it, the coroner's jury
are to hear the evidence only for the king; and inquire whether
the killing were by malice, or without malice, &c. Per Hat., Ch.
Justice. Where a coroner would not admit of evidence against
the king, to prove a felo de se to be non compos mentis, his inqui-
sition was set aside; and a new inquisition taken, whereby it was
found that the party was non compos. 2 Hale's Hist. P. C. 60. If
there be an inquisition of manslaughter or murder, and also an in-
dictment by the grand jury against one, and he is arraigned, and
found not guilty on the indictment; here it is necessary to quash
the coroner's inquisition, or to arraign the party upon it, and ac-
quit him on that also; for otherwise it stands as a record against
him, wherein he may possibly be outlawed. 2 Hale, 65. And
where a person found guilty by the coroner's inquest, pleads, and
is acquitted by the petit jury; they must give in who it was that
killed the man, which serves as an indictment against that other
person; and if they cannot tell who, they may mention some fic-
titious name. Ibid.

2. By the stat. 3 Edw. 1. cap. 10. coroners shall demand or
take nothing for doing their offices; and by the ancient law of
England, none having any office concerning the administration of
justice, could take any fee for doing his office; and therefore this
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Coroner II. 3.

The statute was only in affirmance of the common law. By stat. 3 Hen. VII. cap. 1. upon an inquisition taken on view of the body, the coroner shall have 13s. 4d. fee of the goods of the murderer, and if he be gone, then out of the amercement of the town for the escape. Though stat. 1 Hen. VIII. c. 7. enacts, that where a person is slain by misadventure, the coroner is to take no fee, on pain of 40s. Justices of assise and of peace have power to inquire of and punish extortions of coroners, and also their defaults. Stat. Ibid.

By the stat. 25 Geo. II. c. 29. for every inquisition, not taken upon the view of a body dying in gaol, which shall be taken by any coroner in any township or place contributory to the rates directed by stat. 12 Geo. II. c. 29. the sum of 20s. and for every mile which he shall travel from the place of his abode, the further sum of 9d. shall be paid to him out of the money arising by the said rates. And for every inquisition taken upon the view of a body dying in gaol, so much money, not exceeding 20s. shall be paid him as the justices at sessions shall think fit to allow, out of the money arising from the said rates. Provided, that over and above the recompense by the statute appointed, the coroner who shall take an inquisition upon the view of a body slain or murdered, shall have the fee of 13s. 4d. payable by stat. 3 Hen. VII. c. 1. out of the goods of the slayer or murderer, or out of the amercements upon the township, if the slayer or murderer escape. Coroners taking further fees guilty of extortion.

Provided, that no coroner of the king's household, and of the verge of the king's palaces, nor any coroner of the Admiralty, nor of the county palatine of Durham, nor of the city of London and borough of Southwark, or of any of the franchises belonging to the said city, nor any coroner of any city, borough, town, liberty or franchise not contributory to the rates directed by stat. 12 Geo. II. c. 29. or within which such rates have not been usually assessed, shall be entitled to any fee, recompense or benefit given by this act.

3. If a coroner be remiss in coming to do his office, when he is sent for, &c. he shall be amerced by virtue of the above-mentioned statute, De coronatoribus, S. P. C. 51. Salk. 377. H. P. C. 170.

If a coroner hath been guilty of any corrupt practice, bribery, &c. in taking the inquisition, a mittus inquirendum may be awarded for taking a new one by special commissioners, &c. Coroners concealing felonies, &c. are to be fined, and suffer one year's imprisonment. 3 Edw. I. cap. 9. Also for mismanagement in the coroner, the filing of the inquisition may be stopped. 1 Mod. 82. A coroner's inquisition is not traversable: If it be found before the coroner suiter vixit corporis, that one was feo de se, the executors or administrators of the deceased, it is said, cannot traverse it. 3 Inst. 55. But it has been held that the inquest being moved into B. R. by certiorari, may be there traversed by the executor or administrator of the deceased. 2 Hawk. P. C. c. 9. § 54. And it hath been adjudged, that the inquisition of feo de se is traversable; though fagam fecit is not. 2 Leon. 152.

If a coroner be convicted of extortion, wilful neglect of duty, or misdeemnor in his office, the court before whom he shall be so convicted, may adjudge that he shall be removed from his office. See stat. 25 Geo. II. c. 29.
For further matter on this subject, see 2 Hawk. P. C. c. 9.
throughout.

Coroner of the King's Household, Hath an exempt jurisdiction within the verge, which the coroner of the county cannot intermeddle with; as the coroner of the king's house, may not intermeddle within the county out of the verge. 2 Hawk. P. C. c. 9. § 15. If an inquisition be found before the coroner of the county, and the coroner of the verge, where the homicide was committed in the county, and it is so entered and certified, it will be error. 4 Rep. 45. But if murder be committed within the verge, and the king removes, before any indictment taken by the coroner of the king's household; the coroner of the county, and the coroner of the king's house shall inquire of the same: And according to Sir Edward Coke, the coroner of the county might inquire thereof at the common law. 2 Hawk. P. C. c. 9. § 15. 2 Inst. 550. If the same person be coroner of the county, and also of the king's house, an indictment of death taken before him as coroner, both of the king's house, and of the county, is good. 4 Rep. 46. 2 Inst. 134.

By the stat. 33 Hen. VIII. c. 12. §§ 1. 3. it is ordained, That all inquisitions made upon the view of persons slain within any of the King's palaces or houses, or any other house or houses wherein his Majesty shall happen to be abiding in his royal person, shall be taken by the coroner for the time being of the king's household, without any assisting of another coroner of any shire within this realm; by the oaths of twelve or more of the yeoman officers of the king's household, returned by the two clerks controllers, the clerks of the checks, and the clerks marshal, or one of them of the said household, to whom the said coroner of the household shall direct his precept; and the said coroner shall certify under his seal, and the seals of such persons as shall be sworn before him, all such inquisitions before the master or lord steward of the household; who hath the appointment of such coroner, &c.

Coroner of London. By the charter of King Edw. IV. the mayor and commonalty of London may grant the office of coroner to whom they please; and no other coroner but he that belongs to the city, shall have any power there: Also the lord mayor, &c. may choose two coroners in Southwark. When any one is killed, or comes to an untimely death in London, the coroner upon notice shall attend where the body is, and forthwith cause the beadles of the ward to summon a jury to make the necessary inquiry, how such person came by his death: and after inquisition taken, he shall give a certificate to the churchwarden, clerk or sexton of the parish, to the intent the corpse may be buried. The coroner's fees here formerly amounted to 25s. now to above double that sum; unless the friends of the deceased are poor, and then he shall execute his office for nothing. Cit. Lib. 46, 47. The coroners in London and Middlesex, and in other cities, &c. may bail felons and prisoners, in such manner as hath been heretofore accustomed. Stat. 1 & 2 P. & M. c. 13. s. 6. 1 Lill. Abr. 397.

What anciently belonged to the coroners, you may read at large in Bracton, lib. 3. tract. 2. cap. 5, 6, 7, & 8. Britton, cap. 1. and Fleta, lib. 1. c. 18.

Coronatore Eligendo. A writ which lies on the death of
discharge of any coroner, directed to the sheriff out of the chancery, to call together the freeholders of the county, for the choice of a new coroner; and to certify into the chancery, both the election and the name of the party elected, and also to give him his oath, &c.  Reg. Orig. 177.  Fitz. N. B. 163.  See lit. Coronor.

CORONATOR EXONERANDO. A writ for the discharge of a coroner, for negligence, or insufficiency in the discharge of his duty; and where coroners are so far engaged in any other public business, that they cannot attend the office; or if they are disabled by old age or disease, to execute it; or have not sufficient lands, &c. they may be discharged by this writ. 2 Inst. 32. 2 Hawk. P. C. c. 9. § 12. But if any such writ be grounded on an untrue suggestion, the coroner may procure a commission from the chancery to inquire thereof; and if the suggestion be disproved, the king may make a supersedeas to the sheriff, that he do not remove the coroner; or if he have removed him, that he suffer him to execute the office.  Reg. Orig. 177, 178.  Fitz. N. B. 164. See lit. Coronor.  As also the coroner’s is an office of freehold, the court of chancery, with whom the power of granting this writ resides, will not suffer it to issue, unless on affidavit, that the defendant has been served with notice of the petition for it. 3 Atk. 184.  And on an election of a new coroner by a majority of the freeholders, the power and authority of the old one is ipso facto extinguished. See lit. Coronor.

CORONE, Fr.] All matters of the crown were heretofore reduced to this law head or title; they are the things that concern treason, felony, and divers other offences, by the common law, and by statute.  Steph. Epit. 567.  

CORPORAL OATH, And how it is administered, see lit. Oath.  

CORPORATION.

Corporatio.] A body politic or incorporate; so called as the persons composing it are made into a body, and of capacity to take and grant, &c.  Or, it is an assembly and joining together of many into one fellowship and brotherhood, whereof one is head and chief, and the rest are the body; and this head and body knit together, make the Corporation: also it is constituted of several members, like unto the natural body, and framed, by fiction of law, to endure in perpetual succession.  

With respect to Corporations, or communities of old, the forming of cities into communities, corporations, or bodies politic, and granting them the privilege of municipal jurisdiction, contributed more than any other cause to introduce regular government, police and arts, and to diffuse them over Europe. Louis the Great in France, to counterbalance his potent vassals, conferred new privileges on the towns situated within his domain, called charters of community, and formed the inhabitants into corporations, or bodies politic, to be governed by a council and magistrates of their own nomination. About the same period the great cities in Germany began to acquire like immunities; and the practice quickly spread over Europe, and was adopted in Spain, England, Scotland, and all the other feudal kingdoms. Robertson’s Hist. Emp. C. V. v. 1. 32. 34. &c.

Of Corporations some are sole, some aggregate; sole, when in
one single person, as the king, a bishop, dean, &c. Aggregate, which is the most usual, consisting of many persons, as mayor, and commonalty, dean and chapter, &c. Likewise corporations are spiritual or temporal; spiritual, of bishops, deans, archdeacons, Parsons, vicars, &c. Temporal, of mayors, commonalty, bailiffs and burgesses, &c. Some corporations are of a mixt nature, composed of spiritual and temporal persons, such as heads of colleges and hospitals, &c. All corporations are said to be ecclesiastical or lay.

Lay Corporations are of two sorts, civil and eleemosynary. The civil are such as are erected for a variety of temporal purposes. The king, for instance, is made a corporation to prevent in general the possibility of an interregnum, or vacancy of the throne, and to preserve the possessions of the crown entire; for immediately upon the demise of one king, his successor is in full possession of the regal rights and dignity. Other lay corporations are erected for the good government of a town or particular district, as a mayor and commonalty, bailiff and burgesses, or the like; some for the advancement and regulation of manufactures and commerce; as the trading companies of London, and other towns; and some for the better carrying on of divers special purposes; as churchwardens, for conservation of the goods of the parish; the college of physicians and company of surgeons in London, for the improvement of the medical science; the Royal Society, for the advancement of natural knowledge; and the Society of Antiquaries, for promoting the study of antiquities. And among these general corporate bodies, the universities of Oxford and Cambridge must be ranked. 3 Burr. 1656.

The eleemosynary sort are, such as are constituted for the perpetual distribution of the free alms, or bounty of the founder of them to such persons as he has directed. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent; and all colleges, both in our Universities, and out of them. Such as at Westminster, Eaton, Winchester, &c. which colleges are founded for two purposes: 1. For the promotion of piety and learning, by proper regulations and ordinances. 2. For imparting assistance to the members of those bodies, in order to enable them to prosecute their devotion and studies with greater ease and assiduity. And all these eleemosynary corporations are, strictly speaking, lay, and not ecclesiastical, even though composed of ecclesiastical persons, and although they in some things partake of the nature, privileges, and restrictions of ecclesiastical bodies. 1 Ld. Raym. 6. They are, in fact, lay corporations, because they are not subject to the jurisdiction of the ecclesiastical courts, or to the visitations of the ordinary or diocesan in their spiritual characters. 1 Comm. 471.

I. How Corporations are created.
II. Their Interest and Jurisdiction.
III. How for their Acts are binding.
IV. How they are visited.
V. How they are dissolved.

I Bodies Politic or incorporate may commence and be established three manner of ways, viz. by prescription, by letters pa-
Corporation I.

1. Lawful authority. 2. Proper persons to be incorporated. 3. A name of incorporation. 4. A place, without which no corporation can be made. 5. Words sufficient in law to make a corporation. 10 Rep. 29. 123. 3 Rep. 73. The words incorporata, funda, &c. are not of necessity to be used in making corporations; but other words equivalent are sufficient; and of ancient time, the inhabitants of a town were incorporated, when the king granted to them to have Guildam Mercatoriam. 2 Danv. Abr. 214. He that gave the first possessions to the corporation, is the founder. The parishioners or townsmen of a parish or town; and tenants of a manor, are to some purposes a corporation. Co. Litt. 93. 342.

If the king grants lands to the inhabitants of B. their heirs and successors, rendering a rent, for any thing touching these lands, this is a corporation; though not to other purposes; but if the king grants lands to the inhabitants of B. and they be not incorporated before, if no rent be reserved to the king the grant is void. 2 Danv. 214. If the king grants to the men of Islington to be discharged of toll, this is a good corporation to this intent; but not to purchase, &c. And by special words, the king may make a limited corporation, or a corporation for a special purpose. Ibid.

London is a corporation by prescription; but though a corporation may be by prescription, it shall be intended that it did originally derive its authority by grant from the king; for the king is the head of the commonwealth, and all the commonwealth, in respect of him, is but one corporation; and all other corporations are but limbs of the greater body. 1 Litt. Abr. 330. A mayor and commonly or corporation, cannot make another corporation, or commonly. 1 Sid. 290. The city of London cannot make a corporation, because that can only be created by the crown; but London, or any other corporation, may make a fraternity. 1 Sail. 193.

The parliament, by its absolute and transcendent authority, may perform this, or any other act whatsoever; and actually did perform it to a great extent, by stat. 39 Eliz. c. 5. which incorporated all hospitals and houses of correction founded by charitable persons, without farther trouble; and the same has been done in other cases of charitable foundations. But otherwise it has not formerly been usual thus to intrench upon the prerogative of the crown; and the king may prevent it when he pleases. And in the particular instance before mentioned, it was done, as Sir Edward Coke observes, 2 Inst. 722. to avoid the charges of incorporation and licenses of mortmain in small benefactions; which in his days were grown so great, that they discouraged many men from undertaking these pious and charitable works.

The king (it is said) may grant to a subject the power of erecting corporations; (Bre. Abr. tit. Prerog. 53. Viner, Prerog. 86. fol. 16. though the contrary was formerly held; Year Book. 2 Hen. VII. 13.) that is, he may permit the subject to name the persons and powers of the corporation at his pleasure; but it is really the king that erects, and the subject is but the instrument;
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for though none but the king can make a corporation, yet qui facit per alium, facit per se. 10 Rep. 33. In this manner the chancellor of the university of Oxford, has power by charter to erect corporations; and has actually often exerted it, in the erection of several matriculated companies, now subsisting, of tradesmen subservient to the students.

When a corporation is erected, a name must be given to it; and by that name alone it must sue and be sued, and do all legal acts; though every minute variation therein is not material. 10 Rep. 122. Such name is the very being of its constitution; and, though it is the will of the king that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions. Gilb. Hist. C. P. 183. The name of incorporation, says Sir Edward Coke, is as a proper name, or name of baptism; and therefore when a private founder gives his college or hospital a name, he does it only as a godfather; and by that same name the king baptizes the corporation. 10 Rep. 28.

And it may change its name, as corporations frequently do in new charters, and will still retain its former rights and privileges. 4 Co. 87.

No persons shall bear office in any corporation, &c. but such as have received the sacrament of the church, and taken the oaths. Stat. 13 Car. II. st. 2. c. 1. But see the stat. 5 Geo. I. c. 5. confirming officers in corporations. See tit. By-Laws, Oaths, Non-conformists.

What persons are capable of being elected members of a corporation. See Hardw. 23.

[38 Geo. III. c. 52. regulates the trial of causes, indictments, and other proceedings which arise within the counties of certain cities and towns corporate within this kingdom.]

II. When a corporation is duly created, all incidents, as, to purchase and grant, sue and be sued, &c. are tacitly annexed to it; and although no power to make laws, statutes or ordinances, is given by a special clause to a corporation, it is included by law in the very act of incorporating. Co. Litt. 264. A new charter doth not merge or extinguish any of the ancient privileges of the old charter. And if an ancient corporation is incorporated by a new name, yet their new body shall enjoy all the privileges that the old corporation had. Raym. 439. 4 Rep. 37.

There are usually granted in charters to corporations, divers franchises; as felons' goods, waifs, estrays, treasure-trove, deodands, courts, and cognisance of pleas, fairs, markets, assise of bread and beer, &c. 4 Rep. 65. Actions arising in corporations may be tried in the corporation courts; but if they try actions which arise not within their jurisdictions, and encroach upon the common law, they shall be punished for it. Lutw. 1371, 1372. Actions triable there, must, in general, mean those actions where-in the corporation is not interested.

There may be a corporation without a head; but where there is a head, all acts ought to be by and to the head; nor can they sue without such head; and if he dies, nothing can be done in the vacancy. 10 Rep. 30. 32. Co. Litt. 264. If land be given to a
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mayor and commonalty for their lives, they have an estate by intendment not determinable: so it is, if a feoffment be made of land to a dean and chapter, without mention of successors.

In a case of sole corporation, as bishop, dean, parson, \\n
chattel, either in action or possession, shall go in succession; but the executors or administrators of the bishop, parson, \\n
shall have them: but it is otherwise of a corporation aggregate, as a dean and chapter, mayor and commonalty, and the like: for they in the judgment of law never die. But the case of the Chamberlain of London differs from all these; his successor, in his own name, may have execution of a recognisance acknowledged to his predecessor for orphanage money; and the reason is, because the corporation of the chamberlain is by custom, which hath enabled the successor to take and have such recognisances, obligations, \\n
&c. that are made to his predecessor. Terms de Ley.

Though a sole corporation cannot generally take in succession, goods, and chattels, &c. yet it may take a fee-simple in succession, by the word Successors. Co.Litt. 8, 9, 46. Aggregate corporations may take not only goods and chattels, but lands in fee-simple, without the word Successors, for the reason before-mentioned. 4 Inst. 249. Succession in a body politic, is an inheritance in a body private. If a lease for years be made to a bishop and his successors, it is said his executors shall have it in utter driot; for regularly no chattel can go in succession in case of a sole corporation, no more than if a lease be made to a man and his heirs, it can go to his heirs. Co. Litt. 46.

Grants of corporations are to be by deed, under their common seal, and are good without delivery; for the common seal gives perfection to corporation deeds. Dom. 44. An obligation sealed with the common seal of a corporation, if the mayor signs it, he is suitable, if the corporation be dissolved: but if two of the members sign it, the particular persons are not bound by it. 2 Lev. 137. Raym. 152. A release of a mayor for any sum of money due to the corporation, made in his own name, is not good in law; the corporation must join and do it by their common seal. Terms de Ley.

A corporation which hath a head, may make a personal command without writing; but a corporation aggregate without a head cannot. Lutw. 1497. A corporation aggregate may employ any one in ordinary services, without deed; though not to appear for them, in any act which concerns their interest or title. 1 Vent. 47, 48. Such a corporation may appoint a bailiff to take a distress, without deed or warrant. 1 Salk. 191. But cannot without deed command a bailiff to enter into lands for a condition broken; for such command without deed is void. Cro. 815.

Though a corporation cannot do an act in facs without their common seal, they may do an act upon record; and the reason is, because they are estopped by the record to say it is not their act. 1 Salk. 192. A promise to a corporation is good without deed. 2 Lev. 252. The head of a corporation aggregate may not be charged with the act of his predecessor if it be not by common seal, or for such things as come to the use of the whole body or society. 1 And. 23. 196.
A corporation may do an act in that capacity, to one of themselves in his natural capacity; and any member in his natural capacity may perform an act to the corporation in his politic capacity; and so they may sue one another, in their distinct capacities. 1 Sheft. Abr. 436. Trespass for an assault and battery, &c. will not lie against a corporation; but it must be brought against the persons that do the trespass by their proper names; though if the beasts of the corporation trespass on a man in his ground, action of trespass lies against them for this. Process of outlawry will not lie against a corporation; nor capias or exi- gent, but distress. 22 Ass. 67. 39 Edw. III. 13. 21 Edw. IV.

A corporation cannot sue, or appear in person, but by attorney: they cannot commit treason or felony, or be excommunicate, &c. They may not be executors or administrators, be joint-tenants, trustees, &c. Nor shall the members of a corporation be regularly witnesses for the corporation. 10 Rep. 32. 11 Rep. 98. Co. Litt. 134. But they may be disfranchised, and then be witnesses; though not surrender by consent. Yet in some cases the judges now admit their testimony without disfranchisement where the interest is remote. Attachment doth not lie against a corporation. Raym. 153.

Corporations may have power not only to enfranchise freemen, but to disfranchise a member, and deprive him of his freedom; if he doth any act to the prejudice of the body, or contrary to his oath, &c. Though for conspiring to do any thing contrary to his duty, or for words of contempt against the chief officers, he may not be disfranchised; but he may be committed till he find sureties for his good behaviour. 11 Rep. 98. 5 Mod. 257. A corporation cannot disfranchise for breach of a by-law. 1 Litt. 331. And one wrongfully disfranchised may be restored, and have his remedy by mandamus, &c. in B. R. An alderman or freeman of a corporation cannot be removed from his freedom or place without good cause, and a custom to remove them ad libitum is void, because the party hath a freehold therein. Cro. Jac. 340.

A person may be bound to the good behaviour for words spoken against mayors, &c. but he may not be indicted for it; and if justices of a corporation deny to do right, it is a forfeiture of their exemption from the inquiry of the justices of the county. Mod. Cas. 125. 164. Head officers of corporations are to redress abuses of merchant-strangers, &c. or the franchise shall be seized; stat. 9 Eliz. c. 3. § 1. and have authority in many cases by statute; for which see tit. Mayors.

No strangers shall sell by retail any woollen or linen cloth, or mercery wares, in corporate towns, except at fairs, on pain of forfeiture, &c. But such persons may sell wares by wholesale, and cloth of their own making by retail. 1 and 2 P. & M. cap. 7. Bodies politic and ecclesiastical may make leases for three lives, or twenty-one years, under the restrictions in the acts 1 Eliz. c. 19. 13 Eliz. c. 20. See tit. Leases. If land is given in fee to a dean and chapter, or to a mayor and commonalty, &c. and after, such body politic or incorporate is dissolved, the donor shall have the land again, and not the lord by escheat. Co. Litt. 31.

The corporation of the city of London is to answer for all particular misdemeanors, which are committed in any of the courts.
of justice within the city; and for all other general misdemeanors committed within the city; so it is conceived of all other corporations. 1 Litt. Abr. 329. If a common officer of a town doth any thing for their common use, it is reasonable the corporate town should be answerable for it. 1 Leon. 215.

III. A Corporation is properly an investing the people of the place with the local government thereof, and therefore their laws shall be binding to strangers; but a fraternity is some people of a place united together in respect of a mystery and business into a company, and their laws and ordinances cannot bind strangers, for they have not a local power. Salk. 193.

No masters and wardens, &c. of any mystery, or other corporation, shall make any by-laws or ordinances in diminution of the king's prerogative, or against the common profit of the people; except the same be approved by the Lord Chancellor, or Chief Justices, &c. on pain of 40l. And such bodies corporate shall not make any acts or ordinances for the restraining persons to sue in the king's courts for remedy, &c. under the like penalty. Stat. 19 Hen. VII. cap. 7. Ordinances made by corporations, to be observed on pain of imprisonment, or of forfeiture of goods, &c. are contrary to Magna Charta. 2 Inst. 47. 54.

But penalties may be inflicted by by-laws, which may be recovered by distress or action of debt: and a custom for the Lord Mayor and Aldermen of London, to commit a citizen for not accepting of the livery, &c. was held a good custom, being for the good government of the city. 5 Mod. 320.

Corporations, may not, by bond or otherwise, restrain any apprentice, &c. from keeping shop in the corporation, under the penalty of 40l. Stat. 28 Hen. VIII. c. 5. See tit. By-Laws.

In acts done by corporations, the consent of the major part shall be binding Stat. 33 Hen. VIII. c. 27.

This act clearly vacates all private statutes, both prior and subsequent to its date, which require the concurrence of more than a majority to give validity to any grant or election. Blackstone (1 Comm. 478.) is of opinion, that it has not affected the negative given by the statutes to the head of any society; but it seems that this opinion may be questioned, especially in cases where, in the first instance, he gives his vote with the members of the society. It is the usual language of college statutes to direct that many acts shall be done by guardianus et major pars sociorum, or magister, or prepositus et major pars; and it has been determined by the court of King's Bench, (Cowp. 377.) and by the visi
tor of Clare-Hall, Cambridge, and also by the visitors of Dublin college, that this expression does not confer upon the warden, master, or provost, any negative; but that his vote must be counted with the rest, and he is concluded by a majority of votes against him.

IV. Corporations being composed of individuals, subject to human frailties, are liable, as well as private persons, to deviate from the end of their institution. And for that reason, the law has provided proper persons to visit, inquire into, and correct all irregularities that arise in such corporations, either sole or ag-
ggregate, and whether ecclesiastical, civil, or eleemosynary. With regard to all ecclesiastical corporations, the ordinary is their visitor, so constituted by the canon law, and from thence derived to us. The pope formerly, and now the king, as supreme ordinary, is the visitor of the archbishop or metropolitan; the metropolitan has the charge and coercion of all his suffragan bishops; and the bishops in their several dioceses, are in ecclesiastical matters the visitors of all deans and chapters, of all parsons and vicars, and of all other spiritual corporations. With respect to all lay corporations, the founder, his heirs or assigns, are the visitors, whether the foundation be civil or eleemosynary; for in a lay incorporation, the ordinary neither can nor ought to visit. 16 Rep. 31.

The founder of all corporations in the strictest and original sense, is the king alone, for he only can incorporate a society; and in civil corporations, such as mayor and commonly, &c. where there are no possessions or endowments given to the body, there is no other founder but the king; but in eleemosynary foundations, such as colleges and hospitals, where there is an endowment of lands, the law distinguishes and makes two species of foundation; the one fundatio incipiens, or the incorporation, in which sense the king is the general founder of all colleges and hospitals; the other fundatio perficiens, or the dotation of it, in which sense the first gift of the revenues is the foundation, and he who gives them is in law the founder; and it is in this last sense that we generally call a man the founder of a college or hospital. 10 Rep. 33. But here the king has his prerogative; for, if the king and a private man join in endowing an eleemosynary foundation, the king alone shall be the founder of it. And in general, the king being the sole founder of all civil corporations, and the endower the perficiens founder of all eleemosynary ones, the right of visitation of the former results, according to the rule laid down, to the king; and of the latter, to the patron or endower.

The king being thus constituted by law, visitor of all civil corporations, the law has also appointed the place, wherein he shall exercise this jurisdiction; which is the Court of King's Bench; where, and where only, all misbehaviours of this kind of corporations are inquired into and redressed, and all their controversies decided. However, though the court of King's Bench, upon a proper complaint and application, can prevent and punish injustice in civil corporations, as in every other part of their jurisdiction; it is not the language of the profession, to call that part of their authority a visitatorial power. 1 Comm. 481 n.

As to eleemosynary corporations, by the dotation, the founder and his heirs are of common right the legal visitors; but if the founder has appointed and assigned any other person to be visitor, then his assignee so appointed is invested with all the founder's power, in exclusion of his heir. Eleemosynary corporations are chiefly hospitals, or colleges in the universities. These were all of them considered, by the popish clergy, as of mere ecclesiastical jurisdiction; however, the law of the land judged otherwise; and, with regard to hospitals, it has long been held, (Y. B. 3 Edw. III. 28. 8 Ass. 39.) that if the hospital be spiritual, the bishop shall visit; but if lay, the patron. This right of lay patrons was indeed abridged by stat. 2 Hen. V. c. 1, which ordained that the
ordinary should visit all hospitals founded by subjects; though the king's right was reserved, to visit by his commissioners such as were of royal foundation. But the subject's right was in part restored by stat. 14 Eliz. c. 5, which directs the bishop to visit such hospitals only, where no visitor is appointed by the founder thereof. And all hospitals founded by virtue of the stat. 39 Eliz. c. 5, are to be visited by such persons as shall be nominated by the respective founders. But still, if the founder appoints nobody, the bishop of the diocese must visit. 2 Inst. 273.

Colleges in the universities (whatever the common law may now, or might formerly, judge) were certainly considered by the popish clergy, under whose direction they were, as ecclesiastical, or at least as clerical corporations; and therefore the right of visitation was claimed by the ordinary of the diocese. This is evident, because in many of our most ancient colleges, where the founder had a mind to subject them to a visitor of his own nomination, he obtained for that purpose a papal bull, to exempt them from the jurisdiction of the ordinary; several of which are still preserved in the archives of the respective societies. And in some of our colleges, where no special visitor is appointed, the bishop of that diocese, in which Oxford was formerly comprised, has immemorially exercised visitatorial authority; (that is, the bishop of Lincoln, from whose diocese that of Oxford was taken;) which can be ascribed to nothing else, but his supposed title as ordinary to visit this, among other ecclesiastical foundations.

But, whatever might be formerly the opinion of the clergy, it is now held as established common law, that colleges are lay corporations, though sometimes totally composed of ecclesiastical persons; and that the right of visitation does not arise from any principles of the canon law, but of necessity was created by the common law. Ld. Raym. 8. And yet the power and jurisdiction of visitors in colleges was left so much in the dark at common law, that the whole doctrine was very unsettled till the famous case of Philips v. Bury. (Ld. Raym. 5. 4 Mod. 106.) In this the main question was, whether the sentence of the bishop of Exeter, who (as visitor) had deprived Doctor Bury, the rector of Exeter college, could be examined and redressed by the Court of King's Bench. And the three puisne judges were of opinion that it might be reviewed, for that the visitor's jurisdiction could not exclude the common law; and, accordingly, judgment was given in that court. But Lord Chief Justice Holt was of a contrary opinion; and held that by the common law, the office of visitor is to judge according to the statutes of the college, and to expel and deprive upon just occasions, and to hear all appeals of course; and that from him, and him only, the party grievous ought to have redress; the founder having reposed in him so entire a confidence, that he will administer justice impartially, that his determinations are final, and examinable in no other court whatever. And upon this, a writ of error being brought into the House of Lords, they concurred in Sir John Holt's opinion, and reversed the judgment of the Court of King's Bench. To which leading case all subsequent determinations have been conformable. But where the visitor is under a temporary disability, there the Court of King's Bench will interpose, to prevent a defect of justice. Stra. 797.
Also it is said, (2 Lutw. 1566.) that if a founder of an eleemosynary foundation appoints a visitor, and limits his jurisdiction by rules and statutes, if the visitor in his sentence exceeds those rules, an action lies against him; but it is otherwise where he mistakes in a thing within his power.

No particular form of words is necessary for the appointment of a visitor. Sit visitator, or visitationem commendamus, will create a general visitor, and confer all the authority incidental to the office; (1 Burr. 199.) but this general power may be restrained and qualified, or the visitor may be directed by the statutes to do particular acts, in which instance he has no discretion as visitor; as where the statutes direct the visitor to appoint one of two persons, nominated by the fellows, to be the master of a college, the Court of King's Bench will examine the nomination of the fellows, and if correct, will compel the visitor to appoint one of the two. 2 Term Rep. 290. New ingrafted fellowships, if no statutes are given by the founders of them, must follow the original foundation, and are subject to the same discipline and judicature. 1 Burr. 203. It is the duty of the visitor, in every instance, to effectuate the intention of the founder, as far as he can collect it from the statutes, and the nature of the institution; and in the exercise of this jurisdiction, he is free from all control. Lord Mansfield has declared, that the visitatorial power, if properly exercised, without expense or delay, is useful and convenient to colleges; and it is now settled and established, that the jurisdiction of a visitor is summary, and without appeal from it. 1 Burr. 200. See 1 Comm. 479. &c.

V. A Corporation may be dissolved, for it is created upon a trust; and if that be broken, it is forfeited. 4 Mod. 58.

Corporations are dissolved by forfeiture of their charter, misuse, &c. upon the writ quo warranto brought; by surrender, or by act of parliament; and if they neglect to choose officers, or make false elections, &c. it is a forfeiture of the corporation. 4 Rep. 77.

Corporations may be dissolved in several ways, which dissolution is the civil death of the corporation; and in this case their lands and tenements shall revert to the person, or his heirs, who granted them to the corporation; for the law doth annex a condition to every such grant, that if the corporation be dissolved, the grantor shall have the lands again, because the cause of the grant faileth. Co. Litt. 13. The grant is indeed only during the life of the corporation; which may endure for ever: but, when that life is determined by the dissolution of the body politic, the grantor takes it back by reversion, as in the case of every other grant for life. The debts of a corporation, either to or from it, are totally extinguished by its dissolution: so that the members thereof cannot recover, or be charged with them, in their natural capacities. 1 Lev. 237.

A corporation may be dissolved, 1. By act of parliament, which is boundless in its operations. 2. By the natural death of all its members, in case of an aggregate corporation. 3. By surrender of its franchises into the hands of the king, which is a kind of suicide. 4. By forfeiture of its charter,
through negligence or abuse of its franchise; in which case
the law judges that the body politic has broken the condition upon
which it was incorporated, and therefore the incorporation is void.
And the regular course is to bring an information in nature of a
writ of _quo warranto_, to inquire by _what warrant_ the members
now exercise their corporative power, having forfeited it by such
and such proceedings. The exertion of this act of law, for the
purposes of the state, in the reign of King _Charles_ and King _James_
the Second, particularly by seizing the charter of the city of Lon-
don, gave great and just offence, though perhaps in strictness of
law, the proceedings in most of them were sufficiently regular;
but the judgment against that of _London_ was reversed by act of
parliament, stat. 2 _W. & M._ c. 8. after the revolution. And by the
same statute it is enacted, that the franchises of the city of Lon-
don shall never more be forfeited for any cause whatsoever. And
because by the common law corporations were dissolved, in case
the mayor or head officer was not duly elected on the day ap-
pointed in the charter, or established by prescription, it is now
provided by stat. 11 _Geo. I._ c. 4. that no corporation shall be dis-
olved, for any default to choose a mayor, &c. but the electors
are still to proceed to election; and if no election be made, the
court of King's Bench shall issue a _mandamus_ requiring the elect-
ors to choose such mayor, &c.

By stat. 2 _Ann._ c. 20. where persons intrude into the office of
mayor, &c. of a corporation, a _quo warranto_ shall be brought
against the usurpers, who shall be ousted, and fined; and none
are to execute an office in a corporation for more than a year.
See further on this subject, Kyt's _Treatise on the Law of Corpo-
urations_; and see also particularly this _Dict._ tit. _Mortmain, Manda-
mus, Quo Warranto._

To prevent improper conduct in _trading corporations_ in elec-
tions, and in disposing of the joint stock, it is by stat. 7 _Geo. III._
c. 48. enacted, that no member of such corporations shall be ad-
mitted to vote in the general courts, until he shall have been six
months in possession of the stock necessary to qualify him; un-
less it comes to him by bequest, marriage, succession or settle-
ment. And by the same statute, only one half yearly dividend is
to be made by one general court, five months at least from the
preceding declaration of a dividend; and questions for increasing
the dividend are to be decided by ballot. See _tit._ _East-India Com-
pany._

To facilitate the proceedings in cases of _mandamus_ and _quo war-
rente_, and to prevent any undue advantage on either side, the stat-
12 _Geo. III._ c. 21. provides, that where any person shall be en-
titled to be admitted a freeman, &c. of any corporation, &c. and
shall apply to the proper officer to be admitted, and shall give no-
tice of his intention to move the court of King's Bench for a _mandamus_, in case of refusal, the officer shall pay all the costs of
the application. And the same statute enacts, that the proper
officer shall, on the demand of two freemen, permit them and their
agents to inspect the entries of admission of freemen, and to take
copies and extracts, under penalty of 100l.

CORPOREAL INHERITANCE. In houses, lands, &c. see _tit._
Inheritance.
CORPSE, stealing of. If any one in taking up a dead body steals the shroud, or other apparel, it will be felony. 3 Inst. 110. 12 Reph. 113. 1 Hale's P. C. 515. But stealing the corpse itself, only, is not felony, but it is punishable as a misdemeanor by indictment at common law. 2 Comm. 236.

CORPUS CHRISTI DAY. A feast instituted in the year 1264, in honour of the blessed sacrament; to which also a college in Oxford is dedicated. It is mentioned in the stat. 32 Hen. VIII. c. 21.

CORPUS CUM CAUSA. A writ issuing out of the Chancery, to remove both the body and record, touching the cause of any man lying in execution upon a judgment for debt, into the King's Bench, &c.; there to lie till he have satisfied the judgment. Fitz. N. B. 261. See tit. Habens Corpus.

CORRECTOR OF THE STAPLE. A clerk belonging to the staple, to write and record the bargains of merchants there made. See stat. 27 Edw. III. st. 2. cr. 22, 23.

CORREDEM, CONREDIUM, The same with cornodiun. See Corody.

CORRUPTION OF BLOOD, corruptio sanguinis.] An infection growing to the state of a man, and to his issue; and is where a person is attainted of treason or felony; by means whereof his blood is said to be corrupted, and neither his children, nor any of his blood, can be heirs to him or any other ancestor. Also, if he is of the nobility, or a gentleman, he and all his posterity by the attainder, are rendered base and ignoble. But by pardon of the king the children born afterwards may inherit the land of their ancestor, purchased at the time of the pardon, or after; but so cannot they who were born before the pardon. Terms de Ley.

If a man that hath land in right of his wife, hath issue, and his blood is corrupt by attainder of felony, and the king pardons him; in this case, if the wife dies before him, he shall not be tenant by the curtesy, for the corruption of the blood of that issue: though it is otherwise, if he hath issue after the pardon; for then he should be tenant by the curtesy, although the issue which he had before the pardon be not inheritable. 13 Hen. VII. 17.

A son attainted of treason or felony in the life of his ancestor, obtains the king's pardon before the death of his ancestor, he shall not be heir to the said ancestor, but the land shall rather escheat to the lord of the fee by the corruption of blood. 36 Ass. pl. 32 Hen. VIII.

If the father of a person attainted die seized of an estate of inheritance, during his life no younger brother can be heir; for the elder brother, though attainted, is still a brother, and no other can be heir to his father, while he is alive; but if he die before the father, the younger brother shall be heir. 2 Hawk. P. C. c. 49. § 49. See further Co. Litt. 8. 391. Dyce, 48. 3 Inst. 211.

Corruption of blood from an attainder is so high that it cannot be absolutely salved, but by act of parliament; for the king's pardon doth not restore the blood so as to make the person attainted capable either of inheriting others or being inherited himself by any one born before the pardon. 1 Inst. 391, 392. 2 Hawk.

A statute which saves the corruption of blood, impliedly saves the descent of the land to the heir; and it prevents the
corruption of blood so far: also it saves the wife's dower, &c. But nevertheless the land shall be forfeited for the life of the offender. 3 Inst. 47. 1 Hawk. P. C. c. 41. § 5. See further, tit. Attainder, Forfeiture, Escheat, Tenure, &c.

CORSELET, Fr. in Lat. corsusculum.] A little body. The name of an ancient armour used to cover the body or trunk of a man; wherewith ikemen commonly set in the front and flanks of the battle were formerly armed, for the better resistance of the assaults of the enemy, and the surer guard of the soldiers placed behind; who were more slightly armed for their speedier advancing to, and retreating from, the attack. 4 and 5 P. & M. c. 2.

CORSEPRESNT, From the Fr. corps present.] A mortuary: and the reason why it was thus termed seems to be, that where a mortuary became due on the death of any man, the best, or second-best beast was, according to custom, offered or presented to the priest, and carried with the corps. See stat. 21 Hen. VIII. c. 6, and this Dict. tit. Mortuary.

CORNED BREAD, panis conjuratus.] Ordeal Bread: it was a kind of superstitious trial used among the Saxons, to purge themselves of any accusation, by taking a piece of barley-bread, and eating it with solemn oaths and excommunications, that it might prove poison, or their last morsel, if what they asserted or denied were not punctually true. These pieces of bread were first excommunicated by the priest, and then offered to the suspected person to be swallowed by way of purgation: for they believed a person, if guilty, could not swallow a morsel so accused; or if he did, it would choke him.

The form was thus: We beseech thee, O Lord, that he who is guilty of this theft, when the exorcised bread is offered to him in order to discover the truth, that his jaws may be shut; his throat so narrow that he may not swallow, and that he may cast it out of his mouth, and not eat it. Du Cange. The old form, or exorcismus panis hordoecii vel casci ad probationem veri, is extant in Lindenbrogius, page 107. And in the laws of King Caeru, cap. 6. Si quis altari ministrandum accusat, &c. et amis desitutus sit, cum sacramentales non habet, vadat ad judicium, quod Anglicæ dictum corismed, et fiat sic: Deus velist, nisi super sanctum corpus Domini permittatur ut se purget: from which it is conjectured, that corned bread was originally the very sacramental bread consecrated and devoted by the priest, and received with solemn adjuration and devout expectation, that it would prove mortal to those who dared to swallow it with a lie in their mouths; till at length the bishops and clergy were afraid to prostitute the communion bread to such rash and concealed uses; when, to indulge the people in their superstitious fancies and idle customs, they allowed them to practise the same judicial rite, in eating some other morsels of bread, blest or curt to the like uses.

It is recorded of the perfidious Godwin, Earl of Kent, in the time of King Edward the Confessor, that on his abjuring the murder of the king's brother, by this way of trial, as a just judgment of his solemn perjury, the bread stuck in his throat, and choked him. Ingulph. This, with other barbarous ways of purgation, was by degrees abolished; though we have still some remembrance of this superstitious custom in our usual phrases of abjura-
COSTS.

Expenses Litis.] In the prosecution and defence of actions, the parties are necessarily put to certain expenses, or, as they are commonly called, costs; consisting of money paid to the king and government for fines and stamp-duties; to the officers of the courts; and to the counsel and attorneys for their fees, &c.

These costs may be considered either as between attorney and client: being what are payable in every case to the attorney, by his client, whether he ultimately succeed or not; or as between party and party, being those only which are allowed, in some particular cases, to the party succeeding against his adversary. As between party and party, they are interlocutory or final; the former are given on various interlocutory motions and proceedings in the course of the suit, the latter (to which the term of costs is most generally applied, and the rules respecting which are of the most consequence) are not allowed till the conclusion of the suit.

Vol. II.
The following abstract of the law relating hereto, is taken principally from Tidd's Law of Costs; a short and comprehensive abridgment; to which, and the various other productions on the subject, the practitioner must necessarily have frequent recourse in nice and particular cases.

It will be sufficient for the present purpose, to arrange the information on this subject in the following manner.

I. In what cases Costs are given to the Plaintiff.
II. In what, to the Defendant.
III. Of double and treble Costs.
IV. Of taxing and recovering Costs.

I. No costs were recoverable by the plaintiff or defendant at common law. 2 Inst. 288. Hardr. 152. But by the stat. of Gloucester, (6 Edw. I.) c. 1. § 2. it is provided, “that the demandant may recover against the tenant the costs of his writ purchased; (which by a liberal interpretation, has been construed to extend to the whole costs of his suit, 2 Inst. 288.) together with the damages given by the statute, and that this act shall hold place in all cases where a man recovers damages.” This was the origin of costs de incremento. Gib. Eq. Rep. 195. And hence the plaintiff has, generally speaking, a right to costs, in all cases where he was entitled to damages antecedent to, or by the provisions of, the statute of Gloucester; (10 Co. 116. a.) as in assumpsit, covenant, debt on contract, case, trespass, replevin, ejectment, &c. or where, by a subsequent statute, double or treble damages are given, in a case where single damages were before recoverable; (10 Co. 116. a. 2 Inst. 289. Cowp. 368. as upon stat. 2 Hen. IV. c. 11. for suing in the Admiralty Court; 10 Co. 116. a. b. Dyer, 159. b. Carth. 297.) upon stat. 8 Hen. VI. c. 9. for a forcible entry; (10 Co. 115. b. Co. Litt. 257. b. 2 Inst. 289. Cro. Eliz. 582. or upon stat. 2 and 3 W. & M. sess. 1. c. 5. for rescuing a distress for rent. (Carth. 321. 1 Salk. 205. 1 Ld. Raym. 19. Slin. 555. Holt, 172. S. C.) And he hath also a right to costs, in all cases where a certain penalty is given by statute to the party grieved; (Cro. Car. 560. 1 Roll. Abr. 574. Slin. 363. Carth. 230. 1 Salk. 206. 1 Ld. Raym. 172. Say. Costs, 11. H. Black, 10.) for otherwise the remedy might prove inadequate.

But the stat. of Gloucester did not extend to cases where no damages were recoverable at common law, as in scire facias, prohibition, (Comb. 20.) &c. nor where double or treble damages were given by a subsequent statute, in a new case where single damages were not before recoverable; as in waste against tenant for life or years; (2 Hen. IV. 17. 9 Hen. VI. 66. b. 10 Co. 116. b. 2 Inst. 289.) upon the stat. of Gloucester, (6 Edw. I. c. 5.) for not setting out tithe; (Moor, 915. Addy, 156. Hardr. 152.) upon stat. 2 & 3 Edw. VI. c. 13. or for driving a distress out of the hundred, (2 Inst. 289. Dyer, 177. but see Cro. Car. 560. 1 Roll. Abr. 574.) upon stat. 1 and 2 P. & M. c. 12. Nor does this statute extend to popular actions, where the whole or part of a penalty is given by statute to a common informer; (1 Roll. Abr. 574. 1 Vent. 133. Carth. 231. 1 Salk. 206. 1 Ld. Raym. 172. Cas. Pr. C. B. 87. Barnes, 124. S. C. Cowp. 366. 1 H. Black.
10. *Bull. N. P. 333.*) as upon stat. 5 *Eliz.* c. 4, § 31. for exercising a trade, without having served an apprenticeship; or upon the stat. of *Usury*, 12 *Ann.* stat. 2. c. 16. In these and such like cases, therefore, the plaintiff is not entitled to costs, unless they are expressly given by the statute; but wherever they are so given, he is of course entitled to them.

Where single damages are given by a statute, subsequent to the statute of *Gloucester*, in a new case wherein no damages were previously recoverable, it has been doubted whether the plaintiff shall recover costs, if they are not mentioned in the statute. The rule in *Pitford’s case* is, that he shall not; (10 Co. 116. a.) and accordingly it is held, that he is not entitled to costs in quare imhedi.; (2 *Hen.* IV. 17. 27 *Hen.* VI. 10. 10 Co. 116. a. 2 *Inst.* 289. 362. *Barnes*, 140. And see *Cro. Car.* 360. *Carth.* 251. *Cowp.* 367, 368.) wherein damages are given by the stat. of *Westm.* 2. (13 *Edw.* I.) c. 5. § 3. But the rule in *Pitford’s case* is contradicted by Lord *Coke himself*; (2 *Inst.* 289.) who says, that “this clause (respecting the stat. of *Gloucester’s* holding a place in all cases where a man recovers damages) doth extend to give costs where damages are given to any demandant or plaintiff in any action by any statute made after this parliament.” And the rule has been since narrowed, by several modern decisions; from whence it may be collected, that the plaintiff is entitled to costs, in all cases where single damages are given by statute to the party grieved, although costs are not particularly mentioned in the statute. 2 *Wis.* 91. *Barnes*, 151. S. C. 3 *Burr.* 1723. 1 *Term Ref.* 71. But see the opinion of *Aston*, Just. cont. *Cowp.* 367, 358.

In several of the foregoing cases, wherein costs were not recoverable by the plaintiff at common law, they are expressly given him by stat. 8 & 9 *W.* III. c. 11. by which it is enacted that, “in all actions of *waste*, and actions of debt upon the statute for not setting forth *tithes*, wherein the single value or damage found by the jury shall not exceed the sum of twenty nobles; and in all suits upon any writ or writs of *scire facias*, and suits upon *prohibitions*, the plaintiff obtaining judgment, or any award of execution, after plea pleaded or demurrer joined therein, shall likewise recover his costs of suit; and if the plaintiff shall become non-suit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs, and have execution for the same by *espia ad satisfacendum*, *feri facias*, or *elegit.*”

The plaintiff’s general right to costs being thus settled and established upon the footing of the stat. of *Gloucester*, has been since altered, restrained and modified by several subsequent statutes.

To prevent trifling and malicious actions for *words*, for *assault* and *battery*, and for *trespass*, it is enacted by stats. 43 *Eliz.* c. 6. 21 *Jac.* I. c. 16. 22 & 23 *Car.* II. c. 9. § 136. that where the jury who try any of these actions shall give less damages than 40s. the plaintiff shall be allowed no more costs than damages; unless the judge before whom the cause is tried shall certify under his hand, on the back of the record, that an *actual battery* (and not an *assault only*) was proved: or that in trespass the *freethold or title* of the land came chiefly in question. Also by stats. 4 and 5 *W.* &
M. c. 23. 3 & 9 W. III. c. 11. if the trespass were committed in hunting or sporting, by an inferior tradesman; or if it appear to be wilfully and maliciously committed, the plaintiff shall have full costs; though his damages, as assessed by the jury, amount to less than 40s.

Where to trespass at A. and throwing down, burning, and totally destroying the plaintiff’s hedge there then erected, &c. whereby, &c. the defendant pleads the general issue, and justifies as to the throwing down the hedge, because it was erected on a common over which he prescribes for right of common, and issue is taken on such right, which is found for him, and a verdict for the plaintiff for 20s. damages on the general issue; the facts stated in the special plea, and found, cannot be taken into consideration to show that the title to the freehold could not come in question on the declaration; and as on the declaration the freehold might have come in issue, and the judge did not certify, the plaintiff is entitled to more costs than damages. Stead v. Gamble, 7 East, 525.

If there be a certificate against any more costs than damages upon the stat. 43 Eliz. c. 6. § 2 the plaintiff shall not have the costs of the double pleas, on which all the issues were found for him; although the judge has not certified under the stat. 4 Ann. c. 16. § 5. that the defendant had probable cause to plead the several special matters; that section only applying to cases where one at least of the special pleas is found for the defendant, which would entitle him to the general costs. Richmond v. Johnson, 7 East, 533.

The legislature has also been obliged to interfere still further, to guard against trifling and vexatious actions by means of what are commonly called the Court of Conscience Acts: such are stats. 3 Jac. I. c. 15. § 4. 14 Geo. II. c. 10. which provide, that if an action be brought for less than 40s. against a defendant living in London, and liable to the jurisdiction of the court of requests there, the plaintiff shall not recover any costs, but shall pay them to the defendant.

The London court of requests has jurisdiction by the stat. 39 & 40 Geo. III. c. 104. over a contract for the retention of tithes by the tenant, the value of which was under 5l. and therefore if the vicar sue in the superior court for the same, and recover less than 5l. upon a count in assumptuis for a quantum valebant, the defendant may enter a suggestion on the roll, stating, that he was a freeman and inhabitant of the city of London, trading there at the time he was served with the writ, for the purpose of ousting the plaintiff of his costs under the twelfth section of the act. Sandby v. Miller, 5 East, 194.

Several other acts of parliament have been also made, establishing courts of conscience in various districts, in and about the metropolis; as in the town and borough of Southwark, &c. by stat. 22 Geo. II. c. 47. in the city and liberty of Westminster, and part of the duchy of Lancaster, by stat. 23 Geo. II. c. 27. (explained and amended by stat. 24 Geo. II. c. 42.) and in the Tower-hamlets, by stat. 23 Geo. II. c. 30. and by stat. 23 Geo. II. c. 33. the county court of Middlesex was put on a different footing, for
the more easy and speedy recovery of small debts. See tit. County Courts, Courts of Conscience.

In general, where the act is not pleaded, the proper mode to obtain the costs, is for the defendant to apply to the court, by affidavit, for leave to enter a suggestion on the roll of the facts necessary to entitle him to the benefit of the act suited to his case; which suggestion may be traversed or demurred to.

These statutes might perhaps have been with equal propriety classed under the 2d division of this title; but are introduced here, as forming an exception to the general title of a plaintiff to costs in the cases already instanced.

The principal statute, made for restraining the plaintiff's right to costs, is stat. 22 & 23 Carr. II. c. 9. (extended to Wales, and the counties Palatine, by stat. 11 & 12 W. III. c. 9.) by which it is enacted, that "in all actions of trespass, assault and battery, and other personal actions, wherein the judge, at the trial of the cause shall not find and certify under his hand, upon the back of the record, that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question; the plaintiff, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit, than the damages so found shall amount unto." It seems to have been the intention of this statute, that the plaintiff shall have no more costs than damages, in any personal action whatsoever, if the damages be under forty shillings, except in cases of battery or freehold; and not even in these, without a certificate. And this construction was adopted, in some of the first cases that arose upon the statute. 3 Keb. 241. But a different construction soon prevailed; and it is now settled, that the statute is confined to actions of assault and battery; and actions for local trespasses, wherein it is possible for the judge to certify, that the freehold or title of the land was chiefly in question. T. Raym. 487. T. Jones, 252. 2 Show. 258. S. C. 3 Mod. 39. 1 Salk. 208. 1 Str. 577. Gilb. Eq. Rep. 195. Barnes, 134. 3 Wils. 322. S. C. 1 H. Black. 294. Therefore it does extend to actions of debt, covenant, assumpsit, trover, (3 Keb. 31. 1 Salk. 208.) or the like; or to actions for a mere assault; (3 T. R. 391.) or for criminal conversation; (3 Wils. 319.) or battery of the plaintiff's servant; (3 Keb. 183. 1 Salk. 208. 1 Str. 192.) per quod consortium vel servitium amicit. In all these cases, though the damages be under 40s. the plaintiff is entitled to full costs without a certificate.

The certificate required by the statute need not, it seems, be granted at the trial of the cause. 11 Mod. 198. And where the defendant lets judgment go by default, (Bull. N. P. 329.) or justifies the assault and battery, or pleads in such a manner, as to bring the freehold or title of the land in question, on the face of the record, or a view is granted, (1 Ld. Raym. 76. 2 Salk. 665.) a certificate is holden to be unnecessary; but it is necessary, where, to a plea of a right of way, there is a replication of extra viam. Cochran v. Harrison, Trin. 22 Geo. III. But where, in an action for an assault and battery, the defendant justifies the assault only, (3 T. R. 391.) or an assault only is certified by the judge, (2 Lev.
102.) the plaintiff, recovering less than forty shillings, is not entitled to more costs than damages; though, in the latter case, to entitle him to full costs, the judge may certify, on stat. 8 & 9 W. III. c. 11. that the assault was wilful and malicious. 5 Wils. 326.

None of the statutes, made for restraining the plaintiff's right to costs, extend to actions brought in an inferior court, and removed by the defendant into a superior one: (2 Lev. 124. 4 Mod. 378, 379. 1 Ld. Raym. 335.) and it has been held, that stat. 21 Jac. I. c. 16. and stat. 22 & 23 Car. II. c. 9. only restrain the court from awarding more costs than damages; but the jury, not being restrained thereby, may give what costs they please.

It often happens that there are several counts or pleas, the issues upon which are some of them found for the plaintiff, and some for the defendant. In this case, in the court of C. P. where the declaration consists of several counts, and the plaintiff succeeds upon any one of them, he is entitled to the costs of the whole declaration, though the defendant succeed upon the other counts. Bull. N. P. 335. 2 Black. Rep. 800. 1199. But it is otherwise in the court of K. B. for there neither party is allowed costs as to those counts the issues upon which are found for the defendant. Say. Costs, 212. Doug. 8vo. 577. But see 1 Wils. 331. But if there be two distinct causes of action, in two separate counts, and as to one the defendant suffers judgment to go by default, and as to the other takes issue, and obtains a verdict, he is entitled to judgment for his costs on the latter count, notwithstanding the plaintiff is entitled to judgment and costs on the first count. 3 Term Rep. 654.

As to the certificate on the stat. 4 Ann. c. 16. allowing double pleas, (see tit. Pleading,) and costs thereon, where the judge refuses to grant the certificate, the court have not a discretionary power, whether they will allow the defendant any costs at all; but are bound by the statute to allow him some costs, though the quantum is left to their discretion. Barnes, 140. 2 Term Rep. 394, 395. The intention of the legislature was, that if there be several matters pleaded, some of which are found for the plaintiff, he shall be entitled to the costs of those, notwithstanding other matters are found for the defendant, which entitle him to judgment upon the whole record; unless the judge before whom the cause was tried, shall certify, that the defendant had a probable cause to plead the matters which are found against him.

II. It has already been observed, that no costs were recoverable by a defendant at common law: and the reason seems to be, that if the plaintiff failed in his suit, he was amerced to the King pro False clamore, which was thought to be a sufficient punishment, without subjecting him to the payment of costs. The first instance of costs being given to a defendant, was in a writ of right of ward, by the statute of Marlberge. (32 Hen. III. c. 6.) Afterwards, costs were given to the defendant in error, by stat. 3 Hen. VII. c. 10. and in replevin, by stat. 7 Hen. VIII. c. 4. and stat. 21 Hen. VIII. c. 19. kc. But in one of these cases, the defendant is to be considered as an actor; and in the other of them, the provision is
virtually for the benefit of the plaintiff in the original action. Say.

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In error, brought by the defendant before execution, (Cro. Jac. 636.) or by the plaintiff upon a judgment for the defendant, if the judgment be affirmed, the writ of error discontinued, or the plaintiff in error nonsuit, the defendant in error is entitled to costs, by stat. 3 Hen. VII. c. 10. and 8 & 9 W. III. c. 11. § 2. upon the former of which statutes it has been held, that costs are recoverable in error, for the delay of execution, although none were recoverable in the original action. Dyer, 77. Cro. Eliz. 617. 659. 3 Co. 101. S. C. Cro. Car. 145. 1 Stra. 262. 2 Stra. 1084. but see Cro. Car. 425. 1 Lev. 146. 1 Vent. 38. 166. 4 Mod. 245. Carth. 261. S. C. sembl. contra. By stat. 13 Car. II. stat. 2. c. 2. § 10. if the judgment be affirmed after verdict, the plaintiff shall pay to the defendant in error, his double costs. And by stat. 4 Ann. c. 16. § 24. for preventing vexation, from suing out defective writs of error, it is enacted, that “upon the quashing of any writ of error for variance from the original record, or other defect, the defendant shall recover against the plaintiff in error his costs, as he should have had, if the judgment had been affirmed, and to be recovered in the same manner: 2 Stra. 834. Cas. temp. Hardw. 137. But none of the statutes before mentioned give costs upon the reversal of a judgment. (1 Stra. 617.)

Where the plaintiff recovered a verdict at the trial, and had judgment in C. B. and upon a bill of exceptions returned into B. R. judgment was reversed, and the plaintiff took nothing by his writ, the defendant cannot have costs. Bell v. Potts, 5 East, 49.

In reflexion, or second deliverance, the defendant, making avowry, cognisance, or justification, for rents, customs, or services, or for damage-peonant, is entitled to costs by stat. 7 Hen. VIII. c. 4. and stat. 21 Hen. VIII. c. 19. § 3. if the avowry, cognisance, or justification be found for him, or the plaintiff be nonsuit, or otherwise barred: which statutes extend to avowries, &c. made by an executor; (2 R. Rep. 437.) or for an estray, (Cro. Eliz. 330.) and, as it should seem, for an amercement by a court-leet; (Cro. Jac. 350. sed vide Cro. Eliz. 300.) but not to pleas of prisez en euter lieu, upon which the writ is abated, (Com. Rep. 122.) or to pleas of property in the thing distraint. Hardw. 153. By stat. 17 Car. II. c. 7. § 2. the defendant obtaining judgment thereon, for the arrears of rent, or value of the goods distraint, is also entitled to his full costs of suit. And by stat. 11 Geo. II. c. 19. § 22. if the defendant avow, or make cognisance, according to that statute, upon a distress for rent, relief, heriot, or other service, and the plaintiff be nonsuit, discontinue his action, or have judgment against him, the defendant shall recover double costs of suit. But this latter statute does not extend to a seizure for a heriot custom.

At length, costs were given to defendants, by stat. 23 Hen. VIII. c. 15. § 1. "in trespass upon stat. 5 Rich. II. debt, covenant, detinue, account, trespass on the case, or upon any statute for an offence or wrong personal, immediately supposed to be done to the plaintiff," in cases of nonsuit, or verdict for the defendant.

The stat. 13 Car. II. st. 2. c. 2. § 10. giving double costs to the defendant in error, if judgment be affirmed after verdict, is con-
fined to cases where the judgment so affirmed is for the plaintiff below, and not where the defendant below obtained judgment upon a special verdict. Baring v. Christie, 5 East, 543.

No costs are allowed on the stat. 3 Hen. VII. c. 10, where a writ of error is nonprossed before the transcript of the record by the clerk of the errors of B. R. Salt v. Richards, 7 East, 3.

The king, and any person suing to his use, (stat. 24 Hen. VIII. c. 8,) shall neither pay nor receive costs; for besides that he is not included under the general words of the statutes, as it is his prerogative not to pay them to a subject, so it is beneath his dignity to receive them. And it seems reasonable to suppose that the queen consort has the same privilege; for in actions brought by her, she was not at the common law obliged to find pledges of prosecution, nor could be amerced in case there was judgment against her. Fitz. N. B. 101. 1 Inst. 153. And on this principle of the king not paying or receiving costs, no costs are due on a certiorari removing summary proceedings; unless a recognizance be entered into at the time of removing the proceedings. 1 Term Rep. 82.

Paupers (that is, such as will swear themselves not worth five pounds) are by stat. 11 Hen. VII. c. 12, to have original writs and subpoenas gratis, and counsel and attorney assigned them without fee; and are excused from paying costs when plaintiffs, by the stat. 23 Hen. VIII. c. 15. § 2. but shall suffer other punishments at the discretion of the judges. And it was formerly usual on such paupers being nonsuited, to give them their election either to be whipped or pay the costs; though that practice is now disused. 1 Sid. 261. 7 Mod. 114. Salt. 506. And in cases of misconduct, or in certain other circumstances, they may be dispaupered; that is deprived of their privilege of suing as paupers. It seems, however, agreed that a pauper may recover costs, though he pays none; for the counsel and clerks are bound to give their labour to him, but not to his antagonists. 1 Eq. Abr. 125.

Executors and administrators are not particularly excepted out of stat. 23 Hen. VIII. c. 16. yet, as that statute only relates to contracts made with, or wrongs done to, the plaintiff, 2 Stra. 1107, it has been uniformly held, Cro. Eliz. 503. Cro. Jac. 229. 2 Bullst. 261. 1 Salt. 207, 314. 3 Burr. 1586. Suy. Costs, 97. that they are not liable to costs, upon a nonsuit or verdict, where they necessarily sue in their representative character, and cannot bring the action in their own right; as upon a contract entered into with the testator or intestate, T. Jun. 47. 2 Ld. Raym. 1414. 1 Stra. 682. S. C. Cas. Pr. C. B. 157. Pr. Reg. 118. S. C. Barnes, 141. or for a wrong done in his life-time. Barnes, 129.

But where the cause of action arises after the death of the testator or intestate, and the plaintiff may sue thereon in his own right, he shall not be excused from the payment of costs, though he bring the action as executor or administrator, as upon a contract, (6 Mod. 91. 181. 1 Salt. 207. S. C. 1 Ld. Raym. 436. 1 Stra. 682. Barnes, 119. 2 Stra. 1106. 4 Term Rep. 277.) express or implied; or in trover, (Com. Rep. 162. Cas. Pr. C. B. 61. Barnes, 132. Cas. tempf. Haraw. 204. But see 3 Lcr. 60. semb. consta.) for a conversion, after the death of the testator or intestate. An exe-
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executor or administrator is liable to costs upon a judgment of non pros: (Cas. Pr. C. B. 14. 157, 158. 3 Burr. 1585.) and where he has knowingly brought a wrong action, or otherwise been guilty of a wilful default, he shall pay costs upon a discontinuance, (Cas. P. R. C. B. 79. 3 Burr. 1451. 1 Black. Ref. 451. S. C.) or for not proceeding to trial according to notice; (Cas. Pr. C. B. 158. 3 Burr. 1585.) but otherwise he is not liable to costs, in either of these cases. 2 Stra. 871. Barnes, 133. 4 Burr. 1927. Nor, where he merely sues ex quere datum, is he liable to costs, upon a judgment as in case of a nonsuit. 4 Burr. 1928.

The stat. 23 Hen. VIII. c. 15 only relates to cases where the plaintiff is nonsuited, or has a verdict against him. But by stat. 3 Eliz. c. 2, "upon process issuing out of the court of King's Bench, if the plaintiff do not declare in three days after bail put in, or if after declaration, he do not prosecute his suit with effect, but willingly suffer the same to be delayed or discontinued, or he be nonsuited therein, the judges, by their discretions, shall award to the defendant his costs, damages, and charges in that behalf sustained."

The plaintiff, it has been observed, is not entitled to costs in a popular action, for the whole or part of a penalty given by statute to a common informer, unless they are expressly given him by the statute. Nor was the defendant entitled to costs in such an action, until they were given by the stat. 13 Eliz. c. 3. § 5. made perpetual by stat. 27 Eliz. c. 10.

There being still many cases in which the defendant was not aided by the provisions of the before-mentioned statutes, the stat. 4 Jac. 1. c. 3. gives the defendant costs on a nonsuit or verdict, in all cases where the plaintiff would have been entitled to them if he had obtained judgment. The stats. 13 Car. II. st. 2. c. 2. § 3. 8 & 9 Wm. III. c. 11. § 2. give costs to a defendant also in cases of non pros and demurrer; and the latter stat. § 1. gives costs of one of several defendants in trespass, assault, false imprisonment or ejectment acquitted; though the other defendants are convicted.

When a feigned issue is ordered by a court of law, whether it be in a civil or criminal proceeding, the costs always follow the verdict, and must be paid to the party obtaining it. 1 Litt. P. R. 341. Barnes, 150. 1 Wils. 251. 331. Say. Rep. 54. 1 Wils. 324. But when a feigned issue is ordered by a court of equity, the costs do not follow the verdict, as a matter of course; but the finding of the jury is returned back to the court which ordered it, and the costs there are in the discretion of the court. Where the issue is ordered by a court of law, on a rule for an information; (Say. Rep. 329. 1 Burr. 603.) or motion for an attachment; (Say. Rep. 255.) the costs of the original rule, or motion, do not in general follow the verdict, but only the costs of the feigned issue, which costs are to be reckoned from the time when the feigned issue was first ordered and agreed to. 1 Burr. 604. Yet, where it was ordered, by the consent rule, that the costs should abide the event of the issue, the court directed the whole costs to be paid under it. 2 Burr. 1921.

III. Where the plaintiff recovers single damages, he is only entitled to single costs; unless more be expressly given him by
statute. But if double or treble damages be given by statute, in a case wherein single damages were before recoverable, the plaintiff is entitled to double or treble costs, although the statute be silent respecting them; (Say. Costs, 228.) as in an action upon stat. 2 Hen. IV. c. 11. &c. In some cases, double and treble costs are expressly given to the plaintiff; as upon the game laws, by stat. 2 Geo. III. c. 19. § 5. And wherever a plaintiff is entitled to double or treble costs, the costs given by the court de incerto are to be doubled or trebled, as well as those given by the jury. 2 Leon. 52. Cro. Eliz. 382. 3 Lev. 351. Carth. 297. 321. 2 Stra. 1048. but see 1 Term Rep. 252. But double or treble costs are not to be understood to mean, according to their literal import, twice or thrice the amount of single costs. Where a statute gives double costs, they are calculated thus: 1. The common costs; and then half the common costs. If treble costs, 1. The common costs: 2. Half of these, and then half of the latter.

Double or treble costs are also in some cases expressly given to the defendant; as in actions against parish officers, by stat. 43 Eliz. c. 2. § 19. against justices of the peace, constables, &c. by stat. 7 Jac. I. c. 5. for distresses for rents and services, by stat. 11 Geo. II. c. 19. § 21, 22. and against officers of the excise or customs, by stats. 23 Geo. III. c. 70. § 34. 24 Geo. III. sess. 2. c. 47. § 35. In these, and such like cases, where it does not appear, on the face of the record, that the defendant is entitled to the benefit of the act, (as where he pleads the general issue,) and there is no particular mode appointed for recovery of the costs, the proper mode, after a nonsuit or verdict for the defendant, is to apply to the court, upon an affidavit of the facts, for leave to enter a suggestion on the roll. 1 Stra. 49, 50. Cas. Pr. C. B. 16. Cas. temp. Hardw. 125. Id. 138. 2 Stra. 1021. S. C. Say. Rep. 214. 3 Wil. 442. Cas. temp. Hardw. 125. But where a particular mode is appointed by statute, for the recovery of double or treble costs, as by the certificate of the judge who tried the cause, on stat. 7 Jac. I. c. 5. that there particular mode must be observed: (2 Vent. 45. Doug. 8vo. 307, 308. but see Doug. 8vo. 308. n.) so that if the judge certify, there is no need of a suggestion; and if he do not, it is useless, except where judgment goes by default. Cas. temp. Hardw. 138, 139.

IV. Costs are taxed, as between party and party, by the Master in the King's Bench, or by one of the Prothonotaries in the Common Pleas, upon a bill made out by the attorney for the party entitled; or frequently, without a bill, upon a view of the proceedings; and if there have been any extra expenses, which do not appear on the face of the proceedings, there should be an affidavit made of such expenses, to warrant the allowance of them; which is called an affidavit of increased costs. Inf. K. B. 348. It is usual, among fair practisers, to give notice to the opposite attorney, of the time when the costs are intended to be taxed. Id. 349. But in order to enforce it, there must be a rule to be present at taxing costs; which rule is obtained from the clerk of the rules in the King's Bench, or one of the secondaries in the common pleas, and should be duly served; after which, if the costs
are taxed without notice, the taxation is irregular, and the attorney liable to an attachment.

The means of recovering costs, as between party and party, are by action or execution, upon a judgment obtained for them; or by attachment, upon a rule of court. Thus, in ejectment, where there is a verdict and judgment against the tenant, an action may be brought, or execution taken out thereon, for the costs. *Runn. Eject.* 140, 141. But where the plaintiff is nonsuited for not confessing lease, entry and ouster, the lessor of the plaintiff must proceed by attachment, upon the consent rule. *Id. ibid.* 1 Sulk. 259. *Barnes,* 182. And so where the nominal plaintiff is nonsuited upon the merits, or has a verdict and judgment against him, the only remedy is by attachment against the lessor of the plaintiff. *Runn. Ej.* 142, 143. See tit. *Attachment.*

Besides the ordinary method of proceeding, there are certain auxiliary means for the recovery of costs, as between party and party. These means are by moving to stay the proceedings, until security be given for the payment of costs; or until the costs are paid of a former action for the same cause; or by deducting the costs of one action from those of another. As examples of these means, it may be mentioned, that in ejectment, (1 *Stru.* 681) and actions *qui tam,* (*Id.* 697, 705. *Barnes,* 126.) where the plaintiff, or his lessor, is unknown to the defendant, and in case the plaintiff is a foreigner residing abroad, (1 *Term Rep.* 257. 362. 491) the defendant may call for an account of his residence, or place of abode, from the opposite attorney; and if he refuse to give it, or give in a fictitious account of a person who cannot be found, the court will stay the proceedings until security be given for the payment of costs.

An application to make the plaintiff, who resided abroad, give security for the costs, was refused after notice of trial given, as the defendant might have applied earlier after knowledge of the fact of the plaintiff’s residence, and before so much of the costs were incurred. *Walters v. Frythall,* 5 East. 338.

The practice of deducting or setting off the costs, in one action against those in another, however agreeable to natural justice, does not seem to have obtained till lately in the court of *K. B.* 2 *Stru.* 891. 1203. *Bull. N. P.* 335. 4 *Term Rep.* 124. But in *C. P.* it has been frequently allowed; and that not only where the parties have been the same, but also where they have been in some measure different. *Barnes,* 145. *2 Black. Rep.* 826. *Bull. N. P.* 336.

As between attorney and client, the former may maintain an action against the latter for the recovery of his costs. *Cro. Car.* 159, 160. But by the stat. 3 *Jac. I.* c. 7. § 1 attorneys and solicitors must deliver a bill to their clients before bringing an action; and by stat. 2 *Geo. II.* c. 23. § 23. (explained by stat. 12 *Geo. II.* c. 13. and made perpetual by stat. 30 *Geo. II.* c. 19. § 73.) no attorney nor solicitor shall commence any action, till the expiration of one month after the delivery of his bill; which is directed by the acts to be in a common legible hand, in English, except law terms, and subscribed with the attorney’s hand.

The said stat. 2 *Geo. II.* c. 23. also directs the mode of taxation of attorneys’ bills by the officers of the several courts; and di-
reets that if the bill taxed be less by a sixth part than the bill deliv-
ered, the attorney shall pay the costs of taxation; but if it shall not be less, the costs shall be in the discretion of the court.

If the whole bill be for conveyancing, or for business done at the quarter sessions, &c. it cannot be taxed. But where an attorney had delivered two separate bills, one of which was for fees and disbursements in causes, and the other for making conveyances, a rule was made for taxing both. And so, where it was moved, that the master might be directed to tax those articles in an attorney's bill, which related to conveyancing and parliamentary business, the rest being for management of causes in the court of King's Bench, Lord Mansfield said, there was no doubt but the master might tax the whole. Barnes, C. B. 141, 142. & Term Rep. 124. Say.Rep. 233. Say. Costs, 320.

It is not necessary for the executor or administrator of an attorney, to deliver a bill of costs, for business done by his testator or intestate, before the commencement of an action; (Cas. P. R. C. B. 58.) the stat. 2 Geo. II. c. 23. § 23. being confined to actions brought by the attorney himself, and not extending to his personal representatives. And in the court of common pleas, they will not suffer such a bill to be taxed; (Barnes, 119. 122.) but in the court of King's Bench it is otherwise; (2 Sta. 1055. Say. Costs, 324, 325. Infl. K. B. 482.) for there the bill may be referred to be taxed, on the defendant's undertaking to pay what is due.

If an attorney refuse to deliver a bill to his client, the latter may compel him, by taking out a summons before a judge; and if the attorney, on being served therewith, do not attend, an order will be made for delivering it, within a reasonable time. If he still neglect to deliver it, the order should be made a rule of court, and on serving the same, and making affidavit thereof, the court on motion will grant an attachment. Doug. 3vo. 199. in a. Infl. K. B. 479. The bill being delivered, the client may apply for a judge's summons, to show cause why it should not be referred to the proper officer to be taxed; upon which an order will be made, the client undertaking to pay what shall appear to be due upon such taxation. Infl. K. B. 479, 480. If the attorney do not attend, an order will be made of course. But the client cannot have a summons for delivery of the bill, and taxing it, together. Id. 480. Barnes, C. B. 146.

Costs in Equity are allowed for failing to make an answer to a bill exhibited; or making an insufficient answer; and if a first answer be certified by a master to be insufficient, the defendant is to pay 40s. costs; 3l. for a second insufficient answer; 4l. for a third, &c. But if the answer be reported good, the plaintiff shall pay the defendant 40s. costs. An answer is not to be filed, (till when it is not reputed an answer,) until costs for contempt in not answering are paid. By stat. 4 & 5 Ann. c. 16. if a plaintiff in chancery dismisses his own bill, or the defendant dismisses the same for want of prosecution, costs are allowed to the defendant.

In other cases it seems that the matter of costs to be given to either party is not in equity held to be a point of right, but merely discretionary, under stat. 17 Rich. II. c. 6. according to the circumstances of the case. Yet the stat. 15 Hen. VI. c. 14.
which requires surety to satisfy the party grieved his damages, on granting the subpoena, seems expressly to direct that, as well damages as costs shall be given to the defendant, if wrongfully vexed in this court.

In case of a great fraud, a person may be obliged to pay such costs, as shall be ascertained by the injured party's oath. 2 Vern. 123.

COT. In the old Saxon signifies cottage, and so is still used in many parts of England.

COTARIUS, A cottager. The cotarius, or cottagers, are mentioned in Domesday.

COTE AND COT. The names of places which begin or end with these words or syllables, have the signification of a little house or cottage. There are likewise done cotes, which are small houses or places for the keeping of doves or pigeons. Seetit. Pigeon House.

COTELLUS, COTERIA, A small cottage, house, or homestead.

Coweet.

COTERELLUS. Cotarius and coterellus, according to Spenman and Du Fresne, are servile tenants; but in Domesday, and other ancient MS. there appears a distinction as well in their tenure and quality, as in their name. For the cotarius held a free socage tenure, and paid a stated farm or rent in provisions or money, with some occasional customary services; whereas the coterellus seems to have held in mere villenage, and his person, issue and goods, were disposable at the pleasure of the lord. Paroch. Antig. 310.

COTESWOLD, is used for sheep-cotes, and sheep feeding on hills; from the Sax. cote and wold; a place where there is no wood.

COTGARE, A kind of refuse wool, so clung or clotted together, that it cannot be pulled asunder. By stat. 13 Rich. II. c. 9, it is provided, that neither denizen nor foreigner shall make any other refuse of wool but cotgare and villein.

COTLAND and COTSETHLAND, Land held by a cottager, whether in socage or villenage. Paroch. Antig. 532.

COTSETHLA, COTSETLE, The little seat or mansion belonging to a small farm. Cart. Maima. MS.

COTSETHUS, A cottage holder, who, by servile tenure, was bound to work for the lord. Court. Cotises are the meanest sort of men, now termed cottagers. And cotisis are those who live in cottages. Leg. Hen. I. c. 30.

COTTAGE, cotegium. A little house for habitation, without lands belonging to it.

By the stat. 31 Edw. c. 7. cottages were prohibited to be erected without laying at least four acres of land to the same; and divers other restrictions were thereby enjoined. But this was repealed by stat. 15 Geo. III. c. 32, setting forth, that the said stat. of 31 Edw. had laid the industrious poor under great difficulties to procure habitations, and tended very much to lessen population; and in divers other respects was inconvenient to the labouring part of the nation in general.

COTTON LIBRARY. For better settling and preserving the library kept in the house at Westminster, called Cotton House, in
the name and family of the Cottons, for the benefit of the public, a statute was made, 12 Wm. III. c. 7. See stats. 5 Ann. c. 30. 26 Geo. II. c. 22.


COTUCA, Coat armour. Wals. 114.

COTUCHANS, Boors or husbandmen, of which mention is made in Domesday.

COUCHER, or COURCHER; A factor that continues abroad in some place or country for traffic; as formerly in Gascoign, for buying of wines. 31 Edw. III. c. 16. This word is also used for the general book wherein any corporation, &c. register their particular acts. 3 & 4 Edw. VI. c. 10.

COVENABLE, Fr. covenable, Lat. rationabilis.] What is convenient or suitable. Every of the same three sorts of goods, &c. shall be good and covenable, as in old time hath been used. 31 Edw. III. c. 2. Covenably endowed, i.e. endowed as is fitting. 4 Hen. VIII. c. 12. See Plov. 472.

COVENANT.

Covenant. The agreement or consent of two or more by deed in writing, sealed and delivered; whereby either, or one of the parties doth promise to the other that something is done already, or shall be done afterwards. He that makes the covenant is called the covenantor; and he to whom it is made, the covenantee. See Shifh. Touchst. 160. and on the whole of this subject at length.

I. The several Kinds of Covenants, and by what Words they are created.

II. What Covenants are good and binding, and by whom they may be made.

III. Who shall take Advantag of Covenants, and who are bound by them.

IV. What shall be a Performance, and what a Breach of Covenant. And of Penalties for Nonperformance.

I. A Covenant is generally either in fact or in law. In fact, is that which is expressly agreed between the parties, and inserted in the deed; and in law, is that covenant which the law intends and implies, though it be not expressed in words; as if a lessor demise and grant to his lessee a house or lands, &c. for a certain term, the law will intend a covenant on the lessor's part, that the lessee shall, during the term, quietly enjoy the same against all encumbrances. 1 Inst. 384.

There is also a covenant real, and covenant personal. A covenant real is that whereby a man ties himself to pass a thing real, as lands or tenements; or to levy a fine of lands, &c. And covenant personal is where the same is annexed to the person, and merely personal; as if a person covenants with another by deed
Covenants are likewise inherent, that tend to the support of the
land or thing granted, or are collateral to it; and are affirmative,
where somewhat is to be performed; or negative; executed, of
what is already done, or executory; a covenant being to bind a
man to do something in future, is for the most part executory. 1

A covenant to settle or convey particular lands, will not at
law create a lien upon the lands; but in equity such a covenant,
if for a valuable consideration, will be deemed a specific lien on
the lands, and decreed against all persons claiming under the co-
venantor, except purchasers for valuable consideration, and with-
out notice of such covenant. Finch v. Earl of Winchelsea, 1 P.
Coventry, best reported at the end of Francis's Maxims; for equi-
ty considers that as done, which being distinctly agreed to be
done, ought to have been done. Grounds and Rudiments of Law
and Equity, p. 75.

A general covenant to settle lands of a certain value, without
mentioning any lands in particular, will not create a specific lien
on any of the lands of the covenantor, and therefore cannot be
specifically decreed in equity. Freemont v. Dedire, 1 P. Wms.
430. But if the covenantor expressly declare the settlement to
be in execution of his power, though the particular lands to be
charged be not specified, equity will ascertain them. Coventry v.

It is held in all cases where words that begin any sentence
are conditionals, and give another remedy, they shall not be con-
strued a covenant; and yet if words of condition and covenant are
coupled together in the same sentence, as Provided always, and
it is covenanted, &c. in that case they may be adjudged both a
condition and covenant. March, 103.

The law does not seem to have appropriated any set form of
words, as absolutely necessary to be made use of in creating a
covenant; and therefore it seems that any words will be effectual
for that purpose, which show the party's concurrence to the per-
formance of a future act; as if lessee for years covenants to re-
pair, &c. Provided always, and it is agreed, that the lessor shall
find great timber, &c. this makes a covenant on the part of the
lessee to find great timber, by the word agreed, and it shall not
be a qualification of the covenant of the lessee. 1 New Abr. 527.
See 1 Burr. 290.

"The dependence or independence of covenants, is to be col-
lected from the evident sense and meaning of the parties; and
however transposed they may be in a deed, their precedency must
depend on the order of time, in which the intent of the transac-
tion requires their performance." Per Lord Mansfield, Jones v.
Berkley, Doug. 665. See also Hotham v. The East-India Company,
1 Term Ref. 538. Where the participle doing, performing, pay-
ning, repairing, is prefixed to a covenant, it is clearly a mutual
covenant, and not a condition precedent. Boone v. Lyne, 2 Black
Ref. 1912. Allen v. Babington, Sid. 280. Atkinson v. Morrice,
12 Mod. 503. But where the covenant goes to the whole consi-
deration on both sides, there it is a condition precedent. Duke of St. Albans v. Shore, 1 H. Black. Rep. 270.

If one makes a lease for years, reserving a rent, action of covenant lies for non-payment of the rent; for the sedentium of the rent is an agreement for payment of it, which will make a covenant. 2 Danv. 250. A lease is made to two, and one seals the deed, but the other doth not; if he accepts the estate and occupies the land, he is bound to perform the covenants for payment of the rent, reparations, and the like. 1 Shot. Ab. 458.

If one man covenants to pay another 20l. at a day, though he may have an action of debt for the 20l., yet it is said he may have covenant at his election. 2 Danv. 229.

It is agreed that A. B. shall pay to C. D. 100l. for lands in E. this is a mutual covenant, whereon action of covenant may be brought if C. D. will not convey. 1 Sid. 423. But where there are mutual covenants, and the one not to be performed before a precedent covenant, in such case one covenant is not suedable till the other is performed; though if the covenants are distinct and mutual, several actions may be brought by and against the parties. 1 Litt. Abr. 350. 2 Mod. 74. In a covenant to pay another so much money, he making him an estate in such land, &c., it has been adjudged that if he tender the covenantor a fiefment, and offer to make livery, he may have action of covenant for the money, as if he had made a title. 3 Salk. 107.

Where a man covenants that he hath power to grant, and that the grantee shall quietly enjoy notwithstanding any claiming under him; these are distinct covenants, for one goes to the title, and the other to the possession. 1 Mod. 101.

There is this difference, however, between a covenant and conditions: a condition gives entry, and covenant gives an action only. Owen, 54. A person cannot have action of covenant upon a verbal agreement, for it cannot be grounded without writing, except by special custom. Fitz. N. B. 143.

II. All covenants between persons must be to do what is lawful, or they will not be binding; and if the thing to be done be impossible, the covenant is void. Dryr. 112. But where the thing is lawful at the time of the covenant made, and afterwards the matter agreed to be done is prohibited by act of parliament, yet such covenant will be binding. 3 Mod. 59. And if a man covenants to do a thing before a certain time and it becomes impossible by the act of God, this shall not excuse him, nay, much as he hath bound himself precisely to do it. 2 Danv. Abr. 84.

Though a covenant to stand seised of lands to be after purchased be void at law, unless there be some new act to be done; yet it seems, that a covenant to settle lands of such a value, will charge after-purchased lands, though the covenantor had none at the time of executing the covenant. Took v. Hastings, 2 Vern. 97.

If a person covenants expressly to repair a house, and it is burnt down by lightning, or any other accident, yet he ought to repair it; for it was in his power to have provided against it by his contract. Alleyn, 26, 27. 1 Litt. Abr. 149. But he is not so
bound by covenant in law. Where houses are blown down by tempest, the law excuses the lessee in an action of waste; though in a covenant to repair and uphold, it will not. 1 Plowd. 29. If a lessee for years, rendering rent, covenants for him and his assigns to repair the house, and after the lessee assigns over the term, and the lessor accepts the rent from the assignee, and then the covenant is broken; notwithstanding acceptance of rent from the assignee, action of covenant lies against the first lessee, on his express covenant to repair: and this personal covenant cannot be transferred by the acceptance of the rent. 2 Dani. Abr. 240. See tit. Assignment, and 1st, III.

Action of covenant also lies on covenant for payment of rent against such lessee; but not action of debt after acceptance. 3 Rep. 24. In covenant upon a demise, rendering rent, the defendant cannot say, that part of it was to be allowed; for this is a covenant against a covenant. Comb. 21.

An infant within age may bind himself apprentice; but neither at common law nor by statute may be bound by covenant for his apprenticeship, so as to make him liable to an action of covenant, if he depart, &c. But by the custom of London he may bind himself by his covenant at fourteen years old. 1 Cro. 129. Winch. 63.

III. There may be an agreement and covenant, only to be performed by the parties themselves; and there are some covenants which none but the party and his heirs may take advantage of, being such as concern the inheritance and descend to the heir, as knit to the estate: covenants in gross go to the executors, &c. 1 Roll. Abr. 529. 2 Dani. 335. Not only parties to deeds, but their executors and administrators, shall take advantage of inherent covenants, though not named; and every assignee of the land may have the benefit of such covenants: likewise executors and assigns are bound by them, although not named, as a covenant to repair, &c. 5 Rep. 16, 17. 1 Cro. 552. If a man covenants with another to do anything, his heir shall not be bound, unless he be expressly named: and yet where a lessee covenants to repair, the heir shall have the benefit of the covenant, though not named, because it runs with the land. 2 Lev. 92. 5 Rep. 3.

The executors and administrators of the covenantor will be bound by the covenant, though not named, unless the covenant be of such a nature as not to allow of its being performed by any other person but the covenantor. See Dyer, 14. pl. 69. 1 Roll. Abr. 519. l. 35. Hyde v. Dean & Canons of Windsor, Cro. Eliz. 333.

One who covenants for himself, his heirs, &c. and under his own hand and seal for the act of another, shall be personally bound by his covenant, though he describe himself in the deed as covenanting for and on the part and behalf of such other person. Appleton v. Binks, 5 East, 143.

Where the assignees of a bankrupt advertised the lease of certain premises, of which the bankrupt was lessee, for sale by auction, (without stating themselves to be the owners, or possessed thereof,) and no bidder offering, they never took possession in fact of the premises, held that this was no more than an experi-
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ment to ascertain the value, whether the lease was beneficial or not to the creditors, and did not amount to an assent on the part of the assignees to take the term; nor support an averment in a declaration in covenant against them by the landlord, that all the estate, right, title, interest, &c. of the bankrupt in the premises came to the defendants by assignment thereof. Turner v. Richardson and another, Assignees of Barber, 7 East, 335.

All persons to whom the land descended, were by the common law entitled to the benefit of covenants which run with the land; but grantees of the reversion were not. The stat. 32 Hen. VIII. c. 34 therefore enacted, "That all grantees, &c. of reversion, should have the like advantages against the lessees, their executors, &c. by entry for non-payment of the rent, or for doing waste, or other forfeiture; and the same remedy by action only, for not performing other conditions, covenants, or agreements contained in the leases, against the lessees, as the lessors or grantors had." The statute also gives the lessees the same remedy against the grantees of the reversion, which they might have had against their grantors. It must not, however, be understood from the general words of the statute, that the grantee of the reversion can take benefit of every forfeiture by force of a condition, Lord Coke conceiving the operation of the statute to be confined to such conditions as are either incident to the reversion, as rent; or for the benefit of the state, as for not doing of waste, for keeping the houses in repair, for making of fences, or such like; and not for the payment of any sum in gross, delivery of corn, wood, or the like. See Co. Litt. 215, where a variety of resolutions upon this statute are stated, and the authorities referred to. See also 6 Vin. ABR. Covenant, (K. 3.) p. 397. Webb v. Russel, 3 T. R. 393. See further, Bac. ABR. Covenant, (E. 6.) Vin. Abr. Covenant, (K. 3.)

The liability of the assignee does not extend to covenants broken before the assignment; as a covenant to build within a certain time, which was past before the assignment. Gresco v. Green, 1 Sail. 199. St. Saviour's, Southwark, v. Smith, 3 Burr. 1271. 1 Black. Rep. 321. Nor is the assignee to be affected by any covenant broken after he has assigned over. Boulton v. Canon, 1 Freem. 336.

A collateral covenant to be done upon the land, as to build de novo, shall bind the assignee by express words; in this case, the assignees are bound by the terms of the covenant, for unless named they would not be bound by law; "for the covenant concerns a thing which was not in esse at the time of the demise; but to be newly built after, and therefore shall bind the covenantor, his executors and administrators, and not the assignee; for the law will not annex the covenant to a thing which hath no being." Spencer's case, 5 Co. 156 b. But as the law would sustain such a covenant against the covenantor and his assigns, if expressly included in the covenant, and give damages for its non-performance, it should seem to follow, that the covenantee would be entitled in equity to a decree for the specific performance of such covenant to build; and of this opinion Lord Hardwicke appears to have been in the case of The City of London v. Nash, 3 Atk. 515. 1 Vez. 12. But in the case of Lucas v. Commerford, 3
Bro. C. R. 166. Lord Thurlow C. held, "That there could not be a decree to rebuild in pursuance of a covenant, for that he could no more undertake the conduct of a rebuilding than of a repair."

At law the assignee is liable only for the rent actually incurred, or covenants broken during his possession. Boulton v. Canon, 1 Freem. 336. If therefore he assign the very day before the rent becomes due, the lessor cannot maintain his action for it. Tovey v. Pitcher, Carth. 177. 4 Mod. 71. 3 Co. 22. 1 Salk. 81. 1 Freem. 326. Nor will the circumstance of such assignment being per fraudem, as to a beggar, alter the case. Leroux v. Nash, Stru. 1221. Buller's N. P. 159. But see Knight v. Freeman, 1 Vent. 329. 331. T. Raym. 303. T. Jones, 109. in which the validity of such assignment was denied. But whatever may be the rule of law upon this point, it seems to be now settled, that courts of equity will compel an assignee of a term to account for the rent the whole time he enjoyed the land. Trecate v. Coke, 1 Vern. 105. Whether equity will, in order to secure the future rents, under any circumstances, restrain an assignee from assigning to a beggar or insolvent person, was considered but not determined, in the case of Philpot v. Hoare, 2 Atk. 219. If the assignee offer to give up the possession to the lessor on reasonable terms, and the lessor refuse to accept such surrender, it were clearly too much for a court of equity, in restriction of a legal right, to prevent the assignment. Vaillant v. Dodome, 2 Atk. 546. But supposing the lessor to be willing to accept of a surrender of the term, and the assignee wantonly to insist on his legal right to assign, when and to whom he pleased, it seems that, under certain circumstances, a court of equity might without impropriety interpose to prevent the abuse of such right: and this Lord Hardwicke appears to admit, in Vaillant v. Dodome; for having stated the legal right and the propriety of courts of equity in general, following the rule of law, he observes, "but it is true in some sort of assignments, made by tenants, the court has interposed;" nor does the difficulty reported to have occurred to Lord Hardwicke, in Philpot v. Hoare, appear upon examination, to have been entitled to much attention. His lordship is reported to have said, "As to the accruing rents, it is a point of more difficulty; for the covenant in this lease not to assign, does not run with the land to the assignee, because assignees are not bound by name in the covenant." Whence it might be inferred, that if assigns had been expressly included in the covenant, his lordship would have considered them bound by the covenant. But whether assignees be bound or not by a covenant, does not (except in the case of a collateral covenant to be done upon the land) depend upon their being named in the covenant; for if the covenant run with the land, assignees are bound, whether named or not; and if the covenant do not run with the land, but is a personal contract, or respect something to be done purely collateral to, and not on the land, they are not bound, though they be expressly named. See Spencer's case, 5 Co. 16. b. Yr. a. Therefore, whether the assignee was named or not, was immaterial to the question, Whether the assignee was bound by the covenant not to assign without consent of the lessor? Nor does it appear as having been necessary
in order to determine whether a court of equity should restrain an assignment to a beggar, previously to determine whether the assignee was bound by the covenant not to assign; for supposing the assignee to be bound at law by the covenant, equity may restrain the wanton and fraudulent breach of a covenant; and supposing him not to be bound, yet he may be affected in conscience upon the same principle that the assignee of a merely personal covenant may be affected in conscience, though not bound at law. See City of London v. Richmond, 2 Vern. 421. Treat. of Equity, 350. in n.

The grantee of a reversion may bring action of covenant against a lessee, as well in the county where the demise was made, as in the county where the lands lie. Carth. 183. A person covenants with another, to pay him money at a time to come, and doth not say to his executors, &c. if the covenantor die before the day, yet his executors or administrators shall have the money. Dyer, 112. 257. And in every case where the testator is bound by a covenant, the executor shall be bound by it, if it be not determined by his death. 48 Edw. III. 2. 2 Danv. 232.

If A. seised of land in fee, conveys it to B. and covenants with B. his heirs and assigns, to make any other assurance upon request; and after B. conveys it to C. who conveys it to D. and then D. requires A. to make another assurance, according to the covenant; if he refuses, D. shall have an action of covenant against him, as assignee to B. 2 Danv. 235. A lesser made a lease of a house for years, excepting two rooms, and free passage to them; the lessee assigned the term, and the lessor brought covenant against the assignee for disturbing him in his passage to those rooms; and adjudged, that the action lies; for the covenant as to the passage goes with the tenement, and binds the assignee. 1 Salk. 196. If a man who leases for years, ousts the lessee, he shall have covenant against him. 48 Edw. III. 2. See 2 Danv. 234. A man grants a water-course, and afterwards stops it; for this voluntary misfeasance, covenant lies. 1 Saund. 325. Though where the use of a thing is demised, and it runs to decay, so that the lessee cannot have the benefit of it, for this nonfeasance no action of covenant lies; nor may covenant be brought for a thing which was not in use at the making of the lease. 2 Danv. 233.

If a person covenants that he hath good right to grant, &c. and he hath no right, it is a breach of covenant, for which action of covenant lies. 2 Bull. 12.

A covenant for the lessee to enjoy against all men; this extends not to tortious acts and entries, &c. for which the lessee hath his proper remedy against the aggressors. Vaugh. 111. 120.

Where there is a covenant to save harmless against a certain person, there the covenantor must save the covenantee harmless against the entry of that person, be it by wrong or rightful title: but if it be to save harmless against all persons, the entry and eviction must be by lawful title. Cro. Eliz. 213. Where the covenant is to do a thing, and no time appointed for the performance, it must be done in convenient time. 2 And. 73. Dyer, 57. 150. Hob. 28.

But a covenant must wait upon and join with the grant; so
that if it be to make such assurance as shall be reasonably devis-
ed, it must be of an assurance that differs not from the bargain:
and when the estate to which a covenant is annexed is at an end,
the covenant is gone. Hob. 276. 1 Leon. 179. In an indenture,
the word covenant is the word both of lessor and lessee; and there-
fore if the lessee covenants to pay the rent, this is a reservation.
Though when there is a covenant for a lessee to repair, and he
makes an under-lease to one who is in possession, the under-les-
see is not liable to that covenant in law or equity. 1 Roll. Rep. 80.
1 Vern. 87.

If a lessor covenant with the lessee that he shall have house-
bore, &c. by assignation of his bailiff, this is a good covenant: and
yet it doth not restrain the power that the lessee hath by law to
take those things without assignment: but if a lessee covenants,
that he will not cut any timber, without the leave or assignment of
the lessor; by this he will be restrained. Dyer, 19. 115.

IV. The most frequent use of a covenant, is to bind a man to
do something in futurum, and therefore is for the most part execu-
tory; and if the covenantor do not perform it, the covenantee may
thereupon for his relief have an action or writ of covenant against
the covenantor, so often as there is any breach of the covenant.
Shep. Touchst. 161. et seq.

Not any duty or cause of action arises on a covenant till it is
broken: and as to breaches of covenant, if a person by his own
act disables himself to perform a covenant, it is a breach there-
of. 5 Rep. 21. Though there can be no covenant or breach,
where a lease, &c. is void. Yelv. 18, 19. But here, although
when a covenant concerns the interest of the lease, as where it
is for paying rent, it is void, if the lease be so; yet where co-
venants are collateral to the lease and interest, though that be void,
the covenants may be good. Owen, 136. And if a covenant to
do a thing is performed in substance, and according to the intent,
it is good, though it differs from the words; and on the other
hand, although a covenantor performs the letter of his covenant,
if he does any act to defeat the intent and use of it, he is guilty
of a breach. Mod. Ent. Eng.

In covenant that a person shall hold land free from all encum-
brances, and be kept indemnified from arrears of rent; there,
till an action is brought, or distress made, he is not damnified;
and a suit in chancery is no breach in such case; but where a
joiture or dower is recovered it is. Skin. 397. Moor, 859. Palm.
339. When the intention of the parties can be collected out of
a deed, for the doing or not doing of the thing, covenant shall be
had thereupon. Chanc. Rep. 294. A covenant, being one part
of a deed, is subject to the general rules of exposition of all parts
of the deed: and in a covenant the last words, that are general,
shall be expounded by the first words, which are special and par-
ticular. Vent. 218. Also a latter covenant cannot be pleaded in
bar to a former.

When a covenant is to two persons jointly, one of them may
not bring action of covenant, or plead alone, but both must join.
1 Nels. 558. If a man is bound to perform all the covenants in
an indenture, and they are all in the affirmative, he may plead
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performance generally. Cw. Litt. 303. Covenants in the negative must be pleaded specially. Ibid. 330. When some covenants are in the negative and some in the affirmative, the defendant is to plead specially to the negative covenants, that he had not done the thing; and performance generally as to the affirmative (sed qu. and vide post:) and where the negative covenants are against law, and the affirmative agreeable to law, performance generally may be pleaded. Moor, 856. If any of the covenants are in the disjunctive, so that it is in the election of the covenantor to perform the one, or the other, the performance ought to be specially pleaded, that it may appear what part hath been performed. Cro. Eliz. 23. 1 Nott. 373. And commonly where an act is to be done, according to a covenant, he who pleads performance ought to do it specially. 1 Leon. 135.

In debt upon bond for performance of covenants, one whereof for peaceable enjoyment, and free from all encumbrances, and another for future assurance, &c. the defendant should plead specially, that the house was free from encumbrances at the time of the conveyance made, and not charged at any time since, and that no farther assurance had been required, or such an assurance which he had executed, &c. yet where a defendant pleaded generally, in this case it was held good. 1 Lutw. 603.

The plaintiff in equity, if he has not performed his part of the agreement, must not only show that he was in no default, in not having performed it, but must also allege, that he is still ready to perform it; whereas, at law, if the covenants be not precedent, but distinct and independent, the plaintiff need not allege a performance of his covenants, to entitle him to recover against the defendant for the breach of his. Fordage v. Cole, 1 Sand. 330. Nichols v. Raynbred, Hob. 88. But see Colonel v. Briggs, 1 Salk. 112. Goodison v. Nunn, 4 Term Rep. 761.

Where the covenants are mutual and distinct, the defendant cannot plead a breach by the plaintiff, in bar of the plaintiff's action for a breach by the defendant; for the damage may be unequal, and therefore each party must recover against the other, the damages he sustained. Cole v. Shallett, 3 Lev. 41. Thompson v. Noel, 1 Lev. 16. Howlett v. Strickland, Cows. 56. But see Colonel v. Briggs, 1 Salk. 112. Goodison v. Nunn, 4 Term Rep. 761.

When a breach is assigned, it must not be general, but must be particular; as in action of covenant for not repairing of houses, the breach ought to be assigned particularly, what is the want of reparation. Cro. Jac. 369.

But on mutual promise for one to do an act, and in consideration thereof another to do some act, as to sell goods, &c. for so much money, a general breach that the defendant hath not performed his part, is well assigned. 3 Lev. 319.

Breaches assigned ought to be according to the very words of the condition or covenant: when they may be well enough though too general. 1 Lutw. 326.

Where a thing is to be done by a person or his assigns, the breach is to be, that it was not done either by the one or the other. 5 Mod. 133. If a person is to tender a conveyance, &c. to another, his heirs or assigns, breach assigned that the defendant did not tender a conveyance to the plaintiff, without the words, "his heirs.
or assigns," is good: but if the tender be to be made by another man, his heirs, &c. and not to him, it is otherwise. 1 Salk. 139.

Where a lessee for years is to leave all the timber on the land, which was growing there at the time of the lease, and he cut down any trees, though he leaves the timber on the land at the end of his lease, this is a breach of covenant: for in contracts the intention of the parties is chiefly to be considered. Raym. 464.

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

Covenants are generally taken most strongly against the covenantor, and for the covenantee. Plowd. 287. But is a rule in law, that where one thing may have several intendment, it shall be construed in the most favourable manner for the covenantor. 1 Lut. 490. The common use of covenants is for assuring of land; quiet enjoyment free from encumbrances; for payment of rent reserved; and concerning repairs, &c. And in deeds of covenant, sometimes a clause for performance, with a penalty, is inserted in the body of the deed; at other times more frequently, bonds for performance, with a sufficient penalty, are given separate; which last being sued, the jury must find the penalty; but on covenant, only the damages. Wood's Inst. 256. Vide the stat. 8 & 9 W. III. c. 11. And vide ante et post; and tit. Bond.

Covenant for non-payment of rent, was referred to the master as to the rent, and on payment thereof process to stay as to that, but there being another breach as to not repairing, the plaintiff might proceed for that. Anon. Wils. Rep. Par. 1. p. 75. In an action of covenant, it is not necessary to aver that the plaintiff performed his covenants. Jodderell v. Cowell, Rep. temp. Hardw. 343, 344.

By stat. 8 & 9 W. III. c. 11. in actions on bonds, for performance of covenants, plaintiff may assign as many breaches as he pleases, and the jury on the trial of the action, or on a writ of inquiry, may assess damages: on defendant's paying damages, execution may be stayed, but judgment shall remain to answer any further breach, and plaintiff may have a scire facias against the defendant. See tit. Bond. VI.

"Where a penalty is intended, merely to secure the enjoyment of a collateral object, the enjoyment of the object is considered as the principal intent of the deed, and the penalty only as accessory, and therefore only to secure the damage really incurred." Per Thurlow. C. Sloman v. Walter, 1 Bro. Rep. 418. And upon this construction of a penalty, courts of equity will interfere to restrain proceedings at law to recover the penalty. But the principles of equal justice require, that courts of equity should enforce the specific performance of the act agreed to be done, or restrain from the doing of that, which was agreed should not be done. And upon this principle, wherever the primary object of the agreement be the securing of the specific object of the covenant, the party covenanting is not entitled to elect, whether he will perform his covenant, or pay the penalty. See Hobson v.
Trevor, 2 P. Wms. 191. Parks v. Wilson, 10 Mod. 517. Chilling
v. Chilling, 2 Fez. 528. But if the covenant be to do, or not to do, some particular act, or doing it, or neglecting to do it, to pay a certain sum, by way of liquidating damages, courts of equity will not relieve against the payment of such damages. East-
India Company v. Blake, Finch's Refi. 117. Ponsonby v. Adams, 2
Lowe v. Peers, 4 Burr. 2228. See also Small v. Lord Fitzwilliam,
Prec. Ch. 103. And as courts of equity will not relieve against stipulated damages, they will not, in general, interpose to enforce the performance of the covenant, or to restrain its violation. Therefore, where the lessee covenanted not to plough certain land, or if he did, to pay 30s. per acre, per annum, the court refused to restrain the lessee from ploughing, Woodward v. Gyles, 2
Vern. 119. But there are some circumstances which will induce the court to interfere, though stipulated damages be reserved; as where the lessee had covenanted not to plough ancient meadow, or if he did, to pay an increase of rent, the court upon his threat-
ening to plough, appears to have granted an injunction. Webb v. Clarke, 8th of May, 1792. See also Dulwich College v. Davis, M.
1787.

It is held an action of covenant may be laid in London, for non-
payment of rent on a lease of lands in any other place. 1 Sid. 401. And if, in this action, a sum be miscast, either too little or too much, it is amendable; and not like to the action of debt, which if alleged less than it is, without showing the rest to be satisfied, it is ill. 3 K. b. 39. 2 Crs. 247. In action of covenant, the plaint-
iff must have recourse to the deeds or writings, and the circum-
cstances of time, place, &c. and take notice what particular cove-
nant in the deed it is best to insist upon, to lay a breach right, &c. The words of covenying are, covenant, grant, promise, and agree, &c. but there needs no great exactness in words to make a cove-
nant. See tit. Bonds, Leases, Agreements, Conveyances, &c. and ante, I.

What shall be a real and what a personal covenant. See Fin.
Covenant, (A. 2.) Gilb. Law of Covenants, 105. As to collateral covenants, &c. 7.
Burr. 2446. 2 Wils. 27. 1 Vez. 56. As to affirma-
556. By what words an express covenant may be created. Vin.
Abr. Covenant, (C.) Gilb. c. 2. As to covenants created by im-
pliation of law, and action thereon, Vin. Abr. Covenant, (G.)

How a covenant shall be expounded with regard to the con-
text, or to synonymous or other words, see Com. Dig. Covenant,
(D.) Vin. Abr. Covenant, (L. 4.) As to covenants for quiet en-
For the construction of the words in a covenant, " notwithstanding any act done by the covenantor," Vin. Abr. Covenant, (T.)
COVENANT IV.

Abr. Covenant, (L. 3.) Steph. Touchst. Finch's Refi. 86. Lanf
v. Norris, 1 Burr. 287. 1 Wils. pl. 1. 75. Of covenants to con-
vey lands of a certain value; or that lands are of such a value,
v. North, 2 Chan. Rep. 140. Of covenants that the grantor is
Jac. 369. 3 Lev. 45. Of covenants, to be free from encumbrances,

See fully in what cases and in what manner covenants shall be
said to be suspended, defeated, discharged, or void. Bac. Abr.
Covenant, (G.) Gilb. 470. 1 Wood, 397. 429. Com. Dig. Cov-

This word covenant is also taken for the Solemn League and
Covenant; which was a seditious conspiracy, invented in Scot-
lend, voted illegal by parliament, and against which provision is made
by stat. 14 Car. II. c. 4.

COVENANT TO STAND SEISED TO USES, is when a man that
hath a wife, children, brother, sister, or kindred, doth by covenant
in writing under hand and seal agree that for their or any of their
provision or preferment, he and his heirs will stand seised of
land to their use; either in fee-simple, fee-tail, or for life. The
use being created by the stat. 27 Hen. VIII. c. 10, which convey-
eth the estate as the uses are directed, this covenant to stand
seised is become a conveyance of the land since the said statute.
The considerations of these deeds, are natural affection, marriage,
and the law allows in such cases consideration of blood and mar-
rriage, to raise uses, as well as money and other valuable con-
sideration, when a use is to a stranger. Plowd. 302. There are no
considerations now to raise uses upon covenants to stand seised,
but natural love and affection, which is for advancement of blood;
and consideration of marriage, which is the joining of the blood
and marriage together: other considerations, as money, &c. for
land, though the words in the deed are stand seised, yet they are
bargains and sales, and without enrolment they raise no use. Car-

The usual covenant to stand seised to uses need not be by
deed indented and enrolled. And where a man limits his estate
to the use of his wife for life, this imports a sufficient considera-
tion in itself; also, if a person covenants to stand seised to the
use of his wife, son, or cousin, it will raise a use without any
express words of consideration; for sufficient consideration ap-
ppears. 7 Rep. 40.

In case of a covenant to stand seised, so much of the use as
the owner doth not dispose of, remains still in him. 1 Vent. 373.
And where a use is raised by way of covenant, the covenantor
continues in possession; and there the uses limited, if they are
according to law, shall rise and draw the possession out of him;
but if they are not, the possession shall remain in him until a
lawful use ariseth. 1 Leon. 197. 1 Mod. 152, 160.

If on a covenant to stand seised to uses, no use doth arise, yet
it may be good by way of covenant and give remedy to the cove-
nantee in an action; as if the covenant be future, that, in consi-
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deration of a marriage, lands shall descend or remain to a son and
the heirs of his body on the body of his wife; in this case the co-
venantee may have writ of covenant upon the covenant against the
covenantor. But if a covenant be that a man and his heirs shall
from henceforth stand and be seised to such and such uses, and
the uses will not arise by law; here no action of covenant lies on
the covenant; for this action will never lie upon any covenant;
but such as is either to do a thing hereafter, or where the thing
is already done, and not when it is for a thing present. Plowd.

COVERT BARON. A feme covert baron is a married woman. See tit. Baron and Feme.

COVERTURE, Fr.] Any thing that covers; as apparel, a co-
verlet, &c. but it is by our law particularly applied to the state
and condition of a married woman, who is sub potestate viri; and
therefore disabled to contract with any, to the damage of herself
or husband, without his consent and privity, or his allowance and
When a woman is married, she is called a feme covert; and
whatever is done concerning her, during the marriage, is said to be
during the coverture. All things that are the wife's are the hus-
band's; nor hath the wife power over herself, but the husband;
and if the husband alien the wife's land, during the coverture, she
cannot avoid it during his life; but after his death she may re-
cover by cui in vita. Terma de Ley. See tit. Baron and Feme, Cui in vita.

COVIN, covina.] A deceitful compact between two or more
to deceive or prejudice others; as if tenant for life or in tail, con-
spires with another, that he shall recover the land which he the te-
nant holds, in prejudice of him in reversion. Plowd. 546. Covin
is commonly conversant in and about conveyances of lands by
fine, seoffment, recovery, &c. And then it tends to defeat pur-
chasers of the lands they purchase, and creditors of their just
debts; and so it is used in deeds of gift of goods: it may be like-
wise sometimes in suits of law; and judgments had in them. But
wherever covin is, it shall never be intended, unless it appears
and be particularly found; for covin and fraud though proved,
yet must be found by the jury, or it will not be good. Brownl.
188. Bridg. 112.

If one make a lease to a person by covin, and after grant an-
other lease to another bona fide, but without any fine or rent; in
this case the second lessee may not avoid the first lease, because
he is not a purchaser that comes in for money. s.Repf. 33. On
recovery by a good title, there may be covin; as where tenant
for life by ascent, &c. suffers a recovery by nil dictis, without
making any defence; and if a man hath a rightful and just cause
of action, and of covert and consent shall raise up a tenant by
wrong against whom he may recover; the covin doth so suffo-
cate the right, that the recovery, although it be upon good title,
A. is tenant for life; remainder in tail to B. and a praecipe
is brought against them as joint-tenants, by covin between the de-
mandant and A. and an answer procured for B. as joint-tenant,
and they join the mise; (or issue) and after make default, where-
by final judgment is given; this shall not defeat the estate of
B. who may bring a writ of disceit, and shall be restored to
his land. *Roll.* Abr. 621.
If a man that has a right to certain lands, by *covin* causes
another to oust the tenant of the land, to the intent to recover
it from him, and he recovers accordingly against him by action
tried; yet he shall not be remitted to his ancient right; but
is in of the estate of him who made the ouster; and an assise
lies against him. 2 Danz. Abr. 399. Land is aliened, pending
a writ of debt, by *covin* to avoid the extent thereof for the
debt; the land so aliened shall be extended, when the *covin*
appears upon the return of the *eligit* by the sheriff. *Ibid.* 311.
If a man makes a deed of gift, &c. of his goods in his life-time
by *covin* to oust his creditors of their debts, after his death the
donee or vendee shall be charged for them. See the several sta-
tutes of *Frauds.* If goods are sold in market overt by *covin*, or
purpose to bar him that hath right, this shall not bar him thereof.
COUNCIL. In the city of London, there are common counsell-
men chosen in every ward at a court of wardmote held by the
aldermen of the respective wards on St. Thomas's day, yearly.
They are to be chosen out of the most sufficient men, and sworn to give
true counsel for the common profit of the city, &c. *Les London-
en.* 117. In the court of common council are made laws for ad-
vancement of trade; and committees yearly appointed, &c. But
acts made by them are to have the assent of the Lord Mayor and
Aldermen, by stat. 21 Geo. I. c. 11. See this *Dictionary,* tit.
London.
COUNSELLOR, *consiliarius.*] A person retained by a client to
plead his cause in a court of judicature; a barrister. See tit.
Barrister. To what is there noticed may be added, that by
stat. 5 *Bitz.* c. 14. counsellors shall not be punished for showing
a false deed in evidence. No recusant convict, or nonconformist
shall practise the law as a *counsellor,* or otherwise, under penali-
ties. See stat. 3 *Joc.* I. c. 5. 7 *Wm.* III. c. 24. 13 & *Wm.* III.
COUNT, The original declaration of complaint in a real action.
As declaration is applied to personal, so *count* is applicable to
real causes: but count and declaration are oftentimes confound-
ed, and made to signify the same thing. *Fitz.* N. B. 16. 60.
In passing a recovery at the common pleas bar, a serjeant at
law counts upon the *precipe,* &c. See tit. *Counters,* *Declara-
tions,* *Pleading.*
COUNTEE, Fr. *Comte.*] The most eminent dignity of a sub-
ject, before the conquest: and those who in ancient times were
created *countees,* were men of great estate; for which reason, and
because the law intends that they assist the king with their coun-
sel for the public good and preserve the realm by their valour,
they had great privileges; as they might not be arrested for debt
or trespass; or be put on juries, &c. Of old the *countee* was
*prefectus* or *præfonsius comitatibus,* and had the charge and custo-
dy of the county; but this authority the *sheriff* now hath. 9 Ref.
46. A countee or count, is an earl, in the law French. Law Fr. Dict. See tit. Earl, Sheriff.

COUNTEANCE. This word seems to be used for credit or estimation. Old Nat. Brev. 111. And in the stat. 1 Edw. III. c. 4. See Contenement.

COUNTER, computatorium, from the Lat. computare.] The name of two prisons in London, the Poultry-counter, and Wood-street-counter, [now consolidated into one new-built prison:] for the use of the city, to confine debtors, peace-breakers, &c. Cowel.

COUNTERFEITS. See tit. Cheats.

Counterfeiting the king's seal, or money, &c. is treason. See tit. Treason And counterfeiting Exchequer-bills, bank-bills, lottery-orders, &c. is felony. See tit. Felony, Forgery, Fraud.

COUNTERMAND, contramandatum.] Is where a thing formerly executed, is afterwards by some act or ceremony made void by the party that first did it. And it is either actual, by deed, or implied: actual, where a power to execute any authority, &c. is by a formal writing, for that very purpose put off for a time, or made void; and implied is where a man makes his last will and testament, and thereby devises his land to A. B. if he afterwards enfeoffs another of the same land, here this feoffment is a countermand to the will, without any express words for the same, and the will is void as to the disposition of the land. Also, if a woman seised of land in fee-simple, makes a will and deviseth the same to C. D. and his heirs, if he survive her; and after she intermarries with the said C. D. there, by taking him to husband; and coverture at the time of her death, the will is countermanded. Terms de Ley. But if a woman makes a lease at will, and then marries, this marriage is no countermand to the lease, without express matter done by the husband to determine the will.

Where land is devised, and after a lease made thereof for years only; it shall not be a countermand of the will, which is good notwithstanding; for the reversion after the lease for years is ended: but in case a man have a lease for years, and gives it by his will, and after surrenders it; it is a countermand of the devise, and the devisee shall not have his lease. Dyer, 47. Goldsb. 93. See tit. Devises. If a copyholder, like to die, do surrender his estate to the use of his wife or children, without any consideration of money, &c. and he recover before the presentment and admittance, it may be countermanded; it is otherwise if it be to the use of a stranger. Kitch. 82. If there be a feoffment with letter of attorney to make livery and scisin; and before it is made, the feoffor makes a feoffment, or bargain and sale of the land, or lease to another, it will be a countermand in law of the authority given by the letter of attorney. 2 Brownl. 291. A person may countermand his command, authority, license, &c. before the thing is done; and if he dies, it is countermanded. There is also a countermand of notice of trial, &c. in law proceedings. See tit. Trial, Process.

COUNTERPART. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counterparts: though of late it is most frequent
COUNTY.

(And better) for all the parties to execute every part; which renders them all originals. 2 Comm. 298. See tit. Deeds.

COUNTERPLEA. Is when the tenant in any real action, tenant by the curtesy, or dower, in his answer and plea, vouches any one to warrant his title, or prays in aid of another, who hath a larger estate; as of him in reversion, &c. Or where one that is a stranger to the action, comes and prays to be received to save his estate; then that which the demandant allegeth against it, why he should not be admitted, is called a counterplea; in which sense it is used, stat. 25 Edw. III. cap. 7. So that counterplea is in law a replication to Aid Prior; and is called counterplea to the voucher. But when the voucher is allowed, and the vouchee comes and demands what cause the tenant hath to vouch him, and the tenant shows his cause, whereupon the vouchee pleads any thing to avoid the warranty, that is termed a counterplea of the warranty. Terms de Leu. Stat. 3 Edw. I. cap. 39. If on demurrer to a counterplea of the voucher upon a warranty, it be found against the vouchee, judgment shall not be peremptory, but only siet vocare. It is otherwise upon a plea to the writ tried by the county. 4 Rep. 80. 10 Rep. 54. There is also a counterplea to the plea of clergy. See tit. Clergy, Benefit of, II.

COUNTER-ROLLS. The rolls which sheriffs of counties have with the coroners of their proceedings, as well of appeals, as of inquests, &c. Stat. 3 Edw. I. c. 10.

COUNTORS, Fr. contours.] Have been taken for such serjeants at law, which a man retains to defend his cause, and speak for him in any court, for their fees. Horn's Mirror, tit. 2. And as in the court of C. B. none but serjeants at law may plead, they were ancienly called Serjeant Countors. 1 Inst. 17.

COUNTY.

Counties.] Signifies the same with shire, the one coming from the French, the other from the Saxon. It contains a circuit or portion of the realm, into which the whole land is divided, for the better government of it, and the more easy administration of justice. So that there is no part of this kingdom that lies not within some county; and every county is governed by a yearly officer, the sheriff. Fortescue, cap. 24. Of these counties, the numbers have been different at different times: there are now in England forty, besides twelve in Wales, making in all fifty-two. It seems that this division of the kingdom was made by King Alfred. See 4 Comm. 410. The names of these counties are as follows:—

In England—Bedford, Berks, Bucks, Cambridge, Chester, Cornwall, Cumberland, Derby, Devon, Dorset, Durham, Essex, Gloucester, Hereford, Hertford, Huntingdon, Kent, Lancaster, Leicester, Lincoln, Middlesex, Monmouth, Norfolk, Northampton, Northumberland, Nottingham, Oxford, Rutland, (the smallest,) Salop, (commonly called Shropshire,) Somerset, Stafford, Suffolk, Surrey, Sussex, Southampton, (Hants or Hampshire,) Warwick, Westmorland, Worcester, Wilt, York, (the largest.)—In North Wales—An-
glæsea, Caernarvon, Denbigh, Flint, Merioneth, and Montgomery.
In South Wales—Brecknock, Cardigan, Caernarvon, Glamorgan,
Pembroke, and Radnor.

Three of the counties above enumerated, viz. Chester, Durham,
and Lancaster, are called Counties Palatine. The two former
are such by prescription or immemorial custom; or at least as
old as the Norman Conquest; (Seld. tit. Hon. 2. 5. 8.) the latter
was created by King Edward III. in favour of Henry Plantagenet,
first Earl, and then Duke of Lancaster; (4 Inst. 204.) whose heir-
cases being married to John of Gaunt, the king's son, the franchise
was greatly enlarged and confirmed in parliament to honour John
of Gaunt himself, whom, on the death of his father-in-law, the
king had also created duke of Lancaster. Plowd. 215. T. Raym.
138.

Counties Palatine are so called a palatio; because the own-
ers thereof, the Earl of Chester, the Bishop of Durham, and the
Duke of Lancaster, had in those counties jura regia, as fully as
the king hath in his palace: regalem postestatem in omnibus, as Bract.
expresses it, lib. 3. c. 8. § 4. They might pardon treasons, mur-
ders, and felonies; they appointed all judges and justices of the
peace; all writs and indictments ran in their names, as in other
counties in the king's, and all offences were said to be done
against their peace, and not, as in other places, contra facem do-
mini regis. 4 Inst. 204. And indeed by the ancient law, in all
peculiar jurisdictions, offences were said to be done against his
peace in whose court they were tried: in a court-leet, contra
facem domini; in the court of a corporation, contra facem ballivo-
rum; in the sheriff's courts or towns, contra facem vicecomitatus.
Seld. in Heng. Magna, c. 2.

The Palatine privileges, (so similar to the regal independent
jurisdictions usurped by the great barons on the continent, during
the weak and infant state of the first feudal kingdoms in Europe,) 
were in all probability originally granted to the counties of Che-
s ter and Durham, because they bordered upon inimical countries,
Wales and Scotland; in order that the inhabitants, having justice
administered at home, might not be obliged to go out of the
county, and leave it open to the enemy's incursions; and the
owners, being encouraged by so large an authority, might be the
more watchful in its defence. And upon this account also there
were formerly two other counties palatine, Pembroksire and
Hertfordshire; the latter now united with Northumberland; but
these were abolished by parliament, the former in 27 Hen. VIII.
the latter, in 14 Etiz. And in the time of Hen. VIII. likewise, 
the powers before mentioned, of owners of counties palatine, were
abridged, stat. 27 Hen. VIII. c. 24. the reason for their continuance
in a manner ceasing, though still all writs are witnessed in their
names, and all forfeitures for treason by the common law accrue to
them. 4 Inst. 205.

Of these three, the county of Durham is now the only one re-
mainng in the hands of a subject. For the earldom of Chester,
as Camden testifies, was united to the crown by Hen. III. and has
ever since given title to the king's eldest son. And the County
Palatine, or Duchy of Lancaster, was the property of Henry Bo-
ingbroke, the son of John of Gaunt, at the time when he wrested the crown from King Richard II. and assumed the title of King Henry IV. But he was too prudent to suffer this to be united to the crown; lest if he lost one, he should lose the other also. For as Plowden, (215.) and Sir Edward Coke, (4 Inst. 245.) observe, 'he knew he had the Duchy of Lancaster by sure and indefeasible title, but that his title to the crown was not so assured; for that after the decease of Richard II. the right of the crown was in the heir of Lionel, Duke of Clarence, second son of Edward III. John of Gaunt, father to this Henry IV. being but the fourth son.' And therefore he procured an act of parliament, in the first year of his reign, ordaining that the Duchy of Lancaster, and all other his hereditary estates, with all their royalties and franchises, should remain to him and his heirs for ever; and should remain, descend, be administered and governed, in like manner as if he never had attained the regal dignity; and thus they descended to his son and grandson, Henry V. and Henry VI. many new territories and privileges being annexed to the duchy by the former. Parl. 2 Hen. V. n. 30. 3 Hen. V. n. 15. Henry VI. being attainted in 1 Edw. IV. this duchy was declared in parliament to have become forfeited to the crown, 1 Vent. 155, and at the same time an act was made to incorporate the Duchy of Lancaster, to continue the county palatine, (which might otherwise have determined by the attainder, 1 Vent. 157.) and to make the same parcel of the duchy; and farther, to vest the whole in King Edward IV. and his heirs, Kings of England, for ever; but under a separate guiding and governance from the other inheritances of the crown. And in 1 Hen. VII. another act was made, to resume such part of the duchy lands as had been dismembered from it in the reign of Edward IV. and to vest the inheritance of the whole in the king and his heirs for ever; as amply and largely, and in like manner, form, and condition, separate from the crown of England and possession of the same, as the three Henryes and Edward IV. or any of them, had and held the same.

The Isle of Ely is not a county palatine, though sometimes erroneously called so, but only a royal franchise, the bishop having, by grant of King Henry the First, jura regalia within the Isle of Ely, whereby he exercises a jurisdiction over all causes, as well criminal as civil. 2 Inst. 220.

The Counties Palatine are reckoned among the superior courts; and are privileged as to pleas, so as no inhabitant of such counties shall be compelled by any writ to appear or answer out of the same; except for error, and in cases of treason, &c. and the Counties Palatine of Chester and Durham, are by prescription, where the king's writ ought not to come, but under the seal of the Counties Palatine; unless it be writs of proclamation. Crompt. Jurisd. 137. 1 Danv. Abr. 750.

But certiorari lies out of B. R. to justices of a County Palatine, &c. to remove indictments, and proceedings before them. 2 Hawk. P. C. c. 27. § 23.

There is also a Court of Chancery in the Counties Palatine of Lancaster and Durham, over which there are chancellors; that of Lancaster called Chancellor of the Duchy, &c. See tit. Chancel-
And there is a Court of Exchequer at Chester, of a mixed nature, for law and equity, of which the Chamberlain of Chester is judge. There is also a Chief Justice of Chester; and other justices in the other Counties Palatine, to determine civil actions and pleas of the crown.

The Bishop of Durham has that County Palatine: and if any erroneous judgment be given in the courts of the Bishopric of Durham, a writ of error shall be brought before the bishop himself; and if he give an erroneous judgment thereon, a writ of error shall be sued out returnable in B. R. 4 Inst. 218.

Infants in Counties Palatine enabled to convey by order of the respective courts belonging to those counties. 4 Geo. III. c. 16.

The king may make a County Palatine by his letters-patent without parliament. 4 Inst. 201.

As to further matter relative to the several Counties Palatine, see tit. Chester, Durham and Lancaster; and particularly as to Chester, stats. 43 Eliz. c. 15. (and this Diet. tit. Fines.) 22 Geo. II. c. 46. 26 Geo. II. c. 34. 27 Geo. III. c. 43.

COUNTIES CORPORATE are certain cities and towns, some with more, some with less territory annexed to them, to which, out of special grace and favour, the Kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county; but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein.

The stat. 3 Geo. I. c. 15. for the regulation of the office of sheriffs, enumerates 12 cities and 5 towns, which are counties of themselves, and which have consequently their own sheriffs. The cities are, London, (by grant of Hen. I.) [see 2 Inst. 230. that it is a corporation by prescription. The office of sheriff of London, &c. is always united with that of Middlesex. See 2 Inst. 48.]

—Chester, (42 Eliz.) Bristol, Coventry, Canterbury, Exeter, Gloucester, Litchfield, Lincoln, Norwich, Worcester, York. (32 Henry VIII.) The towns are, Kingston-upon-Hull, Nottingham, Newcastle-upon-Tyne, Pool, Southampton. 1 Comm. 116—119. To these Cirencester is added in Imp Pey's Sheriff; but on what authority does not clearly appear.

COUNTY-COURT, curia comitatus. Is by Lambert called conventus, in his explication of Saxon words, and divided into two sorts; one retaining the general name, as the county-court, held every month by the sheriff or his deputy; the other called the turn, held twice in every year, viz. within a month after Easter and Michaelmas; of both which see Cramp. Juris. fol. 241. All administration of justice was at first in the king's hands; but afterwards, when by the increase of the people the burden grew too great for him, as the kingdom was divided into counties, hundreds, &c. so the administration of justice was distributed amongst divers courts; of which the sheriff had the county-court for government of the county, and lords of liberties had their leets and law-days, for the speedier and easier administering justice there-in, &c.

Before the courts at Westminster were erected, the county-courts were the chief courts of the kingdom; and among the laws of
King Edgar it is ordained, that there be two county courts kept in
the year, in which there shall be a bishop and an alderman, or
carl, as judges; one to judge according to the common law, and
the other according to the ecclesiastical law: but these united
powers of a bishop and earl to try causes, were separated by
William the First, called the Conqueror; and soon after the busi-
ness of ecclesiastical cognisance was brought into its proper courts,
and the common law business into the king's bench. Blount.

That the county court in ancient times, had the cognisance of
pleas of the crown, indictments of felony, &c. appears by Glani.
lib. 2. c. 2, 3, 4. by Bracton and Britton, in divers places, and Fleta,
lb. 1. c. 62. But the power of this court was much reduced
by Magna Charta, c. 17. and by 1 Edw. IV. cap. 2. by the former
of which it is expressly provided, that "no sheriff shall hold pleas
of the crown." It had formerly, and now hath the determination
certain debts, &c. under 40s. Over some of which causes the
inferior courts have by the express words of the stat. of Glouce-
ter, 6 Edw. I. c. 3. a jurisdiction totally exclusive of the king's
superior courts.

This court may also hold plea of many real actions, such as
dower; right patent, right of ward. 4 Inst. 265. 3 Inst. 312.
And of all personal actions to any amount, by virtue of a writ of
justice, which is in nature of a commission to the sheriff to do it.
4 Inst. 266. Here the plaintiff takes out a summons, and if the
defendant do not appear, an attachment or distringas is to be made
out against him; but if the defendant appears, the plaintiff is to
file his declaration, and after the defendant is to put in his answer
or plea; and the plaintiff having joined issue, the trial proceeds,
whereupon, if verdict is given for the plaintiff, judgment is
entered, and a fieri facias may be awarded against the defendant's
goods, which may be taken by virtue thereof, and be appraised
and sold to satisfy the plaintiff: But if the defendant hath no goods,
the plaintiff is without remedy in this court; for no caius lies
therein, but an action may be brought at common law, upon the
K. B. 152.

No sheriff is to enter in the county court, any plaint in the ab-
sence of the plaintiff; nor above one plaint for one cause, under
penalties: The defendant in the county court is to have lawful
summons; and two justices of peace are to view the estreats of
sheriffs, before they issue them out of the county court, &c. By
stat. 11 Hen. VII. c. 15. causes are to be removed out of the coun-
ty court, by recordare, pone, and writ of false judgment, into B. R.
&c. The stats. 9 Hen. III. c. 35. 3 Edw. VI. c. 25. enact, that
no county court shall be adjourned for longer than one month,
consisting of 28 days.

All popular elections which the freeholders are to make, as
formerly of sheriffs and conservators of the peace, and still of
coroners, verderors and knights of the shire, must ever be made in
full county court.

As this court hath of ancient times belonged to the sheriff;
and is incident to his office, the king cannot grant by letters pa-
tent the office of county clerk, nor the fees: but it of right be-
longs to the sheriff. 4 Co. Milto's case.
See stats. 7 & 8 W. III. c. 25. as to the county courts in Yorkshire; and 27 Hen. VIII. c. 26. 34 Hen. VIII. c. 26. as to those in Wales. Blackstone (3 Comm. 82.) observes, on the late erection of numerous courts of conscience, (see that tit. post,) that it is to be wished that the proceedings in the county and hundred courts could be again revived and improved; an experiment that has been tried and succeeded in Middlesex. For by stat 22 Geo. II. c. 33. it is enacted, 1. That a special county court shall be held, at least once a month, in every hundred of the county of Middlesex, by the county clerk. 2. That twelve freetholders of that hundred, qualified to serve on juries, and struck by the sheriff, shall be summoned to appear at such court by rotation; so as none shall be summoned oftener than once a year. 3. That in all causes not exceeding the value of 40s. the county clerk and twelve suitors shall proceed in a summary way, examining the parties and witnesses, on oath, without the formal process of the court. and shall make such order therein as they shall judge to be agreeable to conscience. 4. That no plaintiffs shall be removed out of this court, by any process whatsoever, but the determination herein shall be final. 5. That if any action be brought in any of the superior courts, against a person resident in Middlesex, where the jury shall find less than 40s. damages, the plaintiff shall not recover, but pay costs. (See tit. Costs.) 6. Lastly; A table of very moderate fees is prescribed and set down in the act, which are not to be exceeded.

It seems, indeed, as the learned commentator remarks, that this plan wants only to be generally known to secure its universal reception. See tit. Courts of Conscience.

COUNTY RATES. By stat. 12 Geo. II. c. 29. justices of peace at their quarter sessions, [and by stat. 13 Geo. II. c. 19. justices of liberties and franchises not subject to the county commissioners,] may make one general rate, to answer all former distinct rates, which shall be assessed on every parish, &c. and collected and paid by the high constables of hundreds to treasurers appointed by the justices; which money shall be deemed the public stock, and be laid out in repairing of bridges, gaols, or houses of correction, on presentment made by the grand jury at the assizes or quarter sessions, of their wanting reparation; but appeal lies by the churchwardens and overseers of the poor of the parishes to the justices at the next sessions, against the rate on any particular parish. And as to this appeal see also stat. 22 Geo. III. c. 17. See tit. Bridges, Gaols.

COUNTING-HOUSE OF THE KING'S HOUSEHOLD. Domus Computus Hospitii Regis. Usually called the Board of Green Cloth; where sit the lord steward, and treasurer of the king's house, the comptroller, master of the household, cofferer, and two clerks of the green cloth, &c. for daily taking the accounts of all expenses of the household, making provisions, and ordering payment for the same; and for the good government of the king's household servants, and paying the wages of those below stairs. Stat. 39 Eliz. cap. 7.

COURIER, From the Fr. Courir to run. An express messenger of haste.

COURRACIER, Fr.] A horse-courser. 2 Inst. 719.
COURTS.

A Court, curia.] The king's palace, or mansion; but more especially the place where justice is judicially administered. Co. Litt. 55. The superior courts are those at Westminster; and of courts, some are of record, and some not; which are accounted base courts, in respect of the rest.

A court of record is that court which hath power to hold plea, according to the course of the common law, of real, personal, and mixed actions; where the debt or damage is 40s. or above; as the king's bench, common pleas, &c. A court, not of record, is where it cannot hold plea of debt or damages amounting to 40s. but of pleas under that sum: or where the proceedings are not according to the course of the common law, nor enrolled; as the county court, and the court baron, &c. 1 Inst. 117. 260. 4 Ref. 52 2 Roll. Abr. 574. See Record.

Every court of record is the king's court, in right of his crown and dignity, though his subjects have the benefit of it; and therefore no other court hath authority to fine and imprison: so that the very erection of a new jurisdiction, with power of fine or imprisonment, makes it instantly a court of record. Salk. 200. 12 Mod. 388. Finch. L. 231. The free use of all courts of record and not of record, is to be granted to the people: The land and tourn are the king's courts, and of record. 2 Danw. 259. The rolls of the superior courts of record are of such authority, that no proof will be admitted against them; and these records are only triable by themselves. 3 Inst. 71. But as the county court, court baron, &c. are not courts of record, the proceedings therein may be denied, and tried by a jury; and upon their judgments, a writ of error lies not; but writ of false judgment. 1 Inst. 117. See post, Court baron, Record.

In the courts at Westminster, the plaintiff need not show at large in his declaration, that the cause of action arises within their jurisdiction, it being general: Inferior courts are to show it at large, because they have particular jurisdictions. 1 Litt. Abr. 371. Also nothing shall be intended to be within the jurisdiction of an inferior court, but what is expressly so alleged: And if part of the cause arises within the inferior jurisdiction, and part thereof without it, the inferior court ought not to hold plea. 1 Lev. 104. 2 Ref. 16. See tit. Abatement 1. 1.

An inferior court, not of record, cannot impose a fine, or imprison; but the courts of record, at Westminster, may fine, imprison, and amerce. 11 Ref. 43.

The king being the supreme magistrate of the kingdom, and intrusted with the executive power of the law, all courts, superior or inferior, ought to derive their authority from the crown. Staundf. 54. Though the king himself cannot now, as anciently, sit in judgment in any court upon civil causes, nor upon indictments, because there he is one of the parties to the suit. 2 Hawk. P. C. c. 1. § 1, 2. The king hath committed all his power judicial to one court or the other. 4 Inst. 71. And by stat. 52 Hen. III. c. 1. it is enacted, that all persons shall receive justice in the
king's courts, and none take any distress, &c. of his own authority, without award of the king's courts.

It is said the customs, precedents, and common judicial proceedings of a court, are a law to that court: And the determinations of courts, make points to be law. 2 Rep. 12. 4 Rep. 53. Hob. 294. All things determinable in courts, that are courts by the common law, shall be determined by the judges of the same courts; and the king's writ cannot alter the jurisdiction of a court. 6 Rep. 11. The court of B. R. regulates all the inferior courts of law in the kingdom, so that they do not exceed their jurisdictions, nor alter their forms, &c. And as the court of king's bench hath a general superintendency over all inferior courts, it may award an attachment against any such court usurping a jurisdiction not belonging to it; but it is sometimes usual first to award a writ of prohibition, and afterwards an attachment, upon its continuing to proceed. 2 Hawk. P. C. c. 22. § 25.

If a court having no jurisdiction of a cause depending therein, do nevertheless proceed, the judgment in such court is coram non judice, and void; and an action lies against the judges who give the judgment, and any officer that executes the process under them: Though where they have authority, and give an ill judgment, there the party who executes the process, &c. upon the judgment, shall be excused. 1 Lill. Abr. 370.

Judges of inferior courts may be punished for misbehaviour either by information or attachment. Moravia's case, Hardw. 135. Any defects in the proceedings of an inferior court cannot be amended by the return which is not part of the record. The King v. Holmes, R. 355. Where an inferior court returns its proceedings, no diminution can be alleged. Ibid. Sayer v. Curtis, 367.

Action on the case lies against the plaintiff for suing one in an inferior court where the cause of action is out of its jurisdiction. 1 Vent. 369. And if a plaintiff on a contract for a large sum, splits it into several actions for small sums to give an inferior court jurisdiction, a prohibition shall go. Mod. Cas. 90.

Striking, in the courts at Westminster, is punished by cutting off the right hand, and forfeiture of goods, &c. How contempt to courts in general are punishable by fine and imprisonment, &c. see tit. Attachment, Misprision. See further, as to particular courts, post, Court Baron, &c. and under tit. King's Bench, Chancery, Common Pleas and Exchequer.

Court of Admiralty, see tit. Admiralty.

Court Baron, curia baronis.] A court which every lord of a manor hath within his own precinct; it is an inseparable incident to the manor; and must be held by prescription, for it cannot be created at this day. 1 Inst. 58. 4 Inst. 268. A court baron must be kept on some part of the manor, and is of two natures:

1. By common law, which is the barons' or freeholders' court, of which the freeholders, being suitors, are the judges; and this cannot be a court baron without two suitors at least. The steward of this court is rather the register than the judge.

2. By custom, which is called the customary court; and concerns the customary tenants and copyholders, whereof the lord, or his steward, is judge. See tit. Copyhold.
The court baron may be of this double nature, or one may be without the other; but as there can be no court baron at the common law without freeholders; so there cannot be a customary court without copyholders or customary tenants. 4 Rep. 26. 6 Rep. 11, 12. 2 Inst. 119. See tit. Copyhold.

The freeholders’ court, whose most important business is to determine, by writ of right, all controversies relating to lands within the manor; and which hath also jurisdiction for trying actions of debt, trespasses, &c. under 40s. may be held every three weeks; and is something like a county court, and the proceedings much the same; though, on recovery of debt, they have not power to make execution, but are to distrain the defendant’s goods; and retain them till satisfaction is made.

The proceedings on a writ of right may be removed into the county courts by a precept from the sheriff called a tula, (quia tollit causam,) 3 Rep. Pref. And the proceedings in all other actions, may be removed into the superior courts by the king’s writs of poner, or accessus ad curiam, according to the nature of the suit. Fitz. N. B. 4. 70. Finch. L. 444., 445.

After judgment given also, a writ of false judgment lies to the courts of Westminister to rehear and review the cause; and not a writ of error; for this is not a court of record: and therefore in some of these writs of removal, the first direction given is to cause the plaint to be recorded; recordari facias loquem. Fitz. N. B. 18.

The other court baron, for taking and passing of estates, surrenders, admittances, &c. is held but once or twice in a year, (usually with the court leet) unless it be on purpose to grant an estate; and then it is holden as often as requisite. In this court the homage jury are to inquire that their lords do not lose their services, duties, or customs; but that the tenants make their suits of court; pay their rents and heriots, &c. and keep their lands and tenements in repair; they are to present all common and private nuisances, which may prejudice the lord’s manor; and every public trespass must be punished in this court, by amercement, on presenting the same. By stat. Extent. Man. 4 Edw. I. it shall be inquired of customary tenants, what they hold, by what works, rents, heriots, services, &c. And of the lord’s woods, and other profits, fishing, &c.

Court of Chancery. See Chancery.

Court of Chivalry, curia militaris.] Otherwise called the marshal court; the judges of it are the lord high constable of England, and the earl marshal: this court is said to be the fountain of the martial law, and the earl marshal hath both a judicial and ministerial power; for he is not only one of the judges, but to see execution done. 4 Inst. 123. See tit. Court Martial.

The court of chivalry is the only court military known to, and established by, the permanent laws of the land; it was formerly held before the lord high constable and earl marshal of England, jointly, but since the extinguishment of the former office, it hath usually, with respect to civil matters, been before the earl marshal only. See tit. Constable. From the sentence of this court an appeal lies immediately to the king in person. 4 Inst. 125. This court was in great reputation in times of pure chivalry, and after,
wards, during our connexions with the Continent, by the territories which our princes held in France; but is now grown almost entirely out of use, on account of the feebleness of its jurisdiction, and want of power to enforce its judgments. 3 Comm. 68.

The jurisdiction of this court is declared by stat. 13 Rich. II. c. 2. to be this: "that it hath cognizance of contracts touching deeds of arms, or of war, out of the realm; and also of things which touch war within the realm, which cannot be determined or discussed by the common law; together with other usages and customs to the same matters appertaining." So that wherever the common law can give redress, this court hath no jurisdiction; which has thrown it entirely out of use, as to matters of contract, all such being usually cognisable in the courts of Westminster-hall, if not directly, at least by fiction of law: as if a contract be made at Gibraltar, the plaintiff may suppose it made at Westminster, &c. for the locality, or place of making it, is of no consequence with regard to the validity of the contract.

The words, "other usages and customs," support the claim of this court; 1. To give relief to such of the nobility and gentry as think themselves aggrieved in matters of honour; and, 2. To keep up the distinction of degrees and quality. Whence it follows, that the civil jurisdiction of this court of chivalry is principally in two points; the redressing of injuries of honour, and correcting encroachments in matters of coat-armour, precedence, and other distinctions of families.

As a court of honour, it is to give satisfaction to all such as are aggrieved in that point; a point of a nature so nice and so delicate, that its wrongs and injuries escape the notice of the common law, and yet are fit to be redressed somewhere; such, for instance, as calling a man coward, or giving him the lie; for which, as they are productive of no immediate damage to his person or property, no action will lie in the courts of Westminster; and yet they are such injuries as will prompt every man of spirit to demand some honourable amends, which by the ancient law of the land was appointed to be given in the court of chivalry. Year Book. 37 Hen. VI. 21. Selden of Duels, c. 10. Hal. Hist. C. L. 37. But modern resolutions have determined, that how much soever such a jurisdiction may be expedient, yet no action for words will at present lie therein. Salk. 533. 7 Mod. 125. 2 Hawk. P. C. c. 4. § 7, 8. And it hath always been most clearly holden, (Hal. Hist. C. L. 37.) that as this court cannot meddle with any thing determinable by the common law, it therefore can give no pecuniary satisfaction or damages, inasmuch as the quantity and determination thereof is ever of common law cognizance. And therefore this court of chivalry can at most only order reparation in point of honour; to compel the defendant mendacium sibi ipse imponere, to take the lie he has given upon himself, or to make such other submission as the laws of honour may require. 1 Roll. Abr. 128. Neither can this court, as to the point of reparation in honour, hold a plea of any such word, or thing wherein the party is relievable by the courts of common law. As if a man give another a blow, or call him thief or murderer; for in...
both these cases the common law has pointed out his proper remedy by action.

As to the other point of its jurisdiction, the redressing of encroachments and usurpations in matters of heraldry and coat-armour; it is the business of this court, according to Sir Matthew Hale, to adjust the right of armorial ensigns, bearings, crests, supporters, penons, &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.

The proceedings in this court are by petition, in a summary way; and the trial not by a jury of twelve men, but by witnesses, or by combat. Co. Litt. 261. See tit. Battel. But as it cannot imprison, not being a court of record, and as by the resolutions of the superior courts, it is now confined to so narrow and restrained a jurisdiction, it has fallen into contempt and disuse. The marshalling of coat-armour, which was formerly the pride and study of all the best families in the kingdom, is now greatly disregarded; and has fallen into the hands of certain officers and attendants upon this court, called heralds, who consider it only as a matter of lucre and not of justice: whereby such falsity and confusion have crept into their records (which ought to be the standing evidence of families, descent, and coat-armour) that, though formerly some credit has been paid to their testimony, now even their common seal will not be received as evidence in any court of justice in the kingdom. 2 Roll. Abr. 686. 2 Jones, 224. But their original visitation-books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. And it is much to be wished, that this practice of visitation at certain periods were revived; for the failure of inquisitions post mortem, by the abolition of military tenures, combined with the negligence of heralds in omitting their usual progresses, has rendered the proof of a modern descent, for the recovery of an estate or succession to a title of honour, more difficult than that of an ancient. This will be indeed remedied for the future, with respect to claims of peerage, by a standing order (11 May, 1767) of the house of lords; directing the heralds to take exact accounts, and preserve regular entries of all peers and peeresses of England, and their respective descendants; and that an exact pedigree of each peer, and his family, shall, on the day of his first admission, be delivered to the house by Garter, the principal king at arms. But the general inconvenience, affecting mere private successions, still continues without a remedy. 3 Comm. 105—106.

COURT CHRISTIAN, curia christianitatis.] The ecclesiastical judiciary, opposed to the civil court, or lay tribunal; and as in secular courts, human laws are maintained, so in the court christian, the laws of Christ should be the rule. And therefore the judges are divines; as archbishops, bishops, archdeacons, &c. 2 Inst. 468. See post, tit. Courts Ecclesiastical.

COURTS OF CONSCIENCE, curia conscientiae.] Courts for the recovery of small debts by summary process before commissioners appointed for that purpose. In the 9th year of King Hen. VIII.
the court of conscience, or court of requests, in London, was erected: there was then made an act of common council, that the lord mayor and aldermen should assign monthly two aldermen and four discreet commoners, to be commissioners to sit in this court twice a week, to hear and determine all matters brought before them between party and party, between citizens and freemen of London, in all cases where the debt or damage was under 40s. And this act of common council was confirmed by stat. 1 Jac. I. c. 14, which empowered the commissioners of this court to make such orders between the parties touching such debts, as they should find stand to equity and good conscience. The stat. 3 Jac. I. c. 15 fully establishes this court; the course and practice whereof is by summons, to which if the party appear, the commissioners proceed summarily; examining the witnesses of both parties, or the parties themselves on oath, and as they see cause give judgment. And if the party summoned appear not, the commissioners may commit him to the comter prison till he does; also the commissioners have power to commit a person refusing to obey their orders, &c.

By stat. 14 Geo. II. c. 10, the proceedings of the court of conscience are regulated; and in case any person affront or insult any of the commissioners, on their certifying it to the lord mayor, he shall punish the offender by fine, not exceeding 20s. or may imprison him ten days. See 25 Geo. III. c. 45, 26 Geo. III. c. 38. Debtors.

By 39 & 40 Geo. III. c. 104 (a local act,) the acts 3 Jac. I. c. 15; and 14 Geo. II. c. 10, are explained and amended, and the jurisdiction of the London court of conscience extended to 5l. See 7 East, 47. 50.

Courts of conscience have been established in many parts of the kingdom by acts passed for that purpose. It has of late been the practice to extend the jurisdiction to 5l. and to direct that a larger number of commissioners shall be requisite when the demand exceeds 40s. than when it is within that value. See further, tit. Court of Conscience, Debtors, &c.

By stat. 19 Geo. III. c. 70, so much of all acts for recovery of small debts as authorizes the arrest of a defendant for less than 10l. is repealed, § 3. And by § 4. of the same act it is provided, that in all cases when final judgment shall be obtained in any inferior court, and affidavit made thereof in any court of record at Westminster, and of execution being issued against the person or effects of the defendant; and that the same cannot be found within the jurisdiction of the inferior court; the record of such judgment may be removed into the superior court, and writs of execution issued to the sheriff of any county, &c. By 33 Geo. III. c. 68, these provisions are extended to judgments in the courts of great sessions, and county courts in Wales, and to the courts of the counties palatine of Chester, Lancaster, and Durham.

By 25 Geo. III. c. 45, as to the courts of conscience in London, Middlesex, and Southwark, and by 26 Geo. III. c. 38, which extends to all courts of conscience in the kingdom, the time of imprisonment of debtors in execution is regulated, so that it shall not last more than 20 days for debts not exceeding 20s. nor more than 40
days for debts not exceeding 40s. Like limitations are made by subsequent local acts for the respective jurisdictions.

Court, County. See tit. County Court.

Court of Delegates. See post, tit. Courts Ecclesiastical, 6.

Courts Ecclesiastical, curia ecclesiastica, Spiritual Courts.] Are those courts which are held by the king's authority as supreme governor of the church, for matters which chiefly concern religion. 4 Inst. 321. And the laws and constitutions whereby the church of England is governed, are; 1. Divers inmemorial customs. 2. Our own provincial constitutions; and the canons made in convocations, especially those in the year 1603. 3. Statutes or acts of parliament concerning the affairs of religion, or causes of ecclesiastical cognisance; particularly the rubrics in our common prayer book, founded upon the statutes of uniformity. 4. The articles of religion, drawn up in the year 1562, Articuli Cleri, 9 Edw. II. and established by 33 Eliz. cah. 12. And it is said, by the general canon law, where all others fail.

As to suits in spiritual or ecclesiastical courts, they are for the reformation of manners, or for punishing of heresy, defamation, laying violent hands on a clerk, and the like; and some of their suits are to recover something demanded, as tithe, a legacy, contract of marriage, &c. And in causes of this nature the courts may give costs, but not damages: things that properly belong to these jurisdictions are matrimonial and testamentary; and such defamatory words, for which no action lies at law; as for calling one adulterer, fornicator, usurer, or the like. 11 Rep. 54, Dyer, 240.

The proceedings in the ecclesiastical courts are according to the civil and canon law, by citation, libel, answer upon oath, proof by witnesses, and presumptions, &c. and after sentence, for contempt, by excommunication; and if the sentence is disliked, by appeal.

The jurisdiction of these courts is voluntary, or contentious: the voluntary is merely concerned in doing what no one opposes, as granting dispensations, licenses, faculties, &c.

The punishments inflicted by these courts, are censures, punishments pro salute animae, by way of penance, &c. They are not courts of record. See further, tit. Prohibition.

Much oppression having been exercised through the channel of these courts, on persons charged with trifling offences within their spiritual jurisdiction, the stat. 27 Geo. III. c. 44. limits the time of commencing suits for defamatory words to six months, and for incontinence and beating in the church-yard to eight months. See tit. Limitations, Fornication.

In briefly recounting the various species of ecclesiastical courts, or as they are often styled, courts-christian, (curia christianitatis,) we may begin with the lowest, and so ascend gradually to the supreme court of appeal.

1. The Archdeacon's Court is the most inferior court in the whole ecclesiastical polity. It is held in the archdeacon's absence before a judge appointed by himself; and called his official; and its jurisdiction is sometimes in concurrence with, sometimes in exclusion of, the bishop's court of the diocese. From hence, however, by stat. 24 Hen. VIII. c. 12. an appeal lies to that of the bishop.
2. The Consistory Court of every diocesan bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses. The bishop's chancellor, or his commissary, is the judge; and from his sentence an appeal lies, by virtue of the same statute, to the archbishop of each province respectively.

3. As to the Court of Arches, see tit. Arches Court.

4. The Court of Peculiars, is a branch of and annexed to the court of arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions, are, originally, cognisable by this court; from which an appeal lay formerly to the Pope, but now by the stat. 25 Hen. VIII. c. 19. to the king in chancery.

5. The Prerogative Court is established for the trial of all testamentary causes, where the deceased hath left bona notabilia within two different dioceses. In which case the probate of wills belongs to the bishop of the province, by way of special prerogative. And all causes relating to the wills, administrations, or legacies of such persons are, originally, cognisable herein, before a judge, appointed by the archbishop, called the judge of the prerogative court, from whom an appeal lies by stat. 25 Hen. VIII. c. 19. to the king in chancery, instead of the pope as formerly.

6. The Great Court of Appeal in all ecclesiastical causes, viz. the Court of Delegates (judices delegati) appointed by the king's commission under his great seal, and issuing out of chancery, to represent his royal person, and hear all appeals made to him by virtue of the before-mentioned statute of Hen. VIII. This commission is frequently filled with lords spiritual and temporal, and always with judges of the courts at Westminster, and doctors of the civil law. Appeals to Rome were always looked upon by the English nation, even in the times of popery, with an evil eye; as being contrary to the liberty of the subject, the honour of the crown, and the independence of the whole realm; and were first introduced in very turbulent times in the sixteenth year of King Stephen, (A. D. 1151.) at the same period (Sir Henry Spelman observes) that the civil and canon laws were first imported into England. Cod. Vet. Leg. 315. But in a few years after, to obviate this growing practice, the constitutions made at Clarendon, 11 Hen. II. on account of the disturbances raised by the archbishop Beckett; and other zealots of the holy see, expressly declare, (chap. 8.) that appeals in causes ecclesiastical ought to lie, from the archdeacon to the diocesan; from the diocesan to the archbishop of the province; and from the archbishop to the king; and are not to proceed any farther without special license from the crown. But the unhappy advantage that was given in the reigns of King John, and his son Henry III. to the encroaching power of the pope, who was ever vigilant to improve all opportunities of extending his jurisdiction hither, at length riveted the custom of appealing to Rome in causes ecclesiastical so strongly, that it never could be thoroughly broken off; till the grand rupture
happened in the reign of Henry VIII. when all the jurisdiction usurped by the pope in matters ecclesiastical was restored to the crown, to which it originally belonged; so that the stat. 25 Hen. VIII. was but declaratory of the ancient law of the realm. 4 Inst. 324. But in case the king himself be party in any of these suits, the appeal does not then lie to him in chancery, which would be absurd; but by the stat. 24 Hen. VIII. c. 12, to all the bishops of the realm assembled in the upper house of convocation.

7. A Commission of Review, is a commission sometimes granted, in extraordinary cases, to revise the sentence of the court of delegates; when it is apprehended they have been led into a material error. This commission the king may grant, although the stats. 24 & 25 Hen. VIII. before cited, declare the sentence of the delegates definitive; because the pope as supreme head by the canon law used to grant such commission of review; and such authority as the pope heretofore exerted, is now annexed to the crown by stats. 26 Hen. VIII. c. 1. and 1 Eliz. c. 1. But it is not matter of right, which the subject may demand ex debito justitiae; but merely a matter of favour, and which therefore is often denied.

These are now the principal courts of ecclesiastical jurisdiction; none of which are allowed to be courts of record; no more than was another much more formidable jurisdiction, but now deservedly annihilated, viz. the court of the king's high commission in causes ecclesiastical. This court was erected and united to the regal power by virtue of the stat. 1 Eliz. c. 1. instead of a larger jurisdiction which had before been exercised under the pope's authority. It was intended to vindicate the dignity and peace of the church, by reforming, ordering and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts and enormities. Under the shelter of which very general words, means were found in that, and the two succeeding reigns, to vest in the high commissioners extraordinary, and almost despotic powers of fining and imprisoning; which they exerted much beyond the degree of the offence itself, and frequently over offences by no means of spiritual cognisance. For these reasons this court was justly abolished by stat. 16 Car. I. c. 2. See 3 Comm. 64. et seq.

The wrongs or injuries cognisable by the ecclesiastical court not for the reformation of the offender himself, relate chiefly to the non-payment of tithes, or other ecclesiastical dues, and fees; for spoliations and dilapidations of church benefices, churches, &c. Matrimonial causes and testamentary causes: As to all of these see the proper titles in this Dictionary.

See further, on the general principles, as to the jurisdiction of ecclesiastical courts, this Dictionary, tit. Canon Law, Civil Law.

Courts of Equity. See tit. Equity.


Court of Hustings, curia huttingii.] The highest court of record holden at Guildhall, for the city of London, before the lord mayor and aldermen, the sheriffs and recorder. 4 Inst. 247. This court determines all pleas real, personal and mixt: and here all
lands, tenements, and hereditaments; rents and services, within the city of London and suburbs of the same, are pleadable in two Husting; one called the Husting of plea of lands, and the other Husting of common pleas. In this court the burgesses to serve for the city in parliament must be elected by the livery of the respective companies.

In the Husting of plea of lands, are brought writs of right patent directed to the sheriffs of London, on which writs the tenant shall have three summonses at the three Hustinngs next following; and after the three summonses, there shall be three essoins at three other Hustinngs next ensuing, and at the next Hustinngs after the third essoin, if the tenant makes default, process shall be had against him by grand cafe, or petit cafe, &c. If the tenant appears, the demandant is to declare in the nature of what writ he will; without making protestation to sue in nature of any writ; then the tenant shall have the view, &c. and if the parties plead to judgment, the judgment shall be given by the recorder; but no damages, by the custom of the city, are recoverable in any such writ of right patent.

In the Hustinngs of common pleas are pleadable, writs ex gratia querela, writs of garnet, of dower, waste, &c. also writs of exigent are taken out in the Hustinngs; and at the fifth Hustinngs the outlawries are awarded, and judgment pronounced by the Recorder.

If an erroneous judgment is given in the Hustinngs, the party grieved may sue a commission out of chancery, directed to certain persons to examine the record, and thereupon do right. 1 Roll. Abr. 745. See farther, the Privilegia Londini; and this Dictionary, tit. London.


COURT LEET; or LEET.

The word Leet is not to be found either in the Saxon law, or in Gierow, Bracton, Britton, Fleta, or the Mirror, our most ancient law writers; nor in any statute prior to stat. 27 Edw. III. c. 28. though it is allowed to occur in the conqueror's charter for the foundation of Battle Abbey, and not unfrequently in Domedate Book, Spelm. v. Lota. It seems to be derived from the Saxon, leod, pleo; and to mean the populi curia, or folk-mote, as the sheriff's tourn or leet of the county (at least) appears to have been once actually called, (see Spelman in verb. Folksmote,) in contradiction, perhaps, to the halmote or court baron, which consisted of the free tenants only, who, being few in number, might conveniently assemble in the lord's hall; whereas the leet, which required the attendance of all the restants, within the particular hundred, lordship, or manor, and concerned the administration of public justice, was usually held in the open air. Spelman in verb. Mallobergium. According to Hawkins, (Leach's Hawk. P. C. ii. 112, which see,) a court leet is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's tourn hath in the county. See also 4 Comm. 273.
The view of frank-pledge, visus franciplegii, means the examination or survey of the free-pledges, of which every man, not particularly privileged, was anciently obliged to have nine, who were bound that he should be always forthcoming to answer any complaint. The better to understand this, we are to be informed, that the kingdom being divided by King Alfred into counties or shires, and each county into hundreds, and each hundred into tithings, each tithing containing ten families or households, the heads of these families were reciprocally bound and responsible for each other; so that, in fact, of every ten householders throughout the kingdom, each man had nine pledges or sureties for his good behaviour.

_Leet_ is also a word used for a _law-day_ in several of our ancient statutes. See _Dyer_, 30. b.

That the _leet_ is the most ancient court in the land (for _criminal_ matters, the _court baron_, being of no less antiquity in _civil_) has been pronounced by the highest legal authority, _7 Hen. VI. 12. b._ 1 Roll. Rep. 73. For though we do not meet with the _word_ among the Saxons, there can be no doubt of the existence of the _thing_.

_Lord Mansfield_ states, that this court was coeval with the establishment of the _Saxons_ here, and its activity “marked very visibly both amongst the _Saxons_ and the _Danes_.” _3 Burr. 1860._

In those times whoever possessed a _vill_ or territory, with the _liberties_ of _soc, suci, &c._ (a long string of barbarous words,) was the lord of a manor, had a court _leet_, court _baron_, and in a word, every _privilege_ which it seems to have been possible for the monarch to bestow, or for the subject to acquire. See _Spelman in verb. Manerium._

The _leet_ is a court of record for the cognisance of _criminal_ matters, or pleas of the crown, and necessarily belongs to the king; though a subject, usually the lord of a manor, may be and is entitled to the profits, consisting of the _esson-pence_, _fines_ and _amerciaments_.

It is held before the _steward_ (or was, in ancient times, before the _bailiff_ of the lord; _Mirror, passim_. _Finch’s Law_, 243. See also, _Kennet’s P. A. 319_. This officer, who should be a barrister of learning and ability, is a judge of record, may take _cognizance_ of the peace, may _fine_, _imprison_, and, in a word, as to _things_ to which his power extends, hath equal power with the _justices_ of the _bench_. By stat. 1 _Jac. I. c. 5_ he is prohibited from taking to the value of 12d. for his own use, by colour of any grant of the profits of this court.

This court is held sometimes _once_, sometimes _thrice_, but most commonly _twice_ in the year; that is, within a month after _Easter_, and a month after _Michaelsmas_; and cannot, unless by _adjournment_, be held at any time not warranted by ancient usage. See _Mag. Char. c. 35._ and _Spelman_ in _v. Leta_; according to whom this court should be held regularly only _once_ a year; though sometimes by _custom_ _twice_, when it is called _residuum leta_. As to the place in which it is held, that, it has been said, may be any where within the _precinct_, _8 Hen. VII. 3_. _Owen, 35._ but more strictly speaking, ought to be _certain_ and _accustomed_. _Rastall’s Entries_, 151.

All persons above the age of twelve years, and under sixty, ex-
cept peers, clerks, women, and aliens, resident within the district, whether masters or servants, owe personal suit and attendance to this court, and ought to be here sworn to their fealty and allegiance. 2 Inst. 130, 121. And here also, by immemorial usage and of common right, that most ancient constitutional officer, the constable. (4 Inst. 265.) and sometimes by prescription the mayor of a borough, (see stat. 2 Geo. I. c. 4.) are elected and sworn.

The general jurisdiction of the court extends to all crimes, offences, and misdemeanours at the common law, as well as to several others which have been subjected to it by act of parliament. These are incurred after by a body of the suitors, elected, sworn and charged for that purpose, who must not be less than twelve, nor more than twenty-three; and who, in some manors, continue in office for a whole year; while, in others, they are sworn and discharged in the course of a day. Whatever they find they present to the steward, who, if the offence be treason or felony, must return the presentment (in these cases called an indictment) to the king's justices of oyer and terminer, and gaol delivery. See stats. W. II. c. 13. 1 Edw. III. st. 2. c. 17. In all other cases he has power, upon the complaint of any party grieved, or upon suspicion of the concealment of any offence, to cause an immediate inquiry into the truth of the matter by another jury. See stats. 33 Hen. VIII. c. 6. and 1 Edw. c. 17. § 10. But the presentment, being received, and the day passed, shall be true, and unless it concern the party's freehold, shall not be shaken or questioned by any tribunal whatever. Hale's P. C. 153. 155. Leach's Hawk. P. C. ii. 111, 112. and 11 Co. 44. Upon every presentment of the jury retained by the court, an amerciament follows of course, which is afterwards assessed in open court, agreeable to Magna Charta, c. 14. by the pares curiae, that is, the peers, or equals of the delinquent; and assessed or reduced to a precise sum by two or more suitors sworn to be impartial. 8 Rep. 39. See also, stat. W. I. c. 5. And that these statutes were in this particular but an affirmation of the common law, see 8 Rep. 39. b. 2 Inst. 27. The amerciaments thus ascertained are then estreated (or extracted) from the roll or book in which the proceedings are recorded and levied by the bailiff, by distress and sale of the party's goods, (8 Rep. 41.) by virtue of a warrant from the steward to that effect, or may be recovered by other means, as by process of levare facias, (Hardr. 471.) or action of debt. (Bull. N. P. 167.) No crime in those remote ages appears to have been punished by death; unless it were that of open theft, where the offender was taken with the mainour, that is, with the thing stolen upon him; and of this crime, and this only, the cognisance did not belong to the leet. All other offences of what nature or degree soever, subjected the party to mulct or pecuniary fine, which was in many cases determined and fixed. This pecuniary composition, with respect to certain capital offences, was abrogated, and the punishment of death substituted in its place by King Henry I. Shelman in v. Felo, Wilkins. L.L. Sax. 304.

It is not improbable that the distinction of indictments for felonies, and presentments of inferior offences, owes its origin to the above measure.

It has been said, that by the clause nullus vicecomes, &c. in the
Great Charter, c. 17. the jurisdiction of the leet was abridged, and its power to hear and determine taken away; but this has been said and repeated without due attention either to the nature and constitution of the court, or to the law of the time. No offence, it is well known, is at this day, or, for aught that appears, ever was, heard and determined in the leet, (nor before the period referred to, by any other criminal court in the kingdom,) otherwise than upon the presentment of twelve men, or what we now call in most courts the grand jury. This presentment, as has been already observed, found and established the fact; and judgment, whether of misericordia, mutilation or death, followed as an incident or matter of course; precisely, indeed, as the punishment does at this day on the verdict for the king of the petty jury. In fact, therefore, the jurisdiction of the leet was not in the least abridged or affected by that charter; nor is it at all probable that the barons would either seek or suffer the diminution of their own privileges, of which, on the contrary, there is an express saving.

That this court has no power to inquire of the death of a man, or of rape, is a more ancient, but not less erroneous opinion. The contrary is most directly and expressly held in the Statutum Walliae, in Britton, Plea, the Mirror; and the stat. of 18 Edw. II. (which statute, though it enumerates certain particulars of the jurisdiction of the leet, does not confine it to them only,) all much, older and better authorities than the Book of Assizes, 41 Edw. III. f. 40. in which that opinion first appears.

The steward of a leet may award to prison, persons either indicted or accused of felony before him, or guilty of any contempt in the face of the court. Stat. Westm. 2. c. 13. which, however, seems to apply only to the sheriff's tourn. See Crompt. J. P. 92 b. Owen, 113.

See further, for the whole of this subject, Com. Dig. tit. Lec. The court leet has now been for a long time in a declining way; its business as well as that of the tourn having for the most part gradually devolved on the quarter sessions. See 4 Comm. 274. 8 Burr. 1864.

This last circumstance is very pathetically lamented by the ingenious author, from whom the above account of the court leet is principally drawn; and to whom the editor of the present work is indebted for much of the information under it. Consist. How far the restoration of the powers of the court leet in the present extensive deluge of crimes is advisable or not, is a question not to be determined in the compass here allotted to the subject. Every one desirous of being accurately informed of the foundations of the English law, will wish that the learned author from whom the above extracts have been made, would spend his time rather in examining the ancient, than condemning the present, state of our jurisprudence. For the former task he is eminently qualified; the latter is only worthy of inferior talents.

Court of Marshalsea, curia falatit.] A court of record to hear and determine causes between the servants of the king's household and others within the verge; and hath jurisdiction of all matters within the verge of the court, and of pleas of trespass, where either party is of the king's family, and of all other actions personal, wherein both parties are the king's servants; and this is
the original jurisdiction of the Court of Marshalsea. 1 Bulst. 211. But the curia palatii, erected by King Charles I. by letters patent, in the sixth year of his reign, and made a court of record, hath power to try all personal actions, as debt, trespass, slander, trover, actions on the case, &c. between party and party, the liberty whereof extends twelve miles about Whitehall; stat. 13 Rich. II. st. 1. c. 3. which jurisdiction was confirmed by King Charles II.

The judges of this court are the steward of the king's household, and knight marshal for the time being, and the steward of the court, or his deputy, being always a lawyer. Crompt. Juv. 102. Kitch. 199. &c. 2 Inst. 348.

This court is kept once a week, in Southwark: and the proceedings here are either by capias or attachment; which is to be served on the defendant by one of the knight marshal's men, who takes bond with sureties for his appearance at the next court; upon which appearance, he must give bail, to answer the determination of the court; and the next court after the bail is taken, the plaintiff is to declare, and set forth the cause of his action, and afterwards proceed to issue and trial by a jury, according to the custom of the common law courts. If a cause is of importance, it is usually removed into B. R. or C. B. by a habeas corpus cum causa: otherwise causes are here brought to trial in four or five court days. The inferior business of this court hath of late years been much reduced, by the new courts of conscience in and near London; for which the four counsel belonging to the court were indemnified by salaries during their lives, by stat. 23 Geo. II. c. 27.

By stat. 28 Edw. I. c. 3. the steward and marshal of the king's house are not to hold plea of freehold, &c. Error in the Marshalsea Court may be removed into the King's Bench. Stats. 3 Edw. III. c. 2. 10 Edw. III. st. 2. c. 3. And the fees of the Marshalsea are limited by the stat. 2 Hen. IV. c. 23. This Marshalsea is that of the household; not the King's Marshalsea, which belongs to the King's Bench. See Court of the Lord Steward, &c.

**Court-Martial.**

Curia Martialis.] A court for trying and punishing the military offences of officers and soldiers.

I. Of the Origin, II. Of the Jurisdiction, Of Courts-Martial.

I. Though the authority of the Court of Chivalry, with regard to matters of war, &c. both within and without the realm, not determinable by the general municipal law, was first established by the common law, and afterwards confirmed by several statutes; and was never objected to, even in criminal cases, till the post of high constable was laid aside; (see tit. Constable, Court of Chivalry;) yet we find its jurisdiction encroached upon much earlier; for by the stat. 18 Hen. VI. c. 19. desertion from the King's ar-
any was made felony, and by stats. 7 Hen. VII. c. 1. 3 Hen. VIII. c. 5. benefit of clergy is taken away, and authority given to justices of peace to inquire thereof, and hear and determine the same. And Rapiu quotes an instance of Hen. VII. having ordered those accused of holding intelligence with the enemy after the battle of Stokes, 1487, to be tried by commissioners of his own appointing, or by courts-martial, according to the Martial Law; instead of the usual court of justice, which was not so favourable to his design of punishing them only by fines. This, however, seems to have been an avaricious, arbitrary, and illegal exertion of power, not authorized by any law of the land.

From the time the court of chivalry was abridged of its criminal jurisdiction, by the suppression of the post of High Constable, until the revolution, there appears to have been no regular established court for the administration of martial law. For although the court of chivalry still continued to be held from time to time by the earl marshal, its authority extended only to civil matters; and notwithstanding desertion was by stat. 2 and 3 Edw. VI. c. 2. made felony without benefit of clergy, and other military crimes were made punishable by fines, imprisonment, &c. and by stat. 39 Eliz. c. 17. idle and wandering soldiers and mariners were to be reputed as felons, and to suffer as in cases of felony, without benefit of clergy, (with some exceptions,) and the justices of assise and gaol-delivery were to hear and determine these offences; yet there are instances during this period, of other courts being erected for the administration of martial law; and not only military persons made subject to it, but many others punished thereby; some entirely at the discretion of the crown, and others by appointment of the parliament only; and it was a circumstance of nearly a similar nature, that occasioned the enacting the Petition of Right, 3 Car. I. c. 1. one clause of which was, that the commissions for proceeding by martial law should be dissolved and annulled; and no such commission be issued for the future.

Though undoubtedly these commissions were illegal, yet the necessity of subordination in the army, and the impossibility of establishing that subordination without martial law, soon became apparent; and the two houses of parliament, in the beginning of their rebellion against Charles I. passed an ordinance, appointing commissioners to execute martial law; which was certainly at least as unconstitutional an act without the assent of the king, as any proceedings of his had been without consent of parliament. So true it is that necessity has no law; and that usurped power is always obliged to have recourse to means to support itself, at least as severe as, and generally more violent than, those which it previously condemns in a lawful government; which it may for a while succeed in overturning on false and specious pretexts of undefined liberty.

This ordinance was passed in 1644, and afterwards renewed by the parliament; and in process of time adopted as a model for the Mutiny Act passed after the Revolution; as many other regulations made during the powerful but tyrannical usurpation of sovereign authority, were afterwards modified to the true genius of the British constitution.
At the restoration, one of the first steps taken by the parliament was to disband the army, and to regulate the militia, among whom a military subordination was established, whenever they were drawn out; and fines and imprisonments imposed on them for particular delinquencies. See tit. Militia.

Charles II. however, kept up 8,000 regular troops, for guards and garrisons, by his own authority; which his successor, Jac. II. by degrees increased to 30,000, and more numerous armies were occasionally raised by authority of parliament; yet we find no statute for the government of these troops; nor was it till after the Revolution that a regular act of the whole legislature passed for punishing mutiny and desertion, &c. by courts-martial.

This act was first occasioned by a mutiny in a body of English and Scots troops, upon their being ordered to Holland, to replace some of the Dutch troops which Wm. III. had brought over with him, and intended to keep in England. The king immediately communicated this event to the parliament, who readily agreed to give their sanction to punish the offenders, and on the 2d April, 1699, (1 W. & M.) passed an act for punishing mutiny and desertion, &c. which was to continue in force only until November following. It was, however, renewed again in January, and has, with the interruption of about three years only, from April, 1698, to February, 1701, been annually renewed ever since, with some occasional alterations and amendments, as well in times of peace as war.

II. Martial Law, as formerly exercised at the discretion of the crown, and too often made subservient to bad purposes, justly became obnoxious to the people; and not only the propriety, but the legality of its being executed in times of peace, has been absolutely denied. It is laid down, (2 Imp. 52.) that if a lieutenant or other, that hath commission of martial law, doth, in time of peace, hang or otherwise execute any man by colour of martial law, this is murder, for it is against Magna Charta. And Hale (Hist. C. 1. c. 2.) declares martial law to be in reality no law; but something indulged rather than allowed as law; that the necessity of order and discipline is the only thing which can give it countenance; and therefore it ought not to be permitted in time of peace, when the king's courts are open for all persons to receive justice according to the laws of the land; and if a court-martial put a man to death in time of peace, the officers are guilty of murder. See Hale's P. C. 46.

As future exigencies, however, have arisen in the state, it has become necessary to alter and amend the old laws and enact new ones; and since the custom of keeping up standing armies in time of peace as well as war, has become prevalent and general throughout Europe, (a custom, as it seems, originally introduced by Charles VII. of France, about 1445;) the legislature of Great Britain has also judged it necessary, for the safety of the kingdom, the defence of its possessions, and the balance of power in Europe, (as the preamble to the mutiny act expresses it,) to maintain, even in times of peace, a standing body of troops; and to authorize the exercise of martial law among them.
A proper distinction then should be made between martial law, as formerly executed, entirely at the discretion of the crown, and unbounded in its authority, either as to persons or crimes, and that at present established, which is limited with regard to both. Courts-martial are at present held by the same authority as the other courts of judicature of this kingdom; and the king (or his generals, when empowered to appoint them) has the same prerogative of moderating the rigour of the law, and pardoning and remitting punishments, as in other cases; but he can no more add to, nor alter the sentence of a court-martial, than he can a judgment given in the courts of law. Martial law is now exercised within its proper limits, by the advice and concurrence of parliament, and the condemnation of criminals by courts-martial acting under such authority, cannot be regarded as illegal or contrary to Magna Charta; since during the existence of the statute by which these courts are held, martial law, so modified and restrained, is as much part of the law of the land as Magna Charta itself.

Courts-martial cannot sit before eight in the morning, or after three in the afternoon, except in cases which require an immediate example; the attendance, therefore, of the members does not exceed seven hours at a time: and they are at liberty to adjourn from day to day till they have fully considered the matter before them; and when they come to give their opinions, they are not under the necessity of being unanimous, but the prisoner is condemned or acquitted by a majority of voices; except in cases of death, where 9 out of 13, or two-thirds, if there be more than 13 present, must concur in opinion. Articles of War, § 15. a. 8, 9.

As to general courts-martial, the mutiny act and articles of war are very explicit, both as to the number they shall consist of, and the rank of the officers who are to compose them.

The crimes that are cognisable by a court-martial, as repugnant to military discipline, are pointed out by the mutiny act and articles of war; which every military man is or ought to be fully acquainted with, and therefore not necessary to be recited here; and as to other crimes, which officers and soldiers being guilty of, are to be tried for in the ordinary course of law, it is needless to enter into a detail of them.

By the last article in the code of military laws, courts-martial are authorized to take cognisance of all crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, which are not enumerated in the preceding articles, and punish them at their discretion. Articles of War, § 20. a. 3. Upon the authority of this article it has been too much the custom in the army to try soldiers by courts-martial, for thefts and other crimes cognisable before the courts of law. But it seems questionable, whether an exception might not in many such cases be made to their jurisdiction; for the mutiny acts, and articles of war, § 11. a. 1. expressly direct, that any officer, non-commissioned officer or soldier who shall be accused of any capital crime, violence or offence against the person, estate or property of any of his majesty's sub-
jects, punishable by the laws of the land, shall be delivered over
to the civil magistrate by the commanding officer, under penalty
of his being cashiered in case of refusal. There was formerly an
article, of late omitted, particularly authorizing courts-martial
to take cognisance of all soldiers accused of stealing from their
comrades.

The persona liable to martial law are likewise enumerated in
the acts and the articles. The latter mention only officers, soldiers
and persons serving with the armies in the field. But Hale and
others are of opinion, that aliens who in a hostile manner invade
the kingdom, whether their king were at war or peace with ours,
and whether they come by themselves or in company, with En-
glish traitors, cannot be punished as traitors, but must be dealt with
by martial law. Hale's P. C. cc. 10. 15. 3 Inst. 11. This, how-
ever, means martial law in the strict sense of the word, in which
it cannot be applied to proceedings under the mutiny act, and
which kind of martial law is unknown in this kingdom. The re-
cieving pay as a soldier, subjects the receiver to military juris-
diction. The court of C. P. therefore refused to grant a prohibi-
tion to prevent the execution of the sentence of a court-martial,
passed against one who received pay as a soldier; but who as-
sumed the military character merely for the purpose of recruit-
ing, in the usual course of that service—and this, though the
proceedings of the court-martial appeared, in some instances,
to be erroneous. Grant v. Sir Charles Gould, 2 H. Black. Ref. 69.

The articles of war, in a few cases, point out the express
sentence to be passed on criminals, without any alternative. In
some an optional power is given, of punishing with death or
otherwise; and in others, offenders are punished at the discre-
tion of the court, omitting the word death; evidently mean-
ing thereby to exclude the power of punishing capitally in such
cases.

In cases where an optional power is vested in the court to
punish with death or otherwise, the question to follow that of
guilty or not guilty (upon the court or the majority of it declaring
for the former) is, whether or not the prisoner shall suffer
death? If two-thirds of the court do not concur in the affirm-
tive, the votes of the affirmants are considered as void. A lesser
number than two-thirds being, as was before said, incompetent
to give judgment of death, another question becomes necessary
to be proposed to every member, what punishment, other than
death, shall the prisoner undergo? And each member gives his
voice, de novo, on this question, wherein a majority is competent
to determine.

The crimes cognisable by a court-martial may be divided into
felonies and misdemeanors; or more properly, into capital offences,
and offences only criminal and not capital; and if on the evidence
a prisoner does not appear guilty of a crime of so capital a nature
as is set forth in the charge, the court may find him guilty in a
less degree; but they cannot declare him guilty of a mutiny, or
any other distinct crime or offence, unless it be likewise in the
charge given against him, before the trial commences.
By stat. 37 Geo. III. c. 140, his majesty is enabled more easily and effectually to grant conditional pardons to persons under sentence by naval courts-martial, and to regulate imprisonment under such sentences, viz.

By section 1. if his majesty shall extend his mercy to persons liable to death by the sentence of a naval court-martial, a justice of the King's Bench, &c. may on notification from the secretary of state, allow the benefit of such conditional pardon as if it had passed under the Great Seal, and shall make orders accordingly. The justice or baron allowing the pardon, shall direct the notification, and order it to be filed with the clerk of the crown of the court of King's Bench. § 2. Like provisions are made with respect to the army by the annual mutiny acts.

The judgments of courts-martial, besides being open to the disapprobation of the king, or his commanders in chief, are liable like those of other courts, to be taken cognisance of, and the members punished for illegal proceedings; for the court of King's Bench being the supreme court of common law, hath not only power to reverse erroneous judgments given by inferior courts, but also to punish all inferior magistrates, and all officers of justice, for all willful and corrupt abuses of authority against the known, obvious, and common principles of justice. 2 Hawk. P. C. c. 3. § 10. c. 27. § 22. The mutiny act directs, that every action against any member or minister of a court-martial, in respect to any sentence, shall be brought in some of the courts of record at Westminster, &c. § 63. And there have been many instances of actions of this nature in Westminster-hall. See Navy III. ad finem. An officer on a court-martial, however, is not liable to be punished for mere mistakes, which an honest, well-meaning man may innocently fall into. And if the plaintiff or prosecutor becomes nonsuited, or the defendant has a verdict, he shall recover treble costs. Mutiny Act, § 62. There is also another tribunal, before which the proceedings of courts-martial are liable to censure at least, namely, the House of Commons.

Courts-martial are bound by the same rules of evidence as the courts of common law; and their general proceedings, where not otherwise regulated by act of parliament, must follow the same course. 1 East, 313.

It is enacted by the mutiny acts, that no officer or soldier being acquitted or convicted of any offence, shall be liable to be tried a second time by the same or any other court-martial, for the same offence; unless in the case of an appeal from a regimental to a general court-martial; and by the articles of war, "If upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the general court-martial." No sentence given by any court-martial, and signed by the president, is liable to be revised more than once. And this may be rather deemed an appeal to the same court than a new trial; since in this case the same persons only are to reconsider what they have already done, without any new judges being added to them, or any new witnesses produced.

A distinction is made in the oath taken by the president and members of a court-martial, and that of the judge advocate. The former are sworn, not only to conceal the vote or opinion of each
particular member, but also the sentence of the court, until it shall be approved by his majesty, or by some person duly authorized by him: the latter is only sworn not to divulge the opinion of any particular member of the court-martial.

For further particulars, see Adye's Treatise on Courts-Martial; from whence most of the above is abridged. See also this Dict. tit. Soldiers. And as to naval courts-martial, tit. Navy. See also M. Arthur on Courts-Martial, 2d edit. 1805.

COURT OF PIE POWDERS, curia pedis pulverisat.] Is a court held in fairs, to do justice to buyers and sellers, and for redress of disorders committed in them; so called, because they are most usual in summer, when the suitors to the court have dusty feet; and from the expedition in hearing causes proper thereunto, before the dust goes off the feet of the plaintiffs and defendants. 4 Inst. 272. or from pied poudreux, a pedlar. Barrington, Anc. State. 337. It is a court of record incident to every fair; and to be held only during the time that the fair is kept. Doct. & Stud. c. 5. As to the jurisdiction, the cause of action for contract, slander, &c. must arise in the fair or market, and not before at any former fair, nor after the fair. It is to be for some matter concerning the same fair or market; and must be done, complained of, heard and determined the same day. Also, the plaintiff must make oath that the contract, &c. was within the jurisdiction and time of the fair. See stats. 17 Edw. IV. c. 2. 1 Rich. III. c. 6.

The court of Piepowders may hold a plea of a sum above 40s. and it is said, judgment may be given at another fair; at a court held there, and a writ of error lies upon a judgment given. Dyer, 133. Fitz. M. B. 18. This court may not meddle with any thing done in a market, without a special custom for it; but for what is done in a fair only; and not there for slanderous words, unless they concern matters of contract in the fair: as where it is for slandering the wares of another, and not of his person in the same fair. Moor, Cas. 854. The steward before whom the court is held, is the judge; and the trial is by merchants and traders in the fair; and the judgment against the defendant shall be quot amercietur. If the steward proceeds contrary to the stat. 17 Edw. IV. c. 2. he shall forfeit 5l.

From this court a writ of error lies in the nature of an appeal to the courts at Westminster. Cro. Eliz. 773. And those courts are now bound by the stat. 19 Geo. III. c. 70. to issue writs of execution in aid of its process, after judgment, where the person or effects of the defendant are not within the limits of this inferior jurisdiction. See Piepowder.

COURT OF REQUESTS, curia requisitionum.] Was a court of equity, of the same nature with the court of chancery, but inferior to it; principally instituted for the relief of such petitioners, as in conscionable cases addressed themselves by supplication to his majesty. Of this court, the Lord Privy Seal was chief judge, assisted by the Masters of Requests; and it had beginning about the 9 Hen. VII. according to Sir Julius Caesar's Tractate on this subject; though Mr. Gwyn, in his Preface to his Readings, saith it began from a commission first granted by King Hen. VIII.
This court having assumed great power to itself, so that it became burdensome, *Mich. anno 40* and *41 Eliz.* in the court of common pleas it was adjudged, upon solemn argument, that the Court of Requests was no court of judicature, &c. And by the stat. *16* and *17 Car. I. c. 10.* it was taken away. *4 Inst. 97.* See tit. Courts of Conscience.

**Court of the Lord Steward of the King’s House.** The Lord Steward, or in his absence, the treasurer and controller of the king’s house, and steward of the Marshalsea, may inquire of, hear and determine in this court, all treasons, murders, manslaughter, bloodsheds, and other malicious strikings, whereby blood shall be shed, in any of the palaces and houses of the king; or within the limits, i.e. 200 feet from the gate. *4 Comm. 276.* or in any other house where his royal person shall abide. And this jurisdiction was given by the stat. *33 Hen. VIII. c. 12.* *3 Inst. 140.* But this court was at first intended only to inquire of and punish felonies, &c. by the king’s servants against any lord or other person of the king’s council. *3 Hen. VII. c. 14.* See 4 Comm. 276.

**Court of Star-Chamber, curia comere stellata.** A court of very ancient original, but new modelled by stats. *3 Hen. VII. c. 21* *Hen. VIII. c. 20.* which ordained, that the Lord Chancellor, Treasurer, and Lord Privy Seal, calling a Bishop, and Lord of the King’s Council, and the two Chief Justices to their assistance, on bill or information, might make process against maintainors, rioters, persons unlawfully assembling; and for other misdemeanors, which, through the power and countenance of such as did commit them, lifted up their heads above their faults, and punish them as if the offenders had been convicted at law, by a jury, &c. But this act was repealed, and the court dissolved by stat. *16* and *17 Car. I. c. 10.* having been used to oppress the subject, particularly in matters of state.

**Courts of Universities.** These are the chancellor’s courts in the two universities of England, Oxford and Cambridge; which two learned bodies enjoy the sole jurisdiction, in exclusion of the king’s courts, over all civil actions and suits whatsoever, when a scholar or privileged person is one of the parties; excepting in such cases where the right of freehold is concerned. And these, by the University charter, they are at liberty to try and determine, either according to the common law of the land, or according to their own local customs, at their discretion; which has generally led them to carry on their process in a course much conformed to the civil law.

These privileges were granted that the students might not be distracted from their studies by legal process from distant courts, and other forensic avocations. The oldest charter, it appears, containing this grant to the university of Oxford, was *28 Hen. III. A. D. 1244.* And the same privileges were confirmed and enlarged by almost every succeeding prince, down to King Henry VIII. in the fourteenth year of whose reign the largest and most extensive charter of all was granted. One similar to which was afterwards granted to Cambridge in the third year of Queen Elizabeth. But yet, notwithstanding these charters, the privileges granted therein, of proceeding in a course different from the
law of the land, were of so high a nature, that they were held to be invalid; for though the king might erect new courts, yet he could not alter the course of law by his letters patent. Therefore, in the reign of Queen Elizabeth a statute was passed, (13 Eliz. c. 39.) confirming all the charters of the two universities, and those of 14 Hen. VIII. and 2 Eliz. by name. Which statute established this high privilege without any doubt or opposition.


This privilege, so far as it relates to civil causes, is exercised at Oxford in the chancellor's court; the judge of which is the vice-chancellor, his deputy, or assessor. From his sentence an appeal lies to delegates appointed by the congregation; from thence to other delegates of the house of convocation; and if they all three concur in the same sentence, it is final; at least by the statutes of the university, (Tit. 21. § 18.) according to the rule of the civil law. (Cod. T. 70, 71.) But, if there be any discordance or variation in any of the three sentences, an appeal lies in the last resort to judges delegates, appointed by the crown under the great seal in chancery. 3 Comm. 83, 84, 85. See 2 Ld. Raym. 1346. that it is the same at Cambridge.

COURTS of WALES, curia principalitatis Wallie.] The courts of the principality of Wales.

These courts, upon the thorough reduction of that principality, and the settling of its polity in the reign of Hen. VIII. were erected all over the country; principally by the stat. 34 and 35 Hen. VIII. c. 26. though much had before been done, and the way prepared by the statute of Wales, 12 Edw. I. and other statutes. By the statute of Henry VIII. before mentioned, courts-baron, hundred, and county courts are there established as in England. A session is also to be held twice in every year in each county, by judges (see stat. 18 Eliz. c. 8.) appointed by the king. This session is to be called the Great Sessions of the several counties in Wales, in which all pleas of real and personal actions shall be held, with the same form of process, and in as simple a manner as in the courts of King's Bench and Common Pleas at Westminster. See, for farther regulation of the practice of these courts, stat. 5 Eliz. c. 25. 8 Eliz. c. 20. 8 Geo. I. c. 25. § 6. 6 Geo. II. c. 14. 13 Geo. III. c. 51. Writs of error shall lie from judgments in this great sessions, it being a court of record, to the court of King's Bench at Westminster. But the ordinary original writs of process from the King's courts at Westminster, do not run into the principality of Wales, (2 Roll. Rep. 141.) though process of execution does;) 2 Bulst. 156. 2 Saund. 193. Raym. 206.) as do also prerogative writs, as writs of certiorari, quo warranto, mandamus, and the like. Cro Jac. 484. And even in causes between subject and subject, to prevent injustice through family factions or prejudices, it is held lawful (in causes of freehold at least, and it is usual in all others) to bring an action in the English courts, and try the same in the next English county, adjoining to that part of Wales where the cause arises, and wherein the venue is laid. Vaugh. 413. Hardr. 65. But, on the other hand, to prevent trifling and frivolous suits, it is enacted by stat. 13 Geo. III. c. 51. that in personal actions, tried in any English county, where the cause of
action arose, and the defendant resides in Wales, if the plaintiff shall not recover a verdict for 10l. he shall be nonsuited, and pay the defendant's costs, unless it be certified by the judge, that the freehold or title came principally in question, or that the cause was proper to be tried in such English county. And if any transitory action, the cause whereof arose, and the defendant is resident in Wales, shall be brought in any English county, and the plaintiff shall not recover a verdict for 10l. the plaintiff shall be nonsuited, and shall pay the defendant's costs, deducting thereout the sum recovered by the verdict.

By stat. 11 & 12 W. III. c. 9. it is enacted, that sheriffs in Wales, shall not hold to bail, on process issuing out of any of his majesty's courts of record at Westminster, unless the debt be sworn to be 20l.

For further satisfaction, as to the several courts within this kingdom, see 4 Inst. and the Commentaries.

COURTLANDS, Domains, or lands kept in the lord's hands, to serve his family. See Curtiles Terre.

COUSENAGE. See Cosenage.

COUTHUTLAUGH, from the Sax. couth, i.e. scena, and ut-lauh, oxlex.] A person that willingly and knowingly receives a man outlawed, and cherishes or conceals him; for which offence he was, in ancient times, to undergo the same punishment as the outlaw himself. Bret. lib. 3. tract. 2. c. 13.

COWS. See ut. Cattle.

CRAIERA, crayer.] A small vessel of lading, a hoy or smack. Pat. 2 Rich. II. Stat. 14 Car. II. c. 27.

CRAIL, An engine made use of to catch fish. Blount.

CRANAGE, cragnet.] A liberty to use a crane for drawing up of goods and wares of burden from ships and vessels, at any creek of the sea or wharf, unto the land, and to make profit of it. It also signifies the money paid and taken for the same. Stat. 22 Car. II. c. 11.


CRASPIS, A whale, viz. piscis crassus. Blount.

CRASTINO SANCTI VINCENTII, The morrow after the feast of St. Vincent the Martyr. I.e. the 22d of January; which is the day of the statutes made at Merton, anno 20 Hen. III. There are likewise certain return days of writs in terms, in the courts at Westminster, beginning with Crastino, &c. as Crastino animarum, the morrow of All Souls, in Michaelmas term; Crastino Purificationis beate Marie Virginis, in Hilary term; Crastino Ascensionis Domini, in Easter term; and Crastino sancte Trinitatis, in Trinity term. See stats. 51 Hen. III. st. 2 & 3. 32 Hen. VIII. c. 21. 16 Car. I. c. 6. 24 Geo. II. c. 48. See Days in Bank. Terms.

CRATES, Lat.] An iron grate before a prison, used in the time of the Romans. 1 Vent. 304.


CRAVEN, or CRAVENT, The word of obloquy, where, in the ancient trial by battel, the victory should be proclaimed, and the vanquished acknowledge his fault, or pronounce the word

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cravent, in the name of Recreantissae, &c. and thereupon judgment was given forthwith; after which the recreant should become infamous, &c. 2 Inst. 248. If the affrellant joined battell; and cried cravent, he should lose liberam legem; but if the affellee cried out cravent, he was to be hanged. 3 Inst. 221. See tit. Battell, Champion.

CREAMER, A foreign merchant; but generally taken for one who hath a stall in a fair or market. Blount.

CREANSOR, creditor, from Fr. crevance.] Signifies him that trusts another with any debt, money, or wares; in which sense it is used in Old Nat. Brev. 66. and 38 Edw. III. c. 5.

CREAST, or CREST; crista.] Any imagery or carved work, to adorn the head of wainscot, &c. like our modern cornice; but this word is now applied by the heralds to their devices set over a coat of arms. Kennet's Paroch. Antiq. 373.

CREATION-MONEY. This is mentioned in stat. 12 Car. II. c. 1. See 1 Inst. 835. in n. and this Dict. tit. Peers.


CREDITORS, Shall recover their debts of executors or administrators, who, in their own wrong, waste or convert to their use the estate of the deceased, &c. stat. 30 Car. II. c. 7. Wills and devises of lands, &c. as to creditors on bonds or other specialites, are declared void; and the creditors may have actions of debt against the heir at law and devisees. 3 and 4 W. & M. c. 14. And in favour of creditors, whenever it appears to be the testator's intent, in a will, that his lands should be liable for paying his debts; in such case equity will make them subject, though there are not express words; but there must be more than a bare declaration, or it shall be intended out of the personal estate. 2 Vern. Rep. 708. Where one devises that all his debts, &c. shall be first paid; if his personal estate is not sufficient to pay the creditors, it shall amount to a charge on his real estate for that purpose. Precid. Conc. 450. See tit. Assets, Copyhold, Executor, Fraud.

CREEK, crece, crecca.] A part of a haven where any thing is landed from the sea; so that it is observed, if when you are out of the main sea within the haven, you look round and see how many landing places there are, so many creeks may be said to belong to that haven. Cresp. Jurisd. fel. 110. It is also said to be a shore or bank whereon the water beats, running in a small channel from any part of the sea; from the Lat. crepido. This word is used in the stats. 4 Hen. IV. c. 20. 5 Eliz. c. 5. See tit. Navigation Acts.

CREMENTUM COMITATUS, The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents above the ancient vicontiel rents, under the title of cremen-tum [incrementum, increase] comitatus, or firma de cresento comitatus. Hale's Sher. Acco. p. 56.

CREPARE, OCULUM, To put out an eye; which had a pecu-niary punishment of 60s. annexed to it. Leg. Hen. I. c. 79.

CREST. See Crest.

CRIMINAL CONVERSATION. See tit. Adultery, Baron and Feme.

CROCARDS, A sort of old base money. See Pollards, and tit. Coin.

CROCIAN, The crosier or pastoral staff, so called _a similitudine crucis_, which bishops, &c. had the privilege to carry as the common ensign of their religious office; being invested in their prelacies, by the delivery of such a crosier. Hence the word crosia did sometimes denote the collation to, or disposal of, bishoprics and abbey, by the donation of such pastoral staff; so as when the king granted large jurisdictions, _exceptus crosia_, it is meant, except the collation or investiture of episcopal fees, &c. _Add. to Codex._ See tit. Bishops.

CROCIARIUS, The crosiary or cross-bearer, who, like our verger, went before the prelate, and bore his cross. _Liber de miraculis Tho. Ely. Heref. MS. anno, 1290._

CROFT, Sax. _cristum and croisia._ A little close adjoining to a dwelling-house; and enclosed for pasture or arable, or any particular use. In some old deeds _crosta_ occurs as the Latin word for a _croft_; but _cum tofis et crofis_, is most frequent. _Ingulph._ It seems to be derived from the old English word _creaf_, signifying _handy-craft_; because such grounds are usually manured and extraordinarily drest by the hand and skill of the owner. See Toft.

CROISES, and _croisado._ See Croyses.

CROK, _crocus._] Turning up the hair into curls or _croke_; whence comes _crook, crooked, &c._ _Pat. 21 Hen. III._

CROP, _cropta._] The seeds or products of the harvest in corn, &c. _Pictu., lib. 2. c. 82._

CROSS-BOWS. None shall shoot in, or keep any cross-bow, hand-gun, haigbut, &c. but those who have lands of the value of 100l. _per annum_; and no person shall travel with a cross-bow bent, or gun charged, except in time of war; or shoot within a quarter of a mile of any city or market town, unless for defence of himself or his house, or at a dead mark, under the penalty of 10l. _Stat. 33 Hen. VIII. c. 6._ See tit. _Arms, Game._

CROSSES. By stat. 13 Eliz. c. 2. crosses, beads, &c. used by the Roman Catholics, are prohibited to be brought into this kingdom, on pain of a _premunire, &c._ In ancient times, it was usual for men to erect crosses on their houses, by which they would claim the privileges of the _Templars_, to defend themselves against their rightful lords; but this was condemned by the stat. _Westm. 2. c. 37._ It was likewise customary in those days to set up crosses in places where the _corps_ of any of the nobility rested, as it was carried to be buried, that a _transmutitus pro ejus anima deferreretur._ _Walling. anno 1291._ There were several of these crosses erected over England, especially in honour of the resting-places of our kings, on their bodies being transmitted to any distant place for burial. But these superstitions sunk in this kingdom with the Romish religion.

CROY, Marsh land. _Ingulph. p. 853._ Blount.

CROYSES, _cruce signati._] Is used by Britton for pilgrims, because they wear the sign of the cross upon their garments. Of these and their privileges, Bracton hath treated, _lib. 5. part 2._
cap. 2. part 5. cap. 9. Under this word are also signified the Knights of St. John of Jerusalem, created for the defence of pilgrims; and likewise all those persons who in the reigns of King Henry II. Rich. I. Hen. III. and Edw. I. cruce signati took upon them the croisade, dedicating and listing themselves to the wars, for the recovery of Jerusalem and the Holy Land. Greg. Synag. lib. 15. c. 13; 14. See a general account of the croisades in Rob. Hist. Emp. Ch. V. vol. 1. p. 22. &c.

CROWN. See tit. King.

CROWN OFFICE. An office belonging to the court of King's Bench, of which the king's coroner or attorney there is commonly master. The attorney-general and clerk of the crown exhibit informations in this office, for crimes and misdemeanors; the one ex officio, and the other usually by order of court; and here informations may be laid for offences and misdemeanors at common law, as for batteries, conspiracies, libelling, nuisances, contempts, seditious words, &c. wherein the offender is liable to pay a fine to the king. Finch, 340. Show. 109.

By stat. 4 and 5 W. & M. c. 18. the clerk of the crown in B. R. is not to receive or file any information for trespass, battery, &c. without express order of court; nor to issue any process, without taking a recognisance in 20l. penalty to prosecute with effect; and if the party appear, and the plaintiff do not procure a trial in a year, or if verdict pass for the defendant, &c. the court shall award the defendant costs; but this act doth not extend to informations in the name of the king's coroner or attorney, &c.

When a battery is committed privately, so that the person injured can make no proof thereof by witnesses at law, it is usual to bring an information in this office, or to prefer an indictment, the most legal method, where the party may be a witness for the king, it being his suit. See tit. Indictment, Information, King's Bench, Quo Warranto, &c.


CRY DE PAIS. On a robbery or other felony done, hue and cry may be raised by the country in the absence of the constable, which is called cry de pais. 2 Hale's Hist. P. C. 100. See tit. Hue and Cry.

CRYPTA, A chapel or oratory under ground. Du Cange.

CUCKING-STOOL. See tit. Castigatory.

CUDE. A cude cloth is a chrysom or face-cloth for a child baptized. Vide Christmale.

CUI ANTE DIVORTIUM, A writ for a woman divorced from her husband to recover her lands and tenements which she had in fee-simple, or in tail, or for life, from him to whom her husband did alienate them during the marriage, when she could not gainsay it. Reg. Orig. 233. Fitz. N. B. 240. And the heir shall have a sur cui ante divortium, where the wife dieth before the action brought; as well as he shall have a sur cui in vita. Fitz. N. B. 193. But of an estate tail, the heir shall not have sur cui in vita, or ante divortium, but shall be put to his formedon in the descender. New Nat. Brev. 454. See tit. Entry.
**CUL IN VITa,** A writ of entry, for a widow against him to whom her husband aliened her lands or tenements in his life-time, which must contain in it, that during his life she could not withstand it. *Reg. Orig. 232. Fitz. N.B. 193.* If husband and wife be joint-tenants before the coverture, and the husband alieneth all the land and dieth, she shall have a *cul in vita* for a moiety, and no more; but if they are joint purchasers, during the coverture, and he alien all the land and dieth, his wife shall have a *cul in vita* of the whole land; because that during the coverture, as to purchase, they are but one person in law. *Fitz. N.B. 187.* And for this reason, if husband and wife, and a third person, purchase jointly, and the husband alieneth all in fee and dieth, the wife shall have a *cul in vita* of a moiety. *Ibid.*

Where the husband and wife exchange the lands of the wife for other lands, if the wife agree unto the exchange after the husband's death, she shall not have a *cul in vita.* Also, if the wife do accept of parcel of the land in dower, of which she hath a *cul in vita,* by that acceptance she shall be barred of the residue. *New Nat. Brev. 450.* If the husband and wife lose by default the wife's lands, after the death of her husband, she shall have a *cul in vita* to recover those lands so lost by default. *Fitz. N.B. 187.* By *stat. 13 Edw. I. c. 3.* *cul in vita* is given to the wife where the deceased husband lost her lands by default in his life-time; and she shall be admitted to defend her right during his life, if she come in before judgment. Likewise if tenant in dower, by the curtesy, or for life, do make default, &c. the heirs, and they to whom the reversion belongeth, shall be admitted to their answer, if they come before judgment; and if on default judgment happen to be given, such heirs, &c. shall have a writ of entry for recovery of the same, after the death of such tenants. See *Booth on Real Actions,* and *Fitz. N.B.* See the preceding article.

**CULAGIUM,** The laying up of a ship in the dock to be repaired. *MS. Arth. Trév. Arm. de Plac. Edw. III.*

**CULM.** See Coal.

**CULPRIT,** A prisoner accused for trial. The word arose originally from the reply of the proper officer in behalf of the king, affirming a criminal to be guilty, after he hath pleaded *not guilty,* without which the issue to be tried is not joined. It is compounded of two words, *viz. cul* and *prit;* the one an abbreviation of *culpabilis,* and the other derived from the French word *frest,* i.e. ready; and it is as much as to say that he is ready to prove the offender guilty. See *4 Comm. 339.*

**CULREACH,** A caution given by a lord of regality, to punish a malefactor, whom he reprieved from the sheriff. *Scotch Dict.*

**CULTURA,** A parcel of arable land. *Blount.*

**CULVERTAGE, *culvertagium.*** Is said by some persons to be derived from *culum et veriere,* to turn tail; and in this sense, *sub nomine culvertagius,* was taken to be on pain of cowardice, or being accounted cowards. And in this sense *Spelman in voc. Niderling* derives it from *Culver,* a dove. But in the opinion of others, it rather signifies some base slavery, or the confiscation of an estate; being a *feudal* term for the lands of the vassal forfeited and escheating to the lord; and *sub nomine culvertagius,* in
this signification, was under pain of confiscation. Matt. Paris, anno 1212.

CULWARD and CULVERD, A coward, or cowardice. Chart. temp. Edw. I. See the preceding word.

CUNA-CERVISIE, A tub of ale. Domesday. But this word is truly cuve.

CUNEUS, A mint or place to coin money. Conœnum monetum signifies the king's stamp for coinage; and from the word cune, is derived coin. See Coin.

CUNTEY-CUNTEY, A kind of trial, as appears by Bracton. Bract. lib. 4. tract. 3. c. 18. where it seems to intend the ordinary jury.

CURAGULUS, One who taketh care of a thing. Mon. Ang. tom. 2.

CURATE, curator.] He who represents the incumbent of a church, parson or vicar, and takes care of divine service in his stead. In case of pluralities of livings, or where a clergyman is old and infirm, it is requisite there should be a curate to perform the cure of the church. He is to be licensed and admitted by the bishop of the diocese, or by an ordinary, having episcopal jurisdiction; and when a curate hath the approbation of the bishop, he usually appoints the salary too; and in such case, if he be not paid, the curate hath a proper remedy in the ecclesiastical court, by a sequestration of the profits of the benefice: but if he hath no license from the bishop, he is put to his remedy at common law, where he must prove the agreement, &c. Right Clerg. 137.

By stat. 28 Hen. VIII. c. 11. such as serve a church during its vacancy, shall be paid such stipend as the ordinary thinks reasonable out of the profits of the vacancy; or if that be not sufficient, by the successor, within fourteen days after he takes possession.

By stat. 12 Ann. c. 12. where curates are licensed by the bishop, they are to be appointed by him a stipend not exceeding 50l. per annum, nor less than 20l. a year, according to the value of the livings, to be paid by the rector or vicar; and the same may be done on any complaint made.

By stat. 35 Geo. III. c. 83. § 1. the bishop or ordinary may appoint a stipend to curates of 75l. per annum, with the use of the parsonage-house, or allowance for it where the rector or vicar does not personally reside.

Churches augmented by Queen Anne's bounty, shall be deemed benefices presentative, and the officiating curate may have a like stipend. Id. § 3.

Bishop or ordinary may apportion the stipend to officiating curates of perpetual curacies not augmented. Id. § 5.

Ordinary may license curates employed, though no nomination shall have been made to him by the incumbent, and may revoke any license subject to appeal to the archbishop of the province. Id. § 6.

One person cannot be curate in two churches, unless such may satisfy the law, by reading both morning and evening prayers at each place; nor can he serve one cure on one Sunday, and another cure on the next; for he must not neglect to read morn-
ing and evening prayer in his church every Lord's day: if he doth, he is liable to punishment. Comp. Incumb. 372. But it is otherwise where a church or chapel is a member of the parish church; and where one church is not able to maintain a curate. Can. 48.

A curate having no fixed estate in his curacy, not being instituted and inducted, may be removed at pleasure by the bishop or incumbent. Noy. But there are perpetual curates, as well as temporary, who are appointed where tithes are inappropriate, and no vicarage endowed. These are not removeable; and the impropriators are obliged to find them; some whereof have certain portions of the tithes settled on them. Stat. 29 Car. II. c. 8. See tit. Parson.

It was provided in 1603, by Can. 33. that if a bishop ordains any person not provided with some ecclesiastical preferment, except a fellow or chaplain of a college, or a Master of Arts of five years standing, who lives in the university at his own expense, the bishop shall support him till he prefer him to a living. 3 Burn. Eccl. L. 28. The bishops, before they confer orders, require either proof of such a title as is described by the canon, or a certificate from some rector or vicar, promising to employ the candidate for orders bona fide as a curate, and to grant him a certain allowance till he obtains some ecclesiastical preferment, or shall be removed for some fault. In a case where the Rector of St. Anne, Westminster, gave such a title, and afterwards dismissed his curate without assigning any cause, the curate recovered in an action of assumpsit the same salary for the time after his dismissal, which he had received before. Convit. 437. When the rector had vacated St. Anne's by accepting the living of Rochdale, the curate brought another action to recover his salary after the rector left St. Anne's; but the court of K. B. held that that action could not be maintained; as these titles are only binding upon those who give them, while they continue incumbents in the church for which such curate is appointed. Doug. 137.

No curate (or minister) ought to perform the duties of any church, before he has obtained a license from the bishop. 2 Burn. 58.

The bishop cannot increase the salary of the curate, where there is a specific agreement between the incumbent and the curate. Freem. 70.

Every clergyman that officiates in a church, (whether incumbent or substitute,) is in our liturgy called a curate. Curates must subscribe the declaration, according to the act of uniformity, or are liable to imprisonment, &c. See tit. Clergyman, Parson, Advowson, Chaplain, &c.

CURFEU, Fr. couvir, to cover, fev, fire.] A bell which rang at 8 o'clock in the evening, in the time of William the Conqueror; by which every person was commanded to take up, or cover over his fire, and put out his light: and in many places of England at this day, where a bell is customarily rung towards bed-time, it is said to ring curfew. Stone's Annals.

In the Welsh language, curfa signifies a beating; also, a stroke. Richard's, Antiq. Ling. Britt. Thes.
CURIA. This word was sometimes taken for the persons, as feudatory and other customary tenants, who did their suit and service at the court of the lord. Kenn. Paroch. Antiq. 139. And it was usual for the kings of England, in ancient times, to assemble the bishops, peers, and great men of the kingdom to some particular place, at the chief festivals in the year; and this assembly is called by our historians, curia; because there they consulted about the weighty affairs of the nation. And it was therefore called solemnis curia, augustalis curia, curia publica, &c. See tit. Court, Witenagemote.

CURIA ADVISARE VULT, Is a deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. New Book Entr. And when judgment is said, upon motion to arrest it, then it is entered by the judges curia advisare vult. Shep. Epit. 682. See tit. Judgment.

CURIA CURSUS AQUA, A court held by the lord of the manor of Gravesend for the better management of barges and boats using the passage on the river Thames, from thence to London, and plying at Gravesend bridge, &c. mentioned in stat. 2 Geo. II. c. 26.

CURIA CLAUDENDA, A writ to compel another to make a fence or wall, which he ought to make between his land and the plaintiff’s, on his refusing or deferring to do the same. Reg. Orig. 135. This writ doth not lie but against him who hath a close adjoining to the plaintiff’s land, who is obliged to enclose it; and it lieth not but for him who hath a freehold, &c. It may be sued before the sheriff in the county court, or in the common pleas; and the judgment is to recover the enclosure and damages. New Nat. Brev. 282, 283. But if the occupier of a close adjoining to mine, ought to repair the fence between the closes, and do not, and his cattle stray into my close and do damage, I may distrain them damage-feasant, or drive them out, and bring an action of trespass. If my cattle stray into his close and do damage, he has not a right to distrain them, nor can he support trespass against me for the same. Should my cattle, after straying into his close, stray out of the same into any highway, or other place, and be lost, or trespass in the ground of a third person, and be by him distrained, and kept till reprieved, or I have made satisfaction, I may maintain an action against the defaulter, i.e. against the occupier of the adjoining close, for not repairing his fence, whereby such damage hath happened to me. The writ of curia claudenda, therefore, is grown out of use. See tit. Trespass.

CURIA DOMINI, The lord’s house, hall or court, where all the tenants attend at the time of keeping courts.

CURIA PENTICARIUM, Is a court held by the sheriff of Chester, in a place there called the Pendice or Pentice; and it is probable it being originally kept under a penthouse, or open shed covered with boards, gave it this denomination. Blount.

CURNOCK, A measure containing four bushels, or half a quarter. Fleta, lib. 2. c. 12.

CURRICULUS. The year, or course of a year. Actum est hoc annorum Domini incarnationis quatuor quinquagenis et quinquies,
Curtsey.

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quinas lustrias, et tribus curriculis. This is the year 1028; for
four times 50 make 200, and five times 200 make 1000. Then
5 lustria are 25 years, and 3 curriculi, 3 years; making in all the
very year. Blount.

Curtiers, Persons that curry and dress leather. No currier
shall use the trade of a butcher, tanner, &c. or shall curry
skins insufficiently tanned, or gash any hides or leather, on pain
of forfeiting for every hide or skin 6s. 8d. And persons in Lon-
don putting leather to be curried to any but freemen of the cur-
riers' company; and such curriers not currying the leather suffi-
ciently, shall forfeit the ware or the value, &c. Stat. 1 Jac. I. c.
22. The clause relating to freemen is repealed; but if any cur-
rier do not curry leather sent him, within sixteen days between
Michaelmas and Ladyday, and in eight days at other times, on con-
viction before a justice, he shall forfeit 5l. to be levied by distress,
&c. yet subject to mitigation. 12 Geo. II. c. 25. Curriers and
such as deal in leather, may cut and sell it in small pieces in
their shops to any persons whatsoever. Stat. Ibid. See tit. Lea-
ther, Skins, &c.

Cursing, See Sweating.

Curriers, cleri de curru.] Clerks belonging to the
chancery, who make out original writs; and are called Clerks of
Course, in their oath appointed. 18 Edw. III. ch. 5. There are
of these clerks twenty-four in number, which make a corpora-
tion of themselves; and to each clerk is allotted a division of certain
counties, in which they exercise their functions. 2 Inst. 670. See

Curtsones Terræ, Ridges of land. Stat. 14 Edw. II.

Curtoræ, A sort of light ships or swift sailors. Hoveden,
Ric. I.

Curtsey or England, jus curialitatis Angl. Is where
a man taketh a wife seised in fee-simple, or fee-tail general, or as
heirress in special tail, and hath issue by her, male or female, born
alive, which by any possibility may inherit, and the wife dies; the
husband holds the lands during his life; and is called Tenens her
tem Anglice, or Tenant by the curtesy of England. See tit. Ten-
eres III. 9. Though this is called the Curtsey of England, it ap-
ppears to have been the established law of Scotland, where it was
called Curialitas. It is likewise used in Ireland by virtue of an
ordinance of Hen. III. So that probably the word curtesy is in
this sense understood rather to signify an attendance upon the
lord's courts, than to denote any peculiar favour. See 2 Comm.
136.

Four things are requisite to give an estate by the curtesy, viz.
marriage, seisin of the wife, issue, and death of the wife. Co.
Litt. 30. If land descend to the wife after the husband hath issue
by her; or if the issue be dead at the time of her death, being
born alive; the husband shall be tenant by the curtesy. Also if a
child is born alive, it is not material whether it is baptized, or
ever heard to cry, to make the husband tenant by the curtesy; for
if it is born alive, it is enough. Dyer, 23. 8 Rep. 34.

The words in the general editions of Littleton, 1 Inst. 29. are
ives ou wife, but in Leitou and Michlinia's edition they are neez
wife, and are translated by Lord Coke, born alive. May not the
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word vife in the first instance been an error for vine, meaning thereby that the issue must be heard, or seen; so as to ascertain its being alive?

But the child must be such as by possibility may inherit; and therefore if land be given to a woman, and the heirs male of her body, and she takes husband and hath issue a daughter, and dies; as this issue cannot possibly inherit, the husband shall not be tenant by the curtesy. Terms de Ley.

If the child is ripped forth of the mother’s belly, after her death, though it be alive, it will not cause tenancy by the curtesy; for this ought to begin by the issue, and be consummated by the death of the wife, and the estate of tenant by the curtesy should avoid the immediate descent. Ibid. A man shall not be tenant by the curtesy of a bare right, title, use, reversion, &c. expectant upon an estate of freehold, unless the particular estate is determined during the coverture; nor of a seisin in law; but if a wife dies before a rent becomes due; or in the case of an advowson, before the church becomes void; the husband shall be tenant by the curtesy, though the wife had only a seisin in law; for in this case no other seisin could be attained. Fitz. N. B. 149. Co. Litt. 29, 30, 40.

Though in strictness of law there cannot be curtesy of Trusts, yet since Lord Coke’s time our courts of equity have allowed curtesy, both of trusts and other interests which though in law mere rights and titles, are deemed estates in equity; and made to conform to many of the rules and consequences incident to estates in law. See in 1 Atk. 603. the case of Cashborn v. Ingles; in which Hardwicke, C. decreed curtesy of an equity of redemption. See S. C. more fully reported in Vin. tit. Curtesy, (E.) pl. 23. However, a wife may, in point of benefit, have a trust of inheritance, which may be so declared as to prevent curtesy; as by directing the profits during the wife’s life to be paid for her separate use; for in such case the intention to exclude the husband from curtesy is manifest, and he cannot have an equitable seisin. 3 Atk. 715. It is also proper to remark, that though curtesy out of a trust is allowed, yet dower has been refused; a distinction not easily reconcilable with reason, however settled by the current of authorities. See 1 Inst. 29 a. n. 5.

As to Curtesy in Titles and Offices of Honour, see 1 Inst. 29 b. and Mr. Hargrave’s learned notes there, by which it seems that no such curtesy can take place; though the question appears not to be settled, a decision having been repeatedly avoided thereon.

There is no tenancy by the curtesy of copyhold lands, except there be a special custom for it. But in gavelkind lands a husband may be tenant by the curtesy without having issue. 1 Inst. 30. But it is only of a moiety of the wife’s land, and ceases if the husband marries again. Robins. Gavelk. I. 2. & l. Where a husband is entitled to this tenancy, if after the wife is an idiot, and her estate in the land found; when she dies, he shall not be tenant by the curtesy, for the king’s title by relation prevents it. Plowd. 263. If the wife be seized in fee of lands, and attains of felony, but have issue by her husband, and she is hanged, &c. it is said the husband shall be a tenant by the curtesy: but yet the land will be forfeited, according to Kitch. 159. 21 Edw. III. 49.
A woman seised of land had two daughters, and covenanted to stand seised to the use of E. her eldest daughter in tail; on condition that she should pay to her other daughter within a certain time 300l. And if E. made default, or died without issue before such payment, then the land to go to the second daughter; the mother dying, E. took a husband, and had issue, and died afterwards without any issue living, before the day of payment; it was here held, that her husband should be tenant by the curtesy. 1

Leon. Ca. 283. See Kitch. 159.

CURTEYN, curtana. The name of King Edward the Confessor's sword; which is the first sword carried before the Kings of England at their coronation; and it is said the point of it is broken as an emblem of mercy. Mai. Paris, in Hen. III.

CURTILAGE, curtlagium, from the Fr. court, court, and Sax. leagh, locus. A court-yard, back-side, or piece of ground lying near and belonging to a dwelling-house. See stats. 4 Edw. I. c. 1. 35 Hen. VIII. c. 4. 39 Eliz. c. 10. 6 Rep. 64. and Spelm. And though it is said to be a yard or garden, belonging to a house, it seems to differ from a garden, for we find cum quodam gardino et curtillagio. 15 Edw. I. n. 34.

CURTILES TERRAE, Court lands. It is recorded, that among our Saxon ancestors, the Thanes or nobles who possessed Bockland, or hereditary lands, divided them into Inland and Outland: the Inland was that which lay most convenient for the lord's mansion-house; and therefore the lords kept that part in their own hands, for the support of their families, and for hospitality: afterwards the Normans called these lands Terras Dominicales, the demains, demesnes, or lord's lands: the Germans termed them Terras Indominales, lands in the lord's own use; and the Feudists, Terras Curtiles, lands appropriate to the court or house of the lord. Spelm. of Feuds, c. 5.

CUSTANTIA, custagium, costs.

CUSTODE ADMITTENDO AND CUSTODE AMOVENDO, Writs for the admitting or removing of Guardians. Reg. Orig.

CUSTODES LIBERTATIS ANGlie AUTHORITYE PARLIAMENTI. The style in which writs and all judicial process did run during the grand rebellion, from the murder of King Charles I. till the Usurper Oliver was declared Protector, &c. mentioned and declared traitorous, by stat. 12 Car. II. c. 3.

CUSTODIAM DARE, Was taken for a gift or grant for life. Du Cange.

CUSTOM, consueuto.] Is a law not written, established by long usage, and the consent of our ancestors. No law can oblige a free people without their consent: so wherever they consent and use a certain rule or method as a law, such rule, &c. gives it the power of a law; and if it is universal, then it is common law; if particular to this or that place, then it is custom. 3 Salk. 112. As to the rise of customs when a reasonable act once done was found to be good and beneficial to the people, then they did use it often, and by frequent repetition of the act, it became a custom; which being continued without interruption time out of mind, it obtained the force of a law, to bind the particular places, persons,
and things concerned therein. Thus a custom had beginning and grew to perfection.

To make a particular custom good, the following are necessary requisites.

1. Antiquity. That it have been used so long, that the memory of man runneth not to the contrary. So that, if any one can show the beginning of it, within legal memory, that is, within any time since the first year of Richard I, it is no good custom. For which reason no custom can prevail against an express act of parliament, since the statute itself is a proof of a time when such a custom did not exist. Co. Litt. 113. Therefore a custom that every pound of butter sold in a certain market, should weigh eighteen ounces, is bad; being directly contrary to stat. 13 & 14 Car. II. c. 26. which directs it to contain 16 oz. 3 Term Ref. 271.

2. It must have been continued. Any interruption would cause a temporary ceasing; the revival gives it a new beginning, which will be within time of memory, and thereupon the custom will be void. But this must be understood with regard to an interruption of the right; for an interruption of the possession only, for ten or twenty years, will not destroy the custom. Co. Litt. 114. As if the inhabitants of a parish have a customary right of watering their cattle at a certain pool, the custom is not destroyed, though they do not use it for ten years; it only becomes more difficult to prove; but if the right be any how discontinued for a day, the custom is quite at an end.

3. It must have been peaceable, and acquiesced in; not subject to contention and dispute. Co. Litt. 114. For as customs owe their original to common consent, their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting.

4. Customs must be reasonable, (Litt. § 212.) or rather, taken negatively, they must not be unreasonable. Which is not always, as Sir Edward Coke says, (1 Inst. 62.) to be understood of every unlearned man's reason, but of artificial and legal reason, warranted by authority of law. Upon which account a custom may be good, though the particular reason of it cannot be assigned; for it sufficeth, if no legal reason can be assigned against it. Thus a custom in a parish, that no man shall put his beasts into the common till the third of October, would be good, and yet it would be hard to show the reason why that day in particular is fixed upon, rather than the day before or after. But a custom, that no cattle shall be put in till the lord of the manor has first put in his, is unreasonable, and therefore bad; for peradventure the lord will never put in his; and then the tenants will lose all their profits. Co. Copyh. § 33.

5. Customs ought to be certain. A custom, that lands shall descend to the most worthy of the owner's blood, is void; for how shall this worth be determined? But a custom to descend to the next male of the blood, exclusive of females, is certain, and therefore good. 1 Roll. Abr. 565. A custom to pay two-pence an acre in lieu of tithes, is good; but to pay sometimes two-pence, and sometimes three-pence, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom to pay a year's improved value for a fine on a copyhold estate, is good: though the value is a
thing uncertain; for the value may be ascertained at any time; and the maxim of law is, *id certum est, quod certum reddi potest*. A custom that poor house-keepers shall carry away rotten wood in a chase is bad; being too vague and uncertain. 2 Term Rep. 758.

6. Customs, though established by consent, must be (when established) compulsory; and not left to the option of every man, whether he will use them or no. Therefore a custom that all the inhabitants shall be rated toward the maintenance of a bridge, will be good; but a custom, that every man is to contribute thereto at his own pleasure is idle and absurd; and indeed no custom at all.

7. Lastly, customs must be *consistent* with each other: one custom cannot be set up in opposition to another. For if both are really customs, then both are of equal antiquity, and both established by mutual consent; which to say of contradictory customs is absurd. Therefore if one man prescribes that by custom he has a right to have windows looking into another’s garden, the other cannot claim a right by custom to stop up or obstruct those windows: for these two contradictory customs cannot both be good, nor both stand together. He ought rather to deny the existence of the former custom. 9 Rep. 58. See Doug. 190.

As to the allowance of special customs. Customs in derogation of the common law must be construed strictly. This rule is founded upon the consideration that a variety of customs in different places upon the same subject is a general inconvenience: the courts therefore will not admit such customs but upon the closest proofs. 1 Term Rep. 466. Thus by the custom of gavelkind, an infant of fifteen years, may by one species of conveyance (called a deed of feoffment) convey away his lands in fee-simple. Yet this custom does not empower him to use any other conveyance, or even to lease them for seven years, for the custom must be strictly pursued. Co. Cysth. § 33. And moreover all special customs must yield to the king’s prerogative. Therefore if the king purchases land of the nature of gavelkind, where all the sons inherit equally: yet on the king’s demise, his eldest son shall succeed to those lands alone. Co. Litt. 15.

A custom contrary to the public good, or injurious to a multitude, and beneficial only to some particular persons, is repugnant to the law of reason, and consequently void. 2 Danv. 424. 427. Customs ought to be beneficial to all, but may be good where against the interest of a particular person, if for the public good. Dyer, 60. A custom is not unreasonable for being injurious to private persons or interests, so as it tends to the general advantage of the people. 3 Salk. 112.

A custom may be good in some cases where a prescription is not; but customs that are good for the substance and matter of them, may yet be bad for the manner; if they are uncertain, or mixed with any other custom that is unreasonable, &c. 2 Bulst. 166. 2 Brownl. 198.

A custom extends over some place or will: A prescription extends only to particular persons. Hardw. 253. A prescription must always be had by way of que estate. Ibid. See tit. Prescription.
Custom that every one who passeth over such a bridge within the lord's manor, and which the lord doth repair, shall pay him one penny, is a good custom; but if it be to pay the lord 12d. it will be naught, for it is unreasonable. 

A custom that a lord shall have within his manor liberam soldam, or free fold throughout the village; and that no other shall have it but by agreement with him, and if any take it, the lord may abate the same; this hath been held a good custom. 1 Roll. 560. Custom for inhabitants, as such, to have common adjudged void. Gateswood's case, 5 Co. 60. A custom, that tenants of a manor shall grind all the corn they spend in their own houses, in the lord's mill, &c. is good: but a custom that every inhabitant of a house held of the lord, shall grind the corn that he spends, or shall sell, at his mill, is void. Moor, Ca. 1217. Hob. 149. Custom to have a common bakehouse in a manor or parish, for all the tenants or inhabitants, is a good custom. 2 Bulst. 198.

Custom is and must always be alleged to be in many persons; and so it may be claimed by copyholders, or the inhabitants of a place, and when it is claimed, it must be as within such a county, hundred, city, borough, manor, parish, hamlet, &c. Co. Litt. 110. 113. 4 Rep. 31. A good custom or prescription hath the force of a grant; as where one and his ancestors have had a rent time out of mind, and used to distrain, &c. But a custom that begins by extortion of lords of manors, is judged wanting a lawful commencement, and therefore void; and where custom is amongst many, and they are all dead but one, the custom is gone. Plowd. 322. Dyer, 199.

Customs for an eldest daughter to inherit, or a youngest son, may be good: for these, though contrary to a particular rule of law, may have a reasonable beginning. Nels. Abr. 579. And by custom a woman may be endowed of a moiety of the husband's lands, &c. Also by custom infants may bind themselves apprentices, &c. 2 Danv. Abr. 438.

Regularly a man cannot allege a custom against a statute, because that is the highest matter of record in law: but a custom may be alleged against a negative statute, which is made in affirmance of the common law. 1 Inst. 115. Acts of parliament do not always take away the force of customs. 2 Danv. Abr. 436. A custom is to be positively alleged, by usage in fact. Lutw. 1319.

General customs which are used throughout England, and are the common law, are to be determined by the judges. But particular customs, such as are used in some certain town, borough, city, &c. shall be determined by a jury. Doctor & Student, c. 7. 10. 4 Inst. 110. Consuetudo pro lege servatur, &c. saith Bracton, lib. 11. c. 5. And custom is said to be altera lex: But the judges of the court of B. R. or C. B. can overrule a custom though it be one of the customs of London, if it be against natural reason, &c. 1 Mod. 212.

The law takes particular notice of the custom of Gavelkind and Borough English; (Co. Litt. 175;) and there is no occasion to prove that such customs actually exist, but only that the lands in question are subject thereto. All other private customs must be particularly pleaded; (Litt. § 265;) and as well the existence of
the custom must be shown, as that the thing in dispute is within the custom alleged. The trial in both cases is by a jury of twelve men, and not by the judges, except the same particular custom has been before tried, determined and recorded in the same court. Doct. & Stud. 1. 10. 1 Comm. 76.

As to the manner of laying a custom, and the difference between alleging a thing by way of custom, or by way of prescription, see 6 Co. 60. Hob. 113. Cro. Eliz. 441. Poph. 201. Style, 479. 1 Lev. 176. 1 Vent. 386. 3 Lev. 160. Earth. 192. See further, tit. Prescription, and as to particular customs relative to Inheritance, Dower, &c. see tit. Copyhold, Gavelkind, &c.

The Customs of London, differ from all others in point of trial, for if the existence of the custom be brought in question it shall not be tried by a jury, but by certificate of the lord mayor and aldermen, by the mouth of the recorder. Cro. Car. 516. Unless it be such a custom as the corporation itself is interested in, as a right of taking toll, &c. for then the law permits them not to certify in their own behalf. Hob. 85. And when a custom has once been certified by the recorder, the judges will take notice of it, and will not suffer it to be certified a second time. Doug. 365. As to the form in which the recorder shall certify a custom, see 1 Burr. 248. and tit. Certificate.

These Customs of London relate to divers particulars, with regard to trade, apprentices, widows, orphans, &c. As to the custom relative to the distribution of a freeman's estate, and which now in consequence of stat. 11 Geo. II. c. 18. § 17. extends only to cases of intestacy, or express agreements, made in consideration of marriage, see tit. Executor V. 9. As to the custom of Foreign Attachment, see tit. Attachment Foreign. As to the custom of a feme covert being sole trader, see tit. Baron & Feme, Bankruptcy. And further, in more particular detail, as to the general and local customs of London, see this Dict. under tit. London.

It is said, 1 Rol. Rep. 106. that the courts at Westminster of course take notice of the customs of London, but not of any other place. But this is only where they have been certified. See ante, tit. Custom.


The Custom of Merchants, Lex Mercatoria.] A particular system of customs used only among one set of the king's subjects; which, however different from the rules of the common law, is yet ingrafted into it, and made part of it; being allowed for the benefit of trade, to be of the utmost validity in all commercial transactions; for it is a maxim in law, that culpit in arte et credendum est. 1 Comm. 75.

It seems that this custom of merchants, is only so far considered as law, that it affords the rule of construction in cases of contracts, agreements, &c. and other transactions in trade and commerce. Mr. Christian, in his note on the above passage of the Commentaries, truly remarks, that the lex mercatoria like the lex et consuetudo parliamenti, describes only a great division of the law of England. The laws relating to bills of exchange, insurance, and all mercantile contracts, are as much the general law of the land, as the laws
relating to marriage or murder. And the opinion of Mr. Justice Foster is, that the custom of merchants is the general law of the kingdom, and therefore ought not to be left to a jury after it has been settled by judicial determinations. 2 Burr. 1226.

The custom of merchants, is likewise understood to comprehend the usage of merchants, which generally governs mercantile questions, where no positive law points out the rule for decision: and therefore the courts at Westminster have frequently granted a new trial where the verdict of a jury has militated against the custom or usage of merchants. Rex v. Miller, 6 Term Rep. 268.

See further, more particularly as to the effect and influence of this custom of merchants, under Bankrupt, Bill of Exchange, Factor, Insurance, Partnership, and other titles in this Dictionary.

CUSTOMS ON MERCHANDISE. These are enumerated (1 Comm. 313.) among the perpetual taxes; and are there explained to be the duties, toll, tribute, or tariff payable upon merchandise exported and imported.

The considerations, says the commentator, upon which this revenue, or the more ancient part of it which arose only from exports, was invested in the king, were said to be two; 1. Because he gave the subject leave to depart the kingdom, and to carry his goods along with him. 2. Because the king was bound of common right to maintain and keep up the ports and havens, and to protect the merchants from pirates. Dyer, 163. Some have imagined they were called with us customs, because they were the inheritance of the king, by immemorial usage, and the common law, and not granted him by any stat. Dyer, 43. pl. 24. But Sir Edward Coke, 2 Inst. 38, 39. hath clearly shown, that the king's first claim to them was, by grant of parliament. 3 Edw. I. And indeed this is in express words confessed by stat. 25 Edw. I. e. 7. wherein the king promises to take no customs from merchants without the common assent of the realm, "saving to us and our heirs, the customs on wool, skins and leather formerly granted to us by the commonalty aforesaid." These were formerly called the hereditary customs of the crown, and were due on the exportation only of the said three commodities, and of none other: which were styled the staple commodities of the kingdom, because they were obliged to be brought to those ports where the king's staple was established, in order to be there first rated and then exported. Dunv. 9. They were denominated in the barbarous Latin of our ancient records, custuma; not consuetudines, which is the language of our law, whenever it means merely usages. The duties on wool, sheep-skins, or wool-fells, and leather, exported, were called custuma antiqua sive magna; and were payable by every merchant, as well native as stranger; with this difference, that merchant-strangers paid an additional toll, viz. half as much again as was paid by natives. The custuma parva et nova were an impost of 3d. in the pound, due from merchant-strangers only, for all commodities as well imported as exported: which was usually called the aliens' duty, and was granted in 31 Edw. I. 4 Inst. 29. But these ancient hereditary customs, especially those on wool and wool-fells, came to be of little account when the nation became sensible of the advantages of 2
home manufacture, and prohibited the exportation of wool by 
stat. 11 Edw. III. c. 1.
There is also another very ancient hereditary duty belonging to the 
crown, called the prisaige or butlerage of wines; which is con-
siderably older than the customs, being taken notice of in the 
Exch. 525. 532. Prisaige was a right of taking two tons of wine 
from every ship (English or foreign) importing into England 
twenty tons or more; one before, and one behind the mast; which 
by charter of Edw. I. was exchanged into a duty of 2s. for every 
ton imported by merchant strangers, and called butlerage, because 
paid to the king's butler. Dav. 8. 2 Bulst. 254. Stat. East. 16 
Edw. II. Com. Journ. 27 Apr. 1689.
Other customs payable upon exports and imports were distin-
guished into subsidies, tonnage, poundage, and other imposts. 
Subsidies were such as were imposed by parliament upon any of 
the staple commodities before mentioned over and above the 
custuma antiqua et magna. Tonnage was a duty upon all wines 
imported, over and above the prisaige and butlerage aforesaid. 
Poundage was a duty imposed ad valorem, at the rate of 12d. in 
the pound on all other merchandise whatsoever, and the other 
imposts were such as were occasionally laid on by parliament, 
as circumstances and times required. Dav. 11, 12:

These distinctions are now in a manner forgotten, except by 
the officers immediately concerned in this department; their pro-
duce being in effect all blended together, under one denomination 
of The Customs.

By these we understand, at present, a duty or subsidy paid by 
the merchant, at the quay, upon imported, as well as exported, 
commodities, by authority of parliament; unless where, for par-
ticular national reasons, certain rewards, bounties or drawbacks, 
are allowed for particular exports or imports. Those of tonnage 
and poundage, in particular, were at first granted, as the old sta-
tutes (and particularly 1 Eliz. 19.) express it, for the defence of 
the realm, and the keeping and safeguard of the seas, and for 
the intercourse of merchandise safely to come into and pass out of 
the same. They were at first usually granted only for a stated 
term of years; as, for two years in 5 Rich. II. Dav. 12. but in 
Henry the Sixth's time, they were granted him for life by a sta-
tute in the thirty-first year of his reign; and again to Edward 
IV. for the term of his life also; since which time they were 
regularly granted to all his successors for life, sometimes at the 
first, sometimes at other subsequent parliaments, till the reign of 
Charles I.

Upon the Restoration, this duty was granted in England to King 
Charles the Second for life, and so it was to his two immediate 
successors; and by three several statutes, 9 Ann. c. 6. 1 Geo. 
I. c. 12. 3 Geo. I. c. 7. it was made perpetual and mortgaged for 
the debt of the public. The customs thus imposed by parliament 
were, till the stat. 27 Geo. III. c. 12, contained in two books of 
rates, set forth by parliamentary authority. Stat. 12 Cor. II. c. 4. 
11 Geo. I. c. 7. Aliens used to pay a larger proportion than na-
tural subjects, generally called the aliens' duty; now repealed by 
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stat. 24 Geo. III. sect. 2. c. 16. except as to scavage duties granted to the city of London.

By stat. 27 Geo. III. c. 13. called the Consolidation Act, all the former statutes imposing duties of customs and excise, were repealed with regard to the quantum of the duty; and the two books of rates above mentioned, were declared to be of no avail for the future; but all the former duties were consolidated, and were ordered to be paid according to a new book of rates annexed to that statute. The like plan has been followed in subsequent acts. Sec. 43 Geo. III. c. 68. &c.

**Bullion, wool,** and some few other commodities may be imported duty free. All the articles enumerated in the tables or book of rates, pay upon importation or exportation, the sum therein specified, according to their weight, number or measure. And all other goods and merchandise, not being particularly enumerated or described, and permitted to be imported and used in Great Britain, shall pay upon importation a certain duty ad valorem, or for every 100l. of the value thereof; but subject to a drawback upon exportation. Very few commodities pay a duty upon exportation; but where that duty is not specified in the tables, and the exportation is not prohibited, all articles may be exported without payment of duty, provided they are regularly entered and shipped; but on failure thereof, they are subject to a duty ad valorem. And to prevent frauds in the representation of the value, a very simple and equitable regulation is prescribed, viz. the proprietor shall himself declare the value, and if this should appear not to be a fair and true estimate, the goods may be seized by the proper officer; and four of the commissioners of the customs may direct that the owner shall be paid the price, which he himself fixed upon them, with an advance of 10l. per cent. besides all the duty which he may have paid; and they may then order the goods to be publicly sold, and if they raise any sum beyond what was paid to the owner, and the subsequent expenses, one half of the overplus shall be paid to the officer who made the seizure, and the other half to the public revenue.

As to the customs in Ireland, see Irish Act, 14 and 15 Car. II. c. 9. and the modern act, 46 Geo. III. c. 58. and this Dict. tit. Taxes.

If goods and merchandise are brought by a merchant to a port or haven, and there part thereof sold, but never put on land, they must pay the customs; and discharging them out of the ship into another upon the sale, amounts in law to a putting them upon the land, so that if the custom duties are not paid, the goods will be forfeited. *Hid.* 24 Eliz. 12 C. 18.

A very great number of acts of parliament have been passed to prevent frauds in this branch of the revenue, as well as in the excise; and it is more to be wished than hoped, that the measure pursued respecting the quantum of the duties, by the consolidation act, could be followed by a general act restraining every fraud, and containing every regulation, with a precise statement of the punishment for each offence. But while the dishonest are ingenious to find out means of evading the most explicit laws, the honest part of the community must forgive the length and intri-
cacy of statutes which ultimately secure their liberty and property.

The following are short extracts of such statutes as seem most material to the present purpose; besides those already mentioned.

By stat. 14 Rich. II. c. 10, no customer or comptroller of the customs shall have any ships of his own, or meddle with the freight of ships. And by stat. 20 Hen. VI. c. 5, no searcher, surveyor, &c. or their clerks, deputies, or servants, may have any such ships of their own; nor shall use merchandise, keep a wharf, inn or tavern, or be factor, attorney, &c. to a merchant, under the penalty of 40l. By stat. 5 Hen. VI. c. 5. customers, collectors, or comptrollers, shall not conceal customs duly entered and paid, on pain to forfeit the treble value of merchandise so customed, and to make fine and ransom to the king. By stat. 13 and 14 Car. II. c. 11. § 19. if any persons employed about the customs and subsidies take a bribe, or connive at any false entry, they shall forfeit 100l. and be incapable of any employment under the king; and the person giving the bribe shall forfeit 50l. By stat. 5 Geo. I. c. 11. § 24. &c. if an officer of the revenue, shall make any collusive seizure of foreign goods, to the intent the same may escape payment of the duties, he is to forfeit 500l. and be incapable of serving his majesty; and the importer and owner shall forfeit the treble value of the goods so collusively seized, &c. By stat. 12 Geo. I. c. 29. § 7. officers of the customs, &c. are not to trade in brandy, coffee, &c. or any excisable liquor, on pain of 50l. and forfeiture of offices.

Officers of the customs may search ships, 13 & 14 Car. II. c. 11. § 4. Having writ of assistance, may search houses. § 4. The penalty of abusing officers. § 6. Keepers of wharves, quays, &c. landing or shipping goods, without the presence of some officer of the customs, shall forfeit 100l.

By stat. 6 Geo. I. c. 21. where officers of the customs are hindered in the execution of their duty, by persons armed to the number of eight, the offenders are to be transported for seven years.

By stat. 8 Geo. I. c. 18. if any goods are put into any vessel to be carried beyond sea; or be brought from beyond sea, and unshipped to be landed, the duties not being paid, nor agreed for at the custom-house; the same shall be forfeited, one moiety to the king, the other to the seizer, &c. And by subsequent statutes, foreign goods taken in at sea, by any coasting vessel, &c. shall be forfeited, and treble value.

By stat. 9 Geo. II. c. 35. where three persons are assembled and armed with fire-arms, &c. to be assisting in the running of goods, they shall be guilty of felony and transported; and 50l. be paid for apprehending such offenders; also the like reward to any of them for discovering others. All persons two or more in company, found passing within five miles from the sea-coasts, with any horses, carts, &c. wherein are put above six pounds of tea, or five gallons of brandy, or other foreign goods of 30l. value, landed without entry, and not having permits, and who shall carry offensive weapons, &c. or assault any of the officers of the customs, shall be adjudged runners of goods, and be transported as
felons, and all the goods to be seized and forfeited: and suspect-
ed persons lurking near the coasts, not giving a good account of
themselves, may be sent by a justice to the house of correction
for a month; and informers to have 20s. for every offender so
taken.

If any person offers any tea, brandy, &c. to sale, without a per-
mit, the persons to whom offered may seize and carry it to the
next warehouse belonging to the customs or excise; and the
seizers shall have a third part, &c. And watermen, carmen, por-
ters, &c. in whose custody run goods are found, shall forfeit
trebble value, or be committed for three months.

Ships and vessels from foreign parts, having on board tea, or
brandy, rum, &c. in casks under sixty gallons, (except for the
use of seamen,) found at anchor, or hovering near any port, or
within two leagues (increased to eight leagues by subsequent acts)
of the shore, and not proceeding in their voyages, unless in cases
of unavoidable necessity, all such tea, &c. shall be forfeited.

Persons offering any bribe to officers of the customs, to connive
at the running of goods to forfeit 50l. and obstructing such offi-
cer in entering or searching ships, incurs a forfeiture of 100l.
And if an officer be wounded or beaten on board a ship, the offend-
ers to be transported, &c.

By stat. 19 Geo. II. c. 34. (made perpetual by 43 Geo. III. c.
157.) if any persons, to the number of three, or more, armed
with offensive weapons, shall be assembled in order to be aiding
in the illegal exportation of goods prohibited to be exported, or
the running uncustomed goods, or the illegal relanding any goods,
or rescuing the same, after seizure, from any officer, or from the
place where they shall be lodged, or in the rescuing any person
apprehended for any offence made felony by any act relating to
the customs or excise, or preventing the apprehending any person
guilty of any such offence; or in case any persons to the number
of three, or more, so armed, shall be so assisting; or, if any per-
son shall have his face blacked, or wear any mask, or other dis-
guise, when passing with such goods, or shall forcibly hinder,
obstruct, assault, oppose, or resist any officer of his majesty’s re-
venue, in seizing such goods, or shall maim, or dangerously wound
any such officer in his attempting to go on board any vessel, or
shoot at or dangerously wound any such person when on board,
and in the execution of his office, every such person shall be guilty
of felony, and suffer death. § 4.

On information on oath of any person’s being guilty of any of
the above offences, the justice may certify the information to one
of the secretaries of state, who is to lay it before his majesty;
whereupon his majesty may make an order, requiring the offender
to surrender himself in forty days after publication thereof in the
Gazette; and in default thereof, the order being published twice
in the Gazette, and proclaimed in two markets near where the
offence was committed, and a copy thereof affixed in some public
place there, the offender shall be attainted of felony, and suffer
death. § 2. Any person harbouring or aiding any such offender
after the time for his surrender expired, knowing him to have
been so required to surrender, being prosecuted within a year,
shall be transported for seven years. § 3. Offences made felony by this act, may be sued in any county. § 5.

If any officer, &c. in the seizing, &c. such goods; or in the endeavouring to apprehend any such offender, shall be beat, wounded, maimed, or killed, or the goods be rescued, the inhabitants of the town, lath or hundred, unless the offender be convicted within six months, shall forfeit 100l. to the executors of any officer killed; and pay damages to any officer beat, &c. not exceeding 40l. and for any goods rescued, not exceeding 200l. § 6. A reward of 500l. for apprehending any offender; a person wounded in apprehending an offender to have 50l. extraordinary, and the executors of a person killed, to have 100l. § 10.

By stat. 13 and 14 Car. II. c. 11. ships and vessels outward bound, are not to take in any goods, till the vessel, &c. is entered with the collectors of the customs; and before departure, the contents of the lading are to be brought in under the hands of the masters, &c. Also when ships arrive from beyond sea, the masters are to make a true entry upon oath, of the lading, goods, goods, ship, &c. under the penalty of 100l. And if any concealed goods are found after clearing for which the duties have not been paid, the master of the vessel shall be subject to the like penalty.

By 46 Geo. III. c. 89. for the port of London, (extended to the whole kingdom, by 47 Geo. III. c. 51) the fees of officers of the customs are abolished, and their time of attendance, &c. regulated.

By 46 Geo. III. c. 130. some salutary checks are imposed on the office of Receiver-General of the Customs, so as to prevent any danger of the misapplication of the immense revenues which pass through his hands. See further tit. Smuggling, Navigation.

CUSTOMS AND SERVICES, Belonging to the tenure of lands, are such as tenants owe unto their lords; which being withheld from the lord, he may have a writ of customs and services. See tit. Consuetudinis et Servitiis.

CUSTOMARY FREEHOLD. See tit. Copyhold.

CUSTOS BREV IUM. A principal clerk belonging to the court of Common Pleas, whose office is to receive and keep all the writs returnable in that court, and put them upon files, every return by itself; and to receive of the prothonotaries all the records of nisi prius, called the foestias; for they are first brought in by the clerk of assise of every circuit to the prothonotary, who enters the issue in the causes, to enter the judgment; and four days after the return thereof, the prothonotary enters the verdict and judgment thereupon, into the rolls of the court; whereupon he afterwards delivers them over to the custos brevium, who binds them into a bundle. He makes entry likewise of all writs of covenant, and the concord upon every fine; and maketh forth exemplifications, and copies of all writs and records in his office, and of all fines levied.

The fines, after they are engrossed, are divided between the custos brevium and the chirographer. The chirographer always keeps the writ of covenant and the note, and the custos brevium the concord and the foot of the fine; upon which foot of the fine the chirographer causeth the proclamations to be endorsed, when they are proclaimed. This officer is made by the king's letters patent: and in the court of King's Bench, there is also a
custos brevium et rotulorum, who fileth such writs as are in that court filed, and all warrants of attorney, &c. and whose business it is to make out the records of nisi prius, &c. See tit. Chirograver, Common Pleas.

Custos Placitorum Coronæ, An officer which seems to be the same with him we now call custos rotulorum. Bract. lib. 2. c. 5.

Custos Rotulorum, Keeper of the Rolls or records of the county. The officer who hath the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the peace of the quorum in the county where appointed, and usually some person of quality; but he is rather termed an officer or minister, than a judge. Lamb. Eiren. lib. 4. cap. 3. p. 373. By stat. 37 Hen. VIII. c. 1. (altered by stat. 3 & 4 Edw. VI. c. 1. but restored by 1 W. & M. c. 21.) the custos rotulorum in every county is appointed by a writing signed by the king's hand, which shall be a warrant to the lord chancellor to put him in commission: and he may execute his office by deputy; and hath power to appoint the clerk of the peace, &c. See tit. Clerk of the Peace. The custos rotulorum, two justices of the peace, and the clerk of the peace, are to enrol deeds of bargain and sale of lands of papists, &c. by 3 Geo. 1. cap. 18. See tit. Papists.

Custos of the Spiritualities. See Guardian.

Custos of the Temporalities. See Guardian.

CUT-PURSE. If any person clam et secrete, and without the knowledge of another, cut his purse, or pick his pocket, and steal from thence to the value of 12d. it is felony without benefit of clergy. Stat. 3 Eliz. c. 4. See tit. Felony.


CUTTER of the TALLIES, An officer in the Exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, &c. See tit. Exchequer.

CUVE, Is a French word, in English keever, from whence comes keever, a tub, or vat for brewing. Cowel.

CYCLAS, A long germent close upwards, and open or large below. See Matt. Paris, anno 1236.

CYDER, Is one of the many articles liable to excise duties. See tit. Excise.

CYNEBOTE. This word signifies the same with Cenegild. Blount.