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NAT

NACELLA, A skiff or boat. Mat. Paris.


NAM, or NAAM, *namium*; from the Sax. *niman, capere.*] The taking or distraining another man’s moveable goods. Lawful Naam, which is a reasonable distress, proportionable to the value of the thing distrained for, was antiently called either *vif* or *mort,* quick or dead, as it consisted of dead or quick chattels; and it is when one takes another man’s beasts damage-feasant, in his ground; or by reason of some contract made, as for default of payment of an annuity, it shall be lawful to distrain in such or such lands, &c. There is also a Naam unlawful mentioned in our books. Horne’s Mirror, lib. 2. See Leg. Canut. c. 18: Spelm. Gloss. and this Dictionary, title Replevin: and post. Namium.

NAMATION, *namatio.*] A taking or distraining; and in Scotland it is used for impounding: *Namatus,* distrained. Charta, Hen. 2. See Vettium Namium, and Withernam.

NAME, *nomen,* Fr. *nosme* or *nom.*] By which any person is known or called. There is a name of persons, bodies politic, and places; and of baptism and surname; also names of dignity, &c. In some cases a name by reputation is sufficient; but it is not so of a thing, if the matter and substance be not right. 11 Rep. 21: 6 Rep. 65: 4 Rep. 170. What foundation will support a name by reputation, See Ld. Raym. 301, 304: and this Dictionary, title Misnomer.

NAMIUM VETITUM, An unjust taking the cattle of another, and driving them to an unlawful place, pretending damage done by them. In which case the owner of the cattle may demand satisfaction for the injury, which is called *placetum de namio vetito.* 2 Inst. 140: 3 Comm. 149. See titles Replevin; Withernam.

NAPPERA, From Ital. *najheria, linteamina domestica.*] Linen cloth, or household linen. See stat. 2 R. 2. c. 1.

NARRR, An abbreviation of narratio; a declaration in a cause.

NARRATOR, *Lat.*] A pleader or reporter. Serviens narrator, a serjeant at law; a serjeant-counter. Fleta, lib. 2. cap. 37.

NASSE or NESSE, From Sax. *Nesse, Promontorium.*] The name of the port or haven of Orford, in Suffolk, mentioned in stat. 4 Hen. 7. c. 21. Hence also Sheerness.

NATALE, The state and condition of a man.

NATHWYTE, Seems to be derived from the Sax. *nath,* i.e. lewdness; and so to signify the same with Lairwite. See that title.

NATIONAL DEBT, The money owing by Government, for which it pays interest, part to our own people, part to foreigners, and which forms our National Funds. After the Revolution, when our
new connections with Europe introduced a new system of foreign politics, the expences of the nation, not only in settling the new establishment, but in maintaining long wars, as principals, on the continent, for the security of the Dutch barrier, reducing the French monarchy, settling the Spanish succession, supporting the house of Austria, maintaining the liberties of the Germanic body, and other purposes, increased to an unusual degree; insomuch that it was not thought advisable to raise all the expences of any one year by taxes to be levied within that year, lest the unaccustomed weight of them should create murmurs among the people. It was therefore the policy of the times to anticipate the revenues of their posterity, by borrow- ing immense sums for the current service of the State, and to lay no more taxes upon the Subject than would suffice to pay the annual interest of the sums so borrowed; by this means converting the principal debt into a new species of property, transferable from one man to another, at any time and in any quantity. A system which seems to have had its original in the State of Florence, A. D. 1544, which Government then owed about 60,000l. sterling; and being unable to pay it, formed the principal into an aggregate sum, called metaphorically a Mount or Bank, the shares whereof were transferable like our stocks, with interest at 6l. per cent. the prices varying according to the exigencies of the State. This laid the foundation of what is called the National Debt: for a few long annuities created in the reign of Charles II. will hardly deserve that name. And the example thus set was so closely followed during the long wars in the reign of Queen Anne, and hitherto, that the capital of the National Debt has by degrees increased to the wonderful sum of between 650 and 700 millions sterling, to pay the interest of which, and the charges for management, the extraordinary revenues of the kingdom (excepting only the land-tax and annual malt-tax) are in the first place mortgaged, and made perpetual by parliament; redeemable, however, by the same authority that imposed them: which, if at any time it can pay off the capital, will abolish those taxes which are raised to discharge the interest. See 1 Comm. c. 8.

The Commissioners for auditing the public accounts, in the year 1786, strongly recommended the adoption of some effectual plan for the reduction of the National Debt itself, and various measures were taken accordingly towards accomplishing this purpose.

In the first place, a Sinking Fund of one million, payable at the Exchequer quarterly in every year, was created in the year 1786; (See Stat. 26 Geo. 3. c. 31;) to which certain annuities were directed to be added, upon the expiration of the terms for which they were respectively granted, and the whole was vested in Commissioners for reduction of the National Debt; these sums were afterwards directed to be paid out of the Consolidated Fund, (Stat. 27 Geo. 3. c. 13. § 19;) and such annuities for lives as should remain unclaimed for three years, were added to the same Sinking Fund; which was nevertheless to operate no longer as a sinking fund, at compound Interest, whenever the moneys annually placed to the account of the commissioners, including the original million, should amount to the sum of four millions. From this period, the annual sum of four millions was still to be applied to the same purpose; but the interest of the debt purchased thereby, and the annuities which might afterwards expire, were to remain at the disposition of parliament.
In the year 1792, a further provision was made; (by stat. 32 Geo. 3. c. 55;) that when the interest of any redeemable stock is reduced, or the capital paid off by money raised at a lower interest, a sum, equal to the interest so saved, should be issued quarterly from the Consolidated Fund, and placed to the account of the commissioners; the operation of this fund at compound interest was by this act directed to cease, whenever the money annually paid to the commissioners on this account, as well as on those above stated, should amount to three millions, exclusive of the original million, or of any additions which parliament may direct to be made thereto, or of any sinking fund which may be created in consequence of new loans. From this period the annual sum of four millions, so constituted, was also to be applied as before directed. By the same act it was also enacted, “for the more effectually preventing the inconvenient and dangerous accumulation of Debt thereafter in consequence of any further loans;” That an annual sum, equal to one hundredth part of the capital stock created by any such Loans, should be paid to the Bank, and placed to the account of the commissioners for the reduction of the National Debt, without any limits to its operation short of redeeming the whole of the stock created by such Loans respectively.

To accelerate the effect of all the preceding measures, Parliament, in every year from 1792 to 1802, uniformly granted and applied the sum of 200,000l., pursuing the principle laid down in times of peace, even through a period of war, notwithstanding the necessary increase of public burthens.

In order, however, that the Public may have a continual view of the state of the National Debt, and also of its progressive reduction, it is further provided that an account of each shall be laid before both Houses annually. By stat. 27 Geo. 3. c. 13. § 72. it was enacted that there shall be presented, within fourteen days after the commencement of every Session, an account of all additions which shall have been made to the annual charge of the Public Debt by the interest or annuities for or on account of any loan made, after the passing of that act, and within ten years next preceding the date of such account; together with an account of the produce, within the year next preceding, of any duties which shall have been imposed, or of any additions which shall have been made to the revenue for the purpose of defraying the increased charge occasioned by every such loan respectively: And for the purpose of shewing the progressive reduction of the Public Debt, an account must also be presented on the 15th of February in every year, (or if Parliament be not then sitting, then within fourteen days after the commencement of the then next session,) stating the sums applied by the Bank to the purchase of stock for the commissioners, and the amount of the stock thereby purchased, and of the interest thereon; and stating also the amount of annuities which have expired within the year; and further shewing the time of such purchases, and of the prices paid, and of the whole expence attending the execution of the powers vested in the commissioners. (Stat. 26 Geo. 3. c. 31. § 18.)

The act 42 Geo. 3. c. 71. § 1, 2, 3, repeals the provision in the acts 26 Geo. 3. c. 31, and 32 Geo. 3. c. 55, which directed that when the sums applicable, under those acts, to the payment of the National Debt, should amount to four millions, and three millions respectively.
as before stated, the dividends on the stock in future to be paid off should not be issued, so as to increase the Fund for payment of the debts. By § 2, 3, such annuities as shall in future fall in shall not be applicable to the payment of the National Debt. By § 4 of the same act, from January 5, 1803, the 200,000l before that time annually issued is made a permanent charge, to be paid quarterly out of the Consolidated Fund, and applied in redemption of the Debt. By the same act, § 5, it is also directed that the money applicable to the redemption of the Debt shall accumulate and be applied until the whole shall be paid off within forty-five years. By this act provision is also made for the redeeming so much of the National Debt as is or may be contracted by loans in England for the benefit of Ireland.

By 47 Geo. 3. stat. 1. c. 55, for charging a loan of 12,000,000l. on certain duties of excise, provision is made for applying 1,200,000l. annually in the paying off the stock created by that loan. § 6; and it is enacted that when such stock shall be paid off the issuing of that fund shall cease.

By the Irish act 37 Geo. 3. c. 27, (amended by 42 Geo. 3. c. 57.) provisions are made for the redemption of the National Debt in Ireland, similar to those in the British acts, 26 & 32 Geo. 3, above quoted.

By the Accounts delivered to the House of Commons up to the 5th of January, 1807, it appeared that the total amount of the British National Debt was within a small fraction of 670 millions: that of this the sum of nearly 23 millions had been purchased by the operation of the acts for redemption of the Land-tax, (see title Land-Tax,) and nearly 114 millions more by the operation of the acts 26 Geo. 3. 32 Geo. 3, and 42 Geo. 3, herein before detailed, leaving 535 millions and a fraction then to be redeemed. The whole amount of the Fund then annually applicable to the reduction of the Debt was 8,266,000l. The total amount of Debt for Ireland, funded in Great Britain, was 41,718,000l.; the sum redeemed 3,721,341l.; the Debt unredeemed 37,996,659l.; and the annual Funds applicable 535,959l. 3s. 10d. The whole amount of Debt of Ireland, funded there, was above 17 Millions; of which 2 Millions was redeemed; leaving unredeemed 15 Millions; and the annual Fund then applicable about 300,000l., besides annuities falling in.

Besides the above National Debts there was also a sum of 3,669,300l. 3 per cents. created on account of a loan to the Emperor of Germany, which was reduced by its own sinking Fund to 2,934,696l.; the annual Fund being 58.75l. per annum.

NATIVI DE STIPITE. In the survey of the Duchy of Cornwall, there is mention of nativi de stipite, and nativi conventimaritii; the first were villeins or bondmen, by birth or stock; the other by contract or agreement. L.L. Hen. 1. cap. 76. And in Cornwall it was a custom, that a freeman marrying nativum, if he had two daughters, one of them was free, and the other villein. Bract. lib. 4. c. 21, 22.

NATIVITY, nativitas.] Birth, or the being born in a place. The casting the Nativity, or by calculation seeking to know how long the Queen should live, &c. was made felony, by stat. 23 Eliz. c. 2. Nativitas (Nativity) was antiently taken for the servitude, bondage, or villeinage, of women. Leg. Will. 1.

NATIVO HABENDO, A writ that lay to the sheriff for a lord who claimed inheritance in any villein, when his villein was run away,
for the apprehending and restoring him to the lord: and the sheriff
might seize the villein, and deliver him unto his lord, if he confessed
his villeinage; but if he alleged that he was a freeman, then the she-
 riff ought not to seize him, but the lord was to sue forth a
pnone to re-
move the plea before the justices of C. B. &c. And if the villein
purchased a writ de libertate proroganda before the lord had taken out
the
pnone, it was a supersedeas to the lord, that he proceeded not on
the writ of
Brev. 171, 172.

This writ nativo habendo was in nature of a writ of right, to recov-
er the inheritance in the villein; upon which the lord was to pursue
his plaint, and declare thereupon, and the villein to make his de-
fence so as the freedom was to be tried. New Nat. Br. 171, 173. See
title Villein.

NATIVUS, He who was born a servant, and so differed from him
who suffered himself to be sold, of which servants there were three
sorts, bondmen, natives, and villains; bondmen were those who bound
themselves by covenants to serve, and took their name from the word
bond; natives we spoke of just before; and villains were such who
belonged to the land, tilled the lord's demesnes, nor might depart
thence without the lord's licence. Spellman's Gloss. See Chart. R. 2;
Qua omnes manumittit a bondagio in com. Hertf. Walsingham, p. 254
Cowell. See title Villain.

NATURAL AFFECTION, naturalis affectio.] Is a good con-
sideration in a deed; and if one, without expressing any consideration,
covenant to stand seized to the use of his wife, child, or brother, &c.
here the naming them to be of kin, implies the consideration of Na-
tural affection, whereupon such use will arise. Cart. 138. See title
Consideration.

NATURALIZATION; See title Alien II. III.


NAVAGIUM, A duty incumbent on tenants, to carry their lord's
goods in a ship. Mon. Angl. i. 922.

NAVAL STORES, Persons stealing or imbezzling any of the
King's Naval Stores, to the value of twenty shillings, are guilty of
felony without benefit of clergy. Stat. 22 Car. 2. caf. 5. And by stat.
1 Geo. 1. st. 2. c. 23, the treasurer and commissioners of the navy are
empowered to inquire of Naval Stores imbezzled, and appoint per-
sons to search for them, &c. who may go on board ships, and seize
such Stores; and the commissioners, &c. may imprison the offend-
ers, and fine them double value, the Stores being under the value of
twenty shillings.

None but the contractors with the commissioners of the navy, shall
make any Stores of war, Naval Stores, with the marks commonly
used to his Majesty's Stores, upon pain of forfeiting two hundred
pounds. And persons in whose custody such Stores shall be found
concealed, are liable to the same penalty. Stat. 9 & 10 W. 3. c. 41.

The stat. 3 Ann. c. 10, was made for the encouragement of the im-
portation of Naval Stores from the plantations in America, and for
preservation thereof in those countries; inflicting penalties for cut-
ting down pine, or pitch trees, under such and such sizes, &c. To the
like purpose, and for the making the same more effectual, is the stat.
8 Geo. 1. caf. 12.

Also Naval Stores are imported here from Scotland, under an en-
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encouragement by statute; and a premium is given for the importing of Naval Stores from America and North Britain, of one pound per ton, for masts and pitch, &c. by stat. 2 Geo. 2. cap. 55.

Justices may mitigate the penalty of concealing Stores; stat. 9 Geo. 1. c. 8. Justices of assize and quarter sessions may hear and determine offences relating to Stores; stat. 17 Geo. 2. c. 40. Pre-emption of Stores imported in neutral ships given to the commissioners of the navy during the war; stat. 19 Geo. 2. c. 36. The exportation of Naval Stores prohibited; stat. 33 Geo. 2. § 1.


NAVIGABLE RIVERS; See Rivers.

NAVIGATION, Is the art of sailing at sea, also the manner of trading; and a navigator is one who understands Navigation, or imports goods in foreign bottoms. See title Longitude.

NAVIGATION-ACTS.

Those Statutes which have from time to time been made for the encouraging and increasing of Shipping and Navigation.

The following is a general view of the laws which the Legislature has seen fit to provide for this purpose; See Reeves's History of the law of Shipping and Navigation.

This system is a series of restrictions and prohibitions, and it tends to the establishing of monopoly; but it is a plan of regulation which our ancestors, who were more versed in the practical philosophy of life than the speculative one of the closet, thought necessary for the welfare and safety of the kingdom. Reasoning from the self-preservation of an individual to the self-preservation of a people, they considered the defence of this island from foreign invasion, as the first law in national policy; and judging that the dominion of the land could not be preserved without possessing that of the sea, they made every effort to procure to the nation a maritime power of its own. They wished that the merchants should own as many ships, and employ as many native mariners as possible. To induce, and sometimes to force them to this application of their capital, restrictions and prohibitions were devised. These affected not only foreigners but natives. The interests of commerce were often sacrificed to this object. Trade was considered principally as the means of promoting the employment of ships, and was encouraged chiefly as it conduced to the one great national object, the Naval strength of the Country.

This policy was pursued by those who came after them in directing the public councils; and in the last century, when many institutions of our ancestors fell a sacrifice to the rage of reformation, the wisdom of the Navigation System was respected; measures were even taken for rendering it more narrow and restrictive.

If the wisdom of any scheme of policy is to be measured by its effects and consequences, our Navigation System is entitled to the praise of having attained the end for which it was designed. Whether we regard the primary or inferior objects in this system, whether it is the increase of shipping, the extension of our foreign trade, or the strength of our navy, they have all advanced to a degree of consideration unexampled, and they owe that advancement to this system.
The increase of our trade and Naval strength has kept pace with
that of our shipping and Navigation. We can reflect with pride, that
our foreign trade, combined with our manufactures and domestic in-
dustry, enables us to raise annually sixte en millions of money with
more ease than four millions were raised during the reign of King
William; and this upon a people, who, in their different ranks, enjoy
more riches, more competency, and more comfort, than any people
in Europe; and who are more industrious, because they are better
protected by a Constitution, which has been progressively improving,
both in the theory and practice of it to the present time.

The first grand scheme for establishing English Shipping and Na-
vation on a footing of distinction, that had never been before at-
ttempted, was brought forward by the famous Act of Navigation, passed
by the Usurpation-Parliament, 9th of October, 1651. In this act we
may see principles, which had been gradually developing in former
laws, (and which had been enforced, repealed, or qualified, according
d to different opinions prevailed, and circumstances allowed,) now
adopted and expanded to their full extent, in one system of regulation,
that has subsisted, without any material change in its substance,
to the present day.

One principal object of jealousy at the time of passing this act,
was the immense carrying trade possessed by the Dutch; and the
title of the act is suited to this leading idea, "Goods from foreign
132. The portion of the carrying trade with our colonies, which the
Dutch had obtained, was the most serious grievance, and that which
the nation bore with least patience.

The next main object was, the Fisheries, in which the rivalship
and success of the Dutch had been long regarded as a national loss
and disgrace.

From these two motives arose the scheme of Navigation, which the
bold reformers of that day designed, for increasing the naval strength
and consideration of this country. It may be said to have originated
in jealousy, and to have caused the decline and diminution of a neigh-
boring nation; but it was founded in a policy, which the necessities
and the advantages of an insular situation suggested; and the nation
having, from supineness, or ignorance, permitted an active neighbour
so long to take a share in the fisheries and foreign trade which be-
longed to us, thought itself justified in asserting, at length, its rights,
and carrying them into full effect by this legislative act. And although
this measure brought upon the country an obstinate and bloody war,
and though the authority on which it was founded was unconstitu-
tional and usurped, yet a plan so wise and solid was strenuously main-
tained by those who formed it; and it was not suffered to pass away
with the transient government from which it derived its origin; the
leading features of it were adopted by the lawful government, at the
restoration of Ch. II. when a new act of Navigation was passed.

The present condition of our Marine (says Blackstone) is in a great
measure owing to the salutary provisions of the statutes called the
Navigation Acts; whereby the constant increase of English shipping
and seamen was not only encouraged, but rendered unavoidably ne-
necessary. By stat. 5 R. 2. c. 3, in order to augment the navy of Eng-
lend, then greatly diminished, it was ordained, that none of the King's
liege people should ship any merchandize out of or into the realm,
but only in ships of the King's ligeance, on pain of forfeiture. In the next year, by stat. 6 R. 2. c. 8, this wise provision was enervated, by only obliging the merchants to give English ships (if able and sufficient) the preference. But the most beneficial statute for the trade and commerce of these kingdoms is that Navigation Act, the rudiments of which were first framed in 1650, with a narrow partial view; being intended to mortify our own sugar islands, which were disaffected to the Parliament, and still held out for Charles II.; by stopping the gainful trade which they carried on with the Dutch, and at the same time to clip the wings of those our opulent and aspiring neighbours. This prohibited all ships of foreign nations from trading with any English plantations, without licence from the Council of State. In 1651, the prohibition was extended also to the mother country; and no goods were suffered to be imported into England, or any of its dependencies, in any other than English bottoms; or in the ships of that European nation, of which the merchandise imported was the genuine growth or manufacture. At the restoration, the former provisions were continued by stat. 12 Charles II. c. 18, with this very material improvement, that the master and three-fourths of the mariners shall also be English subjects; under forfeiture of the ship, and all goods imported or exported. 1 Comm. c. 13. p. 417.

It has been stated and recognized by very high authority; [See the Evidence of Mr. Irving, the Inspector-general of Great Britain, before the Finance Committee of the House of Commons in their 4th Report, Appendix L. 3.;] that the fundamental principles of our commercial jurisprudence will be found chiefly in the acts of the 12th Car. 2. (c. 18.); 13 & 14 C. 2. (c. 11.); 22 & 23 C. 2. (c. 26.); 25 C. 2. (c. 7.); and 7 & 8 W. 3. (c. 22.); which latter act has been greatly extended and improved by the act 26 Geo. 3. (c. 60.); [See also the Irish act 27 Geo. 3. c. 20, and the act 42 Geo. 3. c. 61, for regulating the Trade and Navigation of Ireland; and this Dict. tit. Ireland.

The prominent features of this Code are, on the same authority, stated to be the following. First, the securing to our own shipping, as far as circumstances would safely admit, the Carrying Trade, as the great source of our Naval strength; secondly, the confining our trade, as much as possible, without exciting jealousy in our neighbours, to the Capital of our own merchants by excluding foreigners, who are not the subjects of the countries of which the articles are the growth, produce, or manufacture, from becoming the intermediate negotiators: and thirdly, the encouragement of our own manufactures by checking, through the means of absolute prohibitions or high duties, the introduction into the same market of such articles of foreign manufactures as might rival our own; especially those in a progressive state of improvement.

Under the operation of these great fundamental laws (it seems universally admitted that) our trade, our Navigation, our revenue, and our manufactures, have flourished beyond the example of all other nations.

Commerce early became an object of great importance in this kingdom; and as merchants in all countries possess a large proportion of the circulating medium, it was natural for the government to look to imposts on trade as a source of revenue. Thus a system of Taxation was established at a period almost coeval with the commencement of our trade, and has been progressively extended ever
since. In 1797, about 9 millions of the gross, or 7 millions of the net, revenue of Great Britain were drawn from duties on imports and exports. In 1806, the gross revenue of Customs was upwards of 9,670,000l.; the net produce thereof being 7,774,000l.

This Stat. 12 Car. II. c. 18, is intituled "An Act for the Encouraging and Increasing of Shipping and Navigation," which pursues the policy and detail of the one made in 1651, using sometimes its very words. It has made however some alterations, and has, as already remarked, added considerably to the scope of the former act.

Having thus slightly traced the history of these celebrated laws, we shall proceed by endeavouring to separate such matter as is repealed or become obsolete; and to extract so much as constitutes the law of the present day; not indeed the whole particulars of it, but such an outline as may easily be filled up by a reference to the statutes, and Mr. Reeves's excellent digest of them on this subject. To assist the reader's mind, these principles are condensed into certain rules and the exceptions to them; and to each rule and exception are subjoined the grounds and reasons on which they are respectively founded.

The Act of Navigation, as the stat. of 12 Car. 2. c. 18, is usually styled, is looked up to as the origin and great charter of our Navigation System; upon which all subsequent laws may be considered as comments. It seems most natural therefore to class our proposed rules according to the course directed by that act, and under the heads into which that is divided. These are,

I. The Plantation Trade.
II. The Trade with Asia, Africa, and America.
III. The European Trade.
IV. The Coasting Trade.
V. The Fisheries; and lastly,
VI. British Ships and their registry.

I. Rule 1. No goods or commodities may be imported into, or exported out of, any colony or plantation to his Majesty in Asia, Africa, or America, belonging, or in his possession, but in British-built ships owned by British subjects, and navigated by a master and three-fourths at least of the mariners, British subjects; (or in prize-ships, legally condemned and navigated in like manner. See Reeves, 82. & 83. post. Rule 21.) Stat. 7 & 8 Wm. 3. c. 22.

[Except such goods and commodities as may be imported into, and exported from, the free ports in the islands of Jamaica, Grenada, Dominica, and New Providence, by foreign ships, owned and navigated by the subjects of some foreign European Sovereign or State, or by persons inhabiting any country under the dominion of some foreign European Sovereign or State, on the continent of America; and except salt, which may be exported from Turks Islands in ships belonging to any of the United States.]

These exceptions are made by stat. 27 Geo. 3. c. 27, for establishing free ports; (explained by stat. 30 Geo. 5. c. 29: 31 Geo. 3. c. 38: 33 Geo. 3. c. 50.) & stat. 28 Geo. 3. c. 6. §9, respecting Turks Islands. See Reeves, 355, 373.

The above stat. 27 Geo. 3. c. 27, is made perpetual by stat. 32 Geo. 3. c. 37. But see now 45 Geo. 3. c. 57. at the end of this Division.
Rule 2. No sugar, tobacco, cotton, wool, indigo, ginger, fustick, or other dying woods, (stat. 12 Car. 2. c. 18. [Nav. Act.] § 18.) rice, molasses, (stat. 3 & 4 Ann. c. 5.) copper, ore, (stat. 8 Geo. 1. c. 18. § 22.) coffee, pimento, coca-nuts, whale fins, raw silk, hides, or skins, pot or pearl-ashes, iron, or lumber, of the growth, production, or manufacture, of any British plantation in Asia, Africa, or America, (stat. 4 Geo. 3. c. 15. § 27, 28.) may be transported into any place whatsoever, other than to some British plantation, or to Great Britain; or (by stat. 20 Geo. 3. c. 10; and stat. 33 Geo. 3. c. 63,) to Ireland.

[Except Sugar, which may be carried from the sugar colonies to any port in Europe, in a ship clearing out from Great Britain, and having a licence from the commissioners of the customs for that purpose; and lumber, which may be carried from any British colony or plantation to the Madeiras, or the Western Islands called Azores, or to any part of Europe to the southward of Cape Finisterre.] See 45 Geo. 3. c. 57. at the end of this Division.

Rule 3. All other goods and commodities, not so enumerated, being the growth, production, or manufacture of any British colony or plantation in Asia, Africa, or America, may be transported to any place whatsoever.

Because what is not prohibited or restricted by any statute, is open and free: And by stat. 30 Geo. 3. c. 29. § 2, goods, the growth of the countries bordering on Quebec, and imported into that province, may be imported into Great Britain from thence.

[Except hops to Ireland, stat. 5 Geo. 2. c. 9: rum and other spirits, to the Isle of Man, stat. 5 Geo. 3. c. 39; rum to Guernsey and Jersey, stat. 9 Geo. 3. c. 28. § 1, 2, 3; and East-India goods; which must be brought to the port of London; stat. 7 Geo. 1. c. 21. § 9.]

Rule 4. No goods or commodities of the growth, production, or manufacture of Europe, may be imported into any land, island, plantation, colony, territory, or place, to his Majesty belonging, or in his possession, in Asia, Africa, or America, but such as shall be shipped in Great Britain; Stat. 15 Car. 2. c. 7. § 6; or Ireland: stat. 20 Geo. 3. c. 6, 7, 10; and stat. 33 Geo. 3. c. 63.

[Except Salt for the fisheries of Newfoundland, and wines from the Madeiras, and from the Western Islands or Azores; (stat. 15 Car. 2. c. 7. § 7;) craft, clothing, or other goods, the growth, production, or manufacture of Great Britain, Guernsey, or Jersey, or food or victuals, the growth, production, or manufacture of Great Britain, Ireland, Guernsey, or Jersey, from Guernsey, or Jersey to Newfoundland, or any other British colony, where the fishery is carried on, for the use of the fishery. Stat. 9 Geo. 3. c. 28.—And fruit, wine, oil, salt, or cork, from Gibraltar and Malta, in ships importing British-American fish. 46 Geo. 3. c. 116.]
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If the before-mentioned prohibitions and restrictions are confined by the statutes enacting them to Colonies and Plantations, then all islands, lands, territories, or places, that are judged not to be colonies or plantations, (if there are any such) are not within the meaning of them; and such lands, islands, territories, and places, are only included in the first section of the act of Navigation, and the sixth section of stat. 15 Car. 2. c. 7, where they are so named; and not in the second section of the act of Navigation concerning the enumerated goods, where colonies and plantations only are named; nor in stat. 7 & 8 Will. 3. c. 22, which confines the import and export of the colonies and plantations to British-built ships. See Reeves, 134—7.

Rule 6. Sugar, molasses, cocoa-nuts, ginger, and pimento, and all goods and commodities which were not prohibited in the year 1788, to be exported to any foreign country in Europe, may be exported from the West India Islands to the United States. Stat. 28 Geo. 3. c. 6. § 3.

Rule 7. No goods or commodities may be imported from the United States into the West-India Islands, except tobacco, pitch, tar, turpentine, hemp, flax, masts, yards, bowsprits, staves, heading-boards, timber, shingles, and lumber of any sort; horses, neat-cattle, sheep, hogs, poultry, and live-stock of any sort; bread, biscuit, flour, peas, beans, potatoes, wheat, rice, oats, barley, and grain of any sort, being the growth or production of any of the territories of the United States. Stat. 28 Geo. 3. c. 6. § 1.

Rule 8. No goods or commodities may be imported from the United States by sea or coastwise into the province of Quebec, or the countries or islands within that government, or up the river St. Lawrence, (stat. 28 Geo. 3. c. 6. § 14,) nor at all into the province of Nova Scotia or New Brunswick, the islands of Cape Breton, St. John's, or Newfoundland, or any country or island within their respective governments. Stat. 28 Geo. 3. c. 6. § 12.

[Except that the Governors of Nova Scotia, New Brunswick, the islands of Cape Breton, and St. John's, may, in cases of public emergency and distress, authorize the importation of scantling, planks, staves, heading-boards, shingles, hoops, or squared timber of any sort; horses, neat-cattle, sheep, hogs, poultry, or live-stock of any sort; bread, biscuit, flour, peas, beans, potatoes, wheat, rice, oats, barley, or grain of any sort, for a limited time; and the Governor of Newfoundland, being impowered by order of his Majesty in council, may authorize, in case of necessity, the importation of bread, flour, Indian-corn, and live stock for the then ensuing season only. Stat. 28 Geo. 3. c. 6. § 13.]

And by stat. 30 Geo. 3. c. 8. § 1, the Governor of Quebec may authorize the importation of cattle, grain, or flour by sea or coastwise, from the United States, by British Subjects in British vessels. By stat. 33 Geo. 3. c. 50. § 14, pitch, tar, and turpentine, the produce of the United States, may now be imported into Nova Scotia and New Brunswick, by British Subjects in British ships.

By § 10, of the above stat. 28 Geo. 3. c. 6, no tobacco, pitch, tar, turpentine, hemp, flax, masts, yards, bowsprits, staves, heading-boards, timber, shingles, or lumber of any sort; bread, biscuit, flour, peas, beans, potatoes, wheat, rice, oats, barley, or grain, shall be im-
ported into the *West India* islands, including the *Bahama* and *Bermudas* islands, from any of the foreign European *West India* islands; or (by stat. 31 Geo. 3. c. 38, § 1,) from any foreign colony or plantation whatsoever belonging to any foreign European State; on penalty of forfeiture, except by authority of the respective Governors in cases of public emergency, and except timber of certain species under stat. 33 Geo. 3. c. 50. § 13. See 45 Geo. 3. c. 57. at the end of this Division.

**Rule 9.** Goods and merchandize being the growth or production of any of the territories of the United States of America, may be imported directly from thence into Great Britain in British-built ships, owned by British Subjects, and navigated according to law, or in ships built in the countries belonging to the United States, owned by such Subjects, and navigated by a master and three-fourths of the mariners of those countries, under certain Duties specified. See 37 Geo. 3. c. 97; and, as to importation from America to Ireland, see 41 Geo. 3. c. 95. And, as to importation from New Orleans to Great Britain, see 43 Geo. 3. c. 128. § 4; and 30 Geo. 3. c. 26. § 2; as to Yucatan.

By 45 Geo. 3. c. 57, to consolidate and extend the laws for allowing the importation and exportation of goods into and from the Ports in the *West Indies*, it is enacted "that wool, cotton wool, indigo, cochineal, drugs of all sorts, cocoa, log-wood, fusick and all sorts of wood for dyers, silk, hides, skins, and tallow, beaver and all sorts of furs, tortoise shells, hard wood or mill timber, mahogany and all other woods for cabinet ware, horses, asses, mules, and cattle, the product of any foreign European Colonies in America, and all coin, bullion, diamonds, and precious stones, may be imported from thence into certain ports in the act named of Jamaica, Grenada, Dominica, Antigua, Trinidad, Tobago, Tortola, the Bahamas, St. Vincent, and Bermudas, in single decked ships belonging to the inhabitants of such colonies, § 1. [By 47 Geo. 3. stat. 2. the like importation is admitted into Curacoa.]

By § 2, 3, of the said act, 45 Geo. 3. c. 57, tobacco, the growth of foreign islands, &c. in the *West Indies*, may be imported into the said ports of the islands above mentioned, and thence exported to any port in the United Kingdom, on paying like duty as British West India tobacco.

By § 4, 5, and 6, foreign sugar and coffee is allowed to be imported, duty free, into such ports of the Bahamas, Bermudas, and Caicos islands, as are named in the acts, or may be directed by order in council, and thence exported, if into the United Kingdom, under the duties imposed on sugar and coffee not of the British plantations. [See also as to Tortola, 46 Geo. 3. c. 72. § 2.]

No goods of foreign American colonies, other than those enumerated before in the act, shall be imported in foreign ships into any of the ports before-mentioned, on penalty of forfeiture thereof and of the ships. 45 Geo. 3. c. 57. § 7.

British rum (and negroes, but see title Slave Trade,) may be exported from the said ports to the foreign American colonies; and also all goods legally imported; (except certain Naval Stores particularised,) § 8.

European goods, and goods legally imported from foreign Ameri-
can colonies, may be exported from all the said ports in British vessels to British colonies. § 9.

Wool, cotton wool, indigo, cochineal, drugs, cocoa, log-wood, fus-tick, dyer’s wood, hides, skins, and tallow, furs, tortoise shell, mahogany and cabinet wood, are allowed to be imported from the said ports into the United Kingdom, under the regulations of 12 C. 2. c. 18: 22 & 23 Car. 2. c. 26: 20 Geo. 3. c. 10—45 Geo. 3. c. 57. § 11.

No East India goods shall be exported from any of the said ports to any British colony in America. Foreign ships arriving at any of the said ports with East India goods on board, are declared forfeited, § 12.

II. Rule 10. No goods or commodities of the growth, production, or manufacture of Asia, Africa, or America, may be imported into Great Britain, in any other than in British-built ships, or in British ships owned by his Majesty’s Subjects, and navigated by a master and three-fourths at least of the mariners British Subjects. Stat. 12 Car. 2. c. 18. (Navigation Act,) § 3.

[Except such goods and commodities of the growth or production of the United States of America, as are permitted to be imported in ships belonging to the United States as it is stated in the ninth rule.]

This is the only direct exception; but some of the instances which are given as exceptions to the subsequent rule are exceptions also to this, as far as they relate to ships.

Rule 11. No goods or commodities of the growth or production, or manufacture of Asia, Africa, or America, may be shipped or brought from any other place or country, but only from those of their growth, production, or manufacture, or from those ports where only they can be, or are, or usually have been, first shipped for transportation.

This restriction applies as well to the trade with the plantations as the general trade with Asia, Africa, or America; and is founded on the construction of stat. 12 Car. 2. c. 18, (Navigation Act,) § 4.—See Reeves, 140—143.

[Except the commodities of the Streights or Levant Seas, from the usual ports for lading them within the Streights or Levant Seas. Stat. 12 Car. 2. c. 18. §12. East India commodities, from the usual ports for lading them to the southward and eastward of the Cape of Good Hope. Id. § 13. The goods of the Spanish or Portuguese plantations or dominions, from the ports of Spain or Portugal, or the Western Isles, commonly called Azores, or the Madeira or Canary Islands. Id. § 14. Bullion and prize goods, from any port in any sort of ships. Id. § 15. Jesuits bark, sarsaparilla, balsam of Peru and Tolu, and all drugs the produce of America, from the British plantations. Stat. 7 Ann. c. 8. Raw silks, or other goods of Persia, from any place belonging to the Emperor of Russia, in British-built ships. Stat. 14 Geo. 2. c. 36. Cochicine, by stat. 13 Geo. 1. c. 15, and indigo, by stat. 7 Geo. 2. c. 18, from any port in British ships, or ships of a State in amity. Gum-senega, by stat. 25 Geo. 2. c. 32; coarse printed calicoes, cowries, drangoes, and other East India goods, prohibited to be worn here, from any port in Europe, in British ships. Stat. 5 Geo. 3. c. 30. § 1. Cotton wool, stat. 5 Geo. 3. c. 52. § 20; and goat-skins, raw, or undressed, 15 Geo. 3. c. 35. § 1, 2, (made perpetual by stat. 31 Geo. 3. c. 43.) from any place, in British-built ships; and goods the merchan-
dize of the dominions of the Emperor of Morocco, from Gibraltar, in
British ships, by stat. 27 Geo. 3. c. 19. § 11.

See 37 Geo. 3. c. 97, before alluded to in Rule 9, for regulating the
Trade between Great Britain and America: and also 41 Geo. 3. (U.
K.) c. 95, as to the Trade between Ireland and America.

III. RULE 12. No goods or commodities of the growth, produc-
tion, or manufacture of Europe, herein after enumerated and descri-
bcd, namely, no goods or commodities the growth, production, or
manufacture of Muscovy, or of any territories belonging to the Em-
peror of Russia; nor any sort of masts, timber, or boards; no foreign
salt, pitch, tar, rosin, hemp, or flax, raisins, figs, prunes, olive-oils;
no sort of cori, grain, sugar, pot-ashes, wines, vinegar, or spirits call-
ed aquavitæ, or brandy wine, may be imported, but in British-built
ships, or in ships owned by His Majesty's Subjects, and navigated by a
master and three-fourths at least of the mariners British Subjects;
nor any currits or commodities of the growth, production, or manu-
ufacture of any country belonging to the Turkish Empire, may be im-
ported, but in British-built ships owned by British Subjects and navi-
gated by a master and three-fourths at least of the mariners British
Subjects; or, in ships of the built of any country or place in Europe
under the dominion of the Sovereign or State in Europe of which
such goods are the growth, production, or manufacture; or of the
built of such port where only the said goods can be, or most usually
are, first shipped for transportation; and navigated by a master and
three-fourths at least of the mariners of that country, place, or port.

This rule is founded on stat. 12 Car. 2. c. 18, (Nav. Act.) § 8,
amended by stat. 27 Geo. 3. c. 19. § 10.

RULE 13. No sort of wines, (other than Rhenish,) no sort of spice-
ery, grocery, tobacco, pot-ashes, pitch, tar, salt, rosin, deal-boards, fir,
timber, or olive-oil, may be imported from the Netherlands, or Ger-
many, upon any pretence, in any sort of ships or vessels whatsoever.
Stat. 13 & 14 Car. 2 c. 11. § 23. See Reeves, 202, 205.

[Except timber, fir, planks, masts, and deal boards, the production
of Germany, from any port or place in Germany, by British Subjects
in British-built ships: Stat. 6 Geo. 1. c. 16. § 2; and wines, the growth
or production of Hungary, the Austrian dominions, or any part of
Germany, from the Austrian Netherlands, or any port or place be-
longing to the Emperor of Germany, or the House of Austria, in any
such ships as are described in the twelfth rule. Stat. 22 Geo. 2. c. 78.
§ 2: amended by stat. 27 Geo. 3. c. 19. § 10.]

RULE 14. Bullion and prize goods, and all other goods and com-
modities of the growth, production, or manufacture of Europe, (not
prohibited absolutely to be imported,) may be imported from any
country, place, or port, in any sort of ships, owned and navigated in
any sort of manner.

Because bullion and prize goods are excepted by § 15, out of all
provisions of the Act of Navigation; and because what is not pro-
hibited or restricted by any statutes, is open and free.

IV. RULE 15. No person may land or carry on board any ship or
vessel, other than a British-built ship, or a British ship owned by Bri-
tish Subjects, and navigated by a master and three-fourths at least of
the mariners British Subjects, (by stat. 34 Geo. 3. c. 68, after the then existing war navigated wholly by British Subjects,) any commodities or things of what kind soever from any port or creek of Great Britain or Ireland, or of the islands of Guernsey, or Jersey, to another port or creek of the same, or any of them. Stat. 12 Car. 2. c. 18, (Nav. Act.) § 6.

Rule 16. Every foreign-built ship or vessel, bought and brought into Great Britain to be employed in carrying goods and merchandise from any port to port, is to pay at the port of delivery for every voyage five shillings per ton, over and above all other duties. Stat. 27 Geo. 3. c. 13. § 32.

V. Rule 17. (See this Dictionary, title Fish.) Fresh fish of every kind caught by the crew of any British-built ship, or vessel owned by British Subjects usually residing in Great Britain, Ireland, Guernsey, Jersey, or Man, and navigated by a master and three-fourths at least of the mariners British Subjects, may be imported in such ships free of duty. Stat. 27 Geo. 3. c. 13. § 32.

Rule 18. No sort of fish whatever of foreign fishing, (except eels, stock fish, anchovies, sturgeon, botargo, or caveare, turbots, lobsters, and oysters,) may be imported into Great Britain.

This depends on stat. 10 & 11 Will. 3. c. 24, § 13, 14. stat. 1 Geo. 1. st. 2. c. 18. § 1, 2, 3, enforced by stat. 9 Geo. 2. c. 33: and stat. 26 Geo. 3. c. 81. § 43, 44. Oysters are not specially excepted in any statute, but there is a duty on them in the Customs Consolidation Act; (stat. 43 Geo. 3. c. 68.) which not being leviable on British caught fish, must be construed as a permission to import foreign caught oysters.

Rule 19. Perpetual bounties are payable on the export of pilchards, or shads, cod-fish, ling, or hake, whether wet or dried, salmon, white-herrings, red-herrings, and dried red sprats, being of British fishing and curing. Stats. 5 Geo. 1. c. 18. § 6: 26 Geo. 3. c. 81. § 16.

Rule 20. Temporary Bounties are payable on the tonnage of ships carrying on the British and Greenland Fisheries; on the quantity of fish taken in the British and Newfoundland Fisheries; on the quantity of oil, head-matter, blubber, and whale-fins, taken in the Southern whale-fishery, and on the export of pilchards.—Seal-skins, head-matter, blubber, and whale-fins, taken in the Newfoundland, Greenland, and Southern whale-fisheries, may be imported free of duty, provided British-built ships are employed, owned by British Subjects, usually residing in the King's European dominions, and navigated by a master and three-fourths at least of the mariners usually residing in the King's European dominions. These temporary bounties all depend on the statutes 26 Geo. 3. c. 81. (explained by stat. 27 Geo. 3. c. 10:) 26 Geo. 3. cc. 26, 41, 50, explained by stats. 28 Geo. 3. c. 20: 29 Geo. 3. c. 53: & 32 Geo. 3. c. 22: and such statutes as are from time to time made for amending or continuing them. See stats. 31 Geo. 3. c. 45: 32 Geo. 3. c. 22: 33 Geo. 3. cc. 42, 58. And see stat. 34 Geo. 3. c. 68. § 4, under which, after the then existing war, no vessels are to fish on the coasts, unless wholly manned with British Subjects; but foreign mariners are allowed, under certain regulations, to be on board such ships, to instruct British mariners in fishing, &c.
VI. Rule 21. A British-built ship is such as has been built in Great Britain, or Ireland, Guernsey, or Jersey, or the Isle of Man, or in some of the colonies, plantations, islands, or territories, in Asia, Africa, or America, which at the time of building the ship belonged to, or were in the possession of, his Majesty; or any ship whatsoever which has been taken and condemned as lawful prize.

[Except such British-built ships as shall be rebuilt or repaired in any foreign port or place to an amount exceeding fifteen shillings per ton, unless such repairs shall have been proved to be necessary to enable the ship to perform her voyage.]

This rule and exception are contained in the first and second sections of stat. 26 Geo. 3. c. 60. See Reeves, 453, 454.

Rule 22. A British ship is, first, such as is foreign built, but which before May 1, 1786, belonged wholly to any of the people of Great Britain, or Ireland, Guernsey, or Jersey, or the Isle of Man, or of any colony, or plantation, island, or territory in Asia, Africa, or America, in possession of his Majesty; secondly, such as has been built or rebuilt on a foreign-made keel or bottom, and registered before May 1, 1786, as a British ship; thirdly, such as had begun to be repaired or rebuilt on a foreign-made keel or bottom before May 1, 1786, and has been since registered by order of the commissioners of the customs of England or in Scotland. See Reeves, 452, 538.

Rule 23. Every ship, or vessel, having a deck or being of the burthen of fifteen tons, and belonging to a subject in Great Britain or Ireland, Guernsey, Jersey, or the Isle of Man, or any colony, plantation, island, or territory to his Majesty belonging, must be registered by the person claiming property therein; who is to obtain a certificate of such registry in the port to which the ship or vessel properly belongs, and the certificate is to distinguish the ship or vessel under one of these two classes; certificates of British plantation registry, or, certificates of foreign ships registry for the European trade, British property. Stat. 26 Geo. 3. c. 60. § 5, 28.

Rule 24. No ship is to be permitted to clear out as a British-built ship, or a British ship, nor to be entitled to the privileges of a British-built ship, or a British ship, unless the owner has obtained a certificate of registry; and any ship parting from port without being so registered, and obtaining such a certificate, shall be forfeited. Stat. 26 Geo. 3. c. 60. § 32.

Rule 25. All ships, not entitled to the privileges of a British-built ship, or a British ship, and all ships not registered as aforesaid, are deemed, although they may belong to British Subjects, to all intents and purposes alien or foreign ships. Stat. 27 Geo. 3. c. 29. § 13. See Reeves, 509—512.

Rule 26. As often as the master of a ship is changed, a memorandum thereof is to be indorsed on the certificate by the proper officer of the customs. Stat. 26 Geo. 3. c. 60.

Rule 27. The owner is to cause the name by which a ship is registered to be painted in a conspicuous part of the stern, and such name is not to be changed. Stat. 26 Geo. 3. c. 60. § 19.

Rule 28. If a certificate of registry is lost or mislaid, or if a ship
shall be altered in form or burthen, or from any denomination of ves-
sel to another, by rigging or fitting, she must be registered de novo,
and a new certificate granted. Stat. 26 Geo. 3. c. 60. § 22, 23, ex-
plaining 15 Geo. 2. c. 31.

Rule 29. Masters of ships are, on demand, to produce their cer-
tificates to the principal officer in any port within the King's do-
minions, or to the British consul or chief officer in any foreign port,
on penalty of 100l. Stat. 26 Geo. 3. c. 60. § 34: and see stat. 33 Geo.
3. c. 68. § 18, &c. Some doubt having arisen whether ships belonging
to the East-India Company could strictly be considered as British
ships, considering how many foreigners were proprietors of the Com-
pany's stock, this was removed by stat. 21 Geo. 3. c. 65. § 33.

Finally, by the act 34 Geo. 3. c. 68, which was passed for confirm-
ing the principles of the Navigation Act, 12 Car. 2. c. 18, it is enact-
ed that after six months from the conclusion of the then existing war,
no goods, &c. shall be imported into Great Britain, nor any goods ex-
ported from thence, in British vessels, unless the master and three-
fourths of the crew are British Subjects. This act contains several
regulations to enforce these provisions; it defines British Seamen;
who, it declares, must be natural-born Subjects, or persons naturali-
zed by act of parliament, or made denizens by letters of denization,
or persons having become Subjects by conquest, or cession of some
newly-acquired country, having taken the oath of allegiance, or other
oath required on such conquest or cession. Foreign seamen, how-
ever, serving three years in the navy in time of war may be employed
as British seamen, not having taken the oath of allegiance to a for-
reign State. Regulations are also contained for the employment of
negroes in America, and the East and West Indies: and provisions
made for the employment of foreign seamen in case of necessity.
This statute also contains further regulations as to the registry of
British ships, by enacting that no transfer of property in any vessel
shall be valid, unless made according to stat. 26 Geo. 3. c. 60. The
form of indorsement on change of property is prescribed; and other
instructions given as to the transfer of property where the vessels or
their owners are not in the country. The mode of registering de novo
in case of transfer of property, is further settled; and direction given
in case of transfer of the property, in such registered ship, to for-
igners. See also the act 42 Geo. 3. c. 61. extending the like regu-
lations to Ireland. See also stat. 33 Geo. 3. c. 63; by which, goods
legally imported into Ireland from America, &c. may be imported
from thence into Great Britain in British or Irish-built ships, owned
and navigated according to law; except goods produced or manufac-
tured within the limits of the East-India Company's trade; and fur-
ther this Dict. title Ireland.

The above short view of an interesting and important subject, con-
tains much useful information, not merely confined to this head of
law, but connected with the general policy of the English Govern-
ment. The particulars of the laws here detailed, are sometimes fluc-
tuating, and above all, much affected by the circumstances of peace
and war. See, as to importation in neutral ships, the following acts,
viz. 39 & 40 Geo. 3. c. 34, foreign American goods; 42 Geo. 3. c. 80;
foreign West Indian and American goods; 35 Geo. 3. c. 100, flax and
flax-seed: And particularly 43 Geo. 3. c. 153, by which (during the war) the importation into Great Britain and Ireland of goods in neutral vessels from States as well at war as in amity, is permitted and regulated.—45 Geo. 3. c. 34, empowers the King in council to grant licences to subjects to import goods in neutral ships from foreign American colonies, on the parties giving security to export British produce thither.—46 Geo. 3. c. 17, permits importation of wool into the United Kingdom from the British plantations in America.—46 Geo. 3. c. 111, as to the trade with South America.

An intimate research into the regulations contained in the statutes above referred to, and others, can only be conducted with safety by a reference to the statutes themselves; and particular caution is necessary to render the Student aware of the number of laws continually claiming the attention, and receiving the sanction, of Parliament on this national subject.

NAVIS ECCLESIE, The nave or body of the church, as distinguished from the choir, and wings, or isle: it is that part of the church where the common people sit. Du-Cange.

NAVIS, NAVICULA, A small dish to hold frankincense before put into the thuribilum, censor, or smoking pot; and seems to have its name from the shape, resembling a boat or little ship; we have several of these boat-cups in silver; &c. for various uses. Paroch. Antig. 598.

NAVITHALAMUS, A ship or barge that noblemen use for pleasure, with fine chambers and other stately ornaments. Low Lat. Dict.

NAVY.

The Fleet or Shipping of a Prince or State; or an Armament at sea.

I. Of the Navy of England, and its Jurisdiction in the British Seas.

II. Of raising and paying the Mariners. [As to their Prize Money, see title Admiralty.]

III. Of their Discipline, under the Articles of War and Naval Courts Martial.

I. THE NAVY OF ENGLAND, it has been observed, excels all others for three things, viz. beauty, strength, and safety; for beauty our ships of war are so many floating palaces; for their strength so many moving castles; and for safety, they are the most defensive walls of the land; and as our naval power gains us authority in the most distant climates, so the superiority of our fleet above other nations, renders the British Monarch the arbiter of Europe.

The Kings of England in antient times commanded their fleets in person; and King Arthur vindicated the dominion of the seas, making ships of all nations salute our ships of war by lowering the topsail, and striking the flag, as in like manner they shall do to the forts upon land; by which submission they are put in mind that they are come into a territory, wherein they are to own a sovereign power and jurisdiction, and receive protection from it: and this duty of the flag, which hath been constantly paid to our ancestors, serves to imprint
reverence in foreigners, and adds new courage to our seamen; and reputation abroad is the principal support of any government at home.

King Edgar, successor to Arthur, stiled himself Sovereign of the narrow seas; and having fitted out a fleet of four hundred sail of ships, in the year 937, sailing about Britain with his mighty Navy, and arriving at Chester, was there met by eight Kings and Princes of foreign nations, come to do him homage; who, as an acknowledgment of his sovereignty, rowed this monarch in a boat down the river Dee, himself steering the boat; a marine triumph which is not to be paralleled in the histories of Europe.

Canutus, (Edgar's successor) laid the antient tribute called Danegeld, for guarding the seas, and sovereignty of them; with the following emblem expressed, viz. Himself sitting on the shore in his royal chair, while the sea was flowing, speaking, Tu mea ditionis es, & terra in qua sedeo est, &c.

Egbert, Althred, and Ethred kept up the dominion and sovereignty of their predecessors; nor did the succeeding princes, of the Norman race, waive this great advantage, but maintained the right to the four adjacent seas surrounding the British shore: the honour of the flag King John challenged, not barely as a civility, but a right to be paid cum debita reverentia, and the persons refusing he commanded to be taken as enemies: and the same was ordained not only to be paid to whole fleets, bearing the royal standard, but to those ships of privilege that wear the Prince's ensigns or colours of service: this decree was confirmed and bravely asserted by a fleet of five hundred sail, in a royal voyage to Ireland, wherein he made all the vessels which he met with in his way, in the eight circumfluent seas, to pay that duty and acknowledgment, which has been maintained by our Kings to this day, and was never contested by any nation unless by those who attempted the conquest of the entire empire.

Trade gave occasion to the bringing mighty fleets to sea, and on the increase of trade, ships of war were necessary in all countries for the preservation of it in the hands of the just proprietors.

In antient times the several counties of England were liable to a particular taxation for building ships of war, and fitting out fleets, every one in proportion to their extent and riches; so that the largest counties were each of them to furnish a first rate man of war, and the others every one to build one in proportion; but this method has been long disused, and the fitting out our navy for many ages has been always thrown into the public charge.

King Edward III. in his wars with France, had a fleet of ships before Calais, so numerous, that they amounted to seven hundred sail; but these were only very small vessels.

Notwithstanding that the fleets of Great Britain have been remarkable for several ages past, for the great and signal victories obtained from time to time over their enemies, and that in the reigns of some of our antient Kings, there have been greater numbers of ships fitted out at different times, upon certain expeditions, than have been of late years, yet that of a Royal Navy was never properly established, until by Hen. VIII. in the fourth year of his reign, anno 1512; at which time, that King taking umbrage at the mighty naval preparations of France, made an augmentation of twenty-five large ships of war to those already in being: he likewise erected an office for the
Navy, and established a certain number of Commissioners, to whom the charge of the Navy was committed, and whose duty it was to inspect into the state and condition of the King’s ships, and to make a report thereof to the Lord High Admiral, in order to their being repaired or rebuilt, and supplied with every thing necessary for the public service, according as the case required it; for till that time, the establishment of the naval forces of this kingdom seems to have been upon an auxiliary dependency of the sea-ports and maritime towns, who were under certain conditions of furnishing their respective quotas of ships, for the King’s use, upon previous notice given to them in that behalf; after which, they all came to the appointed rendezvous, and were then disposed of by the King’s order upon the services intended. Upon this augmentation, the King’s fleet at that time consisted of no more than forty-five ships, with which that of the French was soon overcome. Of those towns which furnished ships for the public service, the Cinque-Ports were the most noted, and whose privileges still subsist, on account of the services which they obliged themselves in particular to perform to the Crown. See title Cinque-ports.

There are lists of the fleet of Queen Elizabeth, which make it appear there was but one private gentleman a captain, all the rest being Lords and Knights: so high was the esteem for service at sea in those days, when our Princes ruled with the most consummate glory; but the opinion of serving at sea in late times having been very much lessened, it has since been declined by the nobility and gentry.

The navy of England is at present divided into three squadrons, distinguished by the different colours of the several flags, viz. red, white, and blue; the principal commander whereof bears the title of Admiral, and each has under him a Vice-Admiral, and a Rear-Admiral, who are likewise flag-officers. There are belonging to his Majesty’s Navy, six great yards, Chatham, Deptford, Woolwich, Portsmouth, Sheerness, and Plymouth; fitted with several docks, and furnished with store of timber, masts, anchors, cables, &c. And for the management of the Royal Navy, there are several officers of trust and authority, besides the Commissioners of the Admiralty; as the Treasurer, Controller, Surveyor, Commissioners of the Navy, Commissioners of the Victualling office, &c. the principal whereof hold their offices by patent under the Great Seal.

The Maritime State, says Blackstone, though nearly related to the military, is much more agreeable to the principles of our free Constitution. The Royal Navy of England hath ever been its greatest defence and ornament; it is its antient and natural strength, the floating bulwark of the island: an army from which, however strong and powerful, no danger can ever be apprehended to liberty: and accordingly it has been assiduously cultivated, even from the earliest ages. To so much perfection was our Naval reputation arrived in the twelfth century, that the code of maritime laws, which are called the laws of Oleron, and are received by all nations in Europe as the ground of all their marine constitutions, was confessedly compiled by our King Richard I. at the isle of Oleron, on the coast of France, then part of the possessions of the Crown of England. 4 Inst. 144. And yet so vastly inferior were our ancestors in this point, to the present age, that even in the maritime reign of Queen Elizabeth, Sir Edward
Coke thinks it matter of boast, that the Royal Navy of England then consisted of thirty-three ships. The present condition of our marine is in a great measure owing to the salutary provisions of the statutes, called the Navigation Acts; whereby the constant increase of English shipping and seamen was not only encouraged, but rendered unavoidably necessary. See this Dictionary, title Navigation Acts.

At the same time that the good economy of the Royal Navy is displayed, it seems necessary to take some notice of that, which affords it an opportunity of appearing in more magnificent grandeur than can be represented by the ablest writer in the world; namely, the ocean on which it is borne; especially as there is a peculiar sovereignty and property inherent therein, to the Monarchs of Great Britain; the preservation of which, for several ages past, has not a little conduced to increase the glory of the nation, and to gain it such a reputation abroad, as must justly make our fleets seem as formidable to strangers, as they are to us, who know their real strength. This right is so antient and undeniable, that even the most haughty of our neighbours dare not pretend to control it by any public act, however they may presume to contradict it by bare words: neither was any thing ever written against it until it was undertaken by Hugo Grotius, in his book called Mare liberum.

The boundaries properly said to encompass what are called the British Seas, are thus accounted, under the distinction of the four cardinal points of the compass; taking it for granted in general, that all the seas which surround Great Britain, Ireland, and the other islands appertaining to the Crown, are called the British Seas: but as to particulars they stand thus: On the South is the British Channel which separates England from France, the boundaries of which extend to the opposite shores of France, and to those of Spain, as far as Cape Finisterre. From that Cape it extends on the west in an imaginary line running in twenty-three degrees of West longitude from London, to the latitude of sixty-three degrees North, which last is called the Western Ocean of Britain. From the aforesaid latitude of sixty-three degrees it extends in another line (supposed to be drawn) in that parallel of latitude, to the middle point of the land, Van Staten, on the coast of Norway, which is the northern boundary, and from that point it extends along the shores of Norway, Denmark, Germany, and the Netherlands, to the channel first mentioned; which last boundary comprehends what is called the Eastern Ocean of Britain.

There being no lands lying on the West and North sides of the British dominions, nearer than the continent of America, the island of Newfoundland, and Greenland, and the King of Great Britain having possessions in the two first places; the boundaries of his maritime empire cannot be said to be strictly limited on that side. Moreover, as to Greenland, it was at first discovered in the reign of Edward the Sixth, by Sir Hugh Willoughby, for the use of the Crown of England; and still again to the Northward there is some foundation for extending this sovereignty a great deal farther, on account of the acquisitions of King Arthur, a record of which is to be found in Hackluyt, p. 245, translated from the Latin original there quoted from Geoffrey of Monmouth's Hist.

According to this antient right the British dominion on the North Sea is very extensive; and so far from being questioned, or the trade of the British subjects in those parts obstructed, that on the contrary,
(without regard to the above relation concerning King Arthur,) Britain has a prior right even to Denmark and Norway in the Greenland fishery, and Davis's Straights; these places being unknown to them, and the rest of Europe, till John Davis's voyage for discovery of the North-west passage in the year 1585, though it seems that the Danes afterwards demanded toll for our fishing at Greenland, but it was refused to them. See an incomplete note on this subject, 1 Inst. 107, a. n. 6.

A temporary act, 43 Geo. 3. c. 16, was passed for enquiring into irregularities and abuses in the Admiralty and other Naval Departments, and into the business of Prize Agency. This act expired at the end of the session, 46 Geo. 3.

II. Many laws have been made for the supply of the Royal Navy with seamen; for their regulation when on board; and to confer privileges and rewards on them during and after their service.

As to their supply, the power of impressing seamen, though one of the most invidious, has ever been found one of the most certain means. It has been a matter of some dispute, and submitted to not without a national reluctance: it is now however established by the law of the land beyond question, and from the spirit of the Constitutions, the exercise of it resides in the crown. See this Dictionary, title Impressing Seamen.

But besides this method of impressing, (which, after all, is only defensible from absolute public necessity, to which all private considerations must give way,) other ways have from time to time been adopted, and many of them still continue to be, that tend to the increase of seamen and manning the Royal Navy. Among these deserves to be noticed the provision that every foreign seaman, who during a war shall serve two years in any man-of-war, merchant-man, or privateer, is naturalized, ipso facto; stat. 13 Geo. 2. c. 3; and serving three years may be employed as a British mariner, stat. 34 Geo. 3. c. 68; and by various statutes, sailors, having served the King for a limited time, are free to use any trade or profession in any town in the kingdom without exception.

For the furnishing of mariners for the fleet, an act of parliament, stat. 7 & 8 W. 3. c. 21, was passed; by which it was enacted, That all seamen, watermen, &c. above the age of eighteen years, and under fifty, capable of sea-service, who should register themselves voluntarily for the King's service in the Royal Navy, to the number of thirty thousand, should have paid to them the yearly sum or bounty of forty shillings, besides their pay for actual service, and that whether they were in service or not: and none but such mariners, &c. as were registered, should be capable of preference to any commission, or be warrant officers in the Navy: and such registered persons were exempted from serving on Juries, parish offices, &c. also from service abroad after the age of fifty-five years, unless they went voluntarily: and when by age, wounds, or other accidents, they were disabled for future service at sea, they were to be admitted into Greenwich Hospital, and there be provided for, during life: and the widows of such seamen as should be slain or drowned, not of ability to provide for themselves, should be likewise admitted into the hospital; and their children educated, &c. But if any registered seaman should withdraw himself from the King's service, in his ships or navy; or if
any such mariner relinquished the service, without consent of the Commissioners of the Admiralty, he was forever to lose the benefit of the act, and be compelled to serve in his Majesty’s fleet six Months without pay. This Registry, however, being by experience proved to be ineffectual, as well as oppressive, was abolished; and the above statute repealed, by stat. 9 Ann. c. 21. § 64.

By stat. 4 Ann. c. 19. § 18, Watermen plying on the Thames between Gravesend and Windsor, on notice given by the Commissioners of the Admiralty to the company of watermen, are to appear before the said company, to be sent to his Majesty’s fleet, or, on refusal, they shall suffer one month’s imprisonment, and be disabled working on the Thames for two years.

The stat. 2 & 3 Ann. c. 6, provides, That poor boys, whose parents are chargeable to the parish, may, by churchwardens and overseers of the poor, with consent of two Justices of Peace, be placed out apprentices to the sea service, until the age of twenty-one years, they being thirteen years old at the time of their placing forth: these apprentices shall be protected from being impressed for the first three years; (if they are not more than eighteen years old; 4 Ann. c. 19. § 17.) and if they are impressed afterwards, the master shall be allowed their wages. And all masters and owners of ships, from thirty to fifty tons burthen, are required to take one such apprentice, one more for the next fifty ton, and one more for every hundred ton above the first hundred, under the penalty of ten pounds. Masters of apprentices placed out by the parish may, with the consent of two Justices, turn over such apprentices to masters of ships.

Of more modern statutes, the following deserve particular notice.

By stats. 35 Geo. 3. c. 5, c. 9, c. 19, & c. 29, & 36 Geo. 3. c. 115, a number of men were raised for the Navy according to a certain proportion imposed on every County and Port in Great Britain. The execution of this act was intrusted to the Justices of Peace and Magistrates of Corporations, and the expence discharged by rates made upon every parish out of which bounties were paid to volunteers entering.

To further the urgent demand for sailors, the stat. 35 Geo. 3. c. 34, was passed to enable Magistrates to levy for his Majesty’s Navy in their several jurisdictions, “all able bodied, idle, and disorderly persons, who could not on examination prove themselves to exercise and industriously follow some lawful trade or employment, or to have some substance sufficient for their maintenance.” The execution of this act was, by a clause therein, allowed to be suspended and revived according to necessity, by his Majesty’s proclamation or notice from the Admiralty. It is to be feared, however, that it was never enforced to the extent it ought to have been.

By various acts, private Militia-men having served in the Navy were allowed to be discharged from the Militia in order to re-enter into the Navy, to a certain extent.—See the latest act 43 Geo. 3. c. 62, and c. 76. By 43 Geo. 3. c. 50. § 7, no sea-faring man shall be a Militia-man.

To encourage the seamen in the exercise of their duty, to ensure them their wages, to protect their persons, to provide for their families, and to secure them from impositions, in relation to their prize money and other advantages; several acts of parliament have from time to time been past. By the first of these now in force, stat. 31
Geo. 2. c. 10, encouragement is given to seamen to enter into his Majesty's service voluntarily; volunteers entering their names with any commission officer of the fleet, and forthwith proceeding towards their ships, on certificate thereof, shall be entitled to wages from the date of the certificate and be allowed the usual conduct-money, and also be paid an advance of two months' wages, &c. And if any volunteer is turned over to another ship, he shall receive, over and above his wages due, the like advance of two months' pay; and not serve in a lower degree than he did before. Persons entered on board ships of war, are not to be taken thereout by any process at law, unless it be for a criminal matter; or where the debt amounts to 20l. When seamen die on board, the commander of the ship shall, as soon as may be, make out tickets for their pay, which shall be paid to their executors, &c. without tarrying for the ship's return: and seamen's pay shall not be bargained and sold; but tickets may. Governors and consuls in foreign parts are to provide for shipwrecked mariners at 6d. (increased by stat. 33 Geo. 3. c. 33. to 9d.) per diem each, and put them on board the first ships of war, &c. and on sending bills and disbursements with vouchers to the Commissioners of the Navy, they shall be paid.

From the year 1758, the time of passing the said act, 31 Geo. 2. c. 10, when Mr. Grenville so ably filled the office of first Lord of the Admiralty, down to Mr. Dundas's time, scarcely any Parliamentary regulation appears to have been applied to disbursements on account of the Navy; and these increasing with the expense of our Marine, to an amount beyond all former example, had opened a wide door to imposition on our seamen.

Incapiable, as sailors are, of taking care of their property, beyond every other description of men, they were, in numberless instances, either by forgeries committed upon them, or from their own credulity, defrauded of their wages, and deprived of rewards due to them for a long and laborious service. This evil had arisen to its greatest height towards the close of the war, which ended in 1783, and was practised by the lowest orders of the community, who, watching the necessities, and encouraging the vices and follies of the inexperienced sailor, supplied him with small sums of money, and in the hour of intoxication induced him to grant instruments, which in one moment robbed him of all he had acquired, as well as of what he might afterwards be entitled to receive, as a recompence for his toils and gallantry in the service. In other instances, less scrupulous as to the means, the same unprincipled set of men (always selecting for the objects of their spoil such names as appeared to have the largest sums due to them) forged at once the authorities under which they pretended to act, and with great facility deprived of a just inheritance the widows and orphan children of those who had unhappily lost their lives in their country's cause.

The remedy for these evils was first applied in the year 1786, by an act introduced by Mr. Dundas, the regulations of which are as simple as they have been found to be effectual. By this act, 36 Geo. 3. c. 63, modes are prescribed for executing all wills and instruments of delegated authority; which, by making the superior officers of our ships (and other persons above the reach of corruption) necessary witnesses to all such deeds, have struck at the root of forgery. Every sort of guard is provided by it (as far as human nature in the charac-
ter of a British seaman can be guarded) to protect the thoughtless and ignorant; or at least to insure, that the act of the sailor, thus legalized, was not done under the influence of fear, false pretences, or intoxication. Mr. Dundas’s attention was in the next place directed to the protection of that property which devolved upon widows and other representatives of seamen dying in the service, and leaving arrears of wages due to them.

This portion of the sailor’s reward seldom reached the door of his disconsolate widow and helpless children. The same class of people who had heretofore defrauded him, being no longer able, from the operations of the above-mentioned act, to interfere with his property while he continued in the service, now turned their designs upon intercepting that part of it, which he should leave behind him in the event of his death. This was principally effected by the means of wills made in their own favour, and which, under false pretences, they easily procured from the unsuspecting sailor; and there is reason to believe, that no less than one-half of the arrears due at the end of the war before-mentioned, was obtained by such impositions, or by intire forgeries of wills, which were not at that time directed to be attested and executed under sufficient regulations. It is true, indeed, that many of those sharpers forfeited their lives for their crimes; but many more, and particularly the most artful of them, escaped even without a prosecution.

These infamous practices were completely abolished by an act of Parliament, which Mr. Dundas framed with great ingenuity and promptitude. And in a letter dated 1st August, 1792, he caused a general abstract of the several acts respecting the payment of seamen’s wages to be forwarded to the respective ministers of every parish in Great Britain, and explained the general purport of the regulations contained in the last, pointing out in a particular manner, that the representatives of seamen had only to address to the Treasurer of the Navy a plain letter, stating the ground of their pretensions; that, upon being found to be just, the necessary papers should immediately be sent to them from his office to be executed; and that the money should afterwards be paid to them by the Revenue officer living nearest to the place of their residence. See the act 32 Geo. 3. c. 34.

By the above and another act, which Mr. Dundas introduced, all those protections and privileges, which had hitherto been enjoyed exclusively by the seamen, were extended to our Marines, a most useful and meritorious part of our Navy; and, in the same session, the benefits arising from them were also extended to persons residing in Ireland; to whom also the benefit of 3 Geo. 3. c. 16, as to our Pensioners of Greenwich Hospital was extended. See 32 Geo. 3. c. 33, 34, and 67.

But notwithstanding so much had been done for the seaman, and every assistance had been extended to his widow and other representatives, something still was wanting, while his wife and family remained in poverty and distress during his absence. No effectual scheme had hitherto been proposed, none even thought of, to grant them assistance; and it was reserved for Mr. Dundas to establish a system of remittance and supply, so extensive as to convey relief into every corner of the kingdom to the scattered families of our brave defenders. Provisions were made by an act of Parliament, which he
procured to be passed in 1795, 35 Geo. 3. c. 28, (explained and enforced by 37 Geo. 3. c. 53: 46 Geo. 3. c. 127.) for a regular monthly supply to be paid to the wife and each child, or to the parent of every seaman, who was willing, upon a representation being made to him to allow a portion of his pay to be appropriated to the support and comfort of his family during his absence.

The advantages of this act, 35 Geo. 3. c. 28, were, by another of a similar nature, extended to non-commissioned officers and their families. See 35 Geo. 3. c. 95. And the Government of Ireland afterwards applied for the provisions of both to be extended to that country, in order to enable their Seamen to receive their united benefits. The numerous list of persons, relieved by this benevolent regulation, is a convincing proof of its national importance; not less than 30,000 families of seamen, in different parts of the three kingdoms, are from time to time supported by the voluntary application of that portion of their wages which sailors were formerly induced to squander, in a most unprofitable manner, either at sea-port towns, or in London during their attendance at the Navy pay-office. Every town in Great Britain and Ireland can bear witness to the happy effects resulting from this measure. Every parish also feels its influence, as the family no longer remains a burthen upon it. The honest sailor too, when his toils are over, so far from continuing to throw away his money at the place where his ship is paid off, now feels a secret pride and pleasure in returning to his family, whom he has made independent and comfortable by his own bounty.

The higher classes of the service, as well as the lower, have felt the good effects of Mr. Dundas’s measures. In the session of 1795, he obtained an act, 35 Geo. 3. c. 94, by which Naval officers, who may not be in affluent circumstances, are enabled to accept commands, or to undertake other services, without pecuniary embarrassment. For this purpose the arrears which may be due to an officer from his half pay, and 3 months of his full pay, are paid him in advance, as soon as his appointment takes place. A Fund is also provided for those who may wish to receive a part of their pay whilst employed upon foreign service; and the principle of remittance is extended to every one who shall be desirous to avail himself of its advantages.

In whatever part of the world an officer on service happens to be, he may now, at the expiration of three months, draw bills of exchange for his present support, or for that of his family at home; and instead of applying to his agent for advances, ruinous from the accumulation of interest, agency, and other charges (amounting to at least 16 per cent.) he may without such intervention receive directly into his own pocket the reward of his merit. Following him also into his retreat in the time of peace, the benefit of these regulations still attends him. There is no residence, however remote, in which either officers on half-pay, or the relations of such as have fallen in battle, or the disabled from wounds and infirmity, may chuse to settle, but where they may be supported at their own doors. Such ease and security in receiving their money greatly enhances the value of the several rewards which their country bestows upon them. The half-pay of officers, all pensions from Greenwich Hospital, and all other Naval allowances (excepting the pensions of officers’ widows, which are not paid by the Treasurer of the Navy) are thus paid free of expense by the Revenue officer living nearest to the place of residence.
of the party entitled to receive them. By 37 Geo. 3. c. 53, the pay
and allowances to petty officers, seamen, and marines was increased;
and they are declared entitled, when wounded, to receive the full
amount of their wages till their wounds are healed, or they are pro-
vided for in Greenwich Hospital; &c. See title Greenwich.

In pursuance of the same plan, for the comfort and relief of the
defenders of their country, it has been provided by several acts, the
last 4& Geo. 3. c. 92, that letters to and from non-commissioned offi-
cers, seamen, and privates, in any departments of the army, Navy,
or militia, be subject only to one penny postage.
The pay and wages of one man in a hundred, of every ship of war,
and value of his victuals, shall be applied for relieving poor widows
of officers of the Navy, stat. 6 Geo. 2. c. 25. Able seamen, who vo-
luntarily enter on board ships of war, shall receive 5l. besides their
wages, and ordinary seamen 3l. And if any seaman, under a commis-
sion or warrant officer, who enters into the service, be killed or drow-
ed, his widow on certificate to the Commissioners of the Navy that
she is such, is, to have, by way of bounty, one year's wages, according
to the pay for which he served. Stat. 14 Geo. 2. c. 38.—

III. The Commissioners of the Navy, &c. have power to examine
and punish all persons who make any disturbance, fighting or quar-
relling in the yards, and offices, &c. of the Navy.
The method of ordering seamen in the Royal fleet, and keeping
up discipline there, is directed by certain express rules, articles, and
orders, first enacted by the authority of Parliament soon after the
Restoration, but since new modelled and altered. In the 13th year of
King Charles II. an act passed for the regulating the government of
the fleet, stat. 13 Car. 2. st. 1. c. 9, which was repealed by stat. 22
Geo. 2. c. 33, explained and amended by stat. 19 Geo. 3. c. 17. These
two latter statutes contain not only the 36 articles of war, in which
almost every possible offence is explicitly set down, and the punish-
ment thereof annexed or left to the discretion of a Court Martial;
but also sundry clauses of express rules and orders for assembling
and holding Courts for the trial of any of the offences specified
therein.

By 39 & 40 Geo. 3. c. 100, whereby his Majesty was authorised to
grant Commissions for natives of Holland to serve on board certain
Dutch ships of war which had surrendered, the articles of war were
directed to be translated into Dutch, and the crews of the ships were
made subject thereto.
The following are the Articles of War above alluded to:
1. Officers are to cause public worship, according to the liturgy of
the church of England, to be solemnly performed in their ships, and
take care that prayers and preaching by the chaplains be performed
diligently, and that the Lord's Day be observed.
2. Persons guilty of profane oaths, cursing, drunkenness, unclean-
ness, &c. to be punished as a Court Martial shall think fit.
3. If any person shall give or hold intelligence to or with an enemy
without leave, he shall suffer death.
4. If any letter or message from an enemy be conveyed to any in
the fleet, and he shall not in twelve hours acquaint his superior officer
with it, or if the superior officer, being acquainted therewith, shall

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not reveal it to the commander in chief, the offender shall suffer death; or such punishment as a Court Martial shall impose.
5. Spies and persons endeavouring to corrupt any one in the fleet, shall suffer death, or such punishment as a Court Martial shall impose.
6. No person shall relieve an enemy with money, victuals, or ammunition, or like penalty.
7. All papers taken on board a prize shall be sent to the Court of Admiralty, &c. on penalty of forfeiting the share of the prize, and such punishment as a Court Martial shall impose.
8. No person shall take out of any prize any money or goods, unless for better securing the same, or for the necessary use of any of his Majesty’s ships, before the prize shall be condemned; upon penalty of forfeiting his share and such punishment as shall be imposed by a Court Martial.
9. No person on board a prize shall be stripped of his clothes, pilfered, beaten, or ill-treated, upon pain of such punishment as a Court Martial shall impose.
10. Every commander who, upon signal or order of fight, or sight of any ship which it may be his duty to engage, or who, upon likelihood of engagement, shall not make necessary preparations for fight, and encourage the inferior officers and men to fight, shall suffer death; or such punishment as a Court Martial shall deem him to deserve. And if any person shall treacherously or cowardly yield or cry for quarter, he shall suffer death.
11. Every person who shall not obey the orders of his superior officer, in time of action, to the best of his power, shall suffer death; or such punishment as a Court Martial shall deem him to deserve.
12. Every person who, in time of action, shall withdraw or keep back, or not come into the fight, or do his utmost to take or destroy any ship which it shall be his duty to engage, and to assist every ship of his Majesty or his allies, which it shall be his duty to assist, shall suffer death or other punishment. See fioet; and stat. 19 Geo. 3. c. 17. § 3.
13. Every person who, through cowardice, &c. shall forbear to pursue the chase of any enemy, &c. or shall not assist or relieve a known friend in view, to the utmost of his power, shall suffer death, or other punishment. See fioet.
14. If any person shall delay or discourage any action or service commanded, upon pretence of arrears of wages, or otherwise, he shall suffer death; or such punishment as a Court Martial shall deem him to deserve.
15. Every person who shall desert to the enemy, or run away with any ship, ordnance, &c. to the weakening of the service, or yield up the same cowardly or treacherously to the enemy, shall suffer death.
16. Every person who shall desert, or entice others so to do, shall suffer death; or such punishment as a Court Martial shall think fit. If any commanding officer shall receive a deserter, after discovering him to be such, and shall not with speed give notice to the captain of the ship to which he belongs, or, if the ship is at a considerable distance, to the Secretary of the Admiralty, or Commander in Chief, he shall be cashiered. [See also 44 Geo. 3. c. 15, by which petty officers or seamen, taken out of the Navy for any civil or criminal matter, shall be kept in custody until discharged from such suit, and shall
then be conveyed and delivered to some officer of the Navy to con-
tinue their service therein. This act was passed to prevent desertion,
under colour of false actions or prosecutions.]

17. Officers and seamen of ships appointed for convoy of merchant
ships, or of any other, shall diligently attend upon that charge accor-
ding to their instructions; and whosoever shall not faithfully perform
their duty, and defend their ships in their convoy, or refuse to fight
in their defence, or run away cowardly and submit the ships in their
convoy to hazard, or exact any reward for convoying any ship, or
misuse the master or mariners, shall make reparation of damages,
as the Court of Admiralty shall adjudge; and be punished criminally
by death, or other punishment, as shall be adjudged by a Court Mar-
tial. See title Insurance.

18. If any officer shall receive or permit to be received on board
any goods or merchandise, other than for the sole use of the ship,
except gold, silver, or jewels, and except goods belonging to any ship
which may be shipwrecked, or in danger thereof, in order to the pre-
serving them for the owners, and except goods ordered to be received
by the Lord High Admiral, &c. he shall be cashiered, and rendered
incapable of further service.

19. Any person making or endeavouring to make any mutinous as-
sembly shall suffer death. Any person uttering words of sedition or
mutiny shall suffer death; or such punishment as a Court Martial
shall deem him to deserve. If any officer, mariner, or soldier, in or
belonging to the fleet, shall behave himself with contempt to his su-
perior officer, being in the execution of his office, he shall be punished
according to the nature of his offence, by the judgment of a Court
Martial.

20. Any person concealing any traiterous or mutinous practice or
design, shall suffer death; or such punishment as a Court Martial
shall think fit. Any person concealing any traiterous or mutinous
words, or any words, practice, or design, tending to the hindrance
of the service, and not forthwith revealing the same to the commanding
officer; or, being present at any mutiny or sedition, shall not use his
utmost endeavours to suppress the same, shall be punished as a Court
Martial shall think he deserves. [See the act 37 Geo. 3 c. 71, for re-
straining intercourse with the crews of certain ships in a state of mu-
tiny and rebellion; and for the suppression of such mutiny and rebel-
lion; and 37 Geo. 3 c. 70, (last continued by 47 Geo. 3 c. 15.) making
it felony without clergy to attempt to seduce seamen (or soldiers)
from their duty.]

21. Any person finding cause of complaint of the unwholesomeness
of victuals, or upon other just ground, he shall quietly make the same
known to his superior; who, as far as he is able, shall cause the same
to be presently remedied; and no person upon any such or other pre-
tence shall attempt to stir up any disturbance; upon pain of such pu-
nishment as a Court Martial shall think fit to inflict.

22. Any person striking any his superior officer, or drawing or of-
fering to draw or lift up any weapon against him, being in the execu-
tion of his office, shall suffer death. And any person presuming to
quarrel with any his superior officer, being in the execution of his
office, or disobeying any lawful command of any his superior officer,
shall suffer death, or such other punishment as shall be inflicted up-
on him by a Court Martial.
23. Any person quarrelling or fighting with any other person in
the fleet, or using reproachful or provoking speeches or gestures,
shall suffer punishment as a Court Martial shall impose.
24. There shall be no wasteful expence or embezlement of any
powder, shot, &c. upon penalty of such punishment as by a Court
Martial shall be found just.
25. Every person burning or setting fire to any magazine, or store
of powder, ship, &c. or furniture thereunto belonging, not then ap-
pertaining to an enemy, shall suffer death.
26. Care is to be taken that through wilfulness or negligence no
ship be stranded, run upon rocks or sands, or split or hazarded; upon
pain of death, or such punishment as a Court Martial shall deem the
offence to deserve.
27. No person shall sleep upon his watch, or negligently perform
his duty, or forsake his station, upon pain of death, or such punish-
ment as, &c.
28. Murder;—And
29. Buggery or sodomy, shall be punished with death.
30. Robbery shall be punished with death, or otherwise as a Court
shall find meet.
31. Every person knowingly making or signing, or commanding,
counselling, or procuring the making or signing, any false muster,
shall be cashiered and rendered incapable of further employment.
32. Provost Marshal refusing to apprehend or receive any crim-
al, or suffering him to escape, shall suffer such punishment as a
Court Martial shall deem him to deserve. And all others shall do
their endeavours to detect and apprehend all offenders, upon pain of
being punished by a Court Martial.
33. If any flag-officer, captain, commander, or lieutenant, shall be-
have in a scandalous, infamous, cruel, oppressive, or fraudulent man-
er, unbecoming his character, he shall be dismissed.
34. Every person in actual service and full pay, guilty of mutiny,
desertion, or disobedience, in any part of his Majesty’s dominions on
shore, when in actual service relative to the fleet, shall be liable to
be tried by a Court Martial, and suffer the like punishment as if the
offence had been committed at sea.
35. Every person in actual service and full pay, committing upon
shore, in any place out of his Majesty’s dominions, any crime pun-
ishable by these articles, shall be liable to be tried and punished as if the
crime had been committed at sea.
36. All other crimes not capital, not mentioned in this act, shall be
punished according to the laws and customs used at sea. No person
to be imprisoned for longer than two years. Court Martial not to try
any offence (except under the 5th, 34th, and 35th Articles) not com-
mittted upon the main sea, or in great rivers beneath the bridges, or
in any haven, &c. within the jurisdiction of the Admiralty, or by per-
sons in actual service and full pay, except such persons as mentioned
in 5th Article; nor to try a land officer or soldier on board of a trans-
port-ship. The Lord High Admiral, &c. may grant commissions to
any officer commanding in chief any fleet, &c. to call Courts Mar-
tial, consisting of commanders and captains. And if the commander
in chief shall die or be removed, the officer next in command may
call Courts Martial. No commander in chief of a fleet, &c. of more
than five ships, shall preside at any Court Martial in foreign parts,
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but the officer next in command shall preside. If a commander in chief shall detach any part of his fleet, &c, he may empower the chief commander of the detachment to hold Courts Martial during the separate service. If five or more ships shall meet in foreign parts, the senior officer may hold Courts Martial and preside thereat. Where it is improper for the officer next to the commander in chief to hold or preside at a Court Martial, the third officer in command may be empowered to preside at, or hold, the same. No Court Martial shall consist of more than thirteen, nor less than five persons. Where there shall not be less than three, and yet not so many as five of the degree of a post captain or superior rank, the officer who is to preside must call to his assistance as many commanders under the degree of a post captain, as together with the post captains shall make up the number five, to hold the Court Martial.

Proceedings shall not be delayed, if a sufficient number remain to compose the Court, which shall sit from day to day (except Sunday) till sentence be given.

The Judge Advocate, and all officers constituting a Court Martial, and all witnesses, shall be upon oath. Persons refusing to give evidence may be imprisoned. Sentence of death within the Narrow Seas (except in case of mutiny) shall not be put in execution till a report be made to the Lord High Admiral, &c. Sentence of death beyond the Narrow Seas, shall not be put in execution, but by order of the commander in chief of the fleet, &c. Sentence of death in any squadron detached from the fleet, shall not be put in execution (except in case of mutiny) but by order of the commander of the fleet, or Lord High Admiral, &c. And sentence of death passed in a Court Martial, held by the senior officer of five or more ships met in foreign parts, (except in case of mutiny,) shall not be put in execution but by order of the Lord High Admiral, &c.

The powers given by the said articles shall remain in force with respect to crews of ships wrecked, lost, or destroyed, until they be discharged or removed into another ship, or a Court Martial shall be held to inquire of the causes of the loss of the ship. And if upon inquiry it shall appear, that all or any of the officers and seamen did their utmost to save the ship, and behaved obediently to their superior officers, their pay shall go on: as also shall the pay of officers and seamen taken by the enemy, having done their best to defend the ship, and behaved obediently. If any officer shall receive any goods on board, contrary to the 18th article, he shall further forfeit the value of such goods, or 500l. at the election of the informer; half to the informer, and half to Greenwich Hospital. See Seamen; Ships.

By stat. 31 Geo. 2. c. 10. § 33, a competent number of printed copies of the above Articles of War are to be delivered to the captain or commander of every ship or vessel; who is to cause them to be hung up and affixed to the most public places of the ship, and to have them constantly kept up and renewed, so that they may be at all times accessible to the inferior officers and seamen on board: and likewise to observe that such abstract be audibly and distinctly read over, once in every month, in the presence of the officers and seamen, immediately after the Articles of War are read. And by 32 Geo. 3. c. 67, abstracts of the several acts relating to the pay, &c. of the seamen are to be hung up on board all ships, &c. in like manner as the Articles of War.
The offences comprehended and specified in the above Articles of War may be classed under four general heads: 1. Those immediately against God and Religion, contained in the 1st and 2d Articles, viz. neglecting public worship, and being guilty of swearing, drunkenness, &c. the punishment of which is left to the discretion of the Courts Martial.—2. Such as effect the executive power of the State, or concern the criminal neglect of the established rules of discipline; these offences are specified in Articles 3, 4, 5, 15, 16, 19, 20, 22, 24, 25, 27, and 31, viz. holding intelligence with an enemy or rebel; concealing letters or messages from or relieving them; deserting to an enemy; running away with ships, stores, &c. or yielding the same to an enemy; desertion from the service, or entertaining deserters; waste or embezzlements of stores; mutinous assemblies; seditious or mutinous words; concealing any traiterous or mutinous designs, &c. striking, quarrelling, or disobeying the orders of a superior officer; sleeping upon the watch; neglecting duty, or forsaking a station allotted; and knowingly signing false muster-books.—3. Such as violate or transgress the rights and duties which are owing to individuals or fellow-subjects; under which may be classed murder, robbery, &c. See Articles 28, 29, 30.—4. Offences in themselves strictly military, and such as are peculiarly the object of martial law. These are recited in Articles 10, 11, 12, 13, 14, and 17. The 12th and 15th Articles as they formerly stood, by restraining the power of a Court Martial to the positive inflicting the punishment of death in the cases therein mentioned of cowardice, negligence, or disaffection in time of action, &c. were deemed too severe, and attended with peculiar inconveniences; one instance of which was the case of the unfortunate Admiral Byng. These Articles were therefore explained and amended by § 3 of stat. 19 Geo. 3. c. 17, whereby it is now lawful for a Court Martial to pronounce sentence of death, "or to inflict such other punishment as the nature and degree of the offence therein recited shall be found to deserve." See M'Arthur on Naval Courts Martial.

It is already mentioned under title Courts Martial, that desertion from the king's armies in time of war is made felony by stat. 18 H. 6. c. 19. It may here be added that by stat. 5 Eliz. c. 5. § 27, this penalty extended to mariners and gunners serving in the Navy. The ground of the jurisdiction of Naval Courts Martial depends on nearly the same reasoning as relates to those of the army; as to which see this Dictionary, title Courts Martial. The theory and general principles of Courts of Enquiry and Courts Martial in both services, also rest upon the same basis. Some observations, however, more peculiarly applicable to the latter, are here introduced; chiefly from M'Arthur on Naval Courts Martial; and the authorities referred to by him.

It is to be observed, that though in this as in the ordinary course of the criminal judicature of the kingdom, the King has the prerogative of pardoning or remitting punishment; yet he can no more alter the sentence of a Court Martial, than he can a judgment of any other Court. At the same time it is unquestionable that the royal prerogative may be exercised on all occasions in dismissing officers from the service; even though acquitted by a Court Martial.

Among many reasons urged against Naval Courts Martial, the most cogent and constitutional, at the first glance, is that of the infi-
rior officers and seamen, not being tried by their peers; for by the statute, no Courts Martial shall consist of more than thirteen, or less than five persons, to be composed of such flag-officers, captains, or commanders, then present, as are next in seniority to the officer who presides at the Court Martial. This objection, however, is (we may say completely) obviated by the necessity of subordination, which could not be preserved by admitting those as Jurymen, who certainly would have too great a fellow-feeling in the fate of the culprit: besides that it would open a dangerous door to confederacies that might destroy the whole discipline of the Navy.

To institute one inferior or divisional Court Martial, subject to appeal in the Navy, analogous to the regimental Courts in the army, would not be adequate to remedy some other evils complained of; for according to the antient practice of the sea, and as established by the 4th Article of the general printed Instructions, a captain or commander of any of his Majesty’s ships or vessels has the power of inflicting punishment upon a seaman in a summary manner, for any faults or offences committed contrary to rules of discipline and obedience established in the Navy; such punishment not to exceed twelve lashes for any one fault.

All Courts Martial are to be held, and offences tried, in the forenoon, and in the most public part of the ship, where all who will may be present: and the Captains of all his Majesty’s ships in company who take post, have a right to assist thereat. Instr. Art. 4.

Under the stat. 22 Geo. 2. c. 33, No member of any Court Martial, after the trial commenced, could go on shore, or leave the ship in which the Court Martial should assemble, until sentence was given; but it having been found that this restraint and confinement might, in many cases be attended with great inconvenience, and even prejudice to the health of the members, this clause was repealed by §1, 2, of stat. 19 Geo. 3. c. 17, under which all the members are now at liberty to retire upon every adjournment.

The jurisdiction of Naval Courts Martial extends to the trial of all offences specified in the Articles of War; which may be committed upon the main sea, or on great rivers, only beneath the bridges of the said rivers nigh to the sea, or in any haven, river, or creek within the jurisdiction of the Admiralty: and which shall be committed by persons then in actual service and full pay in the fleet or ships of war of his Majesty. Stat. 22 Geo. 2. c. 33. § 4.—Likewise to the trial of all spies, and all persons whatsoever who shall come and be found in the nature of spies, as specified in the 5th of the above Articles of War; as well as to the trial of every person who shall be guilty of mutiny, desertion, or disobedience to any lawful command, in any part of his Majesty’s dominions on shore, when in actual service, relative to the fleet; and for crimes committed on shore by such persons, in any places out of his majesty’s dominions as are more fully specified in the 34th and 36th of the said Articles.

Murders are cognizable by Courts Martial, only in cases where the stroke or poison is given on board ship, and the person dies in consequence thereof on board; but in order to prevent any failure of justice, it is enacted by stat. 2 Geo. 2. c. 21, that if any person be stricken or poisoned at sea or abroad, and die in England, or being stricken or poisoned in England, die at sea or abroad, the murderer and accessories are to be given up to the civil power, and may be indicted and
tried in the county where the stroke, poison, or death happened. See this Dictionary, title Homicide III. 3: Admiral.

Naval Courts Martial can likewise take cognizance of crimes committed by warrant officers or men belonging to ships in ordinary; that is, stationed for particular purposes in the several dock-yards of the kingdom, and not in active public service. But they cannot take cognizance of offences committed by masters, mates, or seamen belonging to Navy transports, as they are persons not subject to naval discipline. They are entitled to be discharged in time of war or peace, on their own application. The Articles of War are never stuck up or read on board these Navy transports; though the officers and men receive their wages quarterly at the dock-yards, in the same manner as the officers and men of his majesty's ships in ordinary.

By § 23 of the said stat. 22 Geo. 2. c. 33, it is enacted, that no person, not flying from justice, shall be tried or punished by a Court Martial for any offence, unless the complaint of such offence be made in writing, or (and?) unless a Court Martial to try such offenders shall be ordered within three years after the offence shall be committed: or within one year after the return of the ship into any of the ports of Great Britain or Ireland.

Pardons, when extended to a criminal tried by a Naval Court Martial, are sent to the Lords Commissioners of the Admiralty, who immediately transmit (as secret) their order of reprieve or pardon to the commander in chief or senior officer of the place for the time being, where the execution would take place; signed by the Lords under the Admiralty Seal, signifying his Majesty's royal clemency, and directing the commander in chief to keep the whole of the order extremely secret, until the offender is, on the day appointed for execution, brought out upon deck, and everything prepared for his execution, agreeable to the Custom of the Navy; and then only to make known to him his Majesty's pleasure, and to release him from his confinement. M. Arthur.

Some doubts having been entertained in the time of Will. III. whether the Commissioners of the Admiralty had the same power to issue commissions to a Court Martial to try a prisoner, as the Lord High Admiral was allowed to have; this and all the other powers of a Lord High Admiral were vested in such Commissioners, by stat. 2 W. & M. stat. 2. c. 2. See this Dictionary, title Admiral.

It is hinted under title Courts Martial, in the former volume of this Dictionary, that members of Courts Martial are liable to answer, in damage, to the party injured, for the consequences of any unjust sentence. A remarkable instance of this occurred in the case of Lieutenant Prye, of the Marines, who in the year 1742, was sentenced to 15 years' imprisonment by a Court Martial. He brought an action against the president Sir Chaloner Ogle, and recovered 1000l damages; and the Judge informing him that he was at liberty to bring his action against any of the members, he proceeded against Rear-Admiral Mayne, and Captain Rentone; who were arrested by a capias from the Court of Common Pleas, at the breaking up of the Court Martial on Admiral Lestock, where the former presided, and the latter sat as member. This was much resented by that Court Martial, who passed some resolutions on the subject, reflecting in intemperate language on the Chief Justice of the Court, (Sir John Willes,) and these were laid by the Lords of the Admiralty before the King; upon
this the Chief Justice caused every member of the Court to be taken into custody; and was proceeding in legal measures to assert and maintain the authority of his office, when a stop was put to the process by a public written submission, signed by all the members of the Court, transmitted to the Lord Chief Justice, received and read in the Court of Common Pleas, registered in the Remembrancer’s Office, and inserted in the Gazette of Nov. 15th, 1746. “A memorial (as the Chief Justice observed) to the present and future ages, that whoever set themselves up in opposition to the laws, or think themselves above the law, will in the end find themselves mistaken.”

NAVY BILLS: As to counterfeiting or stealing them, &c. See stats. 1 Geo. 1. st. 2. c. 25. § 6: 2 Geo. 2. c. 25. § 3: and this Dictionary, titles Forgery, Larceny.

NE ADMITTAS, A writ directed to the bishop for the plaintiff or defendant, where a quoire impedit or assise of darrein presentment is depending, when either party fears that the bishop will admit the other’s clerk during the suit between them: it ought to be brought within six calendar months after the avoidance, before the bishop may present by lapse; for it is in vain to sue out this writ when the title to present is devolved unto the bishop. Reg. Orig. 31: F. N. B. 37. Writ of Ne admittas doth not lie, if the plea be not depending in the King’s Court by quoire impedit, or darrein presentment; therefore there is a writ in the register directed to the Chief Justice of C. B. to certify the King in the Chancery, if there be any plea before him and the other Judges between the parties, &c. So that the writ should not be granted until that be done: but yet it may be had out of the Chancery before the King is certified that such plea of quoire impedit is depending; and then the party grieved may require the Chief Justice to certify, &c. New Nat. Br. 83, 84. The writ runs, Prohibemus vobis, Ne admittas, &c.

Immediately on the suing out of a quoire impedit; if the plaintiff suspects that the bishop will admit the defendant’s or any other clerk pending the suit, he [or the defendant vice versa] may have this prohibitory writ of Ne admittas, which recites the contention begun in the King’s Court, and forbids the bishop to admit any clerk whatsoever till such contention be determined. And if the bishop doth, after the receipt of this writ admit any person, even though the patron’s right may have been found in a jure patronatus, then the plaintiff, after he has obtained judgment in the quoire impedit, may remove the incumbent, if the clerk of a stranger, by writ of seire factas. 2 Sid. 94: And he shall have a special action against the bishop, called a quoire incumbravit, to recover the presentation; and also satisfaction in damages for the injury done him by incumbering the church with a clerk pending the suit, and after the Ne admittas received. F. N. B. 48. But if the bishop has incumbered the church by instituting the clerk, no quoire incumbravit lies; for the bishop hath no legal notice till the writ of Ne admittas is served upon him. The patron is therefore left to his quoire impedit merely, which, since the stat. Westm. 2, lies as well upon a recent usurpation within six months past, as upon a disturbance without usurpation had. See 3 Comm. c. 16, p. 248, 9.

NEAT, or NET, Is the weight of a pure commodity alone, without the cask, bag, dross, &c. Merch. Dict.

NECESSARY INTROMISSION, Is when a Husband or Wife
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continues in possession of the others goods, after their decease, for preservation. Scotch Diet.

NECESSITY. The Law charges no man with default where the act is compulsory, and not voluntary, and where there is not a consent and election; therefore if there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as, in presumption of law, he cannot overcome, such Necessity carries a privilege in itself. Bac. Elem. 25.

Necessity is of three sorts; Necessity of conservation of life, necessity of obedience, and Necessity of the act of God or of a stranger.

And first of conservation of life. If a man steal viands to satisfy his present hunger, it was antiently held to be no felony nor larceny. Britton, c. 10: Mirr. c. 4. § 16. But this now seems to be considered as an unwarranted doctrine, borrowed from the notions of some civilians. But if such necessity be owing to his unthriftiness, surely it is far from being an excuse. 1 Hawk. P. C. c. 33. § 20. See title Hunger.

So if divers be in danger of drowning by the casting away of some boat or barge, and one of them get to some plank, or on the boat’s side to keep himself above water; and another, to save his life, thrusts him from it, whereby he is drowned, this is neither se defendendo, nor by misadventure, but justifiable. 1 Hawk. Pl. C. c. 28. § 26.

So if divers felons be in gall, and the gall by casualty is set on fire, whereby the prisoners get forth, this is no escape, nor breaking of prison. Bac. Elem. 25.

So upon the statute, that every merchant setting his merchandise on land without satisfying the customer or agreeing for it, (which agreement is construed to be in certainty,) shall forfeit his merchandise; and it is so that by tempest a great quantity of the merchandise is thrown overboard, whereby the merchant agrees with the customer by estimation, which falls short of the truth, yet the over quantity is not forfeited; where note, that necessity dispenses with the direct letter of a statute law. Bac. Elem. 25. 6.

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continual claim which shall be as beneficial unto him as any entry. See title Claim.

The second necessity is of obedience; therefore where baron and feme commit felony, the feme can neither be principal nor accessory; because the law intends her to have no will, in regard of the subject and obedience she owes to her husband.

So one reason among others, why ambassadors are excused of practices against the State where they reside (except it be in point of conspiracy, which is against the law of nations and society) is, because non constat whether they have it in mandatum, and then they are excused by necessity of obedience. Ibid.

The third necessity is of the act of God, [as inevitable accident by the elements is, rather irreverently, styled in law:] or of a stranger; as if I be tenant for years of a house, and it be overthrown by tempest or by floods, or invasion of enemies, or if I have belonging to it some cottage which has been infected, whereby I can procure none to inhabit them, nor workmen to repair them, and so they fall down; in these cases I am excused in waste; but of this last learning, when and how the act of God and strangers do excuse, there are other particular rules. Bac. Elem. 26, 27.
Yet Necessity is a privilege only quoad jura privata; for in all cases if the act that should deliver a man out of the Necessity be against the commonwealth, Necessity is no excuse; for privilegium non valet contra rempublicam; and another says, Necessitas publica major est quam privata; for death is the last point of particular Necessity; and the law imposes upon every subject, that he prefer the urgent service of his prince and country, before the safety of his life; as if in danger of tempest those who are in the ship throw over other men’s goods, they are not answerable; but if a man be commanded to bring ordinance or munition to relieve any of the King’s towns that are distressed, then he cannot for any danger or tempest justify throwing them overboard; for there it holds which was spoken by the Roman, when he alleged the same Necessity of weather to hold him from embarking, necesse est ut cam, non ut vivam. So in the case put before, of husband and wife, if they join in committing treason, the Necessity of obedience, it has been said, does not excuse the offence as it does in felony; because it is against the commonwealth. Bac. Elem. 27: see titles Treason; Baron and Feme.

So if a fire happen in a street, I may justify pulling down the wall or house of another, to prevent the fire from spreading; but if I be assailed in my house in a city or town, and distressed, and to save my life I set fire to my house, which spreads and takes hold of other houses adjoining, this is not justifiable; but I am subject to their action upon the case, because I cannot rescue my life by doing any thing which is against the commonwealth; but if it had been but a private trespass, as the going over another’s ground, or breaking his enclosure, when I am pursued, for the safeguard of my life, it is justifiable. Bac. Elem. 27, 28.

The common case proves this exception; that is, if a madman commit felony, he shall not lose his life, because his infirmity came by the act of God; but if a drunken man commit felony, he shall not be excused, because his imperfection came by his own default; for the reason that loss or deprivation of will, and election by Necessity and by infirmity, is all one, for the lack of arbitrium solutum is the matter; therefore as infirmitas culpabilis excuses not, no more does Necessitas culpabilis. Bac. Elem. 29.

Compulsion and inevitable Necessity are considered by Blackstone, among those causes from whence arises a defect of will; and under which, therefore, an action is not to be considered as criminal which would otherwise be so.

These, he states to be a constraint upon the will whereby a man is urged to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to itself) would reject. As punishments are therefore only inflicted for the abuse of that free will which God has given to man, it is highly just and equitable that a man should be excused for those acts which are done through unavoidable force and compulsion.

Of this nature, in the first place, is the obligation of civil subjection, whereby the inferior is constrained, by the superior, to act contrary to what his own reason and inclination would suggest; as when a legislature establishes iniquity by a law, and commands the Subject to do an act contrary to religion or sound morality. How far this excuse will be admitted in foro conscientiae, or whether the inferior in this case is not bound to obey the divine, rather than the human law, is a
question not determinable by municipal law, though among the ca-
suists it will hardly bear a doubt. But, however that may be, obe-
dience to the laws in being is undoubtedly a sufficient extenuation of
civil guilt before the municipal tribunal. The Sheriff who burnt
Latimer and Ridley, in the days of Queen Mary, was not liable to
punishment from Elizabeth, for executing so horrid an office; being
justified by the commands of the then existing magistracy.

As to persons in private relations; the principal case where con-
straint of a superior is allowed as an excuse for criminal misconduct,
is with regard to the matrimonial subjection of the wife to her hus-
band: for neither a son nor a servant are excused for the commission
of any crime, whether capital or otherwise, by the command or co-
ercion of the parent or master; though in some cases the command
or authority of the husband, either express or implied, will privilege
the wife from punishment even for capital offences; as to which see
this Dictionary; title Baron and Feme VII.

Another species of compulsion or Necessity, is what our law calls
duress per minas; as to which see this Dictionary, title Duress.

There is a third species of Necessity which may be distinguished
from the actual compulsion of external force or fear; being the result
of reason and reflection, which act upon, and constrain a man’s will,
and oblige him to an action, which without such obligation would be
criminal. And that is, when a man has his choice of two evils set be-
fore him, and, being under a Necessity of chusing one, he chuses the
least pernicious of the two. Here the will cannot be said freely to
exert itself, being rather passive than active: or if active it is rather
in rejecting the greater evil than in chusing the less. Of this sort is
that Necessity where a man by the commandment of the law is bound
to arrest another for any capital offence, or to disperse a riot, and re-
sistance is made to his authority; it is here justifiable, and even ne-
cessary, to beat, to wound or perhaps to kill the offenders, rather than
permit the murderer to escape; or the riot to continue; for the pre-
servation of the peace of the kingdom, and the apprehending of no-
torious malefactors, are of the utmost consequence to the public; and
therefore excuse the felony which the killing would otherwise amount
to. 1 Hal. P. C. 53: See 4 Comm. 27—31.

As to homicide justifiable by Necessity, see this Dict. title Homici-
de I.

NEEDLE-WORK, Importing it prohibited, stat. 13 & 14 Car. 2.
c. 13. May be exported duty free, stat. 11 & 14 W. 3. c. 3. § 15. See
title Customs Embroidery.

NE EXEAT REGNO; (or as it is sometimes, ungrammatically
as it seems termed, Ne exeat Regnum.) A writ to restrain a person
from going out of the kingdom without the King’s licence. F. N. B.
85. It may be directed to the Sheriff to make the party find surety
that he will not depart the realm; and on his refusal, to commit him
to prison; or it may be directed to the party himself; and if he then
goes he may be fined. 2 Inst. 178.

A Ne exeat Regnum has been granted to stay a defendant from go-

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NE EXEAT REGNO.
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with the King's licence, and continues longer than his appointed
time, it hath been held he loses the benefit of a Subject. 4 Leon. 29.
And if a person beyond sea refuses to return to England on the King's
letters under his privy seal, commanding him upon his allegiance to
return; being certified into the Chancery, a commission may be
awarded to seize his lands and goods for the contempt; and so it is if
such person's servants hinder a messenger from delivering his mes-
sage, on affidavit of it, &c. Jenk. Cent. 246: 3 Nels. Abru. 211: See ti-
tle King V. 3.

The right which the King has, whenever he sees proper of con-
fining his Subjects to stay within the realm, (or of recalling them
when beyond sea,) is classed by Blackstone among his prerogatives as
Generalissimo of the realm. By the common law every man may go
out of the realm for whatever cause he pleaseth, without obtaining
the King's leave; provided he is under no injunction of staying at
home; (which liberty was expressly declared, in King John's Great
Charter, though left out in that of Henry III.): but, because that
every man ought of right to defend the King and his realm, there-
fore the King at his pleasure may command him by his writ that he
go not beyond the seas, or out of the realm without licence; and if
he do the contrary, he shall be punished for disobeying the King's
command. 3. In. B. 85. Some persons there antiently were, that, by
reason of their stations, were under a perpetual prohibition of going
abroad without licence obtained; among which were reckoned all
Peers on account of their being counsellors of the Crown; all Knights,
who were bound to defend the kingdom from invasions; all Ecclesi-
astics, who were expressly confined, by the fourth chapter of the con-
stitution of Clarendon, on account of their attachment in the times of
popery to the see of Rome; all Archers and other Artificers, lest they
should instruct foreigners to rival us in their several trades and ma-
ufactures. This was law in the times of Britton, who wrote in the
reign of Edw. I. And Sir E. Coke gives us many instances to this ef-
flect in the times of Edw. III. Britton, c. 123: 3 Inst. 175. In the
succeeding reign the affair of travelling wore a very different aspect:
and act of parliament being made (5 Rict. 2. c. 2.), forbidding all per-
sons whatever to go abroad without licence; except only the Lords
and other great men of the realm; and true and notable merchants;
and the King's soldiers. But this act was repealed by Stat. 4 Jac. 1.
c. 1. And at present every body has, or at least assumes, the liberty
of going abroad when he pleases. Yet undoubtedly if the King, by
writ of Ne exeat Regnum under his great seal or privy seal, thinks
proper to prohibit him from so doing, and the subject disobeys; it
is a high contempt of the King's prerogative, for which the offender's
lands shall be seised till he return, and then he is liable to fine and
imprisonment. 4 Hawk. P. C. 22: 1 Comm. c. 7.

It is said, in Lord Bacon's Ordinances, No. 89, that, "towards the
latter end of the reign of King James I. this writ was first thought
proper to be granted, not only in respect of attempts prejudicial to
the King and State; (in which case the Lord Chancellor granted it on
application from any of the principal secretaries, without shewing
cause, or upon such information as his Lordship should think of
weight;) but also in the case of interlopers in trade; great bankrupts in
whose estates many subjects might be interested; in duels and other
cases that did concern multitudes of the King's Subjects."
But in the year 1734, Lord Chancellor Talbot declared, that in his experience he never knew this writ of Ne exeat Regnum granted or taken out without a bill first filed.—It is true, it was originally a state-writ, but for some time, though not very long, it has been made use of in aid of the Subjects for the helping of them to justice: but it ought not to be made use of where the demand is entirely at law, for there the plaintiff has bail, and he ought not to have double bail both in law and equity. 3 P. Wms. 312.

The use and object of this writ is, in fact, at present exactly the same as an arrest at law in the commencement of an action, viz. to prevent the party from withdrawing his person and property beyond the jurisdiction of the Court, before a judgment could be obtained and carried into execution; so where there is a suit in equity, for a demand, for which the defendant cannot be arrested in an action at law, upon an affidavit made that there is reason to apprehend that he will leave the kingdom before the conclusion of the suit, the Chancellor by this writ will stop him, and will commit him to prison, unless he produces sufficient sureties that he will abide the event of the suit. 1 Comm. c. 7. ft. 266. n. And see 2 Com. Dig.: F. N. B. 85. &c.: 2 C. C. 245: La. 29: 7 Mod. 9: Pre. Ch. 171: 1 P. Wms. 263, and Mr. Cox’s note there: 15 Vin. 537, 9.

NEGATIVE, is a proposition by which something is denied; also a particle of denial; as, not. An affirmative includes a negative; for where any thing is limited to be done in one form, this includes a Negative on the contrary; Plowd. 206. b. 207. a: 2 P. Wms. 19. But, è contra, a Negative or Prohibition does not necessarily imply an affirmation. 2 P. Wms. 9.

A Negative cannot be proved or testified by witnesses, only in affirmative. 2 Inst. 662. Though a Negative is incapable of being proved directly, yet indirectly it is otherwise: for in case one accuses B. to have been at York, and there to have committed a certain fact, in proof of which he produces several witnesses; here B. cannot prove that he was not at York, against positive evidence that he was; but shall be allowed to make out the negative by collateral testimony, that at that very time he was at Exeter, &c. in such a house and in such company. Fortescue 37.

Negative may be implied by an affirmative, but not necessarily è contra. As the saying, that a papist, unless he conforms, shall not take by devise, does not necessarily imply that if he does conform he shall take by devise, &c. 2 P. Wms. 9.

NEGATIVE PREGNANT; negative pregnancies,] Is a negative, implying also an affirmative; as if a man being impeaded to have done a thing on such a day, or in such a place, denieth that he did it modo & forma declarata, which implieth, nevertheless, that in some sort he did it; or if a man be said to have alienated land in fee, and he saith he hath not aliened in fee, that is a Negative pregnant; for though he hath not aliened in fee, yet it may be, he hath made an estate in tail. Terms of the Law.

A Negative pregnant is a fault in pleading; to which there must be a special demurrer, for the Court will intend every pleading to be good, till the contrary doth appear. See 2 Leon. 248: Bro. Issue join. fld. 81: Heath’s Max. 53: 2 Leo. 199: Cro. Jac. 559, 560: 15 Vin. Abr. title Negative pregnant: and this Dictionary, title Pleading.
NE INJUSTE VEXES.

NEGGILDARe, Signifies to claim kindred. Leg. H. 1. c. 70: L.L. Ina, §§ 7, 8.

NEGLIGENCE, Is where a person neglects or omits to do a thing which he is by law obliged to. See titles Bailment, Laches, &c.

NEGRO; See title Slaves and Slave-trade.

NEIF, Fr. neif, Lat. naturalis, nativa.] A bond woman, or she vil-\levin, born in one's house, mentioned in stat. 9 R. 2. c. 2. Terms de

Ley.—See title Villein.

NEIFTY, Nativitas.] There was an ancient writ called Writ of
\nNeify, whereby the lord claimed such a woman for his Neif; now out
of use. See title Villein.

NEIGHBOUR, vicinus.] One who dwells near another. See Vicin-
age: Jury.

NE INJUSTE VEXES, A writ founded on Magna Carta, c. 10, that lies for a tenant distrained by his lord, for more services than he ought to perform; and is a prohibition to the lord, not unjustly to dis-

train or vex his tenant: in a special use, it is where the tenant hath prejudiced himself, by doing greater services, or paying more rent, without constraint, than he needed; for in this case, by reason of the

lord's seisin, the tenant cannot avoid it by avowry, but is driven to his

writ for remedy. Reg. Orig. 4: F. N. B. 10. And if the lord distrains
to do other services, or to pay other rent than due, after the prohibi-
tion delivered unto him, then the tenant shall have an attachment
against the lord, &c, and when the lord cometh thereon, the tenant
shall count against him, and put himself upon the grand assise; &c.
whereupon judgment shall be given. New Nat. Br. 22.

This writ is one of the remedies which the ancient law provided
to remedy the oppression of lords: though it is of the prohibitory kind,
yet it is in the nature of a writ of right. Booth 126. It lies where te-
nant in fee simple, and his ancestors, have held of the lord by certain
services, and the lord hath obtained seisin of more or greater ser-
service, by the inadvertent payment or performance of them by the
tenant himself; there the tenant cannot in an avowry avoid the lord's
possessory right, because of the seisin given by his own hands; but
is driven to this writ to divest the lord's possession, and establish the
more right of property, by ascertaining the services and reducing them
to their proper standard. 3 Comm. c. 15. &n. 234.

This writ is always ancestral, where the tenant and his ancestors
have holden of the lord and his ancestors; and the lord hath en-
\croached any rent, &c. A feoffee shall not avoid seisin of rent had by
encroachment of his feoffor, nor have the writ Ne injuste vexes; also
a man shall not have a writ of Ne injuste vexes against the grantee
of the seigniory. Mich. 18 Ed. 2.; 10 Ed. 3. Tenant in tail may not
have this writ; but shall plead and shew the matter, and not to be

estopped by the payment of his ancestors, &c. Trim. 20 Ed. 3.; for

he may avoid such seisin of the lord obtained from the payment of
his ancestors, by plea to an avowry in replevin. F. N. B. 11: 2 Inst.
21. But it seems that almost every question that can now arise, where
this writ was formerly in use, may be determined in an action of tres-

pass.

Form of the Writ of Ne injuste vexes.

GEORGE the Third, &c. To A. B. greeting: We command you,
that you do not vex or trouble C. D. or suffer him to be vexed, for his
freehold messuage, &c. which he holds of you, in, &c. Nor in any man-

ner exact, or permit to be exacted from him services which therefore he ought not to do, (or rent which he owes not;) nor has been accus-
toned, &c.

NEMINE CONTRADICENT; Words used to signify the unani-
mous consent of the members of the House of Commons in par-
liament to a vote or resolution. The term Nemine Dissentiente is, in
the same manner, applied in the House of Peers.

NE RECIPIATUR, A Caveat against the receiving and setting
down a cause to be tried. That is, where the cause is not entered in
due time. See Trial.

NE VICECOMES, Cadore Mandati Regis, quemquam amoveat à
possessione Ecclesiæ minus juste. Reg. Orig. 61.

NEW ASSIGNMENT. In many actions the plaintiff who hath
alleged in his declaration a general wrong, may in his replication, af-
after an evasive plea by the defendant, reduce that general wrong to a
more particular certainty, by assigning the injury afresh with all its
specific circumstances in such a manner as clearly to ascertain and
identify it, consistently with his general complaint; which is called a
New or Novel Assignment. 3 Comm. 311. See title Pleading.

NEWCASTLE UPON TINE. Keels in the haven to be mea-
sured and marked. Stats. 9 H. 5. c. 10: 30 Car. 2, st. 1. c. 8: 6 & 7
W. 3. c. 10.

No person shall ship, load, or unload any goods to be sold, into or
from ships at any place on the river Tine, but at the town of Newcas-
tle, on pain to forfeit the goods; and none shall raise any wear in the
haven there, between certain places on the said river, &c. Stat. 21 H.
8. c. 18.

NEW-FOREST, Hampshire—See Stats. 39 & 40 G. 3. c. 86; &
41 G. 3. (U. K.) c. 108. for the preservation of Timber there; and for
ascertaining the bounds of the Forest.

NEWFOUNDLAND. Persons trading to Newfound land, shall
have freedom of fishing, &c. And every fishing ship that first enters
any harbour or creek in Newfound land shall be admiral of the said
harbour for that season, and determine differences between the mas-
ters of fishing vessels, and the inhabitants there, &c. Stat. 10 & 11

NEWHAVEN; See Harbours.

NEWPORT in the Isle of Wight, the poll for knights of the shire
may be adjourned to it. Stat. 7 & 8 W. 3. c. 25. § 10. See title Par-
liament.

NEW RIVER; See River.

NEWS. Spreading false News to make discord between the King
and nobility, or concerning any great man of the realm, is punishable
at common law with fine and imprisonment; which is confirmed by
stats. Westm. 1, 3 E. 1. c. 34: 2 R. 2, st. 1. c. 5: 12 R. 2, c. 11: 2 Inst.
226: 3 Inst. 198: 4 Comm. c. 11. f. 149.

NEWS-PAPERS, Are by various statutes subject to stamp duties.
Persons selling any News-paper, not being stamped as directed, a
justice of peace may commit them to the house of correction for
three months; and a reward of 20s. is to be paid for apprehending
any such offender. Stat. 16 Geo. 1. c. 26. § 5. See titles Advertise-
ments; Lottery; Sunday; Unlawful Assemblies; Libel, &c.

NEW STILE; See Year.

NEW TRIAL. Judgments are often suspended by granting New
NIHIL. 393

Trials. The causes of suspending the judgment by granting a New Trial, are at present wholly extrinsic, arising from matter foreign to, or dehors the record. See this Dictionary, title Trial.

NEW-YORK; See title Navigation Acts.

NEXT OF KIN; See titles Descent; Executor, III; and V. 8.

NICOLE, Anciently used for Lincoln, 7 E. 1: 30 Ed. 1, & sepe alibi. Cowell.


NIENT COMPRISE, Is an exception taken to a petition, because the thing desired is not contained in that deed or proceeding whereon the petition is founded; for example, one desires of the Court wherein a recovery is had of lands, &c. to be put in possession of a house, formerly among the lands adjudged unto him; to which the adverse party pleads, that this is not to be granted by reason this house is not comprized amongst the lands and houses for which he had judgment.

New Book Entries.

NIENT DEDIRE, Signifies to suffer judgment to be had against one, by not denying or opposing it, i. e. by default.

NGER LIBER. The Black Book or register in the Exchequer is called by this name.—Several Chartraleries of Abbies, Cathedrals, &c. are distinguished by a like appellation.

NIIGHT, Is when it is so dark that the countenance of a man cannot be discerned; and by some opinions, burglary in the Night may be committed at any time after sun-set, and before rising. H. P. C. 79: 3 Inst. 63: 1 Hawk. P. C. See Noctanter; Burglary.

NIIGHTWALKERS, Are such persons as sleep by day and walk-by-night, being oftentimes pilferers, or disturbers of the peace. Stat. 5 Ed. 3. c. 14. Constables are authorized by the common law to arrest Nightwalkers and suspicious persons, &c. Watchmen may also arrest Nightwalkers, and hold them until the morning: and it is said, that a private person may arrest any suspicious Nightwalker, and detain him till he give a good account of himself. 2 Hawk. P. C. Watchmen, either those appointed by the statute of Winchester, 13 E. 1. c. 4, to keep watch and ward in all towns from sun-setting till sun-rising, or such as are mere assistants to the constable, may virtute officii arrest all offenders, and particularly Nightwalkers, and commit them to custody till morning. 4 Comm. r. 21. p. 292, cites 2 Hal. P. C. 88—96. One may be bound to the good behaviour for being a Nightwalker; and common Nightwalkers and haunters of bawdy-houses are to be indicted before justices of peace, &c. 1 Hawk. P. C.: 2 Hawk. P. C.: Latch. 173: Poph. 280. See this Dictionary, titles Constable; Watch.

NIHIL CAPIAT PER BREVE, or per Billam. Is the judgment given against the plaintiff in an action, either in bar of his action, or in abatement of his writ or bill, &c. Co. Litt. 363.

NIHIL, or NIL DEBET, Is a common plea to an action of debt, when the money is paid; but it is no plea in covenant, on breach assigned for non-payment of rent, &c. 3 Lev. 170. If an action of debt be brought against a Sheriff or gaoler, for the escape of one in execution, the plaintiff must declare upon the judgment, and yet Nil debet per patriam is a good plea. 1 Saund. 38; See titles Issue; Pleading.

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NIHIL, or NIL DICIT, is a failing by the defendant to put in an answer to the plaintiff by the day assigned; which being omitted; judgment is had against him of course, as saying nothing why it should not. See title Judgment.

NIHIL, or NIL HABUIT IN TENEMENTIS, A plea to be pleaded in an action of debt only, brought by a lessor against lessee for years, or at will, without deed. 2 Lil. Abr. 214. In debt for rent upon an indenture of lease, Nil habuit in tenementis may not be pleaded; because it is an estoppel, and a general demurrer will serve. 3 Lev. 146. But if debt is brought for rent upon a deed poll, the defendant may plead this plea; and where a defendant pleaded Nil habuit in tenementis ten foire dimissionis; the plaintiff replied, Quod habuit in tenementis, & c. and verdict and judgment was had for the plaintiff; whereupon writ of error being brought, it was assigned for error; that the replication was not good, for he ought to have shown what estate he then had; and of that opinion was the Court; and it had been bad upon demurrer, but being after a verdict, it is good. Cro. Jac. 312. If a less estate is found than the plaintiff pleads in his reply to a Nil habuit, &c. so as it be sufficient to entitle the plaintiff to make a lease, it is good enough. 10 W. 3. Nil habuit in tenementis cannot be given in evidence where the plaintiff hath been in possession. Ld. Raym. 746. See title Pleading; Covenant.

NIHILS, or NICHILS, Are issues which the Sheriff that is opposed in the Exchequer says, are nothing worth, and illeivable, for the insufficiency of the parties from whom due. Accounts of Nihil shall be put out of the Exchequer, Stat. 5 R. 2. c. 13.

NISI PRIUS. The commission to Justices of Assise; so called from a judicial writ of distringas, whereby the Sheriff is commanded to distress the impanelled jury to appear at Westminster before the justices at a certain day in the following term, to try some cause; Nisi prius justic. domini regis ad assisas capient. velerint, viz. Unless the justices come before that day to such a place; &c. 2 Inst. 424: 4 Inst. 159.

A writ of Nisi prius is where an issue is joined, then there goes a venire to summon the jury to appear at a day in court; and upon the return of the venire, with the panel of the jurors' names, the record of Nisi prius is made up and sealed, and there goes forth the writ of distringas to have the jurors in Court, Nisi prius justic. velerint, &c. such a day in such a county, to try the issue joined between the parties. 2 Lil. 215.

A record of Nisi prius ought to contain a transcript of the whole issue roll. All civil causes at issue in the Courts at Westminster, are brought down in the two issueable vacations before the day of appearance appointed for the jury above, into the county where the action was laid to be tried there; viz. at the assises; and then upon the return of the verdict given by the jury to the Court above, the next term, the judges there give judgment for the party for whom the verdict is found; and these trials by Nisi prius are for the ease of the county, the parties, jurors, and witnesses, by saving them the charge and trouble of coming to Westminster; but in matters of great weight and difficulty, the judges above, upon motion, will retain causes to be tried there; though laid in the country, and then the juries and witnesses in such causes must come up to the courts at Westminster.
for trial at bar; and the King hath his election to try his suits at the bar or in the county, &c. Wood's Inst. 479.

The statute of Westm. 2, 13 Ed. 1, st. 1, c. 30, having ordained, “that all pleas in either bench, which require only an easy examination, shall be determined in the country before justices of assise;” by virtue of the writ appointed by that statute, commonly called the writ of Nisi prius; it has been held, that an issue joined in the King’s Bench upon an indictment or appeal, whether for treason or felony, or a crime of an inferior nature, committed in a different county from that wherein the Court sits, may be tried in the proper county by writ of Nisi prius: but as the King is not expressly named in this statute, and it is a general rule, that he shall not be bound except named, it is said, where the King is party, a Nisi prius ought not to be granted without his special warrant, or the assent of his attorney; though the Court may grant it in appeals in the same manner as any other actions. 2 Inst. 424; 4 Inst. 160: Dyer 46; 2 Hawk. P. C. c. 42. §§ 2, 3.

Justices of Nisi prius have power to record nonsuits and defaults in the country at the days assigned; and are to report them at the bench, &c. And are to hear and determine conspiracy, confederacy, champerty, &c. Stat. 4 Ed. 3. c. 11: Nisi prius shall be granted in attaints; but that which cannot be determined before the justices upon the Nisi prius, shall be adjourned to the bench where they are justices: and the justices before whom inquisitions, inquests, and juries, shall be taken by the King’s writ of Nisi prius, are empowered to give judgment in felony and treason, &c. and to award execution by force of their judgment. Stats. 5 Ed. 3. c. 11: 14 Hen. 6. c. 1.

It was held by Hale, that the justices of Nisi prius have not any original power of determining felony, without special commission for that purpose; and by virtue of stats. 27 Ed. 1. st. 1. c. 3: 14 H. 6. c. 1, they have authority to determine such felonies only as are sent down to be tried before them; in which case, on removal of the indictments, they may proceed to trial and judgment as if Justices of gaol-delivery. 2 Hale’s Hist. P. C. 41.

By stat. 18 Eliz. c. 12, the Chief Justices of the King’s Bench, Chief Justice of the Common Pleas, and Chief Baron of the Exchequer, and in their absence two other of the Judges, &c. as Justices of Nisi prius for the county of Middlesex, shall try causes upon writs of Nisi prius on issue joined in B. R. and C. B. and the exchequer, which were formerly only triable at bar, in the term time or four days after each term. And by stat. 12 Geo. 1. c. 31, the time is enlarged to eight days (and by stat. 24 Geo. 2. c. 18, to fourteen days,) after the end of any term; also any one judge or baron may try such issues, in the absence of the chiefs: and all Sheriffs, officers, parties, and witnesses are required to give attendance, &c. The authority of justices of Nisi prius in the country, is annexed to the justices of assise; and the Court above will take judicial notice of what is done at Nisi prius; being entered on record. See this Dictionary, titles Assise; Justices of Assise; Circuits; Trial; Jury, &c.

NIVICOLINI BRITONES, Welshmen; because in Caermarthen-shire and other Northern counties of Wales, they lived near high mountains covered with snow. Du Cange: Covel.

NOBILITY, nobilitas.] Compriseth all degrees of dignity above a Knight; under which latter term, is included a Baronet; so that a
NODFYRS,

baron is the lowest order of nobility: it is derived from the King, and may by him be granted by patent in fee, for life, &c. See title Peers of the Realm.

NOBLE, An antient kind of English money in use in England in the time of Edward III. Knighton says, the Rose Noble was a gold coin current in England about the year 1344. A Noble is now valued at 6s. 8d. but we have no peculiar coin of that name. From the treaty of peace between John, King of France, and Edward III. A. D. 1360, the Noble was valued as equal to two French gold crowns.

NOCTANTER, By Night; In the Night time. The name of a writ issuing out of the Chancery and returnable in the King's Bench, given by stat. Westm. 3. 13 E. 1. st. 1. c. 46. By virtue of which statute, in case any one having right to approve waste ground, &c. doth raise and levy a ditch or hedge, and it is thrown down in the night-time, and it cannot be known by a verdict of the assise or a jury by whom; or if the neighbouring towns will not indict such as are guilty, they shall be distrained to make again the hedge or ditch at their own costs, and to answer damages. 2 Inst. 476. And the Noctanter writ thereupon is directed to the Sheriff of the county to make inquisition relative thereto. On the return of this writ by the Sheriff, that the same is found by inquisition, and that the jury are ignorant who did it, the return being filed in the Crown-office, there goes out a writ of inquiry of damages, and a distringus to the Sheriff to distrain the circumadjacent vills, to repair the hedges and fences so destroyed at their own charge, and also to restore the damages, &c. See 2 Litt. Abr. 217.

The charges for the defence of the several vills must be raised by agreement: and if they cannot agree, each vill is to bear their own charges, as in case of a suit against a hundred, till execution; and then the stat. 27 Eliz. c. 13, hath provided a remedy.

The writ of Noctanter, by the better opinion, lies for the prostration as well of all inclosures as those improved out of Commons; but if it be not in the night, this writ will not lie; and there ought to be a convenient time (which the Courts is to judge of) before the writ is brought for the country to inquire of, and indict the offenders; which Coke says should be a year and a day. 2 Inst. 476. See Cro. Car. 440: 1 Keb. 545. And if any one of the offenders be indicted, the defendants must plead it. &c.

The words, in the night-time, are so necessary in an indictment of burglary, that it hath been adjudged insufficient without it. Cro. Eliz. 483. See title Burglary.

NOCTES ET NOCTEM DE FIRMA. In the book of Domesday we often meet with Tot noctes de firma, or firma tot noctium; which is understood of entertainment of meat and drink for so many nights; for in the time of the English Saxons, time was computed not by days, but nights; and so it continued till the reign of King Hen. I. as appears by his laws, c. 66, 76. And hence it is still usual to say a seven-night i. e. septem Noctes, for a week; and a fortnight for two weeks, i. e. quattuordecim Noctes.

NODFYRS, or NEDFRI, Sax.] Spelman says this word is derived from the old Saxon neod obsequium, and fry, ignis, and signifies fires made in honour of the heathen deities. But by others it is said to come from the Saxon neb, that is necessary; and was used for the necessary fire.
NOLLE PROSEQUI, Is used in the law, where a plaintiff in any action will not proceed any further; and may be before or after verdict, though it is usually before; and it is then stronger against the plaintiff than a nonsuit, which is only a default in appearance; but this is a voluntary acknowledgment, that he hath no cause of action. 2 Lit. 218.

A Nolle prosequi is an acknowledgment or agreement by the plaintiff, that he will not further prosecute his suit as to the whole or a part of the cause of action; or where there are several defendants against some or one of them; and it is in nature of a retractit operating as a release or perpetual bar. Tidd. Pract. K. B. cites Cro. Car. 239, 243: 2 Rol. Ab. 100: Hard. 153: 8 Co. 58: Cro. Jac. 211. But see Let. Raym. 599, where there are other defendants.

On a plea of coverture, &c. If the plaintiff cannot answer it, he may enter a Nolle prosequi as to the whole cause of action, but the defendant in such case is entitled to costs, under stat. 3 Eliz. c. 2. § 2: 3 T. R. 511.—So if the defendant demur to one of several counts of a declaration, the plaintiff may enter a Nolle prosequi as to that count which is demurred to, and proceed to trial upon the other counts. 2 Salk. 456. Or if judgment be given for him on demurrer, he may enter a Nolle prosequi as to the issue, and proceed to a writ of enquiry on the demurrer. 1 Salk. 219: 2 Salk. 456: 1 Str. 532, 574. But after a demurrer for misjoinder, the plaintiff cannot cure it by entering a Nolle prosequi. 1 H. Bl. 108. And after demurrer to a declaration, consisting of two counts against two defendants, because one of them was not named in the last count, the plaintiff cannot enter a Nolle prosequi on that count, and proceed on the other 4 T. R. 360. And the court of C. P. refused to allow a defendant to strike out the entry of a judgment of Nolle prosequi, entered by a plaintiff as to one of the counts of the Declaration, after it had been demurred to, &c. and would not in that stage of the proceedings determine the question of costs respecting such count. 1 Bos. & Pull. 157.

If there be a demurrer to part, and an issue upon another part, and the plaintiff prevails upon the demurrer, it was in one case held, that without a Nolle prosequi as to the issue, he cannot have a writ of enquiry, on the demurrer; because on the trial of the issue, the same jury will ascertain the damages for that part which is demurred to. 1 Salk. 219: 12 Mod. 558. But in a subsequent case, where the declaration consisted of four counts, to three of which there was a plea of non assumpsit, and a demurrer to the fourth; and after judgment on the demurrer, the plaintiff took out a writ of inquiry and executed it; this was moved to be set aside, there being no Nolle prosequi on the roll; and it was insisted, that the plaintiff ought to take out a venire, as well to try the issue, as to inquire of the damages upon the demurrer; sed per Curiam, that is, indeed, the court where the issues are carried down to trial, before the demurrer is determined, and in that case the jury give contingent damages; but here the demurrer being determined, and the plaintiff being able to recover all he goes for, upon that count, there is no reason why we should force him to carry down the record to nisi prius, and as to the want of a Nolle prosequi upon the roll, he may supply that when he comes to enter the final judgment; if not, you will have the advantage of it upon a writ of error. The judgment upon the inquiry must stand. 1 Stra. 532: 8 Mod. 198.
NOLLE PROSEQUI.

In trespass or other action for a wrong, against several defendants, the plaintiff may, at any time before final judgment enter a Nolle prosequi as to one defendant, and proceed against the others: Hob. 70; Cro. Car. 239. 243: 2 Rol. Abr. 100. 2 Salk. 55, 6, 7: 3 Salk. 244, 5: 1 Wils. 306: so in assumpsit, or other action upon contract, against several defendants, one of whom pleads bankruptcy, or other matter in his personal discharge, the plaintiff may enter a Nolle prosequi as to him, and proceed against the other defendants. 1 Wils. 89. But a Nolle prosequi cannot be entered as to one defendant, after final judgment against the others. 2 Salk. 455. And it seems that in assumpsit, or other action upon contract, against several defendants, the plaintiff cannot enter a Nolle prosequi as to one, unless it be for some matter operating in his personal discharge, without releasing the others. 1 Wils. 89. See Tidd’s Pract. K. B.

A plaintiff comes by his attorney hic in curiam & fatetur se alterius Nolle prosequi; whereupon judgment was given that the defendant eat sine die, and no amercement upon the plaintiff; this was held erroneous; for the plaintiff ought also to be emerced. 8 Rep. 58. But later determinations have settled that in entering a Nolle prosequi the plaintiff need not be emerced pro falsa clamore, but it is sufficient that the defendant be put without day. 1 Stra. 574.

Where there are two defendants, and one pleads not guilty, and the other another plea; if on demurrer, there is judgment for the plaintiff against one on the demurrer, and a Nolle prosequi for the other there it ought to be eat sine die, or it is ill, and the entry of quod eat sine die is a discharge to the defendant. Cro. Jac. 439: Hob. 180.

In trespass against two, one pleaded not guilty, the other justified; and both issues being found for the plaintiff, and several damages and joint costs assessed; the plaintiff then entered a Nolle prosequi against one, and took judgment against the other for damages found against him, and the costs; upon which it was insisted on for error, that the entry for a Nolle prosequi before judgment as to one, is a release to him, and quasi a release to both; per Cur. it is not an absolute release, but as it were an agreement that the plaintiff will not proceed against the one; and as to him it is a bar, but he may proceed against the other; and where they sever by pleas, there may be proceedings against one, and a Nolle prosequi against the other. Cro. Car. 239, 243; 2 Lil. 220. It has been held, in trespass against three defendants; if a Nolle prosequi were entered against two, before judgment against any of them, it had not amounted to a release to them all; only to a waiver of suit: and the three defendants cannot join in a writ of error; for those against whom the Nolle prosequi is entered are not damnedified. Jenk. Cent. 509.

The King may, by his attorney general, enter a Nolle prosequi on an information; but it shall not stop the proceedings of the informer, 1 Leon. 119. But the clerk of the Crown cannot enter a Nolle prosequi on an indictment, without leave of the attorney general. Ld. Raym. 721. And if an informer cause a Nolle prosequi to be entered, the defendant shall have costs, &c. by stat. 4 & 5 W. & M. c. 18. See title Costs.

Where, in an action against several defendants, the jury by mistake have assessed several damages, the plaintiff may cure it by entering a Nolle prosequi as to one of the defendants and taking judgment against the others. 11 Co. 5: Cro. Car. 239, 243: Carth. 19.
Where there are several defendants, and they sever in plea whereupon issue is joined, the plaintiff may enter a Nolle prosequi as to one defendant at any time before the record is sent down to be tried at nisi prius. 2 Rol. Ab. 100: Saik. 457.—See title Nonsuit.

NOMENCLATOR, One who opens the etymologies of names, interpreted Thesaurus.  Spelman: Cowell.

NOMINATION, nominatio.] Is the power (by virtue of some manor or otherwise) of appointing a clerk to a patron of a benefice, by him to be presented to the Ordinary. The right of Nomination a man may have by deed; and in such case, if the patron refuse to present the nominee, or presents another, he may bring a quare implevit; for he who is to present, is only an instrument to him who nominate; and the person who hath the Nomination is in effect the patron of the church.  Plowd. 529: Moor 47. A nominator must appoint his clerk within six months after avoidance; if he doth not, and the patron presents his clerk before the bishop hath taken any benefit of the lapse, he is obliged to admit that clerk. But where one hath the Nomination, and another the presentation, if the right of presentation should afterwards come to the King, it is said he who hath the Nomination will be entitled to the presentation also; because the King who should present cannot be subservient to the nominator, being contrary to his dignity.  Hughes's Pars. Law 76, 77. Right of Nomination may be forfeited to the Crown as well as presentation; where the nominator corruptly agrees to nominate, within the statute of Simony, &c. See title Advowson.

NOMINA VILLARUM. Edw. II. in the 9th of his reign, sent his letters to every Sheriff in England, requiring an exact account and return into the Exchequer of the names of all the villages, and possessors thereof in every county, which being done accordingly, the returns of the Sheriffs all joined are called Nomina villarum, still remaining in the Exchequer, Anno 9 Ed. 2.

NOMINE PÆNE. A penalty incurred for not paying rent, &c. at the day appointed by the lease or agreement for payment thereof. 2 Lil. 221. If rent is reserved, and there is a Nomine pæna on the non-payment of it, and the rent be behind and unpaid, there must be an actual demand thereof made, before the grantee of the rent can distrain for it; the Nomine pæna being of the same nature as the rent, and issuing out of the land out of which the rent doth issue. Hob. 82, 133. And where a rent charge was granted for years, with a Nomine pæna and clause of distress, if it was not paid on the day; on the rent's being behind, and the term expired, the Court was moved that the grantee might distrain for the Nomine pæna; but it was held that he could not, because the Nomine pæna depended on the rent, and the distress was gone for that, and by consequence for the other. 2 Nels. Abr. 1182. See stat. 8 Ann. c. 14.

When any sum Nomine pæna is to be forfeited for non-payment of the rent at the time, &c. the demand of the rent ought to be precisely at the day, in respect of the penalty; and debt will not lie on a Nomine pæna, without a demand. 7 Rep. 28: Cro. Eliz. 383; Style 4. If there is a Nomine pæna of such a sum for every day after rent becomes due, it has been a question whether there must be a demand for every day's Nomine pæna, or one demand for many days. And by the better opinion it hath been holden, that for every day there ought to be a demand; and that one will not be sufficient for the whole; but
where a Nonine pane of forty shillings was limited quotidian die proximo the feast-day on which the rent ought to be paid, it was adjudged, that there was but one forty shillings forfeited, because the word proximo must relate to the very next day following the rent day; so likewise when the rent became due and unpaid at the next rent day after that, and so on. Palm. 207; 2 Nels. 1182. An assignee is chargeable with a Nonine pane incurred after the assignment, but not before. Motr 357: 2 Lit. Abr. 221. Though forfeiture is mentioned to be Nonine pane, or not paying of a collateral sum, it is no Nonine pane, if it be not of a rent. Lutw. 1156. See this Dictionary, title Distress III.

NON-ABILITY, is an exception taken against the plaintiff in a cause, upon some just ground, why he cannot commence any suit in law; as praemunire, outlawry, excommunication, &c. P. N. B. 35, 65. See titles Disability; Abatement.

NONÆ ET DECIMÆ, Payments made to the church by those who were tenants of church farms; where None was a rent or duty for things belonging to husbandry, and Decima were claimed in right of the church. Formerly a ninth part of moveable goods was paid to the clergy on the death of persons in their parish, which was called Nonagium, and claimed on pretence of being distributed to pious uses. Blount.

NON-AGE, In general understanding, is all the time of a person's being under age of 21: and in a special sense, where one is under 14 as to marriage, &c. See titles Age; Infant.

NON ASSUMPSIT. The general issue in an action of Assumpsit, whereby a man denies that he made any promise. See titles Issue; Pleading.

NON Assumpsit infra sex annos. Where a defendant by virtue of the statute of limitations, stat. 21 Jac. 1. c. 16, pleads that he did not undertake or promise within 6 years before the commencement of the action; as a plea of action non accretit infra sex annos is pleaded by virtue of the same statute. This last plea is proper where the cause of action does not accrue, at the time of the promise made, as in the case of a Note, payable at some time specified, but subsequent to the date. See title Limitation of Actions.

NON-CLAIM, Is an omission or neglect of one that claims not within the time limited by law, as within a year and a day where a continual claim ought to be made, or in 5 years after a fine levied, &c. by which a man may be barred of his right of entry. See stats. 4 H. 7. c. 24: 32 H. 8. c. 33: and this Dictionary, titles Claim; Entry; Limitation of Actions.

NON COMPOS MENTIS, One not of sound mind, memory, and understanding: See this Dictionary, title Idiots and Lunatics.

NON-CONFORMISTS, Persons not conforming to the rites and ceremonies of the Church of England as by law established. The stats. 1 Eliz. c. 2: 13 & 14 Car. 2. c. 4, were made for the uniformity of Common Prayer and service in the church; but see stat. 10 Ann. c. 2, under title Dissenters. Non-conformists to be punished by imprisonment, and to submit in three months, or to abjure the realm; and keeping a Non-conformist in the house after notice, subjected the offender to the penalty of 10l. a month. Stat. 35 Eliz. c. 1. Penalties on being at conventicles Stat. 22 Car. 2. c. 1. See further
this Dictionary, title "Dissenters." In addition to what is said there, the following deserves the notice of the Student:

Toleration of the Episcopal communion in Scotland, stat. 10 Ann. c. 7. Episcopal meeting-houses in Scotland, to be registered; and a penalty imposed on unqualified ministers officiating in Scotland. Stat. 19 Geo. 2. c. 38. Episcopal ministers in Scotland to be ordained by a bishop of England or Ireland. Ib. & stat. 21. Geo. 2. c. 34. Peers and others present at unlawful meeting-houses in Scotland, disqualified from voting. Stat. 19 Geo. 2. c. 38. A form of affirmation to be taken instead of an oath by the members of the Unitas fratrum; and privileges granted to the members thereof who should settle in America. Stat. 22 Geo. 2. c. 30.

This seems the properest place to notice those statutes which are usually known by the name of the Corporation Act and Test Act: as to the true policy or propriety of which any discussion is not here by any means called for.

By the Corporation Act, stat. 13 Car. 2. st. 2. c. 1, No person can be legally elected to any office relating to the government of any city or corporation, unless, within one year before, he has received the sacrament of the Lord's Supper, according to the rites of the church of England; and he is also enjoined to take the oaths of allegiance and supremacy at the same time that he takes the oath of office, or, in default of either of these requisites, such election shall be void. By stat. 5 Geo. 1. c. 6, however, no person shall be removed from a corporate office to which he has been duly elected, or otherwise prosecuted for his omission to take the sacrament, nor incur any incapacity or penalty, unless such person be so removed or the prosecution commenced within six months after his being elected into the office. See title Nonjurors.

By the Test Act, stat. 25 Ch. 2. c. 2, all officers civil and military, and persons having places of trust under his Majesty in England, Wales, Berwick, Jersey, or Guernsey, or in the navy, are directed to take the oath, and make the declaration against transubstantiation in the Court of King's Bench or Chancery, the next term, or at the next quarter sessions; or by substitutes within six months after their admission; and also within the same time to receive the sacrament of the Lord's Supper, according to the usage of the Church of England, in some public church immediately after divine service and sermon; and to deliver into Court a certificate thereof signed by the minister and churchwarden; and also to prove the same by two credible witnesses; upon forfeiture of 500l. and disability to hold the office. See also particularly 1 Geo. 1. st. 2. c. 15, § 32; & 9. Geo. 2. c. 26.

It is to be observed, that the Toleration Act, stat. 1 W. & M. st. 1. c. 18, (see title "Dissenters"), though it exempts Dissenters and others from certain penalties, does not dispense either with the Test or Corporation Acts as far as they impose the obligation of receiving the sacrament on persons serving in offices or corporations. See further as connected with this subject, title Papists.

NON DAMNIFICATUS, A plea to an action of debt upon bond, with condition to save the plaintiff harmless. 2 Lil. Abr. 224.

NON DECIMANDO, A custom or prescription, De Non Deci-
mando is to be discharged of all tithes, &c. See Modus Decimandi; Tithes.

Vol. IV. 3 E.
NON DISTRINGENDO, A writ not to distrain, used in divers cases. Table of Reg. of Writs.

NONES, none.] So called from their beginning the ninth day before the Ides. The seventh day of March, May, July, and October, and the fifth day of all the other months. By the Roman account the Nones in the aforementioned months are the six days next following the first day, or the calendars and of others the four days next after the first, according to these verses,

Sex Nonas, Maius, October, Julius, & Mars,
Quatuor at reliqui, &c.

Though the last of these days is properly called Nones; for the others are reckoned backwards as distant from them, and accounted the third, fourth, or fifth Nones. See Ides.

NON CULPABILIS; See Not guilty.

NON EST FACTUM, The general issue, in an action on bond or other deed, whereby the defendant denies that to be his deed whereon he is impleaded. Broke. In every case where a bond is void, the defendant may plead Non est factum. But when a bond is voidable only, he must shew the special matter, and conclude judgment. Sc. actto, &c. 2 Lil. 226.

None but the party, his heirs, executors, &c. can plead Non est factum. Latuw. 662. For a stranger to the deed cannot plead a special Non est factum; but must say, nothing passed by the deed. 1 Rol. 188. See Com. Dig. title Pleading; and this Dictionary, titles Bond; Deed; Pleading.

NON EST INVENTUS, The Sheriff’s return to a writ, when the defendant is not to be found in his bailiwick. And there is a return that the plaintiff non inventi fidegium, on original writs. Shep. Epit. 1129.

NONFEASANCE, An offence of omission of what ought to be done; as in not coming to church, &c. which need not be alleged in any certain place; for generally speaking it is not committed any where. But Nonfeasance will not make a man a trespasser, &c. Hob. 251: 8 Ref. 146.

NON IMPLACITANDO ALIQUEM DE LIBERO TENEMENTO SINE BREVI, A writ to prohibit bailiffs, &c. from dis-treining or impleading any man touching his freehold, without the King’s writ. Reg. Orig. 171.

NON INTROMITTENDO, QUANDO BREVE PRÆCIPÆ IN CAPITE SUBDOLE IMPETRATUR: Was a writ directed to the justices of the Bench, or in Eyre, commanding them not to give one, who had under colour of entitling the King to land, &c. as holding of him in capite, deceitfully obtained the writ called P्रेसी in capite, any benefit thereof, but to put him to his writ of right. Reg. Orig. 4. This writ having dependence on the court of Wards, since taken away, is now disused.

NONJURORS, Persons who refuse to take the oaths to Government, who are liable to certain penalties; and those who deny that oaths are unlawful are for a third offence to abjure the realm, by stat. 13 & 14 Car. 2, c. 1.—Parsons, vicars, &c. are to take the oaths, and give their assent to the declaration, stat. 13 & 14 Car. 2, c. 4; or they shall not preach, under the penalty of forty pounds, &c. Stat. 17 Car. 2. c. 2.—Ecclesiastical persons not taking the oaths on the Revolution, were rendered incapable to hold their livings: but the King was
empowered to grant such of the nonjuring clergy as he thought fit, not above twelve, an allowance out of their ecclesiastical benefices for their subsistence, not exceeding a third part. Stat. 1 W. & M. sess. 1. c. 8. Persons refusing the oaths, shall incur, forfeit, and suffer the penalties inflicted on Popish recusants, and the Court of Exchequer may issue out process against their lands, &c. Stat. 7 & 8 W. 3. c. 27. See title Non-conformists; Oaths; Dissenters; Papists, &c.

Blackstone enumerates among the contempts to the King’s title, the refusing or neglecting to take the oaths appointed by the statutes 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 admission. 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 præmuniere; being an incapacity to hold the said offices, or any other; to prosecute any suit; to be guardian or executor; to take any legacy or deed of gift; and to vote at any election for members of parliament; and after conviction, the offender shall also forfeit 500l. to him or them that will sue for the same. Members on the foundation in any college of the two Universities, 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 12 months, or after, the King may nominate a 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 Nonjuror, shall be adjudged a Popish recusant convict, and subjected to the same penalties as such recusants; which in the end may amount to the alternative of abjuring the realm, or suffering death as a felon. 4 Comm. c. 9. ft. 123. 4. But by stat. 31 Geo. 3. c. 32. § 18, no person shall be summoned to take the oath of supremacy, or be prosecuted for not obeying such summons. This act was made expressly for the relief of the Roman Catholics, but does not appear to extend to repeal the provisions of stat. 1 Geo. 1. c. 13: as to the oaths of allegiance and abjuration, as suggested by Mr. Christian in his note on 4 Comm. c. 8. ft. 116.

NON MERCHANDIZANDO VICTUALIA, An antient writ to justices of assise, to inquire whether the magistrates of such a town do sell victuals in gross, or by retail, during the time of their being in office, which is contrary to an obsolete statute; and to punish them if they do. Reg. Orig. 184.

NON MOLESTANDO, A writ that lies for a person who is molested contrary to the King’s protection granted him. Reg. of Writs, 184.

NON OBSTANTE, Notwithstanding.] Was a clause heretofore frequent in statutes and letters patent, and was a licence from the King to do a thing which at the common law might be lawfully done; but which being restrained by act of parliament, could not be done without such licence. Vaugh. 347: Plowd. 501. But this doctrine of Non obstante’s, which sets the prerogative above the laws was effectually demolished by the Bill of Rights at the Revolution, and abdi-
cated at Westminster-Hall when King James abdicated the kingdom. 1. Comm. 342. See this Dictionary, titles King, V. 3; Grant of the King; Pardon; Mortmain.

NON OMITTAS. A writ directed to the Sheriff; where the bailiff of a liberty or franchise who hath the return of writs refuses or neglects to serve a process, for the Sheriff to enter into the franchise and execute the King’s process himself, or by his officer. Before this writ is granted, the Sheriff ought to return, that he hath sent to the bailiff, and that he hath not served the writ; but for dispatch, the usual practice is to send a Non omittas with a capias or latitat. F. N. B. 68, 74: 2 Inst. 453. If a Sheriff return that he sent the process to the bailiff of a liberty, who hath given him no answer; a Non omittas shall be awarded to the Sheriff. And if he returns that he sent the process to such bailiff, who hath returned a cefi corpus, or such like matter; and the bailiff bring not in the body, or money, &c, at the day, the bailiff shall be amerced, and a writ issue to the Sheriff to distrain the bailiff to bring in the body. 2 Hawk. P. C.

Writs of capias utlagatum, and of quo minus out of the Exchequer, and it is said all writs whatsoever at the King’s suit, are of the same effect as a Non omittas; and the Sheriff may by virtue of them enter into a liberty and execute them. 2 Lil. Abr. 229. The Reg. of Writs mentions three sorts of this writ, given to prevent liberties being privileged to hinder or delay the general execution of justice; and the clause of the Non omittas is, quod non omittas, propter aliquam libertatem (viz. such liberty to which the Sheriff hath made a mandavi bailiue, qui nullum dedit responsum) quin in eam ingrediaris & capias A. B. 56, &c.

NON PLEVIN, non plevinas.] Is defined to be defulta post defaltem; and in Hengham Magna, cap. 8, it is said, that the defendant is to replevy his lands seised by the King within fifteen days; and if he neglects, then, at the instance of the plaintiff; at the next court-day, he shall lose his seisin, sicue per defaltem post defaltem. But by statute 9 Ed. 3. c. 2. it was enacted, that none should lose his land, because of non plevin, i.e. where the land was not replevied in due time.

NON PONENDIS IN ASSISIS ET JURATIS. A writ granted for freeing and discharging persons from serving on assises and juries; and when one hath a charter of exemption, he may sue the Sheriff for returning him. This writ is founded on the state. West. 2. 13 E. 1. st. 1. c. 38: and Articuli super Chartas, 28 E. 1. st. 3. c. 9. See F. N. B. 165: 2 Inst. 127, 447.

NON PROCEDENDO AD ASSISAM REGE INCONSULTO. A writ to stop the trial of a cause appertaining to one who is in the King’s service, &c. until the King’s pleasure be farther known. Reg. Orig. 220.

NON PROS or NON PROSEQUITUR; See titles Nolle Prosequi; Nonsuit.

NON-RESIDENCE, The absence of spiritual persons from their benefices. See Residence.

NON RESIDENTIA PRO CLERICUS REGIS, A writ directed to the bishop, charging him not to molest a clerk, employed in the King’s service, by reason of his Non-residence; in which case he is to be discharged. Reg. Orig. 58.
NONSUIT.

NON SANE MEMORY, Non sana Memorix.] See title Idiots and Lunaticks.

NONSENSE. Where a matter set forth is grammatically right, but absurd in the sense and unintelligible, some words cannot be rejected to make sense of the rest, but must be taken as they are; for there is nothing so absurd but what by rejecting may be made sense; but where the matter is nonsense by being contradictory and repugnant to somewhat precedent, there the precedent matter which is sense shall not be defeated by the repugnancy which follows, but that which is contradictory shall be rejected. As in ejectment where the declaration is of a demise the 2d of January, and that the defendant postea, to wit, on the 1st of January, ejected him; here the solicitor may be rejected, as being expressly contrary to the postea and the precedent matter; per Holt, Ch. J. 1 &alk. 324. But per Powel, J. Words unnecessary might in construction be omitted or rejected, though they are not repugnant or contradictory; but in ceteris omnibus agreed with the Ch. J. See titles Mistake; Amendment.

NON SOLVENDO PECUNIAM, ad quam clericus multatur pro non residentia. A writ prohibiting an Ordinary to take a pecuniary mulct, imposed on a clerk of the King’s for non-residence. Reg. of Writs, fol. 59.

NONSUIT.

Non est prosecutus.] A Renunciation of a suit by the plaintiff or demandant, most commonly upon the discovery of some error or defect, when the matter is so far proceeded in that the Jury is ready to deliver their verdict. The civilized term it Litis renunciationem, Cowell.

If the plaintiff in an action neglects to deliver a declaration for two terms after the defendant appears, or is guilty of other delays or defaults against the rules of law, in any subsequent stage of the action, he is adjudged not to follow or pursue his remedy as he ought to do; and thereupon a Nonsuit or Non prosequitur is entered; and he is said to be non prossext. And for thus deserting his complaint, after making a false claim (pro falso clamore suo), he shall not only pay costs to the defendant, but is liable to be amerced to the King. A Nonsuit differs from a Retractit, in that the former is negative, and the latter positive. The Nonsuit is a mere default and neglect of the plaintiff, and therefore he is allowed to begin his suit again upon payment of costs: but a Retractit is an open and voluntary renunciation of his suit in Court, and by this he for ever loses his action. 3 Comm. c. 20. p. 295, 6.

Before the Jury gave their verdict on a trial, it was formerly usual to call or demand the plaintiff, in order to answer the amercement, to which by the old law he was liable, in case he failed in his suit. 3 Comm. 376. And it is now usual to call him, whenever he is unable to make out his case, either by reason of his not adducing any evidence in support of it, or any evidence arising in the proper county. The cases in which it is necessary that the evidence should arise in a particular county, are either where the action is in itself local, or made so by act of parliament, as in action upon penal statutes, &c. or where upon a motion to change or retain the venue, the plaintiff undertakes to give material evidence in the county where the action was
brought. 2 Black. Rep. 1039. See titles Action; Venue. And there is
this advantage attending a Nonsuit; that, as is already hinted, the
plaintiff, though he pays costs, may afterwards bring another action
for the same cause; which he cannot do, after a verdict against him.
Tidd's Pract. K. B.

I. Who may be Nonsuit; in what action, and at what time, there
may be a Nonsuit.

II. How far the Nonsuit of one shall be the Nonsuit of another;
and how far a Nonsuit for part of the thing in demand shall
be a Nonsuit for the whole.

III. Of the effect of a Nonsuit; and of its being a temporary bar.

IV. Of judgments as in case of a Nonsuit.

I. It is agreed, that the King, being in supposition of law always
present in Court, cannot be Nonsuit in any information or action
wherein he is sole plaintiff; but it is held, that any informer qui tam,
or plaintiff in a popular action, may be Nonsuit, as well in respect
of the King as of himself. Bro. Nonsuit, 68: Co. Lit. 139, b: 2 Roll.
Abr. 131.

If an infant bring an assise by guardian, although the infant disa-
vow the suit in proper person, yet no Nonsuit shall be awarded. 39
Ass. pl. 1: 2 Roll. Abr. 130.

Where an executor need not name himself executor, he shall pay
costs upon a Nonsuit, and the naming himself executor shall not ex-
empt him from it. 6 Mod. 181. See title Executor. VI. 2.

If an attorney of the Common Pleas sues an action there, he shall
not be demanded, because he is supposed always present aiding the
Court. 2 H. 6. 44, b: 1 Roll. Abr. 581. Sed quâ, as to this doctrine? In
many cases it is the interest of the plaintiff to be Nonsuit, instead of
having a verdict against him, as he may bring a new action, wherein,
if properly advised and pursued, he may recover. J. M.

A person may be Nonsuit in a writ of error. 2 Roll. Abr. 130: 1
Sid. 255. So in a writ of false judgment. 20 H. 6. 18, b: 2 Roll. Abr.
130, S. C.

One cannot be Nonsuit in an action in which he is not an actor or
demandant; and though he afterwards becomes an actor, yet not be-
ing originally so, he cannot be Nonsuit; as an avowant: so of gar-
nishees who become actors, but were not so originally. 23 Ed. 4. 10.

So if a person outlawed hath a charter of pardon, and sues a seire
facias against the party, though hereby he is an actor, yet he cannot
be Nonsuit. 2 Roll. Abr. 130.

So if a man traverse an office he cannot be Nonsuit, though he is
an actor, for he hath no original pending against the King. 2 Roll.
Abr. 130: Dyer 141. pl. 47, where it is made a quere.

But in a petition of right against the King, the plaintiff may be
Nonsuit. 11 H. 4. 52: 2 Roll. Abr. 130.

So in an auditâ querelâ, to avoid a statute, the plaintiff may be Non-
suit, for he is plaintiff in this action. 47 Ed. 3. 5. b.

If to two nihilis returned to a seire facias on a charter of pardon, the
plaintiff does not appear, he shall be Nonsuit; for the statute ordains,
that upon his appearing he ought to count against the defendant. 45
Ed. 3. 16.

At the common law, upon every continuance, or day given over
before judgment, the plaintiff was demandable, and upon his non-ap-
pearance might have been Nonsuit. Co. Lit. 139. b. That if at common law he did not like the damages given by the jury, he might be Nonsuit. See 5 Mod. 208.

But now by stat. 2 Hen. 4. cap. 7, it is enacted in the words following: "Whereas, upon verdict found before any Justice in assise of novel disseisin mort d'ancestor, or any other action whatsoever, the parties before this time have been adjourned upon difficulty in law, upon the matter so found; it is ordained and established, that if the verdict pass against the plaintiff, the same plaintiff shall not be nonsuited."

Notwithstanding this statute, it hath been held, that the plaintiff may be nonsuited after a special verdict, or after a demurrer and argument thereon. Co. Lit. 139: 2 Jon. 1: 2 Roll. Abr. 131-2: 3 Leon. 28: and see 2 Hauk. P. C. c. 23. § 95.

If there be a judgment to account, and auditors assigned, and thereupon a capitias ad computandum, the plaintiff cannot be nonsuited on the original, because the original is determined, by the judgment to account. 2 Roll. Abr. 131. See Co. Lit. 139. b.

A Nonsuit can only be at the instance of the defendant; and therefore where the cause at nisi prius was called on, and jury sworn, but no counsel, attorneys, parties, or witnesses appeared on either side, the judge held, that the only way was to discharge the jury; for nobody has a right to demand the plaintiff, but the defendant, and the defendant not demanding him, the Judge could not order him to be called. 1 Stra. 267: see also 2 Stra. 1117.

The plaintiff in no case is compellable to be nonsuited after he has appeared; 2 Term Refs. K. B. 275: and therefore, if he insist upon the matter being left to a jury, they must give in their verdict, which is general or special. If it be for the plaintiff, or for the defendant in replevin, the jury should regularly assess the damages; but when the plaintiff is nonsuited on the trial of an issue, he cannot have contingent damages assessed for him on a demurrer. 1 Stra. 507. Though when the plaintiff in replevin is nonsuited, the jury may assess damages for the defendant. Comb. 11: 5 Mod. 76: and see Tidd's Pract. K. B.—The Court will not give judgment as in case of a Nonsuit in Replevin under stat. 14 G. 2. c. 17. 3 Term Refs. K. B. 661.

II. In real or mixt actions, the Nonsuit of one demandant is not the Nonsuit of both; but he who makes default shall be summoned and severed; but regularly, in personal actions, the Nonsuit of one is the Nonsuit of both. Co. Lit. 139: 2 Inst. 563: and vide 2 Rol. Abr. 132, several cases to this purpose.

But in personal actions brought by executors, there shall be summons and severance, because the best measure shall be taken for the benefit of the dead; and so it is in action of trespass, as executors for goods taken out of their own possession. Like law in account, as executors by the receipt of their own hands. Co. Lit. 139. a. See title Executors. VI. 2.

In an audiá querelá concerning the personality, the Nonsuit of the one is not the Nonsuit of the other; because it goeth by way of discharge, and freeing themselves, therefore the default of the one shall not hurt the other. Co. Lit. 139. In an audiá querelá, seire facias, atfeint, the Nonsuit of one shall not prejudice the other. 6 Co. 26.

In a quid juris etamatu, the Nonsuit of the one is the Nonsuit of
both; because the tenant cannot attorn according to the grant. Co. Lit. 139. a.

An appeal against divers, whether they plead the same or several issues, it hath been adjudged, that a Nonsuit against one, at the trial of any one of the issues, is a Nonsuit as to all, because a Nonsuit operates as a release of the whole. Cro. Eliz. 460. pt. 6: Dyer 120; 2 Roll. Abr. 133: 1 Sid. 378.

A latittat was sued out against four defendants in trespass; the plaintiff was Nonsuit for want of a declaration, and the defendant’s attorney entered four Nonsuits against him; and it was held to be irregular, because the trespass is joint; and though the plaintiff may count severally against the defendants, yet it remains joint till severed by the count. 2 Saik. 455. There is a Nonsuit before appearance at the return of the writ, or after appearance at some day of continuance, Co. Lit. 138. b.

In an action against several defendants, the plaintiff must be nonsuited as to all, or to none of them: and therefore, if one of two defendants suffer judgment by default, and the other go to trial, the plaintiff cannot be nonsuited as to him; but such defendant must have a verdict; if the plaintiff fail to make out his case. 3 Term Rep. 662.

It is laid down as a general rule, that a Nonsuit for part is a Nonsuit for the whole; but it hath been held, that if a defendant plead to one part, and thereupon issue is joined, and demur to the other, the plaintiff may be Nonsuit as to one part, and proceed for the other. 2 Leon. 177; Hob. 180.

If in debt the defendant acknowledges the action as to part, and joins issue as to the residue, and the plaintiff hath judgment for that which is confessed; but there is a cesset executio, by reason of the damages to be assessed by the jury; if the plaintiff be nonsuited in this issue, this shall be a Nonsuit, for the damages to be given, because that he had judgment. 2 Roll. Abr. 134.

If in trover the defendant pleads, that as to some of the goods they were fixed to his freehold, as to others that he had them of the gift of the plaintiff, and as to the rest not guilty: and as to the first, the plaintiff enters non vult ulterioris prosequi; this amounts only to a retractit, and is no Nonsuit, so as to bar the plaintiff from proceeding on the other parts of the plea, on the rule, that a Nonsuit for part is a Nonsuit for the whole. 2 Leon. 177.

III. A Nonsuit, as hath been observed, is regularly no peremptory bar; but the plaintiff may, notwithstanding commence any new action of the same or like nature: but this general rule hath the following exceptions:

1. It is peremptory in a quare impedit; and in that action a discontinuance is also peremptory; and the reason is, for that the defendant had, by judgment of the Court, a writ to the bishop; and the incumbent, that cometh in by that writ, shall never be removed; which is a flat bar to that presentation.

2. Nonsuit in an appeal of murder, rape, robbery, &c. after appearance, is peremptory, and this in favorem vitae; but the Nonsuit of the plaintiff in an appeal is not such an acquittal, on which the defendant shall recover damages against the abettors, by stat. Westm. 2. 13 E. 1. st. 1. c. 12; unless after the Nonsuit, he were arraigned at the King’s suit, and acquitted,
3. So if the plaintiff, in an appeal of maihem, be Nonsuit after appearance, it is peremptory; for the words therein are felonicè mathe-

4. A Nonsuit after appearance is also peremptory in a writ of na-
tivo habendo, and the Nonsuit of one plaintiff in that action nonsuits both, in favorem libertatis; for in a libertate probanda such Nonsuit is not peremptory, neither is the Nonsuit of one plaintiff the Nonsuit of both. Co. Lit. 139, a; Cro. Eliz. 881.

5. Such Nonsuit is also peremptory in an attaint, but a discontinu-
ance in an attaint is not; because there is a judgment given upon the
Nonsuit, but not upon the discontinuance. Co. Lit. 139, a.

If a Record be ever so erroneous, the plaintiff who has made de-
fault by suffering a Nonsuit, cannot have a judgment afterwards in
his favour. 4 Term Rep. K. B. 436.

IV. The delay and expense attending the trial by proviso, (see
this Dictionary, title Trial,) gave rise to the statute, 14 Geo. 2. c. 17, by which it is enacted, "That where any issue is joined in an action in the Courts of Record at Westminster, and the plaintiff hath neg-
llected to bring such issue on to be tried, according to the course and
practice of the said Courts, the Judges of the said Courts respectively
may, at any time after such neglect, upon motion in open Court (due
notice having been given thereof,) give the like judgment for the defen-
dant as in cases of Nonsuit; unless the said Court shall, upon just
cause and reasonable terms, allow any further time for the trial of
such issue; and if the plaintiff shall neglect to try such issue within
the time so allowed, then and in every such case the said Court shall
proceed to give such judgment as aforesaid. Provided, that all judg-
ments given by virtue of this act shall be of the like force and effect
as judgments upon Nonsuit, and of no other force or effect. Provided
also, that the defendants shall, upon such judgment, be awarded their
costs, in any action or suit, where they would upon Nonsuit be enti-
tled to the same."

This statute has been held to extend to qui tam actions, as well as
others. Barnes 315. And also to a traverse of the return of a manda-
mus. Say. Rep. 110; Say. Costs, 166: 4 T. R. 689. And to a Writ of
Right in which it may be entered against the Demandant. 1 Bos. &
Pull. 103. But it does not extend, any more than the trial by proviso,
to actions of reprehvisin, &c. in which the defendant is considered as
an actor, and may therefore enter the issue and carry down the cause to
400: but see Barnes 317. And where there are two defendants, one
of whom lets judgment go by default, the other cannot have judgment
as in case of a Nonsuit. Say. Rep. 22, 103: Say. Costs, 163, 4, 8: 1
Wils. 325: 1 Burr. 358. Also where the cause has been once carried
down to trial, the defendant cannot have such judgment for not car-

The Course and practice of the Court, referred to by the statute, is
that which before regulated the trial by proviso (see this Dictionary,
title Trial) and as the defendant could not have such trial until the
plaintiff had been guilty of laches, nor until after the issue was en-
tered on record, so neither till then is he entitled to judgment as in
case of a Nonsuit. If the action be laid in London or Middlesex, the
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defendant ought not to give a rule for the plaintiff to enter his issue the same term in which it is joined, unless notice of trial hath been given; and accordingly it is held, that in a town cause, unless notice of trial has been given, the defendant cannot move for judgment as in case of a Nonsuit, the next term after that in which issue was joined, although it was joined early enough to enable the plaintiff to give notice of trial for the sittings after that term; the plaintiff in such case having the whole of the next term to enter the issue, and no laches can be imputed to him till the term after. 4 T. R. 557: 1 H. Black. 65, contra: and see 1 H. Black, 123, 282. But if notice of trial has been given in a town cause, for a sitting in term, the plaintiff may move for judgment as in case of a Nonsuit the next term, being the term after that in which the issue ought to be entered. To support a rule for judgment as in case of a Nonsuit in the next term after that in which issue was joined, the affidavit must state that notice of trial was given for a sitting in the preceding term; but in the third or other subsequent term, a general affidavit, stating the term when the issue was joined, is deemed sufficient. 1 H. Black. 282. In a country cause, where notice of trial is given for the assises, the defendant may move for judgment as in case of a Nonsuit the next term; but the plaintiff is not bound to give notice of trial, till the term succeeding that in which issue was joined. And if he do not, the plaintiff cannot move for judgment as in case of a Nonsuit till after the next assises. 2 Term Rep. 734.

The rule for judgment as in case of a Nonsuit is a rule to shew cause, founded on an affidavit of the state of the proceedings, and of the plaintiff's default in not proceeding to trial; which rule has been held sufficient notice of motion within the act. Lofft. 265: 1 H. Black, 527, contra. And the roll must be in Court at the time the motion is made. This rule is made absolute of course, on an affidavit of service, unless the plaintiff shew some cause to the contrary; as the absence of a material witness, &c. But a slight cause in general is deemed sufficient, if the plaintiff will undertake peremptorily to try at the next sittings or assises. The insolvency of the defendant, after the action brought, is good cause against judgment, as in case of a Nonsuit. Doug. 671. But unless the plaintiff will consent to stay all further proceedings, and enter a cesset processus, the Court will bind him down to a peremptory undertaking. Where the rule to shew cause was discharged, on an affidavit which contained an answer false in itself, the Court would not afterwards open the matter, on an affidavit which disproved the contents of the former one. 3 T. R. 405. See Tidd's Pract. K. B.

For more learning on this subject, see 15 Vin. Abr. title Nonsuit; and this Dictionary, titles Costa; Damages; Process; Trial, &c.

NON SUM INFORMATUS, A formal answer made of course by an attorney, that he is not instructed or informed to say anything material in defence of his client: by which he is deemed to leave it undefended, and so judgment passeth against his client. See title Judgments acknowledged for Debts.

NON-TENURE. A plea in bar to a real action, by saying, that he (the defendant) holdeth not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. See stat. 25 E. 3. c. 16: 1 Mod. Rep. 250. And our books mention Non-tenure general and special: general, where one denies ever to have been tenant
of the land in question; and special is an exception, alleging that he was not tenant on the day whereon the writ was purchased. West, Symb. par. 2. When the tenant or defendant pleads Non-tenure of the whole, he need not say who is tenant; but if he pleads Non-tenure as to part, he must set forth who is the tenant. 1 Mod. 181. Non-tenure in part, or in the whole, is not pleaded after imparlance. 3 Lev. 55. See title Pleading.

NON-TERM, non terminus.] The vacation between term and term; formerly called the time or days of the King's peace. Lamb. Arch. 126.

NON-USER, Of offices concerning the public, is cause of forfeiture. 9 Rep. 50. And if one have a franchise, and do not use it, he shall forfeit the same; which likewise may be lost by default, as well as Non-user. See titles Office; Condition I. 1.

NOOK OF LAND, nocata terrae.] In an old deed of Sir Walter de Pedwardyn, twelve acres and a half of land were called a Nook of Land; but the quantity is generally uncertain. Dugd. Warwick, p. 565.

NORRY, Quasi North Roy, The Northern King at Arms, mentioned in stat. 14 Car. 2. c. 33. See Herald.

NORTHAMPTON. The statute named from this place was made there, anno. 2 Edw. 3.

NORTHERN BORDERS; NORTHUMBERLAND AND NORTHERN COUNTIES. Provisions for preventing theft and rapine upon the Northern Borders are made by stats. 7 Jac. 1. c. 13 & 14 Car. 2. c. 22; made perpetual by stats. 31 Geo. 2. c. 42: 29 & 30 Car. 2. c. 1; revived by stat. 6 Geo. 2. c. 37; made perpetual by stat. 31 Geo. 2. c. 42. Benefit of clergy taken from notorious spoil-takers in Northumberland, &c.; or justices of assise, &c. may transport them not to return, stat. 18 Car. 2. c. 3; revived by stat. 6 Geo. 2. c. 37, and made perpetual by stat. 31 Geo. 2. c. 42. The acts for preventing theft and rapine on the Northern Borders shall be deemed public acts. 6 Geo. 2. c. 37. See also titles Mischief; Malicious; and stats. 2 H. 5. st. 1. c. 5: 9. H. 5. c. 7: 23. H. 6. c. 6: 11. H. 7. c. 9: 2 & 3 Ed. 6. c. 34: 14. Eliz. c. 13.

NORTH WALES; See Wales.

NORTH-WEST PASSAGE, From the Atlantic to the Pacific Ocean; for the reward for the discovery of which, see this Dictionary, title Longitude.

NORWICH. See stats. 33 H. 8. c. 16: 9 G. 1. c. 9; & this Dictionary, titles Wool; Woollen Manufactures.

NOTARY, or NOTARY-PUBLIC, Notarius,] A person who takes notes, or makes a short draught of contracts, obligations, or other writings and instruments. Stat. 27 Ed. 3. st. 1. c. 1. At this time a Notary-public is one who publicly attests deeds or writings, to make them authentic in another country; but principally in business relating to merchants; they make protests of foreign bills of exchange, &c. The Stat. 41 G. 3. (U. K.) c. 79, was passed for regulating Public Notaries in England. By this act no person shall act as a Notary unless duly admitted, nor shall he be admitted as a Notary unless he shall have served seven years Apprenticeship to a Notary on Penalty of 50l. Notaries shall not permit unqualified persons to act in their names. Persons applying to become Notaries within the Jurisdiction of the Company of Scriveners in London, shall be free of the said Company.
NOTE OF A FINE, is a brief of the fine made by the chirographer before it is engrossed. West. Symb.

NOTES PROMISSORY; See Bill of Exchange.

NOT Guilty, The general issue or plea of the defendant in any criminal action or prosecution: Not guilty is a good issue, in actions of trespass, and upon the case for deceits or wrongs; but not on a promise, &c. Palm. 393. If one have cause of justification in trespass, and plead Not Guilty, he cannot give the special matter in evidence, but must confess the fact, and plead the special matter, &c. 5 Rep. 119. Unless in some cases, provided for by statute; as in the case of justices of the peace, peace-officers, churchwardens, and overseers of the poor, &c. See title Pleading.

NOTICE, The making something known, that a man was or might be ignorant of before. And it produces divers effects; for by it the party who gives the same shall have some benefit, which otherwise he should not have had: by this means, the party to whom the Notice is given, is made subject to some action or charge, that otherwise he had not been liable to; and his estate in danger of prejudice. Co. Lit. 309.

Notice is required to be given in many cases by law to justify proceedings where any thing is to be done or demanded, &c. But none is bound by law to give Notice to another person of that which such other may otherwise inform himself, except in cases where Notice is directed by act of parliament. See titles Action: Award: Condition: Covenant: Leases: Motion: Trial: Justice, &c. Generally speaking, where it is required by Law that Notice shall be given to a party, before he shall be affected by any Act, leaving it at his dwelling-house is sufficient.—But it is otherwise in the case of process to bring a party into Contempt: there personal Notice is necessary.—In some instances of process, however, leaving it at the house is sufficient; as a Summum out of Chancery, or a Quo minus out of the Exchequer. See 4 Term Rep. K. B. 454. 5, 6.

NOVALE. Land newly ploughed or converted into tillage, that had not been tilled within time of memory; and sometimes it is taken for ground which hath been ploughed for two years, and afterwards lies fallow for one year; or that which lies fallow every other year: it is called Nova, because the earth nova cultura proscinditur. Cartular Abbatis de Furness in Com. Laci. in Off. Ducat. Lanc. fol. 41.

NOVA OBLATA. See Oblata.

NOVEL ASSIGNMENT, nova assignatio.] See titles New assignment; Trespass.

NOVEL DISSEISIN, nova disseisina.] See title Assise of Novel Disseisin.

NOVELLA. Those constitutions of the civil law, which were made after the publication of the Thedocian code, were called Novele by the emperors who ordained them; but some writers call the Julian edition only by that name. See title Civil law.

NOYLES. By stat. 21 Jac. 1. c. 18, no persons shall put any flocks, Noyles, thrums, &c. or other deceivable thing, into any broad woolen cloth.

NUCES COLLIGERE, To gather hazle-nuts; this was formerly one of the works, or services, imposed by lords upon their inferior tenants. Paroch. Antiq. 495.

NUDE CONTRACT, nudum pactum.] Is a bare naked contract
without a consideration. If a man bargains or sells goods, &c. and there is no recompence made or given for the doing thereof: as if one say to another, I sell you all my lands or goods, but nothing is agreed upon what the other shall give or pay for the same, so that there is not a quid pro quo of one thing for another; this is a Nude Contract, and void in law, and for the non-performance thereof, no action will lie; for the maxim of law is ex nudo pacto non oritur actio. Terms de Ley. The law, in fact, supposes error in making these contracts; they being as it were of one side only. See titles Assumpsit III.; Consideration.

NUDE MATTER, A bare allegation of a thing done, &c. See Matter.

NUDUM PACTUM; See Nude Contract.

NUISANCE; See Nusance.

NUL DISSEISIN, Plea of. A plea in real actions, that there was no disessisin, and is one species of the general issue. See titles Issues; Pleading.

NUL TIEL RECORD, The plea of a plaintiff that there is no such record, on the defendant's alleging matter of record, in bar of the plaintiff's action. See title Failure of Record. It is sometimes the plea of a defendant, as in action on a judgment, &c.

NUL TORT, Plea of. A plea in a real action, i. e. that no wrong was done, and is a species of the general issue. See title Pleading.

NULLUM ARBITRIUM. The usual plea of the defendant prosecuted on an arbitration bond, for not abiding by an award; that there was no award made. See title Award.

NULLITY, Is where a thing is null and void, or of no force. Lit. Dict. Nullity of marriage is where persons marry within the prohibited degrees. &c. See title Marriage.

NUMERUM, Civitas Cant' Reddit, ad Numerum, i.e. by number or tale, as we call it. Domesday.

NUMMATA, The price of any thing, generally by money; as denaria te denoteth the price of a thing by computation of pence, and libras by computation of pounds.

NUMMATA TERRÆ, Is the same with denarius terra, and thought to contain an acre. Spelman.

NUMMUS, A piece of money or coin among the Romans; and it is a penny according to Matth. Westm. sub anno 1095.

NUN, nunna.] A consecrated virgin, or woman who by vow hath bound herself to a single and chaste life, in some place or company of other women, separated from the world, and devoted to the service of God by prayer, fasting, and such like holy exercises; it is an Egyptian word, St. Jerome says. See stat. Westm. 2. 13 Ed. 1. ch. 34, the punishment of taking a Nun from her convent: 3 years Imprisonment.

NUNCIUS, A nuncio, or messenger, servant, &c. The Pope's nuncio was termed legatus pontificis; a Legate.

NUNCUPATIVE WILL; See Will.

NUPER OBIIT, Is a writ that lies for a sister and coheir, deforced by her coparcener of lands or tenements, whereof their father, brother, or any other common ancestor died seised of an estate in fee-simple; for if one sister deforce another of land held in fee-tail, her sister and coheir shall have a formdon against her, &c. and not a Nu per obit; and where the ancestor, being once seised, died seised,
not of the possession, but the reversion, in such a case a writ of rati-

NUTURE, Guardian for, This is, of course, the father or mo-
ther, until the infant attains the age of fourteen years; and in default
of father or mother, the Ordinary usually assigns some proper per-
son. Co. Lit. 88: Moor 738: 3 Rep. 38: 2 Jones 90: 2 Lev. 163. See
title Guardian.

NUSANCE.

[quod] Nocumentum, from the Fr. nuire, i. e. nocere.] Annoyance; any
thing that worketh hurt, inconvenience, or damage.

Nusances are of two kinds; public or common, which affect the
public, and are an annoyance to all the King's Subjects; and private
Nusances, which may be defined, to be any thing done to the hurt or
annoyance of the lands, tenements, or hereditaments of another.
Hawk, P. C. 188.

I. Common or public Nusances; what shall be considered as such.

II. What are private Nusances.

III. Of the remedy for both.

I. COMMON NUSANCES are a species of offences against the pub-
lic order and economical regimen of the State; being either the do-
ing of a thing to the annoyance of all the King's Subjects, or the neg-
lecting to do a thing which the common good requires. 1 Hawk, P.
C. c. 75, § 1.

Of this nature are, 1. Annoyances in highways, bridges, and the pub-
lic rivers, by rendering the same inconvenient or dangerous to pass,
either positively by actual obstructions, or negatively by want of repa-
rations. For both of these, the person so obstructing, or such individ-
uals as are bound to repair and cleanse them, or (in default of these
last) the parish at large may be indicted, distrained to repair and
amend them, and in some cases fined. And a presentment thereof
by a judge of assise, &c. or a justice of the peace, shall be in all re-
spects equivalent to an indictment. Stat. 7 Geo. 3, c. 42. Where
there is an house erected, or an inclosure made on any part of the
King's demesnes, or of an highway, or common street, or public
river, or such like public things, it is called a furpurprist, from the
French fourpris, an inclosure. 1 Inst. 277: and see Highway.

A bridge built in a public highway without public utility, is indict-
able as a Nusance; and so it is if built colorably in an imperfect or
inconvenient manner, with a view to throw the onus of rebuilding or
repairing it immediately on the County. 2 East's Rep. 342.

2. All those kinds of Nusances (such as offensive trades and ma-
ufactures) which, when injurious to a private man, are actionable,
are, when detrimental to the public, punishable by public prosecution,
and subject to fine according to the quantity of the misdemeanor;
and particularly the keeping of any hogs in any city or market-town
is indictable as a public Nusance. Salk. 460.

3. All disorderly inns or ale-houses, bawdy-houses, gaming-houses;
stage plays unlicensed, booths and stages for rope-dancers, mounte-
banks, and the like, are public Nusances, and may upon indictment
be suppressed and fined. 1 Hawk. P. C. c. 75. § 6. Inns in particular,
being intended for the lodging and receipt of travellers, may be in-
dicted, suppressed, and the inn-keepers fined, if they refuse to entertain a traveller, without a very sufficient cause; for thus to frustrate the end of their institution is held to be disorderly behaviour. 1 Hawk. P. C. c. 78, § 2.

4. By stat. 10 & 11 W. 3. c. 17, all Lotteries are declared to be public Nusances; and all grants, patents, or licences for the same to be contrary to law. But as State Lotteries have for many years past been found a ready mode for raising the Supplies, several acts have from time to time been made to license and regulate the keepers of such lottery-offices. See title Lottery. And by stat. 6 Geo. i. c. 18. § 19, all projects by public subscription, for adventuring in commerce, to the common grievance, or acting as a body corporate without a charter, are considered as common Nusances, and punishable accordingly, and also subject to the pains of premunire.

5. The making and selling of fire-works and squibs, or throwing them about in any street, is, on account of the danger that may ensue to any thatched or timber buildings, declared to be a common Nusance, by stat. 9 & 10 W. 3. c. 7, and therefore is punishable by fine. See title Fire-works. To this head also may be referred (though not declared a common Nusance) the making, keeping, or carriage of too large a quantity of gun-powder at one time, or in one place, or vehicle, which is prohibited by stat. 12 Geo. 3. c. 61, under heavy penalties and forfeiture. See title Gun-powder.

6. Eaves-droppers, or such as listen under walls or windows, or the eaves of a house, to harken after discourse, and thereupon to frame slanderous and mischievous tales, are a common Nusance, and presentable at the Court-leet, Kitch, of Courts 20. Or are indictable at the sessions, and punishable by fine, and finding sureties for their good behaviour. Ibid; 1 Hawk. P. C. c. 61, § 4.

Lastly, a Common Scald, is a public Nusance to her neighbourhood. For which offence she may be indicted. 6 Mod. 213. And, if convicted, shall be sentenced to be placed in a certain engine of correction, called the trebucket, castigatory, or cucking-stool. 3 Inst. 219. See titles Castigatory; Scald.

If a ship be sunk in a port or haven, and it is not removed by the owner, he may be indicted for it as a common Nusance, because it is prejudicial to the commonwealth in hindering navigation and trade. 2 Litt. 244.

Indictment lies for laying logs, &c. in the stream of a public navigable river; it is a common Nusance to divert part of a public navigable river whereby the current is weakened, and made unable to carry vessels of the same burden it could before; and if a river be stopped to the Nusance of the country, and none appear bound by prescription to cleanse it; those who have the piscary, and the neighbouring towns that have a common passage and easement therein, may be compelled to do the same. 1 Hawk. P. C. c. 75. §§ 11, 13.

It is a common Nusance indictable, to divide a house in a town for poor people to inhabit in; by reason whereof it will be more dangerous in the time of sickness and infection of the plague. 2 Roll. Abr. 139. A common playhouse, if it draws together such number of coaches and people as incommode and disturb the neighbourhood, may be a Nusance; but these places are not naturally Nusances, but become so by accident. 1 Roll. Rep. 109: 1 Hawk. P. C. c. 75. § 7.

A prohibitory writ was issued out of B. R. against Betterton and
other actors, for erecting a new playhouse in Little Lincoln's Inn Fields, reciting that it was a Nusance to the neighbourhood; and they not obeying the writ, an attachment was granted against them; but it was objected that an attachment could not be issued, and that the most proper method was to proceed by indictment, and then the Jury would consider whether it were a Nusance or not; and this was the better opinion. 5 Mod. 142; 2 Nels. Abr. 1192.

One Hall having begun to build a booth near Charing-Cross, for rope-dancing, which drew together many idle people, was ordered by the Lord Chief Justice not to proceed: he proceeded, notwithstanding, affirming, that he had the King's warrant and promise to bear him harmless; but being required to give a recognizance of three hundred pounds that he would not go on with the building, and he refusing, he was committed, and a record was made of this Nusance, as upon the Judge's own view, and a writ issued to the Sheriff of Middlesex to prostrate it. 1 Vent. 169: 1 Mod. 96.

Erecting a dove-cote is not a common Nusance; though action on the case will lie at the suit of the lord of the manor for erecting it without his licence. 1 Hawk. P. C. c. 75. § 8. It was anciently held, that if a man erected a dove-cote he was punishable at the Leet; but it has been since adjudged not to be punishable in the Leet as a common Nusance, but that the lord for this particular Nusance should have an action on the case, or an assise of Nusance: as he may for building an house to the Nusance of his mill. 5 Rep. 104: 3 Salk. 248. Neither the King, nor lord of a manor, may licence any man to make or commit a Nusance. 1 Roll. Abr. 138.

A brewhouse erected in such an inconvenient place, wherein the business cannot be carried on without incommoding the neighbourhood, may be indicted as a common Nusance; and so in the like case may a glasshouse, &c. 1 Hawk. P. C. c. 75. § 10. Where there hath been an ancient brewhouse time out of mind, although in a most public street of a city, this is not any Nusance, because it shall be supposed to be erected when there were no buildings near; though if a brewhouse should be now built in any of the high streets of London, or trading places, it will be a Nusance, and action on the case lies for whomsoever receives any damage thereby. 2 Lit. Abr. 246: Palm. 536.

It hath been holden to be a common Nusance to make great noises in the night with a speaking trumpet. Stra. 704. Or to permit a house near the highway to continue in a ruinous condition. Salk. 357. Or to lay timber in a public river, although the soil on which it is laid belong to the party; provided it obstructs the necessary intercourse. 3 Bac. Abr.; Stra. 1247. Or to place a floating-dock in the river, although beneficial in repairing ships. 2 Hawk. P. C. c. 75. § 11, in n. Or to travel with a cart on a common pack-way or horse-way, and by thus ploughing it up to render the use of it inconvenient. 6 Mod. 145. Or to put a ship of three hundred tons into Billingsgate dock; for although it is a common dock, it is only for the reception of small vessels freighted with provisions for the London market. 1 Hawk. P. C. c. 75, § 11. Or to manufacture acid spirit, of sulphur, vitriol, or aqua fortis in the vicinity of dwelling-houses. 1 Burr. 333.—See also stats. 13 El. 1. c. 24: 12 R. 2. c. 13: 2 W. & M. S't. 2. c. 8: 30 Geo. 2. c. 22: 31 Geo. 2. c. 17, respecting Nusances in the cities of London and Westminster.
But the fears of mankind, however reasonable, will not create a Nusance; therefore it is no nusance to erect a building for the purposes of inoculation. 3 Atk. 21, 726, 750.

II. Private Nusances are such as affect either the corporeal or corporeal hereditaments of an individual.

First, As to corporeal hereditaments. If a man builds a house so close to mine that his roof overhangs my roof, and throws the water off his roof upon mine, this is a Nusance, for which an action will lie. F. N. B. 184. Likewise to erect a house or other building so near to mine that it obstructs my antient lights and windows, is a Nusance of a similar nature. 9 Ref. 58. But in this latter case it is necessary that the windows be antient; that is, have subsisted a long time without interruption, otherwise there is no injury done. [This time, by modern practice, is now settled at an uninterrupted enjoyment of twenty years.] For he hath as much right to build a new edifice upon his ground as I have upon mine, since every man may erect what he pleases upon the upright or perpendicular of his own soil, so as not to prejudice what has long been enjoyed by another; and it was my folly to build so near another’s ground. Cro. Eliz. 118; Salk. 459.

Also if a person keeps his hogs, or other noisome animals, so near the house of another that the stench of them incommodes him, and makes the air unwholesome [or renders the enjoyment of life or property uncomfortable], this is an injurious Nusance, as it tends to deprive him of the use and benefit of his house. 9 Ref. 58: 1 Burr. 337.

A like injury is, if one’s neighbour sets up and exercises any offensive trade, as a tanner’s, a tallow chandler’s, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, sic utere tuo, ut alienum non lendas; this therefore is an actionable Nusance. Cro. Car. 510. So that the Nusances which affect a man’s dwelling may be reduced to these three: 1. Overhanging it, which is also a species of trespass, for, ejus est solum, ejus est usque ad calum. 2. Stopping antient lights; and, 3. Corrupting the air with noisome smells; for light and air are two indispensable requisites to every dwelling. But depriving one of a mere matter of pleasure, as of a fine prospect, by building a wall, or the like; this, as it abridges nothing really convenient or necessary, is no injury to the sufferer, and is therefore not an actionable Nusance. 9 Ref. 58: 3 Salk. 247, 459: Cro. Eliz. 118.

As to Nusance to one’s lands; if one erects a smeltinghouse for lead so near the land of another that the vapour and smoke kills his corn and grass, and damages his cattle therein, this is held to be a Nusance. 1 Roll. Abr. 89. And by consequence it follows, that if one does any other act, in itself lawful, which yet being done in that place necessarily tends to the damage of another’s property, it is a Nusance; for it is incumbent on him to find some other place to do that act where it will be less offensive. So also if my neighbour ought to scour a ditch, and does not, whereby my land is overflowed, this is an actionable Nusance. Hale on F. N. B. 427.

With regard to other corporeal hereditaments; it is a Nusance to stop or divert water that used to run to another’s meadow or mill. F. N. B. 184. To corrupt or poison a water-course, by erecting a dye-house, or a lime-pit, for the use of trade, in the upper part of the stream. 9 Ref. 59: 2 Roll. Abr. 141. Or, in short, to do any act there-
in, that in its consequences must necessarily tend to the prejudice of one's neighbour. 3 Comm. c. 13.

Secondly, As to incorporeal hereditaments. If I have a way annexed to my estate, across another's lands, and he obstructs me in the use of it either by totally stopping it or putting logs across it, or ploughing over it, is a Nusance; for in the first case I cannot enjoy my right at all, and in the latter I cannot enjoy it so commodiously as I ought. F. N. B. 183: 2 Roll. Abr. 140. Also if I am entitled to hold a fair or market, and another person sets up a fair or market so near mine that he does me a prejudice, it is a Nusance to the freehold which I have in my market or fair. F. N. B. 148: 2 Roll. Abr. 140. See this Dictionary, title Market.

If a ferry is erected on a river so near another ancient ferry as to draw away its custom, it is a Nusance to the owner of the old one. For where there is a ferry by prescription, the owner is bound to keep it always in repair and readiness, for the ease of all the King's Subjects; otherwise he may be grievously amerced: it would therefore be extremely hard if a new ferry were suffered to share his profits, which does not also share his burden. 2 Roll. Abr. 140. But where the reason ceases the law also ceases with it; therefore it is no Nusance to erect a mill so near mine as to draw away the custom, unless the miller also intercepts the water. Neither is it a Nusance to set up any trade, or a school, in a neighbourhood, or rivalry with another; for by such emulation the public are like to be gainers; and if the new mill or school occasion a damage to the old one, it is damnum abaque injuria. Hale on F. N. B. 184.

The stopping up a way leading from houses to lands, suffering the next house to decay to the damage of my house; and setting up or making a house of office, lime-pit, dye-house, tan-house, or butcher's shop, &c. and using them so near my house that the smell annoys me, or is infectious; or if they hurt my lands or trees, or the corruption of the water of lime-pits spoils my water or destroys fish in a river, &c.: these, and the other evils already enumerated, are in general private Nusances. 3 Inst. 231: 5 Rep. 101: 9 Rep. 54: 1 Roll. Abr. 88: 2 Roll. 140: 1 Daws. Abr. 173.

A plaintiff was possessed of an house wherein he dwelled, and the defendant built a brew-house, &c. in which he burnt coal so near the house, that by the stink and smoke he could not dwell there without danger of his health; and it was judged, that the action lay, though a brew-house is necessary, and so is burning coal in it. Hutton 155. If a person melt lead so near the close of another that it injures his grass there, whereby cattle are lost; notwithstanding this is a lawful trade, and for the benefit of the nation, action lies against him; for he ought to use his trade in waste places, so as no damage may happen to the proprietors of the land adjoining. 2 Roll. Abr. 140.

Building a smith's forge near a man's house, and making a noise with hammers, so that he could not sleep, was held a Nusance, for which action lies; although the smith pleaded that he and his servants worked at seasonable times; that he had been a blacksmith, and used the trade above twenty years in that place, and set up his forge in an old room, &c. For though a smith is a necessary trade, and so is a lime burner; and a hog-merchant; yet these trades must be used, so as not to be injurious to the neighbours. 1 Lush. 69.

But if a schoolmaster keeps a school so near the study of a lawyer,
by profession, that it is a disturbance to him; this is not a Nusance for which action may be brought. *Wood's Inst.* 538. An inn-keeper brought an action on the case against a person for erecting a tallow furnace, and melting stinking tallow so near his house that it annoyed his guests, and his family became unhealthy; and adjudged that the action lay. *Cro. Car.* 367. So where a person kept a hogsty near a man's parlour, whereby he lost the benefit of it. 2 *Roll. Abr.* 140.

Yet it is said to be no Nusance to a neighbourhood for a butcher or Chandler to set up their trades in houses amongst them; but it may be by such tradesmen laying stinking heaps at their doors: in other cases the necessity of the thing shall dispense with the noisomeness of it. *Pasch.* 3 *Jac.* 1. B. R. If a man have a spout falling down from his house, and another person erect any thing above it, that the water cannot fall as it did, but is forced into the house of the plaintiff, and rots the timber; it is a Nusance actionable. 18 *E. 3:* 2 *Roll. Abr.* 140. And in trespass for a Nusance, in causing stinking water in the defendant's yard to run to the walls of the plaintiff's house, and piercing them so that it ran into his cellar, &c. judgment was given for the plaintiff. *Hard.* 60. A common waggoner, who continually obstructs the passage of a street by the exercise of his business, may be indicted for a Nusance. 6 *East's Rep.* 427.

III. As common or public Nusances are such inconvenient or troublesome offences which annoy the whole community in general, and not merely some particular person, they are therefore *indictable only*, and not *actionable*; as it would be unreasonable to multiply suits by giving every man a separate right of action for what damnifies him in common only with the rest of his fellow-subjects. 4 *Comm.* c. 13. *p.* 167: 5 *Rep.* 73: 1 *Inst.* 56: 1 *Vent.* 208. And as the law gives no private remedy for any thing but a private wrong, therefore no action lies for a public or common Nusance, but an indictment only; because the damage being common to all the King's Subjects, no one can assign his particular proportion of it. 3 *Comm.* c. 13. *p.* 219. For this reason no person natural or corporate can have an action for a public Nusance, or punish it; but only the King in his public capacity of supreme governor and *pater familias* of the kingdom. *Vaugh.* 341, 2. Yet this rule admits of one exception; where a private person suffers some extraordinary damage beyond the rest of the King's Subjects by a public Nusance, in which case he shall have a private satisfaction by action. As if by means of a ditch dug across a public way, which is a common Nusance, a man or his horse suffer an injury by falling therein; there, for this particular damage, which is not common to others, the party shall have his action. 1 *Inst.* 56: 5 *Rep.* 73. So if by reason of a pit dug in a highway, a man for whose life I held lands is drowned; or my servant falling into it receives injury, whereby I lose his service, &c.; for this special damage, which is not common to other persons, action lies. 4 *Rep.* 18: 5 *Rep.* 73: *Cro. Car.* 446: *Vaugh.* 341: 4 *Bulst.* 344. But a modern authority says, the injury must be direct: and not consequential, as by being delayed in a journey of importance. *Bull. N. P.* c. 5. *p.* 26. But see c. 7. *p.* 78. And where the inhabitants of a town had by custom a watering place for their cattle, which was stepped by another, it has been held, that any inhabitant might have an action against him, otherwise they would be without remedy; because such a Nusance is not common to
all the King’s Subjects, and presentable in the leet; or to be redressed by presentment or indictment in the quarter sessions. 5 Rep. 73: 9 Rep. 103.

Also, if a man hath abated or removed a Nusance which offended him; in this case he is entitled to no action; for he had choice of two remedies: either without suit by abating it himself by his own mere act and authority, or by suit in which he may both recover damages, and remove it by the aid of the law; but having made his election of one remedy, he is totally precluded from the other. 3 Comm. c. 13. p. 220, cites 9 Rep. 55. See also F. N. B. 185: 2 Roll. Abr. 745. But this apparently admits of some qualification; for the party’s right of action might attach before the removal; and in another case it is said, There is a difference between an assise for a Nusance, and an action on the case (see post.); for the first is to abate the Nusance, but the last is not to abate it, but to recover damages; therefore, if the Nusance be removed, the plaintiff is entitled to his damages which accrued before; and though it is laid with a continuando for a longer time than the plaintiff can prove, he shall have damages for what he can prove, before the Nusance was removed. 2 Mod. 253.

This abatement or removal of Nusances is classed by Blackstone among the species of remedy, allowed by law, through the mere act of the party injured. 3 Comm. c. 1. This abatement, removing, or taking away, may be performed by the party aggrieved by the Nusance, so as he commits no riot in the doing it. 5 Rep. 101: 9 Rep. 55. If a house or wall is erected so near to mine that it stops my antient lights, which is a private Nusance, I may enter my neighbour’s lands, and peaceably pull it down. Salk. 459. Or if a new gate be erected across the public highway, which is a common Nusance, any of the King’s Subjects passing that way may cut it down, and destroy it. Cro. Car. 184. And the reason why the law allows this private and summary method of doing one’s self justice, is because injuries of this kind, which obstruct or annoy such things as are of daily convenience and use, require an immediate remedy; and cannot wait for the slow progress of the ordinary forms of justice. 3 Comm. 6.

On an indictment for a Nusance in erecting a wall across a road (not for continuing the Nusance) it is not necessary to adjudge that the Nusance be abated.—But where it is stated in the indictment to be an existing Nusance, there must be judgment to abate it. 7 Term Rep. K. B. 467.—8 T. R. 143.

With respect to the redressing of Private Nusances by due course of law; the remedies by suit are:

1. By action on the case for damages; in which the party injured shall only recover a satisfaction for the injury sustained, but cannot thereby remove the Nusance. Indeed every continuance of a Nusance is held to be a fresh one, and therefore a fresh action will lie, and very exemplary damages will probably be given, if, after one verdict against him, the defendant has the hardiness to continue it. 2 Leon. pl. 129: Cro. Eliz. 402. Yet the founders of the law of England did not rely upon probabilities merely in order to give relief to the injured; they have therefore provided two other actions, the assise of Nusance, and the writ of quod permittat prosternevis; which not only give the plaintiff satisfaction for his injury past, but also strike at the root, and remove the cause itself, the Nusance that occasioned the injury. These two actions, however, can only be brought by the re-
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nant of the freehold, so that a lessee for years is confined to his ac-
tion upon the case. Finch. L. 289.

2. An assise of Nusance is a writ wherein it is stated, that the party
injured complains of some particular fact done ad nocumetum hberi
tenementi sui; and therefore commanding the Sheriff to summon an
assise, that is, a jury, and view the premises, and have them at the
next commission of assises, that justice may be done therein, F. N. B.
183. And if the assise is found for the plaintiff, he shall have judg-
ment of two things: 1st, To have the Nusance abated; and 2d, To re-
cover damages. 9 Rep. 55. Formerly, an assise of Nusance lay against
the very wrong-doer himself who levied or did the Nusance, and did
not lie against any person to whom he had aliened the tenements
whereon the Nusance was situated. This was the immediate reason
for making that equitable provision in stat. Westm. 2. 13 E. 1. c. 24,
for granting a similar writ, in case consimilis, where no former prece-
dent was to be found. The statute gives the form of a new writ in
this case, which only differs from the old one in stating that the
wrong-doer and the alienate both raised the Nusance. For every con-
tinuation, as was before said, is a fresh Nusance.

3. Before this statute the party injured, upon any alienation of the
land wherein the Nusance was set up, was driven to his quod per-
mittat prosternere, which is in the nature of a writ of right, and there-
fore subject to greater delays. 2 Inst. 405. This is a writ command-
ing the defendant to permit the plaintiff to abate the Nusance com-
plained of, and unless he so permits, to summon him to appear in
Court, and shew cause why he will not. F. N. B. 124. And this writ
lies as well for the alienation of the party first injured, as against
the aliener of the party first injuring; as hath been determined by all the
Judges. 5 Rep. 100, 1. And the plaintiff shall have judgment there-
in to abate the Nusance, and to recover damages against the defend-

Both these actions of assise of Nusance and of quod permittat pro-
stenere are now out of use, and have given way to the action on the
case; in which, as was before observed, no judgment can be had to
abate the Nusance, but only to recover damages. Yet as therein it is
not necessary that the freehold should be in the plaintiff and defen-
dant respectively, as it must be in these real actions, but it is main-
tainable, by one who hath possession only against another that hath
like possession, the process is therefore easier, and the effect will be
much the same, unless a man has a very obstinate as well as an ill-
natured neighbour, who had rather continue to pay damages than re-
move his Nusance; for in such a case, recourse must at last be had
to the old and sure remedies, which will effectually conquer the de-
F:

It is said both of a common and private Nusance, that they may be
abated or removed by those who are prejudiced by them; and they
need not stay to prosecute for their removal. 2 Lil. Abr. 244: Wood’s
Inst. 443. Also if a house be on the highway, or a house hang over
the ground of another, they may be pulled down; but no man can jus-
tify the doing more damage than is necessary, or removing the ma-
terials farther than requisite. 1 Hawk. P. C. c. 75, 76: Stru. 680.

Where two houses, one whereof is a Nusance to the other, come
both into one and the same hand, the wrong is purged. See Hob. 131.
An action lies for hindering the wholesome air, and also for corrupting the air. 9 Rep. 58. And by an old stat. 12 R. 2. c. 13, which if not actually obsolete, is now entirely disregarded, none shall cast any garbage, dung, or filth into ditches, waters, or other places within or near any city or town: on pain of punishment by the Lord Chancellor at discretion, as a Nusance.

On the principle that the continuation of a Nusance is, as it were, a new Nusance; where a Nusance is erected in the time of the devisor, and continued afterwards by the devisee, action may be maintained against the latter. 2 Leon. 129: Cro. Car. 231. But a plaintiff may declare both ways, one for erecting and continuing, the other for continuing only, though the latter method is sufficient in any case.

If one hath freehold land adjoining to the highway, and he encroach part of the way, and lay lands to it, and then dying, it comes to his heir; if he continues it, though he do nothing else, he may be indicted for the continuance of the Nusance. Rolf. Abr. 137. A man erects a Nusance, and then lets it; the continuance by the lessee has been held a Nusance, and that action lies against him. Cro. Jac. 373: Moor. 353. But it is said in another case of this nature, that admitting the plaintiff might have an assise of Nusance against the builder, the lessor, he cannot have an action against his lessee, because it would be waste in him to pull it down; but the plaintiff may abate the Nusance standing on his own ground; yet where the thing done is a Nusance per intervala, as a pipe or gutter, action lies against the lessee, because every running is a fresh Nusance; and if a man have a way over the ground of another, and such other stops that way, and then demises the ground, an action lies against the lessee for continuing this Nusance. 1 Mod. 54: 3 Salk. 248.

If a person assigns his lease with a Nusance, action lies against him for continuing it, because the lease was transferred with the original wrong, and his assignment confirms the continuance; besides he hath a rent as consideration for the continuance, therefore he ought to answer the damages occasioned by it. 2 Salk. 460: 2 Cro. 272, 555.

A Nusance in a church-yard is, properly, of ecclesiastical cognisance. Carthew, 152. If a man straiten a way only, and do not stop it up, action on the case lieth: not assise of Nusance. 33 H. 6. c. 26. But for stopping such way, belonging to a freehold tenement, an assise will lie; and where one may have assise of Nusance for an injury to his way, there he shall not have action of trespass. 19 H. 6. c. 29: 2 Shep. Abr. 468. This means trespass, vi et armis, but an action upon the case will undoubtedly lie. J. M.

Writs of Nusance, called vicontiel, are to be made at the election of the plaintiff, determinable before the justices of either bench, or the justices of assise of the county, being in nature of assises, &c. 6 R. 2. c. 3.

See further on this subject Vin. Abr. title Nusance; and this Dictionary, title Highways.

NUTMEGS, Nucis muscate.] A spice well known, mentioned, among spices that are to be garbled, in the statutes of imposing a duty on their importation.

NUTRIMENTUM, Nourishment, particularly applied to breed of cattle. Paroch. Antiq. 401.

NYAS, Mdarius accipiter.] A hawk, or bird of prey. Litt. Dict.