tions divers kinds of it, viz. sables; which are a rich fur, of
colour between black and brown, the skin of a beast called a sable,
of bigness between a pole cat and an ordinary cat, bred in Russia
and Tartary. Lucerna, the skin of a beast of that name, near the
size of a wolf, in colour neither red nor brown, but between both;
and mingled with black spots; which are bred in Muscovy; and is
a very rich fur. Genets, a beast's skin so called, in bigness
between a cat and a weasel, nailed like a cat, and of that nature;
and of two kinds, black and gray, the black most precious,
which hath black spots upon it hardly to be seen; this beast is the
product of Spain. Foins, are of fashion like the sable, the top of the
fur is black, and the ground whitish; bred for the most part in
France. Marten is a beast very like the sable, the skin something
coarser, produced in England and Ireland, and all countries not
too cold; but the best are in Ireland. Besides these, there are the
fitch or pole cat; the calabar, a little beast, in bigness near a squirel;
miniver being the bellies of squirrels and shanks, or what is
called budge, &c. all of them furs of foreign countries, some
whereof make a large branch of their inland traffic.

FURST AND FONDONG, Sax.] Time to advise, or to take

FURTHERCOMING, See Forthcoming.

FURTUM, Theft or robbery of any kind.

FUSTIANS. No persons shall dress fustian with any other in-
strument than the broad sheers, under the penalty of 20s. And
the master and wardens of the company of cloth-workers in
London, &c. have power to search the workmanship of sheermen,
as well for fustian, as cloth. Stats. 11 Hen. VII. c. 27. 39 Eliz. c.
13. See this Dict. tit. Manufacturers.

FUSTICK, Wood brought from Barbadoes, Jamaica, &c. used
by dyers, mentioned in stat. 12 Car. II. c. 18. See tit. Navigation
Acts.

FYRDERINGA, FYRTHING, FYRDUNG, From Sax. fór-
derung; i. e. expeditionis apparatus. A going out to war or a mili-
tary expedition at the king's command; not going upon which,
when summoned, was punished by fine at the king's pleasure.
Leg. Hen. I. c. 10. Blount calls it an expedition; or a fault or
trespass for not going upon the same.

G.

GABEL, gabella, gablum, gablagium, in French gabelle, i. e.
vectigal.] This word hath the same signification among our an-
cient writers, as gabelle had formerly in France: it is a tax, but
hath been variously used; as for a rent, custom, service, &c. And
where it was a payment of rent, those who paid it were termed
gablatores. Domesday. Co. Litt. 213. It is by some authors dis-
tinguished from tribute; gabel being a tax on moveables, tribute
on immovable. When the word gabel was formerly mentioned
in France without any addition to it, it signified the tax on salt, though afterwards it was applied to all other taxes.

**GABLE-END**, gableum.] The head or extreme part of a house or building. *Paroch. Antig.* 286.


**GAFOLD-GILD**, Sax.] The payment of tribute or custom; it sometimes denotes usury.

**GAFOLD-LAND**, or **GAFUL-LAND**, terra censualis.] Land liable to taxes, and rented or let for rent. *Sax. Diet.*

**GAGE, Fr. Lat.** ‘Vadium.’ A pawn or pledge.

**GAINAGE, gainagium**, i.e. flavistri appetus, Fr. gainage, viz. lucrum.] The gain or profit of tilled or planted land, raised by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage, by the baser kind of soke-men or villeins. Gainage was only applied to arable land, when they that had it in occupation, had nothing thereof but the profit raised by it from their own labour, towards their sustenance, nor any other title but at the lord’s will; and gainer is used for a soke-man, that hath such land in occupation. *Bract. lib.* 1. c. 9. *Old Nat. Brev.* 117. The word gain is mentioned by *West. Symb. par.* 2. § 3, where he says land in demesne, but not in gain, &c. And in the stat. 51 Hen. III. st. 4. there are these words: “no man shall be distrained by his beasts, that gain the land.” In the statute of Magna Carta, c. 14. by gainage is meant no more than the plough-tackle, or implements of husbandry, without any respect to gain or profit; where it is said of the knight and freeholder, he shall be amerced salvo contenemento suo; the merchant or trader, salvo mercandisa suo; and the villein or countryman, salvo gainagio suo, &c. In which cases it was, that the merchant and husbandman should not be hindered, to the detriment of the public, or be undone by arbitrary fines; and the villein had his wainage, to the end that the plough might not stand still; for which reason the husbandmen at this day are allowed a like privilege by law, that their beasts of the plough are not, in many cases, liable to distress. See tit. Distress.

**GAINERY, Fr. gaignerie.]** Tillage, or the profit arising from it, or of the beasts employed therein. *Stat. Westm.* 1. cc. 16, 17.

**GALEA, A galley, or swift sailing ship. *Hoved.* p. 682, 692.**

**GALLETTI, According to Somner were viri galeati; but Knighton says they were Welshmen.**

**GALLIGASKINS, Wide hose or breeches, having their name from their use by the Gascoigns. *Dict.*
GALLI-HALFPENCE, A kind of coin, which, with suskins and doittkins, were forbidden by the stat. 3 Hen. V. c. 1. It is said they were brought into this kingdom by the Genoese merchants, who trading hither in galleys, lived commonly in a lane near Tower-street, and were called galley-men, landing their goods at Galley-key, and traded with their own small silver coin termed Galley halpfence. Stow's Survey, 137. See tit. Coin.

GALLIMAUFRY, A meal of coarse victuals, given to galley slaves. Dict.

GALLEVOLATIUM, (from gallus, a cock.) A cock-shoot, or cock glade. Dict.

GALOCHES, Fr.] A kind of shoe, worn by the Gauls in dirty weather, mentioned in the stat. 14 & 15 Hen. VIII. c. 9.

GAMBA, GAMBERIA, GAMBRIA, Fr. jambiere.] Military boots or defence for the legs. Dict.

GAMBESON, gambezonum.] A horseman's coat used in war, which covered the legs; or rather a quilted coat, cento, vestimentum ex coactili lanæ confectum, to put under the armour, to make it sit easy. Fleta, lib. 1. c. 24.

GAME, aucujia, from auctus, auctus, i.e. avium captitus.] Birds, or prey, got by fowling and hunting.

The GAME-LAWS are a system of positive regulations introduced and confirmed by several statutes: the provisions of which ascertain and establish certain qualifications of property enabling or allowing persons to kill game; and imposing penalties, as well on such qualified persons for irregularities in killing game, as on unqualified persons for hunting or killing game at all. These laws have been the subject of much discussion; they have been styled even from the bench, (see 1 Term Rep. 49,) an oppressive remnant of the ancient arbitrary forest laws, under which, in darker ages, the killing one of the king's deer was equally penal with murdering one of his subjects. See this Dict. tit. Forest, and 4 Comm. c. 33. II. 2. On the other hand, the object of them has been well defined to be, the preservation of the several species of these animals which would soon be extirpated by a general liberty; and the prevention of idleness and dissipation in husbandmen, artificers, and others of lower rank. 2 Comm. 411. b. 2. c. 27. Though when the learned Commentator states the other purposes of these laws to be the encouragement of agriculture, by giving every man an exclusive dominion over his own soil; and the preventing insurrections by disarming the bulk of the people, he seems rather incorrect; as, in the first of these instances, a freeholder of 99L per annum, or a leaseholder of 149L, whatever may be otherwise his exclusive dominion, has no right to kill game on his own estate; and the latter motive seems more invidiously stated than is usual with that great and liberal writer; since any person, though unqualified, may keep and use a gun, provided it is not for the purpose of destroying the game. Andr. 255. Stra. 496. 1098. 2 Term Rep. 18.

Our esteemed Commentator also advances a position, "that no man, but he who has a chase or free-warren by grant from the crown, or prescription, which supposes one, can justify hunting or sporting upon another man's soil; nor, indeed, in thorough strictness of common law, either hunting or sporting at all," even
on his own ground. 2 Comm. 416. b. 2. c. 27. In conformity to
which notion he considers the qualifications to kill game as more
properly exemptions from the penalties inflicted by statute law. 4
Comm. 175.

These conclusions he deduces from the two following princi­
ples; that the king, as ultimate proprietor of all the lands in En­
gland, has a right to take these beasts fer a nature on the lands of
any of his subjects; and that, being bona vacantia, they are the
king's by the right of his prerogative. It follows, then, that he
has power to grant these franchises to another, to enable him to
do the same; and that no person is therefore, by the game laws,
abridged of any right possessed previously to the making them.
The above is the substance of the reasoning of this celebrated
writer on this subject; but his premises, as well as his conclusion,
are very strenuously, and apparently successfully, combated by
his annotator, Mr. Christian, in his notes on the passages above
alluded to; in conformity to which, we have already styled the
game laws, "a system of positive regulations by the statute-law
of the kingdom."

Having said thus much on this topic, any further considera­
tions on the policy or propriety of these laws, would here be un­
becoming; strict they certainly are, and by many deemed severe;
a very general statement of them is here inserted, under the fol­
lowing heads:

I. The Qualifications to kill Game.
II. Penalties on qualified and unqualified Persons.
III. Of Treasures in Hunting.

For further matter connected with this title, see this Dict. un­
der the heads Forest, Chase, Park, Warren, Deer, Fish, Swans,
Pigeons, Black Act, and other apposite titles; and the stat. 13
Geo. III. c. 54. for preservation of the game in Scotland.

I. 1. The qualifications for killing game, to state them as
concisely as possible, are, 1. The having a freehold estate of
100l. fer annum; 2. A life-estate or leasehold for 99 years, of
150l. fer annum; 3. Being the son and heir apparent of an esquire
or of any person of superior degree; 4. Being the owner or
keeper of a forest, park, chase, or warren. 4 Comm. 175. All
other persons are termed unqualified.

The qualification by estate for killing game in the reign of
Richard II. was 40s. a year; in the reign of James I. it was ad­
vanced to 10l. a year, and after that, in some instances, to 40l. a
year; and at last, in the reign of Charles II. it was raised to 100l.
a year. Not that the laws became gradually more severe, but as
the value of money decreased, the qualification was raised in pro­
portion, the estate continuing nearly the same; for an estate of
40s. a year in the reign of Richard II. was not much inferior to an
estate of 100l. a year in the reign of Charles II. And the penalty
for destroying the game was even more severe than it is now.
Those ancient laws relating to the game are still in force, and are
generally enacted so to be by the subsequent statutes; it is there­
fore necessary, in order to have a thorough knowledge of this matter, to be acquainted with the provisions contained in them.

The first qualification relating to the game was by stat. 13 Rich. II. c. 13. by which it is enacted, that no layman which hath not lands or tenements of 40s. a year, nor clergyman if he be not advanced to 10l. a year, shall have or keep any grayhound, hound, nor other dog, to hunt; nor shall use ferrets, hays, nets, hare-pipes, nor cords, nor other engines, for to take or destroy hares nor conies, nor other gentlemen's game, on pain of a year's imprisonment. And see stat. 16 Geo. III. c. 30.

The next qualification by estate or degree to kill game, was by 1 Jac. I. c. 27. § 3. whereby it is enacted, that every person who shall keep any grayhound for coursing of deer or hare, or setting dog; or net to take pheasants or partridges, (except he be seised, in his own right, or the right of his wife, of 10l. a year estate of inheritance, or 30l. a year of a lives estate, or goods to the value of 200l. or be the son of a knight or a lord, or the son and heir apparent of an esquire,) and be thereof convicted, he shall be committed to gaol for three months, or pay 20s. to the use of the poor, and become bound with two sureties not to offend again in like manner.

The next qualification relates to deer and conies only, in stat. 3 Jac. I. c. 13. by which it is enacted, that if any person not having hereditaments of 40l. a year, or not worth in goods 200l. shall use any gun or bow to kill any deer or conies; or shall keep any buckstall, nets, or cony dogs; (except he have grounds enclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the value of 40s. a year; or keepers or warreners in their parks, warrens, or grounds;) in such case any person having lands or hereditaments of 100l. a year in fee, or for life, may take from such person to his own use for ever, such guns, bows, buckstalls, nets, and cony dogs.

The next qualification relates to pheasants and partridges only, and is as follows: every free warrener, lord of a manor, or freeholder seised in his own or his wife's right of 40l. a year of inheritance, or lives estate of 80l. or worth in goods 400l. may take pheasants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt Michaelmas and Christmas yearly. Stat. 7 Jac. I. c. 11. § 7.

The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in stat. 22 & 23 Car. II. c. 25. by which every person not having lands and tenements, or some other estate of inheritance (or for a term of life) in his own or his wife's right of 40l. a year of inheritance, or lives estate of 80l. or worth in goods 400l. may take pheasants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt Michaelmas and Christmas yearly. (other than the son and heir apparent of an esquire, or [of] other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the said parks, chases, forests, or warrens,) is declared to be a person by the laws of this realm, not allowed to have or keep for himself, or any other person, any guns, bows, grayhounds, setting dogs, ferrets, cony dogs, lurchers, hays, nets, lowbels, hare-
pipes, gins, snares, or other engines for the taking and killing of game. § 3.

Every person using any dog, gun, or engine for taking game, (except game-keepers; see that title,) shall deliver his name and place of abode to the clerk of the peace, and take out an annual certificate or license on a stamp of three guineas. But these certificates not to authorize unqualified persons to kill game. Stats. 25 Geo. III. c. 50. 31 Geo. III. c. 21.

One having an estate of 103l. a year, mortgaged a part of it of the value of 14l. a year, which being copyhold was surrendered to the mortgagee, who was thereupon admitted tenant, but never entered on the premises, the mortgagor continuing in possession and paying interest. It was held, that the mortgagor under these circumstances was not a qualified person. Cald. 230. Burn's Just. tit. Game IV. and see 8 Term Rep. K. B. 221. n.

An estate of the value of 150l. per annum, held by one in his own right under a lease for 99 years to trustees, if he and others should so long live, is a sufficient qualification. 8 Term Rep. K. B. 506.

The stat. 22 & 23 Car. II. c. 25. is loosely worded, and the stops are no part of the original statute. It has been determined that the clause relative to qualification by freehold estate, terminates with the words per annum; and that a life estate being of an inferior quality, ought to be coupled with leasehold, whereof 150l. a year is necessary to constitute a qualification. A clergyman's benefice is a life estate. Lowndes v. Lewis, Cl. Cald. 183.

In the case of Jones v. Smart, after much argument, it was decided, that a diploma conferring the degree of doctor of physic granted by either of the universities in Scotland, does not give a qualification to kill game under stat. 22 & 23 Car. II. c. 25. and that an esquire or other person of higher degree, as such, is not qualified under that act, though the son of an esquire, or the son of another person of higher degree is qualified. 1 Term Rep. 44. A doctor of physic of the English universities is not qualified as such. Id. 53.

N. The penalties, and regulations for recovering them, are so numerous under the various statutes, and sometimes, if not inconsistent, at least not easily reconcilable, that it is scarcely possible to methodise them in the limits prescribed by this work; or to avoid confusion and uncertainty in the recapitulation of them. Several are here enumerated. The exact student must consult the statute book, and Burn's Just. tit. Game; but must be careful not to trust too implicitly to the latter, or to his own interpretation of the former.

It may be observed, as a preliminary provision, that, by stat. 8 Geo. I. c. 19. where any person for any offence against any law in being, at the making of the said act for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same [before the end of the second term after the offence committed, 26 Geo. II. c. 2.] by action of debt, or on the case, bill, plaint, or information, in any court of record at Westminster, where-
in if he recovers he shall have double costs: provided that the offender shall not be prosecuted both ways; and in case of a second prosecution, he may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had. And by stat. 2 Geo. III. c. 19, reciting that a moiety of the penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence; and that actions for such penalties were attended with great costs; it is enacted, that it shall be lawful for any person to sue for the whole of such penalty entirely to his own use, and if he recovers he shall have double costs; such action to be brought within six months after the offence committed.

By 27 Geo. III. c. 29. for obviating the objections to the competency of witnesses, it is enacted, the inhabitants of any parish or place, shall be competent witnesses in all cases for proving the commission of any offence within the limits of such parish or place, although the penalty is given wholly or in part, for the benefit of the parish or the poor thereof, provided the penalty does not exceed 20l. See this Dict. title Evidence. That this act extends to prosecutions under the Game Laws, see 6 Term Rep. K. B. 177.

By stat. 33 Hen. VIII. c. 6. which is now considered as obsolete, if not superseded by subsequent statutes, shooting with a crossbow, hand-gun or demibake, by a person not having 100l. a year, incurs a penalty of 10l. Hand-guns are to be of a yard in length in the stock and gun; and in this old statute a power is given to qualified persons to seize and destroy unlawful guns. No person shall take pheasants or partridges with engines in another man's ground, without license, on pain of 10l. Stat. 11 Hen. VII. c. 17. If any person shall take or kill any pheasants or partridges, with any net in the night time, they shall forfe it 20s. for every pheasant, and 10s. for every partridge taken: and hunting with spaniels in standing corn, incurs a forfeiture of 40s. Stat. 23 Eliz. c. 10. Those who kill any pheasant, partridge, duck, heron, hare, or other game, are liable to a forfeiture of 20s. for every fowl and hare; and selling, or buying to sell again, any hare, pheasant, &c. the forfeiture is 10s. for each hare, or partridge, 20s. for a pheasant, 40s. for a deer. Stat. 1 Jac. I. c. 27.

Killing in the night: a hare, partridge, or pheasant, by a person qualified or unqualified, 5l. Stat. 9 Ann. c. 25.

Killing, &c. black game between December 10 and August 20, or red game between December 10 and August 12, or bastard between March 1 and September 1, first offence, from 20l. to 10l.: future offences from 30l. to 20l. 13 Geo. III. c. 55. In the new forest, black game is not to be killed before the 1st of September. 43 Geo. III. c. 112.

To kill, take, or destroy; or to use any gun, dog, snare, net, or engine, with intent to kill, &c. any hare, partridge, or other game, in the night, (viz. between 7 at night, and 6 in the morning, from October 12 to February 12; and between 9 and 4 from February 12 to October 12;) or in the day on Sunday or Christmas day; first offence, from 20l. to 10l. second offence, from 30l. to 20l. third and other offences, 50l. In case of a third offence, the party shall be bound in a recognisance to be tried at the sessions, and if the penalty is not paid, may be punished with from twelve to six months'
imprisonment. The information to be laid within one month. Penalty, half to the informer, and half to the poor. Stat. 13 Geo. III. c. 80.

Selling game; qualified or unqualified, 5l. Stat. 28 Geo. III. c. 12. Unqualified person selling or exposing to sale hare, partridge, pheasant, or other game, 5l. or three months’ imprisonment. The conviction to be within three months. If game is found in the shop, house or possession of any poulterer, salesman, fishmonger, cook, pastry-cook, not qualified to kill, this shall be deemed an exposing to sale. Stats. 5 Ann. c. 14, 9 Ann. c. 23, § 2. 28 Geo. III. c. 12.

Higlers, chapmen, carriers, inn-keepers, victuallers, &c. having in their custody hare, pheasant, partridge, heath-game, &c. excepted by some person qualified to kill game, shall forfeit 5l. to be levied by distress and sale of their goods, being proved by one witness, before a justice; and for want of distress shall be committed to the house of correction for three months: one moiety of the forfeiture to the informer, the other to the poor. And if any person shall drive wild fowls with nets, between the first day of July and the first of September, they shall forfeit 5s. for every fowl. Stats. 5 Ann. c. 14, 9 Ann. c. 25. Penalties for killing and destroying game, are recoverable not only before justices of peace by the several statutes; but also by action of debt, bill, plaint, or information, in any of his majesty’s courts at Westminster; and the plaintiff, if he recovers, shall likewise have double costs. Stat. 8 Geo. I. c. 19.

No certiorari shall be allowed to remove any conviction or other proceeding on the stat. 5 Ann. c. 14. into any court at Westminster, unless the party convicted become bound to the party prosecuting, with sufficient sureties, in the sum of 50l. to pay the prosecutor his costs and charges after the conviction confirmed, or a procedendo granted. Stat. 5 Ann. c. 14.

Persons convicted of entering warrens, in the night-time, and taking or killing conies there, or aiding or assisting therein, may be punished by transportation, or by whipping, fine or imprisonment. Persons convicted on this act, not liable to be convicted under any former act. This act does not extend to the destroying conies in the day-time, on the sea and river banks in the county of Lincoln, &c. No satisfaction to be made for damages occasioned by such last-mentioned entry, unless they exceed 1s. Stat. 5 Geo. III. c. 14.

Killing, carrying, selling, buying, or having in possession, partridge between February 12 [February 1, 39 Geo. III. c. 34.] and September 1; or pheasants between February 1 and October 1, by any person qualified or not qualified, 5l. Stat. 2 Geo. III. c. 19. By the acts 36 Geo. III. c. 39 & 54. the time for commencing to kill partridges in England and Scotland, was altered from the 1st to the 14th of September, but these were repealed by 39 Geo. III. c. 34. by which the time for killing partridges is limited from 1st September to 1st February, instead of 12th February, as under 2 Geo. III. Hawking, to catch such game between July 1 and August 31; 40s. for hawking; and 20s. for each partridge, &c. Stat. 7 Jac. II. c. 11. § 2.

By 48 Geo. III. c. 93. so much of stat. 1 Jac. I. c. 27. as subjected to any penalty, persons in England killing hares with any gun, cross bow, stone bow, or long bow, is repealed. By 48 Geo. III. c.
94. the provisions of a Scotch act of Anne, against shooting hares, is also repealed.

Keeping or using gray hounds, setting dogs, lurchers, hays, or engines to kill or destroy game, by one unqualified, 51. Stat. 5 Ann. c. 14. Keeping or using the above named, or any other dogs or engines for such purpose, 20s. or not less than 5s. Stat. 22 & 23 Car. II. c. 25. § 3.

Tracing a hare in the snow; by a person qualified or unqualified, 6s. 8d. Stat. 14 & 15 Hen. VIII. c. 10. Three months’ imprisonment or 20s. fine. Stat. 1 Jac. I. c. 27.

Using snares for hares; by one qualified, or unqualified; one month’s imprisonment or 10s. fine. Stat. 22 & 23 Car. II. c. 25. § 6. Destroying game with engines; 20s. for each pheasant, &c. Stat. 1 Jac. I. c. 27.

A justice of peace, or lord of a manor, within his manor, may take away game out of the possession of an unqualified person. Stat. 5 Ann. c. 14. § 4. Unqualified persons having game in their possession and not giving an account how they came by it, shall forfeit from 20s. to 5s. or suffer confinement to hard labour for from one month to ten days. Stat. 4 & 5 W. & M. c. 23. § 3.

Persons destroying, buying, or selling game, informing against others buying, or selling game, or offering so to do, to be indemnified. Stat. 5 Ann. c. 14. § 3.

Using dogs, guns, or engines for taking or killing game, without a certificate, 20l. Refusing to produce certificate, or to tell his true name and place of abode to a certificated person, 50l. Stat. 25 Geo. III. c. 50.

By the yearly mutiny acts, if any officer or soldier shall, without leave of the lord of the manor under his hand and seal, destroy any hare, cony, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty’s game, and be convicted thereof, on oath of one witness, before one justice; every officer so offending shall forfeit 5l. to the poor; and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 30s. in like manner. And if upon conviction by the justices, and demand made thereof by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission. Burn’s Just.

By stat. 4 & 5 W. III. c. 23. § 10. it is provided that whereas great mischiefs do ensue by inferior tradesmen, apprentices and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing, and other game, to the ruin of themselves and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or fowl, (unless in company with the master of such apprentice duly qualified,) he shall not only be subject to other penalties, (according to the various statutes,) but if he be prosecuted for trespass in coming on any person’s lands, and be found guilty, the plaintiff shall not only recover damages against him, but also full costs.

By 39 & 40 Geo. III. c. 50. persons to the number of two or more, found in any forest, &c. between the hours of eight at night, and six in the morning, from the 1st of October to the 1st of February; or between the hours of ten at night and four in the morning, from the 1st February and 1st October in every year, having any gun or
An unqualified person may go out to beat the hedges, bushes, &c. with a qualified person; and to see the game pursued or destroyed; provided the unqualified person has no gun or other engine with him for the destruction of the game; without being subject to any penalty. R. v. Newman, Lofft. 178. Burn's Just. ut. Game IV.

Two persons, using a greyhound together to destroy game cannot be convicted in separate penalties under stat. 5 Ann. c. 14. § 4, for it is only one offence, and, the magistrate should only convict them in one penalty. 4 Term Rep. 809. So if a man not qualified, goes a hunting and kills never so many hares on the same day, it is but one offence, and the statute imposes the penalty for the keeping and using the dogs and engines, and not for killing the hares. 10 Mod. 26. Com. Rep. 274. and Rose's notes, p. 278. Comfz. 646.

In an action, qui tam, on the game laws, it is sufficient to say that a person is not qualified generally, without showing that he had not 100 l. a year, or any other estate which makes a qualification. 2 Com. Rep. 522. But on convictions it is necessary that all the qualifications should be negatively set out in the information; and it must be averred that the defendant had not the particular qualifications mentioned in the stat. 22 & 23 Car. II. c. 25, because it must be made out before the justice that he had no such qualification as the law requires; and therefore the justice ought to return that he had no manner of qualification before he can convict the defendant. See 1 Burr. 148. 2 Lord Raym. 1415. 1 Stra. 66. Doug. 345. But the evidence need not (and indeed how can it) negative every specific qualification. 1 Term Rep. 125.

A person was convicted before a justice of peace upon the statute, for keeping a gun, not having 100 l. per annum. and the conviction being removed into B. R. was quashed, for not saying when the defendant had not 100 l. a year; for it might be he had such estate at the time when he kept the gun, though not at the conviction, and the offence and time ought to be certainly alleged. 3 Mod. 280.

To convict an offender, there must be an information on oath, and a summons to appear. 2 Barn. B. R. 34. 27. 101. The informer must be sworn and examined in the presence of the defendant; and it is not sufficient if his deposition previously made is read over in the defendant's presence. 1 Term Rep. 125. Or he may be convicted on his own confession before a justice. Stra. 546. The informer cannot be a witness. Lord Raym. 1545. Andr. 240. These offences, where the justices have summary jurisdiction, are not indictable. Stra. 679.

In an action of debt on stat. 5 Ann. c. 14, for keeping and using a dog to kill the game, it is necessary to show what sort of a dog it was. 2 Com. Rep. 575. The word hound is not sufficiently descriptive, not being mentioned in the statute. 2 Stra. 1126. See Rose's Com. Rep. 577. in n. Keeping a forbidden dog is penal, though he is not used; keeping and using are distinct offences. Stra. 496. Cald. 175.
On an information for keeping and using a dog, and also a gun on the same day, the defendant can only be convicted in one penalty. 7 Term Rep. K. B. 152.

It seems that an apothecary is not an inferior tradesman within the stat. 4 & 5 Wm. III. c. 23. § 10, though the word inferior seems applicable rather to the man than to the trade; so that two persons of the same trade may be, one superior, and the other inferior. 2 Wils. 70. Burn's Just. tit. Game IV. A huntsman going out with hounds without his master, is not a dissolve person within the meaning of that act. He may however be a trespasser; but if the damages recovered against him are under 40s. he shall not be liable to full costs. 2 Black. Rep. 900.

III. ONE GENERAL REMARK on this subject is the most forcible statement of the greatest hardship imposed by the game laws; and which might probably be remedied without great inconvenience. Though a freeholder of less than 100l. a year, &c. is forbidden to kill a partridge, even upon his own estate, yet nobody else (not even the lord of the manor, unless he hath a grant of free warren) can do it without committing a trespass and subjecting himself to an action. 4 Comm. c. 33. II. 2.

If a man starts any game within his own grounds, and follows it into another's, and kills it there, the property remains in himself. 11 Mod. 75. And this is grounded on reason and natural justice; for the property consists in the possession, which possession commences by the finding it in his own liberty, and is continued by the immediate pursuit. And so if a stranger starts game in one man's chase or free warren, and hunts it into another liberty, the property continues in the owner of the chase or warren, this property arising from privilege, and not being changed by the act of a mere stranger. Or if a man starts game on another's private grounds and kills it there, the property belongs to him in whose ground it was killed; because it was also started there, the property arising ratione soli. Lord Raym. 251. Whereas if, after being started there, it is killed in the grounds of a third person, the property belongs not to the owner of the first ground, because the property is local; nor yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners. Lord Raym. 16. 7 Mod. 18. See 2 Comm. 419. and Mr. Christian's note there; in which he observes, that these distinctions never could have existed, if the doctrine were true, that all the game was the property of the king, for in that case the maxim in equali jure potior est conditio possidentis, must have prevailed. 2 Comm. c. 27. II. ad fin.

The common law allows the hunting of foxes, and other ravenous beasts of prey, in the ground of another person; though a man may not dig and break the ground to unearth them, without license; if he doth, the owner of the ground may maintain an action of trespass for it. 2 Roll. 538. Cro. Jac. 321. An action was brought against a person for entering another man's warren: the defendant pleaded that there was a pheasant on his land, and his hawk pursued it into the plaintiff's ground; it was resolved that this doth not amount to a sufficient justification, for in this case he
GAME-KEEPER.

can only follow his hawk, and not take the game. Popili. 162. Though it is said to be otherwise where the soil of the plaintiff is not a warren. 2 Roll. Abr. 567. If a man in hunting starts a hare upon his own ground, and follows and kills it on the ground of another, yet still the hare is his own, because of the fresh suit; but if a man starts a hare upon another person's ground, and hunts and kills it there, he is subject to an action. Cro. Car. 553.

If a person hunt upon the ground of another, such other person cannot justify killing of his dogs; as appears by 2 Roll. Abr. 567. But see Cro. Jac. 44. contra, and 3 Lev. 28.

A person may justify a trespass in following a fox with hounds over the grounds of another, if he do no more than is necessary to kill the fox; because foxes are noxious animals. 1 Term Ref. 334. See Nicholas v. Badger, 2 Roll. Abr. 558. B. p. 2. S. P.

GAME-KEEPER.] One who has the care of keeping and preserving the game, being appointed thereto by a lord of a manor.

Game-keepers were first introduced by the present qualification act, 22 & 23 Car. II. c. 25. and various regulations have been made respecting them by subsequent statutes. As all these statutes seem to be in force in some degree at present, and as it is a subject interesting to sportsmen, a short abstract of them, according to their chronology, will be acceptable.

The stat. 22 & 23 Car. II. c. 25. authorizes lords of manors of the degree of an esquire to appoint, under their hands and seals, game-keepers, who shall have power within the manor to seize guns, dogs, nets, and engines, kept by unqualified persons, to destroy game; and by a warrant from a justice of peace, to search in the day time the houses of unqualified persons upon good ground of suspicion, and to seize for the use of the lord, or to destroy guns, dogs, nets, &c. kept for the destruction of the game. This statute does not limit the number of those to whom such power and authority may be given. The stat. 4 & 5 W. & M. c. 23, § 4. gives to these game-keepers the same protection in resisting offenders in the night-time, as the law affords to the keepers of ancient parks. The stat. 5 Ann. c. 14. § 4. permits any lord or lady of a manor to empower game-keepers to kill game within the manor.

The stat. 9 Ann. c. 28. § 1. enacts, that no lord or lady of a manor shall appoint more than one game-keeper, within one manor, with the power of killing game, and his name shall be entered with the clerk of the peace. And by stat. 3 Geo. I. c. 11. the game-keeper who shall have the power to kill game within the manor, shall either be a qualified person, a domestic servant, or a person employed to kill for the sole use of the lord or lady of the manor. The only use of appointing a qualified person a game-keeper is, to give him the power, as before described, of seizing the dogs, guns, and other engines of unqualified persons within the manor.

By stat. 3 Geo. I. c. 11. it was enacted, that no lord of a manor should make or appoint any person to be a game-keeper, with power to take and kill hare, pheasant, partridge, or other game, unless such person were qualified by law so to do, or were truly and properly a servant to the said lord, or immediately employed to take and kill game for the sole use or benefit of the said lord;
and any person not qualified, or not employed as aforesaid, who, under pretence of any qualification from any lord of a manor, should take or kill any hare, &c. or keep or use any dogs to kill and destroy the game, was made liable to all forfeitures, pains and penalties, inflicted by the stats. 5 Ann. c. 14. 9 Ann. c. 25.

By 48 Geo. III. c. 93, this act 3 Geo. I. c. 11, is repealed, and it is enacted, that any lord or lady of any manor may appoint and depute any person whatever, whether acting as game-keeper to any other person or not, or whether retained and paid for as the servant of any other person or not, or whether a qualified person or not, to be a game-keeper to any such manor, with authority to such person to kill game there for his own use, or for the use of any person, to be specified in such deputation, whether qualified or not.

Deputations of game-keepers were, under several acts, liable to a stamp duty; but by 48 Geo. III. c. 55, the duties on such certificates were transferred to the commissioners of taxes.

Where game-keepers ought to have a justice of peace's warrant, to take away guns from unqualified persons, see Comb. 305.

By stat. 5 Ann. c. 14, § 4, any justice of peace may within his county, take either game, or dogs, and instruments kept for the destruction of game, from unqualified persons, and retain them for his own use. But it has been decided, that though game-keepers are liable to the same penalties as unqualified persons for killing game out of their respective manors, yet no one is justified in taking from them their dogs and guns when they are out of the limits of their lord's manor, even in pursuit of game. 2 Wils. 387.

No lord of a manor can grant to another person the power of appointing a game-keeper, without a conveyance also of the manor. A right to a manor cannot be tried in a penal action under the game laws. 5 Term. Rep. 19. This power of appointing a game-keeper has, no doubt, introduced the very erroneous notion, that a lord of a manor has a peculiar right to the game, superior to that of any other land-owner within the manor, although the estate of such land-owner be a sufficient qualification to entitle him to follow the amusements of a sportsman.

Game-keepers, we have seen, were first created by stat. 22 & 23 Car. II. c. 25; by the preceding qualification act, 7 Jac. I. c. 11, their power was given to the constable and headborough; and it seems that it was transferred to the persons appointed by lords of manors for no other reason than because it was probable they were the most interested in the preservation of the game, by having in general the most extensive range to pursue it in, viz. upon their own estates and wastes. And the stat. 22 & 23 Car. II. c. 25, appears to be the first instance, either in our statutes, reports, or law treatises, in which lords of manors are distinguished from their land-owners with regard to the game. 2 Comm. 418. n.

APPOINTMENT OF A GAME-KEEPER BY A LORD OF A MANOR.

TO all people to whom these presents shall come, I. T. lord A. lord of the manor of B. in the county of &c. have by virtue of several acts of parliament lately made for the preservation of the game.
game) nominated, authorized and appointed, and by these presents
do nominate, authorize, and appoint E. D. of, &c. to be my game-
keeper, of and within my manor, &c., in the county of, &c. aforesaid,
with full power and authority, according to the direction of
the statutes in that case made, to kill game for my use; and to take
and seize all such guns, gray hounds, setting dogs, and other dogs,
ferrets, trammels, hays, or other nets, snares or engines, for the
taking, killing or destroying of hares, pheasants, partridges, or other
game, as within the said manor of, &c. and the precincts thereof;
shall be kept or used by any person or persons not legally qualified
to do the same; and farther to act and do all and every thing and
things which belong to the office of a game-keeper, pursuant to
the direction of the said acts of parliament, during my will and pleasure;
for which this shall be his sufficient warrant. Given under my hand
and seal, &c.

GAMING, or GAMES UNLAWFUL, ludì vani. The play-
ing at tables, dice, cards, &c. King Edw. III. in the 39th year
of his reign, enjoined the exercise of shooting and of artillery,
and forbade the casting of the bar, the hand and foot-balls, cock-
fighting, et alios ludos vanos; but no effect followed from it, till
they were some of them forbidden by act of parliament. 11 Rep.
87. In the 28th of Hen. VIII. proclamation was made against all
unlawful games, and commissions awarded into all the counties of
England, for the execution thereof; so that in all places, tables,
dice, cards and bowls, were taken and burnt. Stow's Annals, 527.
At length, by stat. 33 Hen. VIII. c. 9. the legislature interfered;
and justices of peace, and head officers in corporations, are by
that act empowered to enter houses suspected of unlawful games;
and to arrest and imprison the gamesters, till they give security
not to play for the future; also the persons keeping unlawful
gaming-houses may be committed by a justice, until they find
sureties not to keep such houses, who shall forfeit 40s. and the
gamesters 6s. 8d. a time; and if the king license the keeping of

gaming-houses, it is against law, and void. The same statute
also provides, that no artificer, apprentice, labourer, or servant,
shall play at any tables, tennis, dice, cards, bowls, &c. out of
Christmas-time, on pain of 20s. for every offence; and at Christ-
mas, they are to play in their master's house or presence; but any
nobleman or gentleman, having 100l. per annum estate, may license
his servants or family to play within the precincts of his house or
garden, at cards, dice, tables, or other games, as well among
themselves, as others repairing thereto. This act is to be proclai-
med once a quarter in every market town by the respective mayors,
&c. and at every assizes and sessions.

A person was convicted of keeping a cock-pit; and the court
resolved it to be an unlawful game, within the stat. 33 Hen. VIII.
c. 9. and fined him 40s. a day. Keb. 310. But if the guests in an
inn or tavern, call for a pair of dice, or tables, and for their recrea-
tion play with them, or if any neighbours play with bowls, for
their recreation, or the like, these are not within the statute; if
the house be not kept for gaming, nor the gaming be for lucre or gain.
Dalt. c. 46.

By the stat. 16 Car. II. c. 7. if any person, of what degree so-
ever, shall by fraud, deceit, or unlawful device, in playing at cards, dice, tables, bowls, cock-fighting, horse-races, foot-races, or other games or pastimes, or bearing a share in the stakes, betting, &c. win any money, or valuable thing, he shall forfeit treble the value, one moiety to the crown, and the other to the party grieved, prosecution being in six months; in default whereof, the last-mentioned moiety is to go to such other person as will prosecute within one year, &c. And by the said statute if any person shall play at cards, &c. other than for ready money; or bet, and shall lose above 10l. at one time or meeting, upon tick, (i. e. ticket,) he shall not be bound to make it good, but the contract or tick and security shall be void, and the winner shall forfeit treble the value.

By the stat. 9 Ann. cap. 14. all notes, bills, bonds, judgments, mortgages, or other securities, given for money won by playing at cards, dice, tables, tennis, bowls, or other games; or by betting on the sides of such as play at any of those games, or for repayment of any money knowingly lent for such gaming or betting, shall be void: And where lands are granted by such mortgages or securities, they shall go to the next person, who ought to have the same as if the grantor were actually dead, and the grants had been made to the person so entitled after the death of the person so encumbering the same. If any person playing at cards, dice, or other game, or betting, shall lose the value of 10l. at one time to one or more persons, and shall pay the money, he may recover the money lost by action of debt, within three months afterwards; and if the loser do not sue, any other person may do it, and recover the same, and treble the value with costs, one moiety to the prosecutor, and the other to the poor: and the person prosecuted shall answer upon oath, on preferring a bill to discover what sums he hath won. Persons by fraud or ill practice, in playing at cards, dice, or by bearing a share in the stakes, &c. or by betting, winning any sum above 10l. shall forfeit five times the value of the thing won, and suffer such infamy and corporal punishment, as in cases of wilful perjury, being convicted thereof on indictment or information; and the penalty shall be recovered by action, by such person as will sue for the same. And if any one shall assault and beat, or challenge to fight any other person, on account of money won by gaming, upon conviction thereof, he shall forfeit all his goods, and suffer imprisonment for two years. Also by this statute, any two or more justices of the peace, may cause such persons to be brought before them as they suspect to have no visible estates, &c. to maintain them; and if they do not make it appear that the principal part of their expenses is got by other means than gaming, the justices shall require securities for their good behaviour for a twelvemonth, and in default of such security, commit them to prison until they find it: and playing or betting during the time to the value of 20s. shall be deemed a breach of good behaviour, and a forfeiture of their recognisances.

And if the jury on an indictment on the statute of 9 Ann. e. 14. find that the assault was on account of money won at play, the case is within the statute, though the assault were committed at a subsequent time and place, and after abusive language between the parties in respect of such money won. 4 East's Rep. 174.

Where it shall be proved before any justice of peace, that any
person hath used unlawful games contrary to stat. 33 Hen. VIII. c. 9; the justice may commit such offender to prison, till he enter into a recognisance that he shall not from thenceforth, at any time to come, play at any unlawful game. Stat. 2 Geo. II. cap. 28. For better preventing excessive and deceitful gaming; the ace of hearts, faron, basket, and hazard, are declared to be lotteries by cards or dice; and persons setting up these games are liable to the penalty of 200L. And every person who shall be an adventurer, or play or stake therein, forfeits 50L. Likewise the sale of any house, plate, &c. in the way of lottery by cards, &c. is adjudged void as to the winner, and the things to be forfeited to any person that will sue for the same. 12 Geo. II. cap. 28. The game of passage and all other games with one or more dice, or any thing in that nature, having figures or numbers thereon, (back-gammon and games now played with those tables only excepted,) shall be deemed games or lotteries by dice, within the stat. 12 Geo. II. c. 28. And such as keep any office or table for the said game, &c. or play thereat, are subject to the penalties in that act. Stat. 13 Geo. II. cap. 19.

Playing at, or keeping any house or place for playing at the game of roulet, otherwise roly-poly, or any other game with cards or dice already prohibited, incurs the penalties in stat. 12 Geo. II. cap. 28. Persons losing 10L. and paying the same, may sue the winner, and recover the same with costs: and on a bill in equity the court may decree the same to be paid. The persons who have jurisdiction to determine informations on the statutes against gaming, may summon witnesses, who, on refusing to appear and give evidence, shall forfeit 50L. No privilege of parliament shall be allowed on prosecutions for keeping a gaming-house. Persons losing or winning 10L. at one time, or 20L. in twenty-four hours, may be indicted and fined five times the value to be paid to the poor. Stat. 18 Geo. II. c. 34.

By stat. 30 Geo. I. c. 24, if any person licensed to sell liquors shall knowingly suffer any gaming in their house or grounds, with cards, dice, draughts, shuffle-boards, mississippi, or billiard-tables, skittles, or ninepins, by any journeymen, labourers, servants, or apprentices, he shall forfeit 40s. for the first, and 10L. for every subsequent, offence; three-fourths to the poor, and one-fourth to the informer. Any journeyman, &c. so gaming, shall forfeit from 20s. to 5s. No certiorari to be granted; but appeal given to the next sessions; and persons punished by this act, not to be punished by any other law.

See the stat. 25 Geo. II. c. 36. against unlicensed houses for music, dancing, &c. the keeper of which shall forfeit 100L. and further, this Dect, tit. Bawdy-house, Play-houses, and 1 Salk. 344, 345. 5 Mod. 13.  Mod. Ca. 128.

From the above statutes and the several determinations in the books, it may be observed, that at common law, the playing at cards, dice, &c. when practised innocently, and as a recreation, was not unlawful. 2 Vent. 175. But common gaming-houses were always considered as nuisances in the eye of the law. 1 Hawk. P. C. c. 75. § 6. and as the practice was found to encourage idleness and debauchery, the stat. 33 Hen. VIII. c. 9, was passed to restrain it among the inferior sort of people. And on this statute Noy had
a writ to remove bowling-allies as common nuisances. 3 Krb. 465.
Gentlemen were however still left free to pursue their pleasure in this way, until the stat. 16 Car. II. c. 7. the preamble of which states the inconveniences to be remedied as arising from the immoderate use of gaming. The provisions of this statute, however, were soon found to be insufficient; and the stat. 9 Ann. c. 14. was made for the more effectually suppressing this pernicious vice. The subsequent statutes, already enumerated above, superadded further penalties to restrain this fashionable crime: which may show, says Blackstone, that our laws against gaming are not so inefficient, as ourselves and our magistrates in putting those laws in execution. 3 Comm. 173.

Betting on horse-races, is within the general words of the stat. 9 Ann. c. 14. (other game whatsoever;) 2 Stra. 1159. 2 Wils. 309. See Black. Rep. 706. and this Dict. tit. Horse-races. So is cricket. 1 Wils. part 1. p. 220. So is a foot-race: and a foot-man running against time is a foot-race: but to bring it within the statute, it must appear that a person was engaged in such game, and a wager was laid on his side. 2 Wils. 36. But on a wager between two persons on the lives of their two fathers, the winner has been allowed to maintain an action. Burr. 2802.

Where two persons played at all fours for two guineas a game, from Monday evening to Tuesday evening, without any interruption, except for an hour or two at dinner, the plaintiff lost fourteen guineas, for which he brought his action on stat. 9 Ann. c. 14. and this was held to be one sitting. One time in the act means one stake or bet; and is distinguished from one sitting, which means a course of play where the company never parts, though the party may not be actually gaming the whole time. 2 Black. Rep. 1226.

On a conviction for gaming under stat. 9 Ann. c. 14. the judgment is only that the defendant is convicted: and the court cannot set a fine of five times the value, but a new action must be brought upon that judgment for the forfeiture. 2 Stra. 1048.

The statutes against gaming have rendered it now less frequently necessary to resort to courts of equity, which appear to have often interposed, prior to the stat. 16 Car. II. for the purpose of restraining the winner from proceeding at law against the loser upon the security which he had obtained for the money won. See 14 Vin. Abr. 8. pl. 1. 3. 2 Eq. Abr. 184. Chan. Rep. 47.

It is observable that the stat. 16 Car. II. declares that the contract for money lost at play, and all securities given for it, shall be utterly void; but the stat. 9 Ann. confines itself to the securities for money won or lent at play. Upon which it has been determined that though both the security and the contract are void as to money won at play, only the security is void as to money lent at play: and that the contract remains, and the lender may maintain his action for it. 2 Burr. 1077. 2 Stra. 1249.

The statutes having declared the security void, a bill of exchange given for money won at play, cannot be recovered upon, even by an endorsee for valuable consideration, and without notice; the original vice of the consideration affecting the security, even in the hands of an innocent and bona fide holder. 2 Stra. 1155. Doug1. 636. 736. And it seems, that if money be paid on such se-
GAOL AND GAOLER.

GAOLO, Fr. geole, i.e. caveola, a cage for birds; used metaphorically for a prison.] A strong place or house for keeping of debtors, &c. and wherein a man is restrained of his liberty to answer an offence done against the laws: every county hath two gaols, one for debtors, which may be any house where the sheriff pleases; the other for the peace and matters of the crown, which is the county gaol.

I. Of Erecting and Repairing Gaols.
II. To what Place, and at whose Charge, Offenders are to be committed; and how they are to be treated and regulated.
III. Of the Offence of breaking Gaol.

I. Gaols are of such universal concern to the public, that none can be erected by any less authority than an act of parliament.

2 Inst. 705. All prisons and gaols belong to the king, although the subject may have the custody or keeping of them. 2 Inst. 100. 589. It is said, that none can claim a prison as a franchise, unless they have also a gaol delivery; and that therefore the dean and chapter of Westminster, though they have the custody of the Gatehouse prison, yet as they have no gaol delivery, must send a calendar of the prisoners to Newgate. 1 Salk. 343. 7 Mod. 31.

By stat. 14 Edw. III. cap. 10. it is enacted, that the sheriffs shall have the custody of the gaols as before, and shall put in under-keepers for whom they will answer. This statute is confirmed by stat. 19 Hen. VII. cap. 10.

Although divers lords of liberties have the custody of prisons, and some in fee, yet the prison itself is the king's, pro bono publico; and therefore it is to be repaired at the common charge. 2 Inst. 589.

The lord of a franchise is not as such bound to repair a gaol within it, but he may be subject to such a charge by immemorial usage. R. v. Exeter, (Earl,) 6 Term Rep. K. B. 373.

The justices, or the greater number of them within the limits of their commission, upon presentment of the grand jury at the assises, (or sessions, stat. 12 Geo. II. c. 29. § 13.) of the insufficiency or inconveniency of the county gaol, may contract with any person for the building, finishing or repairing the same. Stats. 11 & 12 Wm. III. c. 19. § 1, 2. The expense thereof to be paid by the treasurer out of the general county rates, stat. 12 Geo. II. § 29. But this (by said stat. 11 & 12 Wm. III.) not to extend to
gaols held by inheritance, nor to charge any persons in any town
or liberty which have common gaols for felons, and commissioners
of assise or gaol delivery, with any assessment to the making the
common gaol of the shire.

By stat. 24 Geo. III. st. 2. c. 54. the justices, at their general
quarter sessions, or the major part of them, not being less
than seven, on presentment made by the grand jury, of the insuffi-
ciency, inconvenience, or want of repair of the gaol, may con-
tract for the building, repairing, or enlarging the same: or for
erecting any new gaol upon any site within two miles from that
of the old gaol; and in that case for the selling the old gaol, and
the site thereof, and the materials and land belonging thereto.
In certain cases also justices may build a new gaol in any part of
the county; which is always to be divided into separate apartments
with divers conveniences for the benefit of the health and morals of
the prisoners, which are, enforced by stat. 31 Geo. III. c. 46.

II. Justices of peace may not commit felons, and other crim-
inals to the counters in London, or other prisons, but the common
gaols; for legally they cannot imprison any where but in the com-
mon gaol. Co. Litt. 9. 119. But the house of correction, and
the counters of the sheriffs of London, are the common prisons for
offenders for the breach of the peace, &c.

By stat. 5 Hen. IV. cap. 10. it is enacted, "That none shall be
imprisoned by any justice of the peace, but only in the common gaol,
saying to lords and others, who have gaols, their franchise in this
case." This statute is only declaratory of the common law. 2
Inst. 43.

But the court of king's bench may commit to any prison in the
kingdom which they shall think most proper, and the offender so
committed or condemned to imprisonment cannot be removed or
bailed by any other court. Moor, 666. pl. 913. 1 Sid. 145. See
stat. 31 Car. II. c. 2. § 12.

All the prisons in the kingdom are the king's prisons. The
house of correction for the county of Middlesex, built under stat.
26 Geo. III. c. 55. and adapted to the solitary and separate confine-
ment of felons, according to the directions of 22 Geo. III. c. 64.
and other acts, is a legal prison for the safe custody of persons
charged with high treason. 8 Term Rep. K. B. 172.

As prisoners ought to be committed at first to the proper pri-
son, so ought they not to be removed from thence, except in some
special cases. To which purpose, by the said stat. 31 Car. II. c.
2. sect. 9. it is enacted, "That if any subject of this realm shall
be committed to any prison, or in custody of any officer, for any
criminal or supposed criminal matter; he shall not be removed into
the custody of any other; unless it be by a habeas corpus, or other
legal writ; or where the prisoner is delivered to the constable, &c.
to be carried to some common gaol; or where any person is sent
by order of any judge of assise, or justice of the peace, to any com-
mon work-house, or house of correction; or where the prisoner is
removed from one prison to another within the same county, in
order to a trial or discharge by due course of law; or in case of a
sudden fire or infection, or other necessity; upon pain that he
who makes out, signs, or countersigns, or obeys, or executes such
warrant, shall forfeit to the party grieved one hundred pounds for the first offence, two hundred pounds for the second,” &c. See stat. 19 Car. II. cap. 4. for empowering justices of the peace to remove prisoners in case of infection.

By stat. 11 & 12 Wm. III. c. 10. all murderers and felons shall be imprisoned in the common gaol, and the sheriff shall have the keeping of the gaol.

Offenders committed to prison, are to bear the charges of their conveying to gaol; or, on refusal, their goods shall be sold for that purpose, by virtue of a justice of peace’s warrant; and if they have no goods, a tax is to be made by constables, &c. on the inhabitants of the parish where the offenders were apprehended.

Stat. 3 Jac. I. cap. 10. And by stat. 27 Geo. II. c. 3. the expense of conveying poor offenders to gaol, or to the house of correction, shall be paid by the treasurer of the county, except in Middlesex.

For the relief of prisoners in gaols, justices of peace in sessions have power to tax every parish in the county, not exceeding 6s. 8d. per week, leviable by constables, and distributed by collectors, &c. See also stat. 12 Car. II. c. 29. And by stat. 31 Geo. III. c. 46, the justices in sessions may order such sums as they shall think necessary to be paid out of the county rates towards assisting such prisoners as are not able to work, or being able, cannot procure employment sufficient to maintain themselves in food and raiment, and not otherwise provided for by law.

Various provisions have been, from time to time, made for the relief of poor prisoners, and setting them to work. By stat. 22 & 23 Car. II. c. 20. it is enacted, “That all sheriffs, gaolers, &c. shall permit their prisoners to send for necessary food where they please, nor demand any greater fee for their commitment or discharge, than what is allowable.” Also it is thereby directed, that an inquiry be made into all charities given for the benefit of poor prisoners.

By stat. 29 Geo. III. c. 67. every goaler is, on forfeiture, (of 50l. if a county goaler, and 20l. if another,) to deliver in at the Michaelmas sessions yearly, a certificate stating how far the provisions made by various statutes for the benefit of prisoners, are observed in his gaol. The following are the statutes to be particularized in such certificate:

“ The stat. 22 & 23 Car. II. c. 20. enacts, that felons and debtors shall be kept separate. Stat. 24 Geo. II. c. 40. enacts, that no gaoler shall sell, lend, use, give away, or suffer any spirituous liquors within any gaol; and that a copy of the clauses prohibiting thereof shall be hung up in the gaol. Stat. 32 Geo. II. c. 28. enacts, the clerk of the peace shall cause a list of the fees payable by debtors, and the rules and orders for the government of gaols and prisons, to be hung up in the court where the assizes or sessions are held, and send another copy to the goaler, who shall cause the same to be hung up in a conspicuous part of the gaol. Stat. 13 Geo. III. c. 58. enacts, that clergymen may be provided to officiate in gaols.

Stat. 14 Geo. III. c. 20. enacts, that persons acquitted, or discharged on proclamation for want of prosecution, shall be discharged immediately in open court and without fee. Stat. 14 Geo. III. c. 59. enacts, that the walls and ceilings of cells in gaols shall be scraped and white-washed, at least once a year: that the cells shall
he kept clean and supplied with fresh air by ventilators, &c. that there shall be two rooms set apart for the sick—that a warm and cold bath or bathing tubs shall be provided—that a surgeon or apothecary shall be appointed with a salary—that this act shall be hung up in the gaol." And by stat. 32 Geo. III. c. 45. prisoners discharged may, on application, be conveyed to their settlement by a vagrant pass. See tit. Vagrant.

Thus humane have the legislature continually shown themselves, in repeatedly interfering for the health and comfort of those who are considered generally as the mere outcasts of society; to employ them also in useful industry, and thus turn their minds to good from evil, has been another attempt no less praiseworthy than the former.

The justices in general sessions may provide a convenient stock of materials for setting poor prisoners to work, to be paid for by the treasurer out of the general county rate: and may pay and provide fit persons to oversee and set such prisoners on work; and make the orders needful as to regulating the accounts, for punishing neglects and abuses, and for bestowing the profits of their labour for the relief of the prisoners. Stats. 19 Car. II. c. 4. § 1. 12 Geo. II. c. 29. 31 Geo. III. c. 46.

As to other matters relative to the ease, or to prevent the oppression of prisoners, see this Dict. tit. Habeas Corpus, Transportation, Arrest; and Burn’s Just. tit. Gaol.

III. The offence of prison-breaking by the common law, was no less than felony; and this whether the party were committed in a criminal, or civil case, or whether he were actually within the walls of the prison, or only in the stocks, or in the custody of any person who had lawfully arrested him, or whether he were in the king’s prison, or one belonging to a lord, or franchise. 2 Inst. 589. Stautndf. P. C. 31. Cro. Car. 210.

But now, by the stat. 1 Edw. II. stat. 2. de frangentibus priso­nam, "None from henceforth that breaketh prison shall have judgment of life, or member, for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convicted thereupon according to the law and custom of the realm; albeit in times past it hath been used otherwise." So that to break prison and escape, when one is lawfully committed for any treason or felony, remains still felony, as at the common law: and to break prison, (whether it be the county gaol, the stocks, or other usual place of security,) when lawfully confined upon any other inferior charge, is still punishable as a high misdemeanor by fine and imprisonment. 4 Comm. c. 10. 2 Hawk. P. C. c. 18.

Any place whatsoever, wherein a person under a lawful arrest for a supposed capital offence, is restrained from his liberty, whether in the stocks or street, or in the common gaol, or the house of a constable, or private person, or the prison of the ordinary, is a prison within the statute. 2 Inst. 589. Dyer, 99. fl. 60. Crom. 38. Cro. Car. 210. Hale’s P. C. 107.

There must be an actual breaking, for the words feloniæ fregit prisonam, which are necessary in every indictment for this offence, cannot be satisfied without some actual force, or violence; and
therefore if the prisoner, without the use of any violent means, go out of the prison doors, which he finds open by the negligence or consent of the gaoler, or if he escape through a breach made by others without his privity, he is guilty of a misdemeanour only, and not of felony. 2 Inst. 589. Hale’s P. C. 108. Staunf. P. C. 31.

Nor will the breaking of prison, which is necessitated by any accident, happening without any default of the prisoner, as where the prison is fired by lightning, or otherwise, without his privity, and he breaks out to save his life, come within his stat. Plowd. 136. 2 Inst. 590. Hale’s P. C. 108. Nor is it felony to break a prison, unless the prisoner escape. Kelem. 87. a.

If the imprisonment be for any offence made capital by a subsequent statute, the breach of prison is as much within the act of 1 Edw. II. stat. 2. as if the offence had always been felony; but if the offence, for which a man is committed, were but a trespass at the time when he breaks the prison, and afterwards become felony by a subsequent matter; as where one committed for having dangerously wounded a man, who afterwards dies, breaks the prison before he dies, the fiction of law (which to many purposes makes the offence a felony ab initio) shall not be carried so far as to make the prison-breach also a felony, which, at the time when it was committed, was but a misdemeanour. Hale’s P. C. 108. 2 Inst. 591. Plowd. 258.

It seems the better opinion, that if the offence, for which the party was committed, be in truth but a trespass, the calling it felony in the mittimus, will not make the breaking of the gaol amount to felony; and that on the other side, if the offence were in truth a capital one, the calling it a trespass in the mittimus will not bring it within the statute; for the cause of imprisonment is what the statute regards; and that is the offence, which can neither be lessened, nor increased by a mistake in the mittimus. But for this, see 2 Hawk. P. C. c. 18.

The offence of breaking prison is but felony, whatsoever the crime were for which the party was committed, unless his intent were to favour the escape of others who were committed for treason, for that will make him a principal in the treason. 2 Hawk. P. C. c. 18.

The felony of breach of prison is within clergy, though the offence for which the party was committed be excluded clergy. 1 Hale’s H. P. C. 612.

He that breaks prison may be proceeded against for such crime before he be convicted of the crime for which he is committed, because the breach of prison is a distinct independent offence; but the sheriff’s return of a breach of prison is not a sufficient ground to arraign a man, without an indictment. 2 Hawk. P. C. c. 18.

It is not sufficient to indict a man generally, for having feloniously broken prison; but the case must be set forth specially, that it may appear he was lawfully in prison, and for a capital offence. Hale’s P. C. 109. 2 Inst. 591.

If A. arrest B. for suspicion and carry him to the common gaol, and there deliver him; if he breaks prison and be indicted on it, there must be the following averments in the indictment: that there was a felony done, and that A. having probable cause to sus-
pect. B. had arrested and committed him, and that he broke the prison; all of which must be proved on the trial. But where a felon is taken by cauies and committed, and breaks prison, there needs no such averment, &c. because all appears by matter of record. 2 Inst. 590. Hale's Hist. P. C. 10.

For further matter relative to Gaols and Prisoners, see this Dict. tit. Arrest, Commitment, Debtor, Escape, Execution, False Imprisonment, Insolvent, Marshalsea, 2 Hawk. P. C. and the title (Gaoler) immediately following.

GAOLER. The master of a prison ; one that hath the custody of the place where prisoners are kept. Sheriffs must make such gaolers for which they will answer. But if there be a default in the gaoler, action lies against him for an escape, &c. 2 Inst. 592. In common cases, the sheriff, or gaoler, is chargeable at the discretion of the party; though the sheriff is most usually charged. He who hath the custody of the gaol wrongfully, or of right, shall be charged with the escape of prisoners: and if he that hath the actual possession be not sufficient, his superior shall answer. 2 Hawk. P. C.

It is said that for his own security a gaoler may hamper a felon with irons to prevent his escape. 1 Hale's H. P. C. 661. Dalh. c. 170. and that a gaoler is no way punishable for keeping even a debtor in irons. 2 Hawk. P. C. But it has been observed that this proceeding, even in the case of a felon, (much more in that of a debtor,) can only be intended where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose: but otherwise, notwithstanding the too common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of England, by which gaolers are forbidden to put their prisoners to any pain or torment: and Lord Coke, 2 Inst. 381. is express, that by the common law it might not be done. 1 H. H. 601. And if the gaoler keeps the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law. And this is the cause that if a prisoner die in gaol the coroner ought to sit upon him: and if the death was owing to cruel and oppressive usage on the part of the gaoler, or any officer of his, it will be deemed wilful murder in the person guilty of such duress. 3 Inst. 91. Post. 321, 322. But if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 Hawk. P. C. 1 H. H. 496. See ante, Gaol III. and this Dict. tit. Escape, Murder.

A person in execution in the king's bench prison was put in irons by the marshal: and the court ordered the marshal to keep his prisoner according to law: and in this case they said the gaoler might justify putting him in irons if he feared an escape; or if the prisoner was unruly. 7 Mod. 52. In the second year of Geo. II. Sir William Ritch being laid in irons in the fleet prison, had his irons taken off by order of the house of commons; who thereupon began an inquiry into the conduct of gaolers, which produced some of the wholesome laws mentioned hereafter, and under title Gaol.

By stat. 14 Edw. III. cap. 10. "If any keeper of a prison, or under-keeper, by too great duress of imprisonment, and by pain,
make any prisoner that he hath in his ward to become an appel lor against his will, he is guilty of felony." See tit. Accessary.

By stat. 4 Edw. III. c. 10. it is enacted, that the sheriffs and gaolers shall receive, and safely keep in prison, from henceforth such thieves and felons, by the delivery of the constables and townships, without taking any thing for the receipt; and the justices to deliver the gaol shall have power to hear their complaints, that will complain against the sheriffs and gaolers in such cases; and moreover to punish the sheriffs and gaolers, if they be found guilty.

By stat. 3 Hen. VII. c. 3. the sheriff and every other person, having authority or power of keeping of gaol, or of prisoners for felony, shall certify the names of all prisoners in his custody to the justices of gaol delivery.

If any person assault a gaoler, for keeping a prisoner in safe custody, he may be fined and imprisoned. 1 Hawk. P. C. Where a gaol is broken by thieves, the gaoler is answerable; not if it be broken by enemies. 3 Inst. 52.

It seems clearly agreed, that a gaoler by suffering voluntary escapes, by abusing his prisoners, by extorting unreasonable fees from them, or by detaining them in gaol after they have been legally discharged, and paid their just fees, forfeits his office; for that in the grant of every office it is implied, that the grantee execute it faithfully and diligently. Co. Litt. 233. 9 Co. 5. 3 Mod. 143.

By stat. 8 & 9 Wm. III. c. 27. the marshal of the king’s bench and warden of the fleet taking any reward to connive at prisoners’ escape, shall forfeit 500l. and their office, and be rendered for ever after incapable of executing any such office.

It hath been resolved, that a forfeiture by a gaoler who hath but a particular interest, as of him who hath custody of a gaol for life, or years, does not affect him in remainder, or reversion, who hath the inheritance, but that upon such forfeiture his title shall accrue, and not go to the king. Posth. 119. 2 Lev. 71. Raym. 216. 3 Lev. 288.

By stat. 8 & 9 Wm. III. c. 27. it is enacted, that the office of marshal of the king’s bench, and warden of the fleet, shall be executed by those who have the inheritance of the said prisons, or their deputies, &c. and the profits of their office may be sequestered on motion to the court of B. R. to satisfy a judgment had against them for escape.

By stat. 3 Geo. I. cap. 15. none shall purchase the office of gaoler, or any other office pertaining to the high sheriff, under pain of 500l.

By stat. 24 Geo. III. st. 2. c. 54. a gaoler shall not directly or indirectly sell liquors to the prisoners, or keep, or be concerned in, or benefited by any tap-house, tap-room, tap, or license for that purpose, on pain of 10l. for each offence: the justices in sessions may make allowance to gaolers in lieu of profits formerly derived to them from the sale of liquors.

By stat. 31 Geo. III. c. 46. § 8. gaolers are, on the first day of every assizes, to make a return of the size and condition of gaols, the number of prisoners, &c. therein. See further, tit. Gaol.

GAOL DELIVERY. The administration of justice being originally in the crown, in former times our kings in person rode
through the realm once in seven years, to judge of and determine crimes and offences; afterwards justices in eyre were appointed; and since justices of assize and gaol delivery, &c. A commission of a gaol delivery is a patent in nature of a letter from the king to certain persons, appointing them his justices, or two, or three of them, and authorizing them to deliver his gaol, at such a place, of the prisoners in it; for which purpose, it commands them to meet at such a place, at the time they themselves shall appoint; and informs them that for the same purpose the king hath commanded his sheriff of the same county to bring all the prisoners of the gaol, and their attachments, before them, at the day appointed.


By stat. 3 Hen. VII. c. 3. those that have the custody of gaols must certify the names of all the prisoners to the justices of gaol delivery, in order to their trial or discharge, on pain of 5l.

Justices of gaol delivery are empowered by the common law to proceed upon indictments of felony, trespass, &c. and to order execution or reprieve; and they have power to discharge such prisoners, as upon their trials shall be acquitted; also all such against whom, upon proclamation made, no evidence appears to indict them; which justices of oyer and terminer, &c. may not do.

2 Halk. P. C. But these justices have nothing to do with any person not in custody of the prison, except in some special cases; as if some of the accomplices to a felony be in such prison, and some of them out of it, the justices may receive an appeal against those who are out of the prison, as well as those who are in it; which appeal, after the trial of such prisoners, shall be removed into B. R. and process issue from thence against the rest.

Fitz. Coron. 77. Staundf. P. C. 64. Such justices have no more to do with one let to mainprise, than if he were at large; for such person cannot be said to be a prisoner, since it is not in the power of his sureties to detain him in their custody: and where any person is bailed there he is in the custody of his sureties, and they may detain him where they please.

2 Halk. P. C. 25. Though per Holt, C. J. If a person be let to bail, yet he is in law in prison, and his bail are his keepers: and therefore the justices of gaol delivery may take an indictment against him, as well as if he was actually in gaol. And they may take indictments not only of felony, but also of high treason, if the offenders are in prison, and try and give judgment upon them, like unto commissioners of oyer and terminer; though it has been formerly held otherwise. 2 Hale's Hist. P. C. 35. Justices of gaol delivery may punish those who unduly bail prisoners; as being guilty of a negligent escape.

Staundf. P. C. 77. 25 Edw. III. 39. They are also to punish sheriffs and gaolers, refusing to take felons into their custody from constables, &c. Stat. 4 Edw. III. c. 10. and have authority to punish many particular offences by statute.

The granting a new commission of gaol delivery, or of the peace, in a town corporate, shall not avoid the former commission. 2 & 3 P. & M. c. 18. Justices of gaol delivery may act in their counties. 12 Geo. II. c. 27. See tit. Assize, Circuit, Judges, Justices.

GARB, garbo, from the Fr. garbe, alias gerbe, i. e. fascis. A bundle or sheaf of corn. Chart. Forest. cap. 7. And in some
places it is taken for a handful, 

viz. garba aceris fit ex triginta

feciis. Fleita, lib. 2. cap. 12. Garba sagittarum is a sheaf of

arrows containing twenty-four. Skene.

GARBALES DECIMÆ, Tithes of corn.

GARBLE, Is to sever the dross and dust from spice, drugs, 

&c. Garbling is the purifying and cleansing the good from

the bad; and may come from the Italian garbo, i.e. finery or

neatness; and thence probably we say, when we see a man in a

neat habit, that he is in a handsome garb. Cowel.

GARBELER or SPICES, An officer of antiquity in the city of

London, who may enter into any shop, warehouse, &c. to view and

search drugs and spices, and garble and make clean the same, or

see that it be done. And anciently all drugs, &c. were to be

cleansed and garbled before sold, on pain of forfeiture, or the

value. By stat. 6 Ann. cap. 16, this officer is to be appointed by

the court of lord mayor, aldermen and common council, to garble

spices at the request of the owner, but not otherwise.

GARCIO, Fr. garçon.] A groom or servant. Pla. Cor. 21

Edw. I. garcio stole, groom of the stole to the king: and in the

Irish language, (according to Toland,) garson is an appellative for

any mensal servant. Kennel's Gloss.

GARCIONES, Servants who follow the camp. Ingulph. 886.

Walsing. 242. Boys.

GARD, GARDIAN, &c. See Guard and Guardian.

GARDEBRACHE, Fr. gardebrace.] An armour or vambrace

for the arm. Chart. King Hen. V.

GARDENS. Robbing of orchards or gardens, of fruit grow-

ning therein, is punishable criminally by whipping, small fines,

imprisonment, and satisfaction to the party wronged, according to

the nature of the offence. See stat. 43 Eliz. c. 7. and tit. Black

Act, Trees, Treehase, Felony.

GARDEROBE, garderoba.] A wardrobe; a closet or small

apartment, for hanging up clothes. See 2 Inst. 255.

GARDIA, Is a word used by the feudiste for custodia. Lib.

Feud. 1.

GARE, A coarse wool, full of staring hairs, such as grow about

the shanks of sheep. See stat. 31 Edw. III. cap. 2.

GARLANDA, A chaplet, coronet, or garland. Mat. Paris.

GARNESTURA, Victuals, arms, and other implements of war,


1230.

To GARNISH, To warn; to garnish the heir, signifies in law

to warn the heir. Stat. 27 Eliz. cap. 3.

GARNISHMENT, Fr. garnement, from garnir, i.e. instruere.] In a legal sense intends a warning given to one for his appearance,

for the information of the court and explaining a cause. For

example; one is sued for the detinue of certain writings delivered;

and the defendant alleging that they were delivered to him by the

plaintiff, and another person, upon condition, prays that the other

person may be warned to plead with the plaintiff; whether the con-

dition be performed or not; in this petition he is said to pray gar-

nishment; which may be interpreted either a warning of that other,

or a furnishing the court with all parties to the action, whereby it

may thoroughly determine the cause; and until he appears and
joins, the defendant is as it were out of the court. *Cromp. Juris. 211.
*Fitz. N. B. 106. A writ of scire facias is to go forth against the
other person to appear and plead with the plaintiff; and when he
comes and thus pleads, it is called *enterjzleader: if the garnishee
be returned scire feci, and make default, judgment will be had to
recover the writings, and for their delivery, against the defendant;
and if the garnishee appears and pleads, if the plaintiff recovers, he
shall have damages. *Rast. 213. 1 Brownl. 147.

Garnishment is generally used for a warning; as garnisher le
court is to warn the court; and reasonable garnishment, is where
a person hath reasonable warning. *Kitch. 6. In the stat. 27 *Eliz.
cap. 3. we read, upon a garnishment or two nihilis returned, &c.
And further, some contracts are naked, *sans garnement, and some
furnished, &c. See tit. *Interjzleader.

GARNISHEE, Such third person or party in whose hands
money is attached within the liberties of the city of *London, by
process out of the sheriff's court; so called, because he hath had
garnishment or warning, not to pay the money to the defendant,
but to appear and answer to the plaintiff creditor's suit. Vide
Attachment Foreign.

GARNISTURE, A furnishing or providing. *Pat. 17 *Edw.
III. Vide Garnestura.

GARUMMUNE, *gersuma, or *gersoma, A fine or amerciament.

GARTER, *garterium, Fr. *jar tier, i. e. *fascie popitaria.
] Signifies in divers statutes, and elsewhere, a special garte1·
being the ensign of a noble order of knights, instituted by King
*Edw. III. anno Dom. 1344, called knights of the garter: it is also
taken for the principal king at arms, among our English heralds,
attending upon the knights thereof; created by King *Hen. V.
The first dignity after that of nobility, is that of a knight of the
order of *Saint George, or of the garter. Indeed, many sovereign
princes have been proud of the order, and considered themselves
as highly honoured by our sovereign's conferring it on them. See

GARTH, A little back-side or close in the north of *England;
being an ancient *British word; gardd in that language, signifying
garden, and pronounced and writ garth; also a dam or wear, &c.

GARTHMAN. As there are *fishgarths or wears for catching
of fish, so there are garthmen; for by stat. 17 *Rich. II. c. 9. it is or-
dained, that no fisher nor garthman shall use any nets or engines
to destroy the fry of fish, &c. This word is supposed to be deri-
ved from the Scottish gart, which signifizeth enforced, or compel-
led; the fish being forced by the wear to pass.in at a loop where
they are taken.

GASTALDUS, A governor of the country, whose office was
only temporary, and who had jurisdiction over the common peo-
ple. *Blount.

GATE, At the end of the names of places, signifies a way or
path, from the Sax. *geat, i. e. *porta. The custody of the gates of
the city of *London, is granted to the lord mayor, &c. by *Chart. King
*Hen. IV. See *London.

GAVEL, Sax. *gafel.] *Tribute, toll, custom or yearly revenue;
of which we had in old time several kinds. See tit. *Gabel.
GAVELET, gavelotum.] An ancient and special kind of cessavit used in Kent, where the custom of gavelkind continues, whereby a tenant, if he withholds his rents and services due to the lord, shall forfeit his land: it was intended where no distress could be found on the premises, so that the lord might seize the land itself in the nature of a distress, and keep it a year and a day; within which time, if the tenant came and paid his rent, he was admitted to his tenement to hold it as before; but if not, the lord might enter and enjoy the same. The lord was to seek by the award of his court, from three weeks to three weeks, to find some distress upon the land or tenement, until the fourth court; and if in that time he could find none, at the fourth court it was awarded that the tenement should be seized as a distress, and kept in the lord's hands a year and a day without manuring; and if the tenant did not in that time redeem it, by paying the rent and making amends to the lord, the lord having pronounced his process by witnesses at the next county court, was awarded by his court to enter and manure the tenement as his own; and if the tenant would afterwards have it again, he was to make agreement with the lord, Fitz. Cess. 60. Terms de Ley.

Gavelotum is as much as to say to cease, or to let to pay the rent; and consuetudo de gavelet was not a rent or service, but a rent or service withheld, denied or detained, causing the forfeiture of the tenement. Diet.

The word gavelet in its original signification imported rent; but it means also a process for the recovery of rent peculiar to Kent, and London. The gavelethus prevailing by the custom of Kent may be used whether there is a sufficient distress on the land or not; but is restricted to gavelkind tenure. Robins on Gavelk. 243. To London this writ was given for rent-service generally by stat. 10 Edw. II. which is therefore called the statute of gavelet. But by the words of the statute, this latter gavelet only lies where the lord cannot obtain payment by distress. See Stelm. voe. Gaveleto. Wright's Ten. 197.

This remedy of gavelet as well as that of cessavit is now fallen wholly into disuse; nor, whilst they continued in use, were they applicable, except where the tenure was in fee. Booth on Real Act. 133. See 1 Inst. 142. n. 2. and this Dict. tit. Cessavit, Distress, Tenures.

GAVELET IN LONDON, breve de gaveleto in London, pro redditu ibidem, quia tenementa fuerunt indistingibia.] The writ used in the hustings of London; where the parties, tenant and demandant, appear by seire facias, to show cause why the one should not have his tenement again on payment of his rent, or the other recover the lands, on default thereof.

GAVELGELD, Payment of tribute or toll. Mon. Angl. tomo. 3.

GAVELKIND.

A tenure or custom, annexed and belonging to lands in Kent, whereby the lands of the father are equally divided at his death among all his sons; or the land of the brother among all the brethren, if he have no issue of his own. Litt. 210. See tit. Tenures, III. 12.
All the lands in England, it is said, were of the nature of gavelkind before the year 1066, and descended to all the issue equally; but after the Conquest (as it is called) when knight-service was introduced, the descent was restrained to the eldest son for the preservation of the tenure. *Lamb.* 167. *3 Salk.* 129. Except in Kent, for the supposed reason of which see *Blount* in v. Gavelkind, who relates the story of the Kentish men surrounding William I. with a moving wood of boughs, and thus obtaining a confirmation of their ancient rights.

In the reign of *Hen.* VI. there were not above thirty or forty persons in all Kent that held by any other tenure than this of gavelkind; which was afterwards altered upon the petition of divers Kentish gentlemen, in much of the land of that county, so as to be descendible to the eldest son, according to the course of the common law, by the stat. 31 *Hen.* VIII. cap. 3. Though the custom to devise gavelkind land; and the other qualities and customs remain. *Co. Litt.* 140. By the stat. 34 & 35 *Hen.* VIII. cap. 26. all gavelkind lands in Wales were made descendible to the heir, according to the common law; whereby it appears, that the tenure of gavelkind was likewise in that principality.

Blackstone relies on the nature of tenure in gavelkind as a pregnant proof that tenure in free socage was a remnant of Saxon liberty. It is universally known what struggles the Kentish men made to preserve their ancient liberties, and the success with which those struggles were attended. And as it is principally here that we meet with the custom of gavelkind, we may fairly conclude that this was a part of those liberties; agreeable to Mr. Selden’s opinion that gavelkind, before the Norman Conquest was the general custom of the realm. The distinguishing properties of this tenure are various. Some of the principal are; that the tenant is of sufficient age to alien his estate, by feoffment, at the age of fifteen. That the estate does not escheat in case of an attainder and execution for felony. That in most places the tenant had power of devising lands by will before the statute for that purpose was made. *Fitz. N. B.* 198. *Cro. Car.* 561. The descent of the lands, as above stated; which was indeed anciently the most usual course of descent all over England; *Glanville,* l. 7. c. 3. though in particular cases particular customs prevailed.

These among other properties distinguished this tenure in a more remarkable manner; and yet it is said to be only a species of a socage tenure, modified by the custom of the country; the lands, being holden by suit of court and fealty, which is a service in its nature certain. *Wright,* 211. See this *Dict. tit. Tenures* III. 12. Wherefore by a charter of King John, Hubert archbishop of Canterbury was authorized to exchange the gavelkind tenures holden of the see of Canterbury into tenures by knight’s service; and by the aforesaid statute of 31 *Hen.* VIII. c. 3. for disgravelling lands in Kent, they are directed to be descendible, for the future, like other lands which were never holden by service of socage. Now the immunities which the tenants in gavelkind enjoyed, were such as cannot be conceived should be conferred on mere ploughmen and peasants; from all which the learned Commentator conceives it to be sufficiently clear that tenures in free socage are in general of a nobler original than is assigned by *Vol. III.*
Littleton, or after him by the bulk of common lawyers. 2 Comm. 84, 85. c. 6.

A father having gavelkind lands, had three sons, one of whom died in the life-time of his father, leaving issue a daughter; and it was held, that the daughter shall inherit the part of her father jure representationis, and yet she is not within the words of the custom of dividing the land between the heirs male, for she is the daughter of a male and heir by representation. 1 Salk. 243. The heir at the age of fifteen years, it is said, may give and sell his lands in gavelkind, and shall inherit. Co. Litt. 111. The custom of gavelkind is not altered, though a fine be levied of the lands at common law; because it is a custom that runs with the land. 6 Edw. VI.

Land in gavelkind was devised to the husband and wife for life, remainder to the next heir male of their bodies, &c. They had three sons, and it was adjudged that the eldest son should not have the whole. Dyer, 133. A donee in tail of gavelkind lands had issue four sons; and it was held, that all should inherit: but if a lease for life is made of gavelkind, remainder to the right heirs of A. B. who hath issue four sons; in this case, the eldest son shall inherit the remainder, because, in case of purchase, there can be but one right heir. 1 Rep. 102. If gavelkind lands come to the crown, and are regranted to hold in capite, &c. the land shall descend to all the heirs male as gavelkind. Nels. Abr. 495.

A wife shall be endowed of gavelkind land, of a moiety of the land whereof her husband died seised, during her widowhood. Co. Litt. 111. And it hath been adjudged, that the widow cannot have election to demand her thirds or dower at common law, so as to avoid the custom, by which she shall lose her dower, if she marry a second husband. Moor, 260. But see 1 Leon. 62. See tit. Dower.

The husband shall be tenant by the curtesy of half the gavelkind lands of the wife, during the time he continues unmarried, without having any issue by his wife; but if he marry, he shall forfeit his tenancy by the curtesy. Co. Litt. 111. If the husband had issue by his wife, and she die, he shall be tenant by the curtesy of the whole land; and though he marry, he shall not forfeit his tenancy. Mich. 21 Car. B. R. 1 Litt. Abr. 649.

It was formerly supposed, that although a father was attainted of treason or felony, the heir of gavelkind land should inherit, for the custom, as said, was, “the father to the bough and the son to the plough.” Doct. & Stud. c. 10. But, it has been held, that, in matters of treason, which strike at the foundations of policy and government, even gavelkind lands are forfeitable, and always were. See tit. Forfeiture.

A rent in fee granted out of gavelkind lands, shall descend in gavelkind to all the heirs male, as the lands would have done; it being of the same nature with the land itself. 2 Lev. 138. 1 Mod. 97.

All lands in Kent shall be taken to be gavelkind, except those which are disgavelled by particular statutes. 1 Mod. 98. ’If lands are alleged to be in Kent, it shall be intended that they are gavelkind; if the contrary doth not appear. 2 Sid. 153. By Hale, Ch.
The gavelkind descent of lands in Ireland was an incident to the custom of tanistry; and as such fell to the ground with its principal, in consequence of a solemn judgment against the latter in a case, ann. 5 Jac. I. See Dav. Rep. 38. But in the reign of Queen Anne, the policy of weakening the Roman Catholic interest in Ireland was the cause of an Irish statute to make the lands of papists descendible according to the gavelkind custom, unless the heir conformed within a limited time. See Rob. on Gavelk. c. 17. However, now, by an Irish statute of the present reign, (17 & 18 Geo. III. c. 49.) the descent of the lands of papists is again reduced to the course of the common law. 1 Inst. 176. n. 1.

**GAVELMAN**; A tenant liable to tribute. Somner of Gavelkind, p. 33. And hence gavelkind has been thought to be land in its nature taxable. Blount. See Tenures III. 12.

**GAVELMED**, the duty or work of mowing grass, or cutting of meadow land, required by the lord from his customary tenants; Consuetudo falcandi quia vocatur gavelmed. Somn.

**GAVELCESTER**, Sax. sectarius vectigalis. A certain measure of rent-ale: and among the articles to be charged on the stewards and bailiffs of the manors belonging to the church of Canterbury in Kent, according to which they were to be accountable, this of old was one; de gavelcester cujuslibet bravicii braciati infra libertatem maneriorum, viz. unam lagenam et dimidiam cervisia. This duty elsewhere occurs under the name of tolester; in lieu whereof the abbot of Abingdon was wont of custom to receive the penny mentioned by Selden in his dissertation annexed to Fleta, cap. 8. Nor does it differ from what is called oak gavel in the glossary at the end of Hen. I. Law's Sax. Dict.

**GAVEL WERK**, Sax. Was either manu ojl era, by the hands and person of the tenant, or carrojtera, by his carts or carriages. Phillips of Purvey.

**GAUGETUM**, A gauge or gauging, done by the gauger; and the true English gauge is mentioned in Rot. Parl. 32 Edw. I.

**GAUGER**, gaugator, Fr. gaucher, i. e. in gyrum torquere. An officer appointed by the king, to examine all tunns, pipes, hogsheads, barrels and terces of wine, oil, honey, &c. and to give them a mark of allowance, as containing lawful measure, before they are sold in any place: and because his mark is a circle made with an iron instrument for that purpose, it seems to have its name from thence. Of this officer and his office, there are many statutes; as by stat. 27 Edw. III. cap. 8. all wines, &c. imported, are to be gauged by the king's gaugers, or their deputies. By stat. 31 Edw. III. c. 5. selling wine before gauged, incurs forfeiture of the value; and by stat. 23 Hen. VI. cap. 15. the gauge-penny is to be paid gaugers, on gauging wines. The stat. 31 Edw. c. 8. ordained that beer, &c. imported, shall be gauged by the master and wardens of the coopers' company. See stat. 12 Car. II. c. 4.

The wardens of the coopers shall attend to gauge vessels
upon request. 23 Hen. VIII. c. 4. Gaugers may take samples not exceeding half a pint, 32 Geo. II. c. 29. See tit. Brewers, Excise.

GEASPECIA. In a charter of the privileges of Newcastle upon Tyne, renewed anno 30 Eliz. we find sturiones, porpersia, (i.e. porpoises,) delphinos, geaspecia, viz. grampus, &c.

GEBRUSCIP, geburseciu.] Neighbourhood or adjoining district.

LEG. Edw. Confess. cap. 1.

GEBURUS, A country inhabitant of the same gebureship, or village; from the Sax. gebure, a ploughman, or farmer.

GELD, geldum mulcta; comfitensatio delicti et fretium rei.] Hence, in our ancient laws, wergeld or weregild was used for the value or price of a man slain; and orfgeld of a beast: likewise money or tribute; for it is said, et sint quieti de geldis, danegeldis, horn-geldis, biodwita, &c. Chart. Rich. II. Priorat. de H. in Devon. Pat. 5 Edw. IV. Angeld is the single value of a thing; twangel, double value, &c.

GELDABLE, geldabilis.] That is liable to pay tax or tribute. Camden dividing Suffolk into three parts, calls the first geldable, because subject to taxes; from which the other two parts were exempt, as being ecclesie donatae. The word is mentioned in the stat. 27 Hen. VIII. cap. 26. But in an old MS. it is expounded to be that land, or lordship, which is "sub distrinctione curiae vicecom." 2 Inst. 701.


GENETH, villanus: regis geneth, is the king’s villain. LL. Ine, MS. cap. 19.

GENERAL ISSUE, Is a plea to the fact of not guilty, in criminal cases, in order to trial by the country, or by peers, &c. H. P. C. 254. In civil suits, there are various pleas, which are general issues, according to the species of the action, as in trespass, not guilty, in case of promise, non assumptio, &c. See tit. Pleading.

GENERATIO. When an old abbey, or religious house had spread itself into many colonies, or depending cells, that issue or offspring of the mother monastery was called generator; quasi proles et soboles matris domus. Annal. Waverl. 1323.

GENERALE. The single commons, or ordinary provision of the religious, were termed generale, as their general allowance, distinguished from their peculiere, or pittances; which on extraordinary occasions were thrown in as over commons. These are described amongst other customs. Cartular. Glaston, MS. fol. 10.

GENERAL OF ORDERS, Chiefs of the several orders of monks, friars, and other religious societies.

GÉNEVA, A strong water or spirit. Vide Distillers.

GENTLEMAN, generosus.] Is compounded of two languages, from the Fr. gentil, i. e. honestus, vel honesto loco natus, and the Sax. mon, a man; thus meaning a man well born. The Italians call those gentil homini whom we style gentleman; the French (heu quantum mutati!) under their ancient monarchy, distinguished such by the name of gentilhomme; and the Spaniards keep up to
the meaning of the word, calling him hidalgo or hijo d'alga, who
is the son of a man of account; so that gentlemen are such whom
their blood or race don't make known.

Under the denomination of gentlemen, are comprised all above
yeoman; whereby noblemen are truly called gentlemen. Smith
de Repi. Ang. lib. 1. cc. 20, 21. A gentleman is generally defined
to be one, who, without any title, bears a coat of arms, or whose
ancestors have been freemen; and by the coat that a gentleman
giveth, he is known to be, or not to be, descended from those of
his name that lived many hundred years since.

There is said to be a gentleman by office, and in reputation, as
well as those that are born such. 2 Inst. 668. And we read that
J. Kingston was made a gentleman by King Richard II. Pat. 13
Rich. II. par. 1. Gentilis homo for a gentleman, was adjudged a
good addition. Hil. 27 Edw. Ill. But the addition of esquire, or
gentleman, was rare before 1 Hen. V. though that of knight is
very ancient. 2 Inst. 595. 667. See tit. Precedency.

GENTLEWOMAN, [generosa.] Is a good addition for the
estate and degree of a woman, as generous is for that of a man;
and if a gentlewoman be named spinster in any original writ, ap­
peal, &c. it hath been held that she may abate and quash the same.
2 Inst. 668. But it seems that spinster is in general a good ad­
dition for an unmarried woman, as single woman is, for one who be­
ing unmarried hath had a bastard.

GENTILITY, [gentilitas.] Is lost by attainder of treason, or
felony, by which persons become base and ignoble, &c.

GENU. A generation. Successit Ethelbaldus Offa quinta genu.
Maimb. lib. 1. c. 4.

GENUS, Lat.] The general stock, extraction, &c. as the word
office in law is the genus or general; but the sheriff, &c. is the
species of it, or particular. 2 Lill. Abr. 528.

Genus, among metaphysicians and logicians, denotes a number
of beings, which agree in certain general properties, common to
them all; so that a genus is, in fact, only an abstract idea, expressed
by some general name or term, or rather a general name or
term, to signify what is called an abstract idea.

GEORGE NOBLE, A piece of gold, current at six shillings
and eight-pence, in the reign of King Hen. VII. Lovendes's Essay
upon Coins, p. 41.

GEORGIA, In America, its colony established, by stat. 6 Geo.
II. c. 25. § 7. See tit. Plantations.

GERSUMA, See Garsummune.

GESTIO PRO HÆREDE. Behaviour as heir. That conduct by
which the heir renders himself liable to the debts of the ancestor.
This may be by taking possession of title deeds, receiving rent,
&c. Scotch Diet.

GESTU ET FAMA, An ancient writ where a person's good
behaviour was impeached, now out of use. Lamb. Eirin. lib. 4.

GEWINEDA, Sax.] The public convention of the people, to
decide a cause; et pax quam aldermannus regis in quinque bergo­
rum gewineda dubi emendatur 12 libris. LL. Æthelred, cap. 1.

afud Brompton.
GIFT. [donum donatio.] A conveyance which passeth either lands or goods. A gift is of a larger extent than a grant, being applied to things moveable and immovable; yet as to things immovable, when strictly taken, it is applicable only to lands and tenements given in tail; but gifts and grants are said to be alike in nature and often confounded. *Wood's Inst.* 260.

The conveyance of lands by gift is properly applied to the creation of an estate-tail, as feoffment is to that of an estate in fee, and lease to that of an estate for life or years. It differs in nothing from a feoffment but in the nature of the estate passing by it; for the operative words of conveyance in this case are, do, or dedi—

I give, or have given; and gifts in tail are equally imperfect without livery of seisin as feoffments in fee-simple. *Litt.* § 59. And this is the only distinction that Littleton seems to take when he says, "it is to be understood that there is feoffor and feoffee; donor and donee; lessor and lessee." *Litt.* § 57. *viz.* feoffor is applied to a feoffment in fee-simple; donor to a gift in tail; and lessor to a lease for life or years or at will. In common acceptation, gifts are frequently confounded with grants. *See tit. Grant.* 2 *Comm.* 316. c. 20.

Gifts or grants for the transferring of personal property are thus to be distinguished from each other: that gifts are always gratuitous; grants are upon some consideration or equivalent; and they may be divided with regard to their subject matter into gifts or grants of chattels real, and gifts or grants of chattels personal. Under the former head may be included all leases for years of land, assignments and surrenders of these leases, and all the other methods of conveying an estate less than freehold. See this *Dict.* tit. Deed, Conveyance, Estate. These, however, very seldom carry the outward appearance of a gift, however freely bestowed, being usually expressed to be made in consideration of blood or natural affection; or of 5s. or 10s. nominally paid to the grantor; and in case of leases, always reserving a rent, though it be but a pepper corn; any of which considerations will in the eye of the law convert the gift, if executed, into a grant; if not executed, into a contract. 2 *Comm.* 440. c. 30.

Grants or gifts of chattels personal are the act of transferring the right and the possession of them, whereby one man renounces, and another immediately acquires, all title and interest therein; which may be done either in writing or by word of mouth, attested by sufficient evidence, of which the delivery of possession is the strongest and most essential. But this conveyance, when merely voluntary, is somewhat suspicious, and is usually construed to be fraudulent, if creditors or others become sufferers thereby; and particularly, by *stat. 3 Hen.* VII. c. 4. all deeds of gift of goods, made in trust to the use of the donor, shall be void, because otherwise persons might be tempted to commit treason or felony without danger of forfeiture; and the creditors of the donor might also be defrauded. And by *stat. 13 Eliz.* c. 5. every grant or gift of chattels as well as lands, with an intent to defraud creditors or others, shall be void as against such persons to whom such fraud would be prejudicial, but as against the grantor or giver himself, shall stand good and effectual; and all persons, partakers in, or privy to such fraudulent grants, shall forfeit the whole value of the
A true and proper gift or grant is always accompanied with delivery of possession, and takes effect immediately; as if A. gives to B. 100l. or a flock of sheep, and puts him in possession of them directly, it is then a gift executed in the donee; and it is not in the donor’s power to retract it, though he did it without any consideration or recompense; Jenk. 109. unless it be prejudicial to creditors, or the donor were under any legal incapacity, as infancy, coverture, duress, or the like; or if he were drawn in, circumvented, or imposed upon, by false pretences, ebriety or surprise. But if the gift does not take effect by delivery of immediate possession, it is then not properly a gift but a contract; and this a man cannot be compelled to perform, but upon good and sufficient consideration. 2 Comm. 441. c. 30. See this Dict. tit. Assumpsit, Consideration, Contract.

A gift may be by deed, in word, or in law: all goods and chattels personal may be given without deed, except in some special cases; and a free gift is good without a consideration. Perk. 57.

Whenever any gift shall be made, in satisfaction of a debt, it is proper to make it in a public manner before neighbours, that the goods and chattels be appraised to the full value, and the gift expressly made in satisfaction of the debt; and that on the gift, the donee take possession of them, &c. Hob. 230. See tit. Fraud.

If a man intending to give a jewel to another, say to him, Here I give you my ring with the ruby in it, &c. and with his own hand delivers it to the party, this will be a good gift; notwithstanding the ring bear any other jewel, being delivered by the party himself, to the person to whom given. And if a person give a horse to another, being present, and bid him take the horse, though he call the man by a wrong name, it will be a good gift; but it would be otherwise if the horse were delivered for the use of another person, being absent: there a mistake of the name would alter the case. Bac. Max. 87. A gift must be certain; therefore to give or grant another his horses or cows, that may be spared, will be void; though if one give to A. B. his horse, or his cow, he may take which he will. Bro. Done, 90.

As to gifts in law, when a man is married to a woman, all her goods and chattels by gift in law become the husband’s; but then he is liable for her debts; so if a man is made executor, the law gives him all the goods and chattels of the testator, subject to his debts. 1 Inst. 351. See tit. Baron and Feme, Executor.

If a person make a suit of clothes for another, and put it upon him to use and wear, this will be a gift or grant in law of the apparel made. Co. Litt. 351. This must mean if there was not any employment, and if the tailor, therefore, meant to give the clothes.

A man by deed did give and grant, bargain and sell, alien, enfeoff, and confirm to his daughter certain lands; but no consideration of money was mentioned, nor was the deed enrolled; there was likewise no consideration of natural affection expressed, (other
than what was implied in naming the grantee his daughter,) and there was no livery endorsed, or any found to have been made; nor was the daughter in possession at the time of the deed made; and in B. R. it was adjudged by the court that the deed was good, and carried the estate to the daughter by way of covenant to stand seised, &c. 1 Mod. 157.

The words give and grant, in deeds of gift, &c. of things which lie in grant, will amount unto a grant, a feoffment, a gift, release, confirmation or surrender, at the election of the party, and may be pleaded as a gift, or grant, release, &c. at his election. Co. Litt. 301. And words shall be marshalled so in gifts and grants, that where they cannot take effect according to the letter, the law will make such construction as that the gift by possibility may take effect: _beneignē sunt interpretationes chartarum propter simplicitatem laicorum._ Co. Litt. 183. If a person gives or grants land, and does not say in what parish or county it lies, yet if there be any other thing to describe it, as lately belonging to such a person, &c. or other circumstantial matter, it may be averred where the land lieth, and so the gift be good. Bro. Grant, 53. 9 Refl. 47. All corporeal and immoveable things that lie in livery, such as manors, messuages, cottages, lands, woods, and the like, may be given and granted in fee, for life, or years at first; and be assignable over after, from man to man in infinitum. 1 Roll. Abr. 44. And where a man gives and grants wood to another on his lands, or 20s. for it to be received out of the same lands, &c. here the wood passes by the gift presently, with power to choose to have the money. 1 Roll. Abr. 47. A deed of gift of lands or goods may be made upon condition; and on a gift or sale of goods, the delivery of 6d. or a spoon, &c. is a good seisin of the whole. Wood's Inst. 234. See tit. Conveyance, Fraud, Deed, Grant, Estate, Limitation, &c.


GIGMILLS, A kind of fulling mills for fulling and burling of woollen cloth, prohibited by stat. 5 and 6 Edw. VI. c. 22. See Woollen Manufactures.

GILD, A fraternity or company, &c. See Guild.

GILDA MERCATORIA, A mercantile meeting or assembly. If the king grants to a set of men to have _gildam mercatoriam_, this is alone sufficient to incorporate and establish them for ever. 10 Refl. 30. 1 Roll. Abr. 513. See tit. Corporation, Guild.

GILDING METALS. By certain ancient statutes, now obsolete, the gilding any metal but silver, and church ornaments; or silvering any thing except the apparel of peers, &c. and metal for knights' spurs, is liable to forfeiture of ten times the value, and a year's imprisonment. None shall gild rings or other things made of copper or latten, on pain to forfeit 5l. to the king, and damages to the party deceived. For gilding silver wares, no person may take above 4s. 8d. for a pound of troy weight, under penalties. Stats. 5 Hen. IV. c. 13. 2 Hen. V. c. 4. 8 Hen. V. c. 3. See tit. Gold Lace, Goldsmiths.

GISARMS, or GUISARMES, A halbert or hand-ax, from the Lat. _bis arma_, because it wounds on both sides. _Skene—Speltn._ It is mentioned in the stat. 13 Edw. I. c. 6.
GLIST of ACTION, From the Fr. gist, is the cause for which the action lieth; the ground and foundation thereof, without which it is not maintainable. 5 Mod. 305. See tit. Action.

GLADIOLUM, A little sword or dagger; also a kind of sedge.

GLADIUS. Jus gladii, is mentioned in our Latin authors, and the Norman laws; it signifies a supreme jurisdiction. Cambd.

And it is said that from hence, at the creation of an earl, he is gladio succinctus; to signify that he had a jurisdiction over the county of which he was made earl. See Pleas of the Sword.

GLAIRE, Fr.] A sword, lance, or horseman’s staff. G leyre was one of the weapons allowed the contending parties in a trial by combat. Orig. Jurisd. 79.

GLASS. Certain duties granted on all glass ware, &c. by stat. 6 & 7 Wm. III. which duties were continued for ever by a subsequent act; but were afterwards taken off by stat. 10 & 11 Wm. III. c. 18. Various internal duties of excise have from time to time been laid on glass and glass manufactures, and all works and manufactures of glass are subjected to strict regulation. See the stat. 35 Geo. III. c. 114, and 45 Geo. III. c. 30. § 10. Equivalent duties of customs are imposed on all glass imported, the packages containing which are particularly defined by 38 Geo. III. c. 33. § 6. By 13 Geo. III. c. 38, and 38 Geo. III. c. xvii. a plate-glass company is incorporated in Great Britain.

GLASS-MEN, Are reckoned amongst wandering rogues and vagrants, by the old statutes, 39 Ediz. c. 17. 1 Jac. i. c. 7.

GLAVEA, A hand dart. Blount.

GLEANING, LEASING, or LESING, From Fr. glaineur, quasi graner; colligere grana. Teuton. Ahleson, ex ahr, sfica, &c lesen, colligere. Minshew in v. Glean It hath been said, that by the common law and custom of England, the poor are allowed to enter and glean upon another’s ground, after the harvest, without being guilty of trespass; which humane provision seems borrowed from the Mosaical law. 3 Comm. 212, 213. Trials per puis, c. 15. f. 438. 534.

But it is now positively settled by a solemn judgment of the court of common pleas, that a right to glean in the harvest-field cannot be claimed by any person at common law. Neither have the poor of a parish, legally settled, such right. Guld, J. dissented from this opinion, quoting the passages in the Mosaical law, (Levit. c. 1 9. vv. 9, 10. c. 23. v. 22. and see Deut. c. 2. v. 19.) and & Burr. 1927. together with the recognition of the custom or privilege in a private act of parliament for an enclosure in Basingstoke parish. The other judges, however, were of opinion, that it would be dangerous and impolitic to admit gleaning to be a right, and in fact would be prejudicial to the poor themselves, now provided for under various positive statutes. They also remarked, that the custom of gleaning or leasing was various in various places, and was in many places restricted to particular corn, and could not therefore be set up as a universal common law right; that it would be opening a tempting door to fraud and idleness, and had never been specifically recognised by any judicial determination. 1 H. Black. Refj. 51—63. By the Irish acts, 25 Hen. VIII. c. 1, and 28 Hen. VIII. c. 24, glean-
ing and leasing is so restricted as in fact to be prohibited in that part of the kingdom.

GLEBE, gleba.] Church land; most commonly taken for the land belonging to a parish church, besides the tithes. If any parson, vicar, &c. hath caused any of his glebe-land to be manured and sown at his own costs, with any corn or grain, the incumbents may devise all the profits and corn growing upon the said glebe by will, under stat. 28 Hen. VIII. c. 11. And if a parson sows his glebe and dies, the executors shall have the corn sown by the testator. But if the glebe be in the hands of a tenant, and the parson dies after severance of the corn, and before his rent due; it is said, neither the parson's executors, nor the successor, can claim the rent, but the tenant may retain it, and also the crop, unless there be a special covenant for the payment to the parson's executors proportionably, &c. Wood's Inst. 163. Sed qu. of this case would not come within the equity of stat. I 1 Geo. II. c. 19. s. 15. which gives right of action to the representative of tenant for life, for any portion of rent in arrear at the time of his death?

Exchange of glebe land will not bind the successor. Noy, 5.

Prohibition was moved for to a parson for digging new coal-mines in his glebe, and also for felling trees; for it is waste, and prohibited by the statute de non frustrend' arbore, &c. The court held it lay not for the mines; for then no mines in the glebe could ever be opened. Lev. 107.

By the said stat. 28 Hen. VIII. c. 11. every successor, on a month's warning, after induction, shall have the mansion-house and the glebe belonging thereto, not sown at the time of the predecessor's death. He that is instituted may enter into the glebe land before induction, and has right to have it against any stranger; per Coke, Ch. J. Roll. R. 192.

There is a writ grounded on the stat. articuli cleri, cap. 6. where a parson is distrained in his glebe lands by sheriffs, or other officers; against whom attachment shall issue. New Nat. Brev. 386, 387. See titles Parson, Vicar, Church, Tithes, &c.

GLEBARIÆ, Turfs dug out of the ground. In sylvis, campis, semitis, moris, glebariis, &c.


GLOMERELLS, Commissaries appointed to determine differences between scholars in a school or university and the townsmen of the place: in the edict of the bishop of Ely, anno 1276, there is mention of the Master of the Glomerells.

GLOVE-SILVER, Money customarily given to servants to buy them gloves, as an encouragement for their labours. Glove money has been also applied to extraordinary rewards given to officers of courts, &c. It is now given on the circuits, by the barristers to the judges' crier.

GLOVES. The stat. 6 Geo. III. c. 19. restrains the importation and sale of foreign gloves and mitts; and one section of the stat. 25 Geo. III. c. 55. also restrains the importation of foreign leather not completely made into gloves, but cut into shapes, or tranks. By this latter act, a stamp duty was imposed on gloves sold, which was repealed by 34 Geo. III. c. 10.

GLYN, A valley; according to the book of Domesday.
GO. This word is sometimes used in a judicial signification, as to go without day, is to be dismissed the court; so in old phrase, to go to God. *Brooke Kitch.* 190.

GOATS. No man may common goats within the forest without especial warrant. *Nota capriolus non est bestia venationis forestae.* *Manwood's Forest Laws,* cap. 25. num. 3. See tit. Common.


GOD BOTE, Sax.] An ecclesiastical or church fine, paid for crimes and offences committed against God.

GOD GILD, That which is offered to God, or his service. *Sax.*

GOD AND RELIGION, Offences against. Apostacy is an offence against God and religion. It was formerly the object only of the ecclesiastical courts, which corrected the offender *pro salute animae.* But now, by stat. 9 & 10 *W. III.* c. 32. if any person educated in, or having made profession of, the christian religion, shall by writing, printing, teaching, or advised speaking, deny the christian religion to be true, or the holy scriptures to be of divine authority, he shall upon the first offence be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, and shall suffer three years' imprisonment without bail. To give room, however, for repentance, if, within four months after the first conviction, the delinquent will, in open court, publicly renounce his error, he is discharged for that once from all disabilities.

Heresy is another offence, for which the offender is subject only to ecclesiastical censure, by stat. 29 *Car. II.* c. 9. See 4 *Comm.* 42. 65. As to revelling of the ordinances, non-conformity, blasphemy, swearing and cursing, witchcraft, religious impostors, simony, sabbath-breaking, drunkenness and lewdness; and this *Dict.* under those several titles.

GOLDA, A mine, according to *Blount.* *Mon. Angl.* tom. 2. page 610.

GOLD-MINES. See *Mines.*

GOLD AND SILVER LACE and Thread. Persons that sell orrice lace, mixed with other metals or materials than gold, silver, silk and vellum, shall forfeit 2s. 6d. for every ounce: and there shall be allowed at least six ounces of *gold and silver* prepared and reduced into plate, to cover four ounces of silk, except large twist, frize, &c. And laying the same on greater proportions of the silk, or in any other manner than directed, incurs the like forfeiture of 2s. 6d. the ounce. Copper, and lace inferior to *silver,* is to be spun upon thread, yarn or incle, and not on silk; but this does not extend to *tinsel* apparel used in theatres. No gold, or silver lace, thread, fringe or wire, &c. may be imported on pain of being forfeited and burnt, and 100l. penalty. *Stat.* 15 *Geo. II.* c. 20. See 28 *Geo. III.* c. 7. The importation and making up of gold and silver lace, embroidery, brocade, &c. is prohibited by stat. 22 *Geo. II.* c. 33. See further, titles *Wire-Drawers,* *Embroidery,* *Navigation Acts.*

GOLDSMITHS. *Gold and silver* manufactures are to be assayed by the warden of the goldsmiths' company in *London,* and marked; and gold is to be of a certain touch. *Stat.* 28 *Edw. I.* c.
20. By Stat. 37 Edw. III. c. 7, goldsmiths were to have their own marks on plate, after the surveyors have made their assay; and false metal was to be seized and forfeited to the king. Work of silver made by goldsmiths, &c. is to be as fine as sterling, except the solder necessary; and marking other work, incurs a forfeiture of double value. Stat. 2 Hen. VI. c. 14.

Goldsmiths shall not take above 1s. the ounce of gold, beside the fashion, more than the buyer may be allowed for it at the king's exchange: and if the work of any goldsmith be marked and allowed by the master and wardens of the mystery, and afterwards found faulty; the wardens and corporation shall forfeit the value of the thing so sold or exchanged. Stat. 18 Eliz. c. 15.

Molten silver is not to be transported by goldsmiths before it is marked at goldsmith's hall, and a certificate made thereof on oath; and officers of the customs may seize silver shipped otherwise. Stat. 6 & 7 Wm. III. c. 17. The cities of York, Exeter, Bristol, Chester, Norwich, and town of Newcastle, are also appointed places for assaying and marking wrought plate of goldsmiths, &c. Stats. 12 Wm. III. c. 4. 1 Ann. c. 9.

Certain duties have been from time to time imposed on gold and silver plate wrought in Great Britain. See stat. 6 Geo. I. c. 11. repealed and other provisions made 31 Geo. II. c. 32. 32 Geo. II. c. 24. 24 Geo. III. c. 53. (by which and subsequent acts this duty is placed under the management of the stamp office,) 25 Geo. III. c. 64. 30 Geo. III. c. 31. 38 Geo. III. c. 24. &c. 69. The duty under the latest stamp act 44 Geo. III. c. 98. is 16s. per ounce, and 1s. 3d. on silver plate. In Ireland the duty (of excise) on either gold or silver plate wrought, is 1s. per ounce. See 47 Geo. III. st. 1. c. 18.

Gold plate made by goldsmiths shall contain 22 carats of fine gold: and silver plate 11 ounces and two pennyweight of silver, in every pound troy, or they forfeit 10l. And no goldsmith shall sell any such plate, until marked with the first letters of the maker's christian and surname, the marks of the city of London being the leopard's-head, lion passant, &c. and those made use of by the assayers at York, Exeter, &c. All persons making plate, are to enter their marks, names and places of abode in the assay-office; they are likewise to send with the plate required to be marked, a particular account thereof, in order to be entered, &c. or forfeit 5l. The assayers determine what solder is necessary about plate, and judge of the workmanship, and for good cause may refuse to assay it; and if any parcel be discovered of a coarser allay than the standard, it may be broke and defaced; also the fees for assaying and marking are particularly limited, &c. stat. 12 Geo. II. c. 26. See further tit. Wire-Drawers.

GOLDWIT, or GOLDWICH, Perhaps a golden mulct; in the records of the Tower, there is mention of consuetudo vocata, Goldwith vel Goldwich.

GOLIARDUS, A jester or buffoon. Mat. Paris. 1229.

GOOD ABEARING, bonus gestus.] Signifies an exact carriage or behaviour of a subject towards the king and the people; whereunto some persons, upon their misbehaviour are bound; and he that is bound to this, is said to be more strictly bound than to the peace; because where the peace is not broken, the surety de
**GOOD BEHAVIOUR.** Surety for the *good behaviour* is surety for the *peace*, and differs very little from *good abearing*. A justice of peace may demand it *ex officio*, according to his discretion, when he sees cause; or at the request of any other under the king’s protection: his warrant also is to be issued when he is commanded to do it by writ of *supticavit* out of Chancery or *B. R.* See further, tit. *Justices of Peace*, and *Surety of the Peace*, at large.

**GOOD CONSIDERATION,** See *Consideration*.

**GOODS AND CHATTELS,** *Bona et cattalla,* see *Chattels*.

**GOOLE,** Fr. *Goulet.* A breach in a sea-bank or wall; or a passage worn by the flux and reflux of the sea. Stat. 16 & 17 Cm·. II. c. 11.

**GORCE,** From Fr. *gorte.* A wear: by stat. 25 Edw. III. st. 4. c. 4. it is ordained, that all *gorces*, mills, wears, &c. levied and set up, whereby the king’s ships and boats are disturbed and cannot pass in any river, shall be utterly pulled down, without being renewed. Sir Edward Coke derives this word from *gurges,* a deep pit of water, and calls it a *gors,* or *gulf:* but this seems to be a mistake, for in *Domesday* it is called *gourt* and *gort,* the French word for a wear. *Co. Litt.* 5.


**GOTE,** Sax. *geotan,* i. e. *fundere.* A ditch, sluice or gutter, mentioned in stat. 23 Hen. VIII. c. 5.

**GOVERNMENT.**

By this word, in common speech, is understood the constitution of our country as exercised, according to the principles of *limited monarchy,* under the legislature of *king, lords* and *commons.* For the principles of this government and constitution, and its peculiar excellencies in preference to all others, see this *Dict. jussim*; and particularly, under titles *King, Parliament, Treason, Tenure, Habeas Corpus, Liberties, Jury,* and other apposite titles.

When civil society is once formed, government at the same time results of course, as necessary to preserve and to keep that society in order. Unless some superior be constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a state of nature without any judge upon earth to define their rights and redress their wrongs. But as all the members which compose this society were naturally equal, it may be asked in whose hands are the reins of government to be entrusted? To this the general answer is easy; but the application of it to particular cases has occasioned one half of those mischiefs, which are apt to proceed from misguided political zeal. In general, all mankind will agree that government should be reposed in such persons, in whom those qualities are most likely to be found, the perfection of which is among the attributes of him who is emphatically styled the *supreme being,* the three grand requisites of *wisdom,* of *goodness,* and of *power,* wisdom to discern the real interest of the community; goodness to endeavour always to pursue
that real interest: and strength or power to carry this knowledge and intention into action. These are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well constituted frame of government.

How the several forms of government we now see in the world at first actually began, is matter of great uncertainty, and has occasioned infinite disputes. However they began, or by what right soever they subsist, there is and must be in all of them a supreme, irresistible, absolute, uncontrolled authority, in which the jura summi imperii, or the rights of sovereignty, reside. And this authority is placed in those hands wherein (according to the opinion of the founders of such respective states, either expressly given or collected, from their tacit approbation) the qualities requisite for supremacy, wisdom, goodness, and power, are the most likely to be found.

The political writers of antiquity will not allow more than three regular forms of government. The first when the sovereign power is lodged in an aggregate assembly, consisting of all the free members of a community, which is called a democracy; the second when it is lodged in a council, composed of select members, and then it is styled an aristocracy; the last when it is entrusted in the hands of a single person, and then it takes the name of a monarchy. All other species of government, they say, are either corruptions of, or reducible to, these three.

By the sovereign power, is meant the power of making laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time at the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; by constituting one or a few, or many executive magistrates: and all the other powers of the state must obey the legislative power in the discharge of their several functions, or else the constitution is at an end.

In a democracy, where the right of making laws resides in the people at large, public virtue, or goodness of intention, is more likely to be found, than either of the other qualities of government. Popular assemblies are frequently foolish in their contrivance, and weak in their execution; but generally mean to do the thing that is right and just, and have always a degree of patriotism or public spirit. In aristocracies there is more wisdom to be found than in the other frames of government; being composed, or intended to be composed, of the most experienced citizens. But there is less honesty than in a republic, and less strength than in a monarchy. A monarchy is indeed the most powerful of any; for by the entire conjunction of the legislative and executive powers, all the sinews of government are knit together, and united in the hand of the prince; but then [in absolute monarchies] there is imminent danger of his employing that strength to improvident or oppressive purposes.

Thus these three species of government have, all of them, their several perfections and imperfections. Democracies are usually the best calculated to direct the end of a law; aristocracies to invent the means by which that end shall be obtained; and monarchies
to carry those means into execution. The ancients had in general no idea of any other permanent form of government but these three: for though Cicero declares himself of opinion, "esse optimâ constitutam rempublicam, quae ex tribus generibus illis, regali, optima, et populari, sit modice confusa," yet Tacitus treats this notion of a mixed government, formed out of them all, and partaking of the advantages of each, as a visionary whim, and one that, if effected, could never be lasting or secure.

But, happily for us of this island, the British Constitution has long remained, and it is to be hoped will long continue, a standing exception to the truth of this observation. For, as with us, the executive power of the laws is lodged in a single person, they have all the advantages of strength and despatch, that are to be found in the most absolute monarchy: and as the legislature of this kingdom is intrusted to three distinct powers, entirely independent of each other: first the king; secondly the lords spiritual and temporal, which is an aristocratical assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property; and, thirdly, the house of commons, freely chosen by the people from among themselves, which makes it a kind of democracy; as this aggregate body, actuated by different springs, and attentive to different interests, composes the British Parliament, and has the supreme disposal of every thing; there can be no inconvenience attempted by either of the three branches, but which will be withstood by one of the other two; each branch being armed with a negative power, sufficient to repel any innovation which it shall think inexpedient or dangerous.

Here then is lodged the sovereignty of the British constitution; and lodged as beneficially as is possible for society. For in no other shape could we be so certain of finding the three great qualities of government so well and so happily united. If the supreme power were lodged in any of the three branches separately, we must be exposed to the inconveniences of either absolute monarchy, aristocracy, or democracy, and so want two of the three principal ingredients of good policy, either virtue, wisdom, or power. If it were lodged in any two of the branches; for instance in the king and house of lords, our laws might be providentially made, and well executed, but they might not have always the good of the people in view. If lodged in the king and commons, we should want that circumspection and mediatory caution which the wisdom of the peers is to afford; if the supreme rights of legislature were lodged in the two houses only, and the king had no negative upon their proceeding, they might be tempted to encroach upon the royal prerogative, or perhaps to abolish the kingly office, and thereby weaken (if not totally destroy) the strength of the executive power. But the constitutional government of this island is so admirably tempered and compounded, that nothing can endanger or hurt it, but destroying the equilibrium of power between one branch of the legislature and the rest. For if ever it should happen that the independence of any one of the three should be lost, or that it should become subservient to the views of either of the other two, there soon would be an end of our constitution. 1 Comm. 48. 52: Introd.

Contempts and misprisions against the king's person and govern-
ment, may be by speaking or writing against them; cursing or wishing him ill, giving out scandalous stories concerning him, or doing any thing that may tend to lessen him in the esteem of his subjects, may weaken his government, or may raise jealousies between him and his people. It has also been held an offence of this species to drink to the pious memory of a traitor; or for a clergyman to absolve persons at the gallows, who there persist in the treasons for which they die; these being acts which impliedly encourage rebellion. And for this species of contempt, a man may not only be fined and imprisoned, but suffer the pillory, or other infamous corporal punishment. 1 Hawk. P. C. 4 Comm. 13. c. 9.

In cases of conspiracy or meditated treason against the king and government, it is not unusual to vest a power in the king of apprehending and detaining suspected persons without bail or mainprise; which as to them operates as a suspension of the habeas corpus act. For this purpose the stats. 1 W. & M. c. 2. 6 Ann. c. 15. 1 Geo. I. cc. 8. 39. and divers others have been from time to time passed. The last instances were in Great Britain, under 41 Geo. III. (U. K.) c. 26. and in Ireland, under 43 Geo. III. c. 4.

GRACE. Acts of parliament for a general and free pardon, are called Acts of Grace.

GRACE, Days of, See title Bill of Exchange.

GRADUATES, graduated.] Scholars who have taken degrees in a university. Those not having taken any degrees are called under-graduates.

GRAFFER, Fr. greffier, i. e. scriba.] A notary or scrivener, used in the ancient stat. 5 Hen. VIII. c. 1.


GRAIL, gradate, or graduate.] A gradual or book, containing some of the offices of the Romish church.—Gradate, sic dictum, a gradalibus in tali libro contentis. Lyndewood. Provincial. Ang. lib. 3. It is sometimes taken for a mass book, or part of it, instituted by Pope Celestine, anno 430.

GRAIN, The twenty-fourth part of a penny-weight. Merch. Dict. Also grain signifies any corn sown on ground; and there is what is so called in the top of the ear, less than corn. Lit. Aleyn’s Refl. 80.

GRAND ASSISE, A writ in a real action to determine the right of property in lands. See titles Jury, Magna Assisa.

GRAND CAPE, A writ on plea of land, where the tenant makes default in appearance at the day given, for the king to take the land into his hands, &c. Reg. Jud. 1. See Cape Magnum.

GRAND DAYS, Those days in the terms which are solemnly kept in the inns of court and chancery, i. e. Candlemas Day in Hilary term, Ascension Day in Easter term, St. John the Baptist's Day in Trinity term, and All Saints Day in Michaelmas term; which days are dies non juridici, or no days in court.

GRAND DISTRESS, Is a writ so called, not for the quantity of it, for it is very short, but for its quality; for the extent thereof is very great, being to all the goods and chattels of the party dis-
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trained within the county: it lies in two cases, either when the tenant or defendant is attached, and appears not, but makes default; or where the tenant hath once appeared, and app'ears not, but makes default; then this writ is had by the common law in lieu of a fictit cape. Stats. West. 1. eqn. 44. 52 Hen. III. c. 9.

GRAND JURY, The jury which finds bills of indictment before justices of peace, and gaol delivery, or of oyer and terminer, &c. They ought only to hear witnesses for the king; and to find a bill on probable evidence; because it is but an accusation, and the party is to be put upon his trial afterwards. But if the bill be against A. for murder, and the grand jury, on the evidence before them, be satisfied it was se defendendo, &c. and so return it specially; the court may remand them to consider better thereof, or hear the evidence at the bar, and accordingly direct the grand jury. 2 Hale's Hist. P. C. 157, 158. Where a grand jury refuses to present things within their charge, &c. a new grand inquest may be empannelled, to inquire of the concealment of the former; on whose defaults presented, they shall be amerced. 2 Hale's P. C. 155. A grand juror disclosing to any one indicted, the evidence that appeared against him, is guilty of a high misprision, and liable to be fined and imprisoned. 4 Comm. 126. See at large tit. Indictment, Jury.


GRANGE, grangia.] A house or farm where corn is laid up in barns, granaries, &c. and provided with stables for horses, stalls for oxen, and other things necessary for husbandry. This definition is agreeable to Szelman. According to Wharton, grange is strictly and properly the farm of a monastery, where the religious reposited their com. Grangia, Lat. from Granum. But in Lincolnshire, and in other northern counties, they call every lone house, or farm, which stands solitary, a grange. Stevens's Shakespeare.

Dr. Johnson in his dictionary derives the word from grange, French, and defines it, a farm, generally; a farm with a house, at a distance from neighbours.

GRANGEARIUS, Is the person who has the care of such a place, for corn and husbandry: and there was anciently a granger, or grange-keeper belonging to religious houses, who was to look after their granges, or farms in their own hands. Fleta, lib. 2. c. 8. Cartular. St. Edmund, MS. 323.

DONATIO; CONCESSIO, In the common law, a conveyance in writing of incorporeal things, not lying in livery, and which cannot pass by word only; as of reversions, advowsons in gross, tithes, rents, services, common in gross, &c. It has also been taken generally for every gift and grant of any thing whatsoever. Co. Litt. 172. 3 Rep. 69. Grants are made by such persons as cannot give but by deed: he that granteth is termed the grantor, he to whom the grant is made is the grantee. West. Symb. 234.

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Grant is the regular method, by the common law, of transferring the property of incorporeal hereditaments or such things whereof no livery can be had. Co. Litt. 9. For which reason all corporeal hereditaments, as lands and houses, are said to lie in livery, and the others, as advowsons, commons, rents, reversions, &c., to lie in grant. Ib. 172. And the reason is given by Bracton, “Traditio, [livery,] nihil aliud est quam rei corporalis, de persona in personam, de manu in manum translatio, aut in possessionem inducere: sed res incorporeae quam sunt ipsam jus rei vel corpori in herere, traditionem non patiuntur.” Bract. l. 2. c. 18. Incorporeal hereditaments therefore pass merely by delivery of the deed. And in seigniories or reversions of lands, such grant, together with the attornment of the tenant, (while attornments were requisite,) were held to be of equal notoriness, and therefore equivalent to, a feoffment and livery of lands in immediate possession. It therefore differs but little from a feoffment, except in its subject matter, for the operative words therein commonly used are dedi et concessi; i.e., given and granted. Comm. 316. c. 20. See further, this Dict. tit. Conveyance, Deed, Gift.

I. What Things and Interests may be granted; by what Description; and how Grants shall be construed.

II. Who may make Grants; and who may take by Grant.

I. To every good grant the following things are requisite: 1. That there be a person able to grant; 2. A person capable of the thing granted; 3. That there be a thing grantable; 4. That it be granted in such manner as the law requires; 5. That there be an agreement to, and acceptance of, the thing granted, by him to whom made; and, 6. There ought to be an attornment where needful. Co. Litt. 73. But grants and conveyances are good without attornment of tenants, notice being given them of the grants. By stat. 4 Ann. c. 16. § 9. grants are taken most strongly against the grantor in favour of the grantee: the grantee himself is to take by the grant immediately, and not a stranger, or any in futuro; and if a grant be made to a man and his heirs, he may assign at his pleasure, though the word assigns be not expressed. Lit. 1. Staud. 322. The use of any thing being granted, all is granted necessary to enjoy such use; and in the grant of a thing, what is requisite for the obtaining thereof is included. Co. Litt. 56. So that if timber trees are granted, the grantee may come upon the grantor’s ground to cut and carry them away. 2. Inst. 309. Plowd. 15. A man cannot grant that which he hath not, or more than he hath; though he may covenant to purchase an estate, and levy a fine to uses, which will be good. A person may grant a reversion, as well as a possession; but the law will not allow grants of titles only, or imperfect interests, or of such interests as are merely future. Bac. Max. 58. A bare possibility of an interest, which is uncertain; a right of entry, or thing in action, cause of suit, &c. may not be granted over to a stranger. Perk. § 65. 2 Inst. 314. 4 Reph. 66.

It was formerly held, that by a grant of all a man’s goods and chattels, bonds would pass; now it is held the contrary; that the
words goods and chattels do not extend to bonds, deeds or specialties, being things in action, unless in special cases. 3 Rep. 33. Co. Litt. 152. The stat. 2 Geo. II. cap. 25. was found necessary to make the stealing such bonds, &c. felony, as in case of other goods and chattels.

In grants there must be a foundation of interest, or they will not be binding: if a person grants a rent-charge out of lands, when he hath nothing in the land, the grant will be void. Perk. 15. Though it is said, if a man grant an annual rent out of land, wherein he hath no kind of interest, yet it may be good to charge the person of the grantor. Owen’s Rep. 3. A man may grant an annuity for him, and his heirs, to commence after his death, and it shall charge the heir. Bac. Max. 58. And after the grant of an annuity, &c. is determined, debt lies for the arrears; and the person of the tenant will be charged. 7 Rep. 39. If a common person grants a rent, or other thing that lies in grant, without limitation of any estate, by the delivery of the deed, a freehold passes: but if the king make such a grant of a rent, &c. it is void for uncertainty. Danv. Rep. 45. a.

A grant to a man, with a blank for his christian name is void, except to an officer known by his office, when it must be averred; and it is the same where the grantee’s christian name is mistaken. Cro. Eliz. 328.

Grants may be void by uncertainty, impossibility, being against law, on a wrong title, to defraud creditors, &c. Co. Litt. 183. Such things as lie in grant, may not be granted or held without deed; and if any thing not grantable, is granted with other things, the grant will be void for all. 2 Shef. Abr. 269. 271. 273. Trusts and confidences are personal things, and may not be granted over to others in most cases; as offices of trust and the like: but all kinds of chattels, real and personal, are grantable. Perk. § 99. Plov. 141. 379.

If one grant any thing that lies in livery, or grant, and that is in case at the time of the grant, in fee, or for life, and the estate is to begin at a day to come, this, for the most part, will be void; but a lease or grant for years may be good in futuro; and may be to one for term of years, or years determinable on lives; and after to another, to begin at the end of that estate. 5 Rep. 1. Dyer, 58. Where a man hath a reversion after an estate for life of land, and he grants a rent out of it, the grant is good, and will fasten upon the land after the estate of the tenant for life is ended; and if a person grant rents, &c. and a stranger take them at that time, in this case the grant will be good, for one may not be out of possession of these things but at his pleasure. Perk. 92. 98. If a man grants that to one, that he hath granted before to another for the like term, &c. the second grant will be void. Dyer, 2. Perk. § 102. Grants are usually made by these words, viz.: have given, granted and confirmed, &c. And words in grants shall be construed according to a reasonable sense, and not be strained to what is unlikely. Hob. 304. Also it hath been adjudged, that grants shall be expounded according to the substance of the deed, not the strict grammatical sense, and agreeable to the intention of the parties. Co. Litt. 146. 313.

Where the principal thing is granted, the incident shall pass,
but the principal will not pass by the grant of the incident. Co. Litt. 152. A lord of a manor cannot grant the same, and reserve the court baron, it being inseparably incident. Co. Litt. 313. A grant of a manor, without the word cum pertinentes, will pass all things belonging to the manor; the grant of a farm will also pass all lands belonging to it; but a grant of a messuage passes only the house, out-houses and gardens. Owen's Rep. 51. When lands are granted by deed, the houses which stand thereon will pass; houses and mills pass by the grant of all lands, because that is the most durable thing on which they are built. 4 Rep. 86. 2 And. 123. By grant of all lands, the woods will pass; and if a man grant all his trees in a certain place, this passeth the soil; though an exception of wood extends to the trees only, not the soil. 1 Roll. Rep. 33. Dyer, 19. 5 Rep. 11.

A. being mortgagee in fee of certain lands, and B. the mortgagor entitled to the equity of redemption, by lease and release, A. conveys and B. releases the lands to C. in fee, who by the same instrument covenants with and grants to B. that it shall be lawful for B. and his assigns, at all times, to search and dig for coal, and to take and carry away the same to his and their own use: this is only a license, and conveys no interest in the soil, so as to exclude C. and those claiming under him, from getting coal there; nor could it operate as an exception of reservation out of the grant in respect to B. who had not the legal title in him at the time. 4 East's Rep. 469.

By a grant of all tithes arising out of or in respect to farms, lands, &c. the tithes arising out of and in respect of rights of common appurtenant to such farms or lands will pass. 7 Term Rep. K. B. 641.

Trees in boxes will not pass by the grant of the land, &c. as they are separate from the freehold. Mod. Cases, 170. A man grants all his wood that shall grow in time to come; it is a void grant, not being in esse. 3 Leon. 37. A grant de vestrum terra passeth not the freehold, therefore the grantee hath no authority to dig in it by virtue of such a grant. Owen, 37. By the grant of lands in the possession of another, it is good if such other be in possession, let the possession be by right or wrong. 1 Roll. Rep. 23. If a grant is general, and the lands granted restrained to a certain vill, the grantee shall have no lands out of the vill. 2 Rep. 33. It has been held, that where a grant is made of lands and tenements in D. copyhold lands will not pass; for they cannot pass otherwise than by surrender. Owen, 37.

Where lands are certainly described in a grant, with a recital as granted to A. B. &c. though they were not thus granted, it has been adjudged that the grant was good. 10 Rep. 110. If a first description of lands in a grant is false, notwithstanding the second be true, nothing will pass by it; though, if the first be true, and the second false, the grant may be good. 3 Rep. 10.

Where there is a grant of a particular thing once sufficiently ascertained by some circumstance belonging to it, the addition of an allegation, mistaken or false respecting it, will not frustrate the grant; but when a grant is in general terms, then the addition of a particular circumstance will operate by way of restriction and modification of such grant. 3 East's Rep. 51.
The word grant, where it is placed among other words of demise, &c. shall not enure to pass a property in the thing demised; but the grantee shall have it by way of demise. Dyer, 56.

Of grants, some charge the grantor with something he was not charged with before; others discharge the grantee of something wherewith he was before charged, or chargeable. If a man grant to me a rent-charge, and after I grant to him, that he shall not be sued for this rent; this is good to bar me of bringing an action, though I may still restrain for the rent: and if one grants to his lessee for life or years, that he shall not be impeached for waste, it will be a good discharge, and may be pleaded. 7 Hen. VI. 43. Bro. Grant, 175. Keilw. 88. See 1 Rep. 147. 10 Rep. 43. and this Dict. tit. Condition.

II. Any natural person, or corporate body, (not prohibited by law, as infants, feme covertis, monks, &c.) may make a grant of lands, and be a grantor; and an infant, or woman covert, may be a grantee. Though the infant at his full age may disagree to the grant, and the husband disagree to the grant to his wife. Perk. 3, 4. 43. See tit. Infant, Baron and Feme, &c.

But herein the law distinguishes between such grants as are void, and only voidable; the first of which are all such gifts, grants or deeds, made by an infant, which do not take effect by delivery of his hand; as if an infant give a horse, and no delivery of the horse with his hand, and the donee take the horse by force of the gift, the infant shall have an action of trespass, for the grant was merely void. But if an infant enters into an obligation, makes a feoffment, levies a fine, or suffers a recovery, these are not void, only voidable. Perk. §§ 12, 13. 19. See tit. Infant.

A grant by a feme covert is void, for no act of her's can transfer that interest which the intermarriage has vested in the husband. See 2 New Abr. 648. Perk. § 6. See tit. Baron and Feme.

Grants made by persons non sana memoriae, are good against themselves; but they are voidable by their heirs, &c. A man that is born dumb, or dumb and deaf, if he have understanding, by making signs, he may grant his land to another; not one who is born deaf, dumb, and blind also. Co. Litt. 2. See tit. Idiot. A person attainted of treason or felony, may make a deed of gift or grant, and it shall be good against all persons except the king, and the lord of whom the lands are held; and for relief in prison, they may be good against them likewise. Co. Litt. 2. Perk. § 26. 31.

The grants of persons under duress are void; that is, if they were made under an apprehension of some bodily hurt, or if the grantor were imprisoned without cause, and the grantee refused to release or discharge him, unless he made such grant. 2 Inst. 483. But menacing to burn houses, or spoil or carry away the party's goods, are not sufficient to avoid the grant; for if he should suffer what he is threatened, he may sue and recover damages in proportion to the injury done him. 4 Inst. 485. Perk. § 18. See tit. Duress.

If there be father and son of the same name, and the father grants an annuity by his name, without any addition, it shall be intended the grant of the father; and if the son, being of the
same name with his father, grant an annuity without any addition, yet the grant is good, for he cannot deny his deed. *Perk.* § 37.

There are but few (if any) persons excluded from being grantees; therefore a man attainted of felony, murder, or treason, may be a grantee; so the king's villein, an alien, one outlawed in a personal action, or a bastard, may be grantees. *Perk.* § 48. A bastard who is known to be the son of such a one, may purchase, or be a grantee by such reputed name; for all surnames were originally acquired by reputation. *Co. Litt.* 3. 2 Roll. *Abr.* 43, 44.

*A feme covert may be a grantee,* therefore if a rent-charge be granted to a *feme covert,* and the deed is delivered to her without the privity of her husband, and the husband dies before any disagreement made by him, and before any day of payment, the grant is good, and shall not be avoided; by saying, that the husband did not agree, &c. but the disagreement of the husband ought to be shown. *Perk.* § 43. See tit. *Baron and Feme.*

Although aggregate corporations are invisible, and exist only in supposition of law, yet they are capable of taking by grant, for the benefit of the members of the corporation. *Co. Litt.* 9. 1 *Bawd.* 344.

**GRANTS OF THE KING.** The king's grants are matters of public record; for the king's excellency is so high in the law, that no freehold may be given to, nor derived from him, but by matter of record. *Doct. & Stud.* b. 1. d. 8. To this end a variety of offices are erected, communicating in a regular subordination one with another, through which all the king's grants must pass, and be transcribed and enrolled; that the same may be narrowly inspected by his officers, who will inform him if any thing contained therein is improper, or unlawful to be granted. These grants, whether of lands, honours, liberties, franchises, or aught besides, are contained in charters or letters patent; that is, open letters, *literæ patentes;* so called because they are not sealed up, but exposed to open view, with the great seal pendant at the bottom, and are usually directed or addressed by the king to all his subjects at large. And therein they differ from certain other letters of the king, sealed also with his great seal, but directed to particular persons and for particular purposes; which therefore not being designed for public inspection, are closed up and sealed on the outside, and are thereupon called *writs close, litteræ clausæ;* and are recorded in the close rolls, in the same manner as the others are in the patent rolls. 2 *Comm.* 346. c. 21.

Grants or letters patent must first pass by *bill,* which is prepared by the attorney and solicitor-general, in consequence of a warrant from the crown; and is there signed, that is, subscribed, at top, with the king's own *sign manual,* and sealed with his *privy signet,* which is always in the custody of the principal secretary of state; and then sometimes it immediately passes under the great seal, in which case the patent is subscribed in these words, *her statum regem, by the king himself.* Otherwise, the course is to carry out an extract of the bill to the keeper of the *privy seal,* who makes out a writ or warrant thereupon to the chancery, so that the *sign manual* is the warrant to the *privy seal,* and the *privy seal* is
the warrant to the great seal; and in this last case the patent is subscribed, *per breve de privato sigillo*: by writ of privy seal. But there are some grants which only pass through certain offices, as the admiralty or treasury, in consequence of a sign manual, without the confirmation of either the signet, the great, or the privy seal. 2 Comm. c. 21. See 9 Ref. 18. 2 Inst. 555.

The manner of granting by the king does not more differ from that by a subject, than the construction of his grants when made. A grant made by the king at the suit of the grantee, shall be taken most beneficially for the king, and against the party; whereas the grant of a subject is construed most strongly against the grantor. Wherefore it is usual to insert in the king's grants, that they are made not at the suit of the grantee, but by speciali gratia, certa scientia, et mero motu legis; of the king's special favour, certain knowledge, and mere motion, and then they have a more liberal construction. Finch's L. 100. 10 Ref. 112.

A subject's grant shall be construed to include many things besides what are expressed, if necessary for the operation of the grant. Therefore, in a private grant of the profits of land for one year, free ingress, egress and regress to cut and carry away those profits are also inclusively granted; and if a feoffment of land was made by a lord to his villein, this operated as a manumission, for he was otherwise unable to hold it. Co. Litt. 56. Litt. § 206. But the king's grant shall not enure to any other intent, than that which is precisely expressed in the grant. As if he grants land to an alien, it operates nothing; for such grant shall not also enure to make him a denizen, that so he may be capable of taking by grant. Bro. Atri. Patent, 62. Finch's L. 110.

When it appears from the face of the grant that the king is mistaken, or deceived, either in matter of fact or of law, as in case of false suggestion, misinformation, or misrecital of former grants; or if his own title to the thing granted be different from what he supposes; or if the grant be informal; or if he grants an estate contrary to the rules of law; in any of those cases, the grant is absolutely void. Preem. 172. For instance, if the king grants lands to one and his heirs male, this is merely void; for it shall not be an estate-tail, because there want words of procreation, to ascertain the body out of which the heirs shall issue; neither is it a fee-simple as in common grants it would be, because it may reasonably be supposed that the king meant to give no more than an estate-tail; the grantee is, therefore, if any thing, nothing more than tenant at will. Finch, 101, 102. Bro. Atri. Estates, 34. Patents, 104. Dyer, 270. Danv. 45. 5 Ref. 94. More, 293.

To prevent deceits of the king, with regard to the value of estates granted, it is particularly provided by stat. 1 Hen. IV. c. 6. that no grant of his shall be good, unless, in the grantee's petition for them, express mention be made of the real value of lands. Other statutes have also been passed relative to this subject. The king's grantee shall not forfeit for non-payment of rent, where the rent has been answered before process issued. Stat. 21 Jac. I. c. 25. Grants of felons' goods how to be enrolled. Stat. 4 & 5 W. & M. c. 28. § 1. The crown restrained from granting lands, except for thirty-one years, &c. Stat. 1 Atri. stat. I. c. 7. 34 Geo. III. c. 75.
and 48 Geo. III. c. 73. See also 39 & 40 Geo. III. c. 88, and 47 Geo. III. st. 2. c. 24, as to the disposition of the private property of the king, real and personal; and also as to grants of lands escheated; and which the king may please to restore for the execution of any trusts relating to them; or to reward the discoverers. See also tit. Forfeiture, and likewise a temporary act, 48 Geo. III. c. 50, for preventing the granting of any office, place or employment in reversion, or for joint lives with benefit of survivorship, or for any two or more lives in succession by his majesty, or by any board or department of government.

Before the statute de prerogativa regis, dowers, advowsons, and other things, have passed by the general grant of the king; but by that statute they are to be granted in express words. 1 Rep. 50. See tit. Advowson.

The king's grant is good for himself and successors, though his successors are not named. Yelv. 13.

The king may not grant away an estate-tail in the crown, &c. And the law takes care to preserve the inheritance of the king for the benefit of the successor. 2 And. 154. Styl. 263. See Jenk. Cent. 307. A grant may not be made by the king which tends to a monopoly, against the interest and liberty of the subject: nor can the king make a grant non obstante any statute made, or to be made; if he doth, any subsequent statute prohibiting what is granted, will be a revocation of the grant. 11 Rep. 87. Dyer, 52.

Where the king is restrained by the common law to make a grant, if he makes a grant non obstante the common law, it will not make the grant good: but when he may lawfully make a grant, and the law requires he should be fully apprized of what he grants, and not be deceived, a non obstante supplies it, and makes the grant good: if the words are not sufficient to pass the thing granted, a non obstante will not help. 4 Rep. 35. Nels. Abr. 904. If a grant is made by the king, and a former grant is in being of the same thing, if it be not recited, the grant will be void: and reciting a void grant, when there is another good, may make the king's grant void. Dyer, 77. Cro. Car. 143. And there may be a non obstante to a former grant. 5 Rep. 94. Moor, 293.

The king's grants may be void, by reason of uncertainty; as if debts and duties are granted, without saying in particular what duties, &c. 12 Rep. 46. But where there is a particular certainty preceding they shall not be destroyed by any uncertainty or mistake which follows: and there is a distinction where a mistake of title is prejudicial to the king, and when it is in some description of the thing which is supplemental only, and not material orissuable. 1 Mod. 195. The king grants the manor of D. which he has by the attainder of a certain person, &c. and in fact the king hath it not so; this grant is void. 10 Rep. 109.

If the king grants a messuage of the value of 1l. a year to A. B. and it be of the yearly value of 10l. the value being in the same sentence with the grant, will make it void: though if it be mentioned in another sentence it may be good. Jenk. Cent. 261. The grant of the king to a corporation, that they shall not be impleaded for lands, nor for any cause arising there, elsewhere than before themselves, doth not bind the king where he is party; and the
king by his grant cannot exclude himself from prosecuting pleas of the crown; for it concerns the public government. Kelw. 88.

The king cannot grant a thing intrusted to him in respect of his sovereignty; as the lapse of a church, before, or after it becomes void. 2 Roll. 187. l. 32. 35. Nor purveyance, butlerage, prisage, &c. 2 Roll. 187. l. 35. Nor the power to make a dispensation of a statute. 7 Co. 36. b. So he cannot grant the lands, or goods, of a recusant convict, before the commission returned. 2 Roll. 184. l. 20. Nor the lands or goods of one attainted of treason, before his attainder. Dyer, 108. a.

So the king cannot grant the prosecution, or execution of any penal statute to another; for it is intrusted with him as the head of the public weal. R. 7 Co. 37. a. Nor any fine or forfeiture of a particular person, before he be convicted. Declared by stat. 1 W. & M. stat. 2. c. 2. that such grant or promise is illegal and void. See tit. Forfeiture; and further, as to the subject of this article, tit. King, Scire Facias to repeal patents.

GRANTZ, Is used for grandees, in the Par. Roll. 6 Edw. III. m. 5, 6. Et les ditz countz, barons, et autre grantz, &c.

GRASS HEARTH, The grasing or turning up the earth with a plough; whence the customary service for the inferior tenants of the manor of Amersden, in Oxfordshire, to bring their ploughs and do one day's work for their lord, was called grass hearth or grass hurt: and we still say the skin is grased or slightly hurt; and a bullet grases on any place, when it gently turns up the surface of what it strikes upon. Paroch. Antiq. 496, 497.

GRATUITOUS DEEDS, &c. Such as are made without good and legal consideration. See Consideration.


GRAVARE ET GRAVATIO, An accusation or impeachment. Leg. Etheld. cap. 19.

GRAVE. The names of places ending with grave come from the Sax. graf, a wood, thicket, den or cave.

GRAVERS, Of seals and stones shall give to every one their weight of silver and gold, on pain of imprisonment. Stat. 7 Edw. III. cap. 7. now obsolete.

GRAZIER, pecarius.] A breeder or keeper of cattle, mentioned in the stat. 25 Hen. VIII. cc. 2. 13. See Cattle.

GREAT MEN. This expression is sometimes, in ancient statutes, understood of the temporal lords in the higher house of parliament, and sometimes of the members of the house of commons. See tit. Parliament.

GREAT SEAL OF ENGLAND. See tit. Chancellor; Treason.

GREE, Fr. gré, i. e. good liking or allowance.] Satisfaction; as to make gree to the parties, is to agree with and satisfy them for an offence done. And where it is said in our statutes, that judgment shall be put in suspense till gree is made to the king of his debt; it is taken for satisfaction. Stats. 1 Rich. II. c. 15. 35 Edw. III. c. 19.

GREEN CLOTH, Of the king's household, so termed from the green cloth on the table, is a court of justice composed of the...
Lord Steward, treasurer of the household, comptroller, and other officers; to which is committed the government and oversight of the king’s court, and the keeping of the peace within the verge, &c.

GREENHEW or GREENHUE, The same as vert in forests, &c. Manwood, parr. 2. cap. 6. num. 5. See tit. Forest.

GREENLAND COMPANY. A joint stock of 40,000l. was, by statute, to be raised by subscribers, who were incorporated: and the company to use the trade of catching whales, &c. into and from Greenland, and the Greenland seas; they might make by-laws for government, and of persons employed in their ships, &c. Stat. 4 & 5 Wm. III. cap. 17. But by stat. 1 Ann. c. 16. any persons who will adventure to Greenland for whale fishing, shall have all privileges granted to the Greenland Company. See this Dict. tit. Fish, Fisheries and Fishing, Navigation Acts.

GREEN SILVER. There is an ancient custom within the manor of Wittle, in the county of Essex, that every tenant whose fore-door opens to Greenbury, shall pay a halfpenny yearly to the lord, by the name of green silver. The term silver, here, must mean rent.

GREEN WAX, Is where estreats are delivered to the sheriffs out of the exchequer, under the seal of that court, made in green wax, to be levied in the several counties; this word is mentioned in stat. 7 Hen. IV. c. 3.

GREENWICH HOSPITAL. A duty was laid on all foreign-built ships, half of it payable to the trinity-house, to be applied for the relief of decayed seamen. Stat. 1 Jac. II. cap. 18. Every seaman shall allow out of his wages 6d. a month, for the better support of the said hospital: for which duty receivers are appointed, who may depute officers of the customs, &c. to collect the same, and examine on oath masters of ships, &c. Stats. 8 & 9 Wm. III. c. 23. &c. 10 Ann. c. 17. 2 Geo. II. c. 7. Provisions for securing the payment of the 6d. per month from privateers. 18 Geo. II. c. 31. These funds are under the management of the governors of Greenwich hospital; see 5 Geo. III. c. 16. and are further improved by the transfer thither of the chest from Chatham. 43 Geo. III. cc. 100, 101. See further, tit. Navy, Seamen.

GREVE, Sax. gerefa.] or rather reve. A word of power and authority, signifying as much as comes or vice comes; and hence comes our shrive, portreve, &c. which by the Saxons were written sciregerefa, portgerefa. Lamberti in his exposition of Saxon words, verbo praefectus, makes it the same with reve. See Hoveden, Part. post. Annal. fol. 346.

GRILS, A kind of small fish. Stat. 22 Edw. IV. c. 2.

GRITH, Sax. Peace. Termus de Ley.

GRITHBRECHE, Sax. grythbryce, i. e. pacis fractio.] Breach of the peace. In causa regis grithbreche 100 Sol. emendavit. Leg. Hen. I. c. 36.

GRITHSTOLE, Sax. sedes pacis.] A place of sanctuary. See Fridstol.

GROATS. The allowance to prisoners kept in execution for debt, is vulgarly so called; it was formerly 4d. per day, or 2s. 4d. per week. It is now 3s. 6d. See tit. Execution III. 4.
GROCERS, Were formerly those who engrossed merchandise. Stat. 37 Edw. III. c. 5. It is now a particular and well known trade; and the custom duties for grocery wares and drugs, are particularly ascertained, by statutes. See tit. Customs, Navigation Acts.


GROOM, The name of a servant in some inferior place; generally applied to servants in stables: but it hath a special significance, extending to groom of the chamber, groom of the stole, &c. which last is a great officer of the king’s household, whose precinct is properly the king’s bed-chamber, where the lord chamberlain hath nothing to do; stole signifies a robe of honour. Lex Constitutionis, p. 182. See Garcia.

GROOM PORTER, An officer or superintendent over the royal gaming tables; in Latin he is styled Aule Regis Janitor Primarius.

GROSS, (grosso.] In gross, absolute, entire; not depending on another; as anciently a villein in gross was such a servile person as was not appendant or annexed to the lord, or manor, nor to go along with the tenure as appurtenant to it; but was like the other personal goods and chattels of his lord, at his lord’s pleasure and disposal: so also advowson in gross differs from advowson appendant, being distinct from the manor. Co. Litt. 120. See 2 Comm. 22.

GROUSE, The red and black heath game, for preserving of which, no heath, furze or fern shall be burnt on any heaths, moors or other wastes, between the 2d of February and 24th of June. Stat. 4 & 5 W. & M. c. 23. See title Game.

GROWME, An engine to stretch woollen cloth after it is woven. See the ancient stat. 43 Edw. III. c. 10.

GROWTH-HALFPENNY, A rate so called; and paid in some places for the tithes of every fat beast, ox, or other unfruitful cattle. Clayton’s Ref. 92.
GUARDIAN I.

GRUARI, From the Fr. gruyer.] The principal officers of the forest in general.

GUARD, Fr. garde, Lat. custodia.] A custody or care of defence. And sometimes it is used for those that attend upon the safety of the prince, called the life-guard, &c. sometimes such as have the education and guardianship of infants; sometimes for a writ touching wardship, as droit de garde, ejectione de gard, and ravishment de gard. Fitz. N. B. 139. See tit. Guardian.

GUARDIAN.

Fr. gardein, Lat. custos, guardianus.] One who hath the charge or custody of any person or thing; but commonly he who hath the custody and education of such persons as are not of sufficient discretion to guide themselves and their own affairs, as children and idiots; (usually the former;) being as largely extended in the common law as tutor and curator among the civilians. Blount.

I. The several kind of Guardians; who may be Guardians; and how appointed.

II. Of the Guardian's Interest in the Body and Lands of the Ward, and what he may lawfully do, so as to bind the Infant.

III. Of the Infant's Remedy against the Guardian, and of obliging him to Account.

I. A guardian is either legitimus, testamentarius, datus, or custumarius: he that is a legitimate or lawful guardian is so jure communi, or jure naturali; the first as guardian in chivalry, in fact, or in right; the other de jure naturali, as father or mother. A testamentary guardian was allowed even by the common law; the body of the minor was to remain with him who was appointed, till the age of fourteen; and as for his goods it might be longer, or as long as the testator appointed; guardianus datus, was one appointed by the father in his life-time, or by the lord chancellor after the death of the father; and where there is a guardianship by the common law, the lord chancellor can order and intermeddle; but where by statute, he cannot remove either the child, or the guardian: guardianship by custom, is of orphans by the custom of London, and other cities and boroughs; and in copyhold manors, by the custom it may belong to the lord of the manor to be guardian himself or to appoint one. 3 Salk. Ref. 176, 177.

The guardianships by the common law, were guardians in chivalry; guardians by nature, such as the father or mother; guardians in socage, who are the next of blood, to whom the inheritance cannot descend, if the father does not order it otherwise; and guardian because of nurture, when the father by will appoints one to be guardian of his child. Co. Litt. 18. 2 Inst. 305. 3 Ref. 37.

The several guardians now in use, may be thus enumerated: 1. By Nature; 2. For Nurture; 3. In Socage; 4. By Statute; 5. By Custom of London and other cities and boroughs; (which however, from particular exceptions, do not fall under the general law;) 6. By Election of the Infant; 7. By appointment of the
GUARDIAN I.

Chancellor; 8. Ad litem; 9. By appointment of the Ecclesiastical Court.

1. The father and (in some cases) the mother of the child are guardians by nature. For if an estate be left to an infant, the father is by common law the guardian, and must account to his child for the profits. 1 Inst. 88. But an executor may not pay to a father a legacy left to an infant. 1 P. Wms. 285. See tit. Executor, Legacy. And with regard to daughters it seems by construction of stat. 4 & 5 P. & M. c. 8. that the father might by deed or will assign a guardian to any woman child under the age of 16; and if none be so assigned, the mother shall in this case be guardian.


The said stat. 4 & 5 P. & M. provides, under severe penalties, as fine and imprisonment for years, "That nobody shall take away any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession, custody or governance, and against the will of the father of such maid or woman child, or of such person or persons to whom the father of such maid, or woman child, by his last will and testament, or by any other act in his life-time, hath [appointed] or shall appoint, assign, bequeath, give or grant, the order, keeping, education and governance of such maid or woman child." See this Dict. tit. Marriage, Rafe.

The direct object of the above statute, was to prevent the taking away or marrying maidens under sixteen, against the consent of their parents. But the statute has prohibited it in terms which imply that the custody and education of such females should belong to the father and mother, or the person appointed by the former. It is observable on this statute, that though the title is confined to maidens being inheritors, and the preamble speaks only of such as be heirs apparent, or have real or personal estate, yet the enacting part mentions maidens under sixteen generally. See 1 Inst. 88. b. n. 14. For determinations on this statute see Rutcliff's Ca. 3 Co. 57. Poph. 204. Cro. Car. 465. 1 Sid. 362. 2 Mod. 128. 3 Mod. 84. 169.

Many books, especially some of modern date, are very indiscriminate when they mention guardianship by nature. Sometimes the father is styled guardian by nature, of his heir apparent, for the time, in general terms; such as at first appear to intimate that no other ancestor except the father, not even the mother, is entitled to the guardianship in that right: and accordingly Comyns makes this inference from the language of the books; though perhaps too hastily. See Com. Dig. tit. Guardian, (C). 3 Co. 38. a. 6 Co. 22 b. there cited. In other cases it appears that the father being dead, the mother may have a writ of trespass quare consanguineum et heredem cepit; which imports that she may also be guardian by nature of her heir apparent. The silence in one book as to other ancestors, and the express exclusion of the grandfather in another book, without the necessary explanation, tend to an opinion that all ancestors, except the father and mother, are really excluded. See 1 Inst. 84. b. 6 Co. 22. b. However, in another place it appears that the grandfather and other ancestors may be guardians by nature of their heirs apparent, as well as the father and mother; though being liable to be postponed to others, where the father is not, both they and the mother have a title distinguishable
from his, in point of inferiority. 3 Co. 38. a. Further, some modern books do not confine guardianship by nature to heirs apparent, but denominate the father and mother the natural guardians of all their children; and sometimes even the parents of illegitimate issue seem to have been treated as their natural guardians. 1 Vez. 158. 2 Artk. 15. 70. 9 Mod. 117. Sometimes also the guardianship of female children under sixteen, as impliedly given to the father and mother, by the above mentioned stat. 4 & 5 P. & M. c. 8. is said to be jure nature. See the statute, and 3 Co. 38. b.

On the whole it seems, that not only the father but also the mother and every other ancestor may be guardians by nature, though with considerable differences, such as denote the superiority of the father's claim. The father hath the first title to guardianship by nature, the mother the second: as to other ancestors, if the same infant happens to be heir apparent to two, perhaps priority of the possession of the person of the infant might probably be allowed to decide the question. While the tenure by knight's service continued there was another difference, which more strongly marked the superiority of the father's claim; for he was entitled to the custody of the infant's person even against the lord in chivalry; a preference not allowed to the mother or other relations; and this diversity appears to reconcile the determinations in the old books, which apply only to cases in which the right to the infant's person was in contest with the lord in chivalry. 3 Co. 38 b. Radcliffe's Ca. According to the strict language of our law, only an heir apparent can be the subject of guardianship by nature; which restriction is so true that it hath even been doubted whether such guardianship can be of a daughter whose heirship, though denominated apparent, yet being liable to be superseded by the birth of a son, is in effect rather of the presumptive kind. 3 Co. 38. b. 1 Inst. 84. a. Therefore when the term of guardianship by nature is extended to children in general, or to any besides such as are heirs apparent, it is not conformable to its legal sense, but must be understood to have reference to some rule independent of the common law; as the dictates of nature, and the principles of general reason. Yet we must not, however, conclude, that parents have not a right to the custody of their other children, for the law gives them this custody till the age of fourteen by the guardianship for nurture, next mentioned, which, though it differs from that by nature, not only in name, but also in duration, and some other particulars, is founded on a like conformity to the order of nature. 1 Inst. 88. b. n. 12.

This guardianship by nature continues till the infant attains the age of twenty-one; it extends no further than the custody of the infant's person. Carth. 386. 1 Inst. 84. It yields, as to the custody of the person, to guardianship in socage, where the title to both guardianships concur in the same individuals. 1 Inst. 88. b. (See post, 3.) but guardianship in socage ending at fourteen, it seems, that after that age the father, or other ancestor, having a like title to both guardianships, becomes guardian by nature till the infant's age of twenty-one. See Carth. 384. Lastly, the father may disappoint the mother and other ancestors of the guardianship by nature, by appointing a testamentary guardian under the stats. 4 & 5 P. & M. and 12 Car. II. See post, 4.
2. Guardians for nurture are of course the father or mother till the infant attains the age of fourteen years. Moor, 738. 3 Ref. 38.

In default of father or mother, the ordinary usually assigns some discreet person to take care of the infant’s personal estate, and to provide for his maintenance and education. 2 Jones, 90. 2 Lev. 163. See post, 9. This guardianship by nurture, only occurs where the infant is without any other guardian; and it has been said that none can have it except the father or mother. 8 Edw. IV. 7. b. Bro. Gard. 70. 3 Co. 38. It extends no further than the custody and government of the infant’s person; and determines at fourteen in the case both of males and females. Ibid. Comyns refers to Fleta, as if, according to that ancient book, grandfathers and great-grandfathers might be guardians by nurture. But the statute cited by him doth not point at this species of guardian, it describing the patria potestas in general, and being apparently borrowed from the text of the Roman law; nor will it bear the least application to guardianship as our own law regulates it.

1 Inst. 88. b. in n. 13. ad fin.

3. Guardians in socage, are also called guardians by the common law. Wardship is incident to tenure in socage, but of a nature very different from that which was formerly incident to knight service. For if the inheritance descend to an infant under fourteen, the wardship of him does not, nor ever did, belong to the lord of the fee: because in this tenure no military or other personal service being required, there was no occasion for the lord to take the profits in order to provide a proper substitute for his infant tenant. See this Dict. title Tenure.

This kind of guardianship takes place only when the minor is entitled to some estate in lands; and then by the common law the guardianship devolves upon his next of kin, to whom the inheritance cannot possibly descend; as where the estate descended from his father, in this case his uncle by the mother’s side cannot possibly inherit this estate, and therefore shall be the guardian. Litt. § 123. For the law judges it improper to trust the person of an infant in his hands, who may by possibility become heir to him; that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust. 1 Comm. c. 17. And though this provision has been considered as arising from harsh and barbarous principles, experience shows that it is founded in sound policy and humanity. See 2 P. Wms. 262. 1 Inst. 88.

Guardianship in socage, like that in chivalry, springs wholly out of tenure. It is for this reason that the title to it cannot arise, unless the infant is seised of lands, or other hereditaments, lying in tenure, holden by socage. 1 Inst. 87. b. Like guardianship in chivalry, it is deemed to take place on a descent only, though the contrary has been argued. 2 Mod. 176. The title to this guardianship is without any distinction between the whole and the half blood. If there are two or more disinterested relations in equal degree, he who first gains possession of the heir shall have the custody of him; except where they happen to be brothers or sisters, or to be the infant’s lineal ancestors, the law preferring the eldest in the former case, and the father or other male ancestor in the latter. But if the infant derives lands both by descent, ex parte paternâ and ex parte maternâ, in which case it may be
possible not to find any next of kin incapable of inheriting to the infant, the next of kin on either side first seizing the infant, is entitled to the custody of his person; and the custody of the lands coming ex parte paternae goes to the maternal heir, and so vice versa. Should, however, the infant derive lands by descent in such a way, as lets in both the paternal and maternal blood successively to the inheritance, but with a preference of the former, it seems unsettled who shall have the guardianship. If the person entitled to be guardian in socage is himself under custody of a guardian, the latter is entitled to the custody of both, to the former in his own right, and to the latter pur cause de ward, that is, in right of his wardship of the former; a species of guardianship distinct from all others above enumerated. And it seems that only guardian in chivalry and in socage could be guardian pur cause de ward. See 2 Roll. Abr. 35. 40. Vaughan. 184.

Guardianship in socage, being wholly for the infant’s benefit and not in any respect for the guardian’s profit, is not a subject either of alienation, forfeiture or succession, as wardship in chivalry was; and, consequently, if the guardian in socage becomes incapable or dies, the wardship devolves on the person next in degree of kindred to the infant, not being inheritable to him. Some ancient cases seem to show that under certain circumstances guardianship in socage might be assignable. See Fitz. N. B. 143. P. Fitz. Abr. Garde, 161. But according to the doctrine and practice of latter times, the acknowledged qualities of guardianship in socage being, that it is a personal trust wholly for the infant’s benefit, and neither transmissible by succession nor devisable, they are not consistent with its being assignable; and there is Lord Chief Justice Vaughan’s authority for saying that even in his time common experience proved the contrary. See Plowd. 203. Vaughan. 181. Gilb. Rep. Eq. 177.

This guardianship extends not only to the person and socage estates of the infant, but also to his hereditaments not lying in tenure; and even to his copyhold estates, unless there is a special custom for the lord’s appointing a guardian of them. 1 Inst. 87. b. 1 Roll. Abr. 40. Egleton’s Ca. Hutt. 17. 2 Lutw. 1181. But whether the guardian in socage is entitled to take into his custody the infant’s personal estate, is not ascertained by any express authority. It seems, however, that personality is included except where by the custom of a particular place it happens to be liable to a different custody; and this opinion is founded on the idea that the custody of an infant’s person draws after it the custody of every species of property for which the law hath not otherwise provided; which receives some countenance from the instances of copyholds, and hereditaments not lying in tenure: for including which it will be difficult to account by any other reason than that above given for including personality. It is also strongly confirmed by the manner in which the stat. 12 Car. II. c. 24. regulates the power of the guardian, which it enables a father to appoint: after authorizing such guardian to take the custody of the infant’s personal estate, as well as of his lands, tenements, and hereditaments, it provides that he may bring such action or actions in relation thereunto, as by law a guardian in common socage might do; words almost necessarily importing that the personal
guardian is equally an object of the custody of guardian in socage
with the infant’s real property: though a contrary opinion is hint-
ed by Vaughan, C. J. See Vaughan, 186.

Guardianship in socage is superseded both as to the body and
lands, if the father exercises his power of appointing a testamen-
try or other guardian according to stat. 12 Car. II. c. 24. (See post,
4.) And regularly it ends, when the infant, whether male or female,
attains 14, though some say that this must be understood only
where another guardian, either by election of the infant or
otherwise, is ready to succeed; and that the guardianship in so-
cage continues in the mean time. Andr. 313. At that age, how-
ever, it seems the heir may oust the guardian in socage and call
him to account for the rents and profits. Litt. § 123. Co. Litt. 89.
It was in this particular of wardship, as also in that of marriage, and
in the certainty of the render or service, that the socage tenures
had so much the advantage of the military ones. See tit. Tenure.
But as the wardship ceased at 14, this disadvantage attended it:
that young heirs being left at so tender an age to choose their
own guardians till 21, might make an improvident choice.
Therefore, when almost all the lands in the kingdom were turned into
socage tenures, by the stat. 12 Car. II. c. 24. that statute
gave the power of appointing the testatorial guardian next mentioned.
If no such appointment be made, the court of chancery will fre-
cently interpose, and name a guardian, to prevent an infant heir
from improvidently exposing himself to ruin. 2 Comm. 88. c. 6.
See post, 7. and tit. Recto de Custodia.

4. The stat. 12 Car. II. c. 24. considering the imbecility of judg-
ment in children of the age of 14, and the abolition of guardian-
ship in chivalry, (which lasted till 21. See post, II.) enacts, that
any father, under age or of full age, may, by deed or will attested by
two witnesses, dispose of the custody of his child, either born or
unborn, to any person, except a popish recusant, either in posses-
sion or reversion till such child attains the age of 21. These are
called guardians by statute; or testamentary guardians.

The substance of this parliamentary regulation is, that the father
shall have the power, though under 21; that he shall have it as
to all his children under 21; and unmarried at his decease, or born
after; that he may appoint any person except popish recusants;
that the appointment may be either in possession or remainder;
that he may appoint the guardianship to last till 21, or any less
time; that the appointment shall be effectual against all claiming
as guardians in socage or otherwise; that the guardian so appointed
shall have ravishment of ward or trespass, and recover damages
for the ward’s benefit; that the guardian shall have the custody
of the infant’s estate both real and personal, and have the same
actions in relation to them as a guardian in socage; finally, that
the statute shall not prejudice the custom of London, or any other
city or corporate town. For cases on the construction of this statute,
see Vin. Abr. and Com. Dig. tit. Guardian. The nature of this
new kind of guardianship, which the statute professedly models
after that in socage, except as to duration, is particularly discussed
in the case of Bedell v. Constable, Vaughan, 177. and in Lord Shaftes-
bury’s case, 2 P. Wins. 102. Glib. 172.

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A reputed or putative father cannot appoint guardians under this statute to a natural child; but where he has named guardians by his will to an illegitimate child, the court of chancery will appoint the same persons guardians without any reference to a master for his approbation. 2 Bro. C. R. 583. and see this Dict. tit. Marriage.

Though there is no decided case that guardians can be appointed for a child, by a stranger, during the life of the parent, yet the law will take care that the child shall be educated according to his expectations; in cases where the child is benefited by the will, &c. of such stranger. See Powell v. Clever, 2 Bro. C. R. 500.

A grandfather cannot appoint guardians to his grandson under this statute: but he may give his estate to him on condition that certain persons be his guardians; and if the father of the legatee do not submit to the will, the chancery will make the father's opposition work a forfeiture of his son's estate. Ambt. 306.

5. We may here just mention that there is another species of customary guardianship besides that in London and certain cities and boroughs; where by the special custom of a manor the lord names, or is himself the guardian of an infant copyholder. See Com. Dig. tit. Copyhold. (K. 5.) The nature of this guardianship, depends wholly on the custom of the particular manor; and though it is not expressly saved by the stat. 12 Car. II. yet it has been held, that the father's appointment of the custody of his child under that statute, will not extend to copyhold estates. 2 East. 1161. 3 Lev. 395. Comb. 253.

6. The right of electing a guardian by an infant, arises only when, from a defect in the law, (or rather in the execution of it,) the infant finds himself wholly unprovided with a guardian. This may happen either before 14, when the infant has no such property as attracts a guardianship by tenure, and the father is dead without having executed his power of appointment, and there is no mother; or after 14, when the custody of the guardian in socage terminates, and there is no appointment by the father under the stat. 12 Car. II. Lord Coke only takes notice of such election where the infant is under 14; and as to this omits to state how, or before whom it should be made; see 1 Inst. 87. b. nor does this defect seem supplied by any prior or contemporary writer. As to a guardian after 14, it appears, from the ending of guardianship in socage, at that age, as if the common law deemed a guardian afterwards unnecessary. However, since the stat. 12 Car. II. c. 24, it has been usual, in defect of an appointment under the statute, to allow the infant to elect one for himself; and this practice appears to have prevailed even in some degree before the restoration. Such election is said to be frequently made before a judge on the circuit. 1 Ves. 375. But this form does not seem essential. The late Lord Baltimore, when he was turned of 18, having no testamentary guardian, and being under the necessity of having one for some special purposes relative to his proprietary government of Maryland, named a guardian by deed; a mode adopted by the advice of counsel. It seems, in fact, as if there was no prescribed form of an infant's electing a guardian after 14, any more than there is before, and therefore election by parol, though un-
solemn, might be legally sufficient. The deficiency in precedents on this occasion is easily accounted for; this kind of guardianship being of very late origin, unnoticed, as it seems, by any writer before Coke, except Swinburne (Testam. edit. 1590, 97. b.) and there being yet no cases in print to explain the powers incident to it, or whether the infant may charge a guardian so constituted by himself. Coke, though professing to enumerate the different sorts of guardianship, omits this in one place; whence, perhaps, it may be conjectured, that in his time it was in strictness scarcely recognised as legal. 1 Inst. 88. b. in n.

7. As to guardian by appointment of the lord chancellor; it is not easy to state how this jurisdiction was acquired: it is certainly of no very ancient date, though now indisputable. The first instance of such a guardian, appointed on petition without bill, was in the year 1696, in the case of one Hammond. But since that time the court of chancery has exercised this power, without its being once called in question; therefore, in the case of Lady Teynham v. Leonard, in Dom. Proc. ann. 1724, the counsel for the respondent stated it as a thing fixed, that the lord chancellor was intrusted with that part of the crown's prerogative, which concerned the guardianship of infants. Bro. P. C. Under the same idea, too, the marriage act, stat. 26 Geo. II. c. 33. (§ 11.) refers to the chancellor for the appointment of a guardian, to consent to marriage, where the infant is without a guardian and the mother is not living. 1 Inst. 88. b. in n. See also 1 Bro. C. R. 556. The court never appoints a guardian to a woman after marriage. 1 Vez. 157.

8. All courts of justice have a power to assign a guardian to an infant to sue, or defend actions, if the infant comes into court and desires it; or a judge at his chambers, at the desire of the infant, may assign a person named by him to be his guardian; but this last is no record until entered and filed by the clerk of the rules: Fitz. N. B. 27. L. 1 Inst. 88. b. n. (16). 135. b. n. (1). 1 Litt. 656. 2 Leon, 238. And this is called a guardian ad litem. See tit. Equity.

9. Guardian by appointment of the ecclesiastical court seems now perfectly insignificant, and merely on a par with other guardians ad litem. The right of appointment is however claimed by that court, as to personal estate; and, if there is no other guardian by tenure or otherwise, for the person also; but the following detail will show with how little effect.

Swinburne takes notice of such a guardian; but confines his observations on the appointment, and his extent of power, to the custom within the province of York. Testam. 1st. ed. 99. b. In a case in the court of K. B. Lord Hale admitted the right of the ecclesiastical court to appoint a curator of the personal estate; and after that judge's death, the court inclined to the same opinion. 2 Lev. 162. T. Jones, 90. In another case, soon after, the same court allowed the right as to the infant's portion, but denied it over the person. 3 Keb. 384. In the next case, the question as to the right was largely debated on a plea in prohibition. This alleged that by the common law, used and approved in England, if any person by his will devises any goods to his children, the ordinary, before whom the will is proved, hath used to commit the
custody of the sons and their portions till 14, and of the daughters and their portions till 12, except where they are in the custody of any other by reason of tenure, or by the father’s appointment: and if any person detained such infants, or their portions, the ordinary hath also used to compel the delivery of them by ecclesiastical censures. 2 Lev. 217. But on a demurrer this plea was overruled, and the prohibition ordered to stand; the latter being founded on the libel in the suit in the ecclesiastical court, which had stated the right in a more extensive way, viz. that by the ecclesiastical law, every person having the tuition of any infant under age, by the will of the father, or per judicem competentem, ought to have the custody of the infant and suit in the ecclesiastical court for the detainer. After this case, nothing appears in the books on the subject for a long time, but a cursory notice by Lee, J. of the ecclesiastical court’s appointment without objection, saying the course of that court is, that if the infant is under seven years of age, they choose a curator, but if he is seven, he chooses. Fitzgib. 164. By a loose note of a later case it appears that Lord Hardwicke said, that only guardians ad litem can be appointed by the ecclesiastical court. 14 Vin. Abr. 176. fl. 7. in n. In another case, however, reported more at length, the same judge reproached it as a presumption in the ecclesiastical court to appoint a guardian of the person and estate, and declared their appointment, except when a suit was depending, to be an interference with his power as chancellor; and even recommended to the attorney-general to consider whether a quo warranto would not lie in such a case against the ecclesiastical court. 3 Atk. 631. In a subsequent case in B. R. (Miss Catley’s,) the power of appointment in the ecclesiastical courts was considered as confined to guardians ad litem, and therefore perfectly insignificant. 3 Burr. 1436. See 1 Inst. 88. b. in n.

The above recapitulation, as to guardians, is exclusive of any thing relative to the royal family. See the arguments in the case on the king’s right, in respect to the education and marriage of his grandchildren, which was referred to the judges in the reign of George I. Fort. 401. See also the stat. 12 Geo. III. c. 11. and this Dict. tit. King.

The following miscellaneous observations may serve further to illustrate the above propositions:

Guardianship is a thing cognisable by the temporal courts, where a devise is made of it, which courts are to judge whether the devise be pursuant to the statute. 1 Vent. 207.

The husband of a woman under age, cannot disavow a guardian made by the court for his wife. 1 Vent. 185. An infant, it is said, cannot revoke the authority of the guardian; but the court may discharge one guardian and assign another, at their discretion; and the justices of nisi prius, &c. may assign a new guardian. Palm. 252. Sty. 456. Noy. 49. 1 Danv. Abr. 604.

The eldest son of the half blood shall be guardian in socage, to a son by a second venter; and when the minor attains the age of 14 years, he may choose his guardian before a judge, at his chambers, or in court, or in the chancery. Cro. Jac. 219. Though a father is guardian by nature, yet a man may be guardian to an in-
fant against his father, for prevention of waste, which is a forfeiture of guardianship. Hard. 96.

If a woman hath issue a son by a former husband, and marries a second husband, seised of socage lands, by whom she has issue another son, and the husband and wife die, leaving the second son under 14, his brother of the half blood shall be guardian in socage, as next of kin, to whom the inheritance cannot descend. Cro. Eliz. 825. 2 And. 117. Moor, 635. 2 Jones, 17.

An infant, idiot, lunatic, non compos, one blind and dumb, deaf and dumb, or leper removed, cannot be guardian in socage. Co. Litt. 88. b.

It is clearly agreed, that the king, as pater patriae, is universal guardian of all infants, idiots and lunatics, who cannot take care of themselves; and as this care cannot be exercised otherwise than by appointing them proper curators or committees, it seems also agreed, that the king may, as he has done, delegate the authority to his chancellor; therefore, at this day, the court of chancery is the only proper court which hath jurisdiction in appointing and removing guardians, and in preventing them and others from abusing their persons or estates. 2 Inst. 14. 4 Co. 126. Staundf. Prs. 37. See tit. Idiots and Lunatics, and ante, 7.

And as the court of chancery is now invested with this authority, hence in every day’s practice we find that court determining, as to the right of guardianship, who is the next of kin, and who the most proper guardian; as also orders are made by that court on petition, or motion, for the provision of infants during any dispute herein; as likewise guardians removed or compelled to give security; they and others punished for abuses committed on infants, and effectual care taken to prevent any abuses intended them in their persons or estates; all such wrongs and injuries being reckoned a contempt of that court, it having, by an established jurisdiction, the protection of all persons under natural disabilities. 2 Mod. 177.

II. Though guardianship in chivalry is now abolished by stat. 12 Car. II. c. 24, already so often mentioned, it may be useful as well as curious to consider the following summary concerning it. See 1 Inst. 88. b. n. 11.

This guardianship could only be where the estate vested in the infant by descent. All males under 21, at the ancestor’s death, were liable to it; but not females, unless they were under 14: It extended not only to the person of the infant, but also to all such of his lands and tenements as were within the guardian’s seigniory; and if the king was guardian in respect of a tenure in capite, then to the whole of the infant’s estate of whomsoever holden, whatever the tenure, and whether lying in tenure or not. If the infant heir held lands by knight’s service of several lords, each had the wardship of the land within his seigniory; and as to the body, the wardship of it belonged to that lord of whom the tenure was most ancient, he being styled the lord by priority; and the others, lords by posteriority; but if any lands of the infant were holden of the king by knight’s service in capite, he was entitled to the wardship both of the infant’s body and all his lands so held of the crown, or of others by knight’s service.
This guardianship continued over males till 21, over females till 16, or marriage, when it determined; if the tenure were of a subject, the heir might enter on the lord immediately; but if the king had the wardship, then the heir was not entitled to take possession of the land without suing for livery to the crown, which was a process both nice and expensive. See 1 Inst. 77 a. It had a preference with respect to the custody of the infant's body over every other species of wardship, except only that of the father, where the infant was his heir apparent, even the mother being excluded. It entitled the lord to make sale of the marriage of the infant, subject only to the restriction of not disparaging; and if the infant refused the marriage tendered by the lord, or married after such a tender and against the lord's consent; in the former case, the infant was liable to the payment of a sum equal to the value of the marriage, that is, to the profit which the lord might have made by the sale of it; in the latter case, the heir female paid the same sum as for a refusal, but the heir male was charged the double value, which was called a forfeiture of marriage. The guardian in chivalry was not accountable for the profits made of the infant's land during the wardship, but received them for his own private emolument, subject only to the bare maintenance of the infant. Lastly, guardianship in chivalry being deemed more an interest for the profit of the guardian, than a trust for the benefit of the ward, was saleable and transferable like the ordinary subjects of property, to the best bidder; and, if not disposed of, was transmissible to the lord's personal representatives.

The above general explication of the nature of wardship in chivalry, may well excite a strong idea of the evils necessarily incident to it; and it is natural to wonder how this species of guardianship should be patiently endured for several centuries after the conquest, and even remain unreformed by any effectual checks to soften its rigour till it was wholly taken away at the Restoration; the true period when Britons gained more real liberty, than any other that can be named in history; by no means even excepting the Revolution; and of this proposition, the habeas corpus act, and the statute for abolishing tenures, are most pregnant proofs; statutes both made in the reign of Car. II. and as far preferable to the vaunted bill of rights, as practical liberty is to theoretical doctrines.

Perhaps the facility of evading this guardianship in chivalry, which could only be on a descent, may account both for its being so long submitted to, and for its producing consequences less extensively pernicious than seem almost necessarily incident to it. Various modes of preventing the descent were practised. One was, enfeoffing the heir in the ancestor's life-time; another, the enfeoffing strangers on condition to pay a sum, far exceeding the value of the land, at a time so fixed as to correspond with the heir's coming of age, who might then enter for breach of the condition. See stat. Marlebridge, 52 Hen. III. & 6. 2 Inst. 109. When these modes were declared to be fraudulent, and therefore checked by the said statute, a third more fit to attain the same end succeeded; for uses and trusts being invented, and guardianship in chivalry being only of legal estates, it became the fashion to make feoffments to uses, as well for preventing wardship, as for
avoiding reliefs and forfeitures, and indirectly exercising the power of devising; and thus the heir taking only the use of the land on a descent, instead of becoming the legal tenant, he of course escaped being in wardship. This evasion continued in practice till 4 Hen. VII. when the legislature thought proper once more to interfere, in favour of the lord, and made the heir of cessu que use liable to wardship in chivalry. See stat. 4 Hen. VII. c. 17. 1 Inst. 84. b. 2 Inst. 110. For some time after this, there seems to have been no other means of preventing wardship in chivalry than the ancestor's making a lease for life, with remainder to his heir-apparent in fee; but this protection of wardship in chivalry was soon followed by a great diminution of its profits, for, in the succeeding reign, the statutes of wills gave the power of devising, so as to deprive the lord of the wardship of two thirds of the land holden by knight's service; in which contracted state this obdious species of guardianship was suffered to languish, till it was entirely abolished, with the other oppressive appendages of military tenures, by the famous statute 12 Car. II. c. 24. See 2 Inst. 110, 111. Smith's Ref. Angl. (English edit.) b. 3. c. 5. Staunf. P. C. 4 Inst. 188. Cromp. Jursid. 112. a. 125. Med. Exch. 221. Leg on Ward & Lev. 1 Inst. lib. 2. c. 4. and the abridgments tit. Garde and Gardien.

Guardian in socage shall make no waste, nor sale of the inheritance, but keep it safely for the heir; and where there hath been some doubt of the sufficiency of a guardian in socage, the chancery hath obliged him to give security. 2 Mod. 177. Also a guardian may be ordered to enter into security by recognisance, not to suffer a female infant to marry whilst in his custody, and to permit other relations to visit her, &c. 2 Lev. 128. And the court of chancery will make such guardian give security not to marry the infant without the court is first acquainted with it. 2 Chan. Ref. 237.

Before the stat. 12 Car. II. c. 24. tenant in socage might have disposed of his land, in trust, for the benefit of the heir; but it is said he could not devise or dispose of the guardianship or custody of the heir from the next of kin, to whom the land could not descend, because the law gave the guardianship to such next of kin. Keilw. 186. But now tenant in socage may nominate whom he pleases to have the custody of the heir, and the land shall follow the guardianship, as an incident given by law to attend the custody; and such special guardian cannot assign the custody by any act, the trust being personal; nor shall it go to the executor or administrator of the guardian, but determines by his death. Vaugh. 180. Dyer, 189.

As the law hath invested guardians not with a bare authority only, but also with an interest till the guardianship ceases, so it hath provided several remedies for guardians against those who violate that interest: at common law there were remedies both droitur a l and possessory, to recover the guardianship. 2 Inst. 90. 9 Co. 72.

A guardianship of a minor is an interest in the body and lands, &c. of one within age. Guardians to infants, appointed by the court to sue, may acknowledge satisfaction upon the record, for a debt recovered at law for the infant. Trin. 23 Car. II. B. R. A
Guardian in socage may keep courts, in the infant's manors, in his own name, grant copies, &c. He is dominus pro tempore, and hath an interest in the lands. Cro. Jac. 91. Such guardian may let the land for years, and avow in his own name and right, and his lessee for years may maintain ejectment, but he cannot present to an advowson, for which he may not lawfully account, and the infant must present of whatsoever age. Cro. Jac. 98, 99. Though it is said, if the infant be within the age of discretion, his guardian may present. 8 Edw. II. 10. See 1 Inst. 89. a. and this Dict. tit. Advowson.

In another place Lord Coke extends the doctrine so far as to say, that the infant shall present, whatsoever his age may be. 3 Inst. tit. 156. But some suppose the guardian to have the right of presenting in the name of the infant, in general; others admit the right of the infant, but add, that if he be of such tender years as not to have any discretion, then the guardian should present for him. Vin. Abr. tit. Guardian, Q. pl. 2. But the law seems now settled in the full extent of Lord Coke's opinion, by a determination of Lord Chancellor King. An advowson was conveyed to trustees on trust to present such person as the grantor, his heirs and assigns should by deed appoint; and, on the principle that an infant of any age may present, the chancellor confirmed an appointment by an infant heir, though it appeared that the child was not a year old, and that the guardian guided the child's hand in making his mark and putting his seal. 2 Eq. Abr. Infants, B. pl. 3. Vin. Abr. Collations A. pl. 10. and see 3 Ark. 710. It still remains, however, undecided, whether the want of discretion might not induce a court of equity to control the exercise of this right by an infant, in case a presentation should be obtained without the concurrence of his guardian. 1 Inst. 89 a. in n. 1.

A guardian for nurture of the minor, appointed by will, hath power to make leases at will only. Cro. Eliz. 678. 734. A testamentary guardian cannot make a lease of the infant's lands, but such lease is absolutely void. 2 Wils. 129. 135. Guardians are to take the profits of the minor's lands, &c. to the use of the minor, and account for the same: they ought to sell all moveables in a reasonable time, and turn them into land or money, except the minor is near of age, and may want such goods himself; and they shall pay interest for money in their hands, which might have been put out at interest; in which case it shall be presumed the guardians made use of it themselves. 3 Salk. 177.

III. The power and reciprocal duty of a guardian and ward are the same pro tempore as that of a parent and child; but the guardian, when the ward comes of age, is bound to give him an account of all that he has transacted on his behalf, and must answer for all losses by his wilful default or negligence. In order, therefore, to prevent disagreeable contests with young gentlemen, it has become a practice for many guardians, of large estates especially, to indemnify themselves by applying to the court of chancery, acting under its direction, and accounting annually before the officers of that court. And that court, in case any guardian abuses his trust, will check and punish him, and sometimes pro-
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ceeed to the removal of him and appoint another in his stead. 1 Sid. 424. 1 P. Wms. 703. See 1 Comm. 465. c. 17. and ante, I. 7.

At common law, both a prohibition of waste, and an action of waste, lay against a guardian in chivalry and a guardian in socage, for voluntary, but not for permissive waste or waste done by a stranger. 2 Inst. 305.

By the common law, guardians in socage are accountable to the infant either when he comes to the age of fourteen years, or at any time after, as he thinks fit. Co. Litt. 87. And so is one who is guardian by nature after the infant's age of 21. See ante, I. 1. and 1 Inst. 886. n. 9. But the guardian on his account, shall have allowance of all reasonable expenses; and if he is robbed of the rents and profits of the land, without his default or negligence, he shall be discharged thereof upon his account; for he is in the nature of a bailiff or servant to the infant, and undertakes no otherwise than for his diligence and fidelity. Co. Litt. 89. a.

But against a testamentary or other guardian, whose authority doth not determine till the infant is 21, or being a female attains that age or marries, the infant cannot have action of account before; for the rule of the common law is, that account will not lie while the guardianship continues. But in equity the infant may by prochein amie sue his guardian for an account during the minority. 2 Vern. 342. 2 P. Wms. 119. 1 Vez. 91. 3 Atk. 525.

A guardian cannot be charged in account as a receiver: because then he would lose his costs and expenses; these it is said being in general allowed only to guardians and bailiffs and not to receivers. See 1 Inst. 89. a. n. 2. 172. a.

If a guardian takes a bond for the arrears of rent, he thereby makes it his own debt, and shall be charged with it. 2 Chan. Ref. 97. If a man during a person's infancy receives the profits of an infant's estate, and continues to do so for several years after the infant comes of age, before any entry is made on him; yet he shall account for the profits throughout, and not during the infancy only. 1 Eq. Abr. 280. A receiver to the guardian of an infant who has had his account allowed him by the guardian, shall not be obliged to account over again to the infant when he comes of age. Preced. Chan. 535.

A guardian shall answer for what is lost by his fraud, negligence or omission; but not for any casual events, as where the thing had been well but for such an accident. Litt. 123. By statute, Magna Charta, 9 Hen. III. c. 3. guardians were to retain the lands till the heir comes of age, and then restore the same as fully stocked, &c. as received. By stat. 6 Ann. c. 18. persons who are guardians or trustees for infants holding over, without the consent of the person next entitled, shall be adjudged trespassers and be accountable for profits, &c. By stat. 4 Ann. c. 16. § 27. action of account may be brought against the executors or administrators of a guardian, &c.

FORM OF ELECTION OF A GUARDIAN BY A MINOR.

KNOW all men by these presents, that I A. B. son and heir of, &c. deceased, being now about the age of eighteen years, have elected and chosen, and by these presents do elect and choose, C. D. of, Vol. III.
&c. to be guardian of my person and estate, until I shall attain the age of twenty-one years, and I do hereby promise to be ruled and governed by him in all things touching my welfare; and I do authorize and empower the said C. D. to enter upon and take possession of all and every my messuages, lands, tenements, hereditaments and premises whatsoever, situate, lying and being in, &c. in the county of, &c. or elsewhere, whereunto I have or may have any right or title, and to let and set the same, and receive and take the rents, issues and profits thereof, for my use and benefit, during the term aforesaid; giving hereby granting unto the said C. D. my full power in the said premises; and whatsoever he shall lawfully do or cause to be done in the premises, by virtue hereof, I do hereby promise to ratify and confirm. In witness, &c.

As to orphans under the custom of London, see that title.

GUARDIAN DE L’ESTEMARY, The guardian or warden of the stannaries, or mines in the county of Cornwall, &c. See tit. Stannaries.

GUARDIANS DE L’EGLISE, Churchwardens. See that title.

GUARDIANS OF THE PEACE, Those that have the keeping of the peace; wardens or conservators thereof. Lamb. Eiren. lib. 1. c. 3. See tit. Justices of the Peace.

GUARDIAN (or WARDEN) OF THE CINQUE PORTS, A magistrate that hath the jurisdiction of the ports or havens, which are commonly called the cinque ports, who has there all the authority and jurisdiction the admiral of England has in places not exempt: and Camden believes this warden of the cinque ports was first erected among us in imitation of the Roman policy, to strengthen the sea coasts against enemies, &c. 2 Camd. Br. 238. See tit. Cinque Ports.

GUARDIAN OF THE SPIRITUALITIES. The person to whom the spiritual jurisdiction of any diocese is committed, during the vacancy of the see, is called by this name. See stat. 25 Hen. VIII. cap. 21. and also stat. 3 Edw. I. c. 21. in which the word guardian appears applicable to this officer. The archbishop is guardian of the spiritualities on the vacancy of any see within his province; but when the archiepiscopal see is vacant, the dean and chapter of the archbishop’s diocese are guardians of the spiritualities, viz. the spiritual jurisdiction of his province and diocese, is committed to them. 2 Roll. Abr. 22. 223. The guardian of the spiritualities, it is said, may be either guardian in law, jure magistratis, as the archbishop is of any diocese in his province; or guardian by delegation, being he whom the archbishop or vicar general doth for the time appoint. The guardian of the spiritualities hath all manner of ecclesiastical jurisdiction of the courts, power of granting licenses and dispensations, probate of wills, &c. during the vacancy, and of admitting and instituting clerks presented; but such guardians cannot, as such, consecrate or ordain present to any benefices. See stat. 13 Eliz. c. 12. Wood’s Inst. 25. 27.

GUARDIAN OF THE TEMPORALITIES, custos temporali. The person to whose custody a vacant see or abbey was committed by the king. Who, as steward of the goods and profits,
was to give an account to the escheator, and he into the exchequer. His trust continued till the vacancy was supplied, and the successor obtained the king’s writ de restitutione temporalium, which was usually after consecration. See tit. Temporalities.

Dict.

GUERNSEY, See Jersey.

GUEST, Sax. gest, Fr. gist, a stage of rest in a journey. A lodger or stranger in an inn, &c. See tit. Inns and Innkeepeurs.

GUIDAGE, guidagium. An old legal word, signifying that which is given for safe conduct through a strange land, or unknown country. Est guidagium quod datur aliqui, ut tuto cunctatur fier terram alterius. Consuetud. Burgund. p. 119. 2 Inst. 526.

GUILD, from Sax. guildan, to pay.] A fraternity or company, because every one was gildare, i.e. to pay something towards the charge and support of the company. The original of these guilds and fraternities is said to be from the old Saxon law, by which neighbours entered into an association and became bound for each other, to bring forth him who committed any crime, or make satisfaction to the party injured, for which purpose they raised a sum of money among themselves, and put into a common stock, whereout a pecuniary compensation was made according to the quality of the offence committed. From hence came our fraternities and guilds; and they were in use in this kingdom long before any former licenses were granted for them: though at this day they are a company combined together, with orders and laws made by themselves, by the prince’s license. Camd.

Guilda mercatoria, or the merchants’ guild, is a liberty or privilege granted to merchants, whereby they are enabled to hold certain pleas of land, &c. within their own precinct. 37 Edw. III. 15 Rich. II. King Edw. III. in the 14th year of his reign, granted license to the men of Coventry to erect a merchants’ guild, and also a fraternity of brethren and sisters, with a master or warden, and that they might make chantries, bestow alms, do other works of piety, and constitute ordinances touching the same, &c. And King Hen. IV. in the 4th year of his reign, gave license to found a guild of the holy cross at Stratford-upon-Avon. Antiqu. Warwicksh. 119. 522. Guild, or guild, is also used for a tribute, or tax, an amercement, &c. 27 Edw. III. 11 Hen. VI. 15 Car. II. See Geld; and more fully, tit. Corporation, London.

GUILDHALL, The chief hall of the city of London, for the meeting of the lord mayor and commonalty of the city, making laws and ordinances, holding of courts, &c. Gildarum nomine convenientur non solvm minus fraternitatus, sed ipsae etiam civitatum communitates. Spelm. It also signifies the chief hall of other cities and corporate towns; the sessions-hall in king-street Westminster, is called the guildhall.


GUILD RENTS, Rents payable to the crown, by any guild or fraternity; or such rents as formerly belonged to religious guilds, and came to the crown at the general dissolution of monasteries, being ordered to be sold by the stat. 22 Car. II. cap. 6.
GUILDER. A foreign coin: the German guilder is 3s. 8d. and the golden one in some parts of Germany 4s. 9d. In Portugal it passes for 5s, but the Poland and Holland guilder is but 2s. In Holland, merchants keep their accounts in gilders, &c.

GULE or AUGUST, *gula augusti, goute d'aout.* The day of St. Peter ad Vincula, which is celebrated on the 1st of August, and called the gule of August, from the Lat. *gula,* a throat; for this reason, (as pretended,) that one Quirinus, a tribune, having a daughter that had a disease in her throat, went to Pope Alexander, (the sixth from St. Peter,) and desired of him to see the chains that St. Peter was chained with under Nero, which request being granted, she the said daughter kissing the chains, was cured of her disease; whereupon the Pope instituted this feast in honour of St. Peter; and as, before, this day was termed only the calends of August, it was on this occasion called indifferently either St. Peter's day ad Vincula, from what wrought the miracle, or the gule of August, from that part of the virgin whereon it was wrought, Durand's Rationale Divinorum, lib. 7. cap. 19. It is mentioned Fitz. N. B. 62. Plowd. 316. Stat. Westm. 2. cap. 50.

GUNS. See tit. Arms, Game.

GUNPOWDER. It is lawful for all persons, as well strangers, as natural born subjects, to import any quantities of gunpowder or saltpetre, brimstone, and other materials for the making thereof, and to make and sell gunpowder, &c. Stat. 16 Car. I. cap. 21.

To obtain an exclusive patent for the sole making or importation of gunpowder or arms, or to hinder others from importing them, incurs the penalties of *prœmunire* by stats. 16 Car. I. c. 21. 1 Jac. II. c. 8.

The stat. 12. Geo. III. c. 61. reduces into one, and repeals all former acts relative to the making, keeping, and carrying of gunpowder.

By this act it is provided, that no person shall make gunpowder but in the regular manufactories, established at the time of making the statute, or licensed by the sessions pursuant to the provisions in § 13. &c. on forfeiture of the gunpowder and 2s. per pound. § 1. Pestle mills not to be used, on the like penalty. § 2. Only 40 pounds of powder to be made at one time under one pair of stones; except battle powder, a fine fowling powder so called, made at Battle and elsewhere in Sussex. § 3. 5. Not more than 40 hundred weight to be dried at one time in one stove. § 6. Only the quantity absolutely necessary for immediate use to be kept in or near the place of making, except in brick or stone magazines, 50 yards at least from the mill. § 7. All gunpowder makers to have a brick or stone magazine near the Thames below Blackwall to keep the gunpowder when made, on penalty of 25s. per month; and 5s. a day for not removing it when made, with all possible diligence. § 8. Charcoal not to be kept within 20 yards of the mill. § 10. No dealer to keep more than 200 pounds of powder, nor any person not a dealer more than 50 pounds, in the cities of London and Westminster, or within three miles thereof; or within any other city, borough, or market town, or one mile thereof; or within two miles of the king's palaces or magazines, or half a mile of any parish church; on pain of forfeiture and 2s. per pound; except in licensed mills; or to the amount
of 300 pounds for the use of collieries within 200 yards of them. § 12. Sect. 13, 14, 15, 16. contain provisions respecting the licensing mills, building magazines, &c. Not more than 25 barrels to be carried in any land carriage, nor more than 200 barrels by water; (unless going beyond sea or coastwise;) each barrel to contain not more than 100 pounds. Various means are directed for the safe conveyance, in both cases, and to prevent all danger and delay. § 18—22. Justices of peace may search mills, houses, carriages, &c. § 23. Outward bound ships to take in, and homeward bound to discharge their gunpowder at or below Blackwall; and be searched by the officers, of the Trinity house. § 24, 25. Penalties to be recovered before two justices; and prosecutions to be within 14 days. § 26, 27. General exceptions are made as to his majesty’s mills, storehouses and magazines; and as to powder sent with the army or militia; and exported or carried coastwise below Blackwall. § 29, 30.

It seems that erecting powder mills, or keeping magazines near a town, is a nuisance at common law, punishable by indictment or information. Str. 1169. And see § 15. of the abovementioned statute.

By 46 Geo. III. c. 121. the importation into Great Britain of gunpowder, arms, &c. manufactured in Ireland, is permitted, notwithstanding the stat. 1 Jac. II. c. 8.

GURGITES. Wears, Black Book Hereford, f. 20. See Gorce.

GUTI AND GOTTI, Engl. Goths, called sometimes Jute, and by the Romans Getae, is derived from the old word Jet, which signifies a giant: they were one of those three nations or people who left Germany, and came to inhabit this island. Leg. Edw. Confess. cap. 35.

GUTTERA, A gutter or spot to convey the water from the leads and roofs of houses; and there are gutter-tiles, especially to be laid in such gutters, &c. mentioned in the stat. 17 Edw. IV. See tit. Bricks.

GWABR MERCHED, A British word, which signifies a payment or fine, made to the lords of some manors, upon the marriage of their tenants’ daughters; or otherwise on their committing incontinency. See Mercheta Mulierum.

GWALSTOW, Sax.] A place of execution: omnia gwalstowa, i. e. occidentorum loca, totaliter regis sunt in socii sua. Leg. Hen. I. cap. 11.

GYLPUT, The name of a court held every three weeks, in the liberty or hundred of Pathbew in the county of Warwick. Inquisit. 13 Edw. III.

GYLTWITE, A compensation or amends for trespass, &c. mulcta pro transgressione. LL. Edgar, Regis, anno. 964.

GYPSIES, See tit Egyptians.

GYROVAGI. Wandering monks, who, pretending great piety, left their own cloisters, and visited others. Mat. Paris. f. 490.