KAIA, a Key or Wharf. Shelm.
KAIAGIUM, Keyage; which see.
KALENDÆ, Rural Chapters or conventions of the rural deans and parochial clergy; so called because formerly held on the Kælends, or first day of every month. Paroch. Antig. 640.
KALENDAR and KALENDS. See Calendar and Calends.
KANTREF. See Cantred.
KARITE. See Caritas.
KARLE, Sax. A man; and with any addition a servant or clown; as the Saxons called a domestic servant, a huskarle; from whence comes the modern word churl, Domesday.
KAY. See Key.
KEBBARS, or Cullers.] The refuse of sheep drawn out of a flock; oves rejicule. Cooper’s Thesaur.
KEELAGE, tillagium.] A privilege to demand money for the bottom of ships resting in a port or harbour. Rot. Parl. 21 Ed. 1.
KEELMEN, Are mentioned among mariners, seamen, &c. in various statutes. See title Coals.
KEELS. This word is applied to vessels used in the carriage of coals, &c. See Keyles.
KEEP. A strong tower or hold in the middle of any castle or fortification, wherein the besieged made their last efforts of defence, was formerly in England called a Keep: and the inner pile within the castle of Dover, erected by King Hen. II. about the year 1153, was termed the King’s Keep: so at Windsor, &c. It seems to be something of the nature of that which is called abroad a Citadel.

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KER

KEEPR OF THE FOREST, *Custos Forestae.*] Or Chief-warden of the Forest, hath the principal government over all officers within the forest: and warns them to appear at the Court of Justice-seat, on a general summons from the Lord Chief Justice in Eyre. *Man-

wood,* part 1. p. 156. See title Forest.

KEEPR OF THE GREAT SEAL, *Custos magni sigilli.*] Is a Lord by his office, stiled Lord Keeper of the Great Seal of England, and is of the King's Privy Council: through his hands pass all charters, com-

missions and grants of the King, under the Great Seal; without which seal many of those grants and commissions are of no force in law; for the King is by interpretation of law a corporation, and passeth nothing but by the Great Seal, which is as the public faith of the kingdom, in the high esteem and reputation justly attributed thereto.

The Great Seal consists of two impressions, one being the very seal itself with the effigies of the King stamped on it; the other has an impression of the King's arms in the figure of a target, for matters of a smaller moment, as certificates, &c. that are usually pleaded *sub pede sigilli.* And antiently, when the King travelled into France or other foreign kingdoms, there were two Great Seals; one went with the King, and another was left with the Custos Regni, or the Chancellor, &c.

If the Great Seal be altered, the same is notified in the Court of Chancery, and public proclamations made thereof by the Sheriffs, &c. 1 Hal's Hist. P. C. 171, 4.

The Lord Keeper of the Great Seal, by statute 5 Eliz. c. 18, hath the same place, authority, pre-eminence, jurisdiction, and execution of laws, as the Lord Chancellor of England hath; and he is constituted by the delivery of the Great Seal, and by taking his oath, 4 Inst. 87. See Lamb. Archeion. 65: 1 Rot. Abr. 385, and this Dictionary, title Chancellor.

KEEPR OF THE PRIVY SEAL, *Custos privati sigilli.*] That officer, through whose hands all charters, pardons, &c. pass, signed by the King, before they come to the Great Seal: and some things which do not pass the seal at all: he is also of the Privy Council, but was an-
tiently called only Clerk of the Privy Seal; after which he was named Guardian of Privy Seal; and lastly, Lord Privy Seal, and made one of the great officers of the kingdom. See stat. 12 R. 2. c. 11: Rot. Parl. 11 H. 4: and stat. 34 H. 8. c. 4.

The Lord Privy Seal is to put the seal to no grant without good warrant; nor with warrant, if it be against law, or inconvenient, but that he first acquaint the King therewith. 4 Inst. 55. As to the fees of the clerks under the Lord Privy Seal, for warrants, &c. See stat. 27 H. 8. c. 11. See further this Dictionary, titles Grant of the King; Privy Seal.

KEEPR OF THE TOUCH, mentioned in the antient statute 12 H. 6. c. 14, seems to be that officer in the King's mint, at this day called the Master of the Assay. See Mint.

KEEPRS OF THE LIBERTIES OF ENGLAND. By authority of Par-

liament. Vide Custodes Libertatis.

KENDAL, Concagium. An antient barony, MS.

KENNETS, A coarse Welsh cloth. See stat. 33 H. 8. c. 3.

KERHERE, A custom to have a cart-way; or a commutation for the customary duty for carriage of the Lord's goods. Cowell.
KID

KERNELLARE DOMUM, from Lat. Crena, a notch.] To build a house formerly with a wall or tower, kernelled with crannies or notches, for the better convenience of shooting arrows, and making other defence. Du Fresne derives this word from quarnellus or quadrancellus, a four-square hole or notch; ubiqueque patent quarnelli sive fenestrae: and this form of walls and battlements for military uses might possibly have its name from quadrillus a four-square dart. It was a common favour granted by our Kings in antient times, after castles were demolished for prevention of rebellion, to give their chief subjects leave to fortify their mansion-houses with kernelled walls. Paroch. Antig. 533.

KERNELLATUS, fortified or embattled, according to the old fashion; Plac. 31 Ed. 3.

KERNES, Idle persons, vagabonds. Ordin. Hibern. 31 Ed. 3. m. 11, 12.

KEVERE, A cover or vessel used in a dairy house for milk or whey. Paroch. Antig. p. 386.

KEY, Kaia & caya, Sax. Leg. Teut. Kay, sometimes spelt Quay from the French qua.] A wharf to land or ship goods or wares at. The verb caiare, in old writers, signifies (according to Scaliger) to keep in, or restrain: and so is the earth or ground where Keys are made, with planks and posts. Cowell.

The lawful Keys and wharfs for lading or landing goods belonging to the port of London, were Chester’s Key, Brewer’s Key, Galley-Key, Wool-Dock, Custom house-Key, Bear-Key, Porter’s-Key, Sab’s-Key, Wiggan’s-Key, Young’s-Key, Ralph’s-Key, Dick-Key, Smart’s-Key, Somer’s-Key, Hammona’s-Key, Lyon’s-Key, Botolph-Wharf, Grant’s-Key, Cock’s-Key and Fresh-Wharf; besides Billingsgate, for landing of fish and fruit; and Bridgehouse in Southwark for corn and other provision, &c. but for no other goods or merchandise. Deal boards, masts, and timber, may be landed at any place between Lime-house and Westminster; the owner first paying or compounding for the customs, and declaring at what place he will land them. Lex Mercat. 153, 33. Stat. 13 & 14 Car. 2. c. 11. sect. 14: Rot. Secac. 19 Car. 2. These Quays have been lately purchased by money advanced by Government, with a view to the improvement of the port of London. See the acts, 43 G. 3. c. cxxiv. 46 G. 3. c. 118. and further this Dictionary, title London.

KEYAGE, Kaimgium.] The money or toll paid for lading or un-lading wares at a key or wharf. Rot. Pat. 1. Edw. 3. m. 10: 20 Edw. 3. m. 1.

KEYLES or KEELS; Guli or Ciules.] A kind of long-boats of great antiquity, mentioned in stat. 23 H. 8. c. 18. Selm.

KEYING, Five fells, or pelts, or sheep-skins with their wool on them. Cowell.

KEYUS, KEYS, A guardian, warden, or keeper. Mon. Ang. tom. 2. p. 71. In the Isle of Man, the twenty-four chief commoners, who are, as it were, conservators of the liberties of the people, are called Keys of the island. See title Man, Isle of.

KICHELL, A cake: it was an old custom for godfathers and godmothers, every time their god-children asked them blessing, to give them a cake; which was called a God’s Kichell. Cowell.

KIDDER, Signified one that badges, or carries corn, dead vic-
KIN

tual, or other merchandise, up and down to sell. Stat. 5 Eliz. c. 12. They are also called Kiddiers, in stat. 13 Eliz. c. 12.

KIDDLE, KIDEL, or KEDEL, Kidellus.] A dam, or open wear in a river, with a loop or narrow cut in it, accommodated for the faying of wheels or other engines to catch fish. 2 Inst. fol. 38. The word is antient, for we meet with it in Magna Charta, c. 24. And in a charter made by King John to the city of London. By stat. 1 H. 4. c. 12, it was accorded, inter alia, That a survey should be made of the wears, mills, stanks, stakes, and Kidels, in the great rivers of England. They are now called Kettles, or Kettle-nets, and are much used on the sea-coasts of Kent and Wales. Cowell.

KIDNAPPING, The forcible abduction and conveying away of a man, woman, or child from their own country, and sending them to another; it is an offence at common law. Raym. 474.

This is unquestionably a very heinous crime, as it robs the King of his Subjects, banishes a man from his country, and may in its consequences, be productive of the most cruel and disagreeable hardships; and therefore the common law of England has punished it with fine, imprisonment, and pillory. 2 Show. 221: Skin. 47: Comb. 10.

The stat. 11 & 12 W. 3. c. 7, though principally intended against pirates, has a clause that extends to prevent the leaving of such persons abroad, as are thus kidnapped or spirited away; by enacting, that if any captain of a merchant vessel shall (during his being abroad) force any person on shore, and wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer (what seems no very adequate punishment) three month's imprisonment. There is no doubt, however, that the party thus injured may maintain an action against the party offending for damages sustained by occasion of such treatment. See title Imprisonment.

KILDERKIN, A vessel of ale, &c. containing the eighth part of an hogshead.

KILKETH, An antient servile payment made by tenants in husbandry. Cowell.

KILLAGIUM, Keelage. Cowell.

KILLYTHSTALLION, A custom by which lords of manors were bound by custom to provide a stallion for the use of their tenant's mares. Spelman. Gloss.

KILTH. Ac omnes annuales redditus de quadam consuetudine in, &c. vocat. Kilth. Pat. 7 Eliz.

KINDRED, Are a certain body of persons of kin or related to each other. There are three degrees of Kindred in our law; one in the right line descending; another in the right line ascending, and the third in the collateral line.

The right line descending, wherein the Kindred of the male line are called Agnati, and of the female line Cognati, is from the father to the son, and so on to his children in the male and female line; and if no son, then to the daughter, and to her children in the male and female line; if neither son nor daughter, or any of their children, to the nephew and his children, and if none of them, to the niece and her children; if neither nephew nor niece, nor any of their children, then to the grandson or granddaughter of the nephew; and if neither of them, to the grandson or granddaughter of the niece;
and if none of them, then to the great grandson or great granddaughter of the nephew and of the niece, &c. et sic ad infinitum.

The right line ascending is directly upwards; as from the son to the father or mother; and if neither father nor mother, to the grandfather or grandmother; if no grandfather or grandmother, to the great grandfather or great grandmother; if neither great grandfather or great grandmother, to the father of the great grandfather, or the mother of the great grandmother; and if neither of them, then to the great grandfather’s grandfather, or the great grandmother’s grandmother; and if none of them, to the great grandfather’s great grandfather, or great grandmother’s great grandmother, et sic in infinitum.

The collateral line is either descending by the brother and his children downwards, or by the uncle upwards: it is between brothers and sisters, and to uncles and aunts, and the rest of the Kinred, upwards and downwards, across and amongst themselves. 2 Nels. Abr. 1077, 1078.

If there are no Kindred in the right descending line, the inheritance of lands goes to the collateral line; but it never ascends in the right line upwards, if there are any Kindred of the collateral line, though it may ascend in that line: and there is this difference between the right line descending and the collateral line, that the right of representation of Kindred in the right descending line reaches beyond the great grandchildren of the same parents; but in the collateral line, it doth not reach beyond brothers and sisters’ children; for after them there is no representation among collaterals.

In the right ascending line the father or mother are always in the first degree of Kindred; and by the civil law, if the son died without issue, his father or mother succeeded, and after them his brother or sister, uncle, aunt, &c. But in case of purchase by the son, if he died without issue, his father or mother could not inherit, but his brothers and sisters, &c. by which it appears, that the father cannot succeed the son immediately, though he is the next of kin. If a man purchase lands and dies without issue, it shall never go to the half blood in the collateral line; though it is otherwise in case of a descent from a common ancestor.

The children of the brothers and sisters of the half blood, shall exclude all other collateral ascendants, as uncles and aunts, and all remoter Kindred of the whole blood in the collateral line. 2 Nels. Abr.

There are several rules to know the degrees of Kindred; in the ascending line, take the son and add the father, and it is one degree ascending, then add the grandfather, and it is a second degree, a person added to a person in the line of consanguinity making a degree; and if there are many persons, take away one, and you have the number of degrees; as if there are four persons, it is the third degree, if five, the fourth, &c. so that the father, son, and grandchild, in the descending line, though three persons, make but two degrees: To know in what degree of Kindred the sons of two brothers stand, begin from the grandfather and descend to one brother, the father of one of the sons, which is one degree, then descend to his son the ancestor’s grandson, which is a second degree; and then descend again from the grandfather to the other brother, father of the other of the sons, which is one degree, and descend to his son,
&c. and it is a second degree; thus reckoning the person from whom the computation is made, it appears there are two degrees, and that the sons of two brothers are distant from each other two degrees: for in what degree either of them is distant from the common stock, the person from whom the computation is made, they are distant between themselves in the same degree; and in every line the person must be reckoned from whom the computation is made. If the Kindred are not equally distant from the common stock; then in what degree the most remote is distant, in the same degree they are distant between themselves, and so the kin of the most remote maketh the degree; by which rule, I, and the grandchild of my uncle, are distant in the third degree, such grandchild being distant three degrees from my grandfather, the nearest common stock. See further at length, 2 Comm. c. 14; and this Dictionary, titles Descent; Executor, III; V. 8. The common law agrees in its computation with the civil and canon law, as to the right line; and only with the canon law as to the collateral line. Wood's Inst. 48, 9.

KING,

Rex; from Lat. Rego to rule.—Sax. Cynig or Coning.] A Monarch or Potentate, who rules singly and sovereignly over a people; or he that has the highest power and rule in the land. The King is the head of the State. See Bract. lib. 1. c. 8.

The Supreme Executive Power of these Kingdoms is vested by the English laws in a single person, the King or Queen; for it matters not to which sex the Crown descends; but the Person entitled to it, whether Male or Female, is immediately invested with all the ensigns, rights, and prerogatives of Sovereign Power: as is declared by stat. 1 Mary, stat. 3. c. 1.

I. Of the Title, and Succession to the Throne.

II. Of the Royal Family.—As to the Queen, see this Dict. under that title.

III. Briefly and incidentally of the King's Councils.

IV. Of the King's Duties; and his Coronation Oath.

V. Of the King's Prerogative.

1. Generally.

2. As relates to his Royal Character; wherein of his Sovereignty; Perfection; and Perpetuity.

3. With respect to his Authority, foreign and domestic;—in sending Ambassadors; making Treaties; War and Peace:—As One of the Estates of the Realm; Commander of our Armies and Navies; the Fountain of Justice; and of Honour: Arbiter of Domestic Commerce; Supreme Head of the Church.

4. As regards his Revenues; ordinary and extraordinary; and, in the latter, of his Civil List.

VI. Of the King's Prerogative in relation to his Debts; and see this Dict. titles Execution; Extent; Judgment, &c.

VII. The former and present state of the Prerogative in general.

I. The Executive Power of the English Nation being vested in a single person, by the general consent of the People; the evidence
of which general consent is long and immemorial usage, it became necessary to the freedom and peace of the State, that a rule should be laid down uniform, universal, and permanent; in order to mark out with precision who is that single person, to whom are committed (in subservience to the law of the land) the care and protection of the community; and to whom in return the duty and allegiance of every individual are due.

When the succession to the Crown was formerly interrupted by the state of Society and the Constitution, which had not then arrived to the state of perfection it attained in later ages, and even more recently since the Revolution, distinctions have been frequently made between a King de facto and de jure. Though it is to be hoped that no contest of this nature is likely again to rise in these kingdoms, what is just shortly hinted on this subject will doubtless be agreeable to the student; see further on this subject, title *Treason*.

If there be a King regnant in possession of the Crown, although he be but Rex de facto, and not de jure, yet he is Seignior le Roy; and another that hath right; if he be out of possession, he is not within the meaning of the stat. 11 Hen. 7. c. 1. for the Subjects to serve and defend him in his wars, &c. And a pardon, &c. granted by a King de jure, that is not likewise de facto, is void. 3 Inst. 7. If a King that usurps the Crown, grants licences of alienation or escheats, they will be good against the rightful King; so of pardons, and any thing that doth not concern the King's antient patrimony, or the government of the People: judicial acts in the time of such a one, bind the right King and all who submitted to his judicature. The Crown was lost between the two families of York and Lancaster many years; and yet the acts of royalty done in the reign of the several competitors, were confirmed by the Parliament and those resolutions were made, because the common people cannot judge of the King's title, and to avoid anarchy and confusion. Jenk. Cent. 130, 1.

All judicial acts done by *Henry VI.* while he was King, and also all pardons of felony and charters of denization granted by him, were deemed valid; but a pardon made by *Edw. IV.* before he was actually king, was declared void even after he came to the Crown. See 1 Hawk. P. C. c. 17; and stat. 1 Ed. 4. c. 1.

*Hale* says, the Right Heir of the Crown, during such time as the Usurper is in plenary possession of it, and no possession thereof in the heir, is not a King within this act; as was the case of the house of York, during the plenary possession of the Crown in *Hen. IV. Hen. V. Hen. VI.* But if the right Heir had once the possession of the Crown, as King, though an Usurper had got the possession thereof, yet the other continues his stile, title, and claim thereto, and afterwards re-obtains the full possession thereof; a compassing the death of the rightful heir, during that interval, is compassing of the King's death within this act, for he continued a King still, quasi in possession of his kingdom; which was the case of *Ed. IV.* in that small interval wherein *Hen. VI.* re-obtained the Crown; and the case of *Ed. V.* notwithstanding the usurpation of his uncle *Rich. III.* 1 Hat. Hist. P. C. 104.

The grand fundamental maxim upon which the *Jus Corone,* or right of succession to the Throne of these kingdoms depends, seems to be this: "That the Crown is by common law and constitutional custom hereditary; and this in a manner peculiar to itself; but
that the right of inheritance may from time to time be changed or limited by Parliament; under which limitations the Crown still continues hereditary."

**First**, it is in general hereditary, or descendible to the next heir, on the death or demise of the last proprietor. All regal governments must be either hereditary or elective; and as no instance can be found wherein the Crown of England has ever been asserted to be elective, by any authority but that of the Regicides at the infamous and unparalleled trial of K. Charles I., it must of consequence be hereditary. Yet an hereditary, by no means intends a jure-divino, right to the Throne; save only so far as Kingdoms, like other human fabrics, are subject to the general and ordinary dispensations of providence. Nor indeed have a jure-divino and an hereditary right any necessary connexion with each other; as some have very weakly imagined. The hereditary right which the laws of England acknowledge, owes its origin to the founders of our Constitution, and to them only. The founders of our English Monarchy might perhaps, if they had thought proper, have made it elective; but they rather chose, and upon good reason to establish originally a succession by inheritance. This has been acquisiced in by general consent; and ripened by degrees into common law; the very same title that every private man has to his own estate. Lands are not naturally descendible any more than Thrones; but the Law has thought proper for the benefit and peace of the Public, to establish hereditary succession in the one, as well as the other.

**Secondly**, as to the particular mode of inheritance; it in general corresponds with feodal path of descents, chalked out by the common Law in the succession to landed Estates; yet with one or two material exceptions. Like estates, the Crown will descend lineally to the issue of the reigning Monarch; as it did from King John to Richard II., through a regular degree of six lineal generations. As in common descent, the preference of males to females, and the right of primogeniture among the males are strictly adhered to. But among the females the Crown descends by right of primogeniture to the eldest daughter only, and her issue; and not as in common inheritances to all the daughters at once; the evident necessity of a sole succession to the Throne having occasioned the royal law of descents to depart from the common law in this respect. The doctrine of representation also prevails in the descent of the Crown, as it does in other inheritances, whereby the lineal descendants of any person deceased stand in the same place as their ancestor, if living, would have done. Lastly, on failure of lineal descendants, the Crown goes to the next collateral relations of the late King, provided they are lineally descended from the blood-royal; that is, from that royal stock which originally acquired the Crown. But herein there is no objection (as in the case of common descents) to the succession of a Brother, an Uncle, or other collateral relation of the half blood; provided only, that the one Ancestor from whom both are descended, be that from whose veins the blood-royal is communicated to each. The reason of which diversity between royal and common descents, may be better understood by recurring to the general rules of Descent. See that title; Canon VI. ad fin.

If the King hath issue a son and a daughter by one venter, and a son by another venter, and purchases lands and dies, and the eldest
son enters, and dies without issue, the daughter shall not inherit those lands, nor any other fee-simple lands of the Crown, but the younger brother shall have them together with the Crown. Co. Lit. 15. b.

Thirdly; the doctrine of hereditary right does by no means imply an indefeasible right to the Throne. No man will surely assert this who has considered our Laws, Constitution, and History without prejudice, and with any degree of attention. It is unquestionably in the breast of the Supreme Legislative Authority of this Kingdom, The King and both Houses of Parliament, to defeat this hereditary right; and by particular entailments, limitations, and provisions, to exclude the immediate heir, and vest the inheritance in any one else. This is strictly consonant to our laws and constitution, as may be gathered from the expression so frequently used in our statute-book of "the King’s Majesty, his heirs and successors." In which we may observe, that as the word Heirs necessarily implies an inheritance or hereditary right generally subsisting in the royal person; so the word Successors; distinctly taken, must imply that this inheritance may sometimes be broken through; or that there may be a successor without being the heir of the King.

Fourthly: However the Crown may be limited or transferred, it still retains its descendible quality, and becomes hereditary in the wearer of it. And hence in our law the King is said never to die in his political capacity; because immediately upon the natural death of Henry, William, or Edward, the King survives in his successor. For the right of the Crown vests eo instanti upon his heir; either the hæres natus, if the course of descent remains unimpeached, or the hæres factus, if the inheritance be under any particular settlement. So that there can be no interregnum; but as Hale observes, the right of sovereignty is fully invested in the Successor by the very descent of the Crown. 1 Hist. P. C. 61. Hence the statutes passed in the first year after the Restoration of Car. II. are always called the acts in the 12th year of his reign; and all the other legal proceedings of that reign are reckoned from the year 1648, and not from 1660.

On this principle, that the King commences his reign from the day of the death of his ancestor, it hath been held that compassing his death before coronation, or even before proclamation, is compassing of the King’s death within the statute of 25 Ed. 3. stat. 5. c. 2; he being King presently, and the proclamation and coronation only honourable ceremonies for the further notification thereof. 3 Inst. 7: 1 Hale’s Hist. P. C. 101. See title Treason.

However acquired therefore, the Crown becomes in the Successor absolutely hereditary; unless by the rules of the limitation it should be otherwise ordered and determined.

In these four points consist the constitutional notion of hereditary right to the Throne; which is still further elucidated and made clear beyond all dispute, by the learned Commentator from whom much of the foregoing and following abstract is abridged, in a short historical view which he gives, of the succession to the Crown of England, from Egbert to the present time; of the doctrines of our antient Lawyers; and of the several statutes that have from time to time been made, to create, to declare, to confirm, to limit, or to bar, the hereditary title to the Throne. In the pursuit of this inquiry, he clearly shows, that from the days of Egbert, the first sole Monarch of this
KING I.

kingdom, to the present, the four cardinal maxims above mentioned have ever been held the constitutional canons of Succession to the Crown. It is true this succession, through fraud or force, or sometimes through necessity, when in hostile times the Crown descended on a Minor, or the like, has been very frequently suspended: but has generally at last returned back into the old hereditary channel; though sometimes a very considerable period has intervened. And even in those instances where the succession has been violated, the Crown has ever been looked upon as hereditary in the wearer of it. Of which the Usurpers themselves were so sensible, that they for the most part endeavoured to vamp up some feeble show of a title by descent, in order to amuse the People, while they gained the possession of the kingdom. And when possession was once gained, they considered it as the purchase or acquisition of a new estate of inheritance, and transmitted, or endeavoured to transmit, it to their own posterity, by a kind of hereditary right of Usurpation. See 1 Comm. c. 3. p. 190—7.

If the Throne be at any time vacant, (which may happen by other means besides that of abdication; as if all the blood-royal should fail, without any successor appointed by Parliament,) the right of disposing of this vacancy seems naturally to result to the Houses of Lords and Commons, the trustees and representatives of the Nation. For there are no other hands in which it can so properly be entrusted; and there is a necessity of its being entrusted somewhere, else the whole frame of Government must be dissolved and perish.

The Preamble to the Bill of Rights expressly declares, that "the Lords Spiritual and Temporal, and Commons assembled at Westminster, lawfully, fully, and freely represent all the estates of the People of this realm." The Lords are not less the trustees and guardians of their country than the Members of the House of Commons.

It was justly said, when the royal prerogatives were suspended by the indisposition of the King, (Geo. III.) in 1788, that the two Houses of Parliament were the organs by which the People expressed their will. And in the House of Commons, on the 16th of December in that year, two Declaratory Resolutions were accordingly passed, importing: 1. The interruption of the Royal Authority; 2. That it was the duty of the two Houses of Parliament to provide the means of supplying that defect. On the 23d of the same month a third resolution was passed, empowering the Lord Chancellor of Great Britain to affix the Great Seal to such Bill of Limitations as might be necessary to restrict the power of the future Regent to be named by Parliament: this Bill was accordingly brought forward, but happily arrested in its progress by the providential recovery of the King in March 1789. It is observable, however, that no Bill was ever afterwards introduced to guard against a future emergency of a similar nature: on the grounds undoubtedly of delicacy to the Monarch, in the hope of the improbability that such a circumstance should recur in future; and in the confidence of the omnipotence of Parliament if necessarily called upon again. See the Journals of the Lords and Commons, sub an. 1788-9.

Towards the end of King William's reign, the King and Parliament thought it necessary to exert their power of limiting and appointing the succession, in order to prevent the vacancy of the Throne; which must have ensued upon their deaths, as no farther provision was
made at the Revolution than for the issue of Queen Mary, Queen Anne, and King William. It had been previously by the stat. 1 W. and M. stat. 2. c. 2, enacted, that every person who should be reconciled to, or hold communion with, the Sic of Rome, who should profess the Popish religion, or who should marry a Papist, should be excluded, and forever incapable to inherit, possess, or enjoy the Crown; and that in such case the people should be absolved from their allegiance [to such person,] and the Crown should descend to such persons being Protestants, as would have inherited the same, in case the person so reconciled, holding communion, professing, or marrying, were naturally dead. To act therefore consistently with themselves, and at the same time pay as much regard to the old hereditary line as their former resolutions would admit, they turned their eyes on the Princess Sophia, Electress and Dutchess Dowager of Hanover. For upon the impending extinction of the Protestant posterity of Charles I. the old law of regal descent directed them to recur to the descendants of James I. and the Princess Sophia being the youngest daughter of Elizabeth, Queen of Bohemia, who was the daughter of James I. was the nearest of the antient blood-royal, who was not incapacitated by professing the Popish religion. On her, therefore, and the heirs of her body, being Protestants, the remainder of the Crown, expectant on the death of King William and Queen Anne, without issue, was settled, by stat. 12 & 13 W. 3. c. 2. And at the same time it was enacted, that whosoever should hereafter come to the possession of the Crown should join in the communion of the church of England as by law established.

This is the last limitation of the Crown that has been made by Parliament, and all the several actual limitations from the time of Henry IV. to the present, (stated at large in 1 Comm. c. 3,) do clearly prove the power of the King and Parliament to new model or alter the succession. And indeed it is now again made highly penal to dispute it; for by stat. 6 Ann. c. 7, it is enacted, that if any person maliciously, advisedly, and directly, shall maintain by writing, or printing, that the Kings of this realm, with the authority of Parliament, are not able to make laws to bind the Crown and the descent thereof, he shall be guilty of high treason; or if he maintains the same only by preaching, teaching, or advised speaking, he shall incur the penalties of a præmunire.

The Princess Sophia dying before Queen Anne, the inheritance thus limited descended on her son King George I. and having taken effect in his person, from him it descended to his late Majesty King George II. and from him to his grandson and heir, our present Gracious Sovereign King George III.

The Title to the Crown therefore, though at present hereditary, is not quite so absolutely hereditary as formerly; and the common stock or ancestor, from whom the descent must be derived is also different. Formerly the common stock was King Egbert, then William the Conqueror; afterwards in James I.'s time the two common stocks united, and so continued till the vacancy of the throne, occasioned by the abdication of James II. in 1688; now it is the Princess Sophia, in whom the inheritance was vested by the King and Parliament. Formerly the descent was absolute, and the Crown went to the next heir without any restriction; but now, upon the new settlement, the inheritance is conditional; being limited to such heirs only of the
body of the Princess Sophia, as are Protestant Members of the Church of England, and are married to none but Protestants.

In this due medium appears to consist the true constitutional notion of the right of succession to the Imperial Crown of these Kingdoms. The extremes between which it steers are each of them equally destructive of those ends for which Societies were formed, and are kept on foot. Where the Magistrate, upon every succession, is elected by the people, and may, by the express provision of the laws, be deposed (if not punished) by his Subjects; this may sound like the perfection of Liberty, and look well enough when delineated on paper; but in practice will be ever productive of tumult, contention, and anarchy. And, on the other hand, divine indefeasible hereditary right, when coupled with the doctrine of unlimited passive obedience, is surely of all constitutions, the most thoroughly slavish and dreadful. But when such an hereditary right as our laws have created and vested in the royal stock, is closely interwoven with those liberties, which are equally the inheritance of the Subject; this union will form a constitution, in theory, the most beautiful of any; in practice the most approved; and, in duration, it is to be hoped, the most permanent. It is the duty of every expounder of our Laws to lay this Constitution before the Student in its true and genuine light; it is the duty of every good Englishman to understand, to reverence, and to defend it.

As to Offences in denying the King’s title, see this Dict. title Misprision; in oppugning it, title Treason.

II: The first and most considerable branch of the King’s Royal Family, regarded by the laws of England, is the Queen; as to whom see this Dictionary, title Queen.

The Prince of Wales, or Heir-apparent to the Crown, and also his royal consort; and the Princess Royal, or eldest daughter of the King, are likewise peculiarly regarded by the laws. For, by stat. 25 Ed. 3, to compass, or conspire the death of the former, or to violate the chastity of the latter, is as much high treason as to conspire the death of the King, or violate the chastity of the Queen. See this Dictionary, title Treason. The Heir-apparent to the Crown is usually made Prince of Wales and Earl of Chester, by special creation and investiture; but being the King’s eldest son, he is by inheritance Duke of Cornwall, without any new creation. 8 Rep. 1: Seld. title Lon. 2. 5.

The observations in Coke’s reports, however, as well as the words of the statute, it has been remarked, limit the dukedom of Cornwall to the first begotten son of a King of England, and to him only. But although from this it is manifest, that a Duke of Cornwall must be the first begotten son of a King, yet it is not necessary that he should be born after his father’s accession to the Throne.

This is, on the whole, a strange species of inheritance, and perhaps is the only mode of descent which depends upon the authority of a statute. In the Prince’s case, reported by Lord Coke, the question was, whether the original grant to Edward the Black Prince, who was created in the 11th of Ed. III. Duke of Cornwall, and who was the first Duke in England after the Duke of Normandy, had the authority of Parliament; or was an honour conferred by the King’s charter alone? If the latter, the limitation would have been void, as
nothing less than the power of Parliament can alter the established rules of descent. But notwithstanding it is in the form of a charter, it was held to be an act of the Legislature. It concludes, per ipsum regem et totum concilium in parliamento.—Christian's Note on 1 Comm. c. 4. (See printed Parliament Rolls, 5 H. 4. nu. 22, & 38 H. 6. nu. 29. for full information on this subject. See also this Dictionary, title Prince.)

The rest of The Royal Family may be considered in two different lights, according to the different senses in which the term Royal Family is used. The larger sense includes all those, who are by any possibility inheritable to the Crown. Such, before the Revolution, were all the descendants of William the Conqueror, who had branched into an amazing extent, by intermarriages with the antient nobility. Since the Revolution, and act of settlement, it means the Protestant issue of the Princess Sophia, now comparatively few in number, but which in process of time may possibly be as largely diffused. The more confined sense includes only those who are within a certain degree of propinquity to the reigning Prince, and to whom therefore the laws pay an extraordinary regard and respect.

At the time of passing the Regency Act, stat. 5 Geo. 3. c. 27 (See Post V. 2.) the bill which was framed on the plan of the Regency Act in the preceding reign, empowered his Majesty to appoint either the Queen or any other person of his Royal Family usually resident in Great Britain, to be Regent until the successor to the Crown should attain eighteen years of age. A doubt arising on the question who were the Royal Family, it was explained by the Law Lords to be the descendants of King George II. It was, therefore, found necessary expressly to insert in the act the name of her Royal Highness the Princess Dowager of Wales, widow of the King's eldest son deceased, and mother of his present Majesty, as she was not held to be comprehended under the general description of the Royal Family. See Belsham's Memoirs of King Geo. III.

The younger sons and daughters of the King, and other branches of the royal family, who are not in the immediate line of succession, were therefore little farther regarded by the antient law, than to give them a certain degree of precedence before all persons and public officers, as well ecclesiastical as temporal. This is done by stat. 31 Hen. 8. c. 10; which enacts, that no person, except the King's children, shall presume to sit or have place at the side of the cloth of estate in the Parliament chamber; and that certain great officers therein named shall have precedence above all dukes, except only such as shall happen to be the King's son, brother, uncle, nephew, (which latter Sir E. Coke, 4 Inst. 362, explains to signify grandson or nepos,) or brother's or sister's son.

Indeed, under the description of the King's children, his grandsons are held to be included, without having recourse to Sir E. Coke's interpretation of nepos; and, therefore, when his late Majesty King George II. created his grandson Edward, (the second son of Frederick Prince of Wales deceased,) Duke of York, and referred it to the House of Lords to settle his place and precedence, they certified that he ought to have place next to the late Duke of Cumberland, the then King's youngest son; and that he might have a seat on the left hand of the cloth of estate. Ld's. Journ. Apr. 24, 1760. But when, on the accession of his present Majesty, those royal person-
ages, ceased to take place as the children, and ranked only as the Brother and Uncle of the King, they also left their seats on the side of the cloth of estate: so that when the Duke of Gloucester, his Majesty's second brother, took his seat in the House of Peers, he was placed on the upper end of the Earl's bench (on which the Dukes usually sit) next to his Royal Highness the Duke of York. *Ld's Journ.* 10 January 1765. And in 1718, upon a question referred to all the Judges by *Geo. I,* it was resolved by ten against the other two, that the education and care of all the King's grand-children, while minors, did belong of right to his Majesty as King of this realm, even during their father's life. *Fortesc. Al.* 401–440. And they all agreed, that the care and approbation of their marriages, when grown up, belonged to the King their grandfather. And the Judges have more recently concurred in opinion, that this care and approbation extend also to the *Presumptive Heir* of the Crown; though to what other branches of the royal family the same did extend, they did not find precisely determined. *Ld's Journ.* 28 Feb. 1772: 11 St. Tr. 295. The most frequent instances of the Crown's interposition go no farther than nephews and nieces, but examples are not wanting of its reaching to distant collaterals. Therefore by *stat. 28 Hen. 8.* c. 18. (repealed among their statutes of treasons by 1 *Ed.* 6. c. 12.) it was made high treason for any man to contract marriage with the King's children, or reputed children, his sisters or aunts, *ex parte paterna,* or the children of his brethren or sisters: being exactly the same degrees to which precedence is allowed by the *stat. 31 Hen. 8,* before mentioned. And now by *stat. 12 Geo. 3.* c. 11, no descendant of the body of King *Geo. II.* (other than the issue of Princesses married into foreign countries) is capable of contracting matrimony, without the previous consent of the King signified under the Great Seal; and any marriage contracted without such consent is void: [a marriage accordingly, which had, in fact, taken place abroad against the provisions of this act, between one of the sons of *Geo. III.* and an English lady, was dissolved in 1794 by sentence of an Ecclesiastical Court here:] but it is provided by the act, that such of the said descendants as are above the age of twenty-five, may, after a twelvemonth's notice given to the King's Privy Council, contract and solemnize marriage without the consent of the Crown; *unless* both houses of parliament shall, before the expiration of the said year, expressly declare their disapprobation of such intended marriage. All persons solemnizing, assisting, or being present at, any such prohibited marriage shall incur the penalties of *præmunire.*

III. In order to assist the King in the discharge of his duties, the maintenance of his dignity, and the exertion of his prerogative, the law hath assigned him a diversity of councils to advise with. These are, his *Parliament,* his *Peers,* and his *Privy Council.* See this Dictionary under those titles.

For law matters the Judges of the Courts of law are held to be the King's Council: as appears frequently in our statutes, particularly *stat.* 14 *Ed.* 3. c. 5: and in other books of law. So that when the King's council is mentioned generally, it must be defined, particularized, and understood, *secundum subjectam materiam:* and if the subject be of a legal nature, then by the King's Council is understood his Council for mat-
ters of law; namely, his judges. Therefore, when by stat. 16 R. 2. c. 5, it was made a high offence to import into this kingdom any papal bulles, or other processes from Rome; and it was enacted, that the offenders should be attached by their bodyes, and brought before the King and his Council to answer for such their offence; here, by the expression of the King’s Council were understood, the King’s Judges of his Courts of Justice, the subject matter being legal; this being the general way of interpreting the word Council, 3 Inst. 125. See further this Dictionary, title Judges.

Upon the same principle, in cases where fine and ransom are imposed for any offence at the King’s pleasure, this does not signify any extra-judicial will of the Sovereign, but such as is declared by his representatives, the Judges in his Courts of Justice, voluntas regis in curia, non in camera. 1 Hal. P. C. 375.

IV. It is in consideration of the Duties incumbent on the King by our Constitution, that his dignity and prerogative are established by the laws of the land: it being a maxim in the law, that protection and subjection are reciprocal. 7 Ref. 5. And these reciprocal duties are most probably what was meant by the Convention-Parliament in 1688, when they declared that King James II. had broken the original contract between King and People. But however, as the terms of that original contract were in some measure disputed, being alleged to exist principally in theory, and to be only deducible by reason and the rules of natural law; in which deduction, different understandings might very considerably differ; it was, after the Revolution, judged proper to declare these duties expressly, and to reduce that contract to a plain certainty. So that whatever doubts might be formerly raised about the existence of such an original contract, they must now entirely cease; especially with regard to every Prince who hath reigned since the year 1688.

The principal duty of the King is to govern his people according to law. And this is not only consonant to the principles of nature, reason, liberty, and society, but has always been esteemed an express part of the common law of England, even when prerogative was at the highest. See our ancient authors, Bract. l. 1. c. 8: l. 2. c. 16. § 3: Fortesc. cc. 2, 34. But to obviate all doubts and difficulties concerning this matter, it is expressly declared by stat. 12 & 13 W. 3. c 2, “That the laws of England are the Birth-right of the People thereof; and all the Kings and Queens who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws; and all their Officers and Ministers ought to serve them respectively, according to the same: and therefore all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same, now in force, are ratified and confirmed accordingly.” See further this Dictionary, title Liberties.

As to the terms of the original contract between King and People; these it seems are now couched in the Coronation Oath, which, by stat. 1 W & M. st. 1. c. 6, is to be administered to every King and Queen, who shall succeed to the Imperial Crown of these realms, by one of the Archbishops or Bishops in the presence of all the people; who, on their parts, do reciprocally take the oath of allegiance to the Crown.
This Coronation Oath is conceived in the following terms.

"The Archbishop or Bishop shall say, Will you solemnly promise and swear to govern the people of this [Kingdom of England].—See now stat. 5 Ann. c. 8. § 1: as to the union of Scotland: & 39, 40 Geo. 3. c. 67. as to the union of Ireland, and which together is called "The united Kingdom of Great Britan and Ireland:"] and the dominions thereto belonging, according to the statutes in Parliament agreed on; and the laws and customs of the same! The King or Queen shall say, I solemnly promise so to do.—Abp. or Bp. Will you to your power cause law and justice, in mercy, to be executed in all your judgments?—K. or Q. I will.—Abp. or Bp. Will you to the utmost of your power maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by the law; And will you preserve unto the Bishops and the Clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them?—K. or Q. All this I promise to do.—After this the King or Queen laying his or her hand upon the Holy Gospels shall say, The things which I have here before promised, I will perform and keep, so help me God.—And then shall kiss the book."

It is also required, both by the Bill of Rights, stat. 1 W. & M. st. 2. c. 2; and the Act of Settlement, stat. 12 & 13 W. 3. c. 2, that every King and Queen of the age of twelve years, either at their coronation, or on the first day of the first Parliament, upon the throne in the House of Peers (which shall first happen) shall repeat and subscribe the declaration against Popery, according to stat. 30 Car. 2. st. 2. c. 1.

The above is the form of the Coronation oath, as it is now prescribed by our laws; the principal articles of which appear to be at least as antient as the Mirror of Justices (c. 1. § 2); and even as the time of Bracton. See l. 3. tr. 1. c. 9. But the wording of it was changed at the Revolution, because (as the statute alleges) the oath itself had been framed in doubtful words and expressions with relation to antient laws and constitutions at this time unknown. For these Old Coronation Oaths, see 1 Comm. e. 6. ft. 235; in n: and Rot. Claus. 1 Ed. 2. In a Roll of 5 Ed. II. preserved in Canterbury Cathedral marked K. 11. is the form of the Coronation Oath, si Rex fuerit literatus in Latin: and si Rex non fuerit literatus in French; as required to be administered by the Archbishop of Canterbury, "ad quem de jure & consuetudine Ecclesiae Cant. antiqua & approbata pertinet Reges Angliae inungere & coronare."

However, in what form soever this Oath be conceived, it is most indisputably a fundamental and express original contract; though doubtless the duty of protection is impliedly as much incumbent on the Sovereign before Coronation, as after, in the same manner as allegiance to the King becomes the duty of the Subject immediately on the descent of the Crown, before he has taken the oath of allegiance, or whether he ever takes it at all. In the King's part of this original contract are expressed all the duties that a monarch can owe to his people, viz. to govern according to law; to execute judgment in mercy; and to maintain the established religion. And with respect to the latter of these three branches, the Act of Union stat. 5 Ann. c. 8, recites and confirms two preceding statutes; the one of the Parliament of Scotland, the other of the Parliament of England;
which enact, the former that every King at his accession, shall take and subscribe an oath to preserve the Protestant religion, and Presbyterian church government in Scotland; the latter, that at his coronation he shall take and subscribe a similar oath to preserve the settlement of the church of England, within England, Ireland, Wales, and Berwick, and the territories thereunto belonging. The statute 39, 40 G. 3. c. 67. for the Union of Great Britain and Ireland, recognizes and confirms this part of the Act for the Union with Scotland. See article V. of the Union with Ireland, and this Dict. title Ireland. See also the act of the Irish Parliament, 33 H. 8. c. 1. by which it is enacted that the Kings of England shall always be Kings of Ireland.

V. 1. It has been observed that one of the principal bulwarks of Civil Liberty, or in other words, of the British Constitution, is the limitation of the King’s Prerogative, by bounds so certain and notorious, that it is impossible he should ever exceed them, without either the consent of the people, or a violation of that contract which we have seen expressly subsists between the Prince and the subject. When we more particularly consider this prerogative minutely, in order to mark out, in the most important instances, its particular extent and restrictions, one conclusion will evidently follow; that the powers which are vested in the Crown by the laws of England, are necessary for the support of Society; and do not intrench any farther on our natural, than is expedient for the maintenance of our civil liberties.

There cannot be a stronger proof of that genuine freedom, which is the boast of this age and country, than the power of discussing and examining with decency and respect the limits of the King’s prerogative. This was formerly considered as a high contempt in a Subject, and the glorious Queen Elizabeth herself directed her Parliament to abstain from judging of or meddling with her prerogative. It is no wonder, therefore, that her successor James I. should consider such a presumption as little less than blasphemy and impiety. But whatever might be the sentiments of some of our Princes, this was never the language of our antient constitution and laws. The sentiments of Bracion and Fortescue, at the distance of two centuries from each other, may be seen by a reference to the place cited in the preceding division, IV. And Sir Hen. Finch, under Charles I. after the lapse of two centuries more, though he lays down the law of prerogative in very strong and emphatical terms, yet qualifies it with a general restriction in regard to the liberties of the people. The King, says he, has a prerogative in all things that are not injurious to the Subject; for in them all it must be remembered, that the King’s prerogative stretcheth not to the doing of any wrong, Finch. l. 84, 5. Nihil enim aliud potest Rex, nisi id solum quod de jure potest. Bract. l. 3. tr. 1. c. 9.

The nature of our constitution is that of a limited monarchy, in which the legislative power is lodged in the King, Lords, and Commons; but the King is intrusted with the executive part, and from him all justice is said to flow; hence he is stiled the head of the Commonwealth, supreme governor, pares patriae, &c. but still he is to make the law of the land the rule of his government; that being the measure as well of his power, as of the Subject’s obedience: for
as the law asserts, maintains and provides for the safety of the King's royal person, crown, and dignity, and all his just rights, revenues, powers, and prerogatives; so it likewise declares and asserts the rights and liberties of the Subject. 1 And. 153: Co. Lit. 19, 752 4 Co. 124.

Hence it hath been established as a rule, that all prerogatives must be for the advantage of the people, otherwise they ought not to be allowed by law. Moor 672: Show. P. C. 75.

Although the King is the fountain of justice, and intrusted with the whole executive power of the law, yet he hath no power to alter the laws which have been established and are the birthright of every subject; for by those very laws he is to govern; and as they prescribe the extent and bounds of his prerogative, in like manner they declare and ascertain the rights and liberties of the people, therefore admit of no innovation or change but by act of parliament. 4 Inst. 164: 2 Inst. 54, 478: 2 Hal. Hist. P. C. 131, 282: Vaugh. 418: 2 Salk. 510.

The rights and prerogatives of the Crown are in most things as antient as the law itself; for though the statute 17 Ed. 2. c. 1, commonly called the statute De prerogativer Regis, seems to be introductory of something new, yet for the most part it is but a collection of certain prerogatives that were known law long before. Bendl. 117: 2 Inst. 263, 496: 10 Co. 64. And this statute does not contain the King's whole prerogative, but only so much thereof as concerns the profits of his coffers. Plovdi. 514.

The nature of the government of our King, says Fortescue, is not only regal, but political: if it were merely the former, regal, he would have power to make what alterations he pleased in our laws, and impose taxes and other hardships upon the Subject, whether they would or no: but his government being political, he cannot change the laws of the realm, without the People consent thereto, nor burthen them against their wills. It is also said by the same writer, that the king is appointed to protect his Subjects in their lives, properties, and laws; for which end and purpose he has the delegation of power from the people: likewise our King is such by the fundamental law of our land; by which law the meanest subject enjoys the liberty of his person and property in his estate; and it is every man's concern to defend these, as well as the King in his lawful rights. Fortescue, de Laud. leg. Angli. 17, &c.

If a King hath a kingdom by title of descent, where the laws have taken good effect and rooting, or if a King conquers a Christian kingdom, after the people have laws given them for the government of the country, to which they submit, no succeeding King can alter the same without the Parliament. 7 Rept. 17. It has nevertheless been held, that conquered countries may be governed by what laws the King thinks fit, and that the laws of England do not take place in such countries, until declared so by the conqueror, or his successor; here, in case of infidels, their laws do not cease, but only such as are against the law of God; and where the laws are rejected or silent, they shall be governed according to the rule of natural equity.—2 Salk. 411, 412, 666.

If the King makes a new conquest of any country, the persons there born are his subjects; for by saving the lives of the people conquered he gains a right and property in such people, and may impose on them what laws he pleases. Dyer 224: Vaugh. 281.
But until such laws given by the conquering prince, the laws of the conquered country hold place: (unless where these are contrary to our religion, or enact any thing that is malum in se, or are silent;) for in all such cases the laws of the conquering country prevail. 2 P. Wms. 75, 76.

If there be a new and uninhabited country found out by English subjects, as the law is the birthright of every Subject, so wherever they go they carry their laws with them; therefore such new found country is to be governed by the laws of England; though after such country is inhabited by the English, acts of parliament made in England, without naming the foreign plantations, will not bind them. 2 P. Wms. 75: 2 Saik. 411. And see Campbell v. Hall, Cowp. 204: Spragge v. Stone, cited Doug. 35, 37, 38.

Questions of this nature are not at present likely often to arise, since (as in the instance of annexing the Crown of Corsica to the British Crown in 1794) all such transactions are now regulated by express stipulations; which neither leave to the prerogative of the conquering monarch, nor the laws of his kingdom, any power to interfere.

By the word Prerogative is usually understood, that special pre-eminence, which the King hath over and above all other persons, and out of the ordinary course of the common law, in right of his regal dignity. It signifies, in its etymology from pre and rego, something that is required or demanded before, or in preference to all others. And hence it follows, that it must be in its nature singular and eccentrical; that it can only be applied to those rights and capacities, which the King enjoys alone in contradiction to others; and not to those which he enjoys in common with any of his Subjects: for if once any prerogative of the Crown could be held in common with the subject, it would cease to be prerogative any longer. Finch, therefore, lays it down as a maxim, that the prerogative is that law in case of the King, which is law in no case of the subject. Finch, L. 85.

Prerogatives are either direct or incidental. The direct are such positive substantial parts of the royal character and authority, as are rooted in, and spring from, the King’s political person, and of which we are about to state the law at some length. But such prerogatives as are incidental bear always a relation to something else, distinct from the King’s person, and are indeed only exceptions in favour of the Crown, to the general rules established for the rest of the community; such as that no costs shall be recovered against the King; that he can never be a joint-tenant; and that his debt shall be preferred before that of a Subject. These, and an infinite number of other instances, will better be understood by referring to the Subjects themselves, to which these incidental prerogatives are exceptions. As to his prerogative relating to his debts, however, here reckoned among those considered as incidental, See Post VI. at some length; and this Dictionary, titles Execution; Extent; Judgment, &c. Other incidental prerogatives are, that where the title of the King and a common person concur, the King’s title shall be preferred. 1 Inst. 30.—No distress can be made upon the King’s possession, but he may distrain out of his fee in other lands, &c. and may take distresses in the highway. 2 Inst. 131.—An heir shall pay the King’s debt, though he is not named in the bond: and the King’s debt shall
be satisfied before that of a Subject, for which there is a prerogative writ. 1 Inst. 130, 386.—But this is where the debt is in equal degree with that of the Subject. See stat. 33 Hen. 8. c. 39, at large: post VI.: and Cro. Car. 283: Hardr. 23.—Goods and chattels may go in succession to the King, though they may not to any other sole corporation. 1 Inst. 90.—In the hands of whomsoever the goods of the King come, their lands are chargeable, and may be seized for the same; and the King is not bound by sale of his goods in open market. 2 Inst. 713.—No entry will bar the King, and no judgment is final against him, but with a salvo jure regis. Litt. 178: Finch 46: but see post 2. as to the nudum tempus—act 9 Geo. 3. c. 9.—The King may plead several matters without being guilty of double pleading, and the party shall answer them all. Bro. Doug!. Pl. 57.—In his pleading he need not plead an act of parliament as a Subject is bound to do. 4 Rept. 75.—He is not bound to join in demurrer on evidence, and the Court may direct the Jury to find the matter specially. Finch, 82: 5 Rept. 104.—The King’s own testimony of any thing done in his presence is of as high a nature and credit as any record, whence, in all original writs or precepts, he useth no other witness than himself, as teste meipso. 1 Inst. 41, 57.

It is also held, that the King is by his prerogative Universal Occupant, as all property is presumed to have been originally in the Crown; and that he partitioned it out in large districts to the great men who deserved well of him in the wars, and were able to advise him in time of peace. Hence the King hath the direct dominion; and all lands are holden mediately or immediately from the Crown. Co. Lit. 1: Dyer 154: 1 Benn. 237: Setl. Mare Claus.

If the sea leaves any shore by the water suddenly falling off, such derelict lands belong to the King; but if a man’s lands lying to the sea are increased by insensible degrees, they belong to the soil adjoining. Dyer 326: 2 Rol. Abr. 170.

So, if a river, so far as there is a flux of the sea, leaves its channel, it belongs to the King; for the English sea and channels belong to the King; and, having never distributed them out to the subjects, he hath a property in the soil. 2 Rol. Abr. 170.

But if a river, in which there is no tide, should leave its bed, it belongs to the owners on both sides; for they have in that case the property of the soil; this being no original part or appendix to the sea, but distributed out as other lands. 2 Rol. Abr. 170.

If land be drowned, and so continue for years; if it be after regained, every owner shall have his interest again, if it can be known by the boundaries. 8 Co. Sir Francis Barrington’s case.

It is said, that there is a custom in Lincolnshire, That the lord of the manors shall have derelict lands: and that as such it is a reasonable custom; for if the sea wash away the lands of the subject, he can have no rempence, unless he should be entitled to what he regains from the sea. Dict.

The King hath the Sovereign dominion in all seas and great rivers, which is plain from Seldon’s account of the antient Saxons, who dwelt very successfully in all naval affairs; therefore the territories of the English seas and rivers always resided in the King. Seld. Mar. Cl. 251, Oc. 1 Rol. Abr. 168, 169: 1 Co. 141: 5 Co. 106.

And as the King hath a prerogative in the seas, so hath he likewise a right to the fishery and to the soil; so that if a river as far as
there is a flux of the sea leaves its channel, it belongs to the King.


Hence the Admiralty Court, which is a Court for all maritime causes or matters arising on the high seas, is deemed the King's Court, and its jurisdiction derived from him who protects his Subjects from pirates, and provides for the security of trade and navigation. 4 Inst. 142: Molloy 66.

From the King's dominion over the sea it was holden, that the King, as protector and guardian of the seas, might before any statute made for commissions of sewers, provide against inundations by lands, banks, &c. and that he had a prerogative herein as well as in defending his Subjects from pirates, &c. 10 Co. 141.

But notwithstanding the King's prerogative in seas and navigable rivers, yet it hath been always held, that a Subject may fish in the sea; which being a matter of common right, and the means of livelihood, and for the good of the commonwealth, cannot be restrained by grant or prescription. 8 Ed. 4. 18, 19; Bro. Custom, 46: Fitz. Bar. 1 Mod. 105: 2 Salk. 637.

Also it is held, that every Subject of common right may fish with lawful nets, &c. in a navigable river as well as in the sea; and the King's grant cannot bar them thereof; but the Crown only has a right to royal fish, and that the King only may grant. 6 Mod. 73: Salk. 357. S. C. & S. P. See title Fish, &c.

It is also said, that the King, as a perpetual sign and acknowledgment of his dominion of the seas, hath several creatures reserved to him under the denomination of royal creatures, as swans, sturgeons, and whales; all which are natives of seas and rivers. 7 Co. 16. See post 4.

2. The law ascribes to the King the attributes of Sovereignty or pre-eminence. See Bract. l. 1. c. 8.—He is said to have imperial dignity; and in charters, before the Conquest, is frequently stiled Basileus and Imperator; the titles respectively assumed by the Emperors of the East and West. His realm is declared to be an empire, and his Crown imperial, by many acts of parliament; particularly stats. 24 Hen. 8. c. 12; 25 Hen. 8. c. 28; which at the same time declare the King to be the supreme head of the realm in matters both civil and ecclesiastical; and, of consequence, inferior to no man upon earth, dependent on no man, accountable to no man. See also stats. 24 Geo. 2. c. 24: 5 Geo. 3. c. 27.

No King of England used any seal of arms till the reign of Rich. I. Before that time, the seal was the King sitting in a chair of state on one side of the seal, and on horse-back on the other side; but this King sealed with a seal of two lions: and King John was the first that bare three lions; and afterwards Edward III. quartered the arms of France, which has been continued to this time. King Henry VIII. was the first to whom Majesty was attributed; before which, our Kings were called Highness, &c. Lex Constitut. 47, 48.

The meaning of the Legislature when it uses these terms of empire and imperial, and applies them to the realm and Crown of England, is only to assert that our King is equally sovereign and independent within these his dominions, as any Emperor is in his empire, and owes no kind of subjection to any other Potentate upon earth.

Hence it is, that no suit or action can be brought against the King, even in civil matters, because no Court can have jurisdiction over
him. All jurisdiction implies superiority of power: authority to try would be vain and idle without authority to redress; and the sentence of a Court would be contemptible, unless that Court had power to command the execution of it: but who, says Finch, shall command the King? Finch, l. 83.—Hence it is likewise, that by law, the person of the King is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary: for no jurisdiction upon earth has power to try him in a criminal way, much less to condemn him to punishment. If any foreign jurisdiction had this power, as was formerly claimed by the Pope, the independence of the kingdom would be no more; and if such a power were vested in any domestic tribunal, there would soon be an end to the constitution, by destroying the free agency of one of the constituent parts of the sovereign Legislative Power.

Are then, it may be asked, the Subjects of England totally destitute of remedy in cases the Crown should invade their rights, either by private injuries, or public oppressions? To this we may answer, that the law has provided a remedy in both cases.

As to private injuries; if any person has, in point of property, a just demand upon the King, he must petition him in his Court of Chancery, where his Chancellor will administer right as a matter of grace, though not upon compulsion. Finch, l. 255. See this Dictionary, title Chancery; and post as to the perfection ascribed to the King.

As to cases of ordinary public oppression, where the vitals of the constitution are not attacked, the law has also assigned a remedy. For as a King cannot misuse his powers without the advice of evil counsellors, and the assistance of wicked ministers, these men may be examined and punished. The Constitution has therefore provided, by means of indictments and parliamentary impeachments, that no man shall dare to assist the Crown in contradiction to the law of the land. But at the same time it is a maxim in those laws, that the King himself can do no wrong; since it would be a great weakness and absurdity in any system of positive law, to define any possible wrong, without any possible redress.

As to such public oppressions as tend to dissolve the Constitution, and subvert the fundamentals of Government, these are cases which the law will not, out of decency, suppose: being incapable of distrust have whom it has invested with any part of the supreme power; since such distrust would render the exercise of that power precarious and impracticable. For, whenever the law expresses its distrust or abuse of power, it always vests a superior coercive authority in some other hand or correct it; the very notion of which destroys the very idea of Sovereignty. If therefore (for example) the two Houses of Parliament, or either of them, had avowedly a right to animadvert on the King; or each other, or if the King had a right to animadvert on either of the Houses, that branch of the Legislature, so subject to animadversion, would instantly cease to be part of the Supreme Power; the balance of the Constitution would be overthrown; and that branch or branches, in which this jurisdiction resided, would be completely sovereign. The supposition of Law therefore is, that neither the King, nor either House of Parliament (collectively taken) is capable of doing any wrong; since in such cases the law feels itself incapable of furnishing any adequate remedy. For which reason all oppressions, which may happen to spring from any branch
of the Sovereign power, must necessarily be out of the reach of any stated rule or express legal provision: but if ever they unfortunately happen, the prudence of the times must provide new remedies upon new emergencies.

Indeed, it is found by experience, that whenever the unconstitutional oppressions, even of the Sovereign Power, advance with gigantic strides, and threaten desolation to a State, mankind will not be reasoned out of the feelings of humanity, nor will sacrifice their liberty by a scrupulous adherence to those political maxims which were originally established to preserve it. And, therefore, though the positive laws are silent, experience furnishes us with a very remarkable case, wherein nature and reason prevailed. When King James II. invaded the fundamental constitution of the realm, the Convention-Parliament declared an abdication, whereby the throne was considered vacant, which induced a new settlement of the Crown. And so far as this precedent leads, and no further, we may now be allowed to lay down the Law of redress against public oppression. If therefore any future Prince should endeavour to subvert the constitution by breaking the original contract between King and People, should violate the fundamental laws, and should withdraw himself out of the kingdom, we are now authorized to declare that this conjunction of circumstances would amount to an abdication, and the throne would be thereby vacant. In these therefore, or other circumstances, which a fertile imagination may furnish, since both Law and History are silent, it becomes us to be silent too; leaving to future generations, whenever necessity and the safety of the whole shall require it, the exertion of those inherent (though latent) powers of Society, which no climate, no time, no constitution, no contract, can ever destroy or diminish.

It may not be amiss to conclude this part of the subject with observing that, all persons born in any part of the King’s dominions, and within his protection, are his Subjects; thus are those born in Ireland, Scotland, Wales, the King’s plantations, or on the English seas; who by their birth owe such an inseparable allegiance to the King, that they cannot by any act of theirs renounce or transfer their subjection to any foreign prince. 7 Co. 1. &c.; Calvin’s Case: Molloy, 370: Co. Lit. 129: Dyer, 300. See titles Aliens; Allegiance; Treason.

Besides the attribute of Sovereignty, the law also ascribes to the King, in his political capacity, absolute Perfection. The King can do no wrong. Which antient and fundamental maxim is not to be understood, as if every thing transacted by the Government was of course just and lawful, but means only two things. First, that whatever is exceptionable in the conduct of public affairs is not to be imputed to the King, nor is he answerable for it personally to his people. And, secondly, it means that the prerogative of the Crown extends not to do any injury; it is created for the benefit of the people, and therefore cannot be exerted to their prejudice. Plowd. 487.

Or perhaps it means that, although the King is subject to the passions and infirmities of other men, the constitution has prescribed no mode by which he can be made personally amenable for any wrong that he may actually commit. The law will therefore presume no wrong where it has provided no remedy. The Inviolability of the King is essentially necessary to the free exercise of those high prerogatives, which are vested in him, not for his own private splendor
and gratification, as the vulgar and ignorant are too apt to imagine, but for the security and preservation of the real happiness and liberty of his Subjects.

The King moreover is not only incapable of doing wrong, but even of thinking wrong: he can never mean to do an improper thing; in him is no folly or weakness. If therefore the Crown should be induced to grant any franchise or privilege to a subject, contrary to reason, or in any way prejudicial to the commonwealth, or a private person, the law will not suppose the King to have meant either an unwise or an injurious action; but declares that the King was deceived in his grant: and therefore such grant is rendered void, merely upon the foundation of fraud and deception, either by or upon those agents whom the Crown has thought proper to employ. See title Grant of the King.—But a latitude of supposing a possibility of some failure of this personal perfection is allowed in the case of inquiries frequently instituted by Parliament, even as to those acts of royalty which are most properly and personally the King’s own; but which are to be conducted in those assemblies with the decency and respect due to the kingly character. See further this Dict. tit. Parliament.

The following is a concise statement of the remedies for the various injuries which may proceed from, and also for those which may affect the rights of the Crown.

The distance between the Sovereign and his Subjects is such, that it can rarely happen that any personal injury can immediately and directly proceed from the prince to any private man; and as it can so seldom happen, the law in decency supposes that it never can or will happen at all. But injuries to the rights of property can scarcely be committed by the Crown, without the intervention of its officers, against whom the law furnishes various methods of detecting their errors or misconduct.

The common-law methods of obtaining possession or restitution from the Crown of either real or personal property are, by Petition of right (already alluded to above) or Monstrans de Droit, Manifestation or Plea of Right; as to both which see title Monstrans de Droit.

The methods of redressing such injuries as the Crown may receive from a subject are; either by such usual common-law actions as are consistent with the royal prerogative and dignity; or by such prerogative modes of process as are peculiarly confined to the Crown. As the King, by reason of his legal ubiquity, cannot be diseised or dispossessed of any real property which is once vested in him, he can maintain no action which supposes a dispossession of the plaintiff, such as an Assise or Ejectment. Bro. Ab. 1. Prerogative 89. But he may bring a Quare Impedit, which always supposes the plaintiff to be seised or possessed of the advowson: and he may prosecute this writ like every other by him brought, as well in the court of K. B. as of C. P. or in whatever court he pleases. P. N. B. 32; 3 Comm. c. 17. So too he may bring an action of Trespass for taking away his goods; but such actions (of Trespass) are not usual, though in strictness maintainable for breaking his close or other injury done upon his soil and possession. Bro. Ab. 1. Prerogative 130. P. N. B. 96: Y. B. 4 H. 4. 4.

Much easier and more effectual remedies are however usually obtained by prerogative modes of process. Such is that of inquisition or...
Inquest of Office; as to which see this Dictionary, title Inquest.—Where the Crown hath unadvisedly granted any thing by letters patent which ought not to be granted, or where the patentee hath done any act that amounts to a forfeiture of the grant, the remedy to repeal the patent is by writ of Scire Facias in Chancery. See Dy. 198: 3 Lev. 220: 4 Inst. 88.—So also, if upon office untruly found for the King, he grants the land over to another, he who is grieved thereby, and traverses the office itself, is entitled, before issue joined, to a Scire Facias against the patentee in order to avoid the grant. Bro. Ab. 1. Scire Facias 69, 185. See this Dict. tit. Scire Facias.—An Information on behalf of the Crown is a method of suit for recovering money, or obtaining damages for any personal wrong to the lands or possessions of the Crown; as to which see this Dict. title Information.—A Writ of Quo Warranto is in the nature of a Writ of Right for the King against any person claiming or usurping any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right. Finch, L. 322: 2 Inst. 282. See this Dict. tit. Quo Warranto. And something of the same nature is the Writ of Mandamus, as to which see this Dict. titles Corporation; Mandamus.

The law also determines that in the King can be no negligence or laches, and therefore no delay will bar his right. Nullum tempestas occurrit Regi has been the standing maxim upon all occasions: for the law intends that the King is always busied for the public good, and therefore has not leisure to assert his right within the times limited to his subjects. Finch, L. 82: Co. Litt. 90.—This maxim applies also to criminal prosecutions which are brought in the name of the King; and therefore by the Common Law there is no limitation in treasons, felonies, or misdemeanors.—By stat. 7 W. 3. c. 7, an indictment for treason, except for an attempt to assassinate the King, must be found within three years after the commission of the treasonable act. See this Dict. title Treason.—But where the legislature has affixed no limit nullum tempestas occurrit regi holds true: thus a man may be convicted of murder at any distance of time within his life after the commission of the crime. This maxim obtains still in full force in Ireland. 1 Ld. Mountm. 365. In civil actions relating to landed property, by stat. 9 Geo. 3. c. 16, commonly called the Nullum Tempestas Act, the King, like a subject, is limited to 60 years. For the occasion of passing this act, see Belsham’s Memoirs of Geo. III. sub an. 1768. See also the stats. 21 Jac. 1. c. 23: 11 Geo. 3. c. 4.

In the King also can be no stain or corruption of blood; for if the Heir to the Crown were attainted of treason or felony, and afterwards the Crown should descend to him, this would purge the attainder ipso facto. Finch, L. 82: Rot. Parl. 1 Ric. 3.

Neither can the King in judgment of law as King, ever be a minor or under age; and therefore his royal grants, and assents to acts of parliament are good, though he has not in his natural capacity attained the age of 21. Co. Lit. 43: 2 Inst. Proem. 3. Indeed by stat. 28 H. 8. c. 17, power was given to future Kings to rescind and revoke all acts of parliament that should be made while they were under the age of 24: but this was repealed by stat. 1 Ed. 6. c. 11, so far as related to that prince; and both statutes are declared by stat. 24 Geo. 2. c. 24, to be determined. It hath also been usually thought prudent, when the Heir-apparent has been very young, to appoint a...
Protector, Guardian, or Regent for a limited time; but the very necessity of such extraordinary provision is sufficient to demonstrate the truth of that maxim of the Common Law, that in the King is no Minority; and therefore he hath no legal guardian.

The methods of appointing a guardian or regent in case of an Infant-heir to the Crown, have been so various, and the duration of his power so uncertain, that from hence alone it may be collected that his office is unknown to the Common Law; and therefore the surest way is to have him made by authority of the great Council in Parliament. 4 Inst. 58. The statutes 25 H. 8. c. 12: 28 H. 8. c. 7, [g. 17?] provided, that the successor, if a male and under 18, or a female and under 16, should be till such age in the government of his or her natural mother, (if approved by the King,) and such other counsellors as his majesty should by will or otherwise appoint: and he accordingly appointed his sixteen executors to have the government of his son Edward VI. and the Kingdom: which executors elected the earl of Hereford protector. The stat. 24 Geo. 2. c. 24, in case the Crown should descend to any of the children of Frederick, then late Prince of Wales, under the age of 18, appointed the Princess Dowager; and the stat. 5 Geo. 3. c. 27, in case of a like descent to any of the children of K. Geo. III. empowered the King to name either the Queen, the Princess Dowager, or any descendant of K. Geo. II. residing in this kingdom, to be Guardian and Regent, till the successor attained such age, assisted by a Council of Regency: the powers of them all being expressly defined and set down in the several Acts. See ante II.

From the maxim that the King, as King, cannot be a Minor, grants, leases, &c. made by him, though under age, bind presently, and cannot be avoided by him either during his minority, or when he comes of age: for it is a maxim of politics, that he who is to govern the kingdom should never be considered as incapable from minority of governing his own affairs. Dy. 209: pl. 22. Plowd. 289. Co. Litt. 43: 5 Co. 27: Raym. 90.

The law ascribes to the King's Majesty in his political capacity an absolute Immortality. The King never dies. Henry, Edward, or George, may die; but the King survives them all. For immediately upon the decease of the reigning Prince in his natural capacity, his Kingship or Imperial Dignity, by act of law, without any interregnum or interval, is vested at once in his heir, who is co instatn̄ King to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his demise; demissus regis vel corona: an expression signifying merely a transfer of property. By the term, Demise of the Crown, therefore, is understood, that, in consequence of the disunion of the King's natural body from the body politic, the kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual. Plowd. 177. 234. Thus too, when Ed. IV. in the 10th year of his reign, was driven from his throne for a few months by the house of Lancaster, this temporary transfer of his dignity was denominated his demise; and all process was held to be discontinued, as it then was upon the natural death of the King. M. 49 H. 6. pl. 1—8.

K. Henry II. took his son into a kind of subordinate regality with him, so that there were Rex Pater and Rex Filius; but he did not divest himself of his sovereignty, but reserved to himself the homage
of his subjects. And notwithstanding this King, by consent of Parliament, created his son John King of Ireland; and K. Rich. II. made Robert de Vere Duke of Ireland, and Ed. III. made his eldest son Lord of Ireland, with royal dominion; yet it has been expressly held that the King cannot regularly make a King within his own kingdom. 4 Inst. 357. 360. Hen. de Beauchamp, Earl of Warwick, was by King Hen. VI. crowned King of Wight Island; but it was resolved, that this could not be done without consent of Parliament; and even then our greatest men have been of opinion, that the King could not by law create a King in his own kingdom, because there cannot be two Kings of the same place. And afterwards the same K. Henry made the same Earl of Warwick Primus Comes totius Anglie. Hal. Hist. Coron.

A King cannot resign or dismiss himself of his office of King without consent of Parliament; nor could Hen. II. without such consent, divide the sovereignty: there is a sacred bond between the King and his kingdom that cannot be dissolved without the free and mutual consent of both in Parliament; and though in foreign kingdoms there have been instances of voluntary cessions and resignations, which possibly may be warranted by their several constitutions, yet, by the laws of England, the King cannot resign his sovereignty without his Parliament. Hale's H. Cor.

3. In the exercise of those branches of the Royal Prerogative which invest this our Sovereign Lord, thus all-perfect and immortal in his kingly capacity, with a number of authorities and powers, consists the Executive part of the Government. This is wisely placed in a single hand by the British Constitution, for the sake of unanimity, strength, and dispatch. The King of England is therefore not only the Chief, but properly the Sole Magistrate of the nation; all others acting by commission from, and in due subordination to him.

In the exertion of lawful prerogative, the King is and ought to be absolute; that is, so far absolute, that there is no legal authority that can either delay or resist him. He may reject what bills, may make what treaties, may coin what money, may create what peers, may pardon what offences he pleases; unless where the Constitution hath expressly, or by evident consequence, laid down some exception or boundary, declaring that thus far the prerogative shall go, and no farther. For otherwise the power of the Crown would indeed be but a name and a shadow, insufficient for the ends of government, if, where its jurisdiction is clearly established and allowed, any man, or body of men, were permitted to disobey it in the ordinary course of law. It is not now meant to speak of those extraordinary resources to first principles which are necessary when the contracts of Society are in danger of dissolution, and the law proves too weak a defence against the violence of fraud or oppression. And yet the want of attending to this obvious distinction has occasioned these doctrines, of absolute power in the Prince, and of national resistance by the People, to be much misunderstood and perverted by the advocates for slavery on the one hand, and the demagogues of faction on the other. Civil Liberty, rightly understood, consists in protecting the rights of individuals by the united force of Society. Society cannot be maintained, and of course can exert no protection, without obedience to some Sovereign Power: and obedience is an empty
name, if every individual has a right to decide how far he himself shall obey.

In the exertion therefore of these prerogatives which the law has given him, the King is irresistible and absolute, according to the forms of the constitution. And yet, if the consequence of that exertion be manifestly to the grievance or dishonour of the kingdom, the Parliament will call his advisers to a just and severe account. Thus the King may make a treaty with a Foreign State, which shall irrevocably bind the nation; and yet, when such treaties have been judged pernicious, impeachments have pursued those ministers by whose agency or advice they were concluded.

With regard to Foreign Concerns, the King is the Delegate or Representative of his people. It is impossible that the individuals of a State, in their collective capacity; can transact the affairs of that State with any other community equally numerous as themselves. Unanimity must be wanting to their measures, and strength to the execution of their counsels. In the King; therefore, as in a center, all the rays of his people are united, and form by that union a consistency, splendor, and power, that make him feared and respected by foreign Potentates; who would scruple to enter into any engagement, that must afterwards be revised and ratified by a popular assembly. What is done by the royal authority, with regard to foreign powers, is the act of the whole nation: what is done without the King’s concurrence is the act only of private men. And so far is this point carried by our law, that it hath been held, that should all the Subjects of England make war with a king in league with the King of England, without the Royal assent, such war is no breach of the league. 4 Inst. 152. And by the stat. 2 Hen. 5. c. 6, any Subject committing acts of hostility upon any nation in league with the King, was declared to be guilty of high treason: and though that act was repealed by the stat. 20 Hen. 6. c. 11, so far as relates to making this offence high treason, yet still it remains a very great offence against the Law of Nations; and punishable by our laws, either capitally or otherwise, according to the circumstances of the case.

The King, therefore, considered as the representative of his people, has the sole power of sending Ambassadors to foreign States, and receiving Ambassadors at home. How far the municipal laws of England intermeddle with or protect the right of these messengers from one potentate to another, may be seen in this Dict. tit. Ambassadors; and more fully, 1 Comm. c. 7.

It is also the King’s prerogative to make Treaties, Leagues, and Alliances with foreign States and Princes. For it is by the Law of Nations essential to the goodness of a league, that it be made by the Sovereign power; and then it is binding upon the whole community: and in England the sovereign power, quoad hoc, is vested in the person of the King. Whatever contracts, therefore, he engages in, no power in the kingdom can legally delay, resist, or annul. Although, lest this plenitude of authority should be abused to the detriment of the public, the Constitution (as has been already hinted) hath here interposed a check, by the means of parliamentary impeachment, for the punishment of such ministers as from criminal motives advise or conclude any treaty, which shall afterwards be judged to derogate from the honour and interest of the nation.
Upon the same principle, the King has also the sole prerogative of making War and Peace. For it is held by all the writers on the Law of Nature and Nations, that the right of making war, which by nature subsisted in every individual, is given up by all private persons that enter into Society, and is vested in the Sovereign Power. Puff. b. 8. c. 9. § 6. This right is given up not only by individuals, but even by the entire body of the people, that are under the dominion of a Sovereign. It would indeed be extremely improper, that any number of Subjects should have the power of binding the Supreme Magistrate, and putting him against his will in a state of war. Whatever hostilities, therefore, may be committed by private citizens, the State ought not to be affected thereby; unless that should justify their proceeding, and thereby become partner in the guilt. Such unauthorized volunteers in violence are not ranked among open enemies, but are treated like pirates and robbers. In order to make a war completely effectual, it is necessary with us in England that it be publicly, [actually or virtually,] declared and duly proclaimed by the King's authority; and then, all parts of both contending nations, from the highest to the lowest, are bound by it. And wherever the right resides of beginning a national war, there also must reside the right of ending it, or the power of making peace. And the same check of Parliamentary Impeachment, for improper or inglorious conduct, in beginning, conducting, or concluding a national war, is in general sufficient to restrain the Ministers of the Crown from a wanton or injurious exertion of this great prerogative.

The power of making war or peace is enumerated by Lord Hale inter jura summam imperii, and in England is lodged singly in the King; though, says he, it ever succeeds best when done by Parliamentary advice. 1 Hal. Hist. P. C. 159: 7 Co. 25.

A general war, according to the same Writer, is of two kinds, 1. Bellum solenniter denunciatum: 2. Bellum non solenniter denunciatum. The first is, When war is solemnly declared or proclaimed by our King against another Prince or State, which is the most formal solemnity of a war now in use. 2dly, When a nation slips suddenly into a war without any solemnity, which happens by granting letters of marque, by a foreign prince invading our coasts, or setting on the King's navy at sea; and hereupon a real, though not a solemn, war may arise and hath formerly arisen; therefore to prove a nation to be at enmity with England, or to prove a person to be an alien enemy, there is no necessity of shewing any war proclaimed; but it may be averred, and so put upon the trial of the country, whether there was a war or not. 1 Hal. Hist. P. C. 163. See further also as connected with this subject, titles Letters of Marque; Safe Conduct.

In all these prerogatives of the King respecting this nation's intercourse with foreign nations, he is considered as the Delegate or Representative of his people. But in domestic affairs, he is considered in a great variety of characters, and from thence there arises an abundant number of other prerogatives.

First. He is A Constituent Part of the Supreme Legislative Power; and, as such, has the prerogative of rejecting such provisions in Parliament, as he judges improper to be passed. The expediency of which Constitution is evinced at large under tit. Parliament. It may here be added, that the King is not bound by any act of Parliament, unless he be named therein by special and particular words.
The most general words that can be devised (any person or persons, bodies politic or corporate, &c.) affect not him in the least, if they may tend to restrain or diminish any of his rights or interests. 11 Ref. 74. Yet, where an act of Parliament is expressly made for the preservation of public rights and suppression of public wrongs, and does not interfere with the established rights of the Crown, it is said to be binding as well upon the King as the subject. 11 Ref. 71. The King may likewise take the benefit of any particular act, though he be not especially named. 7 Ref. 32.

The King is considered, in the next place, as the Generalissimo, or the first in military command, within the kingdom.

In this capacity, of General of the Kingdom, the King has the sole power of raising and regulating fleets and armies. Of the manner in which they are raised and regulated, more is said in other places. We are now only to consider the Prerogative of enlisting and governing them, which indeed was disputed and claimed, contrary to all reason and precedent, by the long Parliament of King Charles I.; but, upon the restoration of his son, was solemnly declared by the stat. 13 Car. 2. c. 6, to be in the King alone; for that the sole supreme government and command of the Militia within all his Majesty’s realms and dominions, and of all Forces by sea and land, and of all forts and places of strength, ever was, and is, the undoubted right of his Majesty, and his royal predecessors, Kings and Queens of England; and that both or either house of parliament cannot, nor ought to, pretend to the same. See this Dictionary, title Militia.

This statute, it is obvious to observe, extends not only to fleets and armies, but also to Ports and other places of strength, within the realm, the sole prerogative as well of erecting, as manning and governing of which belongs to the King in his capacity of general of the kingdom. 2 Inst. 30.—And all lands were formerly subject to a tax for building of castles wherever the King thought proper. This was one of the three things, from contributing to the performance of which no lands were exempted; and therefore called by our Saxon ancestors the trinoda necessitas; viz. ponit reparatione, arcis constructio, & expeditio contra hostem. Cowell’s Inter. title Castellorum operatio: Seld. Jan. Angl. 1. 42. See title Castles; Ports, &c.

It is partly upon the same, and partly upon a fiscal foundation, to secure his marine revenue, that the King has the prerogative of appointing Ports and Havens, or such places only, for persons and merchandise to pass into and out of the realm, as he in his wisdom sees proper. See title Harbours and Havens. And to this head may be referred also, the prerogative as to the erection of Beacons and Light-houses; as to which, see 4 Inst. 148; 12 Co. 13: Carter 90: 2 Keb. 114: 3 Inst. 204; and this Dictionary, title Beacons.

To this branch of the prerogative may also be referred the power vested in his Majesty, by stats. 12 Car. 2. c. 4: 29 Geo. 2. c. 16, of prohibiting the exportation of arms or ammunition out of this kingdom, under severe penalties: and likewise the right which the King has, whenever he sees proper, of confining his Subjects to stay within the realm, or of recalling them when beyond the seas.

By the common law every Subject may go out of the kingdom for merchandize or travel, or other cause, as he pleases, without any licence for that purpose; this appears from the statute 5 R. 2. c. 2, made to restrain persons passing out of the realm, but excepts
lords, great men and notable merchants; as also by the statute 26
Hen. 8. c. 10, which gave power to the King during his life to
restrain persons from trading to certain countries; which acts had
been vain and idle, if the King by his prerogative might have done
it. F. N. B. 85: Dyer 165, 296; 2 Rel. Ref. 12: 3 Mod. 131: Stil.
442.

But notwithstanding this general liberty allowed by the common
law, it appears plainly that the King by his prerogative, and without
any help of an act of parliament, may prohibit his Subjects from
going out of the realm; but this must be by some express prohibi-
tion; as by laying on embargoes, which can be only done in time of
danger, or by writ of Ne excet Regno, which, from the words
Quamplurima nobis & corona nostra prejudicia ibidem prosequi intendi,
appears to be a State writ, though it is never granted univer-
sally, but to restrain a particular person, on oath made that he intends
to go out of the realm; indeed Fitzherbert says, that the King may
restrain his Subjects by proclamations; and assigns as a reason for
it, that the King may not know where to find his Subject, so as to
direct a writ to him. 12 Co. 33: 11 Co. 92: Fitz. N. B. 89: 2 Inst.
54. See title Imbargo: Ne excet Regno.

As the King may restrain any of his Subjects from going abroad,
in like manner he may command them to return home; and disobey-
ing a privy seal for this purpose is the highest contempt. 1st, It is
a disobedience to the command of the King himself directed to the
party. 2dly, The command is, that he shall return upon his faith and
allegiance, which is the strongest compulsion that can be used.
3dly, The thing required by the King is the principal duty of a
Subject, viz. to be at the service of his King and country. Dyer 128.
b: Lane 44: Moor 109: 3 Inst. 179.

The punishment for this offence is, seizing the party’s estate
till he return; and of this there are many instances in our books.
And when he does return he shall be fined. 1 Hawk. P. C. e. 22.
§ 4.

William de Brittain in the 19 of Ed. 2, refusing to return on the
King’s writ, his goods and chattels, lands and tenements, were
seized into the King’s hands; so in the case of Edward of Woodstock,
Earl of Kent, in the same reign. Dyer 128. b.

So in the case of one Bartuc, who married the Dutchess of Suff-
folk, they obtained a licence from Q. Mary to go out of the realm,
under pretence of recovering debts as executors to the Duke; when
in reality it was on account of the religion established by Queen
Mary, and living with other fugitives under the protection of the
Palsgrave of the Rhine in Germany, who was an eminent Calvinist,
were sent to by privy seal; but the messenger, in endeavouring to
serve them with his letters, being obstructed and abused by their at-
tendants, a certificate was made of this, and their lands and tene-

So in the case of Sir Francis Englefield, who departed the king-
dom on a licence obtained for three years; but not returning at the
expiration of the three years, a privy seal was sent to him by Queen
Elizabeth, which he not obeying; and this matter being certified into
Chancery by the Queen, under her sign manual, his lands and tene-
ments were seized in the fifth year of her reign by virtue of a com-
mission under the great seal. 1 Leon. 9: Moor 109: 1 And. 95. S. C. See also 7 Co. 18: Pofih. 18: 4 Leon. 135.

So in the case of Sir Robert Dudley, who, intending to travel, obtained a licence from James the First to go to Venice; but before his departure he by indenture enrolled for valuable consideration, as was expressed in the deed, (but none paid,) conveyed the manor of Killingworth with other lands to the Earl of Nottingham and others in fee, with a proviso, that, on tender of an angel of gold, all should be void; and with a covenant on the part of the bargainees that they should make all such estates as the said Sir Robert should appoint; the bargainees were not parties to the deed, nor had they notice of it till some time after: but afterwards they made a lease to Sir Robert Lee, to the intent that Lady Dudley should take the profits of part of the premises for ten years, if their estate continued so long unrevoke. The King, hearing that Sir Robert had been guilty of some bad practices beyond sea, in the fifth year of his reign sent his privy seal to him, which he not obeying, the great question in this case was, Whether those lands thus conveyed were forfeited: and adjudged that they were, the conveyance being fraudulent as to the King. Lane 42, &c.

In these cases it hath been held, that the King hath only an interest in the offender’s lands till he return; and that his restoring them is not a matter of grace but of right. Lane 48.

The King is also considered as the Fountain of Justice, and general Conservator of the peace of the Kingdom.—All jurisdiction exercised in these Kingdoms that are in obedience to our King, is derived from the Crown; and the laws, whether of a temporal, ecclesiastical, or military nature, are called his laws: and it is his prerogative to take care of the due execution of them. Hence it is that all Judges derive their authority from the Crown, by some commission warranted by law. Fleta, c. 17: Co. Lit. 99. a. 144. See title Judges.

From the inherent right inseparable from the King to distribute justice among his Subjects, it hath been held, that an appeal from the Isle of Man lies to the King in council, without any reservation in the grant of the Isle of Man of any such right; and though there had been exclusive words, yet the grant must have been construed to be void on the King’s being deceived, rather than the Subject should be deprived of a right inseparable to him as a Subject, of applying to the Crown for justice. 1 P. Wms. 329.

A consequence of this prerogative is the legal Ubiquity of the King; his Majesty, in the eye of the law, is always present in all his courts, though he cannot personally distribute justice. Fortesc. c. 8: 2 Inst. 186.—His Judges are the mirror by which the King’s image is reflected. It is the regal office, and not the royal person, that is always present in Court, always ready to undertake prosecutions, or pronounce judgment for the benefit and protection of the Subject. And from this ubiquity it follows, that the King can never be nonsuit; for a nonsuit is the desertion of the suit or action by the nonappearance of the plaintiff in Court. But the Attorney General may enter a non vult prosequi, which has the effect of a nonsuit. Co. Lit. 139. For the same reason also, in the forms of legal proceedings, the King is not said to appear by his Attorney, as other men do; for
in contemplation of law he is always present in Court. *Finch, L.* 81.

From the same original, of the King’s being the fountain of justice, may also be deduced the prerogative of issuing *Proclamations*, which is vested in the King alone. These proclamations have then a binding force, when they are grounded upon and enforce the laws of the realm. 3 *Inst. 162*. For though the making of laws is entirely the work of a distinct part, the legislative branch of the sovereign power, yet the manner, time, and circumstances of putting these laws in execution, must frequently be left to the discretion of the Executive Magistrate. And, therefore, his constitutions or edicts concerning these points, which we call proclamations, are binding upon the Subject where they do not either contradict the old laws, or tend to establish new ones, but only enforce the execution of such laws as are already in being, in such manner as the King shall judge necessary. Thus the established law is, that the King may prohibit any of his Subjects from leaving the realm: a proclamation therefore, forbidding this in general for three weeks, by laying an embargo upon all shipping in time of war, will be equally binding as an act of parliament, because founded upon a prior law. 4 *Mod.* 177, 179.

But a proclamation to lay an embargo in time of peace upon all vessels laden with wheat (though in time of a public scarcity) being contrary to law, and particularly to *stat.* 22 *Car.* 2. c. 13, the advisers of such a proclamation, and all persons acting under it, have been always found necessary to be indemnified by special acts of parliaments. See *stat.* 7 *Geo.* 3. c. 7; 30 *Geo.* 3. c. 1, and this Dictionary, title *Imbargo.*—A proclamation for disarming Papists is also binding, being only in execution of what the Legislature has first ordained; but a proclamation for allowing arms to Papists, or for disarming any Protestant Subjects, will not bind; because the first would be to assume a dispensing power, the latter a legislative one; to the vesting of which, in any single person, the laws of *England* are absolutely strangers. Indeed, by the *stat.* 31 *Hen.* 8. c. 8, it was enacted, that the King’s proclamations should have the force of acts of parliament: a statute, which was calculated to introduce the most despotic tyranny; and which must have proved fatal to the liberties of this kingdom, had it not been luckily repealed in the minority of his successor, about five years after, by *stat.* 1 *Ed.* 6. c. 12.—It was antiently held, though that is not now law, that the King might suspend, *dispense* with, or alter any particular law that he deemed hurtful to the public; and it has been said that he may dispense with a penal statute wherein his Subjects have not any interest. 4 *Inst.* 7; 4 *Rept.* 36. But by *stat.* 1 *W.* & *M.* *stat.* 2. c. 2, It is declared and enacted, “that no dispensation by *non obstante* of or to any statute, or any part thereof, be allowed, but that the same shall be held void, and of non-effect, except a dispensation be allowed in such statute.”

—It is plain, however, that the King by his prerogative may, in certain cases, and special occasions, issue out proclamations for prevention of offences, to ratify and confirm an antient law, or, as some books express it, *quoad terrorem populi*, to admonish them that they keep the laws on pain of his displeasure; and such proclamations being grounded on the laws of the realm, are of great
force. Fortesc. de Laud. c. 9; 11 Co. 87; 12 Co. 74, 75; Dal. 20, fl. 10; 2 Rot. Abr. 209; 3 Inst. 162.

It is likewise clear, that the subject is obliged on pain of fine and imprisonment to obey every proclamation legally made, and though the thing prohibited were an offence before, that yet the proclamation is a circumstance which highly aggravates it; and on which alone the party disobeying may be punished. 12 Co. 74: Hob. 251.—It is clearly agreed, that no private person can make any proclamation of a public nature, except by custom, as is usual in some cities and boroughs; this being a prerogative act, with which alone the King is intrusted. Bro. Procl. fl. 1: 12 Co. 75: Crom. Juris. 41.

But, according to the principles already laid down, the King by his proclamation cannot change any part of the common law, statutes, or customs of this realm; nor can he by his proclamation create any offence which was not an offence before. 11 Co. 87, b: 12 Co. 75.

On this foundation it hath been held, that the King’s proclamation prohibiting the importation of wines from France on pain of forfeiture, was against law and void; there being at that time no war subsisting between the nations. 2 Inst. 63.

So where an act was made by which foreigners were licensed to merchandize within London, and Hen. IV. by proclamation prohibited the execution of it, and ordered it should be in suspense, usque ad proximum parliamentum; and this was held to be against law. 12 Co. 75.

On a conference between some Lords of the Privy Council, and the two Chief Justices (of which Lord Coke was one) and Chief Baron and Baron Altham, the question was,

1st, Whether the King by proclamation might prohibit new buildings in and about London?

2d, If the King might prohibit the making starch of wheat?

And the Judges were of opinion that the Subject could not be restrained in these particulars by the King’s Proclamation. 12 Co. 74.

The King by proclamation may call or dissolve parliament, and declare war or peace; for these are prerogative acts, with which he is intrusted, as the executive part of the law; but if there be an actual war, it is not necessary in pleading to shew that such war was proclaimed. 5 Inst. 162: 1 Hal. H. P. C. 163: Owen 45: Rast. Ent. 605. See ante.

The King by proclamation may legitimate foreign coin, and make it current money of this kingdom, according to the value imposed by such proclamation; he may legitimate base coin, or mixed below the standard of sterling; he may enhance coin to a higher denomination or value, and may decry money that is current in use and payment; and in all these cases a proclamation, with a proclamation writ under the Great Seal, is necessary. Co. Lit. 207, b: 5 Co. 114, b: Dar. 21: 1 Hal. H. P. C. 192, 197. See title Coin.

The King by proclamation may appoint Fasts and days of thanksgiving and humiliation, and issue proclamations for preventing and punishing immorality and profaneness; and enjoin reading the same in churches and chapels. Conf. Incumb. 354.

A proclamation must be under the Great Seal, and if denied, is to be tried by the Record thereof; but if a man pleads he was prevented doing a thing by proclamation, it seems the better opinion, that he need not aver that such proclamation was under the Great Seal.
for alleging that such Proclamation was made, it shall be intended to have been duly made. Cro. Car. 180: See 1 Rol. Rep. 172: Vide Cro. Car. 130.

The King is likewise the Fountain of Honour, of Office, and of Privilege; and this in a different sense from that wherein he is stiled the fountain of justice; for here he is really the parent of them. It is impossible that Government can be maintained without a due subordination of rank, that the people may know and distinguish such as are set over them, in order to yield them that due respect and obedience; and also that the officers themselves being encouraged by emulation, and the hopes of superiority, may the better discharge their functions: and the law supposes that no one can be so good a judge of their several merits and services, as the King himself who employs them. It has, therefore, intrusted with him the sole power of conferring dignities and honours, in confidence that he will bestow them upon none but such as deserve them. And, therefore, all degrees of nobility, of knighthood, and other titles, are received by immediate grant from the Crown; either expressed in writing by writs or letters patent, as in the creation of peers and baronets, or by corporal investiture, as in the creation of a simple Knight. See titles Precedency; Peer.

From the same principle also arises the prerogative of erecting and disposing of Offices; for honours and offices are in their nature convertible and synonymous. All offices under the crown carry in the eye of the law an honour along with them; because they imply a superiority of parts and abilities, being supposed to be always filled with those that are most able to execute them. And, on the other hand, all honours in their original had duties or offices annexed to them: an Earl, Comes, was the Conservator or Governor of a county; and Knight, Miles, was bound to attend the King in his wars. For the same reason, therefore, that honours are in the disposal of the King, offices ought to be so likewise; and as the King may create new titles, so may he create new offices; but with this restriction, that he cannot create new offices with new fees annexed to them, nor annex new fees to old offices, for this would be a tax upon the Subject, which cannot be imposed but by act of parliament. 2 Inst. 533. Wherefore, in 13 Hen. 4, a new office being created by the King's letters patent for measuring cloths, with a new fee for the same, the letters patent were, on account of the new fee, revoked and declared void in Parliament.

On this subject it hath been further said, that the King, as the fountain of justice hath an undoubted prerogative in creating officers, and all officers are said to derive their authority mediatly or immediately from him; those who derive their authority from him are called the officers of the Crown, and are created by letters patent; such as the great officers of State, Judges, &c. and there needs no stronger evidence of a right in the Crown herein, than that the King hath created all such officers time immemorial. Dyer 176: 2 Roll. Abr. 152: 4 Co. 32: 2 Inst. 425. 540: 12 Co. 116: 1 Roll. Rep. 206: Show. Par. Ca. 111: 1 Lev. 219.

But though all such officers derive their authority from the Crown, and from whence the King is termed the universal officer and dispenser of justice, yet it hath been held, that he hath not the office in him to execute it himself, but is only to grant or nominate; nor can the
King grant any new powers to such officers, but they must execute their offices according to the rules prescribed by law. Co. Lit. 3. 114: 2 Vent. 270: 4 Inst. 125: 6 Co. 11, 12.

Neither can the King create any new office inconsistent with our constitution or prejudicial to the subject. 2 Inst. 540: 2 Sid. 14: Moor 808: 4 Inst. 200.

And on this foundation an office created by letters patent for the sole making of all bills, informations and letters missive in the council of York, was unreasonable and void. 1 Jon. 231. See further this Dictionary, title Office.

Upon the same, or a like reason, the King has also the prerogative of conferring privileges upon private persons, such as granting place or precedence to any of his Subjects as shall seem good to his royal wisdom. 4 Inst. 361. See title Precedence. Or such as converting aliens, or persons born out of the King's dominions, into denizens, whereby some very considerable privileges of natural-born Subjects are conferred upon them. See title Aliens. Such also is the prerogative of erecting Corporations; which is grounded upon this foundation, that the King, having the sole administration of the Government in his hands, is the best and the only judge, in what capacities, with what privileges, and under what distinctions, his people are the best qualified to serve and act under him.

Another light in which the laws of England consider the King, with regard to domestic concerns, is as the Arbiter of domestic commerce, by the establishment of Markets, the regulating of Weights and Measures, and of the Coin. See this Dictionary under those titles.

The King is, lastly, considered by the laws of England as the Head and Supreme Governor of the national Church.

To enter into the reasons upon which this prerogative is founded is matter rather of divinity than law. It shall only, therefore, be observed, that, by stat. 26 H. 8. c. 1, (reciting that the King's Majesty justly and rightfully is and ought to be the supreme head of the church of England, and so had been recognised by the Clergy of this kingdom in their convocation,) it is enacted, that the King shall be reputed the only Supreme Head in earth of the Church of England, and shall have annexed to the Imperial Crown of this realm, as well the title and stile thereof, as all jurisdictions, authorities, and commodities, to the said dignity of Supreme Head of the Church pertaining. And another statute to the same purport was made 1 Eliz. c. 1. See titles Oaths; Supremacy.

In virtue of this authority the King convenes, prorogues, restrains, regulates, and dissolves, all ecclesiastical synods or convocations. This was an inherent prerogative of the Crown long before the time of Hen. VIII, as appears by the stat. 8 Hen. 6. c. 1; and the many authors, both lawyers and historians, vouched by Sir E. Coke. 3 Inst. 322, 3. 5 Refl. 9. So that the stat. 25 Hen. 8. c. 19, which restrains the convocation from making or putting in execution any canons repugnant to the King's prerogative, or the laws, customs, and statutes of the realm, was merely declaratory of the old common law. 12 Refl. 72: that part of it only being new, which makes the King's royal assent actually necessary to the validity of every canon. See further title Convocation; Bishop.—As Head of the Church, the King is likewise the dernier resort in all ecclesiastical causes; an appeal lying
ultimately to him in Chancery from the sentence of every ecclesiastical Judge; which right was restored to the Crown by Stat. 25 Hen. 8. c. 19. See title Courts Ecclesiastical.

The Kings of England not having the whole legislative power, if the King and clergy make a canon, though it bind the clergy in re ecclesiastica, it does not bind laymen; for they are not represented in the convocation, but in parliament. In the primitive church, the laity were present at all synods; and when the empire became Christian, no canon was made without the Emperor's consent; and indeed the Emperor's consent included that of the people, he having in himself the whole legislative power; but the Kings of this kingdom have it not. 2 Salk. 412, 673. See title Canon Law.

4. The King's Fiscal Prerogatives, or those which regard his Revenue, are such as the British Constitution hath vested in the Royal Person, in order to support his dignity and maintain his power; being a portion which each Subject contributes of his property, in order to secure the remainder.

This revenue is either ordinary or extraordinary. The King's ordinary revenue is such, as has either subsisted time out of mind in the Crown, or else has been granted by Parliament, by way of purchase or exchange, for such of the King's inherent hereditary revenues, as were found inconvenient to the Subject.

It is not, however, to be understood, that the King is at present in the actual possession of the whole of this revenue. Much (nay, the greatest part) of it is at this day in the hands of Subjects; to whom it has been granted out from time to time by the Kings of England, which has rendered the Crown, in some measure, dependent on the People for its ordinary support and subsistence. So that among the royal revenues are now recounted, what Lords of manors and other Subjects frequently look upon to be their own absolute inherent rights, because they are, and have been, vested in them and their ancestors for ages, though in reality originally derived from the grants of our antient princes. See 1 Comm. c. 8.


The Ordinary Revenue, or proper patrimony of the Crown was very large formerly, and capable of being increased to a magnitude truly formidable; for there are very few estates in the kingdom that have not, at some period of time or other since the Norman Conquest been vested in the hands of the King, by forfeiture, escheat, or otherwise. But, fortunately for the liberty of the Subject, this hereditary landed revenue, by a series of improvident management, is sunk almost to nothing; and the casual profits arising from the other branches of the census regalis, are likewise almost all of them alienated
from the Crown. In order to supply the deficiencies of which, we are now obliged to have recourse to new methods of raising money, unknown to our early ancestors; which methods constitute the King’s extraordinary revenue. For the public patrimony being got into the hands of private Subjects, it is but reasonable that private contributions should supply the public service. And, perhaps, if every gentleman in the kingdom was to be stripped of such of his lands as were formerly the property of the Crown, was to be again subject to the inconveniences of purveyance and pre-emption, the oppression of forest laws, and the slavery of feudal tenures, and was to resign into the King’s hands all his royal franchises of wafﬁs, wrecks, estrays, treasure-trove, mines, deodands, forfeitures, and the like; he would ﬁnd himself a greater loser than by paying his quota to such taxes as are necessary to the support of government. The thing, therefore, to be wished and aimed at in a land of liberty is by no means the total abolition of taxes, which would draw after it very pernicious consequences, and the very supposition of which is the height of political absurdity; but wisdom and moderation, not only in granting, but also in the method of raising the necessary supplies; by contriving to do both in such a manner as may be most conducive to the national welfare, and at the same time most consistent with economy and the liberty of the Subject; who, when properly taxed, contributes only some part of his property, in order to enjoy the rest. See further, titles Taxes; National Debt; Excise, Customs, &c.

By these taxes a vast sum of money is annually raised; but the Civil List is properly the whole of the King’s revenue in his own distinct capacity; the rest being rather the revenue of the Publick or its creditors, though collected and distributed again in the name and by the officers of the Crown; it now standing in the same place as the hereditary income did formerly; and as that has gradually diminished, the parliamentary appointments have increased.

The expences defrayed by the Civil List are those that in any shape relate to civil government: as the expences of the royal household; the revenues allotted to the Judges previous to the year 1758; all salaries to officers of State, and every of the King’s servants; the appointments to foreign ambassadors; the maintenance of the Queen and the Royal Family; the King’s private expences, or privy purse; and other very numerous out-goings, as secret-service money, pensions, and other bounties, which sometimes have so far exceeded the revenues appointed for that purpose, that application has been made to parliament to discharge the debts contracted on the Civil List.

The whole revenue of Queen Elizabeth did not amount to more than 600,000l. a year; that of King Charles I. was 800,000l.; and the revenue voted for King Charles II. was 1,200,000l., though complaints were made (in the first years at least) that it did not amount to so much. The revenue of the Commonwealth between the time of Charles I. and Charles II. was upwards of 1,500,000l. A striking instance (says Mr. Christian in his Note on this passage in the commentaries) to prove that the burthens of the people are not necessarily lightened by a change in the Government.

Under the revenue of the Civil Lists above-mentioned were included all manner of public expences; among which Lord Clarendon in his speech to the Parliament computed, that the charge of the navy and
land forces amounted annually to 800,000/. which was ten times more than before the former troubles. The same revenue, subject to the same charges, was settled on King James II. by stat. 1 Jac. 2. c. 1; but by the increase of trade and more frugal management, it amounted on an average to a million and a half per annum; besides other additional customs granted by Parliaments, stat. 1 Jac. 2. cc. 3, 4, which produced an annual revenue of 400,000/. out of which his fleet and army were maintained at the yearly expense of 1,100,000/. After the Revolution, when the parliament took into its hands the annual support of the forces, both maritime and military, a civil list revenue was settled on the new King and Queen, amounting, with the hereditary duties, to 700,000l. per annum; and the same was continued to Queen Anne and King George I. That of King George II. was augmented to 800,000l. by stat. 1 Geo. 2. c. 2; and that of King George III. was from time to time settled and increased by the following statutes: viz. 1 Geo. 3. c. 1. 800,000l. — 17 Geo. 3. c. 21, 100,000l.; and 44 Geo. 3. c. 80, 60,000l. more. By this latter Act it is provided that an account of any accumulation of arrears shall from time to time be laid before Parliament.

By the Irish Act, 33 Geo. 3. c. 34, (amended by 45 Geo. 3. c. 76), a Civil List of 145,000l. is made payable to his Majesty out of the revenues of Ireland.

Upon the whole, it is doubtless much better for the Crown, and also for the People, to have the revenue settled upon the modern footing, rather than the ancient. For the Crown, because it is more certain, and collected with greater ease; for the People, because they are now delivered from the feudal hardships, and other odious branches of the prerogative. And though complaints have sometimes been made of the increase of the Civil List, yet, if we consider the sums that have been formerly granted, the limited extent under which it is now established, the expences defrayed by it, the revenues and prerogatives given up in lieu of it by the Crown, the numerous branches of the present Royal Family, and, above all, the diminution of the value of money compared with what it was worth in the last century, we must acknowledge these complaints to be void of any rational foundation; and that it is impossible to support that dignity, which a King of Great Britain should maintain, with an income in any degree less than what is now established by Parliament.

VI. By Magna Charta, 9 Hen. 3. c. 8, "The King nor his bailiffs shall levy any debts upon lands or rents so long as the debtor hath goods and chattels to satisfy, neither shall the pledges be distrained so long as the principal is sufficient; but if he fail, then shall the pledges answer the debt; howbeit they shall have the debtor's lands and rents until they be satisfied, unless he can acquit himself against the pledges."

Goods and chattels.] By order of the common law, the King for his debt had execution of the body, lands, and goods of his debtor; this is an act of grace, and restrains the power the King had before.
2 Inst. 19.

Pledges be distrained.] This act does not extend, nor was ever taken to extend to sureties in a bond or recognizance, if they may be so called, being bound themselves equally with the principal,
as sureties to perform covenants and agreements are in like manner; but the pledges and manucaptors only, who by express words are not responsible, unless their principals become insolvent, and so are conditional debtors only. And so the act has always been construed, and the words themselves imply as much. Hard. 378.

By Magna Charta, c. 18, "The King's debtor dying, the King shall be served before the executor."

By this statute, the King by his prerogative shall be preferred in satisfaction of his debt by the executors before any other. And if the executors have sufficient to pay the King's debt, the heir nor any purchaser of his lands shall not be charged. 2 Inst. 32.

Stat. West, 1; 3 Ed. 1. c. 19, enacts, "That the Sheriff having received the King's debt, upon his next account shall discharge the debtor thereof, in pain to forfeit three times so much to the debtor, and to make fine at the King's will. And the sheriff and his heirs shall answer all monies that they whom he employed receive; and if any other that is answerable to the Exchequer by his own hands do so, he shall render thrice so much to the plaintiff, and make fine as before. And on payment of the King's debt, the Sheriff shall give a tally to the debtor, and the process for levying the same shall be showed him on demand without fee, on pain to be grievously punished."

The King's debt.] Under this word, debt, all things due to the King are comprehended, and not only debt in the proper sense, but duties on things due, as rents, fines, issues, amercements, and other duties to the King received or levied by the Sheriff; for debt in its large sense signifies whatever a man doth owe; and debere dicitur quia deest habere; debitori enim deest quod habet, cum sit creditoris, maxime in casu domini regis. 2 Inst. 198.

The Sheriff and his heirs shall answer.] This is to be understood, quod restitutionem, but not quod panem; that is for the civil but not for the criminal part; for this is a maxim in law. 2 Inst. 198.

The stat. 28 Ed. 1. st. 3. c. 12, enacts, "That beasts of the plough shall not be distrained for the King's debts so long as others may be found, on such pain as is elsewhere ordained by statute: (viz. by the statute de distributione scaccarii, 51 Hen. 3. stat. 4.) And the great distresses shall not be taken for his debts, nor driven too far; and if the debtor can find convenient surety, the distress shall in the mean time be released; and he that does otherwise shall be grievously punished."

This is an act of grace, and on this act there lies a writ directed to the Sheriff, commanding him to receive surety according to this act, which if he refuses, an attachment lies against him, or the party offering surety according to this act, if it be refused, may have an action against the Sheriff, &c. 2 Inst. 565.

The stat. 25 Ed. 3. st. 5. c. 19, enables a common person to sue a debtor of his (who is likewise a debtor to the King) to judgment, but he cannot proceed to execution, unless the plaintiff gives security to pay the King's debt first, and then he may take execution for his own and the King's debt too.—For otherwise, if, without giving such security, the party takes forth execution upon his judgment, and levies the money, the same money may be seized upon to satisfy the King's debt.

The stat. 33 Hen. 8. c. 39. s. 2, enacts, "That all obligations and
specialties concerning the King and his heirs, or made to his or their use, shall be made to his Highness and to his heirs, Kings, in his or their name or names, by these words, *domino regi*, and to no other person to his use, and to be paid to his highness, by these words, *solvendi cide domino regi heredum vel executoribus suis*, with other words used in common obligations, which obligations and specialties shall be in the nature of a statute staple."

None other are to be charged, but such as were liable to the bond when it was made. Sav. 10.

An obligation for performance of covenants is within this act, after the covenants are broken. 7 Reft. 20, b. Hard. 368, 442.

By § 3 of the said act 33 Hen. 8. c. 39, All such obligations, the debt not being paid, shall come, remain, and be to the heirs or executors of the King as he shall appoint; and if any person take any obligation to the use of the King or his heirs, otherwise than as aforesaid, he shall suffer such imprisonment as shall be adjudged by the King or his honourable council.

Costs and damages are given to the King. § 6.

Debts to be sued for in proper Courts. § 7.

And every of the Courts are empowered to set such fines, &c. on persons for their defaults, &c. as to the Court seem expedient. And all trials shall be by due examination of witnesses, writings, proofs, or such other way as by the Courts shall be thought expedient. § 13.

And in all actions in any of the Courts for any debt due to the King by reason of any attainder, outlawry, forfeiture, gift of the party, or by any other collateral way or means, it shall be sufficient in law to shew and allege generally, that the party to whom the said debt did belong, such a year and day did give the same to the King, or was attainted, outlawed, &c. whereby the said debt did accrue to the King; and the same shall be of the same effect, as if the whole matter had been declared at large, according to the order of the common law. § 25.

If any suit be commenced, or any process awarded for the King, for the recovery of any debt, then the same suit and process shall be preferred before any person. And the King, his heirs and successors, shall have first execution against any defendant for his debt, before any person: so always that the King's suit be commenced, or process awarded for the debt, at the suit of the King, his heirs or successors, before judgment given for the other person. § 26.—And this extends to *Scotland*, under the Articles of Union, and the *stat. 6 Ann. c. 25*, establishing the Court of Exchequer in *Scotland*. Ogilvie v. Wingate, Parliament Cases, vi. 498.

This statute abridges the prerogative, and controls the common law; and here is a negative implied, though the statute sounds in the affirmative; for it enacts a new thing, and the *ita quod* makes a condition precedent and a limitation: and the words are introductive. Hard. 27.

Strange *arg.* said, That on this act he took it, the suit must be said to be taken or commenced when the first step is made towards the proceeding to execution, and the first step to be taken is to procure a *fiat* of a Baron, and then it is in fact that the process is awarded. Gilb. Eq. R. 222.

All manors, lands, tenements, possessions, and hereditaments, *Vol. IV.*
which be, or that hereafter shall be, in the hands, possession, occupation, or seizin of any person, to whom the manors, &c. have heretofore or hereafter shall descend, revert, or remain in fee-simple, or in fee-tail, general or special, by, from, or after the death of any ancestor as heir, or by gift of his ancestors whose heir he is, which ancestor was, is, or shall be indebted to the King; or to any person to his use, by judgment, recognizance, obligation, or other specialty, the debt whereof is or shall not be paid; then in every such case the same manors, &c. shall be chargeable for payment of the debt. Stat. 35 Hen. 8. c. 39, § 27.

All manors.] A. seized of the manor of F. in consideration of a marriage to be had between B. his son, and M. daughter of J. S. covenanted to levy a fine to the use of himself and wife for their lives, remainder to the use of B. and M. and the heirs of their bodies with remainders over; afterwards A. acknowledged a recognizance to the Queen and died. His wife died; the manor is extended for the Queen's debt, by force of the statute. It was argued by Coke, that the manor is not chargeable by the statute; but it was made for the King's benefit in two points. To make lands entailed liable for the King's debts, where they were not so before, against the issue. 2. To make bonds taken by the officers of the King to the use of the King, as effectual as statutes; that the words (was or shall be indebted) shall not be intended after the gift made; that (shall be) is to be intended of future debts after the statute, whereas at the time of the settlement A. was not receiver or other officer to the Queen; the words are (by gift after the debt acknowledged to the Queen); that this case is not within the statute; for the words are (of the gift of his ancestor, but here B. has not the manor of the gift of A. but rather by the statute of uses, and so he is in the foot, and not in the per, by his ancestor; for the fine was levied to divers persons to the uses aforesaid, nor was the gift a mere gratuity, but in consideration that he should marry the daughter of J. S. and the debt accrued not till after the gift. He admitted, that had there been any fraud in the case, or any purpose in A. when he made the conveyance, to become the King's debtor or officer, it would be within the statute, and the gift had been a mere gratuity, &c. and afterwards (as Coke reported) B. and his lands were discharged. 2 Leon. 90, 91.

Shall be indebted.] This is intended an immediate debt, and not such debts as are due to the subject and accrue to the King by any collateral means; for which this statute has a clause for the writ and general manner and form of pleading in such cases, of the part of the King for the recovery of them, that the party such a year and day, &c. (which see at § 35 above.) So that the several manners of penning these two branches manifest the intention of the makers of the act to prefer immediate debts due to the King by judgment, &c. before debts of the Subject which accrue to the King by assignment, attainer, outlawry, &c. and the reason was, because debts due immediately to the King by judgment, recognizance, obligation, or other specialty, are in their nature more high, and may be better known, and upon search found, than debts due to Subjects. 7 Reph. 2: Jenk. 226. pl. 99. S. P. But for such debts the King is left at common law. If the King's debtor, officer, or accountant has leases for years or goods; these leases and goods are not liable if the debtor sold them bona fide; but if he sold them by covin it is otherwise. If
land be purchased with the King's money, it is liable to satisfy the
King.

The debt ought to be immediately to the King himself, or if it be
to any other than to the King, it ought to be originally to the use of
the King, 7 Rep. 22 a.

If tenant in tail becomes indebted to the King, unless it be by
judgment, recognizance, obligation, or other specialty, and dies, the
lands in the seisin of the issue in tail by force of this act shall not be
extended by this act for such debt; for the statute extends only to the
said four cases, and all other debts remain at common law, 7 Rep.
21, b.

The issue in tail (the land being in his hands) is also liable in
either of the said four cases, but not the bona fide alienee of the
issue; for the words of the statute do not extend to this alienee; the
common law did not help the King in these cases; the statute helps
fitl. 19.

The issue in tail shall not be charged by this statute for the penalty
on a conviction of recusancy of the tenant in tail by proclamation,
under stat. 29 Eliz. c. 6, but otherwise it had been if he had been
convicted under stat. 23 El. c. 1: 1 Rel. Rep. 94.

In every such case.] By the express purview of this act, the land
shall be solely extended as long as it is in the possession or seisin of
the heir in tail; for this act says, That in every such case the land
shall be charged. And as the land against the issue in tail was not
extendible before this act, the King has benefit to extend it in the
possession of the heir in tail, which he could not do before; but the
King cannot extend the lands of the alienee: for the statute does
not extend to this, and the makers of the act have reason to
favour the purchasers, farmers, &c. of the heir in tail more than
the heir himself; for they are strangers to the debts of tenant in
tail, and they come to the land on good consideration. 7 Rep. 21, b.

The same manors.] If the goods and chattels of the King's debtors
be sufficient, and so can be made appear to the sheriff, whereupon
he may levy the King's debt, then the Sheriff ought to extend
the lands of the debtor or his heir, or of any purchaser or tenant.
2 Inst. 19.

The King shall not be excluded to demand his debts against any
of his Subjects, as heir to any person indebted to his Highness or to
his use, albeit this word heir be not comprised in such recognizance
or specialty, or that such person shall say, that they have not any
hereditaments to them descended, but only such as be intailed or
given to them by their ancestors. Stat. 33 H. 8. e. 39. § 28.

By this clause the intent of the makers of the act appears, that
the heir in tail shall be only charged with the debt of the King; but
lands in fee-simple were extendible at the common law in whatever
hands they came, therefore as to them this statute was only declara-
tivum antiqui juris: but as to the estates in tail, it was introductivum
novi juris against the issue in tail. 7 Rep. 21, b.

One P. was indebted to the Queen, and one W. was bound to P.
in 100/. in which obligation W. did not mention his heirs; P. as-
signed the obligation in which W. was bound to him, to the Queen;
and, on this, process was made against the heir of W. And it was
held by the Court, that as W. did not oblige himself and his heirs,
that the heir by the death of the father was discharged. And if the
assigment had been made in the life-time of the father, and then
the father had died, the heir should be discharged, but the son may
be charged as executor or administrator, &c. Savi. 2.

Provided, That the King may at his liberty demand his debts of
any executors or administrators of any person indebted, if the ex-
cutors, &c. have assets. stat. 33 H. 8. c. 39, § 29.

J. S. was obliged to Sir Richard Cavendish, Treasurer of the
Chamber to Henry VII. in 100l who was indebted to the King, on
which process was made against those who were tertiants of J. S.
tempior囱 confectionis scripti frate made to the said Sir Richard. Per
Manwood, Ch. B. The tertiants are not chargeable in this case,
but the heirs and executors. Per Shute, second Baron, If an obliga-
tion be made to the King, it shall be of the same nature as a statute
staple to all intents, by this statute; but obligations made to other
persons to the use of the King, shall be executory against the oblig-
ator, his heirs, executors, or administrators, and not against other per-
sons; but if J. N. be bound to J. S. and J. S. assigns this to Sir Richard
Cavendish, and he over to the King, no process shall be made there-
on; to which the Court and all the clerks agreed. And it was held,
that if obligor, after the obligation made, voluntarily make feoffment
of lands, such feoffees shall be charged; otherwise it is of pur-
chasers before the obligation made in case of the King. Sav. 12.

If the hereditament be evicted out of the possession of such
person by just title without fraud, whose hereditaments shall be
chargeable as is above said, then such hereditaments shall be acquitted

B. was indebted to the Queen, for the payment of which debt
certain lands of B. at the time of the debt, were purchased by one
W. against whom and one C. and D. the said B. exhibited his bill in
the Exchequer-chamber, praying that the equity of the case might
there be examined. Before any answer made, W. paid the debt, and
then demanded judgment if the Court would hold further plea, as
the cause of privilege was determined, which is the debt due to
the Queen. And it was held, that on this reason the Court ought to
dismiss the cause, and so it was done. Sav. 15.

If any person of whom any such debt shall be demanded, shew
sufficient matter, in law, reason, or good conscience, why such per-
sons ought not to be charged with the same, and it be sufficiently
proved, the Courts have power to allow the proof, and acquit all per-

Sufficient matter in law.] This proviso gives benefit not only to
him who has matter in good conscience, but also to him who has
good and sufficient cause, and matter in law, reason, (and then
comes) good conscience; and without question the first words, viz.
cause and matter in law, shall extend to all the debts of the King,
and process thereupon, as well at common law as on this act. And
the conclusion of the branch does not make against it. For the sense
thereof was, that he should plead matter in law or good conscience,
and that nothing contained in the act should be an impediment
thereto. 7 Rep. 19, b.

Seire facias issued against Sir W. H. as heir to M. H. his father,
on a recognizance acknowledged to Edw. VI. by the said M. H. the
Sheriff returned seire feci, and on his default judgment was given.
And because in truth he never was summoned, and had good matter.
KING VI.

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if he had notice thereof, to plead in discharge of the recognizance acknowledged, all which he shewed in certain in a bill in the Exchequer; upon which, on conference had by Manswood and the other Barons, with the two Ch. J. he was discharged of the recognizance. 7 Rep. 20, a. As 3 Rep. Trim. 37 Eliz. Sir William Herbert's case.

In law, reason, or good conscience.] A. obtained of the King a privy seal, whereby the forfeiture of certain recognizances for appearing at the sessions, amounting in the whole to 800l. was granted her. And it was made a question, whether the Court might compound those forfeitures by their privy seal, which was granted before the privy seal and grant to A.? And it was doubted whether the privy seal did not take away and revoke the power given to the Court in this particular? But it was held clearly, that the Court might upon good matter in equity discharge these debts by virtue of this statute. And the case in question seemed a hard case to the Court, because the party himself was the cause why there was no appearance, by beating the party so heinously the very day before they ought to have appeared, that they were disabled thereby to appear. Hard. 334.

W. put 100l. out at interest to defendant, and took bond in the name of one J. who became fefo de se, and the plaintiff was relieved against the King on this trust, in equity upon this statute. Sed quere, whether this statute extends to any equity against the King, otherwise than in case of pleas by way of discharge? But it was likewise decreed in this cause that the plaintiff should be saved harmless from all others. Hard. 176.

And the matter so shewed be sufficiently proved.] Scire facias issued against T. the father and T. the son, to shew cause wherefore they did not pay the King 1000l. for the mesne profits of certain lands holden by them from his Majesty, for which land judgment was given for him in the Exchequer, and the mesne rates were found by inquisition, which returned that the said mesne profits came to 1000l. upon which inquisition this scire facias issued; whereupon the Sheriff returned that T. the father was dead, and T. the son appeared, and pleaded that he took the profits but as a servant to his father, and by his command, and rendered an account to his father for the profits, and also that judgment for the lands was given against his father and him for default of sufficient pleading, and not for the truth of the fact; and he shewed this statute, which he pretended aided him for his equity: whereupon the King demurred. Tanfield, Ch. B. said, that the matter in equity ought to be sufficiently proved, and here is nothing but the allegation of the party, and the demurrer for the King; and if the demurrer be in law an admittance of the allegation, and so a sufficient proof within the statute, is to be advised on; and for that point the case is but this: A scire facias issues to have execution of a recognizance, which, within this act, ought, by pretence and allegation of the defendant, to be discharged for matter in equity, and the defendant pleads his matter in equity, and the King, supposing this not to be equity within this statute, demurs in law, whether that demurrer be an insufficient proof of the allegation within the statute or not? Adjournatur. Lane 51.

By § 33 of the said stat. 33 Hen. 8. c. 39, it is provided, that the said act shall not take away any liberties belonging to the dutchy and county palatine of Lancaster.
Process and executions for debts in the Court of Exchequer shall be made in the Exchequer by such officer as hath been used, as by this act is limited. § 34.

The stat. 34, 35 Hen. 8. c, 2, directs how the King's receivers and collectors shall be charged; and the stat. 7 Ed. 6. c, 1, makes further regulations on that subject, and requires all officers to find sureties for duly accounting. See tit Accounts Public.

The stat. 13 Eliz. c, 4, enacts, That all the lands, &c. which any accomptant of the Queen, her heirs and successors, hath while he remains accountable, shall for the payment of the debts of the Queen, her heirs and successors, be liable, and put in execution in like manner, as if such accountant had stood bound by writ obligatory (having the effect of the statute staple) to her Majesty, her heirs and successors, for payment of the same. § 1.

The Queen, by her letters patent, granted catalia utlagatorum & felonum de se, within such a precinct; one who was indebted to the Queen is felo de se within the precinct. It was ruled, that notwithstanding the grant by the letters patent, the Queen shall have the goods for satisfying her debt. 3 Leo. 113: Mo. 126, 127. S. C. between the Queen of the first part, the Bishop of Sarum of the second part, and Oliver Coxhead of the third part; and there per Manswood, Ch. B. the patent does not extend to have the goods of felo de se against the Queen for her debt, because it wanted the words (licet tangat nos); but he agreed, that if the lands of the felon be liable to [sufficient to answer] all the debt of the Queen, the Court may in discretion take all the lands in extent, and leave the goods to the patentee. And as to a petition of Coxhead praying a discharge of the lands, &c. by him purchased of the officer debtor to the Queen, it was answered, that the land was subject to the Queen's extent for all arrears of receipts by his office, received before the conveyance thereof, though the receipt be after the conveyance, and that by reason of the statute; but as to another office accepted after the conveyance of the land, the arrears of that shall not charge the land so conveyed.

B. L. having purchased a long term for years in houses, afterwards purchased the inheritance; afterwards he became receiver of North Wales, and having occasion for 500l. assigned over the term by way of mortgage to J. 3. Afterwards on the marriage of E. L. his son, he settled the houses in St. Clement's (inter alia) on himself for life, remainder to E. L. his son, and the heirs of his body. There was issue of the marriage a daughter, the wife of P.; after this B. L. mortgages these houses to N. for 1800l. The King extends these houses for the debt of B. L. N. gets an assignment of the extent, and a privy seal for the debt. Resolved, 1st, That by the statute of Elizabeth, the land and the real estate of B. L. was bound and stood liable to answer the King's debt, although he was not actually a debtor to the King, nor any extent against him in several years after. 2dly, That where a term is attendant on the inheritance, he shall have a right to the term; but if it be a term in gross, and assigned before any actual extent, the assignment will stand good, and the term not liable to the King's debt. 2 Vern. 389, 390.

If either of the Queen's Officers, on rendering of his account, shall be found in arrear, and such arrears shall not be paid within six months after the account past, the Queen, &c. may sell so much of his estate as will answer the debt, and the overplus of the sale is to
be rendered to the accountant or his heirs, by the officer that receives the purchase money, without further warrant. Stat. 13 Eliz. c. 4. § 2, 3.

Upon this statute many questions were moved. 1st, If the debtor died, whether the land might be sold? 2dly, When the account is determined after his death? 3dly, When the accountant, after becoming debtor, and in arrear makes feoffment, or other estate over, or charges or incumbers the land, either to his issue, or others of his blood, to prevent the Queen's selling, or on other consideration, whether she may sell the land, the words of the act being make sale, &c. of so much of the lands, &c. of every such accountant or debtor so found in arrear, &c. and that the sale shall be good and available in law against the party accountant, and his heirs claiming as heirs? 4thly, If the accountant was seised of land in tail, whether this land may be sold to be good against the issue; for the ousting of which doubts the statute of 27 Eliz. c. 3, was made; but this gives remedy only, that the land shall be sold after the death of the debtor, and when the account is made after his death; therefore to remedy the other mischiefs, the statute 29 Eliz. c. 7, was made (but the same being only a temporary act is expired). Mo. 646. &c. pl. 895: (where part of the last-mentioned act is set forth and explained.)

If such accountant or debtor purchase lands in others' names in trust for their use, that being found by office or inquisition, those lands also shall be liable to satisfy the debt in such a manner as before is expressed. Stat. 13 Eliz. c. 4. § 5.

Lands purchased by accountants since the beginning of the Queen's reign, either in their own names, or in the names of others in trust for their use, shall be also liable to be sold for the discharge of their debts as aforesaid, rendering the overplus to the accountant. § 6.

Provided, That bishops' lands shall be only chargeable for subsidies or tenths, as they were before making this act, and not otherwise. § 9.

Neither shall this act extend to charge any accountant whose yearly receipt exceeds not 300l. otherwise than as he was lawfully chargeable before this act. § 10.

Neither shall this act extend to such accountants, as by order of their offices, and charge, immediately after their accounts past, are to lay out money again; such as are treasures of war, garrisons, navy, provision of victuals, or for fortifications or buildings, and the master of the wardrobe; unless the Queen, &c. command present pay. § 11, 12.

Neither does this act extend to Sheriffs, escheators, or bailiffs of liberties, concerning whose accounts the course remains the same as before. § 13.

Lands bought of an accountant bona fide, and without notice of any fraudulent intent in the accountant, shall be discharged; and if they be bound by office, yet shall they, on traverse, be discharged without remedy, ouster le main, or other suit. § 14.

If a man is receiver to the King, and not indebted, but is clear and sells his land, and ceases to be receiver, and afterwards is appointed receiver again, and then a debt is contracted with the King, the former sale is good.—2 Mod. 247.

The Queen, &c. being satisfied by sale of lands, the sureties shall be discharged for so much, and if any yet remain unpaid, the sureties shall pay the residue rateably according to their abilities. Stat. 13 Eliz. c. 4. § 15.
By stat. 27 Eliz. c. 3, the Queen, &c. may make sale of the accountant's lands, &c. as well after his death as in his lifetime, and as well where the account is made, and the debt known within eight years after his death, as where the account is made, and the debt known in his lifetime. § 2.

By § 3, it is provided, that after the accountant's death, and before the lands be sold as a scire facias shall be awarded to garnish the heirs, to shew cause why lands, &c. should not be sold, &c. whereupon, if the heir, upon such garnishment or two nihilis returned, do not prove that the executors or administrators of the accountant have sufficient, then ten months after such two nihilis, or garnishment returned, the land, &c. shall be sold and disposed according to the statute of 13 Eliz. c. 4.

Nevertheless, the heir's sale bona fide upon good consideration before the scire facias awarded, shall be good to him who is not consenting to defraud the Queen, &c. Stat. 27 Eliz. c. 3. § 4.

This statute shall extend to all officers of receipts and accounts to her Majesty, and to no other. § 5.

If the debt grow in the Courts of the dutchy of wards, a privy seal shall issue out against the heir to appear at a certain day, to shew cause, &c. when, if he appear not, on affidavit made that it was duly served, an attachment with proclamation shall issue against him, to be proclaimed in some open market in the county where he dwelt twenty days (at least) before the return thereof, whereupon, if he appear not, the lands, &c. shall be sold and disposed as aforesaid. § 6.

The heir's lands shall not be sold during his minority; but at any time within eight years after his full age they shall be liable as aforesaid. § 7.

By stat. 20 Car. 2. c. 2, all receivers of monies or duties for the King's use, are to pay damages of 12 per cent. per annum from the expiration of two months after the receipt by them, till they pay the same into the Exchequer.

By stat. 25 Geo. 3. c. 35, for the more easy and effectual sale of lands of the Crown debtors, the court of Exchequer, on application of the Attorney General, in a summary way, may order the estate of any debtor to the King to be sold; and compel the production of title-deeds, &c. and apply the same in liquidation of the King's demand under a writ of Extent, or Diem clausit extremum. (See title Execution.) The surplus, after satisfaction of the Debt and Costs, to be paid to the party entitled to the estate.

By 41 Geo. 3. (U. K.) c. 90, for the more speedy recovery of debts due to the Crown, it is enacted, that when, upon any account declared, &c. in the court of Exchequer in England, or on judgment of that court, any debt shall appear be due to the King, a copy of such account shall be exemplified and transmitted to and enrolled in the Exchequer of Ireland, and process issued against the debtor's body and effects there. The money levied whereon shall be paid into the Irish Exchequer, and transmitted thence to the English Exchequer. Like provisions are made as to property in England, of debtors to the Crown, on accounts declared, &c. in the Exchequer of Ireland.

VII. In King John's Magna Charta of Liberties, there was a clause making it lawful for the barons of the realm to choose twenty-five barons to see the charter observed by the King; with power, on any Justice or other minister of the King's failing to do right, and acting contrary thereto, for four of the said barons to address the King, and
prayer that the same might be remedied; and if the same were not amended in forty days, upon the report of the four barons, to the rest of the twenty-five, those twenty-five barons, with the commonalty of the whole land, were at liberty to distress the King, take his castles, lands, &c. until the evils complained of should be remedied, according to their judgment; saving the person of the King, Queen, and their children. And when the evils were redressed, the people were to obey the King as before. King John's Magna Charta. c. 75. But this clause was admitted in King Henry III.'s Magna Charta; though in a statute made at Oxford, anno 42 Hen. III. to reform misgovernment, it was enacted, that twenty-four great men should be named, twelve by the King; and twelve by the Parliament, to appoint Justices, Chancellors, and other officers, to see Magna Charta observed. These regulations seem (like the constitution, framed by an assembly in a neighbouring nation, before they had directly discarded a monarchical form of government) too laboured and unnatural to succeed in practice: the checks now formed, by the law, on the power of the Crown are of a nature in reality more forcible, though in appearance more loyal, than a measure which placed the Sovereign in subjection to a dangerous Aristocracy.

The Barons' wars seem to have proceeded in some measure from a like power granted to them as by the charter of King John; and probably the Parliament's wars in the time of King Charles I. from their examples.

But, whatever attempts might have been previously made, it cannot but be observed, that most of the laws for ascertaining, limiting, and restraining the prerogative of the Crown, have been made within the compass of little more than a century past, from the Petition of Right in 3 Car. I. to the present time: so that the powers of the Crown are now to all appearance greatly curtailed and diminished since the reign of King James I., particularly by the abolition of the Star Chamber, and High Commission Courts, in the reign of Charles I.; and by the disclaiming of martial law, and the power of levying taxes on the subject, by the same Prince; by the disuse of forest laws for a century past; and by the many excellent provisions enacted under Charles II.; especially by the abolition of military tenures, purveyance, and pre-emption, the Habees Corpus act, and the act to prevent the discontinuance of parliaments for above three years; and since the Revolution, by the strong and emphatical words in which our liberties are asserted, in the Bill of Rights, and Act of Settlement; by the act for triennial, since turned into septennial, elections; by the exclusion of certain officers from the House of Commons; by rendering the seats of the Judges permanent, and their salaries liberal and independent; and by restraining the King's pardon from obstructing parliamentary impeachments. Besides all this, if we consider how the Crown is impoverished and stripped of all its ancient revenues, so that it must greatly rely on the liberality of Parliament for its necessary support and maintenance, we may, perhaps, be led to think, that the balance is inclined, pretty strongly, to the popular scale; and that the executive magistrate has neither independence, nor power enough left, to form that check upon the Lords and Commons which the Founders of our Constitution intended.

On the other hand, however, it is to be considered, that every
prince in the first parliament after his accession, has by long usage a truly royal addition to his hereditary revenue settled upon him for his life; and has never any occasion to apply to Parliament for supplies, but upon some public necessity of the whole realm. This restores to him that constitutional independence, which at his first accession seems, it must be owned, to be wanting. And then, with regard to power, we may find perhaps, that the hands of Government are at least sufficiently strengthened, and that an English Monarch is now in no danger of being overborne either by the Nobility or the People. The instruments of power are not, perhaps, so open and avowed, as they formerly were, and therefore are the less liable to jealous and invidious reflections; but they are not the weaker upon that account. In short, our national debt and taxes have, in their natural consequences, thrown such a weight of power into the executive scale of government, as we cannot think was intended by our patriot ancestors; who gloriously struggled for the abolition of the then formidable parts of the prerogative, and by an unaccountable want of foresight established this system in their stead. The entire collection and management of so vast a revenue being placed in the hands of the Crown, have given rise to such a multitude of new officers created by, and removeable at, the royal pleasure, that they have extended the influence of Government to every corner of the nation. To this may be added, the frequent opportunities of conferring particular obligations, by preference in loans, subscriptions, tickets, remittances, and other money transactions, which will greatly increase this influence, and that over those persons whose attachment, on account of their wealth, is frequently the most desirable. And the same may be said with regard to the officers in our numerous army, and the places which the army has created. All which, put together, give the Executive Power so persuasive an energy, with respect to the persons themselves, and so prevailing an interest with their friends and families, as will amply make amends for the loss of external prerogative.

Upon the whole, therefore, it seems clear, that whatever may have become of the nominal, the real power of the Crown has not been too far weakened by any transactions in the last century. Much is, indeed, given up; but much is also acquired. The stern commands of prerogative have yielded to the milder voice of influence; the slavish and exploded doctrine of non-resistance has given way to a military establishment by law; and to the disuse of parliaments has succeeded a parliamentary trust of an immense perpetual revenue. When, indeed, by the free operation of the Sinking Fund, our national debts shall be lessened, when the posture of foreign affairs, and the universal introduction of a well-planned and national militia, will suffer our formidable army to be thinned and regulated; and when, in consequence of all, our taxes shall be gradually reduced; this adventitious power of the Crown will slowly and imperceptibly diminish, as it slowly and imperceptibly rose; but, till that shall happen, it will be our special duty, as good Subjects and good Englishmen, to reverence the Crown, and yet guard against corrupt and servile influence from those who are entrusted with its authority: to be loyal, yet free; obedient, and yet independent; and, above every thing, to hope, that we may long, very long, continue to be governed by a Sovereign, who, in all those public acts that have personally pro-
ceeded from himself, hath manifested the highest veneration for
the free Constitution of Britain; hath already, in more than one in-
stance, remarkably strengthened its outworks, and therefore will
never harbour a thought, or adopt a persuasion, in any the remotest
degree, detrimental to public liberty. 1 Comm. c. 8.
For further matters relative to the King, see titles Parliament;
Government; Grant of the King; Lease of the King.
KING OF HERALDS, or King at Arms, Rex Heraldum. A prin-
cipal officer at Arms, that hath the pre-eminence of the Society.
Among the Romans he was called pater patratus. See titles Herald;
Garter.
KING OF THE MINISTRELS, at Tutbury in com. Staff. His
power and privilege appears by a charter of Rich. II. confirmed by
Hen. VI. in the 21st year of his reign. Cowell.

KING'S BENCH.

Bancus Regius, from the Saxon, Banca, a Bench or Form.] The
Supreme Court of Common Law in the Kingdom. 4 Inst. 78.
I. Of the Court itself, generally.
II. Of its criminal Jurisdiction.
III. Of its civil Jurisdiction, &c.
IV. Of the Officers of the Court; and the mode of Proceeding there.
I. The Court of King's Bench is so called because the King used
formerly to sit in Court in person; the stile of the Court still being
coram ifiuo rege. During the reign of a Queen it is called the Queen's
Bench; and under the usurpation in Cromwell's time, it was stiled
the Upper Bench.
The Court consists of a Chief Justice, and three puisne Judges;
formerly, according to Fortescue, c. 51, four or five. See Raym. 475:
3 Comm. 41, in n. These Judges are, by their office, the sovereign
Conservators of the peace, and supreme Coroners of the land. Yet,
though the King used himself to sit in this Court, and still is sup-
posed so to do: he did not, neither by law is he empowered to, de-
terminate any cause or motion, but by the mouth of his Judges, to
whom he has committed his whole judicial authority. 4 Inst. 71: See
4 Burr. 851: 2 Inst. 46.
It has been said, that King Hen. III. sat in person with the justices
in Banco Regis several times, being seated on a high bench, and the
Judges in a lower one at his feet. This, however, is a doubtful point.
King Edward IV. sate three days in the second year of his reign,
wholly to see, as he was young, the form of administering justice.
King James I. it is also said, sate there for a similar reason. See 3
Comm. c. 4. in n. It is said that in Westminster Hall, under the mo-
dern Erections for the Courts of King's Bench and Chancery, there
still remain a Stone Bench or Table, and a Stone Chair, used by some
of our antient Kings when they sate in Parliament, or for the admi-
nistration of justice. See Antiquities of Westminster; quarto, 1807.
This Court, which is the remnant of the antient Aula Regia, is not,
nor can it be, from the nature and constitution of it, fixed to any
certain place, but may follow the King's person wherever he goes.
See stat. 28 Eliz. 1. stat. 3. c. 5. For which reason all process issu-
ing out of this Court in the King's name is returnable, "ubicunque
fuerimus in Anglia;—wheresoever we shall then be in England."
See titles Courts; Common Pleas. It hath, indeed, for some centuries
past, usually sate at Westminster, being an antient palace of the
Crown; but might remove with the King to York or Exeter, if he
thought proper to command it. And we find, that after Edw. I had
conquered Scotland, it actually sate at Roxburgh, M. 20, 21. E. 1:
Hale, H. C. L. 200. And this moveable quality, as well as its dignity and
power, are fully expressed by Bracton, when he says, that the Justi-
ces of this Court are "civitates, generalcs, perpetui, et majores; à
latere reges residentes: qui omnium aliorum corrigeor tenetur injurias
et errores. Bract. l. 3. c. 10." And it is moreover especially provid-
ed in the Articula super cartas, 28 E. 1. c. 5. that the King's Chan-
celloi, and the Justices of his Bench, shall follow him; so that he
may have at all times near unto him some that be learned in the
laws.

After the division of the Courts, and the establishment of the
Court of Common Pleas, for the express purpose of determining
civil suits, the Court of King's Bench was accustomed, in antient
times, to be especially exercised in all criminal matters and pleas
of the Crown, leaving the judging of private contracts and civil ac-

Toward the latter end of the Norman period, the Aula Regia, which
was before one great Court where the Justiciar presided, was divid-
ed into four distinct Courts, i. e. the Court of Chancery, King's

The Court of King's Bench retained the greater similitude with
the antient Curia, or Aula Regis, and was always ambulatory, and
removed with the King wherever he went. It hath always retained
a supreme original jurisdiction in all criminal matters; for in these
the process both issued from, and was returnable into, this Court;
but in trespass it might be made returnable into either the King's
Bench or Common Pleas, because the plea was criminal as well as
civil, 2 Inst. 24: 4 Inst. 70: Co. Lit. 71: Dyer 187; Cromp. of Courts
78: 1 Rol. Abr. 94.

II. The jurisdiction of this Court is very high and transcendant.
It keeps all inferior jurisdictions within the bounds of their autho-
ritv, and may either remove their proceedings to be determined
here, or prohibit their progress below. It superintends all civil cor-
porations in the kingdom. It commands magistrates and others to do
what their duty requires, in every case where there is no other speci-
fic remedy. It protects the liberty of the Subject by speedy and sum-
mary interposition. It takes cognizance both of criminal and civil cau-
ses; the former, in what is called the Crown-side or Crown-office; the
latter in the pleas-side of the Court. 3 Comm. c. 4.

On the Crown-side, that is, in the Crown-Office, this Court takes
cognizance of all criminal causes, from high treason down to the
most trivial misdemeanor or breach of the peace. Into this Court
also indictments from all inferior Courts may be removed by writ of
certiorari, and tried either at bar, or at nisi prius by a Jury of the
county out of which the indictment is brought. The Judges of this
Court are the supreme Coroners of the Kingdom. And the Court it-
self is the principal Court of criminal jurisdiction known to the laws
of England. For which reason, by the coming of the Court of King's
Bench into any county, (as it was removed to Oxford on account of the sickness in 1665,) all former commissions of oyer and terminer, and general gaol-delivery, are at once absorbed and determined ipso facto.

But this is now altered, with respect to the Session of Gaol-delivery for Middlesex, by stat. 25 Geo. 3. c. 18; which enacts, that when any session of oyer and terminer, and gaol-delivery of the gaol of Newgate, for the county of Middlesex, shall have been begun to be helden before the essoign day of any term, that the same session shall be continued to be holden, and the business thereof finally concluded, notwithstanding the happening of such essoign day of any term, or the sitting of his Majesty's Court of King's Bench at Westminster, or elsewhere in the county of Middlesex; and that all trials, &c. had at such session so continued to be holden, shall be good and effectual to all intents and purposes. See this Dictionary, title Justices of Oyer, &c.

Into this Court of King's Bench hath reverted all that was good and salutary of the jurisdiction of the Court of Star-Chamber (Camera Stellata), which was a Court of very antient original, finally abolished, on account of the abuse of its jurisdiction, by stat. 16 C. 1. c. 10. See this Dictionary, title Star-Chamber. 4 Comm. c. 19.

To state its powers more particularly, this Court is termed the Custos Morum of all the realm, and by the plenitude of its power, wherever it meets with an offence contrary to the first principles of justice, and of dangerous consequence if not restrained, adapts a proper punishment to it. 1 Sid. 168: 2 Hawk. P. C. c. 3. § 4.

The Justices of B. R. are the sovereign Justices of oyer and terminer, gaol-delivery, and of eyre, and coroners of the land; and their jurisdiction is general all over England: by their presence the power of all other Justices in the county, during the time of this Court's sitting in it, is suspended as has already been noticed; for in praesentia majoris cessat potestas minoris; but such Justices may proceed by virtue of a special commission, &c. H. P. C. 156: 4 Inst. 73: 2 Hawk. P. C. c. 3.

If an indictment in a foreign county be removed before commissioners of oyer and terminer into the county where the King's Bench sits, they may proceed; for the King's Bench not having the indictment before them cannot proceed for this offence. But if an indictment is found in the vacation-time in the same county in which the King's Bench sits, and in term-time the King's Bench is adjourned, there may be a special commission to hear it. 4 Inst. 73.

Justices of this Court have a sovereign jurisdiction over all matters of a criminal and public nature, judicially brought before them, to give remedy either by the common law or statute; and their power is original and ordinary: when the King hath appointed them, they have their jurisdiction from the law. 4 Inst. 74.

This Court has a particular jurisdiction, not only over all capital offences, but also over all other misdemeanors of a public nature, tending either to a breach of the peace, or to oppression or faction, or any manner of misgovernment; and it is not material whether such offences, being manifestly against the public good, directly injure any particular person or not. 4 Inst. 71: 11 Co. 98: 2 H. P. C. c. 3. § 3.

And for the better restraining such offences, it has a discretionary
power of inflicting exemplary punishment on offenders, either by fine, imprisonment, or other infamous punishment, as the nature of the crime, considered in all its circumstances, shall require; and it may make use of any prison which shall seem most proper; and it is said, that no other Court can remove or bail persons condemned to imprisonment by this Court. 2 *Hawk.* P. C. c. 3. § 5.—*Newgate* is as much the prison of this Court as the King's Bench prison is: every prison in the kingdom is the prison of this Court, 1 *Burr.* 541.

This Court hath so sovereign a jurisdiction in all criminal matters that an act of Parliament appointing that all crimes of a certain denomination shall be tried before certain Judges, doth not exclude the jurisdiction of this Court, without express negative words; and therefore it hath been resolved, that *stat.* 33 *Hen.* 8. c. 12, which enacts, That all reasons, &c. within the King's house, shall be determined before the Lord Steward of the King's house, &c. doth not restrain this Court from proceeding against such offences. 2 *Inst.* 549: 2 *Jones* 53.

But where a statute creates a new offence which was not taken notice of by the common law, and erects a new jurisdiction for the punishment of it, and prescribes a certain method of proceeding, it seems questionable how far this Court has an implied jurisdiction in such a case. 1 *Sta.* 296: 2 *Hawk.* P. C. c. 3. § 6.

This Court, by the plenitude of its power, may as well proceed on indictments removed by *certiorari,* out of inferior Courts, as on those originally commenced here, whether the Court below be determined, or still in esse, and whether the proceedings be grounded on the common law, or on a statute making a new law concerning an old offence. *Inst.* 25: 44 Ed. 5. 31. b: *Cromph.* Juris. 131.

But the Court of King's Bench will not give judgment on a conviction in the inferior Court, where the proceedings are removed by *certiorari,* but will allow the party to waive the issue below, and to plead *de novo,* and to go to trial upon an issue joined in *B. R.* *Carth.* 6.

Nor can a record, removed into the King's Bench from an inferior Court, regularly be remanded after the term in which it came in; yet if the Court perceives any practice in endeavouring to remove such record, or that it is intended for delay, they may in discretion refuse to receive it, and remand it back before it is filed. 2 *Hawk.* P. C. c. 3. § 7, and several authorities there cited.

Also by the construction of the statutes, which give a trial by *nisi prius,* the King's Bench may grant such a trial in cases of treason or felony, as well as in common cases, because for such trial, not the record, but only a transcript is sent down. 4 *Inst.* 74: *Raym.* 364: 2 *Hawk.* P. C. c. 3. § 7.

And by *stat.* 6 *Hen.* 8. c. 6, it is enacted, "That the King's Bench have full authority by discretion, to remand as well the bodies of all felons removed thither, as their indictments, into the counties where the felonies were done; and to command the Justices of gaol-delivery, Justices of the peace, and all other Justices, to proceed thereon after the course of the common law, as the said Justices might have done, if the said indictments and prisoners had not been brought into the said King's Bench." This act extends not to high treason. *Raym.* 367: 2 *Hawk.* P. C. c. 3. § 8, 9.

As the Judges of this Court are the sovereign Justices of *oyer and
terminer, gaol-delivery, Conservators of the peace, &c. as also the sovereign Coroners, therefore, where the Sheriff and Coroners may receive appeals by bill, a fortiori the Judges may; also this Court may admit persons to bail in all cases according to their discretion. 4 Inst. 73: 9 Co. 118, b: 4 Inst. 74: Vaugh. 157.

In the county where the King's Bench sits, there is every term a grand inquest, who are to present all criminal matters arising within that county and then the same Court proceeds upon indictments so taken; or if, in vacation, there be any indictment of felony before the Justices of peace of oyer and terminer or gaol-delivery there sitting, it may be removed by certiorari into B. R. and there they proceed de die in diem, &c. 2 Hale's Hist. P. C. 3.

It may award execution, against persons attained in Parliament, or any other Court: when the record of their attainer or a transcript is removed, and their persons brought thither by habeas corpus. Cro. Car. 176: Cro. Jac. 495. Pardons of persons condemned by former Justices of gaol-delivery, ought to be allowed in B. R. the record and prisoner being removed thither by certiorari and habeas corpus. 2 Hawk. P. C. c. 6, § 19.

Into the Court of B. R. indictments from all inferior Courts and orders of sessions, &c. may be removed by certiorari; and inquisitions of murder are certified of course into this Court, as it is the supreme Court of criminal jurisdiction: hence also issue attachments, for disobeying rules or orders, &c. 4 Inst. 71, 72.

III. On the plea side, or civil branch, this Court hath an original jurisdiction and cognizance of all actions of trespass, or other injury alleged to be committed vi et armis; of actions for forgery of deeds, maintenance, conspiracy, deceit, and actions on the case which allege any falsity or fraud: all of which savour of a criminal nature, although the action is brought for a civil remedy; and make the defendant liable in strictness to pay a fine to the King, as well as damages to the injured party. The same doctrine is also now extended to all actions on the case whatsoever. F. N. B. 86, 92: 1 Lit. Prac. Reg. 503. But no action of debt or detinue, or other mere civil action, can by the common law be prosecuted by any Subject in this Court, by original writ out of Chancery. 4 Inst. 76: Tyre's Jus. Filezar, 110. Though an action of debt, given by statute, may be brought in the King's Bench as well as in the Common Pleas. Carth. 234. And yet this Court might always have held plea of any civil action, (other than actions real,) provided the defendant was an officer of the Court, or in the custody of the Marshal, or prison-keeper of this Court, for a breach of the peace or any other offence. 4 Inst. 71. And in process of time, it began, by a fiction, to hold plea of all personal actions whatsoever, and has continued to do so for ages: it being surmised that the defendant is arrested for a supposed trespass, which he never has in reality committed; and being thus in the custody of the Marshal of this Court, the plaintiff is at liberty to proceed against him for any other personal injury; which surmise, of being in the Marshal's custody, the defendant is not at liberty to dispute. See 4 Inst. 72.

These fictions of law, though at first they may startle the Student, he will find upon farther consideration to be highly beneficial and useful; especially as this maxim is ever invariably observed, that no
fiction shall extend to work an injury; its proper operation being to prevent a mischief, or remedy an inconvenience, that might result from the general rule of law. 3 Rep. 30; 2 Roll. Rep. 502. So true it is, that in fictione juris semper submit aquitas. 11 Rep. 51: Co. Litt. 150. In the present case, it gives the Suits his choice of more than one tribunal, before which he may institute his action; and prevents the circuity and delay of justice, by allowing that suit to be originally, and in the first instance, commenced in this Court, which after a determination in another, might ultimately be brought before it on a writ of error. 3 Comm. c. 4.

On the first division of the Courts, it was intended to confine the jurisdiction of the Court of King's Bench to matters merely criminal; and accordingly soon afterwards it was enacted by Magna Charta, c. 11. That common pleas should not follow the King's Court, but be held in a certain place; hence it is, that the Court of King's Bench cannot determine a mere real action. 17 Ed. 3. 50: 1 Rot. Abr. 536, 537.

But notwithstanding common pleas cannot be immediately holden in Banco Regis, yet where there is a defect in the Court, where by law they be holden originally, they may be holden in B. R.; as if a record come out of the Common Pleas by writ of error, there they may hold pleas to the end; so where the plea in a writ of right is removed out of the county by a move in B. R. on a writ of move reflexion, &c. 2 Inst. 23: 4 Inst. 72, 113; and see Saund. 256: Show. P. C. 57.

So any action vi & armis, where the King is to have fine, as ejection, trespass, forcible entry, &c. being of a mixed nature, may be commenced in B. R. 2 Inst. 23.

Also any officer or minister of the Court entitled to the privilege thereof may be there sued by bill in debt, covenant, or other personal action; for the act takes not away the privilege of the Court. 2 Inst. 23: 4 Inst. 71: 2 Bulst. 123.

From hence, as we hinted before, the notion arose, that if a man was taken up as a trespasser in the King's Bench, and there in custody, they might declare against him in debt, covenant, or account; for this likewise was a case of privilege, since the Common Pleas could not procure the prisoners of the King's Bench to appear in their Court; and therefore it was an exception out of Magna Charta. 4 Inst. 71: Cro. Car. 330.

By the statute of Gloucester, 6 E. 1. c. 8, none shall have writs of trespass before Justices, unless he swear by his faith that the goods taken away were worth forty shillings. This oath is now disused; yet if the damages laid in the declaration (in cases cognizable in inferior Courts) do not amount to 40s., the Court will not hold plea of the matter. If laid to the amount of 40s., and there is not any set-off, and the plaintiff recovers under 40s., defendant may suggest it on the roll, and plaintiff shall not have more costs than damages. See 2 Inst. 311. The stat. 43 Eliz. c. 8, directs, that if in personal actions in the Courts of Westminster, (not being for any title or interest of lands, nor concerning the freehold or inheritance of lands, nor for any battery,) the debt or damages is under 40s. the plaintiff shall recover no more costs than damages. See this Dictionary, title Costs.

If upon a nonsuit in an inferior Court 16s. is given for costs, by stat. 23 Hen. 8. c. 15, debt lies for it in this Court of King's Bench, because given by a statute subsequent to the statute of Gloucester. Cro. Eliz. 96: Leon. 316.
This Court is likewise a Court of Appeal, into which may be removed, by writ of error, all determinations of the Court of Common Pleas, and of all inferior Courts of record in England; and to which a writ of error also lay from the Court of King's Bench in Ireland, previous to the stat. 23 Geo. 3. c. 28. See this Dictionary, title Ireland. Yet even this, so high and honourable, Court is not the dernier resort of the Subject: for if he be not satisfied with any determination here, he may remove it, by writ of error, into the House of Lords, or Court of Exchequer Chamber, as the case may happen, according to the nature of the suit, and the manner in which it has been prosecuted. See 3 Comm. c. 4.

To this Court it regularly belongs to examine errors of all Judges and Justices in their judgments and proceedings; the Court of Exchequer excepted. F. N. B. 20, 21. It hath been held, that a writ of error lies in B. R. of an attainder before the Lord High Steward. 1 Sid. 208. And upon judgment given in the Chancery, (i.e. in the petty bag side,) as well as other Courts, writ of error in many cases will lie returnable in the Court of King's Bench. But on proceedings in B. R. by original writ, error lies not, but to the parliament. The Court of B. R. being the highest Court of common law, hath power to reform inferior Courts, reverse erroneous judgments given therein, and punish the magistrates and officers for corruption, &c. 2 Hawk. P. C. c. 3, § 10.

The Court of King's Bench, as it is the highest Court of common law, hath not only power to reverse erroneous judgments for such errors as appear the defect of the understanding; but also to punish all inferior magistrates and all officers of justice, for wilful and corrupt abuses of their authority against the obvious principles of natural justice; the instances of which are so numerous, and so various in their kinds, that it seems needless to attempt to insert them. 2 Hawk. P. C. c. 3, § 10: Vaugh. 157: 1 Salk. 201.

This Court grants writs of Habeas Corpus to relieve persons wrongfully imprisoned; and may bail any person whatsoever. See titles Bail; Habeas Corpus. Writs of Mandamus are granted by this Court, to restore officers in corporations, colleges, &c. unjustly turned out; and freemen wrongfully disfranchised; also writs and informations in the nature of quo warranto against persons or corporations, usurping franchises and liberties against the King; and on misuser of privileges to seize the liberties, &c. In this Court also the King's letters patent may be repealed by scire facias, &c. Prohibitions are also issued from this Court to keep inferior Courts within their proper jurisdiction. See also these several titles in this Dictionary.

This Court in antient times was, (as already observed,) ordinarily exercised only in criminal matters, and pleas of the Crown; leaving private contracts and civil actions to the Common Pleas, and other Courts. 4 Inst. 70.

IV. The officers on the Crown-side are; the King's Coroner and Attorney, commonly called the Clerk of the Crown, or Master of the Crown-office, who taxes costs, nominates all special Juries on the Crown-side, takes recognizances, inquisitions upon the death of any prisoner dying in the King's Bench prison, &c.—The Secondary, who draws up the paper books, and makes up an escheat of all Vol. IV.
fines, &c. forfeited to the Crown. The Clerk of the Rules; the Examiner; and Calendar-keeper; Clerks in Court.

The officers on the Plea-side are, the Chief Clerks; Secondary or Master; their Deputy, Marshal, Clerk of the Rules, Clerk of the Papers, Clerk of the Day-rules, Clerk of the Dockets, Clerk of the Declarations, Clerk of the Bail, Postes, and Escheats, Signer of Writs, Signer of the Bills of Middlesex, Custos Brevium, Clerk of the Upper Treasury, Clerk of the Outer Treasury, Filacer, Exigenter and Clerk of the Outlawries, Clerk of the Errors, Deputy Marshal, Marshal and Associate to the Chief Justice, Train bearer, Clerk of the Nisi Prius in London and Middlesex, Clerks of the Nisi Prius to the different counties appointed by the Custos Brevium, Crier at Nisi Prius in London and Middlesex, Receiver General of the Seal Office, Criers, Ushers, Tipstaffs.

The Secondary or Master constantly attends the sitting of the Court to receive matters referred to him by the Judges, to be examined and reported to the Court; he signs all judgments, and taxes costs, &c. And he also informs the Court in point of practice. The Deputy of him and of the Chief Clerks has the custody of the stamp, for signing all writs, &c. and keeps remembrances of all records; writs returned are filed in his office, and common balls, &c. The Custos Brevium files originals, and other writs whereon proceedings are had to outlawry, examines and seals all records of Nisi Prius for trials at the assizes, and has several Clerks under him for making up records throughout England. The Clerk of the Papers makes up the paper books of all special pleadings and demurrers, which the plaintiff's attorney commonly speaks for; and afterwards gives a rule for the defendant's attorney to bring to him again to be entered, &c. The Clerk of the Declarations files all declarations, and continues them on the back from the term of declaring till issue is joined. The Signer and Sealer of bills keeps a book of entry of the names of the plaintiff's and the defendants in all such writs, and processes; and the defendants enter their appearances with him. The Clerk of the Rules takes notice of all rules and orders made in Court, and afterwards draws them up and enters them in a book at large, and attends the Court to take minutes thereof; with him also are given all rules of course on a cepti corpus, habeas corpus, writs of inquiry, &c. and he files all affidavits used in Court, and makes copies of them. The Clerk of the Errors allows all writs of error, and makes supersedeas thereupon into any county, and transcribes and certifies records. The Clerk of the Bails and Postes, files the bail pieces, and marks the Postes, &c. The Filacers or Effizers of counties make the mesne process after the original, in suing to the outlawry; and have the benefit of all process and entries thereupon. The Marshal, by himself or deputy, always attends the Court, to receive into his custody such prisoners as shall be committed. The Cryer makes proclamations of summoning and adjoining the Court, calls nonsuits, and swears jurymen, witnesses, &c.

The style of the Court is, "Pleas before our Lord the King at Westminster, of the Term of Saint Michael, in the thirty-second year of the reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, and in the Year of our Lord 1791."

In this Court there are two ways of proceeding; viz. by Original
Writ, or by Bill. The former is generally used in case the debt is large, because the defendant, if he means to delay execution of the judgment, must bring his writ of error returnable in Parliament, which greatly enhances the expense; but the latter is more expeditious. See this Dictionary, titles Error; Bill; Original; Privilege; Process.

If the party is privileged as an attorney or other person entitled to privilege, this Court holds plea on a writ of privilege which is the first process issued against the defendant to compel him to appear and make his defence. If attorneys, officers, or ministers of this Court are sued by persons not entitled to privilege, they must be sued by bill, which expresses either the grievance or wrong which the Plaintiff hath suffered by the Defendant, or some faults by him committed against some law or statute of the realm. See titles Attorney; Privilege.

Also a Peer (Cowp. 184,) Knight, Citizen, or Burgess, or other person entitled to privilege of Parliament, may be sued in this Court by original writ, or by original bill, in manner as directed by stat. 12 & 13 W. 3. c. 3, upon which a bill of summons and distringas may issue to compel his appearance. But no writ of summons will lie against a person not entitled to privilege, on a bill filed against him in this Court; though many have attempted that mode of proceeding, which has been set aside with costs. Impey K. B. See titles Parliament; Peer; Privilege.

It has been held, that action upon the statute of Winchester, of robbery, does not lie by original in the Court of B. R. because it is a common plea; but it has been adjudged otherwise, and allowed on bill. 2 Danv. Abridg. 279. 282.

An appeal in B. R. must be arraigned on the Plea-side; except it come in by certiorari, when it is said it ought to be arraigned on the Crown-side. 2 Hawk. P. C. c. 28. § 4. Where the Court of B. R. proceeds on an offence committed in the same county wherein it sits, the process may be made returnable immediately; but when it proceeds on an offence removed by certiorari from another county, there must be fifteen days between the teste and return of every process, & c. 9 Rep. 118: 1 Inst. 134: 1 Sid. 72.

KINGELD; (rather King-geld,) Escuage, or royal aid. As in a charter of King Henry II. to the abbot and monks of Mirceval. Mon. Ang. i. 380.

KING’s HOUSEHOLD, or Civil List. See title King V.

KING’s PALACE. The limits of the King’s Palace at Westminster, extend from Charing Cross to Westminster Hall, and shall have such privileges as the antient palaces. Stat. 28 Hen. 8. c. 12. If any person shall strike another in the King’s Palace, he shall have his right hand cut off, be imprisoned during life, and also be fined. Stat. 33 H. 8. c. 12. See titles Palaces; Striking.

KING’s PREROGATIVE. See title King V. & c.

KING’s SILVER, the money which is paid to the King in the Court of Common Pleas, for a licence granted to a man to levy a fine of lands, tenements, or hereditaments to another person; and this must be compounded according to the value of the land, in the alienation office, before the fine will pass. 2 Inst. 511: 6 Rep. 39. 43. See title Fines of Lands.

KING’s SWAN-HERD. See Swan-herd.
KINTAL. See Quintal.


KIPPER-TIME. No salmon shall be taken between Gravesend and Henley upon Thames in kipper-time, *viz.* between the Invention of the Cross (3 May) and the Epiphany. Rot. Parl. 50. Edw. 3. Corwell. See title *Fish.*

KIRBY's QUEST, An ancient record remaining with the Remembrancer of the Exchequer; so called, from its being the inquest of John de Kirby, treasurer to King Edw I.

KIRK-MOTE. See Chirchgemot.

KNAVE, An old Saxon word, which had at first a sense of simplicity and innocence, for it signified a boy; *Sax. cnafa;* whence a Knav-child, *i.e.* a boy, as distinguished from a girl, in several old writers: "a Knav-child between them two they gate." *Gower, Poem,* *p.* 52, 106; and *Wickliff,* in his old translation; *Exod.* 1. 16; if it be a Knav-child, *i.e.* a son or male child. After, it was taken for a servant boy, and at length for any servant man; also it was applied to a minister or officer that bore the weapon or shield of his superior, as *scild-cnafa,* whom the *Latin* call *armiger,* and the *French* escuyer. See the old statute 14 Ed. 3. c. 3. And it was sometimes, of old, made use of as a titular addition; as *Johnnes C. filius Willielmus C. de Derby,* Knav, &c. 22 H. 7. 36. In the vision of *Piers Plowman,* "Cokes and her Knaves cryden hotes pyes hote;" *i.e.* Cooks and their boys, or skullions, Corwell.—The present use of the word to denote a false, dishonest, or deceitful fellow, has arisen by long perversion.

KNIGHT, Sax. *Cnut,* Lat. *Miles,* and *eques auratus,* from the gilt spurs he usually wore, and thence called antiently Knights of the spur: the Italians term them *Cavalleri*; the French Chevaliers; the Germans *Ruyters,* the Spaniards *Cavalleros,* &c.

Blackstone remarks, that it is observable that almost all nations call their Knights by some appellation derived from an horse. 1 Comm. 404. *Christian* in his Note on this place adds, that it does not appear the *English* word Knight has any reference to a horse; for Knight, or *Cnut,* in the *Saxon* signified *fuer Servus,* an attendant. See *Spelin,* in *ww.* *Knights; Miles.* There is now only one instance where it is taken in that sense, and that is Knight of a shire, who properly serves in parliament for such a county; but in all other instances it signifies one who bears arms, who, for his virtue and martial prowess, is by the King, or one having his authority, exalted above the rank of gentleman, to a higher degree of dignity. The manner of making them, *Camden* in his *Britannia,* thus shortly expresseth: *Nos tris vero temporibus, gut equestrem dignitatem suscitavit, flexis genusbus leviter in humero percucitur, princeps his verbis Gallicè affiatur; sus aut sois Chevalier au nom de Dieu,* *i.e.* *Surge aut sis eques in nomine Dei.* This is meant of Knights bachelors, which is the lowest, but most antient degree of knighthood with us. As to the
privilege belonging to a Knight, see in Fern's Glory of Generosity, p. 116.

Of Knights there are two sorts, one spiritual, so called by divines in regard of their spiritual warfare, the other temporal. Cassaneus de Gloria Mundi, par 9, considerat. 2. See Selden's Titles of Honour, fol. 170.

Chief Justice Popham affirmed, he had seen a commission granted to a Bishop, to Knight all the persons in his diocese. Godb. 398.

Of the several orders, both of spiritual and temporal Knights, see Mr. Ashmole's Inst. of the Knights of the Garter.

He who served the King in any civil or military office or dignity, was formerly called miles: it is often mentioned in the old charters of the Anglo-Saxons, which are subscribed by several of the nobility, viz. after Bishops, dukes, and earls, her A. B. militem, where miles signifies some officer of the Courts, as minister was an officer to men of quality. Thus we read in Ingulphus, De dono F. quondam Militia Kenufi Regis, fol. 860.

Afterwards the word was restrained to him who served only upon some military expedition; or rather to him who by reason of his tenure was bound to serve in the wars; and in this sense the word miles was taken pro vassalle. Thus in the laws of William the Conqueror: Manibus ei sese dedit, cuncta sua ab eo miles à Domino recepit. And he who by his office or tenure was bound to perform any military service, was furnished by the chief lord with arms, and so adoptabatur in militem, which the French call adoubier, and we to dub such a person a Knight. But before they went into the service, it was usual to go into a bath and wash themselves, and afterwards they were girt with a girdle; which custom of bathing was constantly observed, especially at the inauguration of our Kings, when those Knights were made, who for that reason were called Knights of the Bath. Cowell.

They were, says Blackstone, called milites, because they formed a part of the royal army, in virtue of their feudal tenures; (see title Tenures III. 2;) one condition of which was, that every one who held a Knight's fee immediately under the Crown, (which in Edw. II.'s time amounted to 20l. per annum. Stat. de milit. 1 Ed. 2,) was obliged to be knighted, and attend the King in his wars, or fine for his non-compliance. The execution of this prerogative as an expedient to raise money in the reign of Charles I., gave great offence; though then warranted by law, and the recent example of Queen Elizabeth. It was therefore abolished by stat. 16 Car. 1. c. 20. Considerable fees used to accrue to the King on the performance of the ceremony. Ed. VI, and Queen Elizabeth, had appointed Commissioners to compound with the persons who had lands to the amount of 40l. a year, and who declined the honour and expense of knighthood. See 1 Comm. 404; and also 2 Comm. 62, 9: 1 Inst. 69, b: 2 Inst. 593, and the Notes on 1 Inst.

KNIGHTS BACHELORS. from Bas Chevalier, an inferior Knight. 1 Comm. 404, in n.] The most antient, though the lowest order of knighthood amongst us; for we have an instance of King Alfred's conferring this order on his son Athelstan. Wil. Malms. lib. 2: 1 Comm. 404. See Knights of the Chamber.

KNIGHTS BANERET, Milites Vexillarii.] Knights made only in the time of war; and though knighthood is commonly given for
some personal merit, which therefore dies with the person, yet John Coupland, for his valiant service performed against the Scots, had the honour of Baneret conferred on him and his heirs for ever, by patent; 29 Ed. 3. See this Dictionary, title Baneret. These knights rank in general next after Knights of the Garter. By statutes 5 R. 2. st. 2. c. 4: 14 R. 2. c. 11, they are ranked next after Barons; and their precedence before the younger sons of Viscounts, was confirmed by order of King James I. in the 10th year of his reign. But in order to be entitled to this rank, they must be created by the King in person in the field, under the royal banners in time of open war, else they rank after Baronets. 1 Comm. 403.

KNIGHTS OF THE BATH, Militæ Balnei.] Have their name from their bathing the night before their creation. See Knight. This order of Knights was introduced by King Hen. IV. and revived by King George I. in the year 1725; who erected the same into a regular military order for ever, by the name and title of The Order of the Bath, to consist of thirty-seven Knights besides the Sovereign. See the antiquity and ceremony of their creation in Dugdale’s Antiquities of Warwickshire, fol. 531, 552. They have each three honorary Esquires; and they now wear a red ribbon across their shoulders; have a prelate of the order, (the Bishop of Rochester) several heralds, and other officers, &c. See 1 Comm. 404.

KNIGHTS OF THE CHAMBER, Militæ Camera.] Seem to be such Knights Bachelors as are made in time of peace, because knighted in the King’s chamber, and not in the field; they are mentioned in Rot. Parl. 28 Ed. 3: 29 E. 3. p. 1. m. 39: 2 Inst. 666.

KNIGHTS OF THE GARTER, Equites garteriæ; vel periscelidis, otherwise called Knights of the Order of St. George.] An order of Knights, founded by King Edw. III. A. D. 1344, who after he had obtained many notable victories, for furnishing this honourable order, made choice in his own realm, and all Europe, of twenty-five the most excellent and renowned persons for virtue and honour, and ordained himself and his successors Kings of England, to be the Sovereign thereof, and the rest to be fellows and brethren, bestowing this dignity on them, and giving them a blue garter, decked with gold, pearl, and precious stones, and a buckle of gold, to wear daily upon the left leg only; a kirtle, crown, cloak, chaperon, a collar, and other magnificent apparel, both of stuff and fashion exquisite and heroidal, to wear at high feasts, as to so high and princely an order was meet. Smith’s Repub. Angl. lib. 1. c. 20. And according to Camden and others, this order was instituted upon King Edw. III. having great success in a battle, wherein the King’s garter was used for a token. See Selden’s Tit. of hon. 2, 5, 41.

But Polydore Virgil gives it another original, and says, that the King in the height of his glory, the Kings of France and Scotland being both prisoners in the Tower of London, at one time, first erected this order, anno 1350, (see infra) from the Countess of Salisbury’s dropping her garter, in a dance before his Majesty, which the King taking up, and seeing some of his nobles smile, he said, Honi soit qui mal y pense; interpreted, ‘Evil (or shame) be to him that evil thinketh;’ which has ever since been the motto of the garter; declaring such veneration should be done to that silken tie, that the best of them should be proud of enjoying their honours that way.

Camden in his Britannia saith, that this order of Knights received
The scite of the college is the royal castle of Windsor, with the chapel of St. George, and the chapter-house in the castle, for their solemnity on St. George's day, and at their feasts and installations.

Besides the King their sovereign, and twenty-five companions, Knights of the garter, (and also an increase in number of such of the King's sons as shall be admitted to this honour;) they have a Dean and canons, &c. and twenty-six poor Knights, that have no other subsistence but the allowance of this house, which is given them in respect of their daily prayer to the honour of God and St. George; and these are vulgarly called Poor Knights of Windsor.

There are also certain officers belonging to the order; as Prelate of the Garter, which office is inherent to the Bishop of Winchester, for the time being; the Chancellor of the Garter, the Bishop of Salisbury; Register, always Dean of Windsor; the principal King at Arms, called Garter, to manage and marshal their solemnities, and the Usher of the Garter, being likewise Usher of the Black Rod.

A Knight of the Garter wears daily abroad, a blue garter decked with Gold, pearl, and precious stones on the left leg; and in all places of assembly, upon his coat on the left side of his breast, a star of silver embroidery; and the picture of St. George enamelled upon gold, and beset with diamonds, at the end of a blue ribbon that crosses the body from the left shoulder; and when dressed in his robes, a mantle, collar of S. S. &c.

KNIGHTS OF THE ORDER OF ST. JOHN OF JERUSALEM, Milites Sancti Johannis Hierosolymitani.] Were an order of Knighthood, that began about A. D. 1120, Honorius being Pope. They had their denomination from John the charitable patriarch of Alexandria, though vowed to St. John the Baptist their patron: Fern's Glory of Generosity, p. 127. They had their primary abode in Jerusalem, and then in the Isle of Rhodes, until they were expelled thence by the Turks, anno 1523. Since which time their chief seat is in the Isle of Malta, where they did great exploits against the Infidels, but especially in the year 1595. They lived after the order of friars, under the rule of St. Augustine, of whom mention is made in the Statutes 25 Hen. 8. c. 2. 26 Hen. 8. c. 2. They had in England one general prior that had the government of the whole order within England and Scotland; Reg. Orig. fol. 20; and was the first prior in England, and sat in the House of Lords. But towards the end of Henry VIII.'s days they in England and Ireland, being found to adhere to the Pope, too much against the King, were suppressed, and their lands and goods given to the King, by Stat. 32 Hen. 8. c. 24. For the occasion and propagation of this order more especially described, see the treatise, entitled, The Book of Honour and Arms, lib. 5. c. 18. See also this Dictionary, titles Hospitaliors; Templars; and the succeeding articles.

KNIGHTS OF MALTA. These Knights took their name and original from the time of their expulsion from Rhodes, anno 1523. The island of Malta was then given them by the Emperor Charles V.
whence they were therefore called Knights of Malta. See the preceding article.

KNIGHT MARSHALL, Mareschallus Hospitii Regis.] An officer of the King’s house, having jurisdiction and cognizance of transgressions within the King’s house, and verge of it; as also of contracts made within the same house, whereto one of the house is a party. *Reg.* of *Writs*, fol. 185. a. and 191. b. and *Stelm. Gloss.* in *voce* Mareschallus. See *Constable; Marshal.*

KNIGHTS OF RHODES. The Knights of St. John of Jerusalem, after they removed to Rhode island. See *stats.* 32 *Hen.* 8. c. 24. and ante, title *Knights of the Order of St. John.*

KNIGHTS OF THE SHIRE. Milites Comitatus.] Otherwise called Knights of parliament; two Knights or gentlemen of worth, chosen on the King’s writ, *in pieno comitatu*, by the freeholders of every county that can dispense 40s. a year; and these, when every man that had a Knight’s fee was customarily constrained to be a Knight, were obliged to be *milites gladio cincti*, for so runs the writ at this day; but now *notabiles armigeri* may be chosen. Their expenses were formerly borne by the county, during their sitting in parliament, under *stat.* 35 *H.* 8. c. 11. They are to have 600l. *per annum* freehold estate, &c. See *stat.* 9 *Ann.* c. 5; and further this Dictionary, title *Parliament.*

KNIGHTS TEMPLARS. See *Templars; Hospitallers; and ante, Knights of St. John, &c.*

KNIGHTS OF THE THISTLE. The honourable the Scotch knighthood, the Knights whereof wear a green ribbon over their shoulders, and were otherwise honourably distinguished.

KNIGHTS OF ST. PATRICK. A new or revived order of knighthood in Ireland. These two last obtain no rank in England. See title *Precedency.*

KNIGHTEN-GYLD, Was a *Gyld* in London, consisting of nineteen Knights, which King Edgar founded, giving them a portion of void ground lying without the walls of the city, now called *Portoken Ward.* *Stow’s Annals*, p. 151. This in *Mon. Angl.* *par.* 2. *fol.* 82. a. is written *emittene-geld.*

KNIGHTS COURT, A Court Baron, or honour court, held twice a year under the Bishop of Hereford, at his palace there; wherein those who are lords of manors, and their tenants, holding by Knight’s service of the honour of that bishoprick, are suitors; which Court is mentioned in *Butterfield’s Surv.* *fol.* 244. If the suitor appear not at it, he pays 2s. suit-silver for respite of homage. *Cowell.*

KNIGHTHOOD. See *Knight.*

KNIGHT SERVICE. See title *Tenure* III. 2.

KNIGHTS FEE, *Feodum militare.*] Is so much inheritance, as is sufficient yearly to maintain a Knight with convenient revenue; which in *Henry III.*’s days was 15l. *Camd. Brit.*, pag. 111. In the time of *Edward II.* 20l. See ante title *Knight.* Sir *Thomas Smith* (in his *Repub. Ang.* *lib.* 1. c. 18.) rates it at 40l. *Stow*, in his *Annals*, *p.* 285, says, there were found in *England*, at the time of the Conqueror, 60,311 Knights’ fees, according to others 60,215: whereof the religious houses before their suppression were possessed of 28,015— *Octo carucate terra* ‘faccient feodum unius militis.’ *Mon. Ang.* *p.* 2. *fol.* 285, a. Of this see more in *Selden’s Titles of Honour*, *fol.* 691; and *Bracton, lib.* 5. *tract.* 1. c. 2. also 1 *Inst.* 69, a. A Knight’s fee con
tained twelve plow-lands, 2 Inst. fol. 596; or 480 acres. Thus Virgata terra continet 24 acres, 4 virgata terra make an hide, and five hides make a Knight’s fee, whose relief is five pounds. Cowell. Selden insists that a Knight’s fee was estimable neither by the value nor the quantity of the land, but by the services or numbers of the Knights reserved. Tit. Hon. part. 2. c. 5. § 26. See ante Knight.

KNOPA, A knob. nob, bosse, or knot.

KNOW-MEN. The Lollards in England, called Hereticks, for opposing the Church of Rome before the Reformation, went commonly under the name of Knowmen, and just-fast-men; which title was first given them in the diocese of Lincoln, by Bishop Smith, anno 1500.

KYDDIERS, Mentioned in Stat. 13 Eliz. c. 35. See Kidder.

KYLYW, Signifies some liquid thing, and in the North it is used for a kind of liquid victuals. It is mentioned as an exaction of foresters, &c. Mon. Ang. tom. 1. p. 722.


KYTH, Kin or kindred; Cognatus.