MAG

M, is the letter with which persons convicted of Manslaughter are marked on the brawn of the left thumb. See stat. 4 H. 7. c. 13. MACE; See Spices; Navigation Acts.

MACE-GRIFFFE, or MACE-GREFFS, Machecarii. Such as willingly buy and sell stolen flesh, knowing the same to be stolen. Britton, c. 29; Crompton's Justice of Peace, fol. 193. Vide Leges Inneæ, c. 20. MACE-CARIA, MACHEKUNA, Macella.] The flesh-market or shambles. Cowell.


MACHECOLLARE or MACHECOULARE, from the Fr. Maschecoulis.] To make a warlike device, especially over the gate of a castle, resembling a grate through which scalding water or offensive things may be thrown on pioneers or assailants. 1 Inst. 5. a.

MACIO, A mason. Cowell.

MACKAREL, May be sold on Sunday; stat. 10 & 11 W. 3. c. 24. § 29.

MADDER, to be imported unmixed, 13 & 14 Car. 2. c. 30; repealed 15 Car. 2. c. 16. § 3. Tithes of Madder settled, stats. 31 Geo. 2. c. 12: 5 Geo. 3. c. 18. See title Tithe. Penalty of stealing, or destroying Madder-roots. Stat. 31 Geo. 2. c. 55: to make satisfaction to the owner, and pay 10s. to the poor; and for the second offence to be imprisoned three months.

MADNING MONEY, Old Roman coins, sometimes found about Dunstable, are so called by the country people: they seem to retain this name from Magintum, used by the Emperor Antoninus, in his Itinerary, for Dunstable. Camden.

MADRIGALS, an old word, signifying country songs. Cowell.

MAEREMIUM, from Fr. Meresme. Properly signifies any sort of timber, fit for building; seu quodvis materiam. Cartamede Firesta: stat. Claus. 16 Ed. 2. m. 3.

MAGBOTE or MÆGBOTE, from the Sax. Meg. i. e. Cognatus & bote, compensatio.] A compensation for the slaying or murder of one's kinsman, in antient times, when corporal punishments for murder, &c. were sometimes commuted into pecuniary fines, if the friends and relations of the party killed were so satisfied. Leg. Canuti, c. 2.

MAGICK, Magia, Necromantia.] Witchcraft and Sorcery. See Conjuration.

MAGISTER. This title, often found in old writings, signified that the person to whom attributed had attained some degree of eminency in scientia aliqua, præsertim literaria; and formerly those who are now called doctors, were termed magistri.
MAGISTRATE, magistralus.] A Ruler; and he is said to be custos utriusque tabula: the keeper or preserver of both tables of the law. If any magistrate, or minister of justice, is slain in the execution of his office, or keeping of the peace, it is murder for the contempt and disobedience to the King and his laws. 9 Co.

The most universal public relation by which men are connected together is that of government; namely, as governors and governed, or in other words as Magistrates and People. Of Magistrates some also are supreme, in whom the Sovereign Power of the State resides; others are subordinate, deriving all their authority from the supreme Magistrate, accountable to him for their conduct, and acting in an inferior secondary sphere. In all tyrannical Governments the Supreme Magistracy, or the right of both making and enforcing laws, is vested in one and the same man, or one and the same body of men: and wherever these two powers are united together, there can be no public liberty. The Magistrate [or Magistracy] may enact tyrannical laws, and execute them in a tyrannical manner: since he is possessed, in quality of dispenser of justice, with all the power which as legislator he thinks proper to give himself. But when the legislative and executive authority are in distinct hands, the former will take care not to entrust the latter with so large a power as may tend to the subversion of its own independence, and therewith of the liberty of the Subject. In England, therefore, this Supreme Power is divided into two branches; the one Legislative, to wit, the Parliament, consisting of King, Lords, and Commons; the other Executive, consisting of the King alone.

His Majesty's Great Officers of State, the Lord Treasurer, Lord Chamberlain, and principal Secretaries, or the like, are not, in the capacity of subordinate magistrates, in any considerable degree the object of our laws; nor have they any very important share of Magistracy conferred upon them; except that the Secretaries of State are allowed the power of commitment in order to bring offenders to trial: 1 Leon. 70: 2 Leon. 175: Comb. 143: 5 Mod. 84: Salk. 347: Carth. 291. See this Dictionary, titles Commitment; Arrest. As to the office and authority of the Lord Chancellor and the other Judges of the superior Courts of Justice, see this Dictionary under those titles. The rights and dignities of Mayers and Aldermen, or other Magistrates of particular Corporations, are more private and strictly municipal rights, depending entirely upon the domestic Constitution of their respective franchises. The Magistrates and Officers whose rights and duties are most generally in use, and have a jurisdiction and authority dispersedly throughout the kingdom, are principally these, Sheriffs; Coroners; Justices of the Peace; Constables; Surveyors of the Highways; and Overseers of the Poor. See all those titles in this Dictionary; and 1 Comm. c. 2.

The negligence of public officers entrusted with the administration of justice, makes the offender liable to be fined, and in very notorious cases will amount to a forfeiture of the office, if it be a beneficial one. 4 Comm. 140. See further this Dictionary, titles Office; King; Parliament; Constable, &c.

MAGNA ASSISA ELIGENDA, A writ directed to the Sheriff, to summon four lawful Knights before the Justices of Assise, there upon their oaths to choose twelve Knights of the vicinage, &c. to pass

MAGNA CARTA;
The Great Charter of Liberties granted in the ninth year of King Henry III.—It is so called, either for the excellency of the laws therein contained, or because there was another Charter called the Charter of the Forest, established with it, which was the less of the two; or in regard of the great troubles in obtaining it, and the remarkable solemnity in denouncing excommunication and anathemas against the breakers thereof: Speelman calls it, Augustissimum Anglicarum Libertatum Diplomata; & Sacra Anchora.

Edward the Confessor granted to the Church and State several privileges and liberties by Charter: and some were granted by the charter of King Hen. I. Afterwards Stephen, and Hen. II. confirmed the Charter of Hen. I: and Rich. I. took an oath at his coronation to observe all just laws, which was an implicit confirmation of former Charters: King John took the like oath: this King, likewise, after a difference between him and the Pope, and being imbroiled in wars at home and abroad, granted the Charter first specifically known by the name of Magna Carta de Libertatis; but soon after broke it, and thereupon the Barons took up arms against him, and his reign ended in wars. To him succeeded Hen. III who in the 9th year of his reign granted the Magna Carta now given in our statute books. This he confirmed by a Charter granted in the 21st year of his reign. In the 37th year of his reign, after several breaches, and repeated confirmations of this Charter, King Henry III. came to Westminster-Hall, where in the presence of the Nobility and Bishops, with lighted candles in their hands, Magna Carta was read: the King all that while laying his hand on his breast, and at last solemnly swearing faithfully and inviolably to observe all things therein contained, as he was a Man, a Christian, a Soldier, and a King: then the Bishops extinguished the candles, and threw them on the ground; and every one said, Thus let him be extinguished, and stink in hell, who violates this Charter: upon which the bells were set on ringing, and all persons by their rejoicing approved of what was done.

But notwithstanding this very solemn confirmation of this Charter, the very next year King Henry invaded the rights of his People, till the Barons levied war against him; and after various success, he confirmed this Charter, and the Charter of the Forest, in the parliament of Marlbridge, and in the 52d year of his reign. The Charter of the Forest had been first granted in the 2d year, and more fully in the 9th year of King Hen. III. His son, Edw. I. confirmed both these Charters, in the 25th year of his reign, made an explanation of the liberties therein granted to the People, and added some which are new, called Articuli super Cartas: See the Statute book in the 25th and 29th of Edw. I. Magna Carta was confirmed more than thirty times afterwards. Co. Litt. 81. See this Dictionary, title Liberty.

This excellent Charter, or body of law, at that time so beneficial to the Subject, and of such great equity, is the most antient written law of the land. It is divided into thirty-eight chapters; the 1st of which, after the solemn preamble of its being made for the honour of God, the exaltation of Holy Church, and amendment of the Kingdom, &c. ordains, That the Church of England shall be free, and all eccle-
siastical persons enjoy their rights and privileges. The 2d is of the
nobility, knights-service, reliefs, &c. The third concerns heirs, and
their being in ward. The 4th directs guardians for heirs within age,
who are not to commit waste. The 5th relates to the custody of lands,
&c. of heirs, and delivery of them up when the heirs are of age.
The 6th is concerning the marriage of heirs. The 7th appoints dow-
er to women, after the death of their husbands, a third part of the
lands, &c. The 8th relates to sheriffs and their bailiffs, and requires
that they shall not seize lands for debts where there are goods, &c.
the surety not to be distrained, where the principal is sufficient. The
9th grants to London, and all cities and towns their antient liberties.
The 10th orders, that no distress shall be taken for more rent than is
due, &c. By the 11th the Court of Common Pleas is to be held in a
certain place. The 12th gives assises for remedy, on disseisin of
lands, &c. The 13th relates to assises of darrein presentment, brought
by ecclesiastics. The 14th enacts, that no Freeman shall be amerced
for a fault, but in proportion to the offence; and by the oaths of lawful
men. The 15th, no town shall be distrained to make bridges, &c. but
such as of antient times have been accustomed. The 16th is for re-
pairing of sea-banks and sewers. The 17th prohibits sheriffs, coroners,
&c. from holding pleas of the Crown. The 18th enacts, that the
King's debtor dying, the King shall be first paid his debt, &c. The
19th directs the manner of levyng purveyance for the King's
house. The 20th concerns castleward, where a knight was to be dis-
trained for money for keeping his castle, on his neglect. The 21st
forbids sheriffs, bailiffs, &c. to take the horses or carts of any person
to make carriage without paying for it. By the 22d the King is to
have lands of felons a year and a day, and afterwards the lord of the
fee. The 23d requires wears to be put down on rivers. The 24th di-
 rects the writ praecipe in capitc, for lords against tenants offering
wrong, &c. The 25th declares, that there shall be but one measure
throughout the land. The 26th, inquisition of life and member, to be
granted freely. The 27th relates to knight's service, petit-serjeantry,
and other antient tenures; (taken away together with wardship, &c.
by stat. 12 Car. 2. c. 24. See title Tenures.) The 28th directs, that
no man shall be put to his law, on the bare suggestion of another,
but by lawful witnesses. The 29th, no freeman shall be disseised of
his freehold, imprisoned and condemned, but by judgment of his peers,
or by the law of the land. The 30th requires, that merchant strangers
be civilly treated, &c. The 31st relates to tenures coming to the King
by escheat. By the 32d no freeman shall sell land, but so that the re-
sidue may answer the services. The 33d, patrons of abbeys, &c. shall
have the custody of them in the time of vacation. The 34th, a woman
to have an appeal for the death of her husband. The 35th directs the
keeping of the county-court monthly, and also the times of holding
the sheriff's torn, and view of frank-pledge. The 36th makes it un-
lawful to give lands to religious houses in Mortmain. The 37th relates
to escuew, and subsidy, to be taken as usual. And the 38th ratifies and
confirms every article of this great charter of liberties.

The following is Blackstone's summary of this celebrated Charter,
and its occasion and effect.

In King John's time, and that of his son Henry III. the rigours of
the feudal tenures and the forest laws were so warmly kept up, that
they occasioned many insurrections of the Barons or principal Feuda-

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tories; which at last had this effect, that at first King John, and afterwards his son, consented to the two famous Charters of English liberties, Magna Carta and Carta de Foresta. Of these the latter was well calculated to redress many grievances and encroachments of the Crown in the exertion of Forest Law; and the former confirmed many liberties of the Church, and redressed many grievances incident to feudal tenures, of no small moment at the time; though now, unless considered attentively, and with this retrospect, they seem but of trifling concern.

But besides these feudal provisions, care was also taken by Magna Carta to protect the subject against other oppressions, and then frequently arising from unreasonable amencements, from illegal distresses, or other process for debts or services due to the Crown, and from the tyrannical abuse of the prerogative of purveyance and pre-emption. It fixed the forfeiture of lands for felony in the same manner as it still remains; prohibited for the future the grants of exclusive fisheries; and the erection of new bridges, so as to oppress the neighbourhood. With respect to private rights, it established the testamentary power of the Subject over part of his personal estate, the rest being distributed among his wife and children: It laid down the law of Dower as it hath continued ever since: and prohibited the appeals of women, unless for the death of their husbands. In matters of public police and national concern, it enjoined an uniformity of weights and measures; gave new encouragement to commerce, by the protection of merchant strangers; and forbade the alienation of lands in mortmain. With regard to the administration of justice, besides prohibiting all denials or delays of it, it fixed the Court of Common Pleas at Westminster, that the suitors might no longer be harassed with following the King's person in all his progresses; and at the same time brought the trial of issues home to the very doors of the freeholders, by directing assizes to be taken in the proper counties, and establishing annual circuits. It also corrected some abuses incident to the trial by wager of law and of battle; directed the regular awarding of inquests, for life or member; prohibiting the King's inferior Ministers from holding pleas of the Crown, or trying any criminal charge, whereby many forfeitures might otherwise have unjustly accrued to the Exchequer; and regulated the time and place of holding the inferior tribunals of Justice, the County Court, Sheriff's Tourn, and Court-lect. It confirmed and established the liberties of the city of London, and all other cities, boroughs, towns, and ports of the kingdom. And lastly, (by which alone it would have merited the title that it bears, of the Great Charter,) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers, or the law of the land. 4 Comm. c. 33, p. 423, 4.

The following are the words of the often-quoted 29th chapter of Magna Carta, 9 Hen. III. relating to the personal liberty of Englishmen.

"Nullus liber homo castratur, vel imprisonetur, aut disseisiatur de libero tenemento suo vel libertatis vel libertis consuetudinis suis, aut uttagetur, aut colet, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittamus, nisi per legale judicium parium suorum vel per legem terrae."— illicit vendemus, nulli negabimus, aut differemus rectum vel justitiam." See further this Dictionary, title Liberty.
MAGNA PRECARIA. A great or general reap-day. And in 21 R. 2, the lord of the manor of Harrow on the Hill, in Com. Middlesex, had a custom that by summons of his bailiff on a general reap-day, then called Magna precaria, the tenant should do a certain number of days' work for him; every tenant that had a chimney, being obliged to send a man. Phil. Purvey, p. 145.

MAGNA CENTUM, The great hundred, or six score. Chart. 20 H. 2.

MAGNUS PORTUS, The town and port of Portsmouth.

MAIHEMATUS, Maimed or wounded.

MAHOMERIA, The temple of Mahomet; and because the gestures, noise, and songs there, were ridiculous to the Christians, therefore they called antic dancing, and any thing of ridicule, a momeerie. Mat. Paris.

MAIDS. Taking them away unmarried, without consent of father or mother or their guardians, is punishable by stat. 4 & 5 P. & M. c. 8. See this Dictionary, title Guardian, I. 1; Marriage; Rape.

MAIDEN ASSISES, Is when at any assisses no person is condemned to die.

MAIDEN RENTS, A noble paid by every tenant in the manor of Builth, in Com. Radnor, at their marriage, antiently given to the lord for his omitting the custom of Marcheta, (see title Marchet.) More probably a fine for licence to marry a daughter.

MAIGNAGIUM, Fr. maigene, i. e. faber avarius.] A brazier's shop; though some say it signifies a house. Lib. Rames. § 265.

MAIHEM or MAYHEM, maimium, from the Fr. mehaigne, i. e. membre mutilationem.] A Maim, wound, or corporal hurt, by which a man loseth the use of any member, proper for his defence in fight.

As if a man's skull be broke, or any bone broken in any other part of the body; a foot, hand, finger, or joint of a foot, or any member be cut off; if by any wound the sinews be made to shrink; or where any one is castrated; or if an eye be put out, or any fore-tooth broke, &c. But the cutting off an ear or nose, the breaking of the hinder teeth, and such like, was held no Maihem by the Common Law; as they were not a weakening of a person's strength, but a disfiguring and deformity of the body. Glanv. lib. 4. c. 7; Bract. lib. 3. tract. 2; Britton, c. 25: S. P. C. lib. 1. c. 41.

Maihem is accurately thus defined; the violently depriving another of the use of such of his members, as may render him the less able in fighting, either to defend himself, or to annoy his adversary. Brit. l. 1. c. 25: 1 Hawk. P. C. c. 44.

By the Antient Law of England, he that maimed any man, whereby he lost any part of his body, was sentenced to lose the like part, mem- brum pro membro, 3 Inst. 118: Brit. c. 25. But this went afterwards out of use; partly because the law of retaliation is at best but an inadequate rule of punishment, and partly because on a repetition of the offence, the punishment could not be repeated: so that by the Common Law, as it for a long time stood, Maihem was only punishable by fine and imprisonment. 1 Hawk. P. C. c. 44. § 3. Unless perhaps the offence of Maihem by castration, which all our old writers held to be felony; and this although the Maihem was committed upon the highest provocation, such as the party maimed being caught in adultery with the wife of the offender. See Bract. fo. 144; 3 Inst. 62: S. P. C. 32; H. P. C. 133.
But subsequent statutes have put the crime and punishment of Maihem more out of doubt. For first, by stat. 5 H. 4. c. 5, to remedy a mischief which then prevailed, of beating, wounding, or robbing a man, and then cutting out his tongue, or putting out his eyes, to prevent him from being an evidence against the offenders, this offence is declared to be felony, if done of malice prepense; that is, as Coke explains it, voluntarily, and of set purpose, though done upon a sudden occasion. Next in order of time, is stat. 97 H. 8. c. 6; which directs that if a man shall maliciously and unlawfully cut off the ear of any of the King's subjects, he shall not only forfeit treble damages to the party grieved, to be recovered by action of trespass at Common Law, as a civil satisfaction; but also 101. by way of fine to the King, which was his criminal amercement. The last statute, but by far the most severe and effectual of all is, stat. 22 & 23 C. 2. c. 1, called the Coventry Act; being occasioned by an assault on Sir John Coventry in the street, and slitting his nose, in revenge (as was supposed) for some obnoxious words uttered by him in Parliament. By this statute it is enacted, that if any person shall, of malice aforethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any other person, with intent to maim and disfigure him, such person, his counsellors, aiders, and abettors, shall be guilty of felony, without benefit of clergy; though no attainer of such felony shall corrupt the blood, or forfeit the dower of the wife, or lands or goods of the offender.

If a man attack another, of malice aforethought, in order to murder him, with a bill, or any such like instrument, which cannot but endanger the maiming him, and in such attack, happen not to kill, but only to maim him, he may be indicted of felony on this statute; and it shall be left to the jury on the evidence, whether there was a design to murder by maiming, and consequently a malicious intent to maim as well as kill, in which case the offence is within the statute. 1 Hawk. P. C. c. 44, § 6; Woodburn and Cooke's Ca. 6 St. Trials, 212.

By 43 G. 3. c. 58, any person who in England or Ireland, shall willfully, maliciously, and unlawfully stab, or cut any of his Majesty's Subjects, with intent in so doing, or by means thereof to murder or rob, or to maim, disfigure, or disable such of his Majesty's Subjects, or to obstruct, assist, or prevent the apprehension of the party stabbing, &c. or his accomplices, shall be guilty of Felony without clergy.—See more fully this Dictionary, title Mischief (Malicious.)

If the Maim comes not within any of the descriptions of the Act, yet it is indictable at Common Law; and may be punished by fine and imprisonment. Or an appeal may be brought for it at the Common Law, in which the party injured shall recover his damages. See post; and title Appeal of Maihem. 1 Hawk. P. C. c. 44. § 6, in n.

In a case where a gentleman had apprehended a pickpocket, an accomplice followed and gave the gentleman a wound across the nose with a knife; this was held to be a slitting of the nose, and a maiming within the statute.—Carol's Ca. Leach, 83. It has been determined that if a man deliberately watches an opportunity, and carries his intention into execution, he may be said to lie in wait; but where a person went up to a man stealing turnips, who immediately cut him in the face, this was thought not to be a lying in wait within
the statute. Tickner's Ca. Leach. 170. A wound or incision in the throat has been held not to be a Maiming. Lee's Ca. Leach, 49.

Maimhem may be punished by indictment or appeal, or a remedial action of trespass, _vi et armis_, may be brought to recover damages for the injury.

When upon an appeal of Maimhem, the issue joined is whether it be Maimhem or no Maimhem, this shall be decided by the Court, upon inspection; for which purpose they may call in the assistance of surgeons. 2 Ro. Abr. 578. And by analogy to this it is, that in an action of trespass for Maimhem, the Court (upon view of such Maimhem as the plaintiff has laid in his declaration, or which is certified by the Judges who tried the cause, to be the same as was given in evidence to the Jury) may increase the damages at their own discretion. 1 Sid. 108.

As may also be the case upon view of an atrocious battery. Hard. 408;

See 1 Wils. 5: 1 Barnes, 106: See Appeal of Maimhem.

A person who maims himself that he may have the more colour to beg, may be indicted and fined. 1 Inst. 127. And by the like reason, a person who disables himself that he may not be impressed for a soldier. _Burn. J._

MAII INDUCTIO, An antient custom for the priest and people of country villages to go in procession to some adjoining wood on a May-day morning; and return with a may-pole, boughs, flowers, garlands, and other tokens of the spring. This may-game, or the rejoicing at the coming of the spring, was for a long time observed, and still is in some parts of England: but it was condemned and prohibited in the diocese of Lincoln, by bishop Grosbeak.

MAIL, _macula._] A coat of mail, so called from the Fr. _maille_, which signifies a square figure, or the hole of a net; so _maille de haubergeons_ was a coat of mail, because the links or joints in it resemble the squares of a net. Mail is likewise used for the leathern bag wherein letters are carried by the post, from _bulga_, a budget.

MAILE, Antiently a kind of money; and silver halfpence were termed mailies. 9 Hen. 5. By indenture in the Mint, a pound weight of old sterling silver was to be coined into three hundred and sixty sterling or pennies, or seven hundred and twenty Mailes or half-pennies, or one thousand four hundred and forty farthings. _Lowndes's Ess. on Coin._ 38. See title Black-mall.

MAIMING. See Maimhem.

MAINAD, A false oath, or perjury. _Leg. Ina_, c. 34.

MAINE-PORT, _In manu portatum._] A small tribute, commonly of loaves of bread, which in some places the parishioners pay to the rector of their church, in recompence for certain tithes. _Cowell._

This mainport bread was paid to the vicar of Blyth. See _Antiq. of Nottinghamshire_, p. 473.

MAINOVRE, or _Maineuvre_, from the Fr. _main_, i.e. _manus_, and _œuvrer_, _operari._] Handy-work; some trespass commited by a man's hand. See _stat. 7 R. 2._ c. 4: _Brit._ 62: and the succeeding article.

MAINOUR, or MANOUR, or MEINOUR; from the Fr. _manier_, i.e. _manu tractare._] In a legal sense denotes the thing taken away, found in the hand of the thief who taketh away, or stealth. Thus to be taken with the Mainour, _Pl. Cor._ fol. 179, is to be taken with the thing stolen about him: And again, _fol._ 194; It was presented, that a thief was delivered to the sherif or viscount, together with the Mai-
nour; and again, fol. 186, If a man be indicted, that he feloniously stole the goods of another, where, in truth, they are his own goods, and the goods be brought into the court as the Mainour; and it be demanded of him, what he saith to the goods, and he disclaim them; though he be acquitted of the felony, he shall lose the goods. Cowell.

Thus the Court of Attachments in the Forest may attach all offenders against vert and venison, by their bodies, if taken with the Mainour, that is, in the very act of killing venison, or stealing wood, or preparing so to do; or by fresh and immediate pursuit after the act is done; else they must be attached by their goods. Carth. 79: 4 Inst. 289.

One mode of prosecution, by the Common Law, without any previous finding by a Jury, was when a thief was taken with the Mainour; that is, with the thing stolen upon him, in manus; for he might, when so detected, flagrante delicto, be brought into Court, arraigned and tried without indictment. But this proceeding was taken away by several statutes in the reign of Edward III. though in Scotland a similar process remains to this day. See 2 Hal. P. C. 149: 4 Comm. c. 23. p. 307, and title Court-Leet.

MAINPERNABLE; That may let to bail: see stat. West. 1. 3 Ed. 1. c. 15: and this Dictionary, titles Bail; Mainfrize.

MAINPERNORS, manuscaptores.] Are those persons to whom a man is delivered out of custody or prison, on their becoming bound for his appearing, &c. which, if he do not do, they shall forfeit their recognizances; and they are called Manuscaptores, because they do as it were manu capere & ductere capitivum est custodia vel prisona.

MAINPRISE, manuscapito, from the Fr. main, i.e. manus & pris, captus.] The taking or receiving of a person into friendly custody, who otherwise might be committed to prison; upon security given that he shall be forthcoming, at a time and place assigned. Thus to let one to Mainprise is to commit him to those that undertake he shall appear at the day appointed. Old Nat. Br. 42: P. N. B. 249.

Manwood makes this difference between Mainprise and Bail: He that is mainfrised is said to be at large, after the day he is set to Mainprise, until the day of his appearance; but where a man is let to bail by any Judge, &c. until a certain day, there he is always accounted by the law to be in their ward of time; and they may, if they will, keep him in prison, so that he that is so bailed shall not be said to be at large, or in his own liberty. Manwood, p. 167.

A man under Mainprise is supposed to go at large, under no possibility of being confined by his sureties or mainpernors, as in case of bail. 4 Inst. 179. Mainprise is an undertaking in a certain sum; bail answers the condemnation in civil cases, and in criminal, body for body. Sed. gu. If this, as to body for body, is now law? If it is, it is never put in force.

Mainprise may be where one is never arrested, or in prison; but no man is bailed but he that is under arrest, or in prison, so that Mainprise is more large than bail. H. P. C. 96; Wood's Inst. 582, 618. Upon a captus or exigent awarded against a man, he shall find Mainprise for his appearance: and if the defendant make default, his manuscaptors are to be amerced, &c. And a bill of Mainprise, acknowledged and put into Court, is good, though it be not inrolled. Jenk. Cent. 129.
MAINTENANCE.

There is an antient writ of Mainprise, whereby those who are bailable, and have been refused the benefit of it, may be delivered out of prison. Reg. Orig. 269: E. N. B. 230.

The writ of Mainprise, Manucaption, is a writ directed to the Sheriff, (either generally when any man is imprisoned for a bailable offence, and a bail hath been refused; or especially, when the offence or course of punishment is not properly bailable below,) commanding him to take sureties for the prisoner’s appearance, usually called Mainpernors, and to set him at large. F. N. B. 250: 1 Hal. P. C. 141: Co. Bail & M. c. 10: And see 2 Hawk. P. C. c. 15. § 30.

Mainpernors differ from bail, in that a man’s bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. Bail are only sureties that the party be answerable for the special matter for which they stipulate; Mainpernors are bound to produce him to answer all charges whatsoever. 3 Comm. c. 8. p. 128, cites Co. Bail & M. c. 3: 4 Inst. 179.

Of the writ of Mainprise little notice is taken in the late books; yet the law relating to it seems to be still in force in many cases; and consequently in such cases those who are bailable, and have been refused the benefit of the bail, may still, by virtue thereof, be delivered out of prison; (upon their finding sureties to the Sheriff that they will appear and answer to the crimes alleged against them, before the Justices, in the writ mentioned, &c.) as those who are imprisoned for a slight suspicion of felony, or indicted of larceny before the Steward of a leet, or of trespass before Justices of peace; and many other persons. 2 Hawk. P. C. c. 15. § 29.

MAINSWORN; See Male-sworn.

MAINTAINORS. Are those that maintain or second a cause depending between others, by disbursing money, or making friends, for either party, &c. not being interested in the suit, or attorneys employed therein. Stat. 19 H. 7. c. 14. See title maintenance.

MAINTENANCE, manutenentia.] The unlawful taking in hand, or upholding of a cause or person; metaphorically drawn from the succouring of a young child that learns to go by one’s hand; and in law is taken in the worst sense. See stat. 32 H. 8. c. 9. Also it is used for the buying or obtaining of pretended rights to lands. Stat. Ibid.

Maintenance is an offence that bears a near relation to Barratry; being an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money, or otherwise, to prosecute or defend it; a practice that was greatly encouraged by the first introduction of Uses. 4 Comm. c. 10. p. 134.

Maintenance is either ruralis, in the country; as where one assists another in his pretensions to lands, by taking or holding the possession of them for him; or where one stirs up quarrels or suits in the country; or it is urialis in a court of justice; where one officiously intermeddles in a suit depending in any court, which no way belongs to him, and he had nothing to do with, by assisting the plaintiff or defendant with money or otherwise, in the prosecution or defence of any such suit. Co. Litt. 368: 2 Inst. 213: 2 Rol. Abr. 115. And he who fears that another will maintain his adversary, may, by way of prevention, have an original writ grounded on the statutes prohibiting him so to do. 1 Hawk. P. C. c. 83. § 42: Reg. Orig. 182.

Who are guilty of Maintenance.—Not only he who lays out his
money to assist another in his cause, but he that by his friendship or interest saves him that expense which he might otherwise be put to, is guilty of Maintenance. Bro. Mainten. 7, 14, 17, &c. And if any person officiously give evidence, or open the evidence without being called upon to do it; speak in the cause, as of counsel with the party; retain an attorney for him, &c. or shall give any public countenance to another in relation to the suit; as where one of great power and interest says that he will spend twenty pounds on one side, &c. or such a person comes to the bar with one of the parties, and stands by him while his cause is tried, to intimidate the Jury; if a Juror solicits a Judge to give judgment according to the verdict, after which he hath nothing more to do, &c. these acts are maintenance. 1 Hawk. P. C. c. 83: 1 lust. 368.

By the Common Law, persons guilty of Maintenance are punishable.

It is said that if a man of great power, not learned in the law, tells another who asks his advice, that he hath a good title, it is Maintenance. 1 Hawk. P. C. c. 83. § 9. In case any person who is no lawyer, and that hath no interest in the cause, shall take upon him to do the part of a lawyer, this will be unlawful Maintenance. And after a suit is begun, no man may encourage either of the parties, or yield them any aid or help, by money or the like, but he hath that interest therein; but to lend another money to maintain his law-suit, is not Maintenance. 22 H. 6. 6: 19 E. 4, 3: 2 Slech. Abrid. 406. If a person hath any interest in the thing in dispute, though in contingency only, he may lawfully maintain an action relating to it; as if tenant in tail, or for life, beimpleaded, he in reversion or remainder, &c. may maintain the defence of the suit, with his own money; and a lessor may lawfully maintain his lessee. 2 Rol. Abrid. 115. A lord may justify maintaining a tenant, in defence of his title; and the tenant may maintain his lord: one bound to warrant lands, may lawfully maintain the tenantimpleaded; and a man may maintain those who are enfeoffed of lands in trust for him, concerning those lands, &c. An heir apparent, or the husband of such an heir, may maintain the ancestor in an action concerning the inheritance of the land whereof he is seised in fee; a master may maintain his servant, and assist him with money, but not in a real action, unless he hath some of his wages in his hands; and a servant by a reason of relation may maintain his master in all things, except laying out his own money in the master's suit. 1 Hawk. P. C. c. 83: 1 Inst. 368.

How punishable.—By the Common Law, persons guilty of Main-
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tenance may be prosecuted by indictment, and be fined and imprison-
ed; or be compelled to make satisfaction by action, &c. And a court of
record may commit a man for an act of maintenance done in the face of the Court. Hetl. 79: 1 Inst. 368.

By stat. Westm. 1. 3 Ed. 1. c. 25, None of the King's officers shall maintain pleas, or suits, in the King's court, for lands, &c. under covenant to have part thereof; or any profit therein. And clerks of Ju-
tices are not to take part in quarrels, or delay right, on pain of treble damages. By stat. 1 Ed. 3. st. 2. c. 14; further enforced by stat. 20 Ed. 3. c. 4, None of the King's ministers, nor no great man of the realm, by himself nor by any other, by sending of letter or otherwise, nor none other person, great or small, shall take upon them to main-
tain quarrels, to the let and disturbance of the common law. The King's counsellors, officers or servants, or any other person whatso-
ever, shall not sustain quarrels by Maintenance, upon pain to lose their offices and services, and of imprisonment and ransom. Stat. 1 R. 2. c. 4. No person whatsoever shall unlawfully maintain any suit concerning lands, or retain any person for Maintenance, by letters, rewards, or promises, under the penalty of 10l. for every offence, to be divided between the King and the prosecutor. Stat. 32 H. 8. c. 9.

What rights and titles, &c. are within the meaning of the law.—
Maintaining suits in the spiritual court, is not within the statutes re-
lating to Maintenance. Cro. Eliz. 549. But Maintenance in a Court-
baron, is as much within the purview of the stat. 1 R. 2, as Mainte-
nance in a court of Record.—A pretended right to copyhold lands sold, is within the statute of 32 H. 8. c. 9. 4 Refj. 26. If A. be owner of land in possession, and another who hath no right granteth the land; although the grant upon it be void, yet the grantor and grantee are liable to this statute. 1 Inst. 369. So where he that hath a pretended right, and none in truth, shall get the possession wrongfully, and then sell the land, &c. But a remainder-man in fee may obtain the pret-
tended title of a stranger. 1 Inst. 369: 3 Inst. 76, 77. And a person who hath good right and title, at the time of the bargain or lease, will not be within the above statute, although neither he nor his an-
cestors have been in possession thereof, &c. for a year before. Plowd. 47: Dyer, 74.

If a person make a lease to try a title in ejectment, unless it be to a great man, it is out of the statute. 1 Inst. 369: Dyer, 374. A les-
sor having good right to land, but not in possession, made a lease of it, and did not seal it on the land; it was adjudged within the stat. 32 Hen. 8. c. 9: 1 Leon. 166.

The law will not suffer any thing in action, entry, &c. to be grant-
ed over; this is to prevent titles being granted to men of substance, to oppress the meaner sort of people. 1 Inst. 214. Where a bond was given for performance of covenants in a lease, and after the cov-
'enants being broken, the lessee assigned both the lease and bond to another, and then the assignee put the bond in suit; this was held Maintenance; so it would have been if the lessee had assigned the bond and not the lease, and afterwards the covenants were broken, and the bond put in suit. Godb. 81: 2 Nels. Abr. 1142. See further on this subject, 1 Hawk. P. C. c. 83: Vin. Abr. title Maintenance: and this Dictionary, titles Champerty; Embracery, &c.

MAJORITY. The only method of determining the acts of many, is by a Majority: the major part of members of parliament enact laws,
and the majority of electors choose members of parliament; the act of the major part of any corporation, is accounted the act of the corporation; and where the majority is, there, by the law, is the whole. See Stat. 19 Hen. 7. c. 7: Stud. Compan. 25.

MAJOR, A mayor, doth not come from the Lat. major, but from an old English word mater, i. e. potestas. Cowell. See Mayor.

MAISNADA, a family, quasi mansionata. Meigne; Mon. Angl. 2. 219.

MAISON DE DIEU, A monastery, hospital, or alms-house. All hospitals, Maison de Dieu, and abiding places for poor, lame, and impotent persons, erected by the statute 39 Eliz. c. 5, or at any time since founded, according to the intent of that statute, shall be incorporated and have perpetual succession, &c. Stat. 21 Jac. 1. c. 1. See title Hospitals; Corporation.

MAISURA, A house or mansion: a farm; from the Fr. maison.

MAJUS JUS, Is a writ or law proceeding in some customary manors, in order to a trial of right of land; and the entry in the old books is thus: Ad hanc curiam venit A. B. in propria persona sua et dat Domino, &c. ad vidend. Rotul. Curiae. Et petit inquirend, utrum ijsae habeat Majus jus, in uno messagogio, &c. Et super hoc homag. dicunt, &c. Ex libro MS. Episcop. Hereford. Temp. Ed. 3.

MAKE, Facere.] To perform or execute; as to make his law, is to perform that law which he hath formerly bound himself to: that is, to clear himself of an action commenced against him, by his oath, and the oaths of his neighbours. Old Nat. Brev. 161: Kitchen, 192. This antient law seems to have been borrowed from the Feudists, who call those men that came to swear for another in this case Sacramentales. See Hotoman. The formal words used by him that made his law, were commonly these, Hear, O ye Justices, that I do not owe this sum of money demanded, neither in all nor any part thereof, in manner and form declared. So help me God, and the contents of this book. Hence probably, To make oath, is to take oath.


MALA, A male, or port-mail, a bag to carry letters, &c. Old A. B. 14.

MALANDRINUS, A thief or pirate. Walsing. 388.

MALBERGE, Mons placiti, A hill where the people assembled at a court, like our assizes; which by the Scots and Irish are called harley-hills. Du Cange.

MALECREDITUS, One of bad credit, who is suspected, and not to be trusted. Fleta, lib. 1. c. 38.

MALEDICTION, maledictio.] A curse which was antiently annexed to donations of lands made to churches and religious houses, against those who should violate their rights. Si quis autem (quod non optimus) hanc nostram donationem infringere temptaverit, fieriesse sit gelusio glaciertum flatibus et malignorum spirituum; terribiles tormentorum cruciatus evasisse non quiescat, nisi furies in regionis pasientis geminitus, et pura emendatione emenderetur. Chart. Reg. Athelstani Monast. de Wilcume, Anno 933. And we read in a charter of William de Warren, Earl of Surrey: Venientibus contra hae et desiruentibus ea, occurrat Deus in gladio ire et furoris et vindictae et Maledictionis eterna: Servantibus autem hae et defendentibus ea, occurrat.
Deus in pace, gratia et misericordia et salute eterna. Amen, Amen, Amen.

MALESWORN, More accurately perhaps Malsworn; sometimes, more corruptly still, Mainsworn. In the North signifies forsworn.

MALLETENT, Is interpreted to be a toll for every sack of wool, by statute: Nothing from henceforth shall be taken for sacks of wool, by colour of Malletent, &c. Stat. 25 Ed. 1. c. 7.

MALFEASANCE; from the Fr. malafruit, i. e. to offend.] Is a doing of evil, or transgressing. 2 Cro. 266.

MALICE, Is a formal design of doing mischief to another; it differs from hatred. 2 Inst. 42. In murder, it is Malice makes the crime. See title Homicide.

MALICIOUS MISCHIEF; See Mischief.

MALIGNANCY, To malabien; to slander; it has been interpreted to maim; See Leg. Hen. 1. cap. 11.

MALIGNUS, i. e. Diabolus.

MALO GRATO, In spite; unwillingly. Hence the French malgré, and the old English maugre. Libertatem ecclesiae, &c. malo grato stabilitur, i. e. he being unwilling. Mat. Paris, 1245.

MALT. By stat. 13 Ann. st. 1. c. 2, No Malt shall be imported on pain of forfeiting the same, and the value thereof. And by the same statute, a duty of 6d. a bushel was laid upon all Malt made in England; under the management of the Commissioners of Excise. This was continued by annual acts, and additional duties were also imposed by several acts, which were all repealed by the Consolidation-Act, Stat. 27 Geo. 3. c. 13. Under the annual Malt Acts, Malt is subject to a duty of 6d. per bushel in England, and 3d. per bushel in Scotland. By the Annual Acts, for imposing the duties on pensions, offices, &c. (passed since the Land Tax was rendered permanent, See this Dict. title Land Tax,) Malt is also subject to 92d. in England; and 43d. in Scotland. By 43 Geo. 3. c. 69, a permanent duty of 1s. 14d. is imposed on all Malt made in Great Britain; and a further duty of 2s. per bushel (during the war) was imposed by 43 Geo. 3. c. 81.

Various regulations have been from time to time made by Statute to regulate the making of Malt, and to enforce the payment, and to avoid the evasion of the duties.

Bad Malt shall not be mingled with good, under penalties. Malt is to be three weeks in making and drying; except in June, July, and August, and in those months not less than seventeen days; and half a peck of dust must be taken out of every quarter, by skreening, &c. before it shall be offered to sale, on pain of forfeiting 20d. per quarter. [This has been altered occasionally by temporary statutes. See 41 Geo. 3. G. B. c. 6: 41 Geo. 3. U. K. c. 31.] Where bad Malt is made, or bad Malt shall be mixed with good, a constable by the direction of a Justice of Peace, may search for the same, and order it to be sold at a reasonable price, &c. Stat. 2 & 3 Ed. 5. c. 10.

Malters are, once a month, to make an entry at the Excise Office of all Malt made, under the penalty of 10l. and to pay the duty in three months, or forfeit double value; and if any malters alter their steeping vessels without giving notice, or shall use any private cistern, they shall forfeit 30l. Also concealing Malt from the sight of the gau- ger, is liable to a penalty of 10s. per bushel, and wetting barley any
where but in the cistern, incurs a forfeiture of 2s. 6d. a bushel, &c. But Justices of Peace have power to mitigate the penalties and forfeitures. Stat. 12 Ann. st. 1. c. 2. See also Stats. 1 Geo. 1. st. 2. c. 2: 12 Geo. 1. c. 28: 2 Geo. 2. c. 1: 33 Geo. 2. c. 7: 1 Geo. 3. c. 3: 3 Geo. 3. c. 13. Malt made for exportation is discharged from duty; yet it must be entered, and kept secrete (separate) from other Malt, on pain of 50l. and when made shall be put into storehouses with two locks, and not delivered out without presence of an officer, &c. Stat. 12 Geo. 1. c. 4: and see stats. 33 Geo. 2. c. 7: 1 Geo. 3. c. 3. Every malster is to take out a licence, and pay for the same from 5s. to 3l. in proportion to the quantity of Malt made by him. Stat. 24 Geo. 3. c. 41.

Obstructing any officer of Excise in the execution of his duty, incurs a penalty of 10l. Stat. 1 Geo. 1. st. 2. c. 2.

See 41 Geo. 3. (U. K.) c. 91; 46 Geo. 3. c. 139: for making further regulations and increasing the penalties under 12 An. against frauds in making, wetting, or pressing Malt.

Malt may not be imported into Ireland; See Irish Act, 32 Geo. 3. c. 20; & stat. 44 Geo. 3. c. 89.—As to regulations respecting making Malt in Ireland, see 45 Geo. 3. c. 53; 46 Geo. 3. c. 57.


MALT-SHOT, Malt-Scot, Some payment for making Malt. *Sommer of Gavelkind,* p. 27.

MALVEILLES, from Fr. malvoissances. Is used in our ancient records for crimes and misdemeanours, or malicious practices. *Record.* 4 Ed. 3.


MALVEISIN, Fr. mauvais voisins, mals vicinums,] An ill-neighbor.

MALVEIS PROCURORS, Are understood to be such as use to pack Juries, by the nomination of either party in a cause, or other practice. *Artic. super Chart. capi.* 10.

MALUM IN SE, Our Law-books make a distinction between malum in se and malum prohibitum. *Vaugh.* 332. All offences at Common Law generally are malum in se; but playing at unlawful games, and frequenting of taverns, &c. are only malum prohibita to some persons, and at certain times, and not malum in se. 2 Rol. Abr. 355: See 1 Comm. *Intro* . § 2. and Christian’s notes there.

MAN, ISLE OF. An Island off the coast of Cumberland, Westmoreland, and Lancashire, in the Channel that parts Ireland from England.

This Island was a distinct territory from England, and out of the power of our Chancery, or of original writs which issue from thence. And in the case of the Earl of Derby, it was adjudged, that no man had any inheritance in this isle, but the Earl and the Bishop; and that they are governed by laws of their own, so that no statute made in England did bind there without express words, in the same manner as in Ireland, 1 Inst. 9: 4 Inst. 284: 7 Rep. 21: 2 And. 115.

According to Blackstone, it seems that this distinction is still preserved; he states that it is a distinct territory from England, and is not governed by our laws; neither doth any Act of Parliament extend to it, unless it be particularly named therein; and then an Act

It was formerly a subordinate feudatory kingdom subject to the kings of Norway; then to King John and Henry III. of England; afterward to the Kings of Scotland; and then again to the Crown of England; and at length we find King Henry IV. claiming the Island by right of conquest, and disposing of it to the Earl of Northumberland, upon whose attainder it was granted (by the name of the Lordship of Man) to Sir John de Stanley, by letters patent, 7 Hen. 4. In his lineal descendants it continued for eight generations, till the death of Ferdinando, Earl of Derby, A. D. 1594; when a controversy arose concerning the inheritance thereof, between his daughters and William his surviving brother; upon which, and a doubt that was started concerning the validity of the original patent, the Island was seized into Queen Elizabeth’s hands, and afterwards various grants were made of it by King James I. All which being expired or surrendered, it was granted afresh in 7 Jac. 1. to William Earl of Derby, and the heirs male of his body, with remainder to his heirs general: and by a private Act of that year, chap. 4. confirmed and assented to the right heirs of James Lord Stanley, seventh Earl of Derby, with a restraint of the power of alienation. On the death of James, the late Earl of Derby, A. D. 1735, the male line of Earl William failing, the Duke of Atholl succeeded to the Island, as heir-general by a female branch. In the mean time, though the title of King had long been disused, the Earls of Derby, as Lords of Man, had maintained a sort of royal authority therein, by assenting to or dissenting from laws; and exercising an appellate jurisdiction; yet though no English writ or process from the Courts of Westminster was of any authority in Man, an appeal lay from a decree of the Lord of the Island, to the King of Great Britain in council. 1 P. Wms. 329. But the distinct jurisdiction of this little subordinate royalty being found inconvenient for the purposes of public justice, and for the revenue, (it affording a commodious asylum for debtors, outlaws, and smugglers,) authority was given to the Treasury, by stat. 12 Geo. 1. c. 28, to purchase the interest of the then proprietors for the use of the Crown; which purchase was at length completed in the year 1765, and confirmed by stats. 5 Geo. 3. c. 26, 39, the first of which is called the Vesting Act, the latter the Regulating Act; whereby, in consideration of the sum of 70,000l. the whole Island and all its dependencies so granted as aforesaid, (except the landed property of the Atholl family, their manorial rights and emoluments, and the patronage of the bishopric, and other ecclesiastical benefices,) are unalienably vested in the Crown, and subjected to the regulations of the British Excise and customs.

By 45 Geo. 3. c. 123, a further compensation was made by paying to the Duke of Atholl, and the heirs general of the seventh Earl of Derby, an annuity equal to one fourth of the revenue of the Customs at that time arising within the Isle of Man: to be paid annually out of the British Consolidated Fund.

Some temporary regulations as to the trade of the Isle of Man, were made by 38 Geo. 3. c. 63; continued by subsequent acts (the last 44 Geo. 3. c. 86.) By 45 Geo. 3. c. 99; a permanent Act, “for regulating and encouraging the trade, for the improvement of the revenue and prevention of smuggling to and from the Isle of Man,”
the Commissioners of Customs in England and Scotland respectively, are empowered to grant licenses for importation from any place into the port of Douglas in the Isle of Man, of certain quantities of wine, brandy, and geneva: and from Great Britain of certain quantities of rum, tea, coffee, and tobacco, in British built vessels of not less than 50 tons burthen. § 1: & § 17, 18. By this Act certain duties were imposed on such importation into the Island, § 2, 5. Licenses may be granted for exportation of live sheep to the Island of Great Britain not exceeding 100 per Annum. § 8, 9. All regulations relating to import or export of goods are extended to the Island: and some new regulations made for preventing any illicit traffic. § 22, &c.

The Bishopric of Man or Sodor, or Sodor and Man, was formerly within the province of Canterbury, but annexed to that of York, by stat. 33 H. 8. c. 31.

The stat. 6 Geo. 3. c. 50, extends the stat. 29 Car. 2, relating to taking affidavits in the country, to the Isle of Man, and empowers the King to appoint ports therein for landing and shipping goods. The stat. 7 Geo. 3. c. 45, encourages and regulates the trade and manufactures of Man. Stat. 11 Geo. 3. c. 52, provides for repairing its harbour; and stat. 12 Geo. 3. c. 58, was passed for encouraging the herring-fishery there.

For further particulars relative to the Isle of Man, see Com. Dig. title Navigation (F. 2.)

MANA, An old woman, Gerv. of Tilb. cap. 95.

MANAGIUM, from the Fr. manage or manance, a dwelling or inhabiting.] Is a mansion-house or dwelling-place.—Concessi capi

MANBOTE, Sax.] A compensation or recompence for homicide; particularly due to the lord for killing his man or vassal. Splem. de Conc. vol. 1. p. 662. See Lambard in his Explication of Sax. Words, verbo JEstimatio, and Hoveden, in parte posterior annal. suor. fol. 344. and this Dictionary, title Bote.

MANCA, Was a square piece of gold coin, commonly valued at thirty pence; and mancusa was as much as a mark of silver, having its name from manu casa, being coined with the hand. Leg. Canut. But the manca and mancusa were not always of that value; for sometimes the former was valued at six shillings, and the latter, as used by the English Saxons, was equal in value to our half-crown. Manca sex solidis estimetur. Leg. H. 1. c. 69. Thorn in his Chronicle says, Mancusa est pondus duorum solidorum & sex denierorum; and with him agrees Du Cange, who says that twenty mancae make fifty shillings. Manca and Mancusa are promiscuously used in the old books for the same money. Sfelm.

MANCH, Is sixty shillings of silver; or seven pounds and ten shillings; and one hundred shillings of gold, or seventy-five pounds. Merch. Dict.

MANCHESTER, Its collegiate church, how visitable. Stat. 2 Geo. 2. c. 29.

MANCIPLE, mancibe.] A Clerk of the kitchen, or caterer; an officer in the Inner Temple was antiently so called, who is now the steward there, of whom Chaucer, our antient poet, sometime a student of that house, thus writes:
A Manciple there was within the Temple,  
Of which all catours might take ensample.  
This officer still remains in colleges, in the universities. Corwll.

MANDAMUS.

A Prerogative Writ, introduced to prevent disorder from a failure of justice and defect of police; and therefore ought to be used on all occasions where the law has established no specific remedy; and where in justice and good government there ought to be one. 3 Burr. 1265: See 1 Black. Ref. 352, 552: Cowp. 378.

This writ is granted to prevent a failure of justice, and for the execution of the common Law, or of a statute, or of the King's charter; but not as a private remedy to the party: unless in case of a member or officer of a corporation; if deprived of his office or franchise without sufficient cause, to whom this remedy by Mandamus is given, by stat. 9 Ann. c. 20: (see post) Hardw. 99.

A writ of Mandamus (considered as a remedy for the refusal or neglect of Justice) is, in general, a command, issuing in the King's name from the Court of King's Bench, and directed to any Person, Corporation, or inferior Court of Judicature, within the King's dominions; requiring to do some particular thing therein specified, which appertains to their office and duty; and which the Court of King's Bench has previously determined, or at least supposes to be consonant to right and justice. 3 Comm. c. 7. p. 110.

It is a high prerogative writ of a most extensive remedial nature, and may be issued in some cases, where the injured party has also another more tedious method of redress, as in the case of admission or restitution to an office; but it issues in all cases where the party hath a right to have any thing done, and hath no other specific means of compelling its performance. A Mandamus, therefore, lies to compel the admission or restoration of the party applying, to any office or franchise of a public nature, whether spiritual or temporal; to academical degrees; to the use of a meeting-house, &c. It lies for the production, inspection, or delivery of public books and papers; for the surrender of the regalia of a corporation; to oblige Bodies Corporate to affix their common seal; to compel the holding of a Court; and for an infinite number of other purposes, which it is impossible to recite minutely. But on this part of the subject it is to be particularly remarked, that it issues to the Judges of any inferior Court, commanding them to do justice according to the powers of their office, wherever the same is delayed. For it is the peculiar business of the Court of King's Bench to superintend all inferior tribunals, and therein to enforce the due exercise of those judicial or ministerial powers with which the Crown or Legislature have invested them; and this not only by restraining their excesses, but also by quickening their negligence, and obviating their denial of justice. A Mandamus may therefore be had to the Courts of the city of London, to enter up Judgment, (Raym. 214:) to the Spiritual Courts to grant an administration, to swear a churchwarden, and the like. 3 Comm. 110.

This writ is grounded on a suggestion, by the oath of the party injured, of his own right, and the denial of justice below; whereupon, in order more fully to satisfy the Court that there is a probable ground for such interposition, a rule is made, (except in some gen-
eral cases where the probable ground is manifest,) directing the party complained of to shew cause why a writ of Mandamus should not issue: and if he shews no sufficient cause, the writ itself is issued at first in the alternative either to do thus, or signify some reason to the contrary; to which a return or answer must be made at a certain day; and if the inferior Judge or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues in the second place a peremptory Mandamus to do the thing absolutely, to which no other return will be admitted but a certificate of perfect obedience and due execution of the writ. If the inferior Judge or other person makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment. But if he at the first returns a sufficient cause, although it should be false in fact, the Court of King’s Bench will not try the truth of the fact, upon affidavits; but will for the present believe him, and proceed no farther on the Mandamus. But then the party injured may have an action against him for his false return; and (if found to be false by the Jury) shall recover damages equivalent to the injury sustained; together with a peremptory Mandamus to the defendant to do his duty. 3 Comm. 111.

This writ of Mandamus is also (as has already been hinted) made, by stat. 9 Ann. c. 20, a most full and effectual remedy, in the first place, for refusal of admission where a person is entitled to an office or place in any corporation: and secondly, for wrongful renewal when a person is legally possessed. There are injuries, for which, though redress for the party interested may be had by assise or other means, yet as the franchises concern the Public, and may affect the administration of justice, this prerogative writ also issues from the Court of King’s Bench, commanding, upon good cause shewn the Court, the party complaining to be admitted or restored to his office. And the statute requires that a return be immediately made to the first writ of Mandamus; which return may be pleaded to or traversed by the prosecutor, and his antagonist may reply, take issue or demur, and the same proceedings may be had as if an action on the case had been brought for making a false return: and after judgment obtained for the prosecutor, he shall have a peremptory writ of Mandamus to compel his admission or restitution: which latter, in case of an action, is effected by a writ of restitution. 11 Kei. 79. So that now the writ of Mandamus, in cases within this statute, is in the nature of an action; whereupon the party applying and succeeding may be entitled to costs in case it be the franchise of a citizen, burgess, or freeman. Stat. 12 Geo. 3. c. 21. Also in general a writ of error may be had thereupon. 1 P. Wms. 351: 3 Comm. c. 17. p. 265.

This writ of Mandamus may also be issued in pursuance of stat. 11 Geo. 1. c. 4, in case within the regular time no election shall be made of the Mayor or other chief officer of any city, borough, or town-corporate; or being made it shall afterwards become void; requiring the electors to proceed to election, and proper Courts to be held for admitting and swearing in the magistrates so respectively chosen. 3 Comm. 265.

This is a writ of right, which the superior Court is obliged to issue, in the ordinary form, without imposing any terms on him who demands it. 3 New Abr.

But though it be a writ of right, yet the court seldom grants it,
MANDAMUS.

without giving the party to whom it is prayed, a day to shew cause why it should not issue; also such matter must be laid before the Court, by which it may appear, that the party is entitled to it. 3 New Aby. And though the Court of King's Bench be entrusted with this jurisdiction of issuing out writs of Mandamus, yet they are not obliged to do so in all cases wherein it may seem proper, but herein may exercise a discretionary power, as well in refusing as granting such writ; as where the end of it is merely to try a private right; where the granting it would be attended with manifest hardships and difficulties, &c. So even since the statute 11 Geo. 1. c. 4, for obliging corporations to elect officers, it hath been held, that this Court hath a discretionary power of refusing a writ for that purpose, but may first receive information about the election, and, if dissatisfied about the right, may send the parties to try it in an information. 2 Stra. 1003. The King v. Mayor and Burgesses of Tintagel in Cornwall.

A Mandamus lies to restore a mayor, alderman, or capital burgess of a corporation; a recorder, town-clerk, attorney turned out of an inferior Court, steward of a Court, constable, &c. 11 Ref. 99: Raym. 153: 1 Keb. 549: 2 Nels. Aby. 1148, 1149.

By some opinions it doth not lie, to restore a Common Councilman. 2 Cro. 540. But see 1 Vent. 302. A Mandamus may be had to restore a freeman; and also to admit one to the freedom of the city, having served an apprenticeship. Sid. 107. To restore a fellow of the College of Physicians, it lies; though not for a fellow of a college in the universities, if there is a visitor. 1 Lev. 19, 23.

It hath been resolved, that a Mandamus shall not be granted to restore a fellow or member of any college of scholars or physic, because these are private foundations. Carthew's Ref. 92. This writ lieth not for the deputy of an office, &c. yet he who hath power to make such deputy, may have it: Mod. C. 18: 1 Lev. 306; and he may have it to admit his deputy. Stra. 893, 5. It lies not, generally, to elect a man into any office; nor for a clerk of a company, which is a private office; or to restore a barrister expelled a society; a proctor, &c. 2 Lev. 14, 18: 2 Nels. 1150, 1151; nor for a vestry clerk, 5 Term Ref. K. B. 713. But a Mandamus may lie to remove persons as well as to restore them; by virtue of any particular statute, or breach thereof.

4 Mod. 233.

If Justices of Peace refuse to admit one to take the oaths, to qualify himself for any place, &c. Mandamus lies: so to a bishop or archdeacon, to swear a churchwarden; to grant a probate of a will, and to admit an executor to prove a will, or an administrator: to a rector, vicar, or churchwarden, to restore a sexton. Wood's Inst. 568. Mandamus lieth to admit a man to take the oath of allegiance, &c. and subscribe according to the act of toleration, in order to be qualified to be a dissenting minister. Mod. Cas. 310. Also a Mandamus will lie to the bishop, to grant a licence for a parson to preach, where it is denied, and he is in orders for it: and this writ lies to restore a person to university degrees. 2 Ld. Raym. 1206, 1334. But after a man is restored on a peremptory Mandamus, he may be displaced again, for the same matters for which he was before removed, and others.

Th. 1263.

The general jurisdiction and superintendence of the King's Bench, over all inferior Courts, to restrain them within their bounds, and to compel them to execute their jurisdiction, whether such jurisdiction...
arises from a modern charter, subsists by custom, or is created by
act of parliament, yet, being in subisdium justitie, is now exercised in
a vast variety of instances. But though these kind of writs are daily
awarded to Judges of Courts, to give judgment, or to proceed in the
execution of their authority, yet they are never granted to aid a ju-
risdiction, but only to enforce the execution of it; nor are they ever
granted where there is another proper remedy. Dict.

To enumerate, with any degree of particularity, the various offices
and situations to which a person may be admitted or restored by this
writ, would take up more space than the nature of our work allows.
The following, however, is a summary of so general a nature as,
with what has already been said, may give an idea of the extensive
use and nature of this remedy. It has been granted to admit and re-
store, a Mayor, Alderman, Jurat, Common Council-man, Recorder,
High Steward, Town Clerk, Livery-man, Member of the Court of
Assistants, Burgess, Bailiff, Serjeant, or Freeman of a Company or a
Corporation; and it lies where the persons complaining have the
right, though they never had the possession: and to admit one in re-
version after the death of another. It lies for any antient office, be-
ing a freehold, and for every public officer who has no other remedy
to be restored, as Steward of a Court Leet or Court Baron, Attorney
of any Court, Treasurer of a Public Company, Scavenger, Clerk of
the Peace, Master or Fellow of a College, where no visitor is ap-
pointed, Chaplain, Fellow of the College of Physicians, Master, Un-
der-Master or Usher of a School, Registrar or Deputy-Registrar in
the Ecclesiastical Court, Sexton or Parish Clerk, Clerk to Commiss-
ioners of Land Tax, Ale-taster, Director of a chartered Company,
Prebendary, Constable, Churchwarden, Overseer, Surveyor of the
Highways, Dissenting Minister, Teacher and Pastor, Curate, &c. &c.
See Com. Dig. title Mandamus. (A.)

A Mandamus will be granted to inferior jurisdictions of all kinds,
to compel them to do their duty; as to a Lord, to hold a Court Baron;
to a Steward and Homage of a Manor, to hold Courts; to enforce the
attendance of tenants of a Manor, to make a Court; to Justices of
Peace, to grant warrants, make rates, swear officers, &c. See Com.
Dig. sub. sub.—To a Corporation to proceed to election. 1 East's
683, 6.

Two writs of Mandamus may be granted on the application of dif-
f erent parties for the same election. Hardw. 178. But the Court will
not grant cross or concurrent writs without special reasons. 2
Burr. 782.

On application for a Mandamus to be restored, the party applying
must shew that he has complied with all the requisites, to give him
a prima facie title; because, if properly admitted, he may bring an
action for money had and received for the profits. 3 Term Rep. 578.

Although the cases are so various and numerous in which writs of
Mandamus have been granted, yet the instances in which they have
been refused are almost equal in number; and the cases are some-
times contradictory, particularly as relates to Fellows of Colleges,
and some other contested cases; which, in fact, have frequently been
governed by so many private circumstances as scarcely to afford
precedents.

One general rule is, that a Mandamus does not lie for a private
office, as Steward of a Court Baron, Proctor in the Spiritual Court, Clerk of a private Company in London, on the ground generally of a private jurisdiction over such officers. It does not lie to any of the Inns of Court to compel them to admit a person to the bar; the only appeal in this case being to the twelve Judges. It lies to a visitor of a college only, under special circumstances, as to hear an appeal and give some judgment. It does not lie for an office not known, unless it be specially described. See Com. Dig. title Mandamus. (B.)

A Mandamus lies to the Lord and Steward of a Manor, to admit one to a copyhold, who has a prima facie legal title, in order to enable him to try his right.—But this only on payment of the fine or fines due by custom. 6 East's Rep. 431, 2.

It does not lie to restore a person where it is confessed he was rightly removed, though he had no notice at the time to appear and defend himself. Compi. 523. Nor to restore to an office, though the party was irregularly suspended; if it appear by his own shewing that there was good ground for the suspension if the proceedings had been regular. 2 Term Rep. K. B. 177. See also 8 Term Rep. 352, and 1 East's Rep. 562. If a rule to shew cause is obtained, and it appears in affidavits that the case was not proper for a Mandamus, the Court may discharge the rule with costs. 1 Term Rep. 296.

Where an action will lie for a complete satisfaction equivalent to a specific relief, a Mandamus will not lie. It will not therefore be granted against the Bank to transfer stock, because a special action of assumpsit will lie. Doug. 526, (508,) and see 1 Term Rep. K. B. 396.

If an election is doubtful, it should be tried by information in the nature of a Quo Warranto, not on Mandamus. 3 Burr. 1452.

A Mandamus will not be granted to a ministerial officer, to do an act, for the neglect of which, he can be otherwise punished. 5 Term Rep. K. B. 364, 546: 6 Term Rep. 168.

A writ of Mandamus may not be directed to one person, or to a Mayor and Aldermen, &c. to command another to do any act; it must be directed to those only who are to do the thing required, and obey the writ, 2 Salk. 446, 701. Under stat. 11 Geo. 1. c. 4, it may be granted to proceed to the election of any annual officer, as well as of the Mayor or head officer. 2 Term Rep. 732.

This writ is not to be tested before granted by the Court; and if the corporation to which the Mandamus is sent, be above forty miles from London, there shall be fifteen days between the day of the teste and the return of the first writ of Mandamus, taking both days inclusive; but if but forty miles, or under, eight days only; and the alias and pluries may be made returnable immediate; also at the return of the pluries, if no return be made, and there is affidavit of the service, attachment shall go forth for the contempt, without hearing counsel to excuse it. 2 Salk. 434: Stra. 407.

A motion was made for an attachment, for not returning an alias Mandamus; and, by Holt, Chief Justice, in case of a Mandamus out of Chancery, no attachment lies till the pluries, for that it is in nature of an action to recover damages for the delay; but upon a Mandamus out of B. R. the first writ ought to be returned, though an attachment is not granted without a peremptory rule to return the writ, and then it goes for the contempt, &c. 2 Salk. 429.

There is to be judgment upon the return of the writ, before any
action on the case can be brought for a false return of a Mandamus. 2
Lev. 238. Returns upon writs of Mandamus must be certain for the
Court to judge upon. 11 Rep. 99, and must be made by those to whom
the writ is directed. See Com. Dig. title Mandamus. (D.)
If the return consists of several independent matters not inco-
sistent with each other, but part of them good in law and part bad:
the Court may quash the return as to such part only as is bad, and put
the prosecutor to plead to or traverse the rest. 2 Term Rep. 456, and
see 5 Term Rep. 66.
A Return has been made to a Mandamus, the defendant can-
not make any objection to the writ itself. 5 Term Rep. 66.
A case has happened, and others of the like kind may happen,
where an action could not be brought, nor the return pleaded to, or
traversed under the statute 9 Ann. c. 20. In such case it may perhaps
be advisable to move the Court of King’s Bench, for an information
against the person or persons making a false return, or such a return
as will lay the party, who moved for the Mandamus, under the dilem-
ma mentioned above. Rex v. Pettinard et al. Justices of Peace for
Surrey, 4 Burr. 2452.
It has been held, that several persons cannot have one Mandamus;
nor can several join in an action on the case for a false return. 2
Salk. 433. But there has been an instance to the contrary, where the circum-
stances of the case were such, that it required a variety of per-
sons to join in the application, viz. on the highway acts, to compel
the Justices to nominate a surveyor out of the list returned by the in-
habitants. 4 Burr. 2452. For further matter on this subject see Vin.
Abr. and Com. Dig. title Mandamus; and also this Dictionary, title
Quo Warranto.
Although by stat. 9 Ann. c. 20. § 2. the prosecutor of a Mandamus,
to which there is a return, and issue taken on the facts therein, had
an option to try the question in the same county, in which he might
have brought an action for a false return; yet if all the material fac-
ts are alleged in one county, and issue taken thereon there, he cannot
issue the venire facias into another county, though he might have ori-
ginally alleged the facts there, and have there brought his action for
a false return. 1 East’s Rep. 114.
Mandamus, Was also a writ that lay after the year and day, (where
in the mean time the writ, called diem clausit extremum, had not been
sent out,) to the Escheator, on the death of the King’s tenant in ca-
pite, &c. commanding him to inquire of what lands holden by knight’s
service, the tenant died seised. F. N. B. 561; Dy. 209. pl. 19: 248.
pl. 81; Lamb. 35.
Mandamus was likewise a writ or charge to the Sheriff, to take in-
to the hands of the King all the lands and tenements of the King’s
widow, that, against her oath formerly given, marrieth without the
King’s consent. R. G. fol. 293.
MANDATORY, Mandatarius.] He to whom a charge or com-
mandment is given. Also he that obtains a benefice by Mandamus.
MANDATE, Mandatum.] A commandment judicial of the King
or his Justices to have anything done for despatch of justice; where-
of there is a great variety in the table of the Register Judicial; verbo
Mandatum. The Bishop of Durham’s Mandates to the Sheriffs are
mentioned in stat. 31 Eliz. c. 9. Cowell, edit. 1727.
MANDATI DIES. Mandle or Munday Thursday, the day before
Good Friday, when they commemorate and practise the commands of our Saviour in washing the feet of the poor, &c. And our Kings of England, to shew their humility, long executed the antient custom on that day, of washing the feet of poor men, in number equal to the years of their reign, and giving them shoes, stockings, and money.

MANDATO, PANES DE; Loaves of bread given to the poor upon Maunday Thursday. Chartulari Glaston. MS. fol. 29.

MANENTES, was antiently used for tenentes or tenants; qui in solo alieno manent; and it was not lawful for them or their children to depart without leave of the Lord. Concil. Synodal. opud Cloversho. anno 822.

MANGONARE, To buy in the market. Leg. Ethelred. c. 24.

MANGONELLUS, A warlike instrument made to cast small stones against the walls of a castle. Cowell.

It differs from a petrard as follows, viz.

Interre grossos petraria mittit ad intus.

Assidue lafides mangonellus que minores.


MANIPULUS, An handkerchief which priests always had in their left hands. Blount.

MANNER, from the Fr. manier, or mainer, i. e. manu tractare.] To be taken with the Manner, is where a thief having stolen any thing, is taken with the same about him, as it were in his hands; which is called flagrante delicio. S. P. C. 179. See Mainour.

MANNING, mano pera.] A day's work of a man; and in antient deeds there was sometimes reserved so much rent, and so many mannings.

MANNIRE, To cite any one to appear in court, and stand in judgment there: it is different from bannire; for though both of them signify a citation, one is by the adverse party, and the other by the Judge. Leg. H. 1. c. 10. Du Cange.

MANNOPUS, mano pera.] Goods taken in the hands of an apprehended thief. Cowell.

MANNUS, A horse, a pad or saddle horse. In the laws of Alfred, we find man theof, for a horse-stealer. Cowell. See Mantheof.

MANOR, manerium.] Seems to be derived of the Fr. manoir, habitatio, or rather from manendo, of abiding there, because the Lord did usually reside there. It is called manerium, quasi manarium, because it is laboured by handy work: it is a noble sort of fee, granted partly to tenants for certain services to be performed, and partly reserved to the use of the Lord's family, with jurisdiction over his tenants for their farms. That which was granted out to tenants, we call tenementates; those reserved to the Lord, were dominicates: the whole fee was termed a Lordship, of old a Barony; from whence the Court, that is always an appendant to the Manor, is called The Court-baron. See Skene de verb. signif.

Touching the original of Manors, it seems that in the beginning, there was a circuit of ground, granted by the King to some Baron or man of worth, for him and his heirs to dwell upon, and to exercise some jurisdiction more or less within that compass, as he thought good to grant; performing such services, and paying such yearly rent for the same, as he by his grant required; and that afterwards this great man parcelled his land to other meaner men, enjoining such services and rents as he thought good, and so, as he became tenant
to the King, the inferiors became tenants to him. See Perkin's Reservation, 670; Horne's Mirror of Justices, lib. 1. cap. de Roy Alfred; Fulbeck, fol. 18. And according to this our custom all lands holden in fee throughout France were divided into fieffs and arriere fieffs, whereof the former were such as were immediately granted by the King; the second such as the King's feudatories did grant to others, Gregoriu Synagmu. lib. 6. c. 5. num. 3.

In these days, a Manor rather signifies the jurisdiction and royalty incorporeal, than the land or site. For a man may have a Manor in gross, (as the law termeth it,) that is, the right and interest of a court-baron, with the perquisites thereunto belonging; and another or others have every foot of the land. Kitchen, fol. 4. Broke, hoc titulol per totum. Breston, lib. 4, cap. 31. n. 3, divideth Manerium into capi- tate & non capitale. See Fee.

A Manor may be compounded of divers things, as of a house, arable land, pasture, meadow, wood, rent, advowson, court-baron, and such like; and this ought to be by long continuance of time beyond the memory of man; for at this day a Manor cannot be made, because a court-baron cannot now be made, and a Manor cannot be without a court-baron, and suitors or freeholders, two at least; for if all the freeholds except one escheat to the Lord, or if he purchase all except one, there his Manor is gone causa quâ supra, although in common speech it may be so called. Cowell. Vide Ca. Lit. 58, 108: Lit. 73: 2 Rel. Abr. 121.

By a grant of the demesnes and services, the Manor passeth; and by grant and render of the demesnes only, the Manor is destroyed, because the services and demesnes are thereby severed by the act of the party; though it is otherwise, if by act of law, as by partition. 6 Rep. 65. There are two coparceners of a Manor; the demesnes are assigned to one, and the services to the other, the Manor is gone; but if one die without issue, and the Manor descends to her who had the services, the Manor is revived again, for the severance was by act in law. 1 Inst. 122: 8 Rep. 79: 3 Salk. 25, 40.

A new Manor may arise and revive by operation of law. 1 Leon. 204.

It may contain one or more villages or hamlets; or only great part of a village, &c. And there are capital Manors, or Honours, which have other Manors under them, the Lords whereof perform customs and services to the superior Lords. 2 Inst. 67: 2 Rot. Abr. 72. See title Honour. There may be also customary Manors, granted by copy of court-roll, and held of other Manors. 4 Rep. 26: 11 Rep. 17. But it cannot be a Manor in law, if it wanteth freehold tenants; nor be a customary Manor, without copyhold tenants. 1 Inst. 58. Lit. 73: 2 Rot. Abr. 121. But it is said, if there be but one freehold tenant, the seigniory continues between the Lord and that one tenant. 1 And. 257: 1 Nels. Abr. 524. The custom remains, where tenements are divided from the rest of the Manor, the tenants paying their services; and he who hath the freehold of them, may keep a court of survey, &c. Cro. Eliz. 103. See title Copyhold.

Manors, says Blackstone, are in substance as antient as the Saxon Constitution, though perhaps differing a little in some immaterial circumstance from those that exist at this day. Co. Copy. § 2, 10.

The tenemental lands of antient Manors were, from the different modes of tenure, distinguished by different names. First, book-land,
or charter-land, which was held by deed under certain rents and free-
services, and in effect differed nothing from free socage lands. Co.
Cop. § 3. And from hence have arisen most of the freehold tenants
who hold of particular Manors, and owe suit and service to the same.
The other species was called folk-land, which was held by no assur-
ance in writing, but distributed among the common folk, or people,
at the pleasure of the Lord, and resumed at his discretion; being in-
deed land held in the villenage. See this Dictionary, title Villenage.
The residue of the Manor being uncultivated, was termed the Lord’s
Waste, and served for public roads, and for common of pasture to the
Lord and his tenants.

Manors were formerly called Baronies, as they still are Lordships;
and each Lord or Baron was empowered to hold a domestic Court,
called the Court-baron, for redressing misdemeanors and nuisances
within the Manor, and for settling disputes of property among the
tenants. This Court is an inseparable ingredient of every Manor;
and if the number of suitors should so fail as not to leave sufficient
to make a Jury or Homage, that is, two tenants at the least, the Manor
itself is lost.

In the early times of our legal constitution, the King’s greater
Barons, who had a large extent of territory held under the Crown,
granted out frequently smaller Manors to inferior persons, to be
helden of themselves, which do therefore now continue to be held
under a superior Lord, who is called in such cases the Lord para-
mount over all these Manors: and his seigniory is frequently termed
an Honour, not a Manor, especially if it hath belonged to an antient
feudal Baron, or hath been at any time in the hands of the Crown.
(See this Dictionary, title Honour.) In imitation whereof, these in-
ferior Lords began to carve out and grant to others still more minute
estates, to be held as of themselves, and were so proceeding down-
wards in infinitum; till the superior Lords observed, that by this me-
ethod of subinfeudation they lost all their feudal profits, of wardships,
marriages, and escheats, which fell into the hands of these mesne or
middle Lords, who were the immediate superiors of the terre-tenant,
or him who occupied the land; and also that the mesne Lords them-
selves were so impoverished thereby, that they were disabled from
performing their services to their own superiors. This occasioned,
first, that provision in the 32d cap. of Magna Curia, 9 Hen. 3; (which
is not to be found in the first charter granted by that prince, nor in
the Great Charter of King John;) that no man should either give or
sell his land, without reserving sufficient to answer the demands of
his Lord; and afterwards the statute of Westm. 3, or Quia emptores, 18
Ed. 1. c. 1; which directs that upon all sales or feoffments of lands,
the feoffee shall hold the same not of his immediate feoffor, but of
the chief Lord of the fee of whom such feoffor himself held it. But
these provisions not extending to the King’s own tenants in capite, the
like law concerning them is declared by the statutes of prerogative
regis, 17 El. 2. c. 6; 34 El. 3. c. 15; by which last all subinfeudations,
previous to the reign of King Edward I. were confirmed: but all sub-
sequent to that period were left open to the King’s prerogative. (See
this Dictionary, title Tenures.) From hence it is clear, that all Manors
existing at this day, must have existed as early as King Edward I. for
it is essential to a Manor, that there be tenants who hold of the Lord;
and by the operation of these statutes, no tenant in capite since the
accession of that prince, and no tenant of a common Lord since the statute of Quia em/itores, could create any new tenants to hold of himself. 2 Comm. c. 6, pt. 90—92.

If a Lord of a Manor convey a customary estate, to the tenant, he cannot reserve to himself the antient services: for the tenant, by reason of the statute Quia em/itores must then hold of the superior Lord. 4 Term Rep. K. B. 443.

Where the Lord of a customary Manor by his deed, made since the statute of Quia em/itores, granted to his customary tenant, who then held by the payment of certain customary rents, and other services, that in consideration of a 61 penny fine, (being 61 years' rent,) he, the Lord, ratified and confirmed to the tenant, and his heirs, all his customary and tenant-right estates, with the appurtenances, &c. and granted that the tenant and his heirs should be thenceforth freed, acquitted, exempted, and discharged from the payment of all rents, fines, heriots, &c. dues, customs, services, and demands, at any time thereafter happening to become due in respect of the tenancy; except 1d. yearly rent, and also excepting and reserving suit of court, with the service incident thereunto; and saving and reserving all royalties, escheats, and forfeitures, and all other advantages and emoluments belonging to the seigniory, so as not to prejudice the immunities thereby granted to the tenant; and also granted liberty to cut timber, and to sell or lease, &c. without licence: the Court of K. B. held, that such confirmation to the tenant, of his customary tenant-right estates (freed, &c. from all rents and services, except, &c.) was tantamount to a release of those rents and services, not specifically excepted; and that by virtue thereof, the customary tenement became frank-fee, or held in free and common socage; and that the old customary estate, which before was not devisable, was extinguished, and became devisable by the statute of wills. Such customary estates, which are peculiar to the north of England, are not freehold, but seem to fall under the same general considerations as copyholds; alienable by bargain and sale, and admittance thereon, and not holden at the will of the Lord. 4 Inst. 271.

**MANSE, mansa.]** An habitation, or farm and land. Spelm. See Mansum.

**MANSER, A bastard. Cowell.**

**MANSION, mansio; à manendo.]** Among the antient Romans, was a place appointed for the lodging of the prince, or soldiers in their journey; and in this sense we read primum mansionem, &c. It is with us most commonly used for the Lord's chief dwelling-house within his fee; otherwise called the capital messuage, or manor-place. Skene.

Some say it is a dwelling of one or more houses without a neighbour: see Bract. lib. 5, p. 1: and mansion-house is taken in law for any house or dwelling of another; in cases of committing burglary, &c. 3 Co. Inst. 64.

The Latin word mansio, according to Sir Edward Coke, seems to be a certain quantity of land: hidæ vel mansio, and mansa, are mentioned in some old writers and charters. Fleta, lib. 6. And that which in antient Latin authors was termed hidæ, was afterwards called mansis.

**MANS LAUGHTER;** See title Homicide.

**MANS THEALING;** See title Kidnapping.
MAN 233

MANSUM CAPITALE, The manor-house or mense, or court of
the Lord. Kennet's Antiq. 150.

MANSURA and MASURA, are used in Domesday and other
untimely records, for Mansiones vel habitacula villicorum. Cowell.

MANSUS, Anticently a farm. Sel. of Tithe, 62.

MANSUS PRESBYTERI, The manse or house of residence of
the parish priest; being the parsonage or vicarage-house. Paroch.
Antiq. 431.

MANTHEOF, from the Lat. mannus, a nag, and Sax. theoff; i.e.

MANTILE: A long robe; from the Fr. word manteau; mentioned

MANUALIA BENEFICIA, Were the daily distributions of meat
and drink to the canons and other members of cathedral churches,
for their present subsistence. Lib. Statutor. Eccles. Sancti Pauli
London. MS.

MANUALIS OBEDIENTIA, Is used for sworn obedience, or
submission upon oath.

MANUCAPTIO, A writ that lies for a man taken on suspicion of
felony, &c. who cannot be admitted to bail by the Sheriff, or others
having power to let to mainprise. F. N. B. 249. See Mainprise.

MANUAL, manuialis.] Signifies what is employed or used by
the hand, and whereof a present profit may be made; as such a thing in
the Manual occupation of one, is where it is actually used or employ-
ed by him. Staundf. Prerog. 54.

MANUFACTURES AND MANUFACTURERS. These are regulated
by a vast variety of statutes adapted to the particular nature of each
business to which they are applied, to guard against the frauds and
negligence of journeymen and workmen concerned therein. The
following, here noticed, contain the most general provisions. For a
reference to the several statutes relative to every particular branch,
see this Dictionary under the several appropriate titles.

By stat. 3 Ed. 4. c. 4, the Master and Wardens of every craft in
every city, town, and village, and the Mayor or Bailiff of every such
city, &c. are empowered to search at fairs and markets, shops open,
and ware-houses, all such wares pertaining to their proper crafts
which shall be made within England: and if such wares be not law-
ful and duly wrought, to seize them as forfeit.

By stat. 1 Ann. st. 2. c. 18, made perpetual by stat. 9 Ann. c. 30, if
any person employed in the working up the woollen, linen, fustian,
cotton, or iron manufactures shall embezzle or purloin any materials
which he shall be intrusted with to work, or if any person shall re-
scribe such embezzled materials, the offender shall forfeit double the
value to the poor, or be committed to the House of Correction, and
there whipped and kept to hard labour for fourteen days. This statute
was further enforced by stat. 13 Geo. 2. c. 8, which made a second
offence liable to a forfeiture of four times the value. These provi-
sions were however found insufficient.

By stats. 22 Geo. 2. c. 27: 17 Geo. 3. c. 56. any person employed in
working up any woollen, linen, silk, leather, or iron manufacture, who
shall purloin, embezzle, secrete, sell, pawn, exchange, or unlawfully
dispose of any of the materials, shall be committed to the House of
Correction for not less than fourteen days, nor more than three

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months, and whipped; and for a second offence to be committed, for not less than three months nor more than six, and whipped. The receiver to forfeit from 40l. to 20l. or be whipped; and for a second offence from 100l. to 50l. or be whipped. These statutes also empower Justices to grant warrants to search for embezzled materials, and to seize them, giving an opportunity to officers to prove the property, and also to compel workmen entrusted with materials, to work up the same within eight days, and to prevent their engaging in more than one service at a time. The provisions in stat. 12 Geo. 1. c. 34, against unlawful clubs and societies of wool-combers, &c. to regulate the trade, are by the stat. 22 Geo. 2. c. 27, extended to dyers, hot-pressers, hat-makers, and all journeymen in the manufactures of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, or leather. The said stat. 17 Geo. 3. c. 56, also contains many other provisions against receivers of embezzled manufactures, and prohibits journeymen dyers in particular from receiving goods to dye without the consent of their employers.

By the said stat. 1 Ann. st. 2. c. 18, all payments to workmen in the manufactures therein mentioned, shall be by lawful coin, and not by cloth, victuals, or commodities; and this humane provision against oppression and injustice, is extended by stat. 13 Geo. 2. c. 8, to the manufacturers in leather; and by stat. 19 Geo. 3. c. 49, to the lace-manufacturers also.

By the said stat. 1 Ann. st. 2. c. 18, all wool delivered out to be wrought up shall be delivered with the declaration of the true weight; and all wages, demands, and defaults of labourers in the woollen, linen, fustian, cotton, and iron manufactures, shall be heard and determined by two Justices of Peace, with an appeal to the Quarter Sessions.

To prevent the destruction of our home manufactures by transporting and seducing our artists to settle abroad, it is provided by stat. 5 Geo. 1. c. 27, that if any entice or seduce any artificer in wool, iron, steel, brass, or other metal, clockmaker, watchmaker, or other artificer; such seducer shall be fined 100l. and be imprisoned three months; and for the second offence shall be fined at discretion, and be imprisoned a year; and the artificers so going into foreign countries, and not returning, within six months after warning given them by the British Ambassador where they reside, shall be deemed aliens, and forfeit all their lands and goods, and shall be incapable of any legacy or gift. By stat. 23 Geo. 2. c. 13, the seducers of the artists above specified, or of those in mohair, cotton, or silk, incur for the first offence a forfeiture of 500l. for each artificer contracted with to be sent abroad, and imprisonment for 12 months; and for the second 1000l. and are liable to two years' imprisonment: and by the same statute, connected with stat. 14 Geo. 3. c. 71, If any person export any tools or utensils used in the silk, linen, cotton, or woollen manufac-
tures; (except wool-cards to North America, stat. 15 Geo. 3. c. 5;) he forfeits the same, and 200l. and the captain of the ship, having knowledge thereof, 100l.; and if any captain of a King's ship, or officer of the Customs, knowingly suffers such exportation, he shall forfeit 100l. and his employment; and is for ever made incapable of bearing any public office; and every person collecting such tools or utensils in order to export the same, shall, on conviction at the assises, forfeit such tools, and also 200l. By stat. 21 Geo. 3. c. 37, if any person
should put on board any ship, not bound to any place in Great Britain or Ireland, or shall have in his custody, with intent to export, any engine, tool, or implement used in the woollen, cotton, linen, or silk manufactures, he shall forfeit the same, and also the sum of 200l. and shall be imprisoned 12 months, and till the forfeiture is paid. And every captain and Custom-house officer who shall knowingly receive such an article, or take an entry of it, shall forfeit 200l. By stat. 22 Geo. 3. c. 60, if any person shall entice or encourage any artificer employed in printing calicoes, cottons, muslins, or linens to leave the kingdom, he shall forfeit 500l.: and be imprisoned one year: and persons who export, or attempt to export, any engines or instruments used in that manufacture, shall forfeit 500l.: and captains of ships and Custom-house officers conniving at these offences forfeit 100l. and become incapable of holding any office under the Crown. By stats. 25 Geo. 3. c. 67: 26 Geo. 3. c. 89, persons who attempt to export any instruments, specified by name in those acts, (the latter of which particularly regulates the exportation thereof to the West Indies,) shall forfeit 200l. and be imprisoned one year: and captains and Custom-house officers conniving at the offence are subject to the same penalty, and become incapable of exercising any public employment.

MANUMISSION, manumission.] The freeing a villain or slave out of bondage; which was formerly done several ways: Some were manumitted by delivery to the sheriff, and proclamation in the county, &c. others by charter; one way of Manumission was for the lord to take the bondman by the head, and say, I will that this man may be free, and then shoving him forward out of his hands. And there was a Manumission implied, when the lord made an obligation for payment of money to the bondman, or sued him where he might enter without suit, &c. The form of manumitting a person in the time of Will. 1. called The Conqueror, is thus set down.—Si quis velt seruvm suum liberum facere, tradat eum viccomita per manum dextram in fileno comitatu, et quietum illum clamare debet a juge servitutis suae per manumissionem, et ostendet ei liberas portas et vias, et tradat illi libera arma, scilicet lanceam et gladium, et deinde liber homo efficiat. Lamb. Archai. 126. See title Vileins.

MANU OPERA, Stolen goods taken upon a thief, apprehended in the fact. See Mannatus; Mainour.


MANUPES, A foot of full and legal measure. Cowell.

TO MANURE, colo, melioro.] To till, plough, or manure land. Lit. Dict.

MANUS, Antiently used for the person taking an oath, as a compurgator. And it often occurs in old records; Teritia, quarta, &c. manu jurare; that is, the party was to bring so many, to swear with him, that they believed what he vouched was true; and in case of a woman accused of adultery; Mutier hoc neganti jurato sexta manu exitit hactiens, i. e. she was to vindicate her reputation upon the testimony of six compurgators. Reg. Eccl. Christ. Cant. If a person swore alone, it was proprium manu et unica. The use of this word came probably from laying the hand upon the New Testament, on taking the oath.
MANUS MEDLE & INFIMÆ HOMINES, Men of a mean condition, of the lowest degree. Radulphus de Diceto sub annis 1112, 1138, 1185.


MAN-WORTH, The price or value of a man's life or head; for of old every man was rated at a certain price, according to his quality, which price was paid to the lord in satisfaction for killing him. Cowell, See Manbote.

MAPS AND PRINTS. See Stat. 3 Geo. 2. c. 13; and this Dictionary, title Literary Property.


MARCA: See Mark.


MARCH, Earldom of, grants of its lands are to be under the Great Seal. Stat. 4 Hen. 7. c. 14.

MARCHERS or LORDS MARCHERS, Were those noblemen that lived on the Marches of Wales or Scotland: who in times past (according to Camden) had their laws, and potestatem vita, &c. like petty Kings; which are abolished by stat. 27 H. 3. c. 26. See also stat. 1 Ed. 6. c. 10; and this Dictionary, title Wales. In old records the Lords Marchers of Wales were styled Marchianes de Marchia Wallia.

MARCHES, marchia, from the Germ. march, i. e. times; or from the Fr. marque signum: being the notorious distinction between two countries, or territories.] The limits between England and Wales, or Scotland, when those were considered as enemies' countries; which last are divided into West and Middle Marches. See stats. 4 Hen. 5. c. 7: 22 Ed. 4. c. 8: 24 Hen. 8. c. 9. There was formerly a Court called the Court of the Marches of Wales, where pleas of debt or damages, not above the value of fifty pounds, were tried and determined; and if the Council of the Marches held plea for debts above that sum, &c. a prohibition might be awarded. Cro. Car. 384.

MARCHET, marchetum.] Consuetudo pecuniaria, in mancipiorum fialibus maritandis. Bract. lib. 2. cap. 8. This custom, with some variation, is said to have been observed in some parts of England and Wales, and also in Scotland, and the isle of Guernsey: In the manor of Dinevor, in the county of Carmarthen, every tenant at the marriage of his daughter paid ten shillings to the lord, which in the British language is called Gwabr Merched, i. e. a maid's fee. The custom for the lord to lie the first night with the bride of his tenant is asserted to have been common in Scotland, and the North of England; it was said to be abrogated by Malcolm the Third, at the instance of his Queen: and instead thereof a mark was paid to the lord by the bridegroom: from whence it is denominated mercheta mulierum. Sir David Dalrymple, Lord Hales, has annexed to his annals of Scotland a short treatise on this Mercheta Mulierum to prove that no such custom ever existed in Scotland, nor probably in any other place. He explains the term to mean, 1. A fine paid to the lord by a sokeman or villain, when his unmarried daughter chanced to be debauched. 2. A composition or acknowledgment by the sokeman or villain for
the lord's permission to give his daughter in marriage to a stranger or person not subject to the lord's jurisdiction; or the fine for giving her away without such permission. See further titles, Maiden-Renis; Merchet; Borough-English.

MARCHIARE, To adjoin to, or border upon. Cowell.

MARCULUS, a hammer, a mallet. Cowell.

MARDEN, alias Mawarden, in Hertfordshire, its meadow and pasture, how provided for. Stat. 3. Jac. 1. c. 11.

MARES; See Horses.

MARESCHALL, or MARESHAL; See Marshal.

MARETUM, Fr. maret, a marsh, a wet or watered place.

MARESCHALL, or MARESHAL; See Marshal.

MARINARIUS, A mariner or seaman: and marinariorum capitanus was the Admiral or warden of the ports; which offices were commonly united in the same person; the word Admiral not coming into use, till the latter end of the reign of King Ed. 1. before which time the King's letters ran thus:—Rex capitaneo marinariorum et eisdem marinarium salutem. Paroch Antiq. 332. See title Admiral.—

For the various regulations on the subject of Mariner, see this Dictionary, titles Insurance; Navy. As to Mariners wandering up and down, see title Vagrants.

MARINE FORCES, While on shore are regulated and subjected to martial law by annual acts. See title Soldiers.

MARINE SOCIETY. The following account of the origin of this Society will be found interesting and is given from authority.

Lord Harry Pawlet, afterwards Duke of Bolton, in the spring, 1756, then commanding His Majesty's ship Batrleur, requested John Fielding, Esq. afterwards Sir John Fielding, the celebrated magistrate, to collect a number of poor boys for the use of his ship, desiring they might be clothed at his lordship's expense. Fowler Walker, Esq. of Lincoln's-Inn, happening to meet these boys on their journey, and being struck with their appearance, his humanity suggested to him that a greater number of such poor boys might be fitted out by a subscription. On his arrival in Town, he proposed to Mr. Fielding, to solicit the public for a subscription for this purpose, himself offering to open it by a small donation. This worthy magistrate in his written answer, expressed his doubts of the event, but acquiesced with Mr. Walker's design, and happily succeeded so far, that he collected sufficient to clothe 3 or 400 boys.

A Merchant of London, totally unconnected with the Noble Lord, and both the gentlemen abovementioned, desired a meeting of the merchants and owners of ships, and proposed to them to form themselves into a society to clothe the landmen and boys for the sea service. The first part was eagerly embraced, and the design as speedily carried into execution. Many days had not elapsed, when the design relating to the boys fell into their hands.

A regular society was soon formed, from which much temporary benefit resulted.

From the termination of the war in 1763, to May 1769, the operations of the society were suspended. Mr. Hickes, a Merchant of Hamburg, seeing the great utility of this design, bequeathed to this society a sum of money, producing three hundred pounds per annum, for fitting out poor boys in time of war, to serve the officers on board the Royal navy, in order to be brought up as seamen.
In time of peace one half the produce to be expended in fitting out poor boys as apprentices to owners and masters of ships, in the merchants' service and coasting vessels, the other half in placing out poor girls to trades, whereby they may earn an honest livelihood.

In the year 1772, the Society procured an Act of Parliament, 12 Geo. 3. c. 67. The preamble of this Act recites that the Society had clothed and fitted out 5,451 landmen, to serve as seamen on board his Majesty's ships; and also clothed, fitted and placed out as servants or apprentices to officers in the King's ships, and to the merchants' service at sea, 6,306 boys, who had no visible means of support, and who voluntarily offered themselves: For the purpose therefore of enabling them to carry into execution their charitable designs, (that is to say) the fitting out and apprenticing, or placing out poor distressed boys, and to fit for the service of the Royal Navy, and to and for the service of other ships and vessels, the property of and belonging to, subjects of the King of Great Britain; the Society was incorporated, their funds secured, and they were impowered from time to time to place out boys as servants to the commissioned or warrant officers of his Majesty's Navy, and to apprentice out boys in the merchants' service, and to other subjects as they might think proper. By § 5 of the Act it is provided that boys serving out such their respective apprenticeships at sea, not being for a less time than four years, shall be entitled to the liberty of setting up and exercising trade or business in any place in Great Britain or Ireland. By § 15, Two Justices of the Peace in their respective counties are authorised and empowered to hear and determine all complaints of hard and ill usage from the respective masters to their apprentices, and respectively to make such orders therein as they may by law do in other cases between masters and servants, or apprentices.

The estate and property of the trustees of Westminster Fish Market, (see stat. 22 Geo. 2. c. 49,) vested in the Marine Society. Stat. 30 Geo. 3. c. 54.

MARISCUS, a marshy or fenny ground. Domesday.

MARITAGIO AMISSO PER DEFACTAM, A writ for the tenant in frank-marriage, to recover lands, &c. whereof he is deforced by another. Reg. fol. 171.

MARITAGIUM, That portion which is given with a daughter in marriage. See Glanvil, lib. 2. c. 18. As a fruit of tenure, under which Maritagium, strictly taken, is that right which the lord of the fee had to dispose of the daughters of his vassals in marriage; See title Tenure II. 4: and title Marriage. Marchet.

MARITAGIUM HABERE, To have the free disposal of an heiress in marriage; a favour granted by the Kings of England, while they had the custody of all wards or heirs in minority. Cowell. See title Tenure.

MARITIMA ANGLIE. The profit and emolument arising to the King from the sea, which antiently was collected by sheriffs: but it was afterwards granted to the Lord Admiral. Ricardus de Luce dicitur habere maritimam Anglie. Pat. 8 H. 3. m. 4.

MARK, marca, Sax. mearc.] Of silver, is now thirteen shillings and fourpence: though in the reign of Hen. 1. it was only six shillings and a penny in weight; and some were coined, and some only cut in small pieces: but those that were coined, were worth some-
thing more than the others. In former times, money was paid, and things valued oftentimes by the mark. We read of a mark of gold of eight ounces, of 6l. in silver; or as others write 6l. 13s. 4d. Stow's Annals. 32. Rot. Mag. Pipe, Ann. 1. Hen. 2.

MARK TO GOODS, Is what ascertains the property or goodness thereof, &c. And if one man shall use the mark of another, to the intent to do him damage, upon injury proved, action upon the case lieth. 2 Cro. 471. The penalty of counterfeiting the marks on wax, appointed by stat. 23 Eliz. c. 8. is 5l. or pillory and imprisonment.

MARKET, mercatus; from mercando, buying and selling.] The liberty by grant or prescription, whereby a town is enabled to set up and open shops, &c. at a certain place therein, for buying and selling, and better provision of such victuals as the subject wanteth; it is less than a fair; and usually kept once or twice a week. Bract. lib. 2. cap. 24: 1 Inst. 220.

The establishment of public marts, or places of buying and selling, such as markets and fairs, with the tolls thereunto belonging, is enumerated by Blackstone as one of the King's prerogatives. These can only be set up by virtue of the King's grant, or by long and immemorial usage and prescription, which presupposes such a grant. 2 Inst. 220.

According to Bracton, one Market ought to be distant from another, sex leucas, vel milliar, et dimidiam, et tertiam partem dimidiae. If one hath a Market by charter or prescription, and another obtains a Market near it, to the nuisance of the former, the owner of the former may avoid it. 1 Inst. 406: P. N. B. 184: 2 Ro. Ab. 140. But in order to make this out to be a nuisance, it is necessary—1. That the prosecutor's Market or Fair be the elder, otherwise the nuisance lies at his own door: 2. That the second Market be erected within the third part of 20 miles from the other; (i. e. as above expressed, six miles and a half, and one-third of half a mile:) for the dicta, or reasonable day's journey mentioned by Bracton, (l. 3. c. 15.) is constructed by Hale to be 20 miles. See 2 Inst. 567. So that if the new Market be not within the distance above mentioned of the old one, it is no nuisance; as it is held reasonable that every man should have a Market within one third of a day's journey from his own house; that the day being divided into three parts, he may spend one part in going, another in returning, and the third in transacting his necessary business there. If such Market or Fair be on the same day with the old one, it is prima facie a nuisance to that, and there needs no proof of it, but the law will intend it to be so; but if it be on another day, it may be a nuisance, though whether it is so or not, cannot be intended or presumed, but must be proved to a jury. 3 Comm. c. 13. p. 218. Also where a man has a Fair or Market, and one erects another to his prejudice, an action will lie. Rol. 140: 1 Mod. 69.

The lord of a manor, to whom the grant of a Market is made infra villam de W., may hold it anywhere infra villam de W.: and whether villa extend to the town of W. or the township or parish of W. the lord has a right to remove the market-place from one situation to another within the precinct of his grant. And though he should have holden it for above 20 years within the township of W., where the grant only gave it him within the town properly so called at the time, yet if he afterwards give notice of the removal to another place.
The application of law to Fairs and Markets is a complex matter. In the township, the public have no right to go upon his soil and freedom in the old market-place: and any person going there is liable to an action of trespass by the lord. 3 East's Rep. 538.

The Fair or Market is taken for the place where kept, and formerly it was customary for fairs and Markets to be kept on Sundays; but by Stat. 27 H. 6. c. 5, no Fair or Market is to be kept upon any Sunday, or upon the feasts of the Ascension, Corpus Christi, Good Friday, All Saints, &c. except for necessary victuals, and in time of harvest: and they ought not to be held in church-yards, Stat. Wynton, 13 Ed. 1. c. 6. All Fairs are Markets: and there may be a Market without an owner, though where there is an owner, a butcher cannot prescribe to sell meat in his own house upon a Market-day; for the Market must be in an open place, where the owner may have the benefit of it. 4 Inst. 272. No Market shall be held out of the city of London within seven miles: though all butchers, victuallers, &c. may hire stalls and standings in the Markets there, and sell meat and provisions, on four days in a week, &c. Cit. Lib. 101.

Property may, in some cases, be transferred by sale, though the vendor hath none at all in the goods; for it is expedient that the buyer, by taking proper precautions, may at all events be secure of his purchase; otherwise all commerce between man and man must be soon at an end.

The general rule of law, therefore, is that all sales and contracts of any thing vendible in Fairs or Markets overt, (that is, open,) shall not only be good between the parties, but also binding on all those that have any right or property therein. 2 Inst. 713. And for this purpose the Mirror says, tolls were established, viz. to testify the making of contracts; for every private contract was discountenanced by law: insomuch that our Saxon ancestors prohibited the sale of any thing above the value of 20d. unless in open Market; and directed every bargain and sale to be made in the presence of credible witnesses. Mirr. c. 1. § 3: Lt. Ethel. 10. 12: Lt. Eadgr. Wilk. 80. Market overt in the country is only held on the special days provided for particular towns by charter or prescription; but in London every day except Sunday is Market-day. Cro. Jac. 68. The Market-place, or spot of ground set apart by custom for the sale of particular goods, is also in the country the only market overt. Godd. 131. But in London every shop in which goods are exposed publicly to sale, is market overt; for such things only as the owner professes to trade in. 5 Rep. 83: 12 Mod. 521: though if the sale be in a warehouse, and not publicly in the shop, the property is not altered. 5 Rep. 83: Moor, 300. But if goods are stolen from one, and sold out of Market overt, the property is not altered, and the owner may take them wherever he finds them. And it is expressly provided by Stat. 1 Jac. 1. c. 21, that the sale of any goods, wrongfully taken, to any pawn-broker in London, or within two miles thereof, shall not alter the property; for this being usually a clandestine trade, is therefore made an exception to the general rule. And even in Market overt, if the goods be the property of the King, such sale, though regular in all other respects, will in no case bind him; though it binds infants, feme covert, idiots or lunatics, and persons beyond sea, or in prison. 2 Inst. 713. If the goods be stolen from any common person, and then taken by the King's officer from the felon, and sold in open Market, still if the owner has used due diligence in prosecuting the thief to conviction,
he loses not his property in the goods. Bac. Use of the law, 158. So likewise if the buyer knoweth the property not to be in the seller; or if there be any other fraud in the transaction; if he knoweth the seller to be an infant, or feme-covert not usually trading for herself; if the sale be not originally and wholly made in the Fair or Market, or not at the usual hours, the owner's property is not bound thereby. 2 Inst. 713, 4: 5 Rep. 83. If a man buys his own goods in a Fair or Market, the contract of sale shall not bind him, so that he shall render the price: unless the property had been previously altered by a former sale. Perk. § 93. And notwithstanding any number of intervening sales, if the original vendor, who sold without having the property, comes again into possession of the goods, the original owner may take them, when found in his hands who was guilty of the first breach of justice. 2 Inst. 713. But the owner of goods stolen, who has prosecuted the thief to conviction, cannot recover the value of his goods from any one who has purchased them, and sold them again, even with notice of the thief before the conviction. 2 Term Rep. 750. By these regulations the Common Law has secured the right of the proprietor in personal chattels from being divested, so far as is consistent with that other necessary policy, that purchasers bona fide, in a fair, open, and regular manner, should not be afterwards put to difficulties by reason of the previous knavery of the seller. 2 Comm. 449, 450. See this Dict. title Restitution.

Persons that dwell in the country, may not sell wares by retail in a Market-town, but in open fairs: but countrymen may sell goods in gross there. Stat. 1 & 2 P. & M. c. 7.

All contracts for any thing vendible in Markets, &c. shall be binding, and sales after the property, if made according to the following rules, viz. 1. The sale is to be in a place that is open, so that any one that passeth by may see it, and be in a proper place for such goods. 2. It must be an actual sale, for a valuable consideration. 3. The buyer is not to know that the seller hath a wrongfull possession of the goods sold. 4. The sale must not be fraudulent, betwixt two, to bar a third person of his right. 5. There is to be a sale, and a contract, by persons able to contract. 6. The contract must be originally, and wholly, in the Market overt. 7. Toll ought to be paid, where required by statute, &c. 8. The sale is not to be in the night, [or on a Sunday,] but between sun and sun; (though if the sale be so made it may bind the parties.) A sale thus made shall bind the parties, and those that are strangers, who have a right. 5 Rep. 83.

The statutes which ordain, that toll-takers shall be appointed in Markets and Fairs, to enter into their books the names of the buyers, sellers, vouchers, and prices of horses sold, and deliver a note thereof to the buyer, &c. secure the property of stolen horses to the owner, although sold in a Fair or Market, if he repays what was bona fide paid for the horse. Stats. 2 & 3 P. & M. c. 7: 31 Eliz. c. 12. See title Horses.

Every one that hath a Market, shall have toll for things sold, which is to be paid by the buyer, and by ancient custom may be paid for standing of things in the Market, though nothing be sold; but not otherwise. A piepowder court is incident as well to a Market as a Fair; (see title Court of Piepowders) and proprietors of Markets ought to have a pillory, and turnbrel, &c. to punish offenders. 1 Inst. 281: 2 Inst. 221; 4 Inst. 272. Keeping a Fair or Market, otherwise
than it is granted, as by keeping them upon two days, when only one is granted; or on any other day than appointed; extorting toll or fees where none are due, &c. are causes of forfeiture. Finch. 164. If a person erects stalls in a Market, and does not leave room for the people to stand and sell their wares, so that they are thereby forced to hire such stalls, the taking money for the use of them, in that case, is extortion. 1 Ld. Raym. 149. See further titles Fair; Clerk of the Market.

MARKET TOWNS; See Market.

MARKPENNY, Was a penny antiently paid at the town of Malton, by those who had gutters laid or made out of their houses into the streets. Hill. 15 Ed. 1.


MARLE, marla, from the Sax. marga, i. e. medulla.] Otherwise called Malin; a kind of earth or mineral, which in divers counties of this kingdom is used to fertilize land. See stat. 17 Ed. 4. c. 4.

MARLEBERG, Statutes made there, 52 Hen. 3.

MARLERIUM, or MARLETUM, A marle pit. Chart. Antig. MARQUE, from the Saxon mare, signum.] A mark or sign; but in our antient statutes it signifies Reprisals. See title Letters of Marque.

MARQUESS, or MARQUIS, Marchio.] Is now a title of honour before an Earl, and next to a Duke; and by the opinion of Hotoman, the name is derived from the German March, signifying originally Custos Limitis, or Comes et prefectus limitis. In the reign of King Rich. II. came up first the title of Marquis, which was a governor of the marches were called commonly Lords Marchers, and not Marquesses, as Judge Dodderidge has observed in his law of Nobility and Peerage. Selden’s Mare claus, lib. 2. c. 19. A Marquis is created by patent: and antiently by cincture of sword, mantle of state, &c. See titles Lords Marchers; Peers; Nobility.

MARRIAGE.

Maritagium.] A civil and religious contract, whereby a man is joined and united to a woman, for the purposes of civilized society: Maritagium, in the feudal law, signified the interest of bestowing a ward or widow in marriage by the Lord. Mag. Chart. c. 6. See title Tenures II. 4.

Maritagium is likewise applied to land given in Marriage; and is that portion which the husband receives with his wife. Bract. lib. 2. c. 34: Glanv. lib. 7. c. 1. In this sense there are divers writs, De Maritagio, &c. Reg. 171.

There is further a term called Duty of marriage, signifying an obligation to marry; imposed on women who formerly had lands, charged with personal services, in order to render them by their husbands. Cowett. See Tenure, title II. 4.
Marriage is generally the conjunction of man and woman, in a constant society, and agreement of living together; until the contract is dissolved by death or breach of faith, or some notorious misbehaviour, destructive of the end for which it was intended. It is one of the rights of human nature; and was instituted in a state of innocence, for preservation thereof: and nothing more is requisite to a complete Marriage, by the laws of England, than a full, free, and mutual consent between parties, not disabled to enter into that state by their near relation to each other, infancy, pre-contract, or impotency. \textit{Dict. See post. stat. 26 Geo. 2. c. 33.}

As to the solemnization of Marriage, this is regulated by the laws and customs of the nation where we reside; and every State allows such privileges to the parties it deems expedient, and denies legal advantages to those who refuse to solemnize their Marriage, in the manner the State requires; but they cannot dissolve a Marriage celebrated in another manner, Marriage being of divine institution, to which only a full and free consent of the parties is necessary. Before the time of Pope \textit{Innocent III.} there was no solemnization of Marriage in the church; but the man came to the house where the woman inhabited, and led her home to his own house, which was all the ceremony then used. See \textit{1 Rol. Abr. 359: 1 Sid. 64.}

Marriages by \textit{Romish} priests, whose orders are acknowledged by the church of England, are deemed to have the effects of a legal Marriage in some instances; but Marriages ought to be solemnized according to the rites of the church of England, to entitle the parties to the privileges attending legal Marriage, as dower, thirds, &c. And by \textit{stat. 3 Jac. 1. c. 5. § 13}, Popish Recusants convict, married otherwise than according to the orders of the church of England, by a minister lawfully authorized, and in some open church, &c. shall be disabled, the man to be tenant by the curtesy, and the woman to claim her dower, jointure, or widow's estate, &c.

Marriage at Common Law is either in right, or in possession; and Marriage \textit{de facto}, or in reputation, as among Quakers, &c. is allowed to be sufficient to give title to a personal estate. \textit{1 Leon. 53: Wood's Inst. 59.} But in the case of a dissenter, married to a woman by a minister of the congregation, who was not in orders; it was held that when a husband demands a right to himself as husband, by the Ecclesiastical Law, he ought to prove himself a husband by that law, to entitle him to it: and notwithstanding the wife, and the children of this marriage, may entitle themselves to a temporal right by such Marriage; yet the husband shall not, by the reputation of the Marriage, unless he hath a substantial right: and this Marriage is not a mere nullity, because by the law of nature the contract is binding; for though the positive law of man ordains Marriage to be made by a priest, that law only makes this Marriage irregular, and not expressly void. \textit{1 Salk. 119.} But this is, in some cases, altered by the Marriage-act, \textit{stat. 26 Geo. 2. c. 33:} the substance of which see \textit{post.}

The Marriages that are made in an ordinary course, are to be by asking in the church, and other ceremonies appointed by the book of common Prayer. \textit{Stat. 2 & 3 Ed. 6. c. 21.} By the ordinances of the church, when persons are to be married, the bans of matrimony shall be published in the church where they dwell three several \textit{Sundays} or holidays, in the time of divine service; and if, at the day appointed for their Marriage, any man do allege any impediment; as pre-
contract, consanguinity, or affinity, want of parent's consent, infancy, &c. why they should not be married, (and become bound with sufficient sureties to prove his allegation,) then the solemnization must be deferred until the truth is tried. Rubrick. And no minister shall celebrate matrimony between any persons without a faculty of licence, except the banns of Marriage have been first published as directed, according to the book of Common Prayer, on pain of suspension for three years; nor shall any minister, under the like penalty, join any persons in marriage, who are so licensed, at any unseasonable times, or in any private place, &c. Canon 62. Also on the granting of licences, oath is made, and bond is to be taken, that there are no impediments of pre-contract, consanguinity, &c. nor any suit or controversy depending in any Ecclesiastical Court, touching any contract of Marriage of either of the parties with any other; that neither of them are of better estate than is suggested; and that the Marriage be openly solemnized in the parish church where one of the parties dwelleth, or the church mentioned in the licence, between the hours of eight and twelve in the morning. Licences to the contrary shall be void; and the parties marrying are subject to punishment as for clandestine Marriages. Can. 102.

But by special licence or dispensation from the Archbishop of Canterbury, Marriages, especially of persons of quality, are frequently in their own houses, out of canonical hours, in the evening, and often solemnized by others in other churches than where one of the parties lives, and out of time of divine service, &c.

Marriages are prohibited in Lent, and on fasting days, because the mirth attending them is not suitable to the humiliation and devotion of those times; yet persons may marry with licences in Lent, although the banns of Marriage may not then be published. Formerly, during the establishment of the Catholic religion in these kingdoms, priests were restrained from Marriage, and their issue accounted bastards, &c. and the stat. 31 H. 8. c. 14, made such Marriages felonious. But on the Reformation, laws were made, declaring that the Marriage of priests should be lawful, and their children legitimate; though the preambles to those statutes set forth, that it would be better for priests to live chaste, and separate from the company of women, that they might with more fervency attend the ministry of the Gospel. See stat. 2 & 3 E. 6. c. 21. But this statute, like all other reforms in the church, was repealed by Queen Mary, and was not revived again till by stat. 1 Jac. 1. c. 25; though the thirty-nine articles had passed in convocation in 5th year of Queen Elizabeth, the 32d of which declares, that it is lawful for the bishops, priests, and deacons, as for all other Christian men, to marry at their own discretion. The Clerks in Chancery, though laymen, were not allowed to marry, till stat. 14 & 15 H. 8. c. 8. And no lay-doctor of civil law if he was married, could exercise any ecclesiastical jurisdiction, till stat. 37 H. 8. c. 7.

Taking Marriage in the light of a civil contract, the law treats it as it does all other contracts: allowing it to be good and valid in all cases where the parties at the time of making it were in the first place willing to contract; secondly, able to contract; and, lastly, actually did contract, in the proper forms and solemnities required by law. 1 Comm. c. 15. p. 433.

First, They must be willing to contract; "Consensus non concubitus
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Facit nuptias," is the maxim of the Civil Law in this case; and it is also adopted by the Common Lawyers. 1 Inst. 33.

Secondly, They must be able to contract. In general all persons are able to contract themselves in Marriage, unless they labour under some particular disabilities and incapacities. What those are we shall therefore inquire.

These disabilities are of two sorts: first, such as are canonical, and therefore sufficient by the Ecclesiastical Laws to avoid the Marriage in the Spiritual Court; but these in our law only make the Marriage voidable, and not ipso facto void, until sentence of nullity be obtained. Of this nature are pre-contract, consanguinity, or relation by blood; affinity, or relation by Marriage; and some particular corporeal infirmities. These canonical disabilities are either grounded upon the express words of the divine laws, or are consequences plainly deducible from thence; it therefore being sinful in the persons who labour under them, to attempt to contract matrimony together, they are properly the object of the Ecclesiastical Magistrates' coercion; in order to separate the offenders and inflict penance for the offence, pro salute animarum. But such marriages not being void ab initio, but voidable only by sentence of separation, they are esteemed valid to all civil purposes, unless such separation is actually made during the life of the parties. For after the death of either of them the Courts of Common Law will not suffer the Spiritual Court to declare such Marriages to have been void; because that declaration cannot now tend to the reformation of the parties. 1 Inst. 33: 2 Inst. 614. Therefore when a man had married his first wife's sister, and after her death the Bishop's Court was proceeding to annul the Marriage, and bastardize the issue, the Court of King's Bench granted a prohibition quod hoc; but permitted them to proceed to punish the husband for incest. Salk. 548.

These canonical disabilities being entirely within the province of the Ecclesiastical Courts, our books are perfectly silent concerning them. But there are a few statutes which serve as directories to those Courts, of which it will be proper to take notice. By stat. 32 H. 8 c. 38, it is declared, that all persons may lawfully marry but such as are prohibited by God's law: and that all Marriages contracted by lawful persons in the face of the church, and consummate with bodily knowledge and fruit of children, shall be indissoluble. And (because in the times of popery a great variety of degrees of kindred were made impediments to Marriage, which impediments might however be bought off for money,) it is declared by the same statute, that nothing, God's law except, shall impeach any Marriage, but within the Levitical degrees, the farthest of which is, that between uncle and niece. Gilb. Refh. 158.

By the same statute all impediments, arising from pre-contracts to other persons, were abolished, and declared of none effect, unless they had been consummated with bodily knowledge; in which case the Common Law holds such contract to be a Marriage defacto. But this branch of the statute was repealed by stat. 2 & 3 E. 6 c. 23. How far that clause of the Marriage-Act, stat. 26 Geo. 2 c. 33, which prohibits all suits in Ecclesiastical Courts to compel a Marriage in consequence of any contract, may collaterally extend to revive this clause of stat. 32 Hen. 8, and abolish the impediment of pre-contract, deserves the consideration of the canonists. See 1 Comm. c. 15. p. 434, 5. A con-
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tract per verba de præsenti tempore, used to be considered in the Ec
clesiastical courts ipsum matrimonium; and if either party had after-
wards married, this, as a second Marriage, would have been annulled
in the Spiritual Courts, and the first contract enforced. See as in-
stance, 4 Co. 39. But as this pre-engagement can no longer be car-
ried into effect as a Marriage, it seems undoubted that it will never
more be an impediment to a subsequent Marriage actually solemnized
and consummated. 1 Comm. 435, in n.

In the above stat. 32 H. 8. c. 38, the prohibitions by God's law are
not specified; but in stats. 25 H. 8. c. 22: 18 H. 8. c. 7, the prohibited
degrees are particularized. It is doubtful whether these two last sta-
tutes are in force. 2 Burr. Ecc. L. 405. But so far they seem to be
only declaratory of the Levitical Law. The former declared null and
void the Marriage between Henry VIII. and Catherine of Arragon,
widow of his eldest brother, Prince Arthur, for which a dispensation
had been obtained from the Pope. 1 Comm. 435, in n.

The prohibited degrees are all which are under the 4th degree of
the Civil Law, except in the ascending and descending line; and by
the course of nature it is scarcely a possible case, that any one should
ever marry his issue in the 4th degree: but between collaterals it is
universally true, that all who are in the fourth or any higher degree
are permitted to marry: as first cousins are in the fourth degree,
and therefore may marry: a nephew and great aunt, or neice and
great uncle, are also in the fourth degree, and may intermarry; and
though a man may not marry his grandmother, it is certainly true
he may marry her sister. Gibs. Cod. 413. The same degrees by affi-

nity are prohibited. Affinity always arises by the marriage of one of
the parties so related; as a husband is related by affinity to all the
consanguinei of his wife; and, vice versa, the wife to the husband's
consanguinei: for the husband and wife being considered one flesh,
these who are related to the one by blood, are related to the other by
affinity. Gibs. Cod. 412. Therefore a man after his wife's death can-
not marry her sister, aunt, or niece. But the consanguinei of the hus-
band are not at all related to the consanguinei of the wife. Hence two
brothers may marry two sisters; or father and son a mother and
daughter. If a brother and sister marry two persons not related, and
the brother and sister die, the widow and widower may intermarry;
for though I am related to my wife's brother by affinity, I am not so
to my wife's brother's wife, whom, if circumstances would admit, it
would not be unlawful for me to marry. 1 Comm. 435, in n. See 1
Inst. 235, a. in n.

The son of a father by another wife, and daughter of a mother by
another husband, cousins german, &c. may marry with each other:
a man may not marry his brother's wife, or wife's sister; an uncle his
niece, an aunt her nephew, &c. But if a man take his sister to wife,
they are baron and feme, and the issue are not bastards, till a di-
vorce. Levit. c. 18, 20: 2 Inst. 683: 1 Rot. Abr. 340, 357: 5 Mod.
448.

A person may not marry his sister's daughter: and a sister's bas-
tard daughter is said to be within the Levitical Law of affinity; it be-
ing morally as unlawful to marry a bastard as one born in wedlock,
and it is so in nature; and if a bastard doth not fall under the prohibi-
tion ad proximum sanguinis non accedas, a mother may marry her
bastard son. 5 Mod. 158: 2 Nits. Abr. 1161.
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There are persons within the reason of the prohibition of Marriage, though not mentioned, and must be prohibited; as the father from marrying his daughter, the grandson from marrying the grandmother, &c. Vaugh. 321.

The other sort of disabilities are those which are created, or at least enforced by the Municipal Laws. And though some of them may be grounded on natural law, yet they are regarded by the laws of the land, not so much in the light of any moral offence, as on account of the civil inconveniences they draw after them. These civil disabilities make the contract void ab initio, and not merely voidable: not that they dissolve a contract already formed, but they render the parties incapable of forming any contract at all; they do not put asunder those who are joined together, but they previously hinder the junction. And if any persons under these legal incapacities come together, it is a meretricious, and not a matrimonial union. 1 Comm. 436.

The first of these legal disabilities is a prior marriage, or having another husband or wife living; in which case, besides the penalties consequent upon it as a felony, the second Marriage is to all intents and purposes void. Br. Ab. title Bastard, pl. 8. See this Dictionary, title Bigamy.

The next legal disability is want of age. If a boy under 14 or girl under 12 years of age marries, this Marriage is only inchoate and imperfect; and when either of them comes to that age, which is for this purpose termed their age of consent, they may disagree and declare the Marriage void, without any divorce or sentence in the Spiritual Court. This is founded on the Civil Law. But the Common Law pays a greater regard to the Constitution than the age of the parties; for if they are habiles ad matrimonium, it is a good Marriage, whatever their age may be. And in law it is so far a Marriage, that if at the age of consent they agree to continue together, they need not be married again. Co. Litt. 79. If the husband be of years of discretion, and the wife under 12, when she comes to years of discretion, he may disagree as well as she may; for in contracts the obligation must be mutual; both must be bound or neither; and so it is, vice versa, when the wife is of years of discretion, and the husband under. Co. Litt. 79.

If persons are married before the age of consent, they may at that age disagree and marry again, without any divorce: though if they once give consent when at age, they cannot afterwards disagree; and when they are married before, there needs not a new Marriage, if they agree at that age. 1 Inst. 33: 2 Inst. 182. A woman cannot disagree within her age of twelve years, till which her Marriage continues; and before that time her disagreement is void. 1 Dene. 699. Though if a man marries a woman under that age, and afterwards she, within her age of consent, disagrees to the Marriage, and at her age of twelve years marries another; now the first Marriage is absolutely dissolved, so that he may take another wife; for although the disagreement within the age of consent was not sufficient, yet her taking another husband at the age of consent, and cohabiting with him, affirms the disagreement, and so the first Marriage is avoided. Moor, 575, 764. If after disagreement of the parties, at the age of consent they agree to the Marriage, and live together as man and wife, the Marriage hath continuance, notwithstanding the former
disagreement; but if the disagreement had been before the Ordina-
ry, they could not afterwards agree again to make it a good Mar-
riage. 1 Danv. Abr. 699. But now the agreement after 12 or 14
would not be binding on the infant, if the Marriage was without
banns or by licence, and without consent of parents, guardians, &c.
and the infant was not a widow or widower; for the Marriage-Act
makes all such Marriages void. See stat. 26 Geo. 2. c. 33: 1 Inst.
79, b. in n.

If either party be under seven years of age, contracts of Marriage
are absolutely void; but Marriages of Princes made by the State in
their behalf, at any age, are held good; though many of those con-
tracts have been broken through. Swinb. Matrimon. Contr. See

The above proposition, “that in contracts the obligation must be
mutual,” has been censured as too generally expressed; for there are
various contracts between a person of full age and a minor, in which
the former is bound and the latter is not. The authorities seem decid-
itive, that it is true with regard to the contract of Marriage, referred
to the ages of 14 and 12; but it has also long been clearly settled,
that it is not true with regard to contracts of Marriage, referred to
the minority under 21. For where there are mutual promises to
marry between two persons, one of the age of 21, and the other un-
der that age, the first is bound by the contract, and on the side of the
minor it is voidable; or for a breach of the promise on the part of the
person of full age, the minor may maintain an action, and recover
damages; but no action can be maintained for a similar breach of the
contract on the side of the minor. Stra. 937: Fitzgibb. 175, 275.

Another incapacity arises from want of consent of parents and guar-
dians. By the Common Law, if the parties themselves were of the
age of consent, there wanted no other concurrence to make the
Marriage valid; and this was agreeable to the Canon Law; but by
several statutes, viz. stats. 6 & 7 W. 3. c. 6: 7 & 8 W. 3. c. 35, pen-
alities of 100l. are laid on every clergyman who marries a couple
either without publication of banns (which may give notice to parents
or guardians) or without a licence, to obtain which, the consent of
parents or guardians must be sworn to; and the man so married for-
feits 10l. and the parish clerk, &c. assisting, 5l. These statutes are
confirmed by stat. 10 Ann. c. 19, and extended to privileged places;
so that if a person so offending be a prisoner in any place, on convic-
tion he shall be removed to the county gaol, there to remain in execu-
tion charged with the said penalty of 100l. &c. Before these sta-
tutes, an information was exhibited against certain persons for com-
bination in procuring a clandestine Marriage in the night, without
banns or licence, between a maid-servant and a young gentleman
who was heir to an estate, the person being in liquor; and they were
fined 100 marks, and ordered to be committed till paid; but it doth
not appear that the Marriage could be made void. Cro. Cor. 557.

But the evil of clandestine and improper Marriages is more fully
restrained by the following statute commonly known by the name of
The Marriage Act.

By stat. 26 Geo. 2. c. 33, all Marriages are to be either in pursu-
ance of banns published, of a licence, or of a special licence. A
Marriage in pursuance of banns must be solemnized in one of the
churches or chapels where the banns were published. A Marriage
in pursuance of a licence (except a special licence) must be solemnized in such church or chapel as in the licence shall be named; all Marriages solemnized in any other place than a church or such chapel, unless by special licence, or without publication of banns or a licence of marriage from a person having authority to grant the same, shall be void; and all Marriages solemnized by licence, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, which shall be had without the consent of father, guardian, &c. shall be void. No person, vicar, &c. shall be obliged to publish banns of matrimony, unless the persons to be married shall seven days before the time required for the first publication, deliver to him a notice in writing of their true names, and of the house or houses of their respective abode within such parish, &c. and of the time they have dwelt in such house or houses. All banns shall be published upon three Sundays, or holydays, next preceding the Marriage in the parish church, &c. where the persons to be married shall dwell. If they dwell in divers parishes, then in the parish church, &c. where each of them shall dwell, if in an extra-parochial place, then in the parish church, &c. adjoining.

After solemnization of any Marriage under a publication of banns, it shall not be necessary, in support of such Marriage, to give any proof of the actual dwelling of the parties in the respective parishes, &c. wherein the banns of Marriage were published, nor shall any evidence be received to the contrary, in any suit touching the validity of such Marriage.

No licence of Marriage shall be granted by any archbishop, bishop, &c. to solemnize any Marriage in any other church, &c. than in the parish church, &c. within which the usual place of abode of one of the parties shall have been, for four weeks immediately before the granting of such licence: if both or either of the parties shall dwell in an extra-parochial place, then in some parish church adjoining. Nothing herein contained shall extend to prevent the archbishop of Canterbury from granting special licences.

Where any Marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for four weeks as aforesaid, was in the parish, &c. where the Marriage was solemnized: nor shall any evidence be received to the contrary, in any suit touching the validity of such Marriage. All Marriages by licence, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, which shall be had without the consent of his or her father, if living, or if dead, of his or her guardian, and if no guardian, of his or her mother, if living and unmarried, and if no mother living and unmarried, then of the guardian appointed by the Court of Chancery, shall be void. If guardian or mother, or any of them, where consent is made necessary, be non compos mentis, beyond sea, or refuse to consent, and the Lord Chancellor shall declare it to be a proper Marriage, that shall be effectual as if the guardian or mother had consented.

All Marriages shall be solemnized in the presence of two or more witnesses besides the minister. No minister, &c. solemnizing Marriage between persons, both or one of whom shall be under the age of twenty-one years, after banns published, shall be punishable by ecclesiastical censure for solemnizing such Marriage without
consent of parents or guardians, whose consent is required by law, unless such parson, &c. shall have notice of such dissent. And in case such parent or guardian shall openly declare in the church, &c. at the time of such publication, his dissent to such Marriage, such publication of banns shall be void.

If any person shall solemnize matrimony in any other place than a church, &c. where banns have been usually published, unless by special licence, or shall solemnize matrimony without publication of banns, unless licence of Marriage be first had and obtained from some person having authority to grant the same, every such person knowingly so offending, shall be transported for fourteen years. The prosecution to be within three years.

To make a false entry in a Marriage Register; to alter it when made; to forge or counterfeit such entry, or a Marriage licence; to cause, or procure, or act, or assist in such forgery; to utter the same as true, knowing it to be counterfeit; or to destroy, or procure the destruction of any register in order to vacate any Marriage, or subject any person to the penalties of this act; all these offences knowingly and wilfully committed, subject the party to the guilt of felony without benefit of clergy.

No suit shall be in any Ecclesiastical Court to compel a celebration of Marriage, by reason of any contract, whether per verba de presenti, or de futuro. This act not to extend to Jews, Quakers, or Scotland, nor to the Marriages of any of the Royal Family; as to which latter see this Dictionary, title King II.

The effect of the above act as relates to the consent of parents, &c. may be thus shortly stated: The party under age marrying by licence, if a Minor, and not having been married before, must have the consent of a father if living; if he be dead, of a guardian, lawfully appointed; if there be no such guardian, then of the mother if she is unmarried; if there be no mother, then of a Guardian appointed by the Court of Chancery. The guardian, whose consent is interposed between that of the father and that of the mother, must either be a testamentary guardian appointed by the father's will, or a guardian appointed by Chancery; or if there is no such guardian, and the Minor is under the age of 14, and has lands by descent, perhaps the consent of a socage guardian would be sufficient; though it might not be prudent to rely upon it alone, and such an early Marriage now seldom happens. 1 Comm. 438, in n.

In reading this statute it should be attended to; that the clause for annulling the Marriages of infants without the consent of parents or guardians, is restricted to Marriages by licence; so that the Marriage of an infant without such consent may still be good where banns are regularly published, unless a dissent is openly declared by the parent or guardian in the church or chapel at the time of publishing, in which latter case the statute makes the banns void. As to the Marriages without either licence or banns, which are usually termed clandestine, they are universally annulled by this statute. Scotland being expressly excepted out of this statute, in consequence of this, so much of the act as was calculated to defeat the Marriages of Minors without the consent of parents or guardians, hath been frequently evaded, by going into Scotland to be married there, and returning to England immediately afterwards. Indeed the validity of such Marriages was once questioned; and though, in general, Marriages are
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governed by the laws of the country in which they are celebrated, yet it was doubted whether the lex loci ought to be applied to a case accompanied with circumstances so strongly marking the intent to evade the law of England. See 2 Burr. 1079. But this point seems now fully settled in favour of the Scotch Marriages, by a decision of the Court of Arches, which was afterwards confirmed in the Court of Delegates. However it may not be amiss to recollect, that there have been persons of authority who will not allow such cases of apparent evasion of the law of any country to fall within the principle on which lex loci is indulged. See 1 Inst. 796, in n.

The Marriage of a female bastard with consent of her putative father is sufficient to gain a settlement, although she was under age at the time of the Marriage. Const's Bott. ii. 85. pl. 121. On the same principle, a Marriage between two infants solemnized by means of a procured licence, and without the consent of either parents or guardians, is not sufficient to gain a settlement, although both the parties are illegitimate, for such Marriage is void by the Marriage-act. 1 Term Rep. 96.

A Marriage celebrated bona fide in Scotland will undoubtedly entitle the woman to Dowry in England; and the lawfulness of such a Marriage may be tried by a Jury in England. 2 H. Black. 145.

As the above act requires that the Marriage should be celebrated in some parish church or public chapel where banns had been usually published (i. e. before 25 Mar. 1754); the Court of K. B. were obliged to declare a Marriage void which had been solemnized in a chapel erected in 1765. Doug. 659. And as there were many Marriages equally defective, an act of Parliament immediately passed, which legalized all Marriages celebrated in such churches or chapels since the passing of the Marriage-act, and indemnifying the clergyman from the penalties incurred. Stat. 21 Geo. 3. c. 53. See also 44 Geo. 3. c. 77, by which such Marriages solemnized before 25th March, 1805, are declared valid: and the registers are ordered to be removed from chapels to the parish churches adjoining. See likewise the local acts, 44 Geo. 3. c. lxxvii and 47 Geo. 3. st. 2. c. lxxvi.

A fourth legal incapacity of contracting Marriage is want of reason, without a competent share of which, as no other, so neither can the matrimonial contract be valid. 1 Rol. Abr. 257. See title Idiots and Lunatics IV.

Lastly, the parties must not only be willing and able to contract, but actually must contract themselves in due form of law, to make it a good civil marriage. Any contract made fier verba de praesenti, or in words of the present tense, and, in case of cohabitation fier verba de futuro also, between persons able to contract, was, before the Marriage-act above stated, deemed a valid Marriage to many purposes, and the parties might be compelled in the Spiritual Courts to celebrate it in facie ecclesiae. But these verbal contracts are now of no force to compel a future Marriage. It is held to be also essential to a Marriage, that it be performed by a person in orders. Salk. 119: See Burr. Set. Ca. 232: 1 Wils. 74; though the intervention of a priest to solemnize this contract is merely juris positivi; and not juris naturalis aut divini; it being said that the Pope Innocent III. was the first who ordained the celebration of Marriage in the church, before which it was totally a civil contract. Moor, 170. And in the times of the grand Rebellion all Marriages were performed by the Justices of the Peace;
and those Marriages were declared valid, without any fresh solemnization, by stat. 12 Car. 2. c. 33.

On the whole, as the law now stands, it may be collected, that no Marriage by the Temporal Law is nisi facie, void, that is celebrated—by a person in orders—in a parish church or public chapel; (or elsewhere by special dispensation)—in pursuance of banns or a licence—between single persons—consenting—of sound mind—and of the age of 21 years—or of the age of 14 in males, and 12—of females, with consent of parents and guardians; or without, in case of widowhood. And no Marriage is voidable, by the Ecclesiastical Law after the death of either of the parties; nor during their lives unless for the canonical impediments of pre-contract; (if that indeed still exists;) of consanguinity, and of affinity, or corporeal imbecility subsisting previous to the Marriage. 1 Comm. 440.

In this place it will not be inapplicable to notice the offence of the Forcible Abduction and Stealing an Heiress; a crime vulgarly called Stealing an Heiress. By stat. 3 H. 7. c. 2, it is enacted, that if any person shall for lucre take any woman, being maid, widow, or wife, and having substance either in goods or lands, or being apparent to her ancestors, contrary to her will, and afterwards she be married to such misdoer, or by his consent to another, or defiled; such person, his procurers and abettors, and such as knowingly receive such woman, shall be deemed principal felons; and by stat. 39 Eliz. c. 9, the benefit of clergy is taken away from all such felons who shall be principals, procurers, or accessories before the fact. In the construction of this statute it hath been determined, 1st, That the indictment must allege that the taking was not lucre, for such are the words of the statute. 1 Hawk. P. C. c. 42. 2d, In order to shew this, it must appear that the woman has substance either real or personal, or is an heir apparent. 1 Hal. P. C. 660: 1 Hawk. P. C. c. 42. 3dly, It must appear that she was taken away against her will. 4thly, It must also appear, that she was afterwards married or defiled. And though possibly the Marriage or defilement might be by her subsequent consent, being won therunto by flatteries after the taking, yet this is felony, if the first taking were against her will. 1 Hal. P. C. 660. And so vice versa, if the woman be originally taken away with her own consent, yet if she afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will; as if she had never given any consent at all; for, till the force was put upon her, she was in her own power. 1 Hawk. P. C. c. 42. It is held, that a woman, thus taken away and married, may be sworn and give evidence against the offender, though he is her husband de facto, contrary to the general rule of law; because he is no husband de jure, in case the actual Marriage was also against her will. 1 Hal. P. C. 651. In cases indeed where the actual Marriage is good, by the consent of the inveigled woman obtained after her forcible abduction, Hale seems to question how far her evidence should be allowed: but other authorities seem to agree that it should, even then, be admitted; esteeming it absurd that the offender should thus take advantage of his own wrong; and that the very act of Marriage, which is a principal ingredient of his crime, should, by a forced construction of law, be made use of to stop the mouth of the most material witness.
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An inferior degree of the same kind of offence, but not attended with force, is punished by stat. 4 & 5 P. & M. c. 8, which enacts, that if any person above the age of 14, unlawfully should convey or take away any woman child unmarried, (which is held to extend to bastards as well as legitimate children, Sira. 1162.) within the age of 16 years, from the possession and against the will of the father, mother, guardians, or governors, he shall be imprisoned two years, or fined at the discretion of the Justices; and if he deflowers such maid or woman child, or without the consent of parents contracts matrimony with her, He shall be imprisoned five years or fined at the discretion of the Justices, and She shall forfeit all her lands to her next of kin during the life of her said husband. But this latter part of the act is now rendered almost useless by the provisions of the Marriage-Act, which makes the Marriage [unless by banns] totally void. See 4 Comm. c. 15. pp. 208, 9.

These stolen Marriages under the age of 16 being usually upon mercenary views, this last act, besides punishing the seducer, wisely removed the temptation; [as to lands.] It has been decided in the Court of Exchequer that the woman in this case forfeits her lands only during the life of her husband. Ambl. 73. Though the more natural construction of the statute seems to be, that the next heir shall retain them during the life of the wife, even after the death of the husband. 1 Bro. C. R. 23.

An antient stat. 31 H. 6. c. 9, still appears on our Statute-books, to invalidate bonds and securities taken from women under duress of imprisonment by threats of forcible Marriage, &c.

Matrimonial causes, or injuries respecting the rights of Marriage, are one branch of the Ecclesiastical jurisdiction: though if Marriages are considered in the light of mere civil contracts, they do not seem to be very properly of spiritual cognizance. This, however, was effected by the usurpation of the church under the Catholic system; and causes matrimonial are now so peculiarly ecclesiastical, that the Temporal Courts will never interfere in controversies of this kind, unless in some particular cases: as, if the Spiritual Court do proceed to call a Marriage in question after the death of either of the parties; this the Courts of Common Law will prohibit, because it tends to bastardize and disinherit the issue; who cannot so well defend the Marriage as the parties themselves, when both of them living, might have done.

Of matrimonial causes one of the first and principal is, causa jactationis matrimonii; when one of the parties boasts or gives out, that he or she is married to the other, whereby a common reputation of their matrimony may ensue. On this ground the party injured may libel the other in the Spiritual Court; and unless the defendant undertakes and makes out a proof of the actual Marriage, he or she is enjoined perpetual silence on that head; which is the only remedy Ecclesiastical Courts can give for this injury. Another species of matrimonial causes was when a party contracted to another, brought a suit in the Ecclesiastical Court to compel a celebration of the Marriage in pursuance of such contract; but this branch of causes is now cut off entirely by the Marriage-Act above stated. The suit for restitution of conjugal rights is also another species of matrimonial
causes; which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the ecclesiastical jurisdiction will compel them to come together again, if either party be weak enough to desire it contrary to the inclination of the other. See 3 Comm. c. 7, f. 93, 4. Divorces and suits for Alimony are also subjects of ecclesiastical jurisdiction, as to which see this Dictionary, titles Baron and Feme XI: Divorce.

The Temporal Courts by the stat. 28 Hen. 8. c. 7, are to determine what Marriages are within or without the Levitical degrees; and prohibit the Spiritual Courts if they impeach any persons from marrying within these degrees. And it is said, were it not for that statute, we should be under no obligation to observe the Levitical degrees. Vaugh. 206: 2 Vent. 9.

Although matrimonial causes have been for a long time determinable in the Ecclesiastical Courts, they were not so from the beginning; for as well causes of matrimony as testamentary were civil causes, and appertained to the jurisdiction of the civil magistrate, until Kings allowed the clergy cognizance of them. Davis’s Rep. 51. If persons married are infra annos nubiles, the Ecclesiastical Judges are to judge as well of the assent, whether sufficient, &c. as of the first contract; and where they have cognizance, the Common-Law Judges ought to give credit to their sentences, as they do to our judgments. 7 Rep. 23. See the Duchess of Kingston’s Ca. 11 St. Tr. 198.

Loyalty or lawfulness of Marriage is always to be tried by the Bishop’s certificate; or inquisition taken before him, on examining of witnesses; &c. Dyer, 303. If the right of Marriage comes naturally in question, as in dower, &c. the lawfulness of Marriage is to be tried by the Bishop’s certificate: but in a personal action, where the right of Marriage is not in question, it is triable by a Jury at Common Law. 1 Lev. 41. Whether a woman is married, or she is the wife of such a person, is triable by a Jury: and in personal actions it is right to lay the matter upon the fact of the Marriage, to make it issuable and triable by a Jury, and not upon the right of the Marriage, as in real actions and appeals. 1 Inst. 112: 3 Sailk. 64. If the Marriage of the husband is in question, Marriage, in right ought to be, and that shall be tried by certificate. 1 Leon. 53. But if on covenant to do such a thing to another upon the Marriage of a man’s daughter, the party alleges that he did marry her, &c. this shall be tried per pais; for the Marriage is only in issue, and not whether he was lawfully espoused.Cro. Car. 102.

Conditions against marrying generally are void in law; and if a condition is annexed to a legacy, as where money is given to a woman, on condition that she marries with consent of such a person, &c. such a condition is void by the Ecclesiastical Law, because the Marriage ought to be free without coercion; yet it is said it is not so at the Common Law. 2 Nels. Abr. 1162: Poph. 58, 59: 2 Ill. 192. See titles Condition; Legacy.

Of the Effect of Marriage, by operation of law.—By Marriage with a woman the husband is entitled to all her estate real and personal; and the effects of Marriage are, that the husband and wife are accounted one person, and he hath power over her person as well as estate, &c. 1 Inst. 337.
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The wife doth partake of the name, so of the nature and condition of the husband by the Marriage; for if she be an Earl’s wife, she is a Countess; if a Knight’s wife, a Lady; and if he be an alien and made a denizen, the wife is so likewise. 39 H. 6. 45: 4 H. 7. 31: Bro. 499.

There being divers advantages by Marriage, to the man and the woman; therefore on promise of Marriage, damages may be recovered, if either party refuse to marry; but the promise must be mutual on both sides; to ground the action. 1 Salk. 24. And if there be reciprocal promises of Marriage, as the woman’s promise to the man is a good consideration to make his obligatory; so his promise to her is a sufficient consideration to make hers binding; and though no time for Marriage be agreed on, if the plaintiff prove tender and offer to marry defendant, and refusal by defendant, or if defendant marry another, whereby performance of the promise is, in law, rendered impossible, action lies, and damages are recoverable. Carthew, 467. These promises are not affected by the provisions of the Marriage-Act, as relate to actions brought for their non-performance.

If a man and woman make mutual promises of intermarriage, and the man gives the woman 100l. which she accepts, in satisfaction of his promise of Marriage, it is a good discharge of the contract. Mod. Cas. 156. By the Statute of Frauds, stat. 29 Car. 2. c. 3, no action shall be brought upon any agreement on consideration of Marriage, except it be put in writing, and signed by the party to be charged, &c. And where an agreement relating to Marriage must be in writing after a year; and when it need not, vide Skinn. 383. Observe the words, they are upon any agreement on consideration of Marriage, which is essentially different from mutual promises of the parties to marry each other. And which latter are not within the statute. See title Assumpsit II.

Contracts and Bonds for money to procure Marriage between others are usually called Marriage-brocage agreements or bonds. Concerning these, see the Treatise of Equity (8vo.) p. 249—254.

Wherever a parent or guardian insist upon a private gain or security for it, and obtain it of the intended husband, it shall be set aside; for the power of a parent or guardian ought not to be made use of to such purposes. And it is now a settled rule that if the father on the Marriage of his son, takes a bond of the son to pay him so much, &c. it is void, being done by coercion while he is under the awe of his father. Nor will the Court only decree a Marriage-brocage bond to be delivered up, but also, a gratuity actually paid to be refunded; (2 Vern. 292;) for such bond or contract is in no case to be countennanced. A bond to procure Marriage, though between persons of equal rank and fortune, is void as being of dangerous consequence. See 3 Lev. 41; 1 Salk. 156.

From the case of Grisley v. Lother, Hob. 10. it should seem that though the procuring of a Marriage is not a consideration in equity, it is a sufficient consideration in law, and of that opinion Holt, C. J. appears to have been in Hale v. Potter, 3 Lev. 411; and the circumstance of the bond in that case having been ultimately cancelled by a decree of the House of Lords does not affect the rule of Law: as that decision was upon an appeal from the decree in Equity which had declared the bond to be good; as Courts of Equity do not in such cases interpose for the benefit of the party, so much as on considera-
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ations of public policy. See Law v. Law, Forrest. 142; but query whether the vice of such consideration could not now be pleaded at Law. 2 Wils. 347; Collins v. Blantern.

That Equity will relieve against bonds to Strangers; for procuring of Marriage; see 1 Chan. Rep. 47; 3 Ch. Rep. 18; 2 Ch. Ca. 176; 1 Vern. 412; 1 Ves. 503; 3 Akt. 566; and as these contracts are avoided on reasons of public inconvenience, the Court of Exchequer in Shirley v. Martin, 14 Nov. 1779, held that they would not admit of subsequent confirmation by the party. See also Booth v. Warrington, (E.) Cases in Part. 8vo. tit. Fraud. Ca. 6.

An Obligation procured from an infant by the father of his intended wife, in fraud of Marriage articles agreed to by the infant and his friends, is absolutely void. Morisone v. Arbuthnot, (Ld.) Part. Ca. 8vo. viii. p. 247. Appendix II. Ca. 1.

If a man before Marriage gives bond and judgment to the wife, to leave her worth 1000l. at his death, in consideration of a Marriage portion, this shall be made good out of the husband's estate, and satisfied before any debts; provided a judgment be not obtained against him with her consent. An intended husband, in consideration of a Marriage, covenanted with the intended wife, that if she would marry him, and she should happen to survive him, he would leave her worth 500l. The Marriage took effect, and the wife survived, and he did not leave her worth that money; she married a second husband, and he brought an action of debt against the administrator of the first husband for the 500l. To which it was objected, that this being a personal action, it was suspended by the Marriage, which was a release in law, and so extinct; but the plaintiff had judgment, for the action is not suspended, because during the coverture there was no action: nothing in this case is due whilst the coverture takes place, and the debt arises by the death of the husband. Palm. 99: 2 Sid. 58.

A bond was given by a man, reciting, he was to marry A. S. and that if the Marriage took effect, and he did survive her, then, within three months after her decease, he would pay to the obligee 300l. for such uses as the said A. S. by any writing under her hand and seal subscribed and published in the presence of two witnesses, should direct and appoint; this Marriage bond was adjudged good. 3 Cro. 376; Yelv. 226, 227.

In case articles are entered into before Marriage, and afterwards a settlement is made different therefrom, the Court of Chancery will set up the articles against it; but where both are finished before the Marriage had, at a time when all parties are at liberty, such settlement will be taken as a new agreement between them: this is the general rule, unless the deed of settlement is expressly mentioned to be made in pursuance of the Marriage articles, &c. whereby the intent may still appear to be the same. Talb. 20. Articles of Marriage were made for settling lands on the husband and wife, and the heirs male and female of the body of the husband by the wife, &c. and a settlement was drawn contrary to these articles, long after which the husband suffered a recovery, and devised the land to others; it was here held to be no bar to the heirs female, who were decreed to have the land. 2 P. Williams, 349, 355. Yet it is said, where relief is to be given in equity on a settlement, it must be only to the persons who claim as purchasers, as the first and other sons; and all remainders
after to the husband's heirs of his body, or his right heirs, are voluntary and not to be aided. Abr. Cas. Eq. 385.

Though a term to raise daughters' portions, payable at the age of eighteen, or day of Marriage, in a Marriage settlement, is limited in remainder, to commence after the death of the father generally; or if it be in case he die without issue male of his wife, and she dies first without such issue, leaving a daughter, &c. In equity the term is saleable during the life-time of the father, when the daughter is eighteen years old, or married; because every thing hath happened and is past which is contingent, for it is impossible there should be issue made of the wife when she is dead; and as to the father's death that is not contingent, but certain, by reason, all men must die; but if there is a contingency not yet happened, as if the daughters are to be unmarried, or not provided for at the time of the father's death, &c. it is otherwise. 1 Salk. 139.

Upon Marriages, the Settlements generally made of the estate of the husband, &c. are to the husband for life, after his death to the wife for life for her jointure, and to their issue in remainder, with limitations to trustees to support contingent uses, and leases to trustees for terms of years, to raise daughters' portions, &c. And they are made several ways, by lease and release, fine and recovery, covenant to stand seised to uses, &c. See the form of a complete Marriage Settlement in the Appendix to Blackstone's Analysis, with other useful forms relative thereto: See the same also, in the Appendix to the second volume of his Commentaries.

These settlements the law is ever careful to preserve, especially that part of them which relates to the wife, of which she may not be divested, but by her own fine: and if a woman about to marry, to prevent her husband's disposal of her land, conveys it to friends in trust, and they with the husband, after Marriage, make sale of the same, the Court of Chancery will decree the purchaser to reconvey to her. Tuthill, 43.

Where a woman on Marriage, by the man's consent, makes over her estate, to be at her own disposal, the product or increase thereof she can also dispose of: and if the wife has a separate maintenance settled on her by the husband, she may, by writing in the nature of a will, give away what she saves, if she dies before the husband; and shall have the same herself, in case she outlives him, and it shall not be liable to his debts. Preced. Canc. 255, 44. But where a settlement is made on the wife, in consideration of her whole fortune and equivalent to it: here the wife's portion, though it be out on bonds, &c. which upon the death of the husband by law survive to the wife, shall in equity be subject to the husband's bonds; after his decease, to eace the real estate of the heir. Ibid. 63. And it has been likewise held, that if after the wife's death, debts of her's appear, the husband shall be answerable for the debts of the wife, so far as he had any money or estate of hers. Ibid. 256.

If a man in mean circumstances marry a woman of fortune, upon suggestion and proof of lunacy in the wife by her friends, the Court will order her estate to be so settled, that she may not be wrought on by her husband to give it to him from her children, by him or any other husband, &c. Skin. 110.

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Marriage is dissolved by the natural death of the husband or wife, or by divorce; and where a Marriage is dissolved by the death of the husband, dower survives to the wife, where no settlement is made of the husband’s lands. See this Dictionary, titles Baron and Feme; Chancery; Bankruptcy; Dower; Jointure; &c.

MARROW, Was a Lawyer of great account in Henry VIIIth’s days, whose learned readings are extant, but not in print. Lamb. Liv. de rerun. lib. 1. cap. 10.

MARSHAL, Marescallus, Fr. Mareschal.] It seems to signify as much as Tribunus militum, with the antient Romans: It has also been derived from the German marschall, i. e. Equitus magister, which Hotoman in his Feuds, under verb. Marchalcus, derives from the old word march, which signifies a horse; others make it of the Sax. mar, i. e. Equus, & sculch, præfectus.

With us there are several officers of this name; the chief whereof is the Earl Marshal of England, mentioned in stat. 1 H. 4. c. 24: 8 R. 2. c. 5: 13 R. 2. st. 1. c. 2, &c. whose office consists especially in matter of war and arms, as well in this kingdom as in other countries. This office is very antient, having formerly greater power annexed to it than now; it has been long hereditary in the family of the Duke of Norfolk. Vide Luhanus de Magistratibus Franciae, lib. 1. c. Marescallus; and Titius, lib. 2. c. De Constabili Mariscallo, &c. and this Dictionary, titles Constable; Court of Chivalry; Court Martial.

The next is the Marshal of the King’s house, otherwise called Knight Marshal; his authority is exercised in the King’s palace, in hearing and determining all pleas of the Crown, and suits between those of the King’s house and other persons within the verge, and punishing faults committed there, &c. See the stat. 28 El. 1. st. 3. c. 3: 18 Ed. 3. c. 7: 27 Ed. 3. st. 2. c. 6: 8 Ric. 2. c. 5: 2 H. 4. c. 13: Compt. Jurisd. 192.

Fleta mentions a Marshal of the King’s hall, to whom it belongs, when the tables are prepared, to call out those of the household and strangers, according to their rank and quality, and properly places them. Fleta, lib. 2. cap. 15.

There are other inferior officers called Marshal, as Marshal of the Justice in Eyre. Anno 13 Ed. 1. c. 19. Marshal of the King’s Bench; see stat. 5 Ed. 3. cap. 8. who hath the custody of the King’s Bench prison in Southwark. This officer gives attendance upon the Court, and takes into his custody all prisoners committed by the Court; he is fineable for his absence; and non-attendance is a forfeiture of his office. Hil. 21 & 22 Car. 2. By stat. 8 & 9 W. 3. c. 27, Grants of the King’s Bench and Fleet prisons to be enrolled; and the office of Marshal and Warden of the King’s Bench and Fleet, is to be executed by those who have the inheritance of those prisons. The power of appointing the Marshal of the King’s Bench, which had been granted in fee by K. James I. was revested in the Crown by stat. 27 Geo. 2. c. 17, and the office subjected to the control of the Court of King’s Bench.

There is also a Marshal of the Exchequer, to whom that Court commits the custody of the King’s debtors for securing the debts; he likewise assigns to sheriffs, customers and collectors, their auditors, before whom they shall account. Stat. 51 Hen. 3. stat. 5.

There is also a Marshal or Provost Marshal of the Admiralty, whose duty it is to act ministerially, under the orders of the Court
of Admiralty in securing prizes, executing Warrants for these and other purposes, arresting and attending the execution of criminals, &c. See stat. 45 G. 3. c. 72. § 117, and other Prize Acts.

MARSHAL AND STEWARD OF THE KING's HOUSEHOLD AND MARSHalseA. Of what things they shall hold plea. Art. sufer Cartas, 28 Ed. 1. stat. 3. c. 3: 8 R. 2. c. 5.

MARSHalseA, Mareualitia.] The court or seat of the Marshal; of whom see Crown. Jur. 120. It is also used for the prison in South-wark; the reason whereof may be, because the Marshal of the King's house was wont perhaps to sit there in judgment, or keep his prison. See stats. 9 Rich. 2. c. 5: 2 Hen. 4. c. 23. King Charles the First erected a court by letters patent under the great seal, by the name of Curia Hospitii Domini Regis, &c. which takes cognizance more at large of all causes than the Marshalsea could; of which the Knight Marshal or his Deputy are Judges. Cowell. See title Court of Marshalsea.

MARSHES AND FENS, Laws concerning them. See title Fens. MART; A great fair for buying and selling goods, holden every year. 2 Inst. 221. See titles Fair; Market.

MARTIAL LAW, The law of war, that depends upon the just but arbitrary power and pleasure of the King, or his Lieutenant; for though the King doth not make any laws but by common consent in Parliament, yet in time of war, by reason of the necessity of it, to guard against dangers that often arise, he useth absolute power, so that his word is a law. Smith de Repub. Angl. lib. 2. c. 4. This power, however, is now regulated by Act of Parliament. See this Dictionary, title Court Martial.

MARTILAGIUM, For Martyrologium. Monast. ii. 322.

MARTYROLOGY, Martyrologium.] A book of Martyrs, containing the lives, &c. of those men who died for their religion. Also a calendar or register kept in religious houses, wherein were set down the names and donations of their benefactors, and the days of their death, that upon every anniversary they might commemorate and pray for them; such benefactors usually made it a condition of their benefice, to be inserted in the Martyrology. Paroch. Antiq. 189.

MASAGIUM. Antiently used for messuagium, a messuage. Pat. 16. R. 2.

MASKS. The penalty of selling or keeping visor masks. See the antient stat. 3 Hen. c. 9.

MASONs. To plot confederacies amongst Masons, was, by an obsolete stat. 3 Hen. 6. c. 1, declared felony. See title Conspiracy.

MASS; See Papist.

MASSER, A priest that says mass. Blount.

MASS-PRIEST. In former times secular Priests, to distinguish them from the regulars, were called Mass-Priests, and they were to officiate at the Mass, or in the ordinary service of the church; hence Messe Priest in many of our Saxon canons, for the parochial minister; who was likewise sometimes called Messe Thegne, because the dignity of a priest in many cases was thought equal to that of a Thein, or lay lord. But afterwards the word Mass-Priest was restrained to stipendaries retained in chantries, or at particular altars, to say many Masses for the souls of the dead.

MAST, Glans Pessona.] The acorns and nuts of the oak, or other large tree.—Glandi, nomine continentar glans, castanea, fagina, sicus
et nucem, et alia quaque qua edis et pasci poterunt prater herbam. Bract. lib. 4. Tempus pessone often occurs for Mast-time, or the season when Mast is ripe; which in Norfolk they call Shaking-time.—Quod habitat decem forces in tempore de pessone in bosco meo. Mong. Angl. ii. 113, 231.

MASTER, Magister.] Signifies in general a governor, teacher, &c. and also in many cases an officer. See Servant.

MASTER AND SERVANT. The relation between a Master and a Servant, from the superiority and power which it creates on the one hand, and duty, subjection, and, as it were, allegiance on the other, is, in many instances, applicable to other relations, which are in a superior and subordinate degree; such as lord and bailiff, principal and attorney, owners and masters of ships, merchants and factors, and all others having authority to enforce obedience to their orders, from those whose duty it is to obey them, and whose acts, being conformable to their duty and office, are esteemed the acts of their principals. See this Dictionary, title Servant; as also titles Apprentice; Labourer.

MASTER OF THE ARMORY, Magister Armorum et Armaturæ Regis.] An officer who hath the care of his Majesty's arms and armory, mentioned in the antient stat. 39 Eliz. c. 7.

MASTER OF THE CEREMONIES, Magister Admissionum.] One who receives and conducts ambassadors and other great persons to audience of the King, &c. This office was instituted by King James I., for the more magnificent reception of ambassadors and strangers of the greatest quality.

MASTER OF, OR IN CHANCERY, Magister Cancellaire.] In the Chancery there are Masters, who are assistants to the Lord Chancellor or Lord Keeper, and Master of the Rolls: of these there are some ordinary, and some extraordinary; the Masters in ordinary are twelve in number, of whom the Master of the Rolls is chief, and some sit in Court every day during term, and have referred to them interlocutory orders for stating accounts, computing damages, and the like; they also administer oaths, take affidavits, and acknowledgments of deeds and recognizances: they also examine, on reference, the propriety of Bills in Chancery; which if they report to be scandalous or impertinent, such matter must be struck out, and the defendant shall have his costs. The extraordinary Masters are appointed to act in the country, in the several counties of England, beyond ten miles' distance from London, by taking affidavits, recognizances, acknowledgments of deeds, &c. for the ease of the suitors of the Court.

By the stat. 13 Car. 2. st. 1, in the Appendix, a public Office was ordained to be kept near the Rolls, for the Masters in Chancery; in which they, or some of them, are constantly to attend, for administering oaths, caption of deeds, and despatch of other business; and their fees for taking affidavits, acknowledgment of deeds, exemplifications, reports of certificates, &c. are ascertained by that act; and to take more, incurs disability for such Master to execute his office, and a forfeiture of 100l. &c.

Respecting the salaries of the Masters in Chancery, see this Dictionary, titles Chancellor; Chancery.

MASTER OF THE COURT OF WARDS AND LIVERIES, The chief officer of that Court, assigned by the King; to whose cus-
tody the seal of the Court was delivered, &c. as appears by the stat. 33 H. 8. c. 33. But as this Court was abolished by stat. 12 Car. 2. c. 24; this office of course dropped with it.

MASTER OF THE FACULTIES, Magister facultatum.] An officer under the Archbishop of Canterbury, who grants licences and dispensations, &c.

MASTER OF THE HORSE, He who hath the ordering and government of the King's stables; and of all horses, racers, and breeds of horses belonging to his Majesty: he has the charge of all revenues appropriated for defraying the expense of the King's breed of horses, of the stables, litters, sumpter-horses, coaches, &c. and has power over the equerries and pages, grooms, coachmen, farriers, smiths, sadlers, and all other artificers working for the King's stables, to whom he administers an oath to be true and faithful; but the accounts of the stables, of liveries, wages, &c. are kept by the Averner; and by him brought to be passed and allowed by the Court of Green Cloth.

The office of Master of the Horse is of high account, and always bestowed upon some great nobleman; and this officer only has the privilege of making use of any horses, footmen, or pages, belonging to the King's stables: at any solemn cavalcade he rides next to the King, with a led horse of state. He is the third great officer of the King's household, being next to the Lord Steward and Lord Chamberlain; and is mentioned in stats. 39 Eliz. c. 7: 1 Ed. 6. c. 5.

MASTER OF THE JEWEL OFFICE, An officer of the King's household, having the charge of all plate used for the King or Queen's table, or by any great officer at Court; and also of the royal plate remaining in the Tower of London, and of chains and jewels not fixed to any garment. See stat. 39 Eliz. c. 7.

MASTER OF THE HOUSEHOLD, Magister Hospitii Regis.] Otherwise called Grand Master of the King's Household, now styled Lord Steward of the Household; which title this officer hath borne ever since Anno 52 H. 8. But under him there is a principal officer still called Master of the Household, who surveys the accounts, and has great authority.

MASTER OF THE KING'S MUSTERS, A martial officer in the King's armies, to see that the forces are complete, well armed and trained; and to prevent frauds, which would otherwise waste the Prince's treasure, and weaken the forces, &c.

MASTER OF THE MINT, An officer who receives the silver of the goldsmiths, and pays them for it, and oversees every thing belonging to the Mint; he is at this day called Warden of the Mint.

MASTER OF THE ORDNANCE, A great officer to whose care all the King's ordnance and artillery is committed. See stat. 39 Eliz. c. 7.

MASTER OF THE POSTS, Was an officer of the King's Court, who had the appointing, placing, and displacing of all such through England, as provided post-horses for the speedy passing of the King's messages, letters, pacquets, and other business; and was to see that they kept a certain number of good horses of their own, upon occasion that they provided others for furnishing those persons who had a warrant from him to take and use post-horses, either from or to the seas, or other places within the realm; he likewise paid their wages, settled their allowances, &c. See stat. 2 Ed. 6. c. 3.
This office is now superseded, by the establishment of a regular Post-office; see that title. It has been thought necessary, however, to provide by the stat. 21 Geo. 2. c. 25, That any person may let or hire chaises, or furnish horses for chaises at any stage upon any post-road, notwithstanding stat. 9 Ann. c. 10.

MASTER OF THE REVELS, An officer to regulate the diversions of dancing and masking, used in the palaces of the King, Inns of Court, &c. and in the King's Court, is under the Lord Chamberlain. His power is very much abridged since the time of Charles II. when patents were granted for public Theatres in London, &c.

MASTER OF THE ROLLS, Magister Rotulorum.] An assistant to the Lord Chancellor in the High Court of Chancery, who in his absence hears causes there, and also at the Chapel of the Rolls, and makes orders and decrees. Crompt. Jurisd. 41. His title in his patent is, Clericus parva Baga, Custos Rotulorum, &c. And he has the keeping of the Rolls of all the patents and grants which pass the Great Seal, and the records of the Chancery. He is called Clerk of the Rolls, stat. 12 R. 2. c. 2. and in Fortescue, c. 24; and nowhere Master of the Rolls, until the stat. 11 H. 7. c. 18. In which respect, Sir Thomas Smith says, he may not unfitly be styled Custos Archivorum. Master of the Rolls enabled to grant leases of the houses belonging to the Rolls; stat. 12 Car. 2. c. 26. Construction of the power; st. 3 Geo. 2. c. 34. His judicial authority confirmed; st. 3 Geo. 2. c. 30; see title Decree. In his disposition are the offices of the Six Clerks, and the Clerks of the Petty Bag, Examiners of the Court, and Clerks of the Chapel. 14 & 15 H. 8. c. 1. See further title Chancery.

MASTER OF A SHIP: See Insurance.

MASTER OF THE TEMPLE. The founder of the order of Knight Templars, and his successors, were called Magni Templi Magistri; and probably from hence he was the spiritual guide and director of the Temple. The Master of the Temple here was summoned to Parliament Anno 49 H. 3. The chief Minister of the Temple Church in London, is now called Master of the Temple. Dugd. War. 706.

MASTER OF THE WARDROBE, Magister Garderobe.] A considerable officer at Court, who has the charge and custody of all former Kings' and Queens' antient robes remaining in the Tower of London; and all hangings, bedding, &c. for the King's houses: he hath also the charge and delivery out of all velvet or scarlet cloth allowed for liversies, &c. Of this officer mention is made in stat. 39 Eliz. c. 7. The Lord Chamberlain has the oversight of the officers of the Wardrobe.

MASTINUS, Mastivus.] A great dog; a mastiff. Knyght, lib. 2. c. 15.

MASTS; See Ships and Stores.

MASURA; An old decayed house. Domesd.

MASURA TERRÆ, Fr. masure de terre.] A quantity of ground, containing about four oxgangs. Domicitium cum fundo; or fundus cum domicilio competentis. See Domesday.

MATERIA, A great beam, or timber proper for building. Mon. Angl. i. 821.

MATRICULA, A register; as in the antient church there was matricula clericorum, which was a catalogue of the officiating clergy;
and matricula pauperum, a list of the poor to be relieved; hence to be entered in the register of the Universities, is to be matriculated, &c.

MATRIMONIAL CAUSES, Or injuries respecting the rights of marriage, are a branch of the ecclesiastical jurisdiction. See title Marriage.

MATRIMONIUM, Is sometimes taken for the inheritance descending to a man ex parto matris. Blount.

MATRIMONY; See Marriage.

MATRIX ECCLESIA, The mother church; and is either a Cathedral, in respect of the parochial churches within the same diocese; or a parochial church, with respect to the chapels depending on it, and to which the people resort for sacraments and burials. Leg. H. 1. c. 19.

MATRONS, Jury of. When a widow feigns herself with child, in order to exclude the next heir, and a supposititious birth is suspected to be intended; then, upon the writ de ventre inspiciendo, a Jury of women is to be impanelled to try the question, whether with child or not. Cro. Eliz. 566. So if woman is convicted of a capital offence, and being condemned to suffer death, pleads in stay of execution, that she is pregnant, a Jury of Matrons is impanelled to inquire into the truth of the allegation; and if they find it true, the convict is respite until after her delivery. See titles Ventre inspiciendo; Execution of Criminals.

MATTER IN DEED, AND MATTER OF RECORD, Are often mentioned in law proceedings, and differ thus: the first seems to be nothing else but some truth or matter of fact to be proved by some speciality, and not by any record; and the latter is that which may be proved by some record. For example; if a man be sued to an exigent, during the time he was abroad in the service of the King; &c. this is Matter in Deed, and he that will allege it for himself, must come before the seire facias for execution be awarded against him; but after that, nothing will serve but matter of Record, that is, some error in the process appearing upon the Record. There is also a difference between Matter of Record and Matter in Deed, and nude matter; the last being a naked allegation of a thing done, to be proved only by witnesses, and not either by record or specialty. Old Nat. Br. 19: Kitch. 216.

MAUGRE, from the Fr. Mal, and grce; i. e. Animo iniquo.] Signifies as much as to say with an unwilling mind, or in despite of another; as where it is said, that the wife shall be remitted, maugre the husband, that is, whether the husband will or not. Lit. § 672: See Malo Grato.

MAUM, A soft brittle stone in some parts of Oxfordshire; and in Northumberland they use the word Maum for soft and mellow. Plot's Nat. Hist. Oxfordsh. p. 63.

MAUND, A kind of great basket or hamper, containing eight bales, or two fats: it is commonly a quantity of eight bales of unbound books, each bale having having one thousand pounds weight. Old Book of Rates, pag. 3.

MAUNDY THURSDAY, The Thursday before Easter. See Mandati Dies.

MAUPIGYRNUM, an old sort of broth or pottage. Cowell.

MAXIMS IN LAW, Positions and theses, being conclusions of
reason, and universal propositions, so perfect, that they may not be impugned or disputed. Cowell, Co. Litt. 543.

A Maxim is a sure foundation or ground of art, and a conclusion of reason; so called *quia maxima est ejus dignitas et certissima autho-
iritas*, *atque quid maxime probetur*, so sure and uncontrollable as that it ought not to be questioned; and what is elsewhere called a prin-

ciple, and is all one with a rule, a common ground, *postulatum or axiom*. Co. Lit. 10. b; 11. a.

Maxims are the foundations of the law, and conclusions of reason; therefore ought not to be impugned, but always to be admitted; but they may by reason be conferred and compared the one with the other though they do not vary, or it may be discussed by reason which thing is nearest the Maxim, and the mean between the Max-

ims, and which is not; but the Maxims can never be impeached or impugned, but ought always to be observed, and held as firm princi-

ples and authorities of themselves. Plowd. 27. b.

The alterations of any of the Maxims of the Common Law are dangerous. 2 Inst. 210.

Maxims are principles and authorities, and part of the general cus-

toms or Common Law of the land; and are of the same strength as acts of parliament, when the Judges have determined what is a Max-
im; which belongs to the Judges, and not a Jury. *Terms de Legy; Doct.

& Stud. Dial. 1. c. 8.* A Maxim in law is said to be a proposition of all men confessed and granted, without argument or discourse. Max-

ims of the Law are holden for law; and all other cases that may be applied to them, shall be taken for granted. 1 Inst. 11, 67: 4 Rep. See 1 Comm. c. 68.

The Maxims in our books, which are many and various, are such as the following, *viz.* It is a Maxim, that freehold land shall descend from the father to the eldest son, &c. It is a Maxim, that as no estate can be vested in the King without matter of record, so none can be divested out of him but by matter of record; for things are dissolved as they are contracted. Rep. 1, Cholmeley's case. Another, that an obliga-

tion, or other matter in writing, cannot be discharged by an agree-

ment by word. Co. Lit. 141.

It is also a Maxim, that if a man have issue two sons by divers ven-
ters, and the one of them purchase lands in fee, and die without issue, the other brother shall never be his heir, &c. See title *Descent.*

That allegiance is due more by reason of the crown than of the per-

son of the King, condemned; *Exil. Hug. le Despenser*, 15 Ed. 2. st. 3.

MAYHEM. See Maihem.

MAYOR, *Prefectus urbis*, antiently *meyr*; comes from the Brit. *miret*, i. e. *custodire*; or from the old English word *maier*, viz. *potes-
tas*; and not from the Lat. *major.*] The chief Governor or Magistrate of a city or town-corporate, as the Mayor of London, the Mayor of Southampton, &c. King Rich. I. anno 1189, changed the bailiffs of London into a Mayor; and from that example King John made the bailiff of King's *Lynn* a Mayor, anno 1204. Though the famous city of *Norwich* obtained not this title for its chief magistrate, till the seventh year of King *Hen. V.* anno 1419, since which there are few towns of note, but have had a Mayor appointed for government. Sjelm. Gloss.

Mayors of Corporations are Justices of Peace, *pro temore*, and
they are mentioned in several statutes; but no person shall bear any office of magistracy concerning the government of any town, corporation, &c. who hath not received the sacrament according to the church of England, within one year before his election; and who shall not take the oaths of supremacy, &c. Stat. 13 Car. 2. st. 1. c. 1. See title Oaths; Dissenters; Conventicle. If any one intrudes into, and thereupon executes, the office of Mayor, a quo warranto, informations may be brought against him; and he shall be ousted and fined, &c. See title Quo Warranto.

A distinction is made in cases relative to Corporations between a mere Usurper, and an Officer de facto; though not de jure. An Usurper is a man who, without any colour of election, gets possession of the office, and acts in it: and the mere circumstance of being sworn into the office, makes no difference; but to make an officer de facto, at least the form of an election is necessary, though on legal objections it may afterwards be overturned. Notwithstanding this distinction, however, if in point of form, it is doubtful whether there be any in the effect. Some acts, it is admitted, may be good if done by a Mayor de facto, or under his authority; but it does not appear whether the same acts would be good if done by a mere Usurper: some acts are certainly void if done by an Usurper; and probably so, if done by a Mayor de facto. Those acts which are good if done by a mayor de facto, or under his authority, are such as he may be compelled to do in favour of a person who has a precedent right to have done them. All voluntary acts not necessary to carry on the business of the corporation seem to be void, whether done by an Usurper, or a Mayor de facto, or under the authority of either: some necessary acts are also void in both cases. See Andr. 116, 117, 163, 388: Hardw. 147—152: Laws. 519: 2 Stra. 1090; 1109: 5 Burr. 2601, and Kyd’s Law of Corporations, c. 3. § 7. But the above does not apply to acts in which strangers are interested. See Kyd.

Where an Infant is actually Mayor, or other Chief Officer of a Corporation, this shall not void the acts of the Corporation with respect to Strangers, because these acts are not the acts of the particular persons, but of the Body-corporate. But it seems, that where neither the provisions of the charter, nor the usage of the Corporation expressly authorize the election of an Infant into this or any other corporate office, an Infant is not capable of being elected; because, as Lord Hardwicke observed, “if an Infant is not fit to manage for himself, he is improper to be a Mayor for the Publick.” See Hardw. 8: Corp. 220.

The powers and duties of a Mayor, or other head officer of a Corporation depend in general on the provisions of the charters, or prescriptive usage of the Corporation, or the express provisions of an act of Parliament. It is commonly one of his duties, as well as of his particular privileges, to preside at the corporate assemblies: but whether, in a Corporation by charter, this be necessarily incident to his office, where no express provision is made for that purpose, has been made a question, but never solemnly decided; and indeed all cases of such nature must chiefly depend on their own particular circumstances. See 3 Mod. 14: 2 Ld. Raym. 1237: 2 Burr. 370. In the case of a Corporation by prescription, this question can hardly ever arise; because there must necessarily be some usage one way or the other, to shew what is the power and duty of the Mayor in this respect, in
every such particular Corporation, independently of any general principle. In every other respect it may be safely asserted, that the Mayor, as well as the Aldermen, and other select bodies, have no other powers, authorities, or privileges, than those which they possess by charter, prescription, or act of Parliament. See Kyd on Corporations.

Where the Mayor's presence is necessary at a corporate assembly; his departure before a business regularly begun be concluded, will not invalidate that particular business: but the assembly cannot proceed to any thing else. 1 Barnard, 385. And on the death of the Mayor, or during the vacation of the office, the Corporation can do no corporate act, but that of choosing a new Mayor. 21 Ed. 4. 58. n.

By the provisions of some charters the Mayor or other chief officer is elected for a year, and till another be chosen; in which case, if no successor be chosen at the end of the year, the Mayor of the preceding year is said to hold over. But where a particular day is appointed for the election of a successor, which is generally the case, and a power of holding over is not expressly given, it does not exist by implication. 3 Ed. 394. And the preamble of the stat. 11 Geo. 1. c. 4. (see post.) manifestly shows, that the Legislature thought it was not implied; for it proceeds on the supposition, that for want of an election of a new Mayor on the charter day, the Corporation was dissolved; which could not have been the case if the Mayor of the preceding year had a right of holding over. Kyd on Corporations.

Where there was a clause of holding over, it had become a practice with the Mayor and other Head Officers of the Corporations to avoid holding an election on the charter day; by which means they continued in office for several years together: In order to put an end to this practice, the stat. 9 Ann. c. 20. § 8, after reciting the inconvenience which had arisen from Head Officers of Corporations, to whom it belonged to preside at the election, and make return of Members to serve in Parliament, being elected for two years successively, enacted, "that no person or persons who had been or should be in such annual office for one whole year, should be capable of being chosen into the same office for the year immediately ensuing; and that where any such annual officer or officers was or were to continue for a year, and until some other person or persons should be chosen and sworn into such office, if any such Officer or officers should voluntarily and unlawfully obstruct and prevent the choosing of another person, to succeed into such office, at the time appointed for making another choice, he should forfeit 100l." See 3 Mod. 111, 127, 132: and Kyd on Corporations.

By stat. 11 Geo. 1. c. 4, if no Mayor or other Chief Officer be elected in a Corporation on the day appointed by charter, by the proper officers, or such election being made, it shall afterwards become void: the next in place is to hold a Court; and elect one the day following; &c. or, in default thereof, the Court of King's Bench may compel the electors to choose one, &c. by writ of mandamus, requiring the members who have a right to vote, to assemble themselves on a day prefixed; and proceed to election, or shew cause to the contrary; and Mayors, &c. voluntarily absenting on the day of election, shall be imprisoned six months, and be disabled to hold any office in the Corporation. See titles Mandamus; Quo Warranto.

The authority of Mayors, as to matters not relating to their Corporation, extends to the following other particulars:—The statute 2 Ed.
MAYOR. 267

3. c. 3, gives power to Mayors to arrest persons carrying offensive weapons in fairs, markets, &c. to make affrays, and the disturbance of the peace.

By stat. 23 H. 8. c. 4, Mayors, &c. have power to set the price of ale and beer:—and they are authorised to convict persons selling ale without licence; and also to levy penalties on the offender by distress, &c. Stat. 3. Car. 1. c. 3;—and they are to cause quart and pint pots for the selling of ale, to be examined whether they hold their full measure; and to mark them, under the penalty of 5l. Stat. 11 & 12 W. 3. c. 15.—Mayors, bailiffs, and lords of leets, are to regulate the assise of bread, and examine into the goodness thereof: and if bakers make unlawful bread, they may give it to the poor, and pillory the offenders, &c. 5 Hen. 3. st. 6. See title Bread and Beer.

Mayors, &c. are empowered to make inquiry into offences committed against stat. 1 Eliz. c. 2, which requires that the common prayer be read in churches; and that the churchwardens do their duty in presenting the names of such persons as absent themselves from church on Sunday, &c. The Head officers of Corporations are to appoint and swear overseers or searchers to examine into defects of northern cloth, &c. and the overseers shall fix a seal of lead to cloths, expressing the length and breadth; and if they find any faulty, or sealed with a false seal, &c. they are to present the same at the next quarter sessions.—Mayors, &c. neglecting their duty, are liable to a penalty of 5l. stat. 30 Eliz. c. 20. Mayors may determine whether coin offered in payment be counterfeit or not; and tender an oath to determine any question relating to it. Stat. 9 & 10 W. 3. c. 21.

By stat. 23 Eliz. c. 9, Mayors, &c. may call before them and examine dyers, suspected to use logwood in dying; and, if they find cause, may bind them over to the quarter sessions, where, on conviction, they are liable to a forfeiture of 20l.—Under various statutes Mayor and Head Officers of Corporations are to punish drunkenness. See title Drunkenness.

Head Officers and Justices of Peace in Corporations, may inquire of forcible entries, commit the offenders, and cause the tenements to be seized, &c. within their franchises, in like manner as Justices of Peace in the county. Stat. 8 H. 6. c. 9. See titles Forcible Entry II.

Mayors, &c. shall inquire into unlawful gaming, against the stat. 33 H. 8. c. 9. They are to search places suspected to be gaming houses, and levy penalties, &c. and they have power to commit persons playing at unlawful games. See title Gaming.

Horses stolen, found in a Corporation, may be redeemed by the owner, making proof before the Head Officer of the Corporation of the property, &c. Stat. 31 Eliz. c. 12. See title Horses.

Mayors and Head Officers in corporate and Market-towns, and lords of liberties and their stewards, are to appoint and swear two skilful persons yearly, to be searchers and sealers of leather; and they are to appoint triers of insufficient leather, and of leather wares: searchers not doing their duty to forfeit 40s. and triers, 5l. Stat. 1 Jac. 1. c. 22. See title Leather.

Persons robbing orchards, hedge-breakers, &c. are punishable by Mayors; and a person on conviction by the oath of one witness, shall pay to the person injured such damage as the Mayor, &c. shall think fit, or be whipped. Stat. 43 Eliz. c. 7. See title Trespass.
Mayors, &c. on receipt of precepts from sheriffs, (when writs are issued for elections) requiring them to choose burgesses or members of Parliament, by the citizens, &c. are to proceed to election, and make returns by indenture between them and the electors; and making a false return, shall forfeit 40l. to the King, and the like sum to the party chosen, not returned, &c. Stat. 25 H. 6. c. 14. See stat. 2 Geo. 2. c. 24; and this Dictionary, title Parliament.

In time of sickness, a tax may be laid on inhabitants of Corporations, for relieving such persons as have the plague, by Mayors, &c. who are to appoint searchers and buriers of the dead: and if any infected persons shall go abroad with sores upon them, after a Head Officer hath commanded them to keep at home, it is felony; and if they have no sores about them, they are punishable as vagrants. Stat. 1 Jac. 1. c. 31. See title Plague.

The stat. 43 Eliz. c. 2, which directs that the father, grandfather, mother, grandmother, and children, of every poor person, shall be assessed towards their relief by Justices, and which empowers Justices of Peace to order a poor's rate or tax, and overseers of the poor, &c. to place forth apprentices, and sets forth the office of overseers; gives the like authority to the Head Officers in corporate towns, as Justices of Peace have in their counties; which said Justices are not to intermeddle in Corporations for the execution of this law. See titles Poor; Justices of the Peace.

Mayors, Bailiffs, and other Head Officers of corporate towns, &c. are to make proclamation for rioters to disperse as follows: Our Sovereign Lord the King charges and commands all persons assembled, immediately to disperse themselves, and peaceably depart to their habitations, upon pain of imprisonment, &c. And if the rioters, being twelve in number, do not disperse within an hour after, it is felony without benefit of clergy, &c. Stat. 1 Geo. 1. st. 2. c. 5. See title Riots.

Matters relating to servants, and apprentices, may be determined by Mayors; who have power to compel persons to go to service, &c. Stat. 5 Eliz. c. 4. See titles Servants; Labourers; Apprentices. Mayors may arrest soldiers departing without licence; and they are to be present at musters; quarter and billet soldiers, &c. See title Soldiers. Stats. 18 Hen. 6. c. 18: 1 Geo. 1. c. 47, &c. Persons using games on a Sunday forfeit 5s. 4d. to the use of the poor; carriers, &c. travelling on that day 20s. and persons doing any worldly labour thereon 5s. all leviable by warrant from Mayors and Head Officers of Corporations, as well as other Justices. See stats. 1 Car. 1. c. 1: 3 Car. 1. c. 2: 29 Car. 2. c. 7: and see this Dictionary, titles Holidays; Sundays.

In every city, town, &c. there is to be a common balance and sealed weights, under divers penalties: there is also to be a common bushel sealed. Stat. 8 Hen. 6. c. 5: 11 Hen. 6. c. 8. And Mayors, &c. are to provide a mark for the sealing of weights and measures, being allowed 1d. for sealing every bushel and hundred weight; and a halfpenny for every other measure and half hundred weight, &c. Mayors and Head Officers of Corporations, &c. shall view all weights and measures once a year; and punish offenders using false weights; and they may break or burn such weights and measures, and inflict penalties, &c. If they permit persons to sell by measures not sealed, they shall forfeit 5l. Sealing weights not agreeable to the standard, is liable to the same penalty; and refusing to seal weights and measures, subjects them to a forfeiture of 40s. See stat. 31 Geo. 2. c. 17.
§ 9; and this Dictionary, title *Weights and Measures*. Mayors, &c. are to inspect and order the size of faggot, billet, tale-wood, &c. 43 Eliz. c. 14. See title *Fuel; Wood*.

For the various offences which *Mayors*, *Justices*, &c. have jurisdiction to punish, part of which are above enumerated, see the titles of the offences, this Dictionary, *passim*; and the statutes imposing the several penalties; too long and numerous to be referred to, under this title. See also titles *Corporation; Justices of Peace; Officers; Oaths; Mandamus; Quo Warranto*; &c.

*MEAD AND METHEGLIN*, are liable to certain duties of Ex- cise. See that title.

*MEAL;* May be exported duty free. 11 & 12 W. 3. c. 20. See titles *Corn; Navigation Acts*.

*MEAL-RENTS*, Certain rents heretofore paid in Meal by the tenants of the honour of *Clun*, to make meat for the Lord's hounds; they are now payable in money.

*MEALS*. The shelves of land, or banks on the sea-coasts of *Norfolk*, are called the *Meals* and the *Males*. *Cowell*.

*MEAN or MESNE, medius.*] The middle between two extremes; and that either in time or dignity. In time it is the interim betwixt one act and another, and is applied to Mean profits of lands between a disseisin and recovery, &c. See title *Ejectment*. As to dignity, there is a Lord Mean or Mesne, that holds of another Lord; and mean tenant, &c. All the land in the kingdom is, by a fiction arising from the feudal origin of the *English* tenures, supposed to be holden mediate-ly or immediately of the King, who is styled the *Lord Paramount*, or above all. Such tenants as held under the King immediately, when they granted out portions of their lands to inferior persons, became also Lords with respect to those inferior persons, as they were still tenants with respect to the King; and thus partaking of a middle nature were called *Mesne*, or middle Lords. So that if the King granted a manor to *A*, and he granted a portion of the lands to *B*, now *B* was said to hold of *A*, and *A* of the King; or in other words, *B* held his lands immediately of *A*, and mediate ly of the King. The King was therefore styled *Lord Paramount*; *A* was both tenant and *Lord*, or was a *Mesne* Lord, and *B* was called *Tenant paravail*, or the lowest tenant, being he who was supposed to make avail or profit of the land. 1 Inst. 296: 2 Comm. c. 5. p. 59. See this Dictionary, title *Tenures*.

The *Writ of Mesne* is in the nature of a writ of right, and lies when, upon any subinfeudation, the Mean or middle Lord suffers his under-tenant, or tenant paravail, to be distrained upon by the *Lord Paramount*, [whether the King or another,] for the rent due to him from the Mesne Lord. *Booth*, 136: *F. N. B.* 135.

In such case the tenant shall have judgment to be acquitted or indemnified by the *Mesne Lord*; and if he makes default therein, or does not appear originally to the tenant's writ, he shall be forejudged of his mensality, and the tenant shall hold immediately of the Lord Paramount himself. 2 Inst. 374.

**Form of a Writ of Mesne.**

**GEORGE the Third, &c. To the Sheriff of S. Command A. B. that justly, &c. he acquit C. D. of the service which E. F. exacts from him**
of his freehold that he holds of the said A. B. in W. whereof the said A. who is Mesne betwixt the said E. and C. ought to acquit him; and whereupon he complains, that for his default he is distrained; and unless, &c.

If a man bring a writ of Mesne where he is not distrained, yet it is maintainable, but then he shall not have damages; for it is brought only to be acquitted, &c. And tenant for life, where the remainder is over in fee, shall have this writ against the Mesne. 7 H. 4. 12: 15 H. 6: New Nat. Br. 330. One brought a writ of Mesne against a Man, because he did not acquit the plaintiff of a rent-charge demanded, &c. when he by his deed bound himself and his heirs to warrant and acquit him; and it was held good: and if a man have judgment to recover in this writ, if he be not afterwards acquitted, he may have a distingas ad acquitandum against the Mesne: and scire facias against the Lord. Stat. Westm. 2. 13 E. 1. c. 9: 14 Ed. 3. MEAN PROCESS; See Mesne Process.


MEASON-DUE, In Fr. Maison de Dieu, Domus Dei; a house of God, a monastery, religious house or hospital; the word is mentioned in stat. 39 Ed. c. 5. See Hospital.

MEASURE, mensura.] A certain quantity or proportion of any thing sold; and, in many parts of England, it is synonymous with a Bushel.

The regulation of Weights and Measures, for the advantage of the public, ought to be universally the same throughout the kingdom; being the general criterions which reduce all things to the same or an equivalent value. But as weight and Measure are things in their nature arbitrary and uncertain, it is therefore expedient that they be reduced to some fixed rule or standard: which standard it is impossible to fix by any written law, or oral proclamation; for no man can, by words only, give another an adequate idea of a foot rule, or a pound weight. It is therefore necessary to have recourse to some visible, palpable, material standard; by forming a comparison with which, all weights and Measures may be reduced to one uniform size; and the prerogative of fixing this standard, our antient law vested in the Crown; as in Normandy it belonged to the Duke. This standard was originally kept at Winchester: and we find in the laws of King Edgar, c. 8, near a century before the Conquest, an injunction that the one Measure, which was kept at Winchester, should be observed throughout the realm. Most nations have regulated the standard of Measures of length by comparison with the parts of the human body; as the palm, the hand, the span, the foot, the cubit, the ulna, (or arm, ell) the pace, and the fathom. But as these are of different dimensions in men of different proportions, our antient historians inform us, that a new standard of longitudinal measure was ascertained by King Henry the First; who commanded that the ulna, or antient ell, which answers to the modern yard, should be made of the exact length of his own arm. And, one standard of Measures of length being gained, all others are easily derived from thence; those of greater length by multiplying, those of less by
subdividing, that original standard. Thus, by the statute called com-positio ulnarum et perticarum, five yards and a half make a perch; and the yard is subdivided into three feet, and each foot into twelve inches; which inches will be each of the length of three grains of barley.

Superficial Measures are derived by squaring those of length; and Measures of capacity by cubing them.

The standard of Weights was originally taken from corns of wheat, whence the lowest denomination of weights we have is still called a grain; thirty-two of which are directed by the statute called compositio mensurarum, to compose a penny-weight, whereof twenty make an ounce, twelve ounces a pound; and so upwards. And upon these principles the first standards were made; which, being originally so fixed by the Crown, their subsequent regulations have been generally made by the King in Parliament. Thus, under King Richard I. in his Parliament helden at Westminster, A. D. 1197, it was ordained, that there should be only one weight and one Measure throughout the kingdom; and that the custody of the assise or standard of weights and Measures should be committed to certain persons in every city and borough; from whence the antient office of the King's Aulnager seems to have been derived, whose duty it was, for a certain fee, to measure all cloths made for sale, till the office was abolished by stat. 11 & 12 W. 3. c. 20.

In King John's time this ordinance of King Richard was frequently dispensed with for money; which occasioned a provision to be made for enforcing it, in the great charters of King John and his son. Stat. 9 Hen. 3. c. 25. These original standards were called pondus regis, and mensura domini regis; and are directed by a variety of subsequent statutes to be kept in the Exchequer, and all weights and Measures to be conformable thereto. But, as Sir Edward Coke observes, though this hath so often by authority of Parliament been enacted, yet it could never be effected; so forcible is custom with the multitude. 1 Comm. 274, &c.

Magna Carta, c. 25, ordains, “that there shall be but one measure throughout England, according to the standard in the Exchequer;” which standard was formerly kept in the King's palace; and in all cities, market towns, and villages, it was kept in the churches. & Inst. 273. By stat. 16 Car. 1. c. 19, there is to be one weight and Measure, and one yard according to the King's standard; and whoever shall keep any other weight or Measure, whereby any thing is bought or sold, shall forfeit for every offence 5l. And by stat. 22 Car. 2. c. 8, water Measure, as to corn or grain, or salt, is declared to be within the stat. 16 Car. 1. c. 19. And by stats. 22 Car. 2. c. 8: 22 & 23 Car. 2. c. 12, if any sell or buy grain, or salt, &c. by any other bushel, or Measure, than what is agreeable to the standard in the Exchequer, commonly called Winchester Measure, he shall forfeit 40s. and also the value of the grain or salt so sold or bought; half to the poor and half to the informer. Notwithstanding these statutes, in many places and counties, there are different Measures of corn and grain; and the bushel in one place is larger than in another; but the lawfulness of it is not well to be accounted for, since custom or prescription is not allowed to be good against a statute. Dalt. 230.—

And now it is settled that no practice or usage can countervail the
MEASURE.

stats. 22 Car. 2. c. 8: 22 & 23 Car. 2. c. 12, above-mentioned. 4 Term Ref. 750: 5 Term Ref. 353.

If the reddendum, reserved in an old lease, be so many quarters of corn, it will be understood to mean legal quarters, reckoning the bushel at eight gallons; although the old leases, before the stats. 22 & 23 Car. 2. c. 12, contained the same reddendum; and although till lately the lessees paid by composition, reckoning the bushel at nine gallons. 6 Term Ref. K. B. 338.

There are three different Measures, viz. one for wine, one for ale and beer, and one for corn; in the Measure of wine, eight pints make a gallon, eight gallons a firkin, sixteen gallons a kilderkin half barrel or rundlet, four firkins a barrel, two barrels a hogshead, two hogsheads a pipe, and two pipes make a tun. Stats. 15 R. 2. c. 4: 11 H. 7. c. 4: 12 H. 7. c. 5.

In measure of corn eight pounds or pints of wheat make the gallon, two gallons a peck, four pecks a bushel, four bushels a sack, and eight bushels a quarter, &c.

And in other Measure; three barley corns in length make an inch, twelve inches a foot, three feet a yard, three feet and nine inches an ell, and five yards and a half, which is sixteen feet and a half, make the perch, pole, or rod. Stat. 27 Ed. 3. c. 10.

Selling by false Measures, being an offence by the Common Law, may be punished by fine, &c. upon an indictment at Common Law, as well as by statute. See the stat. 11 Hen. 7. c. 4, which inflicts particular fines for offences; pillory, &c. The easier and more usual way of punishment is, by levying, on a summary conviction by distress and sale, the forfeiture imposed by the several acts of Parliament adapted to particular frauds.

The respective contents of a barrel of beer and ale, stats. 12 Car. 2. c. 23. § 20: c. 24. § 34: 1 W. & M. c. 24. § 5. The bushel of Corn and Salt ascertained, stats. 22 Car. 2. c. 8: 22 & 23 Car. 2. c. 12: 5 W. & M. c. 7. § 18. See also as to Salt, 38 Geo. 3. c. 89. § 4: and as to Corn, 31 Geo. 3. c. 30. § 82. (See post.)—A Measure of brass shall be chained in every market; and constables to search for unsealed measures, stat. 22 Car. 2. c. 8.—Where there is not a clerk of the market, the Mayor, &c. shall seal Measures, 22 & 23 Car. 2. c. 12. § 4.—Collectors of the excise to provide quarts and pints of brass for ale in every market town, stat. 11 & 12 W. 3. c. 15. § 3.—Contents of Winchester Measure, stat. 1 Ann. st. 2. c. 3. § 10.—Water Measure of fruit ascertained, stat. 1 Ann. st. 1. c. 15.—Wine Measure, stat. 5 Ann. c. 27. § 17.

By 31 Geo. 3. c. 30. § 82. (see title Corn,) All corn measured in pursuance of that act, shall be measured by a Winchester bushel, to be kept in the several towns and places, required to make returns under that act: and all computations are to be made by the stricken and not by the heaped bushel; where corn is sold by weight, 57lbs. avoirdupois of wheat, 55lbs. of rye, 49lbs. of barley, 42lbs. of beer or bigg, and 38lbs. of oats, shall be deemed a bushel; 56lbs. of wheat meal, and 45lbs. of wheat flour, 53lbs. of rye meal, 48lbs of barley meal, 41lbs of beer or bigg meal, and 22lbs. of oat-meal, shall be deemed equal to a bushel of the unground corn respectively.

By 38 Geo. 3. c. 89. § 4. 65lbs. weight avoirdupois of Rock salt, shall be deemed a bushel; and of all other Salt 56lbs. weight.—See further titles Corn; Weights.
MEASURER or METER of woollen cloth, and of coals, &c. An officer in the city of London; the latter of great account. Chart. Jac. I. See Alnager. Coals.

MEASURING-MONEY. The letters patent, whereby some persons exacted for every cloth made, certain money, besides alnage, called Measuring-Money, revoked. Rot. Parl. 11 Hen. 4.

MEDERIA, A mead-house, or place where mead or metheglin is made. Cartular Abb. Glast. MS. 29.

MEDFEE, a bribe or reward; and used for a compensation where things exchanged are not of equal value. It is said to come from the word Meed, merit. Vide Cowell.

MEDLE & INFIME MANUS HOMINES, Men of a mean and base condition, of the lower sort. Blunt.

MEDIANUS, Middle size; medianus homo, a man of middle fortune.

MEDIATORS OF QUESTIONS, Were six persons authorised by statute, who, upon any question arising among merchants, relating to unmerchantable wool, or undue packing, &c. might before the Mayor and officers of the Staple upon their oath certify and settle the same; to whose order and determination therein, the parties concerned were to give entire credence, and submit. Stat. Antig. 27 Ed. 3. st. 2. c. 24.

MEDIETAS LINGUAÆ; A Jury de Medietate linguae, signifies a Jury or Inquest impanelled, whereof the one half consists of natives, and the other foreigners; and is used in pleas wherein the one party is a foreigner, the other a denizen: this manner of trial was first given by the stat. 28 Ed. 3. c. 13; before which, this was obtained by the King’s grant. Staudff., P. C. lib. 3. c. 7. He that will have the advantage of trial per medietatem linguae, must pray it; for, it is said, he cannot have the benefit of it by way of challenge. 3. P. C. 158: 3 Inst. 127. In petit treason, murder, and felony, medietas linguae is allowed; but for high treason, an alien shall be tried by the Common Law, and not per medietatem linguae. H. P. C. 261. And a Grand Jury ought not to be &c medietate linguae, in any case. Wood’s Inst. 263. It was thought necessary to exclude Egyptians, expressly by statute, from the benefit of this trial. See stats. 22 H. 8. c. 10: 1 & 2 P. & M. c. 4: and this Dictionary, title Egyptians. But we read, That Solomon de Standford, a Jew, had a cause tried before the Sheriff of Norwich, by a Jury which were sex probos et legales homines, et sex legales Judaeos de Civitate Norwici, &c. Pasch. 9 Ed. 1.

A Jury de mediate is also allowed in some other cases; by analogy to this rule de medietate linguae. As on a Jus Patronatus, the Jury must be of six clergymen, and six laymen. See that title. So also under the stat. 8 H. 6. c. 12, against embezzling records, the Jury shall consist of six persons, officers of any of the superior Courts, and six common Jurors. See title Records. So on a criminal trial in the University Courts, the Jury must be half freeholders of the county, and half matriculated laymen of the University. See 4 Comm. 278. See further title Jury II.

MEDIO ACQUIETANDO, A judicial writ to distrain a Lord for the acquitting of a mean Lord from a rent, which he formerly acknowledged in Court not to belong to him. Reg. Judic. 129. See Mean.

MEDITERRANEAN, Passing through the midst of the earth: applied to the sea, which stretcheth itself from West to East, divi-
ding Europe, Asia, and Africa, which is hence called The Mediterranean Sea. The counterfeiting of Mediterranean passes for ships to the coast of Barbary, &c. or the seal of the Admiralty Office to such passes, is felony without benefit of clergy. Stat. 4 Geo. 2. c. 18. See title Navigation Acts.

MEDLEYE, MEDLETA, MEDLETUM. Fr. Mesler, to meddle.] A sudden scolding at, and beating one another. Bract. 1. 3. c. 35.

MEDSYPP, A harvest-supper, or entertainment given to labourers at harvest-home. Plac. 9 Ed. 1. Cow.

MEDWAY-RIVER, [called Vage by the Britons; the Saxons added Med.] Pilots thereon how to be licenced, 5 Geo. 2. c. 20. See also 3 Geo. 1. c. 13: and 7 Geo. 1. c. 21.

MEER, merus.] Though an adjective, is used as a substantive to signify Meer right; Old. Nat. Brev. 2, in these words; "This writ hath but two issues, viz. joining the Mise upon the Meere, and that is to put himself in the Great Assise of our Sovereign Lord the King; or to join battle." Cowell. See Misc.

MEIGNE. See Maisnada.

MEINY, Fr. Mesnie.] As the King's Meiny, the King's family, or household servants. See Stat. 1 R. 2. c. 4.

MELASSES. See Navigation Acts.

MELDFEOH, from Sax. meld, indicium delaturae; and feoh, premium pecunia. Selm.] Was the recompence due and given to him who made discovery of any breach of penal laws, committed by another person; called the promoter's or informer's fee. Leg. Ins. c. 20.

MELIUS INQUIRENDUM, A writ that lieth for a second inquiry, where partial dealing is suspected: and particularly of what lands or tenements a man died seised, on finding an office for the King. E. N. B. 355. It has been held, that where an office is found against the King, and a melius inquirendum is awarded, and upon that melius, &c. it is found for the King; if the writ be void for repugnancy, or otherwise, a new melius inquirendum shall be had; but if upon the first melius it had been found against the King, in such case he could not have a new melius, &c. for then there would be no end of these writs. And if an office be found for the King, the party grieved may traverse it; and if the traverse be found against him, there is an end of that cause; and if for him, it is conclusive. 8 Rcf. 169: 2 Nels. 1008. If there is any defect in the points which are found in an inquisition, there may not be a melius inquirendum; but if the inquisition finds some parts well, and nothing is found as to others, that may be supplied by melius inquirendum. 2 Salk. 469. A melius inquirendum shall be awarded out of B. R. where a coroner is guilty of corrupt practices: directed to special commissioners. Went. 181. See 15 Vin. Abr. title Melius inquirendum, and this Dictionary, title Inquest.

MEMBERS OF PARLIAMENT, The Members of the House of Commons, are usually so styled; though in fact the Peers are, strictly speaking, Members of Parliament; which consists of King, Lords, and Commons.

MEMORIES. Some kind of remembrances or obsequies for the dead; mentioned in injunctions to the clergy, Anno 1 Ed. 6.

MEMORY, Time of.] Hath been long ago ascertained by the law to commence from the reign of Richard the First; and any cus-
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torn may be destroyed by evidence of its non-existence in any part of the long period, from his days to the present. 2 Comm. 31, & n. See title Limitation.


MENDLEFE, Mentioned in Cromp. Justice of Peace, 193. Is that which Bracton calleth Medletem; quarrels, scuffling, or brawling; Cowell. See Medlefe.

MENIALS, from menia, the walls of a castle, house, or other place.] Household servants who live under their Lord or master's roof; mentioned in the antient stat. 2 Hen. 4. c. 21.

MENSA, Comprehends all patrimony, or goods and necessaries for livelihood.

MENSALIA, Such parsonages or spiritual livings as were united to the tables of religious houses, and called mensal benefices among the Canonists. And in this sense it is taken, where mention is made of appropriations, ad mensam suam. Blount.

MENSURA, A bushel of corn, &c. See Measure.

MENSURA REGALIS, The King's Standard Measure, kept in the Exchequer, according to which all others are to be made. See stat. 16 Car. 1. c. 19; and this Dictionary, title Measure.

MER or MERE, Words which begin or end with those syllables, signify fenny places. Cowell. See Mara, or Mere; a lake or great pond.

MERA NOCTIS, Midnight. Cowell.


MERCENLAGE, See Merchantage.

MERCHANT, Mercator.] One who buys and trades in any thing; and as merchandize includes all goods and wares exposed to sale in fairs or markets; so the word Merchant formerly extended to all sorts of traders, buyers, and sellers. But every one who buys and sells is not at this day under the denomination of a Merchant; only those who traffic in the way of commerce, by importation or exportation, or carry on business by way of emption, vendition, barter, permutation, or exchange; and who make it their living to buy and sell, by a continued assiduity, or frequent negotiation, in the mystery of merchandizing, are esteemed Merchants. Those who buy goods, to reduce them by their own art or industry, into other forms, and then to sell them, are Artificers, not Merchants. Bankers, and such as deal by exchange, are properly called Merchants. Lex Mercet. 23.

Merchants were always particularly regarded by the Common Law; though the municipal laws of England, or indeed of any one realm, are not sufficient for the ordering and determining the affairs of traffic, and matters relating to commerce; merchandize being so universal and extensive that it is impossible; therefore of the Law Merchant (so called from its universal concern,) all nations take special knowledge; and the common and statute laws of this kingdom leave the causes of Merchants in many cases to their own peculiar law. Lex Mercat. See 1 Comm. 75; and this Dictionary, title Bill of Exchange; Insurance; Custom of Merchants.

The custom of Merchants is part of the Common Law of this kingdom, of which the Judges ought to take notice; and if any doubt.
arise about the custom, they may send for merchants to know the
custom; per Hobart, Ch. J.: Winch. 24.

The Lex Mercatoria is allowed, for the benefit of trade, to be of
the utmost validity in all commercial transactions: for it is a maxim
of law, that "cuilibet in sua arte credendum est." See 1 Comm. 75.

The law of England, as a commercial country, pays a very particu-
lar regard to foreign Merchants in innumerable instances. By Magna
Carta, c. 30, it is provided, That all merchants (unless publicly pro-
hibited beforehand) shall have safe-conduct to depart from, to come
into, to tarry in, and to go through, England, for the exercise of mer-
chandize, without any unreasonable imposts, except in time of war;
and if a war breaks out between us and their country, they shall be
attached (if in England) without harm of body or goods, till the King
or his chief judicary be informed how our Merchants are treated in
the land with which we are at war; and, if ours be secure in that land,
they shall be secure in ours. This seems to have been a common rule
of equity among all the Northern Nations; but it is somewhat extra-
ordinary, that it should have found a place in Magna Carta, a mere
interior treaty between the King and his natural-born subjects; which
occasions the learned Montesquieu to remark with a degree of admira-
tion, "that the English have made the protection of foreign mer-
chants, one of the articles of their national liberty." But indeed it
well justifies another observation which he has made, that the English
know better than any other people upon earth, how to value at the
same time these three great advantages, Religion, Liberty, and
c. 2: 27 E. 3. st. 2. cc. 13, 17, 19, 20; 28 E. 3. c. 13: 36 E. 3. c. 7: 2
Ric. 2. c. 1: 11 R. 2. c. 7: 14 R. 2. c. 9: 5 H. 4. c. 9: 7 H. 4. c. 9: in
all which, provisions are contained, for the accommodation of Mer-
chants-strangers; which are now by long use become the known law
of the land, allowing for the variations inevitably introduced by time
and commerce.

In the reign of King Ed. IV, a Merchant-stranger made suit be-
fore the King's Privy Council, for several bales of silk feloniously
taken from him, wherein it was moved, that this matter should be
determined at Common Law; but was answered by the Lord Chan-
cellor, that as this suit was brought by a Merchant, he was notbound
to sue according to the law of the land. 13 Ed. 4. In former times it
was conceived, that those laws that were prohibitory against foreign
goods, did not bind a Merchant-stranger; but it has been a long time
since ruled otherwise; for in the leagues that are now established
between nation and nation, the laws of either kingdom are excepted;
so that as the English in France, or any other foreign country in
amity, are subject to the laws of that country where they reside; so
must the people of France, or any other kingdom, be subject to the
laws of England when resident here. 19 Hen. 7.

English Merchants are not restrained to depart the kingdom with-
out licence, as all other subjects are; they may depart, and live out
of the realm, and the king's obedience; and the same is no contempt,
they being excepted out of the statute. 5 R. 2. st. 2. And by the
Common Law, they might pass the seas without licence; though not
to merchandize. Dyer, 206.

If any disturbance or abuse be offered them, or any other Mer-
chant in a Corporation, and the Head Officer there do not provide a
remedy, the franchise shall be seized; and the disturber shall answer
double damages and suffer one year’s imprisonment, &c. by stat. 9
Ed. 3. st. 1. c. 1.—All Merchants (except enemies) may safely come
into England with their goods and merchandize. Stat. 14 Ed. 3. st. 2.
c. 2.—Merchant-strangers may come into this realm, and depart at
their pleasure; and they are to be friendly entertained. Stat. 5 R. 2.
st. 2. c. 1, And Merchants alien shall be used in this kingdom, as
denizens are in others. Stat. 5 H. 4. c. 7.

If a difference arise between the King and any foreign State, alien
Merchants are to have forty days’ notice, or longer time, to sell their
effects and leave the kingdom. 27 Ed. 3. st. 2. c. 17. All Merchants
may buy merchandizes of the staple: and any Merchant may deal in
more merchandizes than one; he may buy, sell, and transport all
kinds of merchandize. Stat. 27 E. 3. st. 2. c. 2: 38 Ed. 3. st. 1. c. 2.

Various restraints are laid on Merchants, especially to prevent
their carrying of gold and silver out of the nation, &c. by the statute
24: 3 H. 7. c. 8: 4 H. 7. c. 23: 1 R. 3. c. 9: 1 Eliz. c. 11.

By stat. 6 H. 4. c. 4, Merchant-strangers shall not carry out of the
realm any merchandizes brought within the realm by Merchant-
strangers.

If a person who is otherwise no Merchant, being beyond sea, takes
up money and draws a bill upon a Merchant, he cannot, in an action
brought upon this bill against him as the drawer thereof, plead that
he was no Merchant; for the very taking up the money and drawing
the bill makes him a Merchant to this purpose. Comb. 152. See title
Bill of Exchange.

Merchant includes all sorts of traders as well and as properly as
taylor is a common term; per Holt, Ch. J: 2 Salk. 445.

There are Companies of Merchants in London for carrying on
considerable joint trades to foreign parts, viz. The Merchant-Ad-
vventurers, (see title Hamburgh Company;) the Company established
in England for the improvement of commerce; which was erected
by patent by King Ed. I. merely for the exportation of wool, &c. be-
fore we knew the value of that commodity, and at a time when we
were in a great measure strangers to trade. The next Company was
that of the Barbary Merchants, incorporated in the reign of King
Ed. VII. A Company of Merchants trading to the North, called the
Muscovy or Russia Company, was established by King Ed. VI. and
encouraged with additional privileges, by Queen Mary, Queen Eli-
abeth, &c. See title Russia Company. The Barbary Merchants de-
caying towards the latter end of Queen Elizabeth’s reign, out of their
ruins arose the Levant or Turkey Company; who first trading with
Venice, and then with Turkey, furnished England that way with the
East-India commodities; this Company hath very considerable fac-
tories, at Constantinople, Smyrna, Aleppo, &c. See title Turkey Com-
pany. From the flourishing state of the Levant or Turkey Company,
in the reign likewise of Queen Elizabeth sprung the old East-India
Company, who having fitted out ships of force, brought from thence
at the best hand, the Indian commodities, formerly sold to England
by distant Europeans; and they having obtained many charters, and
grants from the Crown, in their favour, were sole masters of that ad-
antageous traffic; until at last a new Company was incorporated by
King Will. Anno 9 W. 3. on their lending Government two millions of money; and both these Companies, after the expiration of a certain term, were by articles united. See title East India Company.

In the 21st year of Queen Elizabeth, the Eastland Company of Merchants was erected; and in King Charles the Second's time, that Company was confirmed, with full power to trade in Norway, Sweden, Poland, and other Eastland counties. See title Eastland Company. The Royal African Company had their charter granted to them in the 14th year of King Charles II. and by stat. 9 & 10 W. 3, c. 26, they are to maintain all forts, &c. See title African Company. King Charles II. also by commission under the Great Seal of England, constituted his Royal Highness James Duke of York (afterwards King James II.) Edward Earl of Clarendon, and others, to be a Council for the Royal Fishery of England, and declared himself to be the protector of it; and in the 29th year of his reign, he incorporated them into a Company. King William III. in the fourth year of his reign, established a Greenland Company. See that title.

By stat. 9 Ann. c. 21, to pay the debts of the army, navy, &c. amounting to near ten millions, the South Sea Company of Merchants was erected; who having advanced that money, the duties upon wines, vinegar, tobacco, &c. were appropriated as a fund for payment of the interest, after the rate of 6l. per cent. &c. The Company was granted the sole trade to the South Seas; and others trading therewith shall forfeit their ships and goods, and double value; and the corporation is to continue for ever; but the funds are subject to redemption by Parliament. This Company had their capital stock very much enlarged in the reign of King George I. And to raise money lent, were empowered to make calls or take in subscriptions, &c. as they thought fit; and on this foundation, the South Sea scheme was executed in 1720; but, to retrieve credit, afterwards part of the stock of the South Sea Company was ingrafted into the capital stock of the East India Company and the Bank of England; and after that half the stock was converted into annuities at 4l. per cent. Since which a further reduction thereof hath been made. See title South Sea Company.

The West India Dock Company (established under the Act 39 Geo. 3. c. ixix): and the London Dock Company (under 39 & 40 Geo. 3. c. xlvii) are among the most extensive of the modern associations of this nature.

This short History of some of our Companies of Merchants, which have ever had many and great privileges, and are at length become of double use, to enlarge commerce and supply the necessities of the State, in some measure shews the progress and increase of our trade, and the wealth of the nation: though it must nevertheless be observed that they are a kind of monopolies erected by law; which, if they become prejudicial, are generally restrained by Parliament, as has been the case with many of the Companies already specified; and if the power granted them is abused, it becomes of fatal consequence; for which we need only instance the ever memorable year of 1720, when the Sub-governor and Directors of the South Sea Company incurred a forfeiture of their estates by statute, and were disabled to hold any offices, &c. for their vile conduct, which tended to the ruin of the public. Over and above these Companies, there are the Dutch Merchants; those who trade to the West Indies:
the Canary Merchants; Italian Merchants, who trade to Leghorn, Venice, Sicily, &c. the French and Spanish Merchants, &c. See the several titles through this Dictionary, and particularly title Navigation Acts; which see also for the several regulations of Importation and Exportation by Merchants.

**MERCHENLAGÉ, Merciorum Lex.**] The law of the ancient kingdom of Mercia. Camden in his Britannia says, That in the year 1016, this kingdom was divided into three parts; whereof the West Saxons had one, governing it by the laws called West Saxon-lage, which contained Kent, Sussex, Surrey, Berks, Hampshire, Wilts, Somerset, Dorset, and Devon: The Danes had the second, containing York, Derby, Nottingham, Leicester, Lincoln, Northampton, Bedford, Bucks, Hertford, Essex, Middlesex, Norfolk, Suffolk, Cambridge, and Huntingdon; which was governed by the laws called Dane-lage: and the third part was in the possession of the Mercians, whose law was called Merchelenlage; and contained Gloucester, Worcester, Hereford, Warwick, Oxford, Chester, Salop, and Stafford; from which three, King Wil. I. chose the best, and with other laws ordained them to be the laws of the kingdom. Camd. Brit. 94. See Molbunian laws.

**MERCHET, Merchetaum, Mercheta Muliebrium.**] A fine or composition paid by inferior tenants to the Lord, for liberty to dispose of their daughters in marriage. No baron or military tenant, could marry his sole daughter and heir, without such leave purchased from the King, pro mariananda filia. And many of our servile tenants could neither send their sons to school, nor give their daughters in marriage, without express licence from the superior Lord. See Kennet's Glossary in Monasticon, and this Diet. Marchet. Borough English.

**MERCIA,** Is used in many places in the Monasticon for amerciament.

**MERCIMONIATUS ANGLIE,** Was of old time used for the impost of England upon merchandise.

**MERCURIES,** Or vendors of printed books or papers. Vide Hawkers.

**MERCY;** See Misericordia.

**MERGER,** Is where a greater estate and a less coincide and meet in one and the same persons, without any intermediate estate; in which case the less is immediately annihilated, or in the law phrase is said to be merged, that is sunk or drowned, in the greater; as, if the fee comes to tenant for years or life, the particular estates are merged in the fee. 2 Rep. 60, 61: 3 Lev. 437. If a lessee, who hath the fee, marries with the lessee for years; this is no Merger, because he hath the inheritance in his own, and the lease in the right of his wife. 2 Plowd. 418. And where a man hath a term in his own right, and the inheritance descends to his wife, as he hath a freehold in her right, the term is not merged or drowned. Cro. Car. 275.

So if tenant for years dies and makes him, who hath the reversion in fee, his executor, whereby the term of years rests also in him, the term shall not Merge; for he hath the fee in his own right, and the term of years in the right of the testator, and subject to his debts and legacies. See Plowd. 418: Cro. Jac. 275: Co. Lit. 338.

An estate-tail is an exception to this rule, for a man may have in his own right both an estate-tail, and a reversion in fee; and the estate-tail, though a less estate, shall not merge in the fee. 2 Rep. 61: 8 Rep. 74. For estates-tail are protected and preserved from Merger.
by the operation and construction, though not by the express words, of the statute de donis; which operation and construction have probably arisen upon this consideration; that in the common cases of Merger of estates for life or years, by uniting with the inheritance, the particular tenant hath the sole interest in them, and hath full power at any time to defeat, destroy, or surrender them to him that hath the reversion; therefore when such an estate unites with the reversion in fee, the law considers it in the light of a virtual surrender of the inferior estate. 

Cro. Eliz. 302. But in an estate-tail the case is otherwise; the tenant for a long time had no power at all over it, so as to bar or destroy it; and now can only do it by certain special modes, by a fine, a recovery, and the like. It would therefore have been strangely improvident to have permitted the tenant in tail by purchasing the reversion in fee to Merge his particular estate, and defeat the inheritance of his issue; and hence it has become a maxim, that a tenancy in tail, which cannot be surrendered, cannot also be merged in the fee. 2 Comm. c. 11. p. 178.

When the legal and equitable estates meet in the same person or persons, the trust or equitable estate is merged in the legal estate: as if a wife should have the legal estate and a husband the equitable, and they have an only child to whom these estates descend, and who dies intestate without issue, the two estates having united the descent will follow the legal estate, and the estate will go to the heir on the part of the mother. Goodright d. Alston v. Wells, Doug. 771.


MERSE-WARE. Sax. Incola paludum.] The inhabitants of Romney Marsh in Kent were antiently so called. Cowell.

MERTLAGE, Seems to be a corruption of, or a law French word for martyrology. See Hil. 9 Hen. 7. 14. b. where it seems to mean a church calendar or rubrick. Cowell.

MERTON, Statutes made there, 20 Hen. 3.

MESNE, Medius.] He who is Lord of a Manor, and so hath tenants holding of him, yet himself holds of a superior Lord. Cowell. See Mean.

MESNE PROCESS. Such Process as issues pending the suit upon some collateral interlocutory matter, as to summon Juries, witnesses, and the like; distinguished from original Process, which is founded on the writ. Finch, L. 346. Mesne Process is also sometimes put in contradistinction to final Process, or Process of Execution; and then it signifies all such Process as intervenes between the beginning and end of a suit. 3 Comm. c. 19. p. 279.

MESMALTY, medietas.] The right of the Mesne, as ' the Mesmality is extinct.' Old. Nat. Br. 44.

MESSARIUS, from messis.] The chief servant in husbandry, or harvest time, now called a bailiff in some places. Mon. Angl. tom. 2. p. 832. This word is also used for a mower or reaper; one that works harvest-work. Fleta, lib. 2. c. 75.

MESSERGER, Is a carrier of messages, particularly employed by Secretaries of State, &c. and to these commitments may be made of State prisoners; for though regularly no one can justify the detaining a person in custody out of the common gaol, unless there be some particular reason for it; as if the party be so dangerously sick, that it would hazard his life to send him thither, &c. yet it is the constant...
practice to make commitments to Messengers; but it is said, it shall be intended only in order to carrying the offenders to gaol. 

Salk. 347: 2 Hawk. P. C. c. 16. § 9. An offender may be committed to a Messenger, in order to be examined before he is committed to prison; and though such commitment is irregular, it is not void; and a person charged with treason, escaping from the Messenger, is guilty of treason, &c. Skin. 59. See this Dictionary, titles Commitment; Arrest; Treason.

MESSENGERS OF THE EXCHEQUER, Officers attending that Court; they are four in number, and in nature of pursuivants to the Lord Treasurer.

MESSE THANE, Signifies a priest. The Saxons called every man Thane who was above the common rank; so Messe-Thane was he who said mass; and Worules Thane was a secular man of quality. Cowell.

MESSINA, Reaping time, harvest. Cowell.

MESSUAGE, Messuagium.] Properly a dwelling house, with some adjacent land assigned to the use thereof. West. Symb. title Fines. § 26. Bract. lib. 5. c. 28. See Plowd. 169, 170: where it is said, that by the name of a Messuage may pass also a curtilage, a garden and orchard, a dove-house, a shop, a mill, a cottage, a toft, a chamber, a cellar, &c. yet they may be demanded by their single names. Messuagium in Scotland, signifies the principal place or dwelling-house within a barony, which we call a manor-house, Skene de verborum signif. verb. Messuagium. In some places it is called the site of a manor. A precipe lies not de domo, but de Messuagio. Co. Lit. c. 8.3

MESTILO, Mesline, rather miscellane, that is, wheat and rye mingled together. Pat. 1 Ed. 3. p. 1. m. 5.

METAL. The exportation of iron, brass, copper. Lattin, bell and other Metal, was restrained by the antient state. 28 Ed. 3. c. 5: 33 Hen. 8. c. 7: 2 & 3 Ed. 6. c. 37: but permitted by stat. 5 W. & M. c. 17. See this Dictionary, title Navigation Acts.

METECORN, A measure or portion of corn, given out by the lord to customary tenants, as a reward and encouragement for their duties of labour. Stithenda et metecorn ac cetera debita servitut in monasterio predicto solvuntur. Ryley's Plac. Parl. 391.

METEGAVEL, Sax. cibi gablium; seu vectigal.] A tribute or rent paid in victuals, which was a thing usual in this kingdom, as well with the King's tenants as others, till the reign of King Hen. I. METE of coals in London, from metior, to mete or measure a thing. See Mearser.

METEGLIN, Brit. Meddiglin.] An old British drink made of honey, &c. which still continues in repute in England; it is mentioned in the statute 15 Car. 2. c. 9. See title Mead.

METTESHEP, METTENSCHEP, Was an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants, for their defaults in not doing their customary services, of cutting the Lord's corn. Parch. Antig.

MEYA, A mow or mow of corn, as antiently used; and in some parts of England they still say mew the corn, i. e. put it on an heap in the barn. Blount. Ten. 130.

MICEL-GEMOTES, MICEL-SYNODS, The great councils in the Saxon times of King and noblemen, were called Wittena Gena-

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MIL

MIDDLESEX. The Sessions of the peace how often to be held, stat. 14 H. 6. c. 4. In actions triable by Middlesex Jurors, they shall be called the fourth day, &c. Stat. 8 Ed. 4. c. 3. Inhabitants of Westminister exempt from serving on Jurors at the sessions for the peace, 7 & 8 W. 3. c. 32. § 9. No Juror to be returned at the Nisi Prius in Middlesex, who hath been returned in two preceding terms of vacations. Leaseholders qualified to serve as Jurors in Middlesex, 4 Geo. 2. c. 7. § 2, 3. See title Jury II. But one county rate to be made for Middlesex, st. 12 Geo. 2. c. 29. § 15. A registry of deeds and wills in that county established. Stat. 7 Ann. c. 20. See titles Register; Enrollments; Deeds.

MILDERNIX, A kind of canvas, of which sail-cloths of ships are made. See stat. 1 Jac. c. 14.

MILE, [Miliare.] In the measure of this country, is the distance or length of a thousand paces; otherwise described to contain eight furlongs, every furlong being forty poles, and every pole sixteen foot and a half. See stat. 35 Eliz. c. 6.—It is 1760 yards, or 5280 feet.

Miles, mentioned in the statutes relative to the refining of salt, are to be computed, according to the common estimation of the county, or place where the pit is; and not according to the statute measure. St. 3 Geo. 2. c. 12. And see 38 Geo. 2. c. 39.


MILITARE, To be knighted, viz. Rex per Angliam fecit proclamari, &c. ut qui adherent unde militarent adessent a Judo Westmonasterium, &c. Mat. West. p. 118.

MILITARY CAUSES, Are by stat. 13 R. 2. c. 2, declared to be such as relate to contracts touching deeds of arms and of war, as well out of the realm, as within it, which cannot be determined or discussed by the Common Law; together with other usages and customs to the same appertaining.

The only Military Court known to, and established by, the permanent laws of the land, is the Court of Chivalry, formerly held before the Lord High Constable, and Earl Marshal of England jointly; but since the attainer of Stafford, Duke of Buckingham, under Hen. VIII. and the consequent extinguishment of the office of Lord High Constable, it hath usually, with respect to civil matters, been held before the Earl Marshal only. See title Court of Chivalry.

MILITARY FEUDS; See title Tenures I.

MILITARY OFFENCES. By the annual acts for punishing mutiny and desertion, if any officer or soldier shall excite or join any mutiny, or, knowing of it, shall not give notice to the commanding officer; or shall desert or list in any other regiment, or sleep upon his post; or leave it before he is relieved, or hold correspondence with a rebel or enemy, or strike or use violence to his superior officer, or shall disobey his lawful commands; such offender shall suffer such punishment as a court martial (established by the act) shall inflict, though it extend to death itself.

Exclusive of the before-mentioned statutes, desertion from the King's arms in time of war, whether by land or sea, in England, or in parts beyond the seas, is, by the standing laws of the land, and particularly by stats. 18 H. 6. c. 19: 5 Eliz. c. 5, made felony, but not
without benefit of clergy. But by the stat. 2 & 3 Ed. 6. c. 2, clergy is taken away from such deserters, soldiers, and the offence is made triable by the Justices of every shire. The same statutes punish other inferior military offences with fines, imprisonment, and other penalties. By the modern Mutiny Acts, (see 47 Geo. 3. st. 1. c. 32, &c.) deserters may be transported as felons for life; or for a term of years, and sentenced to serve for life afterwards. See further, title Courts Martial.

MILITARY POWER OF THE CROWN; See title King V. S. MILITARY STATE. Includes the whole of the Soldiery; or, such persons as are peculiarly appointed among the rest of the people, for the safeguard and defence of the realm. See title Soldiers.

MILITARY TENURES; See title Tenures I.

MILITARY TESTAMENT, As a part of the compensation for soldiers being, by the annual act for punishing mutiny and desertion, put in a worse condition than any other subjects, by stats. 29 Car. 2. c. 3: 5 W. 3. c. 21. § 6, soldiers in actual military service may make nuncupative wills, and dispose of their goods, wages, and other personal chattels, without those forms, solemnities, and expenses, which the law requires in other cases. See title Wills.

MILITIA,

The National Soldiery; the standing force of the nation.

It seems universally agreed by all historians, that King Alfred first settled a national Militia in this kingdom, and by his prudent discipline made all the Subjects of his dominions, soldiers; but we are unfortunately left in the dark as to the particulars of this celebrated regulation.

The feudal military tenures were established for the purpose of protection, and sometimes of attack against foreign enemies: (see this Dictionary, title Tenures.) For the further defence in cases of domestic insurrections or foreign invasions, various other plans have been adopted, all of them tending to unite the character of a citizen and soldier in one. First, The Abuse of Arms, enacted 27 H. 2, and afterwards the stat. of Winchester, 13 E. 1. c. 6, obliged every man, according to his state and degree, to provide a certain quantity of such arms as were then in use; and it was part of the duty of Constables under the latter statute to see such arms provided. These weapons were changed by the stat. 4 & 5 P. & M. c. 2, into more modern ones; but both these provisions were repealed by state. 1 Jac. 1. c. 25; 21 Jac. 1. c. 28. While these continued in force, it was usual, from time to time, for our Princes to issue commissions of array; and send into every county officers in whom they could confide, to muster and array (or set in military order) the inhabitants of every district; and the form of the commission of array was settled in Parliament. anno. 5 Hen. 4, so as to prevent the insertion therein of any new penal clauses. Rush. pl. 3. pl. 662, 7. See 8 Rep. 375, &c. But it was also provided by state. 1 E. 3. st. 2. cc. 5; 7: 25 E. 3. st. 5. c. 8, that no man should be compelled to go out of the kingdom at any rate, nor out of his shire, but in cases of urgent necessity; nor should provide soldiers unless by consent of Parliament. About the reign of King Henry VIII., or his children, lieutenants began to be introduced, as standing representatives of the Crown to keep the counties
in military order; for we find them mentioned as known officers in
the stat. 4 & 5 P. & M. c. 3, though they had then not been long in
use, for Camden speaks of them in the time of Queen Elizabeth, as
extraordinary magistrates constituted only in times of difficulty and
danger. But the introduction of these commissions of lieutenancy,
which contained in substance the same powers as the old commissions
of array, caused the latter to fall into disuse.

In this state things continued till the repeal of the statutes of ar-
mour in the reign of King James I; after which, when King Charles
I. had, during his northern expeditions, issued commissions of liue-
tenancy, and exerted some military powers, which having been long
exercised, were thought to belong to the Crown, it became a ques-
tion in the Long Parliament, how far the power of the Militia did in-
herently reside in the King; being now unsupported by any statute,
and founded only upon immemorial usage. This question, long agi-
tated with great heat and resentment on both sides, became at length
the immediate cause of the fatal rupture between the King and his
Parliament; the two Houses not only denying this prerogative of the
Crown, the legality of which might, perhaps, be somewhat doubtful;
but also seizing into their own hands the entire power of the Militia;
the illegality of which step could never be any doubt at all.

Soon after the Restoration of King Charles II., when the military
tenures were abolished, it was thought proper to ascertain the power
of the Militia, to recognise the sole right of the Crown to govern and
command them, and to put the whole into a more regular method of
military subordination. And the order in which the Militia now stands
by law is principally built upon the stats. 13 C. 2. c. 6: 14 C. 2. c. 3: 15
C. 2. c. 4, which were then enacted. It is true, the two last of them are
apparently repealed, but many of their provisions are re-enacted with
the addition of some new regulations by subsequent Militia laws: the
general scheme of which is to discipline a certain number of the in-
habitants of every county chosen by lot formerly for three, but now for
five years, (liable to be prolonged by the circumstance of the Militia
being called out and embodied,) and officered by the Lord Lieutenant,
the Deputy Lieutenants, and other principal landholders, under a
Commission from the Crown. They are not compellable to march
out of their counties unless in case of invasion or actual rebellion
within the realm, (or any of his Majesty’s dominions or territories,
stat. 16 Geo. 3. c. 3,) nor in any case compellable to march out of the
kingdom. They are to be exercised at stated times; and their disci-
pline in general is liberal and easy; but when drawn out into actual
service, they are subject to the rigours of martial law, as necessary to
keep them in order. This is the constitutional security which our
laws have provided for the public peace, and for protecting the realm
against foreign or domestic violence. See 1 Comm. 410, &c.

The last general acts passed for reducing into one all the laws re-
lating to the Militia are, 42 Geo. 3. c. 90. for England, and, c. 91. for
Scotland; these ascertain the particular quota to be raised in each
county and district; but which has, from time to time, been augment-
ed and altered by subsequent Acts. It is provided, that in cases of ac-
tual invasion or imminent danger thereof, and in cases of rebellion
and insurrection, his Majesty may embody and increase the Militia:
and if Parliament is not then sitting, they are to meet by proclama-
tion in 14 days.
The Militia of Ireland is regulated on principles nearly similar, under acts passed by the Parliament of Ireland previous to the Union. The wives and families of Militia men, are provided for, when requiring parish relief, under the acts 43 Geo. 3. c. 47. for England; 43 Geo. 3. c. 89. for Scotland; and 43 Geo. 3. c. 142. for Ireland.

The pay and clothing of all the Militia is provided for by acts which pass annually.

The rank of officers of the corps of Fencibles in Scotland, and of those in the English Militia, where serving together, is settled by stat. 33 Geo. 3. c. 36. § 2.

The Militia of the city of London is regulated by stats. 36 Geo. 3. c. 92; and 39 Geo. 3. c. 82; and that of the Tower Hamlets, by 37 Geo. 3. c. 25, and c. 75: See also this Dictionary, title Trophy-money.

As to the Militia of the Cinque Ports, see 42 Geo. 3. c. 90. § 153, referring to 13 & 14 Car. 2. c. 3, & 15 Car. 2. c. 4.—See also 43 Geo. 3. c. 100: For raising a body of Miners in Cornwall and Devon, see 42 Geo. 3. c. 72.

MILL, Molendinum.] A house or engine to grind corn, and is either a water-mill, wind-mill, horse-mill, hand-mill, &c. And besides corn and grist-mills, there are paper mills, fulling or tucking mills, iron-mills, oil-mills, &c. 2 Inst. 621. The toll shall be taken according to the strength of the water, Ordin. pro fistor. incerti temp. Prohibition shall not go in suit for tithe of a new Mill. Art. cler. 9 Ed. 2. st. 1. c. 5.

Magistrates may search Mills for adulterated meal, &c. Stat. 31 Geo 3. c. 29. § 29.—A miller, baker, &c. may not act as magistrate under this act. § 32.

By stat. 9 Geo. 3. c. 29, maliciously to burn or destroy any Mill, or riotously and tumultuously to demolish, or begin to demolish, any Mill, or the works thereto belonging, is felony without clergy.

MILLEATE or MILL-LEAT, (mentioned in stat. 7 Jac. 1. c. 19,) A trench to convey water to or from a mill; the word is most peculiar to Devonshire. Cowell.

MILLED-BOARDS; See Paste-boards.

MILLET, Milium.] A small grain; so termed from its multitude, Lit. Dict.

MINA, A corn measure of different quantity, according to the things measured by it: and minage was a toll or duty paid for selling corn by this measure. Cowell. According to Littleton, it is a measure of ground, containing one hundred and twenty feet in length, and as many in breadth. Also it is taken both for a coin and a weight. Lit. Dict.

MINARE, To mine or dig mines. Minator, a miner. Record. 16 Ed. 1.

MINATOR CARUCÆ, A ploughman. Cowell.

MINERAL, Any thing that grows in mines, and contains metals. Shef. Epit.

MINERAL COURTS, Curia minerale. Are peculiar Courts for regulating the concerns of lead mines; as Stannary Courts are for tin. See Berghmote.

MINE-ADVENTURERS, A company established by stat. 9 Ann. c. 24.

MINES, Minerae.] Quarries or places whereout any thing is dug; this term is likewise applied to hidden treasure dug out of the earth,
The King by his prerogative hath all Mines of gold and silver to make money; and where in Mines the gold and silver is of the greater value, they are called Royal Mines. Plowd. 336. But by stat. 1 W. & M. c. 30, no Mine of copper or tin shall be adjudged a Royal Mine, though silver be extracted. And by stat. 5 W. & M. c. 6, persons having mines of copper, tin, lead, &c. shall enjoy the same, although claimed to be Royal Mines; but the King may have the ore, (except in Devon and Cornwall,) paying to the owners of the mines, within thirty days after it shall be raised, and before removed 16s. per ton for copper ore washed and made merchantable; for lead ore, 96d. per ton; tin or iron, 40s. &c. See 1 Comm. 295.

If a man hath lands where there are some Mines open and others not, and he lets the land, with the mines therein, for life or years, the lessee may dig in the open Mines only, which is sufficient to satisfy the words in the lease; and hath no power to dig the Mines unopened; but if there be no open Mine, and the lease is made of the lands, together with all Mines therein, there the lessee may dig for Mines, and enjoy the benefit thereof; otherwise those words would be void. 1 Inst. 54: 5 Rep. 12; 2 Lev. 184. To dig Mines is waste, where lessees are not authorised by their leases; though a mine is not properly so called, till it is opened; being but a vein of iron or coals, &c. before. See title Waste.

If a man demises lands for life or years, in which there is a coal Mine open, the lessee may dig in it; for the Mine being open, it shall be intended, by his demising all the land, that his intent is as general as his demise; but if the mine was not opened at the time of the demise, the lessee by lease of the land is not impowered to make new Mines: but in such case if he leases his land and all Mines therein, the lessee may dig for mines there; resolved. 5 Rep. 12.

A question was, if copyholder of inheritance may dig Mines in his land? The court seemed to think he might; for that otherwise, Mines there would never be opened; as in the case of a glebe of a parson. Sid. 152.

As to tenant in tail working Mines, See 2 P. Wms. 388.

If a person breaks up, or even attempts or threatens to break up Mines which he ought not to do, that is a reason for coming into Chancery to have an injunction; per Lord Chancellor. Barn. Chan. Rep. 497.

If any person maliciously set on fire any Mine or Pit of Coal, he shall suffer death as a felon, by stat. 10 Geo. 2. c. 32. And damaging such Mines, or any coal-works, by conveying water therein, or obstructing sewers from draining them, &c. shall forfeit treble damages. 13 Geo. 2. c. 21. Entering Mines of black lead with intent to steal, is made felony by stat. 23 Geo. 2. c. 10.

By stat. 9 Geo. 3. c. 29, Wilfully and maliciously to burn and destroy any engine or other machines, therein specified, belonging to any Mine, is made single felony, and punishable with transportation for seven years, in the offender, his advisers, and procurers. 4 Comm. c. 17. p. 247. See titles Felony; Coals.

A man opens a Mine in his land, and digs till he digs under the soil of another; he may follow his Mine there; but if the owner digs there also he may stop his farther progress; and said to be the use in Cornwall. 2 Vent. 342. per Wilde J. on a case referred to him by Lord Bridgman. 22 Car. 2.
It was said by the Solicitor General, that there was a great difference between pits and Mines; for if a Mine be opened, he that may work the Mine is not obliged to pursue the vein of ore under ground; but he may sink pits in pursuit of it which are necessary to come at the ore, and as many as he thinks proper; and Lord Chancellor said, it had been so resolved before Powell J. on great consideration, and consulting and examining the most able Miners. Cases in equity in Lord King’s time, 79.

Alum Mines belong of course to the persons in whose grounds they are; and therefore no privilege concerning them can be granted but in the King’s own ground. 3 Inst. 185; See stat. 21 Jac. 1. c. 3, § 11, 12.

Mines, In another signification, are caves or trenches dug under ground, whereby to undermine the walls of a city or fortification.

MINIMENTS: See Miniments.

MINISTERS. If a Minister is disturbed in the execution of his office in the church, the punishment upon conviction is a fine of 10l. and, upon non-payment, three months’ imprisonment, &c. Stat. 2 & 3 Ed. 6. c. 1. And disturbing any licensed dissenting minister incurs a forfeiture of 20l. by stat. 1 W. and M. stat. 1. c. 18. See titles Dissenters; Parish.

MINISTRI REGIS, Extend to Judges of the realm; as well as to those who have ministerial offices in the government. 2 Inst. 208.

MINOR, One under age; more properly an heir male or female, before they come to the age of twenty-one years; during which minority they are generally incapable to act for themselves. See title Infant.

MINORES, Friars Minorities, of the order of St. Francis, that had no prior; they washed each other’s feet, and increased very much in the year 1207. Mat. West.

MINISTREL Minitrelius et menestralius, from the Fr. menestrier.] A musician, fiddler, or piper; mentioned in stat. 4 H. 4. c. 27. Quodet mariscalli et Ministrelli prrediti per se forent et esse deberunt unum corpus et una communitas perfecta, &c. Upon a Quo-Warranto, 14 H. 7, Laurentius Dominus de Dutton clamat, quad omnes Ministrelli infra civitatem Cestrie et infra Cestriam manentes, vel officia ibidem excercen- tes, debebant consenire coram ipsa vel Senescallo suo quod Cestriam, ad festum Nativitatis St. Johannis Baptistae annuatim, et dubiam sibi ad dictum festum quatuor lagenas vini et unam lanceam; et in sufer quilh- bet corum dabit et quatuor denarios et unum obolum ad dictum festum, et habere de qualibet meretrice infra conitatum Cestria, et infra Ces- triam manentem, et officium suum exrecxente, quatuor denarios per annum ad festum prreditum, &c. Pat. 24 Afo 9. E. 4. And where, by the statute of 39 Eliz. c. 4, Fidlers were declared to be rogues, yet there a proviso was contained therein, exempting those in Cheshire licensed by Dutton of Dutton, See Rot. Claus. 9 Ed. 2. m. 26 Dora, an ordinance super mensuratione ferculorum et Menestrallorum. It was usual for these Minstrels, not only to divert princes, and the nobility, with sports, but also with musical instruments, and with flattering songs, in praise of them and their ancestors. The office and power of the King of Minstrels is mentioned in the Monastites. 1 tom. 355. Cowell. See title Vagrants.

MINT; Officinæ monetariae; Monetarium.] The place where the King’s money is coined; which is at present and long hath been in the Tower of London, though it appears by divers statutes, that in an-
tient times the Mint has also been at Calais, and other places. *Stats*, 2 R. 2. c. 16: 9 H. 5. c. 5. The Mint-master is to keep his alloy, and receive silver at the true value, &c. *Stat*. 2 H. 6. c. 12. Gold and silver delivered into the Mint are to be assayed, coined, and given out, according to the order and time of bringing in: and persons shall receive the same weight of coin, or so much as shall be finer or coarser than the standard, &c. *Stat*. 18 Car. 2. c. 5.—All silver and gold extracted by melting and refining of metals, shall be employed for the increase of moneys, and be sent to the Mint, where the value is to be paid. *Stat*. 1 W. and M. c. 30. See title Mines.—By *Stat*. 18 Car. 2. 3000£ a year was granted out of certain duties on wine, beer, &c. imported, to defray the expence of the Mint; which sum was increased by *Stat*. 4 & 5 Ann. c. 22; and is now settled by subsequent statutes, at a sum not exceeding 15,000£, per annum, for England and Scotland, &c. See this Dictionary, title Coin; ad finem.

The officers belonging to the Mint have not always been alike; they are now the following, viz. the Warden, who is the chief of the rest, and is by his office to receive the silver and bullion of the goldsmiths to be coined, and take care thereof, and he hath the overseeing of all the other officers. The Master-worker receives the silver from the warden, and causes it to be melted, when he delivers it to the moniers, and taketh it from them again after made into money. The Comptroller, who is to see that the money be made to the just assise, and control the officers if the money be not made as it ought. The master of the Assay, who weigheth the silver, and examineth whether it be according to the standard. The auditor takes account of the silver, &c. The Surveyor of the melting, who is to see the silver cast out, and that it be not altered after the assay master hath made trial of it, and it is delivered to the melters. The Clerk of the Irons, who seeth that the irons be clean and fit for working. The Graver, whose office is to engrave the stamps for the money. The melters, who melt the bullion, &c. The Blanchers to anneal and cleanse the money. The moniers, who are some to shear the money, others to forge and beat it broad, some to round, and some to stamp or coin it. The Provost to provide for all the moniers, and oversee them, &c. See title Money.

MINT, A pretended place of privilege in Southwark, near the King’s Bench. If any persons within the limits of the mint shall obstruct any officer in the serving of any writ or process, &c. or assault any person therein, so as he receives any bodily hurt, the offenders shall be guilty of felony, and transported to the plantations, &c. *Stat*. 9 Geo. 1. c. 28. See titles Prisons; Priviledged Places.

MINUERE, To let blood; *minuere*, blood-letting. This was a common old practice among the regulars, and the secular priests or canons, who were the most confined and sedentary men. In the register of statutes and customs belonging to the cathedral church of St. Paul’s in London, collected by Ralph Baldock, dean, about the year 1300, there is one express chapter De minutione. *Cowell*.

MINUTE TITHE, *minutio, sive minores decima.]* Small tithes, such as usually belong to the Vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, &c. See title Tithes.

MIRACULA, A superstititious sport or play, practised by the popish clergy for gain and deceit; prohibited by Bishop Groshead in the diocese of Lincoln. *Cowell*.
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MIS: This syllable added to another word signifies some fault or defect; as, misprision; misdicere, i. e. to scandalize any one; misdocere, i. e. to teach amiss. Cowell.

MISA, A compact or agreement, a form of peace, or compromise. Cowell.

MISADVENTURE, Fr. mesaventure, Lat. infortunium.] The killing a man, partly by negligence and partly by chance. S. P. C. lib. 1. c. 8. Britton distinguishes between Adventure and Misadventure; the first he makes to be mere chance; as if a man being upon or near the water, be taken with some sudden sickness, and so fall in and is drowned; or into the fire, and is burnt; misadventure he says is, where a person comes to his death by some outward violence, as the fall of a tree, the running of a cart-wheel, stroke of a horse, or such like. Brit. c. 7. Staundford construes misadventure more largely than Britton understands it; and says, it is where one, thinking no harm, carelessly throws a stone, wherewith he kills another; &c. West defines misadventure to be, when a man is slain by mere fortune, against the mind of the killer; and he calls it homicide by chance mixed, when the killer’s ignorance or negligence is joined with the chance. West, Symb. § 48, 49. See title Homicide II. 1.

MISCasting or MISCOMPUTING; See titles Assumpsit; Amendment; Error.

MISCHIEF, MALICIOUS. Malicious mischief or damage, is a species of injury to private property, which the law considers as a public crime. This is such as is done, not animo furandi, or with an intent of gaining by another’s loss, but either out of a spirit of wanton cruelty, or wicked revenge. In this latter light it bears a near relation to the crime of Arson, for as that affects the habitation, so does this the property, of individuals; and therefore any damage arising from this mischievous disposition, though only a trespass at the Common Law, is now, by several statutes, made severely penal. The general effect of these is shortly recapitulated by Blackstone, in order of time. See 4 Comm. c. 17.

By stat. 22 H. 7. c. 11, perversely and maliciously to cut down or destroy the foeudike in the fens of Norfolk and Ely, is felony; and in like manner it is by many special statutes, enacted upon the several occasions, made felony to destroy the several Sea-banks, River-banks, public Navigations, and Bridges, erected by virtue of those Acts of Parliament.

By stat. 43 Eliz. c. 13, for preventing rape on the northern borders, to burn any barn, or stack of corn, or grain; or to imprison or carry away any Subject, in order to ransom him, or make prey or spoil of his person or goods, upon any deadly feud, or otherwise, in the four northern counties of Northumberland, Westmoreland, Cumberland, and Durham, or being accessory before the fact, to such carrying away or imprisonment; or to give or take any money or contribution, there called Black-mail, to secure such goods from rapine, is felony without benefit of clergy. See titles Arson; False Imprisonment; Black-maill.

By stat. 22 and 23 Car. 2. c. 7, Maliciously, unlawfully, and willingly, in the night time, to burn, or cause to be burnt or destroyed any ricks or stacks of corn, hay, or grain, barns, houses, buildings, or kilns; or to kill any horses, or other cattle, is felony: but the offender may make his election to be transported for seven years: and to main-

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or hurt such horses, sheep, or cattle, is a trespass for which treble
damages shall be recovered. See titles Arson; Cattle; Burning.

By stat. 4 & 5 W. & M. c. 23, to burn on any waste between Cen-
dlemas and Midsummer, any grig, ling, heath, furze, goss, or fern, is
punishable with whipping and confinement in the house of correc-
tion.

By stat. 1 Ann. st. 2. c. 9, Captains and mariners belonging to ships,
and destroying the same, to the prejudice of the owners, (and by stat.
4 Geo. 1. c. 12, of the insurers,) are guilty of felony without benefit
of clergy. See also stat. 11 Geo. 1. c. 29; 43 Geo. 3. c. 113, (now)
and this Dictionary, title Insurance II. 4. And by stat. 12 Ann. st. 2. c.
18, making any hole in a ship in distress, or stealing her humps, or
aiding or abetting such offence, or willfully doing any thing tending to
the immediate loss of such ship, is felony without benefit of clergy.

By stat. 1 Geo. 1. c. 46, maliciously to set on fire any underwood,
wood, or coppice, is made single felony.

By stat. 6 Geo. 1. c. 23, the wilful and malicious tearing, cutting,
spoiling, or defacing of the garments or clothes of any person passing
in the streets or highways, and the assaulting with intent so to do, is
felony. This was occasioned by the insolence of certain weavers and
others, who, upon the introduction of some Indian fashions, prejudi-
cial to their own manufactures, made it their practice to deface
them either by open outrage, or by privily cutting or casting aqua-
fortis in the streets upon such as wore them.

By stat. 9 Geo. 1. c. 22, commonly called the Waltham Black Act,
it was among other things enacted, that to set fire to any house, barn,
or out-house. (extended by stat. 9 Geo. 3. c. 29, to Mills; see that
title:) or to any hovel, cock, mow, or stack of corn, (a parcel of corn
is not a sufficient distinction under this Act,) straw, hay, or wood; or
unlawfully and maliciously to break down the head of any fish-pond,
whereby the fish shall be lost or destroyed; or in like manner to kill,
maim, or wound any cattle, (from malice or revenge to the owner;) or
cut down or destroy any trees planted in an avenue or growing in
a garden, for ornament, shelter, or profit: all these malicious acts, or
the procuring, by gift or promise of reward, any person to join
therein, are felonies without benefit of clergy; and the hundred
shall be charged with the damages, unless the offender be convicted.
See this Dictionary, titles Black Act; Burning.

By stats. 6 Geo. 2. c. 37; 10 Geo. 2. c. 32, it is also made felony,
without benefit of clergy, maliciously to cut down any river or sea-
bank, whereby lands may be overflowed or damaged; or to cut any
hopt-binds, growing in a plantation of hops; or wilfully and maliciously
to set on fire any mine, pit, or delph of coal. See titles Mines; Coals,
&c. See Rivers.

By stat. 11 Geo. 2. c. 22, to use any violence in order to deter any
persons from buying corn or grain; to seize any carriage or horse
carrying grain or meal to or from any market or sea-port; or to use
any outrage with such intent, is punishable for the first offence with
imprisonment and public whipping; and the second offence, or de-
stroying any granary, where corn is kept for exportation; or taking
away or spoiling any grain or meal in such granary, or in any ship or
vessel, intended for exportation, is felony, subject to transportation
for seven years. See titles Corn; Riots.

By stat. 28 Geo. 2. c. 19, to set fire to any goss, furze, or fern,
growing in any forest or chase, is subject to a fine of st.
By statutes, 6 Geo. 3. c. 36, 48: 13 Geo. 3. c. 33, wilfully to spoil or destroy any timber or other trees, roots, shrubs, or plants, is for the two first offences liable to pecuniary penalties; and for the third, if in the day-time, and even for the first if at night, the offender shall be guilty of felony, and liable to transportation for seven years. See Timber.

By stat. 9 Geo. 3. c. 29, wilfully and maliciously to burn or destroy any engine or other machines belonging to Mines; or any fences for Inclosures, pursuant to any Act of Parliament, is made single felony, and punishable with seven years' transportation. See titles Mines; Common.

By stat. 13 Geo. 3. c. 38, the punishment of seven years' transportation was inflicted on such as should break into any house, &c. belonging to the Plate Glass Company, with intent to steal, cut, or destroy any of their stock or utensils; or should wilfully and maliciously cut or destroy the same.

By stat. 22 Geo. 3. c. 40, if any person shall break into any house or shop, with intent to cut or destroy any serge, woollen, velvet, silk, linen, or cotton goods, in the loom, or any stock of utensils used in the manufacturing of such goods, the offender shall be guilty of felony without benefit of clergy.

By 43 Geo. 3. c. 58. Persons in England or Ireland who shall maliciously shoot, or attempt to shoot at, or shall stab or cut with intent to murder, rob, or maim, &c. any of his Majesty's subjects; or to prevent arrest of, or to rescue, culprits; or who shall administer any poison, with intent to murder any person, or to procure the miscarriage of any woman quick with child; or who shall maliciously set fire to any house or houses, &c. with intent to injure or defraud any person, and the counsellors, aiders, and abettors of persons in such malicious injuries are declared guilty of felony without benefit of clergy. Provided that where the killing by such shooting, stabbing, &c. would not be murder by law, the parties shall be acquitted of the felony under this act, § 1.

Persons administering medicines to women to procure miscarriage, though the woman is not, or is not proved to be, quick with child, and their abettors, declared guilty of felony punishable by fine, imprisonment, pillory, whipping, or 14 years' transportation, § 2.

By the same act women acquitted of the murder of their bastards may be imprisoned where the birth was concealed, § 4. See title Bastards.

By 43 Geo. 3. c. 113, the provisions of 4 Geo. 1. c. 12, § 3, & 11 Geo. 1. c. 29. § 5, 6, 7, (See ante) respecting the casting away and destroying ships are repealed.—All persons who shall wilfully cast away from or destroy any ship or vessel, or any ways counsel, direct, or procure the same to be done, with intent to injure the owner or insurer of the ship or goods, are declared guilty of felony without benefit of clergy. See also 43 Geo. 3. c. 79, as to such offences committed in Ireland.

These seem the principal instances of Malicious Mischief punishable by statute; and which are here enumerated in one view, though noticed, for the most part, under various titles in this Dictionary.

MISCOGNISANT, Ignorant or not knowing. In the stat. 32 H. 8. c. 9, against Champerty and Maintenance, it is ordained that proclamation shall be made twice in the year of that act, to the intent no
person should be ignorant or miscognisant of the penalties therein contained, &c.

MISCOMPUTING; See Miscasting.

MISCONTINUANCE; Signifies the same with discontinuance. Kitch. 231. Though it is generally said to be, where a continuance is made by undue process. Jenk. Cent. 57.

MISDEMESNOR, or MISDEMEANOUR, a crime less than felony. The term Misdemeanour is generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony; as Perjury, Libels, Conspiracies, Assaults, &c. See 4 Comm. c. 1. p. 5. in n.

A Crime or Misdemeanour, says Blackstone, is an act committed or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both Crimes and Misdemeanours; which, properly speaking, are mere synonymous terms; though in common usage, the word Crimes is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of Misdemeanours only.

In making the distinction between public wrongs and private, between Crimes and Misdemeanours, and civil injuries, the same Author observes, that public wrongs, or Crimes and Misdemeanours, are a breach and violation of the public rights and duties, due to the whole community, considered as a community in its social aggregate capacity. 4 Comm. 5.

This term may be considered as, and in fact is, a genus, which contains under it a great number of species, almost as various in their nature as human actions. See Hale's & Hawkins's Pleas of the Crown; and this Dictionary, title Misprision.

MISE, Fr. Lat. missum, misu.] Is a law term signifying expenses, and it is so commonly used in the entries of judgments, in personal actions; as when the plaintiff recovers the judgment is quod recuperet damna sua to such a value, and pro misis et custagis, for costs and charges, so much, &c. This word hath also another signification in law; which is where it is taken for a word of art, appropriated to a writ of right, so called because both parties have put themselves upon the mere right, to be tried upon the grand assize, so that what in all other actions is called an issue, in a writ of right is termed a Mise; but if in the writ of right a collateral point be tried, there it is called an issue. To join the Mise upon the mere right, is as much as to say, to join the Mise upon the clear right, i. e. to join upon this point, which hath the more right, the tenant or demandant. 1 Inst. 294: stat. 37 Ed. 3. c. 16. See 3 Comm. Aff. § 6.

MISES, Taxes or tallages, &c. An honorary gift or customary present, from the people of Wales to every new King and Prince of Wales, antiently given in cattle, wine, and corn, but now in money, being 5000l. or more, is denominated a Mise; so was the usual tribute or fine of 3000 marks, paid by the inhabitants of the county palatine of Chester, at the change of every owner of the said earldoms, for enjoying their liberties. And at Chester they have a Mise-book, wherein every town and village in the county is rated what to pay towards the Mise. The stat. 27 Hen. 8. c. 26, ordains, that “Lords shall have all such Mises and profits of their lands as they had in times past, &c.”

Mise is sometimes corruptly used for mease, in Law French mees,
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a messuage; thus a Mise-place in some manors is such a messuage or tenement as answers the lord a heriot at the death of its owner. 2 Inst. 538.

MISELLI, Leprous persons. Cowell.

MISE-MONEY, Money given by way of contract or composition to purchase any liberty, &c. Blount Ten. 162.

MISERERÉ. The name and first word of one of the penitential Psalms, and is most commonly that which the Ordinary gave to such guilty malefactors as were admitted to the benefit of clergy; being therefore called the Psalm of Mercy. See title Clergy, benefit of.

MISERICORDIA, An arbitrary or discretionary amerciament. See title Amercement.

Sometimes Misericordia is to be quit and discharged of all manner of amerciaments that a man may fall into the forest. See Cromp. Jur. 196. See title Moderata Misericordia; & stat. Westm. 1. cap. 15.

MISERICORDIA in cibis & potu, Exceedings, or over-commons, or any gratuitous portion of meat and drink given to the religious above their ordinary allowance. Mat. Par. Vit. Abb. S. Albani. p. 71. In some convents they had a stated allowance of these over-commons upon extraordinary days, which were called Misericordia regulares. Monast. Angl. i. 149. b.

MISERICORDIA COMMUNIS, Is when a fine is set on the whole county or hundred. Mon. Angl. i. p. 967.

MISEVENIRE, To succeed ill; as, where a man is accused of a crime, and faïs in his defence or purgation. Lex Canut. 78. ejusd Brompton.


MISFEASOR, A trespasser. 2 Inst. 200.


MISKERING; Vide Abishereng.

MISNOMER, of the Fr. mes, amiss; and nomer, nominare.] The using one name for another; a misnaming. A name, Nomen, est quasi rei notamen, and was invented to make a distinction between person and person; and where a person is described, so that he may be certainly distinguished and known from other persons, the omission, or in some cases, the mistake of the name shall not avoid the grant. 11 Rept. 20, 21. A grant to a man by a wrong name may be good, si constat de persona, but the demonstratio personas must appear upon the face of the grant. Ld. Raym. 304. Yct a grant to a knight, by the name of esquire, is void. Ib. 303. And if the name of a party is mistaken, the Judges ought to mould a small mistake therein, to make good a contract, &c. and so as to support the act of the party by the law. Hob. 125. But the Christian name ought always to be perfect; and the law is not so precise as to surnames, as it is of Christian names. Poph. 57: 2 Lil. Abr. 199. Misprisions of clerks in names, are amendable: Peter and Piers have been adjudged one and the same name. Saunder and Alexander, and Garret and Gerald are but
one name: but Ranulph and Randolph, Isabel and Sybil, &c. are several names, and must be named right. 1 Rol. Abr. 135; 1 And. 211.

Where a Christian name is quite mistaken, as John for Thomas, &c. it may be pleaded that there was no such man in re unum natura. Dyer, 349. Or, he may plead his having been christened by the name of Thomas, and always called and known by that name; and traverse his being called or known by the name of John. If a person pleads that he never was called by such a name, it is ill; for this may be true, and yet he might be of that name of baptism. 1 Salk. 6.

One whose name is Edmund is bound in a bond by the name of Edward; though he subscribes his true name, that is no part of the bond. 2 Cro. 640: Dyer, 279. If a person be bound by the name of W. R. he may be sued by the name of W. R alias dictus W. B. his true name; not W. B alias dictus W. R. 3 Salk. 238. If a person be indicted by two Christian and surnames, it will be quashed; for he cannot have two such names. 1 Ld. Raym. 562. A lady, wife to a private person, ought to be named according to the name of her husband, or the writ shall abate; so if the son of an Earl, &c. be sued as a Lord, and not as a private person, by the name of his family. Dyer, 76: 2 Salk. 451.

Misnomer of corporations may be pleaded in abatement. 1 Leon. 152: 5 Mod. 327: 2 Salk. 451. And if there be any mistake in the name of a corporation, that is material in their leases and grants; they will be void. 2 Bendl. 1: Anders. 196. Judgment against a corporation by a wrong name is void. Ld. Raym. 119. A defendant may avoid an outlawry by pleading a Misnomer of name of baptism or surname; or Misnomer as to additions of estate, of the town, &c. See title Outlawry.

Though Misnomer of a surname may not be pleaded on an indictment, in an appeal it may; but any other Misnomers, and defective additions, are as fatal in an indictment as an appeal. 2 Hawk. P. C. c. 25, § 68, 9. A Misnomer must be pleaded by the party himself who is misnamed. 1 Lutw. 35. Plea of Misnomer by attorney may be refused; but it is no cause of demurrer. Ld. Raym. 509. If defendant omits to plead a Misnomer, he may be taken in execution by the wrong Christian name. 2 Strange, 1218. What words in a plea of Misnomer shall be considered as a special imparlance, see 1 Wils. 261.

If issue is joined on a plea in abatement for a Misnomer, in an action upon the case on promises, and found against the defendant, the judgment shall be peremptory, therefore the Jury ought to assess the damages. 2 Wils. 367.

What foundation will support a name by reputation, see Ld. Raym. 301, 304.—Note, names of persons not christened are surnames only. Ib. 305.

For the addition or omission of a letter or two, not making any material alteration in the sound, it is not proper to plead a Misnomer. The Courts of Law discourage (and that justly,) dilatory pleas, as much as they can, as tending to the delay of justice. See further Com. Dig. title Abatement, E. 18—22; E. 17—26: and this Dictionary, titles Abatement I. 3. b: Amendment.

MISPLEADING. If, in pleading, any thing be omitted, that is essential to the action or defence, as if the plaintiff does not merely state his title in a defective manner, but sets forth a title that is
wholly defective in itself, or if to an action of debt, (i.e. on bond, contract, &c.) the defendant pleads Not guilty instead of nil debet, these cannot be cured by a verdict for the plaintiff in the first case, or for the defendant in the second. Salk. 365; Cro. Eliz. 778.

When an issue is joined on an immaterial point, or such a point, as, after trial, the Court cannot give judgment, the Court regularly awards a repleader. See titles Pleading; Repleader.

MISPRISION,

Mispriso, from the Fr. mespris, contemptus.] A neglect, oversight, or contempt: as for example, Misprision of treason is a negligence in not revealing treason to the King, his Council, or a Magistrate, where a person knows it to be committed: so of felony. Staudf. P. C. lib. 1. c. 19. If a man knoweth of any treason or felony, and conceals the same, it is Misprison. In a larger sense, Misprision is taken for many great offences, which are neither treason nor felony, or capital, but very near them; and every great misdemeanor, which hath no certain name appointed by the law, is sometimes called Misprison. 3 Inst. 36: H. P. C. 127: Wood, 406, 408.

Misprisions are, in the acceptation of our law, generally understood to be all such high offences as are under the degree of capital, but nearly bordering thereon; and it is said that a Misprison is contained in every treason and felony whatsoever; and that if the King so please, the offender may be proceeded against for the Misprison only. Yearb. 2 R. 3. 10: Staudf. P. C. 32, 37: Kel. 71: 1 Hal. P. C. 374: 1 Hawk. P. C. c. 20. § 1.

Misprisions are generally divided into two sorts: 1. Negative, which consists in the concealment of something which ought to be revealed; and 2. Positive, which consists in the commission of something which ought not to be done. 4 Comm. c. 9.

Of the first or negative kind, is what is called Misprision of Treason: consisting in the bare knowledge and concealment of treason, without any degree of assent thereto; for any assent makes the party a principal traitor: as indeed the concealment, which was construed aiding and abetting, did at the Common Law. Thus it is laid down, that when one knows another hath committed treason, and doth not reveal it to the King or his Privy Council, or some Magistrate, that the offender may be secured and brought to justice, it is high treason by the antient Common Law; for delay in discovering treason, was deemed an assent to it, and consequently high treason. Bract. 118: S. P. C. 37: 3 Inst. 138, 140.

But it is now enacted, by stat. 1 & 2 P. & M. c. 10, that a bare concealment of treason shall be only held a Misprison. This concealment becomes criminal if the party apprised of the treason does not, as soon as conveniently may be, reveal it to some Judge of Assise, or Justice of the Peace. 1 Hal. P. C. 372. But if there be any probable circumstances of assent; as if a man goes to a treasonable meeting, knowing before-hand that a conspiracy is intended against the King; or being in such company once by accident, and having heard such treasonable conspiracy, meets the same company again, and hears more of it, but conceals it; this is an implied assent in law, and makes the concealer guilty of actual High Treason. 1 Hawk. P. C. c. 20. § 4.

A person having notice of a meeting of conspirators against the
government, goes into their company and hears their treasonable consultation and conceals it, this is treason; so where one has been accidentally in such company, and heard such discourse, if he meets such a company a second time; for in these cases, the concealment is attended with circumstances which shew an approbation thereof. H. P. C. 127: Kel. 17, 21.

A man who hath knowledge of a treason cannot secure himself by discovering generally that there will be a rising, without disclosing the persons intended to rise: nor can he do it by discovering these to a private person, who is no magistrate. S. P. C: H. P. C. 127. But where one is told in general, that there will be a rising or rebellion, and doth not know the persons concerned in it, or the place where, &c. this uncertain knowledge may be concealed, and it shall not be Treason or Misprision. Kel. 22: 1 H. P. C. 36. If high treason is discovered to a clergyman in confession, he ought to reveal it; but not in case of felony. 2 Inst. 629. This was law, when the Roman Catholic religion was professed here as the religion of the land; the same may be still law. Dict.

If a person is indicted of Misprision, as for treason; though he be found guilty, the Judges shall not give judgment thereon, he not being indicted of the Misprision. Jenk. Cont. 217. Information will not lie for Misprision of treason, &c. but indictment, as for capital crimes. There must be two witnesses upon indictments as well as trials of Misprision of treason, by stat. 7 W. 3. c. 3. See title Treason.

There is a negative Misprision of treason, created by Act of Parliament. By stat. 13 Eliz. c. 2, concealers of bulls of absolution from Rome are declared guilty of Misprision of treason. A positive Misprision of treason is also created by stat. 14 Eliz. c. 3, which enacts that those who forge foreign coin, not current in this kingdom, their aiders, abettors, and procurers, shall all be guilty of Misprision of treason; for though the law would not put foreign coin upon quite the same footing as our own, yet if the circumstances of trade concur, the falsifying it may be attended with consequences almost equally pernicious to the public; and therefore the law has made it an offence just below capital, and that is all. For the Punishment of Misprision of Treason, is loss of the profits of land during life, forfeiture of goods, and imprisonment during life. 1 Hal. P. C. 574: 3 Inst. 36, 218; which total forfeiture of the goods was inflicted while the offence amounted to principal treason, and of course included in it a felony by the Common Law; and therefore is no exception to the general rule, that whenever an offence is punished by such total forfeiture, it is felony at the Common Law. 4 Comm. c. 9. ft. 120, 1.

Misprision of Felony is the concealment of a felony which a man knows, but never assented to; for if he assented, this makes him either principal or accessory; and the punishment of this, in a public officer, by stat. Westm. 1. 3 Ed. 1. c. 9, is imprisonment for a year and a day; in a common person, for a less discretionary time; and in both, fine and ransom at the King's pleasure, as declared by the Judges in a Court of Justice. 1 Hal. P. C. 375.

Under this title of Misprision, that of Theftbote may be reduced; which is, where one knowing of a felony, takes his goods again, or amends for the same. 3 Inst. 134, 139: H. P. C. 130. Though the bare taking goods again which have been stolen is no offence, unless
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some favour be shewn the thief. 1 Hawk. P. C. c. 59. § 7. To take
any reward to help any person to stolen goods, is made felony by stat.
4 Geo. 1. c. 11. And to advertise a reward for the return of things
stolen incurs a forfeiture of 50l. by stat. 25 Geo. 2. c. 56. The stats.
Westm. 1. 3 &. 1. c. 9: 3 H. 7. c. 1, provide against concealments of
felonies by sheriffs, coroners, and bailiffs, &c.

There is also another species of negative Misprision, namely,
the concealing of Treasure-trove, which belongs to the King or his
grantees by prerogative-royal; this concealment was formerly pu-
nishable by death, but now only by fine and imprisonment. Glanv.
lib. 1. c. 2: 3 Inst. 133.

2 Misprisons which are merely positive, are generally denomina-
ted Contempts or High Misdemeanours; of which the first and principal
is the Mal-administration of such high Officers as are in public
trust and employment. This is usually punished by the method of
parliamentary impeachment, wherein such penalties, short of death,
are inflicted, as to the wisdom of the House of Peers shall seem pro-
per; consisting usually of banishment, imprisonment, fines, or per-
petual disability. Hitherto also may be referred the offence of Em-
bazzling the Public Money, which is not a capital crime, but subjects
the offender to a discretionary fine and imprisonment. 4 Comm. 122.

Other Misprisons are in general such contempts of the executive
Magistrate, as demonstrate themselves by some arrogant and undu-
tiful behaviour towards the King and Government; these are either
against the King's Prerogative, the King's Person and Government;
the King's Title; his Palaces, or Courts of Justice. With respect to
the two first of these, see this Dictionary, titles Contempt; Govern-
ment.

Contempts against the King's Title, not amounting to Treason or
Praemunire, are, the denial of his right to the Crown, in common and
unadvised discourse; for if it be by advisedly speaking, it amounts to
a Praemunire; see that title. This heedless species of contempt is
punished with fine and imprisonment. Likewise if any person shall
in any wise hold, affirm or maintain, that the Common Laws of this
realm, not altered by Parliament, ought not to direct the right of the
Crown of England; this is a misdemeanour by stat. 13 Eliz. c. 1; and
punishable with forfeiture of goods and chattels. A contempt may
also arise from refusing or neglecting to take the oaths appointed by
statute for the better securing the Government, and yet acting in a
public office, place of trust, or other capacity for which the said oaths
are required to be taken, viz. those of allegiance, supremacy, and
abjuration; which must be taken within six calendar months after ad-
mission. The penalties for this contempt, inflicted by stat. 1 Geo. 1.
st. 2. c. 13, are very little, if any thing, short of those of a Praemunire;
being an incapacity to hold the said offices, or any other; to prose-
cute any suit; to be guardian or executor; to take any legacy or deed
of gift; or to vote at any election for Members of Parliament; and
after conviction the offender shall forfeit 500l. to any that will sue
for the same. See this Dictionary, titles Dissenters; Non-conformists;
Oaths. Members on the foundation of any colleges in the two Uni-
versities, who by this statute are bound to take the oaths, must also
register a certificate thereof in the College Register, within one
month after; otherwise, if the electors do not remove him, and elect
another within twelve months, or after, the King may nominate a

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person to succeed him, by his great seal or sign manual. Besides thus taking the oaths for offices, any two Justices of the Peace may by the same statute summon, and tender the oaths to any person whom they shall suspect to be disaffected; and every person refusing the same, who is properly called a Non-juror, shall be adjudged a popish recusant convict, and subject to the same penalties as are inflicted on them; which in the end may amount to the alternative of abjuring the realm, or suffering death as a felon. 4 Comm. 124: See this Dictionary, titles Papists; Oaths; Præsunture.

Contempts against the King’s Palaces or Courts of Justice have been always looked upon as high Misprisions; and by the ancient law, before the Conquest, fighting in the King’s Palace, or before the King’s Judges, was punished with death. 3 Inst. 140: Ll. Alured, cc. 7, 34. And at present, by stat. 33 H. 8. c. 12, malicious striking in the King’s Palace, wherein his royal person resides, whereby blood is drawn, is punishable by perpetual imprisonment, and fine at the King’s pleasure: and also with loss of the offender’s right hand: the solemn execution of which sentence is prescribed in the statute at length. See Sir Edm. Kewett’s Ca. in Stowe; & 11 St. Tr. 16; & the Earl of Devonshire’s; 11 St. Tr. 133.

But striking in the King’s superior Courts of Justice in Westminster Hall, or at the assizes, is made still more penal than even in the King’s Palace; the reason seems to be, that those Courts being antiently held in the King’s Palace, and before the King himself, striking there included the former contempt against the King’s Palace, and something more, viz. the disturbance of public justice. For this reason, by the antient Common Law before the Conquest, striking in the King’s Courts of Justice, or drawing a sword therein, was a capital felony. Ll. Ine. c. 6: Ll. Canut. c. 56: Ll. Alured, c. 7: and our modern law retains so much of the antient severity, as only to exchange the loss of life for the loss of the offending limb. Therefore a stroke or blow in such a Court of Justice, whether blood be drawn or not, or even assaulting a Judge sitting in the Court, by drawing a weapon, without any blow struck, is punishable with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels, and of the profits of the offender’s lands during life. Staundf. P. C. 38: 3 Inst. 140, 1. A Rescue also of a prisoner from any of the said Courts, without striking a blow, is punished with perpetual imprisonment, and forfeiture of goods, and the profits of lands during life; 2 Hawk. P. C. c. 21. § 5; being looked upon as an offence of the same nature with the last; but only as no blow is actually given, the amputation of the hand is excused. For the like reason, an affray or riot near the said Courts, but out of their actual view, is punished only with fine and imprisonment. Cro. Car. 373.

Not only such as are guilty of any actual violence, but of threatening, or reproachful words to any Judge sitting in the Courts, are guilty of a high Misprision, and have been punished with large fines, imprisonment, and corporal punishment. Cro. Car. 503. And even in the inferior Courts of the King, an affray or contemptuous behaviour is punishable with a fine by the Judges there sitting; as by the Steward in a Court-leet, or the like. 1 Hawk. P. C. c. 21. §§ 10, 11.

Likewise all such as are guilty of any injurious treatment to those who are immediately under the protection of a Court of Justice, are punishable by fine and imprisonment: as if a man assaults or threat-
ens his adversary for suing him, a counsellor or attorney for being employed against him, a juror for his verdict, or a gaoler or other ministerial officer, for keeping him in custody, and properly executing his duty. 3 Inst. 141, 2.

Lastly, to endeavour to dissuade a witness from giving evidence; to disclose an examination before the Privy-Council; or to advise a prisoner to stand mute; (all of which are impediments of justice;) are high Misprisions, and contempts of the King's Courts, and punishable by fine and imprisonment. And antiently it was held, that if one of the Grand Jury disclosed to any person the evidence that appeared against him, he was thereby made accessory to the offence, if felony; and in treason, a principal. And at this day it is agreed that he is guilty of a high Misprison, and liable to be fined and imprisoned. 1 Hawk. P. C. c. 21. § 15.

Misprisions of Clerks, &c. Relate to their neglects in writing or keeping records; and here Misprison signifies a mistaking. See stat. 14 Ed. 3. c. 5: and this Dictionary, title Amendment.

MISRECITAL of deeds or conveyances, will sometimes hurt a deed, and sometimes not. Hdb. 18, 19, 129.

If a thing is referred to time, place, and number, and that is mistaken, all is void. Arg. Pl. C. 392. b. Trin. 13 Eliz. in the case of the Earl of Leicester v. Heydon.

Misrecital in an immaterial point, and where it is only an additional flourish in things circumstantial, shall not avoid a grant; as where the husband has a term in right of his wife, and this term is recited as made to the husband. A Misrecital in the beginning of a deed, which goes not to the end of a deed, shall not hurt; but if it goes to the end of a sentence, so that the deed is limited by it, it is vitious. Carth. 149. See titles Amendment; Deed; Lease.

Missa, The Mass, at first used for the dismissal or sending away of the people: and hence it came to signify the whole church service or Common Prayer; but more particularly the Communion-service, and the office of the Sacrament, after those who did not receive it were dismissed. Litt. Dict.


Missura, Singing the Nunc Dimittis, and performing other ceremonies to recommend and dismiss a dying person. And in the statutes of the church of St. Paul in London, (collected by Ralph Ballock, dean about the year 1295, in the chapter de Frateria, of the fraternity or brotherhood, who were obliged to a mutual communication of all religious offices,) it is ordained—Ut fiat commendatio & Missura & seculatura omnibus sociis coaduantibus & assistentibus. Liber Stat. Eccles. Paulina, M. S. fol. 25.

Missurium, A dish for serving up meat to a table. Thorn’s Chron. p. 1762.

Mistake, A negligent error in any deed, record, process, &c. As to which see this Dictionary, title Amendment; Deed; &c. Ignorance or Mistake is classed by Blackstone among defects of the will; as when a man intending to do a lawful act, does that which is unlawful. For here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a crimi-
nal act. But this must be an ignorance or mistake of fact, and not an error in point of law. Thus, if a man intending to kill a thief or housebreaker in his own house, by Mistake kills one of his own family, this is no criminal action; but if a man thinks he has a right to kill a person excommunicated or outlawed, wherever he meets him, and does so, this is wilful murder; for a Mistake in point of law, which every person of discretion not only may, but is bound and presumed to know, is, in criminal cases, no sort of defence. 4 Comm. c. 71. 27.

MISTERIUM, for MINISTERIUM. Mon. Angl. tom. p. 102.
MIS-TRIAL, A false or erroneous trial; where it is in a wrong county, &c. 3 Cro. 284. Consent of parties cannot help such a trial, when past. Hob. 3. See tit. Trial.
MISUSER, is an abuser of any liberty or benefit; as, 'he shall make a fine for his Misuser.’ Old Nat. Br. 149. By Misuser, a charter of a corporation may be forfeited; so also an office, &c. See titles Office; Condition, I. 1.
MITRED ABBOTS, Were those governors of religious Houses, who obtained from the Pope the privilege of wearing the mitre, ring, gloves, and crosier of a bishop. The mitred Abbots, says Cowell, were not the same with the conventual prelates, who were summoned to Parliament as spiritual Lords, though it hath been commonly so held; for their summons to Parliament did not any way depend on their mitres, but on their receiving their temporals from the hands of the King. See title Abbot.
MITTA, from the Saxon mitten, mensura.] An antient Saxon measure; its quantity dowl not certainly appear, but it is said to be a measure of ten bushels. Dom. Day. Tit. Wirescotre. Mon. Angl. tom. 2. p. 262. And Mitta, or Mitcha, besides being a sort of measure for salt and corn, is used for the place where the cauldrons were put to boil salt. Gale’s Hist. Brit. 767.
MITTENDO MANUSCRIPTUM PEDIS FINIS, Was a judicial writ directed to the Treasurer and chamberlains of the Exchequer, to search for, and transmit, the foot of a fine, acknowledged before Justices in Eyre, into the Common Pleas, &c. Reg. Orig. 14.
MITTIMUS, A writ for removing and transferring of records from one Court to another; as out of the King’s Bench into the Exchequer, and sometimes by Cereditari into the Chancery, and from thence into another Court: but the Lord Chancellor may deliver such record with his own hand. Stais. 5 R. 2. st. 1. c. 15: 28 & 29 H. 8: Dyer 29, 32. Mittimus is also a precept in writing, under the hand and seal of a Justice of Peace, directed to the gaoler, for the receiving and safe keeping of an offender until he is delivered by law. 2 Inst. 590. See title Commitment.
MITTRE A LARGE, Is generally to set or put at liberty. Law Fr. Dict. And there is a Mittre le estate and de droit, mentioned by Littleton, in case of releases of lands by joint tenants, &c. which may sometimes pass a fee, without words of inheritance. 1 Inst. 273, 274. See title Release.
MIXED ACTIONS, Suits partaking of the nature of real and personal, wherein some real property is demanded, and also personal damages for a wrong sustained. See title Action.
MIXED LARCENY, or Compound Larceny. Is such as hath all the properties of simple Larceny, but is accompanied with one or
both the aggravations of a taking from one's house or person. See title Larceny.

**MIXED TITHES,** Are those of cheese, milk, and young beasts, &c. 2 Inst. 649. See title Tithes.

**MIXTILIO;** See Measilo.

**MIXTUM.** This word is often mentioned by our Monkish historians; it sometimes signifies a breakfast, but always a certain quantity of bread and wine. Cowell.

**MOCRADOES,** Stuffs made in England and other countries; mentioned in stat. 23 Eliz. c. 9.

**MODERATA MISERICORDIA,** A writ founded on Magna Carta, which lies for him who is amerced in a Court, not of record, for any transgression, beyond the quality or quantity of the offence: it is directed to the Lord of the Court, or his bailiff, commanding him to take a moderate amerciament of the parties. If a man be amerced in a Court-baron, on presentment by the Jury, where he did not any trespass; he shall not have this writ, unless the amerciament be excessive and outrageous: and if the Steward of the Court, of his own head, will amerce any tenant or other person without cause, the party ought not to sue for his writ of Moderata Misericordia, if he be restrained for that amerciament; but he shall have action of trespass. New Nat. Br. 167. When the amerciament which is set on a person is affected by his peers, this writ of *Moderata Misericordia* doth not lie; for then it is according to the statute. See F. N. B. 76: 4to Edit. 176.


**MODIUS,** A measure, usually a bushel; but various according to the customs of several countries.

**MODIUS TERREÆ VEL AGRI,** This phrase was much used in the antient charters of the British Kings, and probably signified the same quantity of ground, as with the Romans, viz. One hundred feet long, and as many broad. Mon. Angl. iii. 200.

**MODO ET FORMA,** Words of art in law pleading, &c. and particularly used in the answer of a defendant, whereby he denies to have done the thing laid to his charge, modo & forma declarata, in manner and form as declared by the plaintiff. Kitch. 232.

Where *Modo et Forma* are of the substance of the issue, and where but words of form, this diversity is to be observed; where the issue taken goeth to the point of the writ or action, there *Modo et Forma* are but words of form, as in the case of the writ of entry in casu proviso. But otherwise it is, when a collateral point in pleading is traversed; as if a feoffment be alleged by two, and this is traversed *Modo et Forma,* and it is found the feoffment of one, there *Modo et Forma* is material. So if a feoffment be pleaded by deed, and it is traversed *abique hoc quod feoffavit Modo et Forma,* upon this collateral issue *Modo et Forma* are so essential as the Jury cannot find a feoffment without deed. Co. Lit. 281. b. See Br. Labourers, pt. 46. cites 38 H. 6. 22. So in breach of covenant, as for ploughing meadow land, a licence in writing, by several, intituled at the time to the reversion with the appurtenant, (or lands pro tempore,) may be traversed, *Modo et Forma,* and a licence by parol, or by one or two, &c. and not by all, will not support the issue.
Modo et Forma do not put the day nor place in issue; but only the matter and substance of the plea. Reg. Plac. 188. a. 5.

Where a traverse is with a Modo et Forma, &c. that will put the manner, as well as the matter in issue, where the manner is material, as the time, the fact, and other circumstances, when they are the effect of the issue. Reg. Plac. 189. c. 5. See title Pleading.

MODUS DECIMANDI, Is when lands, tenements, or some certain annual sum, or other profit, hath been given time out of mind to a parson and his successors, in full satisfaction and discharge of all tithes in kind, in such a place. 2 Rep. 47: 2 Inst. 490; and see title Tithes.

A Modus Decimandi, commonly called by the simple name of a Modus only, is where there is by custom a particular manner of tithing allowed, different from the general law of taking tithes in kind, which are the actual tenth part of the annual increase. This is sometimes a pecuniary compensation, as 2d. an acre for the tithe of land; sometimes it is a compensation in work and labour, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner’s making it for him; sometimes in lieu of a large quantity of crude or imperfect tithe, the parson shall have a less quantity, when arrived to greater maturity, as a couple of fowls in lieu of tithe-eggs, and the like. Any means, in short, whereby the law of tithing is altered, and a new method of taking them is introduced, is called a Modus Decimandi, or special manner of tithing. 2 Comm. c. 3. p. 29.

MOHAIR YARN; See titles Manufactures; Silk.

MOIETY, medietas, Fr. moitié, i. e. coëqua vel media pars.] The half of any thing; and to hold by Moieties is mentioned in our books, in case of joint-tenants, &c. Lit. 125. See title Joint-tenants.

MOLASSES; See Navigation-Acts.

MOLENDINUM, A mill of divers kinds. See Mill.


MOLITURA, Was commonly taken for the toll or multure paid for grinding corn at a mill; sometimes called molta, Fr. moult—Mo- litura libera, free grinding or liberty of a mill without paying toll; a privilege which the lord generally reserved to his own family. Paroch. Anttg. 236.

MOLLITER MANUS IMPOSUIT. Several justifications in trespass, i.e. actions of assault, are called by this name, from the words gently laid his hands upon him used in the plea; as where the defendant justifies an assault, by shewing that the plaintiff was unlawfully in the house of defendant, making a disturbance, and being requested to cease such disturbance and depart, he refused, and continued therein, making such disturbance, he, the defendant, gently laid his hands on the plaintiff; and removed him out of the house. So in various other instances, as for separating two persons fighting, in order to preserve the peace: so in the legal exercise of an office, &c. See titles Pleading; Assault;


MOLMUTIAN, or MOLMUTIN LAWS, The laws of Dunvallo Molmutius, sixteenth King of the Britons, who began his reign above four hundred years before the birth of our Saviour: these were famous in this land till the time of William the Conqueror. This King
was the first who published laws in Britain; and his laws (with those of Queen Mercia,) were translated by Gildas out of the British, into the Latin tongue. Usher's Primord. 126.

MOLNEDA, MULNEDA, A mill-pool, or pond. Paroch. Antig. 135.

MOLTA, The duty or toll paid to the lord by his vassals, to grind corn at his mill. Monastic. ii. 97. See Molitura.

MONARCHY, That form of government where the sovereign power is entrusted in the hands of a single person. See title Government.

MONASTERIES and ABBEYS; See title Abbot.

MONETAGIUM, A certain tribute paid by tenants to their lord every third year, that he should not change the money which he had coined, formerly when it was lawful for great men to coin money current in their territories; but of silver and gold. It was abrogated by the law of the year, that was made, being silver or gold; the denomination or intrinsic value, given by the King, by virtue of his prerogative; and the King's stamp thereon. 1 Hale's Hist. P. H. 188.

It belongs to the King only, to put a value, as well as the impression, on Money; which being done, the Money is current for so much as the King hath limited. 2 Inst. 575. Any piece of Money coined is of value as it bears a proportion to other current Money, and that without proclamation: and though there is no act of Parliament, or order of State for guineas, as they are taken; but being coined at the Mint, and having the King's insignia on them, they are lawful Money, and current at the value they were coined and uttered at the Mint. 2 Salk. 446. It has been insisted that guineas were originally coined for 20s. according to the twenty shilling pieces of Money, and that legally, no more ought to be demanded for them: also that in legal proceedings, they should be mentioned as pieces of gold called guineas, of the value, &c. 5 Mod. 7. If an action is brought for damages, the value of guineas may be given in evidence to the Jury; but if the action be for so many guineas, the value ought to be set forth in the declaration, to ascertain the debt. Carthew, 255.

Gold and silver coin, &c. is not to be exported without licence, on pain of forfeiture. Stat. 9 Ed. 3. stat. 2. c. 1. Silver Money melted down, is to be forfeited, and double value. Stat. 13 & 14 Car. I. c. 31. But by old statutes, foreign money may be melted down; and no Money shall be current but the King's own, &c. See stats. 27 Ed. 3. c. 14: 17 R. 2. c. 1; this Dictionary, title Coin; and 1 Comm. c. 7. f. 276; 7. & n.

MONEY, LENDING IT ABROAD. By a temporary statute, 3 Geo. 2. c. 5, the King by proclamation might for one year, prohibit all his subjects from lending or advancing Money to any foreign Prince or State, without licence under the Great or Privy Seal; and if any person knowingly offended in the premises, he should forfeit treble the
value of the Money lent, &c. two-thirds to the King, and the other to
the informer; but persons might deal in foreign stocks, or be interest-
ed in any bank abroad, established before issuing his Majesty’s pro-
clamation. see title Alien.

Money into Court. In law proceedings, Money demanded is of-
ten times brought into Court, either by a rule of Court, or by plead-
ing a *profect in curiam* of the Money on a tender. The practice of
bringing Money into Court was first introduced in the time of Kelyng,
Ch. J. to avoid the hazard and difficulty of pleading a Tender: and it
is allowed in cases where an action is brought upon contract for the
recovery of a debt, which is either certain, or capable of being ascer-
tained by mere computation, without leaving any other sort of discre-
tion to be exercised by a Jury. 2 Burr. 1120. In these cases, when
the dispute is not whether any thing, but how much, is due to the
plaintiff, the defendant may have leave to bring into Court any sum
of Money he thinks fit; and the Court will make a rule, that unless
the plaintiff accept of it, with costs, in discharge of the action, it
shall be struck out of the declaration, and paid out of Court to the
plaintiff; or his attorney; and the plaintiff, upon the trial, shall not be
permitted to give evidence of the sum brought in: which rule should
be accompanied with the general issue or other plea to the residue of

Thus in *Assumpsit* or *Covenant* for the payment of Money the de-
fendant may bring Money into Court; and in *Covenant* to find diet
and lodging, or pay 10l. the Court allowed a defendant to bring in
the 10l. In debt for rent, the defendant was formerly allowed to bring
Money into Court, as is done in the Common Pleas and the Exche-
quar; but the Court of King’s Bench has refused it, and said that they
never did it in *debt*. But there is a distinction between those actions
of debt wherein the plaintiff cannot recover less than the sum de-
manded, as on a record, specialty, or statute, giving a *sum certain* by
way of penalty: and those actions wherein the plaintiff may recover
less, as in debt for rent, or on a simple contract. In the former the
defendant cannot, though he may move to stay the proceedings, on
payment of the *whole debt* and costs; as was the practice in cases of
debt on bond, conditioned for payment of a lesser sum than the pe-
nalty, previous to the stat. 4 & 5 Ann. c. 16, which allows the defen-
dant, pending an action on such bond, to bring the principal, interest,
and costs into Court, and declares that such payment shall be a full
satisfaction and discharge of the bond. But in the latter, the defen-
dant has been allowed to bring Money into Court, because the plain-
tiff does not recover according to his demand, but according to the
verdict of the Jury. *Tidd*.—By stat. 19 Geo. 2. c. 37, the defendant
may bring Money into Court, in debt, covenant, or other action, on a
policy of assurance. See 3 Burr. 1773. In an action by an executor
or administrator, the plaintiff not being liable to costs, the defendant
was not formerly allowed to bring Money into Court; but now it is
otherwise, and the effect of the rule will be, not to make the plain-
tiff pay, but only to lose his subsequent costs. See 2 *Bail*. 596; 2
*Stra*. 796.

In trover the defendant cannot bring the goods and costs into
Court. 1 Wils. 23. In an action for the mesne profits after a recove-
ry in ejectment, the defendant shall not have leave to pay Money into
Court. 2 Wils. 113.
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In a plea of tender, with a profert in curia, the sum tendered must be paid to the signer of the writs, and if not so paid, the plaintiff may consider the plea as a nullity, and sign judgment. 1 Stra. 638. And as a tender cannot be pleaded, so the defendant cannot bring Money into Court, in an action for general damages upon a contract, or for a tort or trespass. But in action on assumpsit against a carrier, for not delivering goods, the defendant having advertised that he would not be answerable for any goods beyond the value of 20l. unless they were entered and paid for accordingly, the Court of King’s Bench allowed him to bring the 20l. into Court. And where, in an action for general damages, the bringing of Money into Court is irregular, if the plaintiff takes it out, he thereby waives the irregularity; and cannot afterwards have a verdict, unless he recover more than the sum brought in. Tidd’s Pract. K. B.

By stat. 24 Geo. 2. c. 44. § 4, (which seems to be the first statute allowing Money to be brought into Court in an action for general damages;) state. 20 Geo. 3. c. 70. § 33; 24 Geo. 3. st. 2. c. 47. § 35; and several subsequent statutes, in actions against Justices of the Peace, or Officers of the Excise or Customs, for anything done in the execution of their offices, “in case the defendants shall have neglected to tender any, or shall have tendered insufficient amends, before the action brought, they may, by leave of the Court at any time before issue joined, pay into Court such sum of money as they shall see fit; whereupon such proceedings, orders, and judgments shall be had, made, and given, in and by such Court, as in other actions where the defendant is allowed to pay Money into Court.”

Where there are several counts or breaches in the declaration, and as to some of them the defendant may bring Money into Court, but not as to the others; he may obtain a rule for bringing it in specially, upon some of the counts or breaches only. Thus where an action of covenant was brought upon a lease, for non-payment of rent, and repairing, &c. the Court made a rule, that upon payment of what should appear to be due for rent, the proceedings as to that should be stayed; and as to the other breaches, that the plaintiff might proceed as he should think fit. So in covenant upon a charter-party, the defendant has been allowed to bring Money into Court upon two of the breaches only, viz. for freight and demurrage. If a defendant thus bring Money into Court upon some of the counts, and the plaintiff take it out, the latter is only entitled to the costs of those counts. Tidd’s Pract. K. B.

The motion for leave to bring Money into Court, is a motion of course, and should regularly be made before plea pleaded; but it is frequently made, and in some cases expressly authorised by statute, after plea, on obtaining a judge’s order for that purpose. And if there has been no delay, the Court will give the defendant leave to withdraw the general issue, in order to bring Money into Court, and plead it in payment of costs. Tidd’s Pract. K. B.

Bringing Money into Court is an acknowledgment of the right of action to the amount of the sum brought in; which the plaintiff (on producing an office copy of the rule) is entitled to receive at all events, whether he proceed in the action or not; and even though he be nonsuited, or have a verdict against him, and bring an acknowledgment on record, the party can never recover it back again, though it afterwards appear that he paid it wrongfully. Tidd’s Pract. K. B. But if the
defendant brings Money into Court, upon a tender and *uncor prist,* and the plaintiff takes issue upon the tender, and it is found against him, then the defendant shall have the Money out of Court. 2 Salk. 597. The Court of C. P. held that payment of money into Court is an admission of a *legal* demand only, and that Money so paid could not be applied to an illegal account. 1 Bos. & Pul. 264. And beyond the amount of the sum brought in, bringing Money into Court is no acknowledgment of the right of action, and therefore if the plaintiff proceed further, it is at his peril. If he proceed to trial, otherwise than for the payment of costs, and do not prove more to be due to him than the sum brought in, the plaintiff, on producing the rule, shall be nonsuited, or have a verdict against him, and pay costs to the defendant; but if more appear to be due to him, he shall have a verdict for the overplus and costs. Where the plaintiff proceeds further without going on to trial, he shall have his costs to the time of bringing Money into Court; and if the plaintiff proceed to trial, and the Juror is withdrawn by consent, the plaintiff is not entitled to come up to the time of bringing the Money into Court. *Tidd's Pract. K. B.* and the authorities there cited.

The Court will not order Money paid into Court, through a mistake, to be repaid to the defendant: but perhaps they would in case of fraud. 2 Bos. & Pul. 392; & see 3 Bos. & Pul. 536.

**MONGER,** A little sea vessel which fishermen use. See stat. 13 Eliz. c. 11. When a word ends with *monger,* as *ironmonger,* &c. it signifies merchant, from the Sax. *manger,* i. e. *Mercator.*

**MONIERS or MONEYERS,** *Monetarii,* Are ministers of the Mint, who make and coin the King's money. *Reg. Orig.* 262: 1 Ed. 6. 15: See *Mint.* It appears in ancient authors that the Kings of England had Mints in several counties, and those who had the conduct of them appear to have been called *Monetarii,* Moniers. In the tract in the Exchequer, written by Oakham, it is said, that whereas sheriffs were usually obliged to pay into the Exchequer the King's sterling money, for such debts as they were to answer; those of Cumberland and Northumberland were admitted to pay in any sort of money, so it were silver: and the reason there given, is, because those two shires *Monetarios de antiqua institutio ne habent; quod abbas & monachi prediciti habeant unum monetarium & unum cuneum auid Rading ad monetam ibidem, tam ad obolos & sterlingos quam ad sterlingos frout moris est fabricand, & faciend; Memorand. Scac. de Anno 20 Ed. 3. inter record de Trin. Rot.* Of later days, the title of Moniers hath been given to bankers, that is, such as make it their trade to deal in moneys upon returns. *Cowell.*

**MONK,** *Monachus,* from the Gr. *Miss, solus quia soli,* i. e. *Separati ab altiorum consortio vivant,* because the first Monks lived alone in the wilderness.] They were after divided into three ranks; *Cenobitarium,* i. e. a society living in common in a monastery, &c. under the government of a single person; and these were under certain rules, and afterwards called *Regulars; Anachoreta,* or *Eremita,* those Monks who lived in the wilderness on bread and water; and *Sarabite,* Monks living under no rule, that wandered in the world.

**MONKERY,** The profession of a Monk, mentioned in *Whitlock's* reading upon *Stat. 21 H. 8. c. 13.*

**MONKS CLOTHES,** Made of a certain kind of coarse cloth. *Vide 20 H. 6.*
MONOPOLY, From Monopolis solius & pullum vendo.] A licence or privilege allowed by the King, by his grant, commission, or otherwise, to any person or persons, for the sole buying, selling, making, working, or using of any thing; by which other persons are restrained of any freedom or liberty that they had before, or hindered in their lawful trade. 3 Inst. 181: 4 Comm. 159. It is defined to be where the power of selling any thing is in one man alone; or where one shall ingross and get into his hands such a merchandize, &c. as none may sell or gain by them but himself. 11 Ref. 86.

A Monopoly, it is said, hath three incidents mischievous to the public: 1. The raising of the price. 2. The commodity will not be so good. 3. The impoverishing of poor artificers. 11 Ref. 86. All Monopolies are against the antient and fundamental laws of the realm: A by-law, which makes a Monopoly, is void; so is a prescription for a sole trade to any one person or persons, exclusive of all others. Moor, 591. Monopolies by the Common Law are void, as being against the freedom of trade; and discouraging labour and industry; and putting it in the power of particular persons to set what prices they please on a commodity. 1 Hawk. P. C. Upon this ground it hath been held, that the King's grant to any corporation of the sole importation of any merchandise, is void. 2 Rol. Abr. 214: 3 Inst. 182. The grant of the sole making, importing, and selling of playing-cards, was adjudged void. 11 Ref. 84: Moor, 671. And the King's grant of the sole making and writing of bills, pleas, and writs in a Court of Law, to any particular person, hath been resolved to be void. 1 Jones, 231: 3 Mod. 75.

The King may grant to particular persons the sole printing of the holy scriptures, and law books. 1 Hawk. P. C. See title Literary Property. All matters of this nature ought to be tried by the Common Law, and not at the Council-table, or any other Court of that kind; and the making use of or procuring any unlawful Monopoly, is punishable by fine and imprisonment at Common Law. 3 Inst. 181, 182.

These Monopolies had been carried to an enormous height during the reign of Queen Elizabeth; but were in a great measure remedied by stat. 21 Jac. 1. c. 3, by which all Monopolies, grants, letters patent, and licences, for the sole buying, selling, and making of goods and manufactures, are declared void, except in some particular cases; and persons grieved by putting them in use, shall recover treble damages and double costs, by action on the statute; and delaying such action before judgment, by colour of any order, warrant, &c. or delaying execution after, incurs a Premunire: but this does not extend to any grant or privilege granted by act of Parliament; nor to any grant or charter to corporations or cities, &c. or to grants to companies or societies of merchants, for enlargement of trade; or to inventors of new manufactures, who have patents for the term of fourteen years; grants or privileges for printing; or making gunpowder, casting ordnance, &c.

As to inventors of new manufactures, &c. it has been adjudged on this statute, that a manufacture must be substantially new, and not barely an additional improvement of any old one, to be within the statute; it must be such as none other used at the granting the letters patent; and an old manufacture in use before, cannot be prohibited in any grant of the sole use of any such new invention. 3 Inst. 184. Yet
a grant of Monopoly may be to the first inventor, by the stat. 21 Jac. 1. c. 3; notwithstanding the same thing was practised before beyond sea; because the statute mentions new manufactures within the realm, and intended to encourage new devices useful here: and it is the same thing whether acquired by experience or travel abroad, or by study at home. 2 Salk. 447. It is said, a new invention to do as much work in a day by an engine, as formerly used to employ many hands, is contrary to the statute; by reason it is inconvenient, in turning so many men into idleness. 3 Inst. 184. But experience seems in favour of such inventions, as they tend to lessen the price of manufactures, and enable us to undersell foreigners, both at home and abroad.

Combinations among victuallers or artificers to raise the price of provisions or any commodities, or the rate of labour are commonly called Monopolies; and are in many cases severely punished by particular statutes; and in general by stat. 2 & 3 E. 6. c. 15, with the forfeiture of 10l. or twenty days' imprisonment, with an allowance of only bread and water, for the first offence; 20l. or the pillory, for the second; and 40l. for the third, or else the pillory, loss of one ear, and perpetual infamy.—See title Conspiracy. See 4 Comm. 159.

MONSTER, One who hath not human shape, and yet is born in lawful wedlock: and such may not purchase or retain lands; but a person may be an heir to his ancestor's lands, though he be deformed in some part of his body. Co. Lit. 7. See title Descent.

Shewing a Monster for money is a misdemeanor.—It was a child that had four legs and four arms, and two heads, and but one belly, where the two bodies were conjoined; the child died and was embalmed to be kept for shew, but was ordered by the Lord Chancellor to be buried in a week. 2 Ch. Ca.

MONSTRANS DE DROIT, a shewing a right.] A writ out of Chancery to be restored to lands and tenements that are a man's, in right, though by some office found to be in the possession of one lately dead; by which office the King would be entitled to the said lands, &c. Steundf. P. C. r. 21: 4 Rep. 54.

The Common-law methods of obtaining possession or restitution from the Crown, of either real or personal property, are, 1. By Petition de droit, or petition of right, which is said to owe its original to K. Edward I. 2. By Monstrans de droit, manifestation or plea of right; both which may be preferred or prosecuted either in the Chancery or Exchequer. Skin. 609.

The former is of use where the King is in full possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the Crown, grounded on facts disclosed in the petition itself: in which case he must be careful to state truly the whole title of the Crown, otherwise the petition shall abate. Finch. L. 256. And then, upon this answer being indorsed or underwritten by the King, "soit droit fait à partir—let right be done to the party;" a commission shall issue to enquire the truth of this suggestion: after the return of which the King's Attorney is at liberty to plead in bar, and the merits shall be determined upon issue or demurrer, as in suits between Subject and Subject. Skin. 608: Rast. Entr. 461. Thus if a disseisor of lands which are holden of the Crown die seised without any heir, whereby the King is prima facie entitled to the lands, and the possession is cast on him either by in-
quest of office, or by act of law without any office found; now the disseisee shall have remedy by petition of right, suggesting the title of the Crown, and his own superior right before the disseisin made.  Bro. Ab. Petition, 20: 4 Rep. 58.

But where the right of the party, as well as the right of the Crown, appears upon record, there the party shall have Monstrans de droit, which is putting in a claim of right grounded on facts already acknowledged and established; and praying the judgment of the Court, whether upon those facts, the King or the Subject hath the right. As if, in the case before supposed, the whole special matter is found by an inquest of office, (as well the disseisin as the dying without any heir,) the party grieved shall have Monstrans de droit at the Common Law. 4 Rep. 55. But as this seldom happens, and the remedy by Petition was extremely tedious and expensive, that by Monstrans was much enlarged, and rendered almost universal by several statutes; particularly stat. 56 Ed. 3. c. 12; 2 & 3 E. 6. c. 8; which also allow inquisition of office to be traversed or denied, wherever the right of a Subject is concerned, except in a very few cases. Skin. 608. These proceedings are had in the Petty-bag Office in the Court of Chancery; and if upon either of them the right be determined against the Crown, the judgment is quad manus Domini Regis amoveanter; & possessio restituantur petentis: salvo jure Domini Regis: which last clause is always added to judgments against the King, to whom no laches is ever imputed, and whose right, till it was otherwise provided by statute, was never defeated by limitation or length of time. See stats. 21 Jac. 1. c. 2: 9 Geo. 3. c. 16: and this Dictionary, title King V. 2.

By the above judgment the Crown is instantly out of possession, so that there needs not the indecorous interposition of his own officers, to transfer the seisin from the King to the party aggrieved. Linch. L. 459: See 3 Comm. c. 17. fi. 256, 7.

Lessee of an outlaw cannot maintain trespass, but must be relieved by Monstrans de droit. Ld. Raym. 307.

MONSTRANS DE FAITS ou RECORDS. Shewing of deeds or records is thus; upon an action of debt brought upon an obligation, after the plaintiff hath declared, he ought to shew his obligation, and so it is of Records. And the difference between Monstrans de faits and oyer de faits, is this: he that pleads the deed or record, or declares upon it, ought to shew the same; and the other against whom such deed or record is pleaded, may demand oyer of the same. Cowell.

Where a man pleads a deed, which is the substance of his plea or declaration, if he doth not plead it with a profert in curia, his plea or declaration is bad upon a special demurrer, showing it for cause; and if he doth plead it with a profert in curia, if the other party demands a sight of it, he cannot proceed till he hath shewn it; and when the defendant hath had a sight of it, if he demands a copy of the same, the plaintiff may not proceed until a copy is delivered unto him. See Stat. 4 & 5 Ann. c. 16: 2 Litt. Abr. 201, 202: and this Dictionary, titles Oyer; Pleadings; Profert in Curia.

MONSTRAVERUNT, is a writ which lies for tenants in antient demesne, who hold land by free charter, when they are distrained to do unto their lords other services and customs than they or their ancestors used to do. Also it lieth where such tenants are distrained for
the payment of toll, &c. contrary to their liberty, which they do or
should enjoy. F. N. B. 14: 4 Inst. 269. This writ is directed to the
sheriff, to charge the lord that he do not distress them for such un-
usual services, &c. And if the lord nevertheless distresses his tenants,
for other services than of right they ought to do, the sheriff may
command the neighbours, who dwell next the manor, or take the
power of the county, to resist the lord, &c. And the tenants in such
case, may likewise sue an attachment against their lord, returnable
in C. B or B. R. to answer the contempt and recover damages. New
Nat. Br. 32.

But the lord shall not be put to answer the writ of attachment sued
against him upon the Monstraverunt, before the Court is certified by
the Treasurer and Chamberlains of the Exchequer, from the book
of Domesday, whether the manor be antient demesne; so that it is
requisite that the plaintiff in the Monstraverunt, do sue forth a spe-
cial writ for the certifying of the same. Ibid. 35. The writ of Mon-
straverunt may be sued for many of the tenants, without naming any
of them by their proper names, but generally Monstraverunt nobis
hominès de, &c. But in the attachment against the lord the tenants
ought to be named; though one tenant may sue it in his own name,
and the name of the other tenants by general words, Et hominès, &c.
2 H. 6. 26. See titles Ne injustes vexes; Antient demesne.

MONSTRUM, Is sometimes taken for the box in which relics are
iii. 173. Monstrum is also taken for what we call corruptly a muster
of soldiers. Cowell.

MONTH or MONETH, Sax. Monath, Mensis, à mensione lune
cursûs.] Signifies the time the sun goes through one sign of the zo-
diac, and the moon through all twelve; properly the time from the
new moon to its change, or the course or period of the moon, whence
it is called Month from the moon. Lit. Dict. A month is a space of
time containing by the week twenty-eight days; by the Calendar
sometimes thirty, and sometimes thirty-one days: Julius Caesar di-
vided the year into twelve Months, each Month into four weeks, and
each week into seven days.

The space of a year is a determinate period, consisting commonly
of 365 days; for though in Bisextile or Leap Years, it consists pro-
perly of 366; yet by stat. 21 H. 3, de anno Bisextili, the increasing
day in the Leap-year, together with the preceding day, shall be ac-
counted for one day only. That of a Month is more ambiguous; there
being in common use, two ways of calculating Months, either as lu-
nar, consisting of twenty-eight days, the supposed revolution of the
moon, thirteen of which make a year; or as calendar months of un-
equal lengths, according to the Julian division in our common alman-
acks, commencing at the calends of each month, whereof in a year
there are only 12. A Month in law is a lunar month, or 28 days;
unless otherwise expressed; not only because it is always one uni-
form period, but because it falls naturally into a quarterly division by
weeks. Therefore a lease for 12 Months is only for 48 weeks: but if
it be for a twelvemonth in the singular number, it is good for the
whole year. 6 Rep. 61. For herein the law recedes from its usual
calculation, because the ambiguity between the two methods of com-
putation ceases; it being generally understood, that by the space of
time called thus, in the singular number, a *twelvemonth*, is meant a whole year, consisting of one solar revolution. 2 *Comm.* 141.

The Month by the Common Law is but twenty-eight days: and in case of a condition for rent, the Month shall be computed at twenty-eight days, so in the case of inrollment of debts, and generally in all cases where a statute speaks of Months: but where the statute accounts by the year, half-year, or quarter of a year, then it is to be reckoned according to the Calendar. 1 Inst. 133; 6 *Rep.* 62; Cro. Jac. 167; 6 *Term Rep.* K. B. 224.

A twelvemonth in the singular number includes the whole year, according to the Calendar: but twelve Months, six Months, &c. in the plural number, shall be accounted after twenty-eight days to every Month; except in case of presentation to benefices, to avoid lapse, &c. which shall be in six *calendar Months*. 6 *Rep.* 61; Cro. Jac. 141. But if an agreement is to pay fifty shillings for the interest of one hundred pounds at the end of six Months; the computation must be by calendar Months; because, if it was by lunar Months, the interest would exceed the rate allowed by the statute. So in bills of exchange and promissory notes, a Month is always a calendar Month; as if a bill or note is dated on the 10th of January and made payable one Month after date, it is due (the 3 days of grace being added) on the 13th of February.

It is somewhat remarkable that the difference between six calendar Months and half a year, does not seem to have been considered by legal writers. *Coke* says, half a year consists of 182 days. 1 Inst. 135. But six calendar Months will be 2 or 3 days less or more than such a half year, accordingly as *February* is reckoned or not one of the six. *Coke* in his Report of *Catesby’s* case, clearly considers the *tempus semestre* to be six calendar Months. 6 Co. 61: yet *Croke* in his report of that case states it, as confidently, to consist of 182 days; Cro. Jac. 141, 156; and in neither report is the difference taken notice of. 2 *Comm.* 141, in n.

From the cases in 3 *Wils.* 21: 1 *Term Rep.* 159, it seems as if notice to a tenant from year to year to quit the premises, must be half a year, and not six calendar Months; though the computation by the latter would be more simple and convenient, and was understood to be the proper notice by the Court of C. P. See 2 *Black.* *Rep.* 1224;

*MONUMENT,* An heir may bring an action against one that injures the Monument, &c. of his ancestor; and the coffin and shroud of a deceased person belong to the executors or administrators; but the dead body belongeth to none. 3 *Inst.* 202, 203. See title *Heir III.* 3.

*MOORS,* In the *Isle of Man,* who summon the Courts for the several shadings, are the lords bailiffs, called by that name; and every Moor has the like office with our bailiff of the hundred. *King’s Descript.* *Isle of Man."

*MOOT,* from the Sax. *Motian Placitare,* to treat or handle.] A term in the Inns of Court, signifying the exercise of arguing of cases; which young barristers and students used to perform at certain times, the better to enable them for the practice and defence of clients’ causes. The place where Moot cases were argued, was anciantly called the Moot-hall: and in the Inns of Court there is a bailiff of the Moot yearly chosen by the benchers, to appoint the Mootmen for the Inns of chancery; and keep accounts of the performances of exercises, both there and in the house. *Orig. Juridicial.* 212.
MORTGAGE.

MOOTA CANUM, a pack of dogs. Cowell.

MOOTMEN, Those who argue the reader's cases, called moot-cases, in the Inns of Chancery; in the term-time, and in vacation. See Moot.

MORA, A moor, or barren or unprofitable ground, derived from the Sax. mor, signifying also marshland. Mon. Angl. tom. 2, p. 50. 1 Inst. 5. Also a heath. Fleta, lib. 2, c. 71.

MORA MUSSA, A watery or boggy moor; a morass; and such in Lancashire they call mosses; morossa is used in the same sense. Mon. Angl. tom. 2, p. 306.

MORATUR IN LEGE, he demurs; because the party goes not forward in pleading, but rests or abides upon the judgment of the Court, in a certain point, as to the sufficiency in law of the declaration or plea of the adverse party; who deliberate and take time to argue and advise thereupon, and then determine it. Co. Litt. 71. See title Demurrer.

MORETUM, A sort of brown cloth, with which caps were formerly made. Mat. Paris, anno 1258.

MORGANGINA, or MORGANGIVA, from Sax. morgen, the morning, and giftan, to give.] The gift on the wedding day: Dowry, or rather dowry.—Si sponsa virum suum superficere, dotem et maritatem suam, certarum instrumentis, vel testamentum habet et traditam, perpetuatiter habeat et morganginam suam. L.L. Hen. 1, c. 11, 70. In some books it is writ morgenegiba, morgingab, &c. In Leg. Canuti a quod Bromfenton; it is writ morgagifis, c. 99. It signifies literally donum matutinale; and it is what we now call dowry money, or that the husband presents to his wife on the wedding-day. It was usually the fourth part of his personal estate; not here, but amongst the Lombards. Du Cange in v. Morgenegiba, Cowell.

MORIAM, Fr. morion; cassis.] A head-piece. It seems to be derived from the Italian morione; see stat. 4 & 5 P. & M. c. 2.

MORINA, Murrain; an infectious distemper in cattle. It also signifies the wool of sick sheep, and those dead with the Murrain. Fleta, lib. 2, c. 79, par 6.

MORLING, or MORTLING, That wool which is taken from the skin of dead sheep, whether being killed or dying of the rot. See stats. 4 Ed. 4, c. 2 & 3; 27 H. 6, c. 2; 3 Jac. 1, c. 18; 14 Car. 2, c. 88, and title Shortling.

MOROSUS, Marshy; see Mora.


MORTARIUM, A light or taper set in churches to burn over the graves or shrines of the dead. Consuetud. Dom. Farendon, MS. fol. 48.

MORT-D’ANCESTOR; See Assize of Mort-d’ancestor.

MORTGAGE,

MORTGAGIUM, vel mortuam vadium; from mort, mortuus and gage, frigus. ] A pawn of land or tenement, or any thing immovable, laid or bound for money borrowed, to be the creditor’s forever, if the money be not paid at the day agreed upon; and the creditor holding land and tenement upon this bargain, is called Tenant in Mortgage. Of this we read in the Grand Custumary of Normandy, c. 313, which see. Glenvil likewise, lib. 10, c. 6, defineth it thus: Mortuam vadium dicitur illud, cuius fructus vel redditus interim percepit in nullo se ac-
Mortgage, I.

quietant. So that it is called a dead gage, because whatsoever profit it yieldeth, yet it redeemeth not itself by yielding such profit, except the whole sum borrowed be paid at the day. See Skene de verb. sig. nif. verbo Mortgage. He who pledgeth this pawn or gage, is called the Mortgagor, and he who taketh it the Mortgagee. West. Symbol. p. 2. title Fines, § 145. This if it contain excessive usury, is forbidden by stat. 37 H. 8. c. 9. But it is called Mortgage, because, if the money is not paid at the day, the land moritur to the debtor, and is forfeited to the creditor. Cowell.

I. Of the Origin, Nature, and several Kinds of Mortgages.
II. What shall be deemed a Mortgage, or an Estate redeemable; and of the distinct Interests of Mortgagor and Mortgagee.
III. Of the Equity of Redemption and Foreclosure; and of the Manner of redeeming and foreclosing.

I. The notion of mortgaging and redemption seems to be of Jewish extraction, and from them derived to the Greeks and Romans; the plan of the Mosaic law constitutes a just and equal Agrarian, that the lands may continue in the same tribes and families, and the people might not be diverted by any exotic arts and inventions from the exercise of agriculture, in which innocent employment they were to be continually educated; therefore whoever were compelled by want to sell, could transfer no estate in the lands, farther than to the next general jubilee, which returned once in fifty years; wherefore they computed till the jubilee, that, according to the distance from thence, such was the interest that could be transferred to the buyer; but the vendor had power at any time to redeem, paying the value of the lands to the jubilee; but though he did not redeem it at the year of jubilee, yet the lands came back again free to the vendor and his heirs. Cunæus, 11, 12.

But our notion of mortgaging and redemption seems to have come more immediately from the civil law; therefore it will be necessary herein to consider the distinctions in that law between pledges and things hypothecated. Justin 392.

The pignus or pledge was, when any thing was obliged for money lent, and the possession passed to the creditor.

The hypotheca was, when the thing was obliged for money lent, and the possession remained with the debtor. Now in case of goods pignorated, the creditor was obliged to the same diligence in keeping them, as he used about his own; so that if the goods were lost by the negligence of the creditor, an action lay as for a deposit; for the property being transferred to the creditor for a particular purpose, he was to keep them as his own. See this Dictionary, title Bailment.

If the debtor did not redeem the thing pledged, the creditor was to foreclose the redemption of the debtor; and if the money was not paid, the creditor had his actio pignoritata, or hypothecaria; which, when he had pursued, and obtained sentence thereon, he might sell as his own property; but there was this difference between the actio pignoritata and hypothecaria; that the actio pignoritata was only against the person of the debtor to foreclose him, because the pignus was already in the possession of the creditor; but the actio hypothecaria was tam in rem, quam in personam, and was given ad pignus prosequendum, contra quemcumque possessorum; because herein the creditor had not the possession of the pledge, but it remained to the debtor; and un-
til sentence was obtained in these actions, the creditor could not obtain the property of the pledge; and if the money was paid before sentence, the pledge was subject to redemption: and where the same thing was pledged to several, those were said to be *potiores in pig-nore,* to whom the things were first hypothecated. *Digest. lib. 20. tit. 6; Corvin, 269, 270, 271.*

If the money was tendered or paid to the creditor, the contract of pignoration was dissolved, and the debtor might have the pledge back, as a thing lent; which seems to have introduced the notion among us of the debtor's right to redemption; and with them the usu-mortgagor, if the money was paid to the creditor, the contract of pignoration was dissolved, and the debtor might have the pledge back, as a thing lent; which seems to have introduced the notion among us of the debtor's right to redemption; and with them the usufructuation, or the right of prescription, did not extinguish the pledge, unless a stranger had held it for thirty years, or the debtor had held it for forty years. *Digest. lib. 20. tit. 6.*

In the feudal law the rule was, *Fenadal, invitio domino, aut egnatis, non recte subjectur hypotheca, quamvis fructus posse esse receptum est;* and the reason of this rule was, because the feud was filled with a tenant from the lord's original bounty, on whom he depended for his personal service in war and peace; therefore the feudatory could not obtrude a tenant on him without his leave, who might be less capable of those services; for which reason, as the tenant could not originally alienate without licence, so he could not mortgage. *Corvin, 268.* See Fonblanque's *Treat. Eq. lib. 3. c. 1. § 1.*

But when a licence of alienation was given about the time of Hen. III, and it became a maxim in law, that the purity of a fee simple imported a power of disposing of it as the owner pleased; there were two ways of mortgaging lands introduced, which *Littleton* distinguishes by the names of *vadium vivum,* living pledge, and *vadium mortuum,* dead pledge. *9 H. 3. 32; 18 Ed. 1.*

Blackstone classes these estates held in pledge among estates defeasible on condition subsequent, and divides them as above into *vivum* and *mortuum vadium.* See 2 *Comm. c. 10; III. p. 157.*

*Vivum vadium,* or living pledge, is, when a man borrows a sum, suppose 200l. of another, and grants him an estate, as of 20l. per annum. to hold, till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void as soon as such sum is raised. And in this case the land or pledge is said to be *living;* it subsists and survives the debt, and immediately on the discharge of that, results back to the borrower. This seems to be the antient way of pledging lands; for they held, that lands could not be hypothecated; therefore they used to subject the *usufructus* which continued originally during the life of the feudatory; but when there was a free liberty given of alienation, then the feudatory could pledge the *usufructus* of the land at pleasure; but because, by this way of pledging, the lender received his money by degrees, and in small parcels, which was very troublesome; and those that lend money to usury, are generally willing to receive the whole in a gross sum; therefore this way of pledging is now out of use. *Co. Litt. 205; See Madd. Formal. 136.*

But *mortuum vadium,* a dead pledge, or Mortgage, (which is much more common than the other,) is where a man borrows of another a specific sum, e. g. 200l. and grants him an estate in fee, on condition, that if he, the mortgagor, should repay the mortgagee the said sum of 200l. on a certain day mentioned in the deed, that then the mortgagor may re-enter on the estate so granted in pledge; or, as is now
the more usual way, that then the mortgagee shall re-convey the estate to the mortgagor. 2 Comm. 158.

The _vadium mortuum_ is so called by Littleton, because it is doubtful, whether the feoffee will pay the money at the day limited or not; and if he do not pay, then the land, which is but in pledge upon condition, for the payment of the money, is, in strictness of law, taken from him forever, and so _dead_ to him; and the mortgagee's estate in the lands is then no longer conditional, but absolute; and if he do pay it, then the pledge is dead to the tenant of the land. Litt. § 332: Co. Lit. 205.

So long as the estate of the mortgagee continues conditional, that is, between the time of the lending the money and the time allotted for payment, the mortgagee is called Tenant in Mortgage. Litt. § 332. But as it was formerly a doubt, whether by taking such estate in fee it did not become liable to the wife's dower, and other incumbrances of the Mortgagee; though that doubt has been long ago overruled by our Courts of equity; (see _post_ III;) it therefore became usual to grant only a long term of years by way of mortgage; with condition to be void of repayment of the Mortgage-money; which course has been since pretty generally continued; principally because on the death of the Mortgagee such term becomes vested in his personal representatives, who alone are entitled in equity to receive the money lent, of whatever nature the Mortgage may happen to be. 2 Comm. 158.

Of these Mortgages therefore we see there are two sorts; 1st, Of the freehold and inheritance; and 2dly, Of terms for years. Maddox, 318, 319.

1st, Of the freehold and inheritance; and here the antient way was to make a charter of feoffment, on condition that if the feoffee or his heirs paid the sum to the feoffee or his heirs, he should re-enter and re-possess; and sometimes the condition was contained in the charter of feoffment, and sometimes it was defeasanced by another charter, as may be seen in the old forms. Maddox, 318, 319.

For as a man might annex a condition to his feoffment, for _cujus est dare_, _ejus est disfannonere_, so he might annex a condition by another deed, bearing date, and executed at the same time; for, being executed at the same time, it is really but one and the same disposition, _quae incontinenti sunt inesse videntur_; but a defeasance or condition annexed after the feoffment executed comes too late; because the livery _coram paribus_ attesting the infeudation, in which there is no condition, the tenant must hold the land according to the tenure of the investiture: but rents, annuities or warranties that are things executory, may be defeated by defeasances made at the time of their creation, or any time after; because there is not any necessity of the notority of livery to make an investiture; therefore being created by deed only, they may be defeated or destroyed by deed alone. Co. Litt. 220, 227.

These sorts of conveyances were subject to some inconveniences; as if the money were not paid at the day, so that the estate became absolute, the estate was thenceforth subject to the dower of the feoffee, and all other his real charges and incumbrances; for though if the feoffee performed the condition, then he might re-enter, and repossess himself in his former estate, and consequently was in above all the charges and incumbrances of the feoffee; yet if he did not literally perform the condition by payment of the money at the day,
then the estate was legally subject to the charges and incumbrances of the feoffee, though the money was afterwards paid to, and the estate re-conveyed by the feoffee. Co. Litt. 221, 222.

But the Courts of Equity, as they grew in power, have set this matter right; and have maintained the right of redemption, not only against tenant in dower, and the persons who came in under the feoffee, but even against the tenant by the curtesy, and lord by escheat, that are in the post; because the payment of the money doth, in the consideration of equity, put the feoffer in status quo; since the lands were originally only a pledge for the money lent. Hard. 463. See post III.

2d, As to Mortgages by way of creating terms, this was formerly by way of demise and re-demise. As for example; A. borrowed money of B. thereupon A. would demise the lands to B. for a term of 500, &c. years absolutely, with common covenants against incumbrances, and for further assurance; and then B. would, the day after, re-demise to A. for 449 years, with condition to be void on non-payment of the money at the day to come; this manner of mortgaging came in after the 21 H. 8. for falsifying recoveries, when there was a mixed interest settled in terms for years; and was esteemed best for the mortgagor, to avoid all manner of pretension from the incumbrances and dower of the feoffee in Mortgage; and was reputed best for the mortgagee, to avoid the wardship and feudal duties of the tenure; and was only inconvenient in this, that if the second deed were lost, there appeared to be an absolute term in the mortgagee. 3 New Abr. 633.

And this is now the common method, viz. by a demise of the land for a term, under a condition to be void on the payment of the Mortgage-money and interest; and a covenant is inserted at the end of such deeds, that, till default shall be made in the payment of the money, that the mortgagor shall receive the rents, issues, and profits without account. 3 New Abr. 633.

This has been ruled to create a tenancy at will to the mortgagor; but if the mortgagor dies, the tenancy at will is determined till there is a receipt of interest from the heir, which seems to make him also tenant at will to the mortgagee. Raym. 147. In a late case however it was held, that the mortgagor has no interest in the premises but by the mere indulgence of the mortgagee: he has not even the estate of a tenant at will, for he may be prevented from carrying away the emblements or the crops which he himself hath sown. Moss v. Gallymore, Doug. 266, (279;) Keech v. Hall, id. 21. See post II.

3d, But now the last and best improvement of Mortgages seems to be, that in the Mortgage deed of a term for years, or in the assignment thereof, the mortgagor should covenant for himself and his heirs, that if default be made in the payment of the money at the day, that then he and his heirs will, at the costs of the mortgagee and his heirs, convey the freehold and inheritance of the mortgaged lands to the mortgagee and his heirs, or to such person or persons (to prevent merger of the term) as he or they shall direct and appoint; for the reversion, after a term of years, being of little worth, and yet the mortgagee for want thereof continuing but a termor, and subject to forfeiture; &c. and not capable of the privileges of a freeholder, therefore where the mortgagor cannot redeem the land, it is but reasonable the mortgagee should have the whole interest and inheritance of it, to dispose of as absolute owner. 3 New Abr. 633.
II. Whatever clauses or covenants there are in a conveyance, though they seem to import an absolute disposition or conditional purchase, yet if upon the whole, it appears to have been the intention of the parties, that such conveyance should only be a Mortgage, or pass an estate redeemable, a Court of Equity will always construe it so. 1 Vern. 183, 268, 394. And the mortgagor should be allowed to redeem, notwithstanding any condition that it should, in any future event operate as a purchase. 2 Vern. 84: 1 Vern. 488. 476: 1 Ch. Ca. 1: Finch, Ref. 376. But see 1 P. Wms. 258: 2 Atk. 494: Tusburgh v. Ecclin, Bro. P. C.: and Powell on Mortgages, 31. A Mortgage will not however be easily presumed, against an absolute conveyance, especially if the possession has gone along with the conveyance. Forrest. 61. But parol evidence is admissible to shew or explain the real intention and purpose of the parties, though the conveyance be absolute. See Pre. Ch. 526: 2 Atk. 98: 3 Atk. 388.

Where the condition of a Mortgage is, that the mortgagor should redeem during his life, or that the mortgagor, and the heirs of his body, should redeem, yet equity will admit the general heir of such mortgagor to a redemption; because this can be no purchase, since there is a clause of redemption; and when the land was originally only a pledge for money, if the principal and interest be offered, the land is free; and it would be very hard, that it should be in the power of the scrivener, or gripping usurer, by such impertinent restrictions, to elude the justice of the Court. 1 Vern. 33, 190: 2 Chan. Ca. 147.

But if a man borrows money of his brother, and agrees to make him a Mortgage, and that, if he has no issue male, his brother should have the land; such an agreement, made out by proof, will be decreed in equity. 1 Vern. 193.

A, in consideration of 1000l. made an absolute conveyance to B, of the reversion of certain lands after two lives, which, at the time, were worth little more; and by another deed of the same date, the lands were made redeemable any time during the life of the grantor only, on payment of 1000l. and interest; A, died, not having paid the money; and it was held by Lord K. Nottingham, that his heir might redeem, notwithstanding this restrictive clause, and that it was a rule, Once a Mortgage, and always a Mortgage; and that B, might have compelled A, to redeem in his life-time, or have foreclosed him; but, on a re-hearing, Lord North reversed the decree on the circumstances of this case; for it appeared by proof, that A, had a kindness for B, and that he married his kinswoman, which made it in the nature of a marriage-settlement; he likewise held, that B, could not have compelled A, to redeem during his life, which made it more strong, 1 Vern. 7, 192, 214, 232: 2 Vent. 364. S. C. where it is said, that Lord North's decree was affirmed in the House of Lords. See also Hard. 511.

If A, mortgagor lands to B, worth 15l. per ann. for securing 200l, and at the same time B, enters into a bond, conditioned, that if the 200l. and interest is not paid within a year, then he to pay A, his executors or administrators, the further sum of 78l, in full for the purchase of the premises, &c. and A, dies within the year, and the money is paid the next day after, the Mortgage is forfeited to his administrator; yet A's heir may redeem paying the 200l. and likewise the 78l, that was paid to the administrator. 1 Vern. 488.
So where A. for 550/. made an absolute assignment of a church lease for three lives to B. and B. by writing under his hand agreed, that if A. paid 600/. at the end of the year, B. would convey; B. died, leaving C. his son and heir; two of the lives died, and the lease was twice renewed by C. and his father; and though it was near twenty years since the conveyance was made, yet the Master of the Rolls decreed a redemption on payment of 550/. and the two fines. 2 Vern. 84.

A. lends money to B. to carry on certain buildings, and takes a Mortgage from him to secure 1600l. with interest; and by another deed, executed at the same time, takes a covenant from B. that he should convey to him, if he thought fit, ground-rents to the value of 1600l. at the rate of 20 years' purchase; and on a bill brought to redeem, the Master of the Rolls decreed a redemption on payment of principal, interest, and costs, without regard to that agreement, but set aside the same as unconscionable; for a man shall not have interest for his money, and a collateral advantage besides for the loan of it, or clog the redemption with any by-agreement. 1 Vern. 520.

But though these and such like restrictions are relieved against, to make them answer the primary intention of the parties; yet if A. on a Mortgage lends money at 5l. per cent. but agrees in the deed, that if the money were paid within three months after it became due, that he would accept of 4l. per cent. and the mortgagor neglects to pay the interest within the time, equity will not relieve him, but he must pay 5l. per cent. for though the Court relieves against unreasonable penalties, yet this is not so, for the mortgagee might have refused to lend his money under 5l. per cent. Preced. Chanc. 150: 1 P. Wms. 653. See post. III. ad finem.

So if the mortgagee devises that the mortgagor should be remitted part of his Mortgage-money, provided he pays the principal and interest within three days after his decease; if the condition be not performed, the remittance is lost; because, being a voluntary bounty; and not ex debito justitiae, the party must take it as it is limited, for ejus est dare, ejus est dispensere; and the Court cannot relieve in this case, after the day. 1 Cha. Ca. 52.

But where in a Mortgage there was a proviso, that if the interest was behind six months, that then the interest should be accounted principal, and carry interest; this by Lord Cowper was decreed to be a vain clause, and of no use; and he said, that no precedent had ever carried the advance of interest so far, and that an agreement made at the time of the Mortgage, will not be sufficient to make future interest principal; but, to make interest principal, it is requisite that interest be first grown due, and then an agreement concerning it may make it principal. 2 Saik. 499.

The mortgagor, before forfeiture, and whilst it remains uncertain, whether he will perform the condition at the time limited or not, hath the legal estate in him; also after forfeiture he hath an equity of redemption; so that he is still considered as owner and proprietor of the estate, until the equity of redemption be foreclosed; therefore may make leases or any settlement thereof, which will bind his equity of redemption. (But they will not bind the Mortgagee, unless he is a party to the lease, &c.) See ante I.

It is said that a tenant in tail of an equity of redemption may devise it for the payment of debts. 1 Vern. 41.
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If a man mortgages his land, and (as is usual) still continues in possession, and levies a fine, and five years pass, yet the mortgagee is not barred; for though the mortgagee be in reality out of possession, yet when that is done by consent of both parties, and the nature of the contract requires it should be so, while the interest is paid, it is against the original design of the contract, that any act of the mortgagor (except the payment of the money) should deprive the mortgagee of his security; and is no less than fraud, which the law will not countenance. 1 Sid. 460: 1 Vent. 82: Carth. 101, 414: 2 Keb. 522.

As the mortgagor, being considered only as tenant at will (or rather like a tenant at will) to the mortgagee, cannot, by his act, defeat the interest of the mortgagee, otherwise than by payment of the mortgage-money; so neither can the mortgagee defeat the mortgagor of his equity of redemption; therefore if a mortgagee in fees suffers a recovery, this, even at law, shall not bind the mortgagor's right of entry, upon performance of the condition; but if the mortgagor had been a party to the recovery, then his right had been bound, not only on account of the recumpence in value, but because he is estopped by the recovery to claim the land against the recoveree or his heirs, when he was called in, before the judgment given, to defeat his title, and could not do it. Palm. 135: Cro. Jac. 593.

So if a mortgagee be disseised, and the disseisor levies a fine; and five years pass after the proclamations, though the mortgagee is here-by barred, yet if the mortgagor pays or tenders his money, he has five years to prosecute his right, by the second saving in the statute 4 Hen. 7. c. 24, because his title did not accrue till payment of the money. Plow. 373. a. See title Fines.

As to the nature of the estates of the mortgagor and mortgagee; it seems to be at length settled, that as the mortgagee is considered as holding the estate, merely in the nature of a pledge or security for payment of his money, a Mortgage, though in fee, (the legal estate in which descends to the heir at law,) is considered, in equity, only as personal estate. Fonzl. Treat. Eq. lib. 3. c. 1. § 3 & 13. in n.

Hence as the mortgagor, till the equity of redemption be foreclosed, is considered as owner of the land, it was ruled, where a bill for redemption was brought against a mortgagee in possession, and a decree accordingly, that the mortgagee, before the account taken, having presented to a church that became void, should revoke his presentation, and present such a person as the mortgagor or his vendee (he having contracted to sell) should appoint. Preced. Chanc. 71: 2 Vern. 401. So even though nothing but the advowson is mortgaged, and the deed contain a covenant that on any avoidance the mortgagee should present. 3 Atk. 559. For, in such case, though the presentation is not deemed the subject of value, and therefore cannot be brought into the account, it might be a benefit beyond the securing of the principal debt and lawful interest thereon; which decision over-rules that in 2 P. Wms. 403. The mortgagee may however grant leases of the premises, and avoid such leases as have, since his Mortgage, been granted without his consent by the mortgagor. Treat. Eq. lib. 3 c. 1. § 3.

As to the estate of the mortgagor, though formerly doubted whether he had more than a right of redemption, it is now established that he hath an actual estate in equity, which may be devised, grant-
ed, and entailed, and of which there is a possessio fratriis, and a tenancy by the curtesy. 1 Atk. 603.

By stat. 7 W. 3. c. 25, it is enacted, "That no person or persons shall be allowed to have any vote in election of members to serve in parliament, for or by reason of any trust-estate or Mortgage, unless such trustee or mortgagee be in actual possession, or receipt of the rents and profits of the same; but that the mortgagor, or cestui que trust in possession, shall and may vote for the same, notwithstanding such Mortgage or trust."

And by stat. 9 Ann. c. 5, which requires, that knights of the shire should have 600l. per ann. and every other member 300l. per ann. it is enacted, "That no person shall be qualified to sit in the House of Commons, within the meaning of the act, by virtue of any Mortgage whereof the equity of redemption is in any other person; unless the mortgagee shall have been in possession of the mortgaged premises for seven years before the time of election."

III. As soon as the estate is created the mortgagee may immediately enter on the lands; but is liable to be dispossessed, upon performance of the condition by payment of the Mortgage-money at the day limited. And therefore the usual way is to agree that the mortgagor shall hold the land till the day assigned for payment; when, in case of failure whereby the estate becomes absolute, the mortgagee may enter upon it, and take possession without any possibility of being afterwards evicted by the mortgagor, to whom the land is now for ever dead. But here the Courts of Equity interpose, and though a Mortgage be thus forfeited, and the estate absolutely vested in the mortgagee, at the Common Law, yet they will consider the real value of the tenements, compared with the sum borrowed; and if the estate be of greater value than the sum lent thereon, they will allow the mortgagor, at any reasonable time to recall or redeem his estate, paying to the mortgagee his principal, interests, and expenses. And by stat. 7 Geo. 2. c. 20, after payment or tender by the mortgagor of principal, interests, and costs, the mortgagee can maintain no ejectment, but may be compelled to re-assign his securities. See the statute at length, post. at the end of this division.

This reasonable advantage, allowed to mortgagors, is called The Equity of Redemption: and this enables a mortgagor to call on the mortgagee, who has possession of his estate, to deliver it back, and account for the rents and profits received, on payment of his whole debt and interest; thereby turning the mortuum into a kind of vivum vadium. But on the other hand, the mortgagee may either compel the sale of the estate in order to get the whole of his money immediately; or else call upon the mortgagor to redeem his estate presently, or in default thereof to be for ever foreclosed from redeeming the same; that is, to lose his equity of redemption without possibility of recall. It is not, however, usual for mortgagees to take possession of the mortgaged estate, unless where the security is precarious or small, or where the mortgagor neglects even the payment of interest; when the mortgagee was frequently obliged to bring an ejectment and take the lands into his own hands, in the nature of a pledge, or the pignus of the Roman law already alluded to; ante, 1. But it has now been determined that the mortgagee is not obliged to bring an ejectment to recover the rents and profits of the estate; for where there is a tenant in possession by a lease prior to the Mortgage, the
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mortgagee may at any time give him notice to pay the rent to him, and he may distrain for all the rent which is due at the time of the notice, and also for all that accrues afterwards. Moss v. Gallimore, Doug. 266, (279). See Treat. Eq. lib. 3. c. 1. § 8, in n.

In general, if the mortgagee has been 20 years in possession, the Court of Chancery, in conformity to the time of bringing an ejectment, will not permit a mortgagor to redeem; unless during part of the time such mortgagor has been an infant or a married woman; or unless the mortgagee admits he holds the estate as a Mortgage, or there is some other special circumstance which forms an exception to the general rule. 1 Eq. Abr. 313, B: 2 Bro. C. R. 399. See Treat. Eq. lib. 3. c. 1. § 7.

Where two different estates are mortgaged by the owner to the same person, one cannot be redeemed without the other. Abr. 733. So of other securities given by the mortgagor to the mortgagee. See Treat. Eq. lib. 3. c. 1. § 9.

Although, after breach of the condition, an absolute fee-simple is vested at Common Law in the mortgagee: yet a right of redemption being still inherent in the land, till the equity of redemption be foreclosed, the same right shall descend to and is vested in such persons as have a right to the land, in case there had been no Mortgage or incumbrance whatsoever; and as an equitable performance as effectually defeats the interest of the mortgagee, as the legal performance doth at Common Law, the condition still hanging over the estate, till the equity is totally foreclosed; on this foundation it hath been held, that a person who comes in under a voluntary conveyance, may redeem a Mortgage; and though such right of redemption be inherent in the land, yet the party claiming the benefit of it, must not only set forth such right, but also shew that he is the person entitled to it. Hard. 465: 1 Vern. 182, 193.

The right of redemption is not confined to the mortgagor, his heirs, executors, assignees, or subsequent incumbrances; but extends to all persons claiming any interest whatever in the premises as against the mortgagor; therefore a person claiming under a deed void (as being voluntary) against a subsequent mortgagee, may redeem; for the deed, though void as to the mortgagee, is binding on the mortgagor. 1 Ch. Ca. 59: 1 Vern. 193. A fortiori may any person who has acquired for valuable consideration an interest in the land; as a tenant under the mortgagor; or a judgment-creditor having previously sued out a writ of execution; or a tenant by estreat, statute-merchant, or staple, or tenant by the curtesy, or in dower; or a jointress; the Crown may also redeem estates mortgaged, and afterwards forfeited by the treason, &c. of the mortgagor. Treat. Eq. lib. 3. c. 1. § 8, in n. and the authorities there cited.

As the heir at law is regularly entitled to the benefit of redemption, he is also entitled to the assistance of the personal estate of the mortgagor for that purpose; according to the doctrine established in the Courts of Equity, that the personal estate, in the hands of the executor, shall be employed in ease of the heir, by whatever means the heir becomes indebted as heir; for the personal estate having received the benefit by contracting the debt, the real is considered only as a pledge for it; according to the common rule, Qui sentit commodum sentiri debet & onus. Prec. Chanc. 477. See Treat. Eq. lib. 3. c. 2. § 1: and this Dictionary, title Executor V. 6.

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And on this foundation it hath been frequently held, that if a man mortgage lands, and covenants to pay the money, and dies, the personal estate of the mortgagor shall, in favour of the heir, be applied in exoneration of the Mortgage. 2 Salk. 449.

Also it is held by some opinions, that this benefit shall not only extend to the heir at law, or heres natus, but also to an heres factus; from a presumption, that it is the intention of the testator, that he should have all the privileges of the heres natus; and it has been even held, that an ordinary devisee shall have this benefit; 1 Vern. 37; but as to this last point it hath been held otherwise; and that if a man mortgages his land, and devises it to J. S. or A. for life, the remainder in fee, to B. that there the charge doth pass with the estate, there appearing no intention of the testator, that he should have it discharged. 2 Chan. Ca. 84: 1 Chan. Ca. 271. This distinction, however, between an heres factus and a particular devisee, has been long since over-ruled, and the opinion in 1 Vern. 37. is now established law. 2 Atk. 435. And the devisee of a particular estate shall not only have his devised estate exonerated out of the personal estate, but if there be another estate expressly devised for payment of debts, and the personal estate be excepted or exhausted, he may also resort to such devised estates; and that although the particular estate devised to him be devised subject to the incumbrances thereon. 2 P. Wms. 383. So if the personal estate be exempt or exhausted, and there be no real estate expressly devised for payment of debts, but there be a descended estate, the devisee of a particular estate shall have it exonerated out of the descended estate. 2 Atk. 430. See title Executor V. 6.

So if the mortgagor conveys away the equity of redemption, the purchaser shall not have the benefit of the personal estate, but must take it cum onere. 2 Salk. 450: 1 Vern. 37.

It has likewise been held, that the heir of the mortgagor, shall have the benefit of the personal estate to pay off the Mortgage, though there be no covenant in the Mortgage-deed for the payment thereof; because the Mortgage-money is a debt whether there be any express covenant for the payment of it or not. 2 Salk. 449: 1 Vern. 436: Preced. Chanc. 61: Because the personal estate received the benefit.

But where a Mortgage in fee was made redeemable at Mich. 1702, or any other Mich. day following on six months' notice; and there was no covenant for payment of the Mortgage-money; it was held by Lord Chancellor Cowper, that the mortgagor having devised his personal estate to his wife and daughter, and having during his life paid the interest of the Mortgage, the personal estate should not be applied in ease and exoneration of the real estate for the benefit of the heir at law; for, being no covenant for paying of the money, there was no contract at all between them, neither express nor implied; nor would any action lie against the mortgagor to subject his person, to compel him to pay this money; but this was in nature of a conditional purchase, subject to be defeated on payment by the mortgagor, or his heirs, of the sum stipulated between them, at any Mich. day, at election of the mortgagor or his heirs; for here was an everlasting subsisting right of redemption, descendible to the heirs of the mortgagor, which could not be forfeited at law like other Mortgages; therefore there could be no equity of redemption, or any occasion for the assistance of this Court; but the plaintiffs might, even at law,
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defeat the conveyance, by performing the terms and conditions of it; which were not limited to any particular time, but might be performed on any Michaelmas day, to the end of the world; and since there was no covenant or contract, either express or implied, to charge the personal estate of the mortgagor, he thought there was no reason to lay the load of this debt upon that which was given to other persons. 

Preced. Chanc. 423: 2 Vern. 701.

There is one case in which the Legislature has thought proper to take from the mortgagor the equity of redemption, and to give the mortgagee an absolute estate in the land; that is, where the former is guilty of a fraud upon the latter by concealing prior incumbrances. For by stat. 4 & 5 W. & M. c. 16. it is enacted, that if any person shall borrow any money, and for payment thereof, or for any other valuable consideration, shall voluntarily give a judgment, statute, or recognizance, and shall afterwards borrow any other sum of another, or for any other valuable consideration become indebted to such other; and for securing the repayment and discharge thereof shall mortgage lands, or any part thereof, to the second lender, &c. or to any other in trust for or to the use of such second lender, &c. and shall not give notice to the said mortgagee, of such previous judgment, &c. in writing, under his hand, before the execution of the said Mortgage or Mortgages; unless such mortgageor or his heirs, upon notice given by the mortgagee, his heirs, &c. in writing, &c. attested by two witnesses, of any such former judgment, &c. shall within six months pay off the said judgment, &c. and all interest and charges, and procure the same to be vacated, &c. then the mortgagor or his heirs, &c. shall have no benefit or remedy against the said mortgagee or his heirs, &c. in equity or elsewhere, for redemption; but the mortgagee shall hold the lands, &c. for such estate and term as was granted to the mortgagee, against the mortgagor, and all persons claiming under him, freed from equity of redemption, &c.

And if any person who shall once mortgage lands for valuable consideration, shall again mortgage the same lands or any part thereof, to any other person for valuable consideration, (the former Mortgage being in force,) and shall not discover to the second mortgagor, the former Mortgage, in writing under his hand, such mortgagor, his heirs, &c. shall have no relief or equity of redemption against the second or after mortgagor, &c. And such second or third mortgagees may redeem any former Mortgage, upon payment of the principal debt, interest, and costs of suit, to the proper mortgagee, &c.

But the statute does not bar any widow of any mortgagor from her dower, who did not legally join with her husband in such Mortgage, or otherwise lawfully exclude herself.

It hath been held, that this statute extends to assignees of a mortgagor; and that if a man mortgages certain lands to one man, and mortgages those lands with some others to another, though this seems to be a case omitted out of the above statute against clandestine Mortgages; yet if it appears to be a contrivance to evade it, as if an acre or two of land were only added, this will not exempt it; also a person, who will take advantage of the statute, must be an honest mortgagor; therefore, if a man has used any fraud or practice in obtaining a second Mortgage, he shall not have the benefit of the statute. 2 Vern. 589, 590.
It has been said to be an established rule of equity, that a second mortgagee who has the title-deeds without notice of any prior incumbrance, shall in all cases be preferred; because if a mortgagee lend money upon real property without taking the title deeds, he enables the mortgagor to commit a fraud. 1 Term Ref. 762. But Lord Thurlow C. afterwards observed upon this, that he did not conceive that the not taking the deeds was alone sufficient to postpone the first mortgagee; if it were so, there could be no such thing as a Mortgage of the reversion; and he held, that a second mortgagee in possession of the title deeds was preferred only in cases where the first had been guilty of fraud or gross negligence. 2 Bro. C. R. 652. It seems however, that fraud or gross negligence would be presumed, unless the mortgagee could shew that it was impossible for him to obtain possession of the title deeds, or that he had used the due and necessary diligence for that purpose. 2 Comm. 160, in n. See Treat. Eq. lib. 1. c. 3. § 4; where the rule of equity is thus stated on the ground of a solemn judgment in the Court of Exchequer; "that nothing but a voluntary, distinct, and unjustifiable concurrence on the part of the first mortgagee, to the mortgagor's retaining the title-deeds, shall be a reason for postponing his priority."

Whatever may be the value of the estate, it is of great importance to those who lend money upon real security, to be certain that there is no prior Mortgage upon the estate; for it has been long settled, that if a third mortgagee, who at the time of his Mortgage had no notice of the second, purchases the first mortgagee, even pending a bill filed by the second to redeem the first, both the first and third Mortgages shall be paid out of the estate before any share of it can be appropriated to the second; the reason assigned is, that the third, by thus obtaining the legal estate, has both law and equity on his side, which supersede the mere equity of the second. And even Lord Hale held it right that the third, should thus seize what he called tabula in naufragio, a plank in the shipwreck, and so leave the second to perish. See 2 Vent. 337: 1 C. C. 162, 36, 149. But among mortgagees where none has the legal estate, the rule in equity is qui prior est tempore potior est jure. 2 P. Wms. 491: 1 Bro. C. R. 63. See also 2 Vern. 81, 23, 525: 2 Atk. 32, 347. If however the second or mesne incumbrancer has obtained a decree for an account, a subsequent incumbrancer cannot, by buying in the first incumbrance, defeat the effect of such decree. 3 Atk. 609. See Fonblanque's Treatise of Equity, lib. 1. c. 4. § 23. Some reflections have been made by Mr. Christian on the above doctrine, 2 Comm. 160, in n; but it seems perfectly consistent with the maxim of law, vigilitantibus non dormientibus servit lex. See Treat. Eq. lib. 3. c. 3. § 1.

It is well observed by Blackstone, that in Glanvill's time, when the universal method of conveyance was by livery of seisin, or corporal tradition of the lands, no gage or pledge of lands was good, unless possession was also delivered to the creditor, for which the reason given is, to prevent subsequent and fraudulent pledges of the same land. Glanv. lib. 10. c. 8. And the frauds which have arisen, since the exchange of those public and notorious conveyances for more private and secret bargains, has well evinced the wisdom of our ancient law. 2 Comm. c. 10. ft. 160.

The stat. 7 Geo. 2. c. 20, before alluded to, enacts, That where any action shall be brought on any bond for the payment of the money
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secured by Mortgage, or performance of the covenants therein contained; or where any action of ejectment shall be brought by any mortgagee, &c. for the recovery of the possession, and no suit shall be then depending in equity, for foreclosing or redeeming such mortgaged lands; if the person having right to redeem shall appear and become defendant in such action, and shall, at any time pending such action, pay unto such mortgagee, or in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal money and interest due on such Mortgage, and also all such costs as have been expended in any suit at law or in equity upon such Mortgage, (such money for principal, interest, and costs, to be ascertained and computed by the Court where such action is or shall be depending,) the moneys so paid, &c. shall be deemed and taken to be in full satisfaction and discharge of such Mortgage; and the Court shall discharge every such mortgagor or defendant of and from the same accordingly; and shall, by rule of the same Court, compel such mortgagee, at the costs of such mortgagor, to assign, surrender, or re-convey such mortgaged lands, and deliver up all deeds, &c. relating to the title.

And that where any bill or suits shall be filed, or brought in equity by any person having or claiming any estate, right or interest in any lands, &c. by virtue of any Mortgage to compel the defendant to pay the plaintiff the principal money and interest, together with any sum due on any incumbrance or specialty, charged or chargeable on the equity of redemption; and in default of payment to foreclose such defendant’s right of equity of redeeming such mortgaged lands, &c. upon his admitting the right and title of the plaintiff; such court of equity shall, at any time before such suit shall be brought to hearing, make such order or decree therein, as it might or could have made therein, in case the same had been regularly brought to hearing; and all parties to such suit shall be bound by such order or decree, to all intents and purposes, as if the same had been made at or subsequent to the hearing of the cause.

This act not to extend to any case, where the person against whom the redemption shall be prayed, shall (by writing under his hand, or the hand of his attorney, &c. to be delivered, before the money shall be brought into Court at law, to the attorney or solicitor for the other side) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sum than what appear on the face of the Mortgage, or shall be admitted on the other side; nor to any cause where the right of redemption to the mortgaged lands shall be controverted or questioned, by or between different defendants in the same cause; nor shall be any prejudice to any subsequent mortgagee, or subsequent incumbrancer.

It was heretofore held, that if a contract were made in England for a Mortgage of a plantation in the West Indies, no more than legal interest might be paid; and that a covenant in such Mortgage for payment of 8 per cent. interest would be within the statute of usury, notwithstanding this were the rate of interest where the lands lay. But now this point is settled by stat. 14 Geo. 3. c. 79. § 2; which enacted, “that none of his Majesty’s Subjects in Great Britain, shall be subject or liable to any of the penalties or forfeitures inflicted by stat. 12 Ann. st. 2. c. 16, against usury, by receiving or taking inte-
rest for any sum or sums of money really and bona fide lent on any Mortgage, &c. of lands in Ireland, or in the colonies or plantations in the West Indies, securities for which are made and executed in Great Britain; so as the interest so to be received or taken do not exceed the rate of six per cent. See Powell on Mortgages, v. 2. c. 5. and also stat. 13 Geo. 3. c. 14. as to Mortgages of Estates in the West India Colonies, and the mode of proceeding to enforce the same.

A distinction is made in Chancery between an agreement, that the interest shall be raised, if not punctually paid, and for abatement thereof upon punctual payment. For in the former case it is considered as a penalty which the Courts of Equity will relieve against; but in the latter as a condition, which must be strictly adhered to; in which case the debtor cannot have relief in equity after the day of payment elapsed; because the abatement is to be upon a condition which is not performed. 3 Burr. 1374, 5.

If the mortgagee assign the Mortgage, with the concurrence of the mortgagor, all money really and bona fide paid by the assignee, that was due to the mortgagee, shall be considered as principal, and the assignee shall have interest upon the interest then due, and paid by him, as well as upon the principal originally lent. 2 Ch. Ca. 67, 68, 258: 1 Vern. 169: 2 Vern. 155. As to the other cases in which interest shall become principal, see Powell on Mortgages, ii. c. 5.

A remainder-man can force the tenant for life to keep the interest down if the land be charged; but cannot directly compel him to redeem, though indirectly he may, by purchasing in the Mortgage; when the tenant for life must pay one third, or part with the possession. Ref. Eq. 69.

For further matter relative to Mortgages, see Powell on Mortgages: Bac. Abr. Vin. Abr: Treat. Eq: and Com. Dig.

MORTGAGOR, Is he who mortgages or pawns the lands; as he to whom the mortgage is made is called the Mortgagee.

MORTH, Murder; Sax. morth, death, Morthlaga, a murderer or manslaughter. Morth-tuge, homicide or murder; &c.

MORTITIVUS, Dead of the rot, applied to sheep and lambs. Mon. Angl. ii. 114.

MORTMAIN, manus mortua, from the Fr. mort, mors and maine, manus—Cowell, Skene, Hoitoman.] An alienation of lands and tenements to any guild, corporation, or fraternity, and their successors, as bishops, parsons, vicars, &c. which could never be done without the King's license, and that of the lord of the manor, or of the King alone, if it be immediately holden of him. The reason of the name may be deduced from hence; because the services, and other profits due, for such lands, as escheats, &c. should not without such license come into a dead hand, or into such a hand as it were dead, and so dedicated unto God, or pious uses, as to be abstractedly different from other lands, tenements, or hereditaments, and never to revert to the donor, or any temporal or common use. Magna Carta, c. 36.

Polydore Virgili, in the seventeenth book of his Chronicles, mentions this law, and gives this reason of the name; Et legem hanc manus mortuam vocarunt, quod res semel data collegiis sacerdotum, non utique rursus venderentur velut mortue, hoc est, usui alienum mortuam in perpetuum adeptae essent. Lex diligentem servatur, sic, ut nihil possessionum ordini sacerdotali a quoquam detur, nisi regis per-
misus; but the statutes of Mortmain are in some manner abridged by stat. 39 Eliz. c. 5, by which the gift of lands, &c. to hospitals is permitted, without obtaining licences in Mortmain. But see post.

Hottoman, in his Commentaries, De verbis Peudalibus, verbo Manus mortua, hath these words: Manus mortua locatio est, quae usurpa-tur de iis, quorum possessio (ut ita dicam) immortalis est, quia nunquam heredem habere desinunt: Qua de causa res nunquam ad priorem dominum revertitur, nam manus pro possessione dicitur mortua per antiphrasin pro immortalit., &c. Petrus Belluga in speculo Principium, fol. 76. Jus amortizationis est licentia cahendi ad manum mortuam: to the same effect read Cassan. de Conset. Burgund. p. 348, 387, 1183, 1185, 1201, &c. Skene de verb. signif. saith, Dimittere terras ad manum mortuam est idem atque dimittere ad multitudinem sive universitatem, quae nunquam moritur, idque per antiphrasin, seu a contrario sensu, because commonalities never die. Cowell.

William the Conqueror demanding the cause why he conquered the realm by one battle, which the Danes could not do by many; Frederick, abbot of St. Alban's, answered, that the reason was, because the land, which was the maintenance of martial men, was given and converted to pious employers, and for the maintenance of holy votaries: to which the Conqueror said, that if the clergy were so strong, that the realm were enfeebled of men for war, and subject by it to foreign invasion, he would aid it. Therefore he took away many of the revenues of the abbots, and of others also. Speed. 418, b. See 1 Inst. 2: 2 Inst. 75.

The foundation of all the statutes of Mortmain was Magna Carta. By c. 36, it is declared, "That it shall not be lawful for any to give his lands to any religious house, and to take the same land again to hold of the same house, &c. upon pain that the gift shall be void, and the land shall accrue to the lord of the fee." This statute is interpreted to extend to lands which a religious house kept in their own hands, though they gave them not back again to hold of the same house. 2 Inst. 75.

But ecclesiastical persons found means to creep out of the statute, by purchasing lands helden of themselves, or by making leases for a long term of years, &c. wherefore by stat. 7 Ed. 1, commonly called the Statute of Mortmain, or de religiosis, no persons religious or others whatsoever, shall buy or sell any lands or tenements, or under the colour of any gift or lease, or by reason of any other title, receive the same, or by any other craft shall appropriate lands in any wise to come into Mortmain, on pain of forfeiture; and within a year after the alienation, the lord of the fee may enter: and if he do not, then the next immediate lord, from time to time, may enter in half a year; and for default of all the lords entering, the King shall have the lands so alienated for ever, and may enfeoff others by certain services, &c.

As this statute extended only to gifts, alienations, &c. made between ecclesiastics and others, they found out an evasion also of this statute; for pretending a title to the land which they meant to gain, they brought a feigned action against the tenant of the land, and he, by consent and collusion was to make default, and thereupon they recovered the land, and entered by judgment of law: so that the statute West. 2, 15 Ed. 1. c. 32, was thought necessary; by which it is to be inquired by the country whether the demandant had a just title to the
land; and if so, then he shall recover seisin; but if otherwise, the lord of the fee shall enter, &c.

And by stat. 34 Ed. 1. st. 3. lands shall not be alienated in Mortmain, where there are mean lords, without their consent declared under hand and seal; nor shall any thing pass where the donor reserves nothing to himself.

Notwithstanding all these statutes, ecclesiastical persons (not being able to get lands, by purchase, gift, lease, or recovery) procured lands to be conveyed by feoffment, or in other manners, to divers persons and their heirs, to the use of them and their successors, whereby they took the profits. 2 Inst. 75. To bar this, the stat. 15 R. 2. c. 5, was made, which statute enacts, "that no feoffment, &c. of any lands and tenements, advowsons or other possessions, to the use of any spiritual persons, or whereof they shall take the profits, shall be made without licence of the King, and of the Lords, &c. upon pain of forfeiture." And by stat. 23 H. 8. c. 10, against superstitious uses, forfeitures, fines, recoveries, grants, devises, &c. of lands, in trust to the use of any parish church, or to have perpetual obits, or a continual service of a priest for ever, or for sixty years, &c. to the prejudice of the King and other lords, as in case of lands alienated in Mortmain, shall be void: though this last act extends not to corporations, where there is a custom to devise lands in Mortmain; as in London, a freeman that pays scot and lot, may devise all his lands, in the city, in Mortmain, without license. 1 Rol. Abr. 556.

And notwithstanding this, previous to stat. 9 Geo. 2. c. 36, any man might give lands, tenements, &c. to any persons and their heirs, for finding a preacher, maintenance of a school, reparation of churches, relief of the poor, &c. or for any like charitable uses; though it was said to be good policy on every such estate to reserve a small rent to the feoffor and his heirs, when the feoffees should be seized to their own use, and not to the use of the feoffor; or if a consideration of a small sum be expressed, the 23 H. 8. cannot by any pretence make void the use. 1 Reph. 24: 11 Reph. 70: Wood's Inst. 303: but see post.

A more clear and concise account of the rise, progress, and effect of these statutes will be found to be contained in the following extract from the Commentaries; vol. 4. c. 18.

Alienation in Mortmain, is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. But these purchases having been chiefly made by religious houses, in consequence whereof the lands became perpetually inherent in one dead hand, this hath occasioned the general appellation of Mortmain to such alienations; and the religious houses themselves to be principally considered in forming the statutes of Mortmain.

By the Common Law any man might dispose of his lands to any other private man at his own discretion, especially when the feudal restraints on alienation were worn away; yet in consequence of these it was always and still is necessary for corporations to have a license in Mortmain from the Crown to enable them to purchase lands: for as the King is the ultimate lord of every fee, he ought not, unless by his own consent, to lose his privilege of escheats and other feudal profits, by the vesting of lands in tenants who can never be attainted or die. See F. N. B. 121. And such licenses of Mortmain seem to have been necessary among the Saxons, above sixty years before the Norman conquest. Seld. Jan. Angl. l. 2. § 45. But besides this general
licensure from the King, as lord paramount of the kingdom, it was also requisite, whenever there was a mesne or intermediate lord between the King and the alienor, to obtain his licence also, (upon the same feodal principles) for the alienation of the specific land. And if no such licence was obtained, the King or other lord might respectively enter on the lands so alienated in Mortmain, as a forfeiture. The necessity of this licence from the Crown was acknowledged by the Constitutions of Clarendon, c. 2. (A.D. 1164) in respect of advowsons, which the monks always greatly coveted, as being the ground-work of subsequent appropriations. Yet such were the influence and ingenuity of the clergy, that notwithstanding this fundamental principle, the largest and most considerable dotations of religious houses happened within less than two centuries after the Conquest. And when a licence could not be obtained, the contrivance seems to have been this: that as the forfeiture for such alienations accrued in the first place to the immediate lord of the fee, the tenant who meant to alienate, first conveyed his lands to the religious house, and instantly took them back again, to hold as tenant to the monastery; which kind of instantaneous seisin was probably held not to occasion any forfeiture: and then, by pretext of some other forfeiture, surrender, or escheat, the society entered into those lands, in right of such their newly acquired seigniory, as immediate lords of the fee. But when these dotations began to grow numerous, it was observed that the feodal services ordained for the defence of the kingdom, were every day visibly withdrawn; that the circulation of landed property from man to man began to stagnate; and that the lords were curtailed of the fruits of their seigniories, their escheats, warships, reliefs, and the like; and therefore to prevent this, it was ordered by the second of King Henry III's Great Charters, and afterwards by that printed in our common Statute-book, that all such attempts should be void, and the land forfeited to the lord of the fee. See stat. 9 H. 3. c. 36.

But as this prohibition extended only to religious Houses, Bishops and other sole Corporations were not included therein; and the aggregate ecclesiastical bodies found many means to creep out of this statute, by buying in lands that were bona fide held of themselves as lords of the fee, and thereby evading the forfeiture; or by taking long leases for years, which first introduced those extensive terms, for 1000 or more years, which are now so frequent in conveyances. This produced the statute de Religiosis, stat. 7 Ed. 1, which provided that no person, religious or other, whatsoever, should buy or sell, or receive, under pretence of a gift, or term of years, or any other title whatsoever, nor should by any art or ingenuity appropriate to himself any lands or tenements in Mortmain; upon pain that the immediate lord of the fee, or on his default for one year, the lords paramount, and in default of all of them, the King, might enter thereon as a forfeiture.

This seemed to be a sufficient security against all alienations in Mortmain; but as these statutes extended only to gifts and conveyances between the parties, the religious Houses now began to set up a fictitious title to the land, which it was intended they should have, and to bring an action to recover it against the tenant, who by fraud and collusion made no defence; and thereby judgment was given for the religious House, which then recovered the land by sentence of law, upon a supposed prior title: and thus they had the honour of...
inventing those fictitious adjudications of right which are since become the great assurance of the kingdom, under the title of Common Recoveries. See this Dictionary, titles Fines and Recoveries. But upon this the stat. Westm. 2. 13 E. 1. c. 32, enacted that in such cases a Jury shall try the true right of the demandants or plaintiffs to the land, and if the religious house or corporation be found to have it, they shall still recover seisin, otherwise it shall be forfeited to the immediate lord of the fee, or else to the next lord, and finally to the King, upon the immediate or other lord’s default. And the like provision was made by the succeeding chapter, 33 of the same statute, in case the tenants set up crosses on their lands, (the badges of Knights Templars and Hospitalers,) in order to protect them from the feodal demands of their lords, by virtue of the privileges of those religious and military orders. So careful indeed was this Prince to prevent any future evasions, that when the statute of Quia Emptores, 18 Ed. 1, abolished all sub-infeudations, and gave liberty for all men to alienate their lands, to be holden of their next immediate lord, a proviso was inserted, that this should not extend to authorise any kind of alienation in Mortmain. See stat. 18 E. 1. st. 1. c. 3; 2 Inst. 501. And when afterwards the method of obtaining the King’s licence by writ of ad quod damnum, was marked out by stat. 27 Ed. 1. st. 2, it was further provided by stat. 34 Ed. 1. st. 3, that no such licence should be effectual without the consent of the mesne or intermediate lords.

Yet still it was found difficult to set bounds to ecclesiastical ingenuity; for when they were driven out of all their former holds, they devised a new method of conveyance, by which the lands were granted not to themselves directly, but to nominal feoffees to the use of the religious houses; thus distinguishing between the possession and the use, and receiving the actual profits, while the seisin of the lands remained in the nominal feoffee who was held by the Courts of Equity (then under the direction of the clergy) to be bound in conscience to account to his estoit que use for the rents and emoluments of the estate. And it is to these inventions that our practisers are indebted for the introduction of uses and trusts, the foundation of modern conveyancing. But they did not long enjoy the advantage of their new device, for the stat. 15 R. 2. c. 5, enacts that the lands which had been so purchased to uses, should be amortised by licence from the Crown, or else be sold to private persons; and that for the future, uses shall be subject to the statute of Mortmain, and forfeitable like the lands themselves. And whereas the statutes had been cluded by purchasing large tracts of land adjoining to churches, and consecrating them by the name of church-yards, such subtile imagination is also declared to be within the compass of the statutes of Mortmain. And civil or lay corporations, as well as ecclesiastical, are also declared to be within the mischief, and of course within the remedy provided by those statutory laws. And lastly, as during the times of Popery, lands were frequently given to superstitious uses, though not to any corporate bodies; or were made liable in the hands of heirs and devisees, to the charge of obits, chanteries, and the like, which were equally pernicious in a well-governed State, as actual alienations in Mortmain; therefore at the dawn of the Reformation the stat. 23 H. 8. c. 10, declares, that all future grants of lands for any of the purposes aforesaid, for a longer term than 20 years, shall be void.
During all this time, however, it was in the power of the Crown, by granting a licence of Mortmain, to remit the forfeiture, so far as related to its own rights, and to enable any spiritual or other corporation to purchase and hold any lands or tenements in perpetuity; which prerogative is declared and confirmed by the stat. 18 Ed. 3, st. 3. c. 3. But as doubts were conceived at the time of the Revolution, how far such licence was valid, since under the Bill of Rights, the King had no power to dispense with the statutes of Mortmain by a clause of non obstante, which was the usual course, though it seems to have been unnecessary: (See Co. Lit. 99.) and as by the gradual declension of mesne seignories, through the long operation of the statute of Quia Emptores, the rights of intermediate lords were reduced to a very small compass; it was therefore provided by stat. 7 & 8 W. 3. c. 37, that the Crown for the future, at its own discretion, may grant licences to alienate or take in Mortmain, of whomsoever the tenements may be holden.

After the dissolution of monasteries under Hen. VIII. though the policy of the next Popish successor affected to grant a security to the possessors of abbey-lands, yet in order to regain so much of them as either the zeal or timidity of their owners might induce them to part with, the statutes of Mortmain were suspended for 20 years by stat. 1 & 2 P. & M. c. 8; and during that time, any lands or tenements were allowed to be granted to any spiritual corporation without any licence whatsoever.

By the stat. 39 Eliz. cap. 5, The gift of lands, &c. to Hospitals is permitted without obtaining licences of Mortmain. See title Hospitals.

Long afterwards, for a much better purpose, the augmentation of poor livings, it was enacted by the Stat. 17 Car. 2. c. 5, that appropriators may annex the great tithes to the vicarages; and that all benefices under 100l. per ann. may be augmented by the purchase of lands, without licence of Mortmain in either case; and the like provision hath been since made in favour of the Governors of Queen Anne’s Bounty. Stat. 2 & 3 Ann. c. 11. § 4. See also Stat. 15 Car. 2. c. 17, as to the incorporation of Commissioners for Bedford Level; and Stat. 22 C. 2. c. 6: and other statutes for the sale of the fee-farm rents of the Crown. It hath also been held, that the Stat. 32 H. 8. c. 10, before-mentioned, did not extend to any thing but superstitious uses, and that therefore a man may give lands for the maintenance of a school, an hospital, or any other charitable use. 1 Rep. 24. But as it was apprehended from recent experience, that persons on their death-beds might make large and improvident dispositions, even for these good purposes, and defeat the political end of the statutes of Mortmain; it is therefore enacted by stat. 9 Geo. 2. c. 56, that no lands or tenements, or money to be laid out thereon, shall be given for, or charged with, any charitable uses whatsoever, unless by deed indentured, executed in the presence of two witnesses, twelve calendar months before the death of the donor, and enrolled in the Court of Chancery, within six months after its execution; (except stocks in the public funds, which may be transferred within six months previous to the donor’s death;) and unless such gift be made to take effect immediately, and be without power of revocation: and that all other gifts shall be void. The two Universities, their Colleges, and the scholars upon the foundation of the colleges of Eton, Winchester, and West-
Mortmain.

monaster, are excepted out of this act; but such exemption was granted with this proviso, that no College shall be at liberty to purchase more advowsons than are equal in number to one moiety of the fellows; or, where there are no fellows, one moiety of the students upon the respective foundations; and, under § 5, the advowsons annexed to headships are not to be computed. See 2 Comm. c. 18.

It has been declared since this last Mortmain act, that there is no restriction whatsoever upon any one, from leaving a sum of money by will, or any other personal estate, to charitable uses; provided it be to be continued as a personality, and the executors or trustees are not obliged, or under a necessity of laying it out in land, by virtue of any direction of the testator for that purpose. 2 Burn. Ecc. 509. title Mortmain.

Money left to repair parsonage-houses, or to build upon land already in Mortmain, is held not to be within the statute. 1 Br. C. R. 444: Ambl. 373, 651. But a legacy to the Corporation of Queen Anne's Bounty, is void, as by the rules of the Corporation it must be laid out in land. 1 Bro. C. R. 13. in n.

The words of the above stat. 9 Geo. 2. c. 36, are "That no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or in any way conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or in any ways charged or incumbered by any person or persons whatsoever, in trust, or for the benefit of any charitable uses whatsoever; unless such gift, appointment, conveyance, or settlement, of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate, (other than stocks in the public funds,) be and are made by deed, indented, sealed and delivered in the presence of two or more credible witnesses, 12 calendar months at least before the death of such donor or grantor, (including the days of the execution and death,) and be enrolled in his Majesty's High Court of Chancery, within six calendar months next after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor, (including the days of the transfer and death); and unless the same be made to take effect in possession of the charitable use intended immediately from the making thereof; and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or any person or persons claiming under him." § 1. And the fourth section of the said act declares all gifts and dispositions, settlements, incumbrances, &c. otherwise made, to be void to all intents and purposes.

It is incident to every corporation to have a capacity to purchase lands for themselves and successors; and this is regularly true at the Common Law. 10 Rep. 30. But they are excepted out of the statute of Wills, stat. 34 H. 8. c. 5.; so that no devise of lands to a corporation, except for charitable uses, by stat. 43 Eliz. c. 4. which exception is again greatly narrowed by the above stat. 9 Geo. 2. c. 36. So
that now a corporation, whether ecclesiastical or lay, cannot purchase without licence from the Crown, though that capacity seems to be vested in them by the Common Law. And such charities which have not this licence, which is now granted by act of parliament, charter of incorporation, or letters patent, are reduced to the necessity of choosing from among themselves certain persons to be trustees; and to purchase in their names, and to take the lands in trust for the charity; for if they were bought in the name of the institution, not being incorporated, they would instantly vest in the Crown, as a forfeiture in Mortmain. Highmore on Charitable Uses.

It frequently happens that a Donor or Testator is not readily furnished with the correct title of the hospital or institution to whose charitable designs he wishes to contribute; to obviate this difficulty, it appears that a statute was passed, stat. 14 Eliz. c. 14. evidently made for the benefit of Christ's Hospital, St. Thomas's, and St. Bartholomew's; but including also all other hospitals, declaring "that all gifts and legacies, by will, jeoffment, or otherwise, for relief of the poor in any hospital, then remaining and being in esse, shall be as valid, according to the true meaning of the Donor, as if the said corporation had been rightly named." The same act then recites one preceding, and explains "that the words Master or Guardian of any hospital mentioned therein, were intended and meant of all hospitals, Maisons-dieux, head-houses, and other houses ordained for the sustentation or relief of the poor; and shall be so expounded and taken for ever." It has been decided that the stat. 13 Eliz. c. 10, to which this refers, extends to all manner of hospitals, whether incorporated by name of Master or Warden, or any other name; or whether a sole corporation, or aggregate of many. 5 Co. 14, b.: 11 Co. 76, a.: Palmer, 216. See Highmore on Charitable Uses.

The said stat. 9 Geo. 2. c. 56, has been uniformly construed by our Courts of Law and Equity, so as to give it its full force and effect; and by no means to give way to those subtleties which by degrees overturned the former Mortmain acts; at the same time that all proper encouragement has been given to such gifts and bequests to charities, as did not manifestly appear to be against the policy of this statute.

The statute was not meant solely to restrain devises of lands, or money to be laid out in lands, to charities; but has also been construed to the prohibition of any devise of lands to trustees, to sell them and convert the produce of the sale to such purpose; for this mode, though it does not seem so directly within the mischief intended to be provided against by the act, might open a door to much fraud and evasion. See 1 Vez. 108: 2 Vez. 52: and Attorney Gen. v. Tindal, A. D. 1764, cited in Highmore's Charitable Uses.

Although, however, the statute prohibits the gift of money or personal estate, to be laid out in lands, for charitable uses, yet, as has been already hinted, money, &c. given generally, is not forbidden: so also the residue of a personal estate hath been decreed not to be within the act; and if money be given to be laid out "in lands or otherwise" to a charitable use, such devise is good; by reason of the option thereby given to lay it out in personal securities, which are not restrained by the statute, unless they are converted into land. See Soresby v. Hollins, A. D. 1740. Grimmett v. Grimmett, A. D. 1754, cited in Highmore's Charitable Uses.
A devise of a mortgage, or of a term of years, or of a rent charge on lands, to a charity, is not good. It has been urged that the words of the statute, "that the lands shall not be conveyed or settled for any estate or interest whatsoever, or in any ways charged or incumbered," relate merely to the case of a person charging his own lands for the benefit of a charity, and not to prevent the bequeathing a mortgage made to secure a personal debt, but it has been always held that the devise of a mortgage passeth the lands so mortgaged, for the equity of redemption may ultimately vest in the mortgagee; but a charity is precluded from a right of foreclosure; and therefore the bequest of a real security to a charity is in its nature void. See Cro. Car. 37: Atk. 605: 2 Vez. 547, 44: 1 Bro. C. R. 271: and Highmore Cha. Uses: to the indirect way in which this may be in some manner affected, by marshelling the assets, so as to pay the debts out of the mortgage, and leave the personal estate free to answer the legacy to the charity; a matter in which the Courts of Equity are very nice and careful.

Courts of Equity have by several decisions favoured devises if made for intended charities, though they were not in esse at the time of the making the will. See Highm. Char. Uses.

By the exemption in the 4th section of the statute, in favour of the Universities, any land, or personal estate to be laid out in land, may still be disposed of in trust for their benefit, or for any colleges therein, as it might have been before the making of the act. But the extension to the colleges of Eton, Winchester, and Westminster, seems confined to any disposition "for the better support and maintenance of the scholars only upon those foundations," so that a devise to those colleges for any other purpose would apparently be declared void. Highm. Char. Uses.

Section 5 of the statute was made to prevent successions in colleges from happening so rapidly, as that fit members might not be left either to govern the college or to succeed to the vacant benefices. By 43 Geo. 3. c. 101, reciting 'that the said Restriction had been found by experience to operate to the prejudice of such Colleges, by rendering the succession too slow,' the said section of the said statute 9 Geo. 2. was repealed.

The concluding section of the statute exempts all estate real or personal in Scotland from the restraints imposed on those in England. A case has occurred where an estate in Ireland was devised to charitable uses in Ireland. 1 Bro. C. R. 27. There does not appear any case where estates either in Scotland or Ireland were devised to charities in England; though it may be concluded if the charities were incorporated, and so became capable of taking, such a devise would not be void. Upon the same principles a devise of lands, or of a rent charge on lands, in the West Indies, to a charity in England is good. Instances of the latter have actually occurred, and the executors or heirs at law never thought of contesting the devise against the charity. Highm. Char. Uses.

In the case of a legacy in South-Sea annuities bequeathed for the maintenance of poor labourers in Edinburgh and towns adjacent, the Court of Chancery was of opinion, that no directions could be given there as to the distribution of the money; that belonging to another jurisdiction; viz. to some of the Courts in Scotland; and therefore directed that the annuities should be transferred to such persons as the
plaintiffs should appoint, to be applied to the uses of the will. See
Ambl. 236.

For further learning on this subject, see Vin. Abr. title Mortmain.

MORTUARY, Mortuarium mortarium.] A gift left by a man, at
his death, to his parish church, for the recompence of his personal
stakes and offerings not duly paid in his life-time. A Mortuary is not
properly and originally due to ecclesiastical incumbents from any,
but those only of his own parish, to whom he ministers spiritual in-
struction, and hath right to their tithes. But by custom in some
places of this kingdom, they are paid to the parsons of other parishes,
as the corpse passes through them.

Mortuarium (says Lindewode) sic dictum est quia relinguitur ecce-
stile pro animâ defuncti. Custom did so prevail, that Mortuaries being
held as due debts, the payment of them was enjoined as well as by
the statute De circumseptâ agâlis, 13 Ed. 1. st. 4, as by several con-
stitutions, &c.

The stat. 13 Ed. 1. c. 4, enacts, That a prohibition shall not lie for
Mortuaries, in places where Mortuaries used to be paid.

A Mortuary was anciently called Saulc-secat, which signifies pecu-
nia sepulchralis, or symbolum animae. After the conquest, it was called
a corse-present, because the beast was presented with the body at
the funeral; and sometimes a principal; of which see a learned discourse
in the Antiquities of Warwickshire, fol. 679; and Selden's History of

There is no Mortuary due by law, but by custom. 2 Inst. 491: see
Sithem. de Concil. tom. 2. 390: Fleta, lib. 2. c. 600. par. 30. See Non-
gium, Principh. In the Irish canons it is called Pretium sepulchri,
and Sedarium, viz. Omne corpus sepulchrum habet in iure suo vaccam &
19. c. 6. And in another place, Rogat principem loci, (i. e. the bishop,)
at basilicum ejus foderit, &c. & reddat amicus pretium ejus & seda-
tium commune.

The word Mortuariwm was sometimes used in a civil as well as an
ecclesiastical sense, and was payable to the lord of the fee, as well as
to the priest of the parish. Dehentur domino (I. e. mannerii de Wrech-
wyke) nominibus heriotti & mortuarii due vacce pret. xii. sol.—Pa-
rich. Antig. 470: Cowell.

Selden says, that the usage antiently was, bringing the Mortuary
along with the corpse when it came to be buried, and to offer it to the
church as a satisfaction for the supposed negligence and omissions,
the defunct had been guilty of, in not paying his personal tithes, and
from thence it was called a corse present; a term which bespeaks it to
have been once a voluntary donation. Selden's History of Tithes, 287.
c. 10.

Mortuaries are, in fact, a sort of Ecclesiastical Heriots: being a cus-
tomary gift claimed by, and due to, the minister in very many parish-
es on the death of his parishioners. 2 Comm. c. 28. p. 425.—They
seem originally to have been like lay-heriots, only a voluntary bequest
to the church; being intended, as above-mentioned, and as Lindewode
states from a constitution of Archbishop Langham, as a kind of expia-
tion and amends to the clergy, for the personal tithes and other eccle-
siastical duties, which the laity in their life-time might have neglect-
ed or forgotten to pay. For this purpose, after the Lord's heriot or
best good was taken out, the second best chattel was reserved to the Church as a Mortuary. Co. Litt. 185: "Lindesw. Provinc. l. 1. tit. 3.

In Bracton's time, so early as Henry III. this was riveted into an established custom; insomuch that the bequests of heriots and Mortuaries, were held to be necessary ingredients in every testament of Chattels, and that the Lord should have the best good left him as an heriot, and the Church the second best as a Mortuary. See Bracton, l. 2. c. 26: "Pleta. l. 2. c. 57: See this Dictionary, title Heriot.

This custom still varies in different places, not only as to the Mortuary to be paid, but the person to whom it is payable. In Wales, a Mortuary or Corse present, was due upon the death of every clergyman, to the Bishop of the diocese; till abolished upon a recompence given to the Bishop, by stat. 12 Ann. st. 2. c. 6. And in the archdeaconry of Chester, a custom also prevailed, that the Bishop, who is also Archdeacon, should have, at the death of every clergyman dying therein, his best horse or mare, bridle, saddle, and spurs, his best gown or cloak, hat, upper garment under his gown, and tippet; and also his best signet or ring. Cro. Car. 237. But by stat. 28 Geo. 2. c. 6, this Mortuary is directed to cease, and an equivalent is settled upon the Bishop in its room.

The King's claim to many goods on the death of all prelates in England, seems to be of the same nature; though Coke apprehends that this is a duty due upon death, and not a Mortuary; a distinction seemingly without a difference. For not only the King's ecclesiastical character, as supreme Ordinary, but also the species of the goods claimed, which bear so near a resemblance to those in the archdeaconry of Chester, which was an acknowledged Mortuary, puts the matter out of dispute. The King, according to the record vouched by Sir Edward Coke, is entitled to six things, the Bishop's best horse or palfrey, with his furniture; his cloak or gown and tippet; his cup and cover; his bason and ewer; his gold ring; and lastly, his muta canum, his mew or kennel of hounds. See 2 Inst. 491: 2 Comm. 426, 7.

This variety of customs, with regard to Mortuaries, giving frequently a handle to exactions on the one side, and frauds or expensive litigations on the other, it was thought proper, by stat. 21 Hen. 8. c. 6, to reduce them to some kind of certainty. For this purpose, it is enacted, "That all Mortuaries, or Corse-presents, to parsons of any parish, shall be taken in the following manner: viz. for every person who does not leave goods to the value of 10 marks (6l. 13s. 4d.) nothing; for every person who leaves goods to the value of 10 marks, and under 50l., 5s. 4d.; if above 50l. and under 40l., 6s. 8d.; if above 40l. of what value soever they may be, 10s. and no more. And no Mortuary shall throughout the kingdom be paid for the death of any feme covert; nor for any child; nor for any one of full age that is not a housekeeper; nor for any wayfaring man, but such wayfaring man's Mortuary shall be paid in the parish to which he belongs.

"No person shall pay Mortuaries in more places than one, or more than one Mortuary; and no Mortuary shall be demanded of any but in such places where Mortuaries are due by custom, and have used to have been paid: also in places where Mortuaries have been of less value than as aforesaid, no person shall pay any more than has been accustomed.
"If a parson, vicar, &c. take or demand more than is allowed by
the statute for a Mortuary, he shall forfeit all he takes beyond it, and
40s. more, to the party grieved, to be recovered by action of debt,
&c."

Since this statute, whereby Mortuaries are reduced to a certainty,
and on which stands the law of Mortuaries to this day, an action of
debt will lie upon the said statute in the Courts of Common Law, for
recovery of the sum due for a Mortuary, being by custom as afore-
said, although before that statute they were recoverable only in the
Spiritual Court: but as such actions have never been brought, it is
said, they are still recoverable in that Court only. Wats. Clergym.
Law, 475.

Where by custom a Mortuary hath not been usually paid, if a
person be libelled in the Spiritual Court, he shall have a prohibition
by virtue of the statute 21 H. 8. c. 6. And upon a prohibition the cus-
tom may be tried, &c. 2 Lutw. 1066: 3 Mod. 268.—No suit in equity
lies for a Mortuary, 2 Strange, 715.

MORTUARIO, A Mortuary, Hath been sometimes used in a
civil as well as ecclesiastical sense, being payable to the lord of the

MOSS-TROOPERS, A rebellious sort of people in the North of
England, that lived by robbery and rapine, not unlike the Tories in
Ireland, the Buccaneers in Jamaica, or Banditti of Italy: the counties
of Northumberland and Cumberland were charged with an yearly sum,
and a command of men to be appointed by Justices of the Peace, to
apprehend and suppress them. See stats. 4 Jac. 1. c. 1: 13 & 14 Car.
2. c. 22: 30 Car. 2. c. 2: 6 Geo. 2. c. 37, and this Dictionary, titles
Mischief, Malicious; Northern-borders.

MOTE, [Mota, Sax. gemote.] Curía, placitum, conventus: as Mota
de Hereford, i. e. Curia vel placita comitatis de Hereford. In the char-
ter of Maud the Empress, daughter of King Henry the First, we read
thus: Sciatis me fecisse Misonem de Glouchest. Comitem de Hereford,
& dedicasse et motam Herefordiae cum tuto castello, &c. Hence Burg-
mote, curia vel placita comitatis de Hereford, &c. Swalmmote, curia vel conventus mini-
istrorum, scil. forestae, &c. From this also we draw our word mote and
moot, to plead. The Scots say, to mote, as the Mute-hill at Scone, i. e.
Mons placito de Scona. See Pote-mote.
The word moot was usually applied to that arguing of cases used
by young students in the Inns of Court and Chancery. In the charter
of peace between King Stephen and Duke Henry, afterwards King, it
is taken to signify a fortress, as Turris de London, & mota de Wind-
sor, the tower of London, and fortress of Windsor. Mote also signifies
a standing pool of water to keep fish in.

It likewise signifies a great ditch encompassing a castle or dwell-

ing-house. Chart. Antiq.

MOTE-BELL, or Mot-bell, the bell so called, which was used by
the English Saxons to call people together to the Court. Leg. Ed.
Confess. c. 35.

MOTEER, A customary service or payment at the mote or court
of the lord: from which some persons were exempted by charter of
privilege. Rot. Chart. 4 Joh. m. 9.

MOthering, A custom of visiting parents on Midlent-Sunday.
See Letare Jerusalem.

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MOTION

MOTIBILIS, One that may be removed or displaced, or rather a vagrant. *Fleta*, l. 6. c. 6.

MOTION IN COURT, An occasional application to the Court, by the parties or their counsel, in order to obtain some Rule or Order of Court, which becomes necessary in the progress of a cause. 3 Comm. 364.

A Motion is either for a Rule absolute in the first instance, which is sometimes moved for in open Court; and sometimes merely drawn up on a Motion-paper signed by Counsel, and delivered to the Clerk of the Rules; or it is only for a Rule, to shew cause, or, as it is commonly called, a rule nisi, i. e. unless cause be shewn to the contrary; which is afterwards moved to be made absolute. *Tidd’s Pract.* K. B.

In stating the different Motions in the following extract, from *Tidd’s Practice*, the letter *A*, is used to denote that the rule is absolute, in the first instance—*A.* S. that it is drawn up absolute on the mere signature of counsel; (these are called Motions of course)—*A.* C. that it cannot be had without consent.—*N.* that in the first instance it is only a rule *Nisi.*

Motions are of a civil or criminal nature. Of the latter kind is the Motion for an attachment, which may be moved for on account of contemptuous words, spoken of the Court, *A*; or its process, *N*; for a rescue, *N*; or disobedience to a subpoena, or other process, *N*; against a sheriff, for not returning the writ, or bringing in the body, *A*; against an attorney, for not performing his undertaking; or otherwise misbehaving himself, *N*; against other persons for non-payment of costs, on the Master’s Allocatur, *A*; for the non-payment of money generally, *N*; or not performing an award, &c. *N*.

An attachment for misbehaviour is commonly preceded by a Motion for a Rule to answer the matters of the Affidavit; and the party being taken on the attachment, either remains in custody or puts in bail before a Judge, (for he is not bailable before the Sheriff,) to answer interrogatories to be exhibited against him; which interrogatories must be signed by counsel; and if judgment be not given in the same term, the name of the cause should be inserted in the list of Motions appointed to come on peremptorily in the ensuing term. *R. M.* 34 Geo. 3; 5 Term Rep. 474: *Tidd’s Pract*. K. B.

Motions of a civil nature are made on behalf of the plaintiff or of the defendant. On behalf of the Plaintiff, they are either, 1. for something to be done in the common and ordinary course of the suit, as to increase issues, *A*; for a concilium, *A.* S; or judgment on demurrer, special verdict, or writ of error, *A*; for leave to enter up judgment on an old warrant of attorney, *A*; or *nunc pro tunc*, *N*; to enter up judgment and take out execution after an award, where a verdict has been taken for the plaintiff’s security, *N*; or after a verdict for the plaintiff against one of several underwriters, where the rest have agreed to be bound by it, *N*; or to take out execution pending a writ of Error, *N*; to amend the pleadings or other proceedings in the course of a suit, *N*; or to set aside a judgment of *Non prosto*, or of *Non-suit*, *N*; or a verdict, or inquisition, *N*: Or, 2. they are for something to be done out of the common and ordinary course of the suit; as for the defendant to abide by his plea, *A.* S; to refer it to the Master to assess the damages, without a writ of inquiry, *N*; for the execution of a writ of inquiry before a Judge, *N*; or to have a good Jury upon the execution of such writ, *A*; for a trial at bar, or in an adjoin-
ing county, N; for a view in trespass, A. S; in other cases, N; or special jury, A. S; to have witnesses examined on interrogatories, A. C; or for leave to inspect and take copies of books, court-rolls, &c. or to have them produced at the trial, N.

On behalf of the Defendant motions may be considered as they arise and succeed one another in the course of the suit. Before declaration: they are, to quash the writ, N; justify bail, A; reverse an outlawry, N; or after several rules for time to declare, that the plaintiff declare peremptorily, A.—After declaration: they are, to set aside an interlocutory judgment for irregularity; as being signed contrary to good faith, or upon an affidavit of merits, N; to set aside or stay proceedings in actions upon bail-bonds or in other actions if irregular or unfounded, N; and if the defendant is a prisoner to discharge him out of custody upon common bail, N; or if the proceedings are regular, to stay them upon terms, N; to compound penal actions, A. C; change the venue, A; consolidate actions, N; or strike out superfluous counts, N; for time to plead or reply, &c. under special circumstances, N; to plead several matters, or pay money into Court, A. S; to withdraw the general issue and plead it de novo, with a notice of set off; or upon paying money into court; to add or withdraw special pleas, all these are generally, A; but sometimes, N; to pay the issue money into Court in a qui tam action, N; (see Penal Actions) to put off a trial if the defendant is not ready, N; or if the plaintiff will not proceed to trial, A; or inquiry, A; or for judgment as in case of a nonsuit, N; in arrest of judgment, N; or for a suggestion after verdict to entitle the defendant to costs, N; to set aside an execution, and discharge the defendant, or restore to him the money levied, or to retain it in the Sheriff’s hands, N.

The defendant also as well as the plaintiff may move for a concilium, A. S. or judgment, A, on a demurrer, special verdict, or writ of error: to amend, N; for a trial at bar, or in an adjoining county, N; for a view or special jury, A. S; to have witnesses examined on interrogatories, A. C; or for leave to inspect and take copies of books, court-rolls, &c. or have them produced at the trial, N; to set aside a verdict or inquisition, N; either parties may likewise move to make a Judge’s order, submission to arbitration, or order of nisi prius, a Rule of Court, A; to enlarge the time for making an award, A. C; to set aside an award or Judge’s order, N; for the Master to make his report, A; or review his taxation, N.

There are some Motions peculiar to the action of Ejectment, such as for judgment against the casual ejector; generally A. S; but where there is anything peculiar in the service of the declaration, it should be mentioned to the Court; and where the affidavit of service is defective, they will give leave to file a supplemental one;—that service on the tenant’s son, daughter, &c. may be deemed good service, N; for the landlord to be admitted defendant instead of the tenant, A. S; or for leave to take out execution in such case against the casual ejector after the landlord has failed in his defence, N. See this Dictionary, title Ejectment.

There are also other motions not necessarily connected with any action; as to set aside an annuity, and deliver up the securities to be cancelled, &c. N. See Tidd’s Pract. K. B.

An attachment for non-payment of costs, and against the Sheriff for not returning the writ, may be moved for the last day of term.
A Motion is in general accompanied with an affidavit, and sometimes preceded by a notice. The affidavit should be properly intitled, and contain a full statement of all the circumstances necessary to support the application; and the rather as it is a rule not to receive any supplementary affidavit on shewing cause. 2 Term Rep. 644. Motions and affidavits for attachments in civil suits, are proceedings on the civil side of the Court, until the attachments issue, and are to be intitled with the names of the parties. 3 Term Rep. 253. But as soon as the attachments issue the proceedings are on the Crown side; and from that time the King is to be named as the prosecutor. 3 Term Rep. 133, 253. And where a submission to an award is made, a Rule of Court, under the statute, there being no action, the affidavits on which to apply for an attachment for disobeying the award, need not be intitled in any cause, but the affidavit in answer must. 3 Term Rep. 601. An affidavit sworn before the attorney in the cause cannot be read, except for the purpose of holding the defendant to special bail. Tidd. And where an affidavit is made before a commissioner by a person who from his signature appears to be illiterate, the commissioner taking the affidavit shall certify or state in the jurat, that it was read in his presence, to the party making the same, who seemed perfectly to understand it, and wrote his signature in the presence of the commissioner. R. E. 31 Geo. 3. 4 Term Rep. 284. The notice of Motion though seldom necessary, is frequently given, in order to save time and expense; by affording the adverse party an opportunity of shewing cause in the first instance, or by inducing the Court to disallow the costs of proceedings taken after the notice, and before the Motion. The stat. 14 Geo. 2. c. 17, requires notice of Motion, for judgment as in case of a nonsuit; but in the Court of K. B. the Rule to shew cause is deemed a sufficient notice. Laid. 65. But it is otherwise in C. B. See 1 H. Black. 527.

The Rule to shew cause is drawn up for a particular day in term, previous to which it should be duly served. To bring a party into contempt, a copy of the Rule must be personally served, and the original at the same time shewed to him; in other cases the same degree of strictness is not required in the service of the Rule, but it is sufficient, without shewing the original, to leave a copy of it with any person representing the party, at his dwelling-house or place of abode. 3 Term Rep. 351. And when a Rule is obtained to set aside proceedings for irregularity, and to stay proceedings in the mean time, the proceedings are suspended for all purposes till the Rule is discharged. 4 Term Rep. 176.

On the day appointed for that purpose, the Counsel for the party called upon by the Rule, may shew cause against it, either upon or without an affidavit, as circumstances require. But an office-copy must be first taken of the Rule, and of the affidavit upon which it was granted; or otherwise Counsel cannot be heard. Previous to shewing cause, it is usual to deliver over the affidavit against the Rule to the Counsel for the Rule, who has a right to make any objection appearing on the face of it; and if a doubt arises, upon the statement of the
facts contained in the affidavit, it is inspected by the Judges, or read by the officer of the Court: when an affidavit has been made use of, but not before, it may be filed, in order that, if it be not true, the party may be indicted for perjury. Tidd's Pract. K. B.

If cause be not shewn on the day appointed, the Counsel for the party obtaining the Rule may move, the next day, to make it absolute; which is done as a matter of course, if no cause be shewn, on an affidavit of service. But it frequently stands over by consent of the parties, or for the accommodation of Counsel, till a subsequent day, when the Counsel on either side may bring it on, by moving to make the Rule absolute, or to discharge it; though if not brought on, or enlarged during the same term, it falls to the ground. When the Counsel for the party obtaining the Rule is not ready to support it, he may move to enlarge the Rule till a future day in the same or next term, which is pretty much of course, when it is in his own delay; but otherwise the Court will not enlarge the rule without consent, or some evident necessity; and they will never enlarge the plaintiff's Rule, when it would have the effect of continuing the defendant in custody. In like manner when the Counsel for the party called upon by the Rule is not prepared to shew cause against it, he may apply to enlarge the Rule till a future day; which is a matter of right if the Rule was not served in time, so as to give the party an opportunity of answering it: but otherwise the Court may impose upon him what terms they think proper, and they commonly require him to file his affidavits, so as to give the adverse party an opportunity of inspecting them, previous to the day appointed for shewing cause. In cases of urgency, the Court, towards the end of the term, will sometimes enlarge the Rule till a day in the vacation, when it is to be brought on before a Judge at Chambers. Tidd's Pract. K. B.

On shewing cause against the Rule, the Court either make it absolute, or discharge it, and that either with or without the costs of the application; or such costs are directed to abide the event of the suit; according to the discretion of the Court under all the circumstances of the case.

In hearing Motions, the course formerly was, to begin every day with the senior Counsel within the bar, and then to call to the next senior, in order, and so on, as long as it was convenient to the Court to sit, and to proceed again in the same manner, upon the next and every subsequent day, although the bar had not been half, or perhaps a quarter gone through, upon any one of the former days: so that the juniors were very often obliged to attend in vain, without being able to bring on their Motions for many successive days. 1 Burr. 57. This practice bearing hard upon junior Counsel, Lord Mansfield introduced a different Rule, which has ever since been adhered to; of going quite through the bar, even to the youngest Counsel, before he would begin again with the seniors; even though it should happen to take up two or more days, before all the Motions, which were ready at the bar upon the first day, could be heard. 1 Burr. 57.

Particular days are appointed for certain business, as Tuesday and Fridays, which are called paper days, for going through the paper of causes, wherein conciliums have been moved for, on the civil-side; and Wednesday and Saturday for transacting business on the Crown-side. All Motions or Rules, in matters of length or consequence, are appointed for particular days; and called on first. Special causes are
to be argued in the same order they are entered in the paper, and not
be entered anew or put off, without a special application to the
Court; and all enlarged Rules must come on, peremptorily during the
first week of the term. If a Rule be made absolute, or discharged, by
surprise, the Court will open it; and if by mistake it be drawn up
wrong they will order it to be set right. See Tidd’s Pract. K. B.; and
the various authorities there cited.

Monday is a special day for Motions in B. R. by the antient course;
but they are made upon any day, as the business of the Court will
permit. 2 Lit. 208, 210.

In the Chancery, during term, every Thursday is a day for scaling;
and Motions; and Tuesdays and Saturdays are days for Motions, as
are the first and last days of the term: in vacation, only seal days ap-
pointed by the Lord Chancellor, are days of Motion.

After motion in arrest of judgment, no Motion shall be for a new
trial; but after Motion for a new trial, one may move in arrest of
judgment. 2 Salk. 647. See titles Trial; Arrest of Judgment.

In B. R. one ought not to move the Court for a Rule for a thing to
be done, which by the common Rules of practice may be done with-
out moving the Court: nor shall the Court be moved for doing what
is against the practice of the Court: one ought not to move for sev-
eral things in one Motion; and where a Motion hath been denied, the
same matter may not be moved again by another Counsel, without
acquainting the Court thereof, and having their leave for the same.
Every person who makes a solemn argument at the bar is allowed by
the Court a Motion for his argument. 2 Lit. Abr. 209, 210. But
Counsel cannot move for his argument in a matter of course in the
paper, in B. R. 1 Wils. 76.

If there be divers Rules of Court made in a cause, and the party
intends to move thereon, he must produce the Rule last made in the
cause, and move upon that; but it is necessary to have all the Rules
and copies of the affidavits, to satisfy the Court how the cause hath
been proceeded in and how it stands in Court; though the last Rule
is the most material: and where a Motion is made to set aside a Rule
grounded on an affidavit, a copy of the affidavit must be produced,
that the Court may be informed upon what grounds the Rule was
made, and judge whether there be cause shown upon the Motion

If any thing be moved to the Court upon a record, the record is to
be in Court, or the Court will make no Rule upon such Motion. Hill.
22 Car. B. R.

For the reasons of the several Motions as arising from the progress
of a cause through the Courts from the commencement of the action
to execution; which Motions form the greatest part of the visible
practice of Courts of Law; See Eunomus, Dial. 2. § 26—40: and this
Dictionary, title Practice. See also Vin. Abr. title Motion.

MOVEABLES. All sorts of things moveable are included under
the name of things personal, or are personal estate, i. e. all those
things which may attend a man’s person wherever he goes. See 2
Comm. c. 24.

MOULT; An old English word for a mow of corn, or hay; mullo

MOUNTEBANKS. See Nusance.
MOWNTTEE, An alarm or outcry, to mount and make some speedy expedition; mentioned in the statutes. Hen. 5.

MUFFLE, Winter-gloves made of ram-skins. In Leg. Hen. 1. c. 70, they are called Mushlue, and sometimes Miasfa.

MULCT, Mulcta. | A fine of money set upon one, for some fault or misdemeanor; fines laid on ships or goods by a company of trade, to raise money for the maintenance of consuls, &c. are called Mulcts. Merc. Dict.

MULIER, As used in our law, seems to be a word corrupted from mélior, or the Fr. meilleur; and signifies the lawful issue, born in Wedlock, preferred before an elder brother born out of marriage. See stat. 9 Hen. 6. c. 11: Smith's Repub. Angl. lib. 3. c. 6. But by Glanvil, lawful issue are said to be Mulier, not from melior, but because begotten à muliere, and not ex concubinâ; for he calls such issue filios mulieratos, opposing them to bastards. Glanv. lib. 7. c. 1. It appears to be thus used in Scotland also; Skene saying, mutieratus filius is a lawful son, begotten of a lawful wife.

If a man hath a son by a woman before marriage, which is a bastard and unlawful, and after he marries the mother of the bastard, and they have another son, this second son is Mulier and lawful, and shall be heir to his father, but the other cannot be heir to any man; and they are distinguished in our old books with this addition. Bastard eigné, and Mulier puïné. Co. Lit. 170, 243.

Where a man has issue by a woman, if he afterwards marries her, the issue is Mulier by the civil law; though not by the laws of England; 2 Inst. 99: 5 Rep. 416. Of antient time, Mulier was taken for a wife, as it is commonly used for a woman, particularly one not a maid; and sometimes for a widow; but it has been held, that a virgin is included under the name Mulier. See Co. Lit. 170, 243: 2 Inst. 434: this Dictionary, title Bastard: and 2 Comm. 248.

MULIERTY, The being or condition of a mulier, or lawful issue. Co. Lit. 352. h.


MULMUTIN LAWS. See Mutmutian Laws.


MULTE, or MULTURA EPISCOPI, Is derived from the Latin word mulcta, for that it was a fine given to the King; that the Bishop might have power to make his last will and testament, and to have the probate of other men's, and the granting administrations. 2 Inst. 491.

MULTIPLICATION OF GOLD AND SILVER, Was prohibited and declared to be felony by stat. 5 Hen. 4. c. 4. Which statute was made on a presumption that persons skilful in chemistry, could multiply or augment these metals, by changing other metals into gold or silver; and the endeavours of some persons in making use of extraordinary methods for the producing of gold and silver, and finding out the philosopher's stone, were found to be so prejudicial to the public, from the lavish waste of many valuable materials, and the ruin of many families by such useless expenses, that they occasioned the above statute. But the restraint thereby having no other effect, from the unaccountable vanity of those who fancied those attempts practicable, than to send them beyond sea to try their experiments with
impunity in other countries, the stat. 5 Hen. 4. c. 4, was at last repealed by stat. 1 W. & M. c. 30. See Dyer, 88: 1 Hawk. P. C. c. 18. § 12.

This repeal, it is said, was obtained by the learned and celebrated Robert Boyle; who was himself an excellent chemist, and in some measure a favourer of what is called Alchymy, or the art of obtaining the Philosopher's Stone, for the transmutation of metals.

MULTITUDE, multitudo.] According to some authors must be ten persons or more: but Sir Edw. Coke says, he could never find it restrained by the Common Law to any certain number. Co. Lit. 257. See title Riot.

MULTO FORTIORI, or A MINORI AD MAJUS, Is an argument often used by Littleton, and is framed thus: "If it be so in a feoffment passing a new right, much more it is for the restitution of an antient right, &c." See Co. Lit. 253. See 260. a.

MULTO, MUTILO, MOLTO, MUTO, MUTO, A mutton or sheep, or rather a wether, quia testiculis mutilati. Cowell.

MULTONES AURI, Pieces of gold money imprest with an Agnus Dei, a sheep or lamb on the one side, and from that figure called Multones. This coin was more common in France, and sometimes current in England, as appears by a patent, 33 Ed. 1, cited by Spelman; though he had not then considered the meaning of it. Cowell.

MULTURE, molitura vel multura.] The toll that the miller takes for grinding corn. Cowell.

MUM, A sort of beer or strong liquor, brewed from wheat, oats, and ground beans.—It was one of the articles subject to the regulation of the Excise-laws. Brunswick is the most celebrated place for brewing this liquor.

MUMMING, from Teuton. Mummen, to mimick.] Antic diversions in the Christmas holydays, to get money and good cheer. Mummers to be imprisoned, stat. 3 Ann. 8. c. 9.

MUNDBRECH, from Sax. mund, munitio, defensio, & brice, frac-tio.] This is mentioned among divers crimes, as pacis frac-tio, lasio majestatis, &c. Spelman. Gloss. Some would have Mundbrech to signify an infringement of privilege: though of later times it is expanded clausarum fractionem, a breach of bounds, by which name ditches and fences are called in many parts of England: and we say, when lands are fenced in and hedged, that they are moulded. See the next article.

MUNDE, Peace; hence Mundebreece a breach of it. Leg. H. 1. c. 37.

MUNDEBURDE, Mundebrudum, from Sax. mund, i.e. tutela, and bord or bord, i. e. fidejussor. A receiving into favour and protection. Cowell.

MUNDICK: See Metal.

MUNICIPAL LAW, Is defined by Blackstone, (1 Comm. Introd.) "A rule of civil conduct prescribed by the Supreme Power in a State," and for this definition he gives his reasons at large, to which we refer the reader. See also this Dictionary, title Law.

MUNIMENT-HOUSE, Munimen.] In cathedral and collegiate churches, castles, colleges, or public buildings, is a house or little room of strength: purposely made for keeping the seal, evidences, deeds, charters, writings, &c. of such church, college, &c. Such evidences of title to estates, whether of public bodies or private persons,
being called Muniments, (corruptly miniments;) from Munic, to defend; because inheritances and possessions are defended by them. 3 Inst. 170: Law Terms: Stats. 5 R. 2. c. 8: 35 H. 6. c. 37.

MUNIMENTS, Muniments.] See the preceding article.
MUNUS ECCLESIASTICUM, The consecrated bread, out of which a little piece is taken for a communicant. Mon. Angl. ii. 838.

MURAGE, Muragium.] A reasonable toll, to be taken of every cart and horse coming laden through a city or town, for the building or repairing the public walls thereof, due either by grant or prescription; it seems to be a liberty granted to a town by the King for collecting of money towards walling the same. See stat. 3 Ed. 1. c. 30: 2 Inst. 222. The service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle, was called murorum operatio; and when this personal duty was commuted into money, the tax so gathered was called Murage. Paroch. Antiq. 114. In the city of Chester, there are two antient officers called Murengers, being two of the principal aldermen, yearly chosen to see the walls kept in good repair; for the maintenance of which they receive certain tolls and customs.


MURDER; See Homicide III. 3.

MURORUM OPERATIO, The service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle. From which duty some were exempted by special privilege. So King Henry II. granted to the tenants within the honour of Wallingford, Ut quieti sint de operationibus castellorum & murorum. Paroch. Antiq. 114. When this personal duty was commuted into money, the tax so gathered was called Murage. Cowell. See Murage.

MUSCOVY COMPANY; See Russia Company.

MUSICANS. The Musicians of England were incorporated by King Charles II. anno 1670. See Minstrels.

MUSLINS; See titles Lincen; Navigation Acts.

MUSSA, Lat.] A moss or marsh ground; also a place where sedge grows; a place over-run with moss. Cowell: Mon. i. 426.

To MUSTER, from Fr. Monstre.] To shew men, and their arms, that are soldiers, and inrol them in a book. Terms de Ley. See titles Soldiers: Courts Martial.

MUSTER-MASTER GENERAL, Mentioned in stat. 35 Eliz. c. 4. See Master of the King’s Musters.

MUTA CANUM, Fr. Mente de chiens.] A Kennel of hounds, one of the mortuaries to which the King was entitled at a bishop’s and abbot’s decease. See title Mortuary.

MUTARE, To mew up hawks, in the time of their molting or casting their plumes. In the reign of King Ed. II. the manor of Broughton in Com. Oxon. was held—Per servientiam mutandi unum hosticium domini regis, &c. Paroch. Antiq. 560. The Mews (Muta Regia) near Charing Cross, London, now the King’s stables, was formerly the falconry or place for the King’s hawks.


MUTATUS ACCIPITER, A mewed hawk. Cowell.

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MUTE, Mutus.] One dumb, who cannot or refuses to speak. And
by our law a prisoner may stand Mute two ways;
1. When he speaks not at all; in which it shall be inquired whether
he stand Mute out of malice, or by the act of God? and if by the lat-
ter, then the Judge ought to inquire whether he be the same person,
and of all pleas which he might have pleaded in his defence, if he had
not been Mute. 2. When the prisoner does not plead directly, or will
not put himself upon the inquest, to be tried; and a person pining
himself mad, and refusing to answer, shall be taken as one who stands
Mute. 2 Inst. H. P. C. 226.

If a prisoner on his trial peremptorily challenge above the number
of jurors allowed by law, this being an implied refusal of a legal trial,
he shall be dealt with as one who stands Mute, and according to
some opinions be hanged. H. P. C. 259: Kel. 36: 2 Hawk. P. C.
c. 30.

It seems now clearly settled, that a prisoner thus perversely and
obstinately offending, is, in high treason, ipso facto, attainted. 2 Hale,
263: 4 Comm. c. 25, p. 325: c. 27, p. 354. And in felony the challenge
shall be over-ruled. 2 Hale, 376.

Regularly a prisoner is said to stand Mute, when being arraigned
for treason, or felony, he either, 1. Makes no answer at all: or, 2. An-
wers foreign to the purpose, or with such matter as is not allowable,
and will not answer otherwise: or, 3. Upon having pleaded not guilty,
refuses to put himself upon the country. 2 Hal. P. C. 316. If he says
nothing, the Court ought ex officio to impanel a Jury to inquire whe-
ther he stands obstinately Mute, or whether he be dumb ex visitat-
tione Dei. If the latter appears to be the case, the Judges of the Court
(who are to be of Counsel for the prisoner, and to see that he hath law
and justice) shall proceed to the trial, and examine all points as if he
pleaded not guilty. But whether judgment of death can be given
against such a prisoner, who hath never pleaded, and can say nothing
in arrest of judgment, is a point (says Blackstone) yet undetermined.

If he be found to be obstinately Mute, (which a prisoner hath been
held to be, that hath cut out his own tongue, 3 Inst. 178;) then if it
be on an indictment of high treason, it hath long been clearly settled,
that standing Mute is equivalent to a conviction, and he shall receive
the same judgment and execution. 2 Hawk. P. C. c. 30, § 9: 2 Hal.
P. C. 332, 317. And as in this the highest crime, so also in the lowest
species of felony, viz. in petit larceny, and in all misdemeanors stand-
ing Mute hath always been equivalent to conviction. But upon ap-
peals or indictments for other felonies, or petit treason, the prisoner
was not by the antient law looked upon as convicted, so as to receive
judgment for the felony, but should for his obstinacy have received
the terrible sentence of penance, or feine (probably a corrupted abbre-
viation of prison) forte et dure.

Before this was pronounced the prisoner had not only trina admis-
nito, but also a respite of a few hours, and the sentence was distinctly
read to him, that he might know his danger; and after all, if he con-
tinued obstinate, and his offence was ciergyable, he had the benefit
of his clergy allowed, even though he was too stubborn to pray it. 2 Hal.
P. C. 320, 321: 2 Hawk. P. C. c. 30, § 34. Thus tender was the law
of inflicting this dreadful punishment; but if no other means could
prevail, and the prisoner (when charged with a capital felony) conti-
nued stubbornly Mute, the judgment was then given against him without any disunion of sex or degree. A judgment which was purposely ordained to be exquisitely severe, that by that very means it might rarely be put in execution.

The rack or question, to extort a confession from criminals, is a practice of a different nature: this having been only used to compel a man to put himself upon his trial, that being a species of trial in itself. See title Torture.

The judgment of penance for standing Mute was as follows: that the prisoner be remanded to the prison from whence he came; and put into a low, dark chamber, and there be laid on his back, on the bare floor, naked, unless where decency forbids; that there be placed upon his body as great a weight of iron as he could bear, and more; that he have no sustenance, save only on the first day three morsels of the worst bread; and on the second day three draughts of standing water, that should be nearest to the prison door; and in this situation this should be alternately his daily diet, till he died, or (as antiently the judgment ran) till he answered. Brit. cc. 4, 22; Flet. lib. 1. c. 34. § 33.

It hath been doubted whether this punishment subsisted at the Common Law, or was introduced in consequence of stat. West. 1. 3 E. 1. c. 12; which latter seems to be the better opinion. 2 Inst. 179; 2 Hal. P. C. 322; 2 Hawk. P. C. 30. § 13; Staunf. P. C. 149; Larr. 82. For not a word of it is mentioned in Glosvil or Bracton, or in any antient author, case, or record (that hath yet been produced) previous to the reign of Edward I; but there are instances on record in the reign of Henry III. where persons accused of felony, and standing Mute, were tried in a particular manner, by two successive juries, and convicted; and it is asserted by the Judges in 8 Hen. 4, that by the Common Law, before the statute, standing Mute on an appeal, amounted to a conviction of the felony. This statute of Edward I directs such persons as will not put themselves upon inquests of felonies, before the Judges at the suit of the King, to be put into (or rather shall be sent back to) hard and strong prison (soient mys 2 (the best copies read remys) en la prisono fort et dure) as those which refuse to be at the Common Law of the land." And immediately after this statute, the form of the judgment appears in Pluta and Britton to have been only a very strait confinement in prison, with hardly any degree of sustenance; but no weight is directed to be laid upon the body, so as to hasten the death of the sufferer: and indeed any surcharge of punishment on persons adjudged to penance, so as to shorten their lives, is reckoned by Horne in the Mirror as a species of criminal homicide. Mirr. c. 1. § 9. It also clearly appears, by a record of 31 E. 3, that the prisoner might then possibly subsist for forty days under this lingering punishment. It seems, therefore, that the practice of loading him with weights, or as it was usually called, presssing him to death, was gradually introduced between 31 E. 3, and 8 Hen. 4, at which last period it first appears upon our books; being intended as a species of mercy to the delinquent, by delivering him the sooner from his torment; and hence it seems also that the duration of the penance was then first altered; and instead of continuing till he answered, it was directed to continue till he died, which must very soon happen under an enormous pressure. Yearb. 8 Hen. 4. 1, 2.

The uncertainty of its original, the doubts that were conceived of
its legality, and the repugnance of its theory (for it rarely was carried into practice) to the humanity of the laws of England, all concurred to require a legislative abolition of this process, and a restitution of the antient Common Law; whereby the standing Mute, in felony, as well as in treason and in trespass, amounted to a confession of the charge. Or, if the corruption of the blood, and the consequent escheat in felony had been removed, the judgment of *pene fort et dure* might perhaps have still innocently remained, as a monument of the capacity with which the tyrants of feodal antiquity hunted after escheats and forfeitures; since no one would ever have been tempted to undergo such a horrid alternative. For the law was, that by standing Mute, and suffering this heavy penance, the judgment, and of course the corruption of the blood and escheat of the lands were saved in felony, and petit treason, though not the forfeiture of the goods; and therefore this lingering punishment was probably introduced, in order to extort a plea, without which it was held that no judgment of death could be given, and so the lord lost his escheat. But in high treason, as standing Mute is equivalent to a conviction, the same judgment, the same corruption of blood, and the same forfeitures always attended it as in other cases of conviction. 2 Hawk. P. C. c. 30. § 9. And now, to the honour of our laws, it is enacted by stat. 12 Geo. 3. c. 20, that every person who, being arraigned for felony or piracy, shall stand Mute or not answer directly to the offence, shall be convicted of the same; and the same judgment and execution (with all their consequences in every respect) shall be thereupon awarded, as if the person had been convicted by verdict or confession of the crime. Standing Mute, therefore, at present, in all cases, amounts to a constructive confession. Two instances have occurred, since the passing this statute, of persons who refused to plead, and who were in consequence condemned and executed; one at the Old Bailey for murder in 1778, the other for burglary at the summer assizes at Wells in 1792. See 4 Comm. c. 25. p. 324—329. & n.

Although this subject is now become matter of curiosity rather than instruction, the following particulars as to this terrible punishment, are preserved for the satisfaction of the inquiring student.

It is said by Sir Matth. Hale, that an appellee of felony standing Mute shall be executed, and not have judgment of penance; but the contrary hath been held by others. H. P. C. 226: S. P. C. 150: 2 Inst. 178: Kel. 37. One who stands Mute shall have the benefit of clergy, unless it be otherwise specially provided by some statute. And although it be enacted by stat. 3 & 4 W. & M. c. 9, that if any person shall be indicted of any offence, for which, by virtue of any former statute, he is excluded from the benefit of his clergy, if he had been thereof convicted by verdict or confession, if he stand Mute he shall not be admitted to the same; yet appeals, and offences excluded from the benefit of clergy, by subsequent statutes, seem not within that act: and a statute taking away the benefit of clergy generally from those who are convicted of a crime, doth not take it away from those who stand Mute on an indictment or appeal. 2 Hawk. c. 30. But see the statutes 25 H. 8. c. 3, and 5 & 6 Ed. 3. c. 10. whereby it is enacted, that those who are indicted of offences for which the benefit of clergy is not to be allowed, shall not have their clergy if they stand Mute, &c. and this Dictionary, title Clergy, Benefit of.
Hawkins, in his description of the *peine forte et dure*, says, that the manner of inflicting this punishment may be best found from the books of entries and other law books; all of which generally agree, that the prisoner shall be remanded to the place from whence he came, and put into some 
low dark room, and there laid on his back without any manner of covering, except for the priy parts, and that as many weights be laid upon him as he can bear, and more, and that he shall have no manner of sustenance but the worst bread and water, and that he shall not eat the same day in which he drinks, nor drink the same day on which he eats, and that he shall so continue till he die. But that it is said that antiently the judgment was not, that he should continue until he should die, but until he should answer; and that he might save himself from the penance by putting himself upon his trial, which he cannot do at this day after judgment of penance once given. 2 Hawk. P. C. cap. 30. § 16.

And there in the margin, the Serjeant, as to the remanding him to the place whence he came, cites H. P. C. 227: S. P. C. 150. (E): Keilw. 70. a: 4 Ed. 4. 11. pl. 18: 14 Ed. 4. 8. pl. 17: Abr. Br. Corone, 160: 2 Inst. 178: Ra. Ent. 385. pl. 17: 8 Ed. 4. 1. pl. 2.

And as to the words in some low dark room, he says, that this clause is omitted in Keilw. 70. a: 4 Ed. 4. 11. pl. 18. but is mentioned in all the other books above cited, but with this difference, that 14 Ed. 4. 11. pl. 17, says only that he shall be put in a chamber, without adding that it shall be low or dark.

And as to the words there laid on his back, &c. he says, that in this all the books above cited seem to agree. And 14 Ed. 4. 8. pl. 17, and S. P. C. 150. (E), and 2 Inst. 178, add, that he shall lie without any litter or other thing under him, and that one arm shall be drawn to one quarter of the room with a cord, and the other to another, and that his feet shall be used in the same manner. But that these clauses are wholly omitted in all the other books above cited, except H. P. C. which takes notice of the latter of them only. And Ra. Ent. 385. pl. 2, adds, that a hole shall be made for the head. And Keilw. 70. a. says that the head shall not touch the earth: but none of the others mention either of these clauses.

And as to the words, that as many weights shall be laid upon him as he can bear, and more, &c. he says, that in this all the books above cited agree.

And as to the word bread, he says that 14 Ed. 4. 8. pl. 17: S. P. C. 150. (E), and 2 Inst. 178. are, that he shall have three morsels of barley bread a day. Keilw. 76. a. that he shall have only rye bread, and Ra. Ent. 385. pl. 2. and 2 Hen. 4. 1. pl. 2, generally, that he shall have the worst bread.

And as to the word water, he says, that in 14 Ed. 4. 8. pl. 17: S. P. C. 150. (E): 2 Inst. 178, and 8 Hen. 4. 1. pl. 2, and Keilw. 70. a. are, that he shall have the water next the prison, so that it be not current; but Ra. Ent. 385. pl. 5, is general that he shall have the worst water.

And as to the words, not eat the same day on which he drinks, nor drink the same day on which he eats, &c. he says, this is omitted in Keilw. 70. a. and in Hen. 4. 1. pl. 2.

And as to the words till he die, he says, this is omitted in none of the books above cited, except 14 Ed. 4. 11. and H. P. C. 227. But
that neither of these books give the whole judgment at large. 2 Hawk. Pl. C. c. 30.

To advise a prisoner to stand Mute, is a high misprision, a contempt of the King’s Court, and punishable by fine and imprisonment. See title Misprision.

For more learning on this, now fortunately obsolete, subject, see 15 Vin. Abrid. title Mute; and Barrington’s Observations on Antient Statutes, pt. 51—54.

MUTILATION. The depriving a man of any member, &c. See title Malhem.

For some offences the law punishes with Mutilation, or dismembering, by cutting off the hand, or ears, &c. See titles Judgment, criminal; Misprision; Libel, &c.

MUTINY; See titles Soldiers; Militia; Courts Martial.

MUTUAL DEBTS; See title Set-off.

MUTUAL PROMISE, Is where one man promises to pay money to another, and he in consideration thereof promises to do a certain act, &c. See title Assumpta.

MUTUATUS. If a man oweth another 10l. and hath a note for the same, without seal, action of debt lies upon a Mutuatus; but in this there may be wager of law, which there may not be in action upon the case, on an implied promise of payment, &c. See title Debit.

MUTUO, To borrow or lend. 2 Sand. 291.

MUTUS et SURDUS, A person dumb and deaf, and being tenant of a manor, the lord shall have the wardship and custody of him. 2 Cro. 105. If a man be dumb and deaf, and have understanding, he may be grantor or grantee of lands, &c. 1 Inst. See Deaf.

MYSTERY, Misterium, from the Fr. meistier, métier, ars, artifex.] An art, trade, or occupation.