O. THE seven Antiphones, or alternate hymn of seven verses, &c., sung by the Choir in the time of Advent, was called O, from beginning with such exclamation. In the statutes of St. Paul's church in London, there is one chapter, De faciendo O. Liber Statut. MS. f. 86.

OATH, Sax. Eoth, Lat. Juramentum.] An affirmation or denial of any thing, before one or more persons who have authority to administer the same, for the discovery and advancement of truth and right, calling God to witness that the testimony is true: therefore it is termed Sacramentum, a holy band or tie: it is called a corporal Oath, because the witness when he swears lays his right hand on the Holy Evangelists, or new Testament. 3 Inst. 165.

There are several sorts of Oaths in our law, viz. Juramentum processionis, where Oath is made either to do, or not to do, such a thing: Juramentum purgationis, when a person is charged with any matter by bill in Chancery, &c. Juramentum probationis, where any one is produced as a witness, to prove or disprove a thing: and Juramentum triationis, when any persons are sworn to try an issue, &c. 2 Nels. 1181.

All Oaths must be lawful, allowed by the Common Law, or some statute; if they are administered by persons in a private capacity, or not duly authorized, they are coram non judice, and void; and those administering them are guilty of a high contempt, for doing it without warrant of law and punishable by fine and imprisonment. 3 Inst. 165: 4 Inst. 273: 2 Roll. Abr. 257.

One who was to testify on behalf of a felon, or person indicted of treason, or other capital offence, upon an indictment at the King's suit, could not formerly be examined on his Oath for the prisoner against the King; though he might be examined without Oath: but by stat. 1. Ann. st. 2. c. 9, witnesses on behalf of the prisoner upon indictments are to be sworn to depose the truth, in such manner as witnesses for the King; and if convicted of wilful perjury, shall suffer the punishment inflicted for such offences. The evidence for the defendant in an appeal, whether capital or not, or on indictment or information for a misdemeanour, was to be on oath before this statute.

2 Hawk. P. C.

A person who is to be a witness in a cause may have two Oaths given him, one to speak the truth to such things as the Court shall ask him concerning himself, or other things which are not evidence in the cause; the other to give testimony in the cause in which he is produced as a witness; the former is called the Oath upon a voyer (vrai) dire.
If Oath be made against Oath in a cause, it is a non liquet to the Court which Oath is true; and in such case the Court will take that Oath to be true, which is to affirm a verdict, judgment, &c. as it tends to the expediting of justice. 2 Lit. Abr. 247.

A voluntary Oath, by consent and agreement of the parties, is lawful as well as a compulsory Oath; and in such case, if it is to do a spiritual thing, and the party fail, he is suable in the Ecclesiastical Court, pro lesione fidei; if to do a temporal thing, and he fail therein, he may be punished in B. R. Adjudged on assumpsit, where, if the defendant would make oath before such a person, the plaintiff promised, &c. Cro. Car. 486; 3 Salk. 248.

By the Common Law, officers of justice are bound to take an Oath for the due execution of justice. Trin. 22 Car. 1. B. R. Though if promissory Oaths of officers are broken, they are not punished as perjuries, like unto the breach of assentory Oaths; but their offences ought to be punished with a severe fine, &c. Wood's Inst. 412. Antiently, at the end of a legal Oath, was added, So help me God at his holy dome, i. e. judgment; and our ancestors did believe, that a man could not be so wicked to call God to witness any thing which was not true; but that if any one should be perjured, he must continually expect that God would be the revenger: and thence probably jurgations of criminals, by their own Oaths, and for great offences by the Oaths of others, were allowed. Malmes. lib. 2. c. 6: Leg. Hen. 1. c. 64.

OATHS TO THE GOVERNMENT. As to the Oaths of the Chancellor, Judges of both benches; Barons of the Exchequer, &c. Clerks in Chancery, and the Cursitors, see 14 Edw. 3. st. 1. c. 5; 18 Edw. 3. st. 4, 5; 20 Edw. 3. c. 1. 2. 3.

Ecclesiastical persons are required to take the Oaths of Supremacy, &c. And clergymen not taking the Oaths, on their refusal being certified into B. R. &c. do for a second offence, incur the penalties of praemunire: See stat. 1 Eliz. c. 1: and this Dictionary, title Parson. Officers and ecclesiastical persons, members of parliament, lawyers, &c. are to take the Oath of Allegiance, or be liable to penalties and disabilities. Stat. 7 Jac. 1. c. 6.

By stat. 1 W. & M. st. 1. c. 6, the Coronation Oath was altered and regulated; see title King: the Oaths of Allegiance and Supremacy were abrogated, and others appointed to be taken and enforced, on pain of disability, &c. by stats. 1 W. & M. c. 8: 7 & 8 W. 3. c. 27.

By stat. 13 W. 3. c. 6, all that bear offices in the government, peers, and members of the House of Commons, ecclesiastical persons, members of colleges, school-masters, preachers, serjeants at law, counsellors, attornies, solicitors, advocates, proctors, &c. are enjoined to take the Oaths of Allegiance; and persons neglecting or refusing are declared incapable to execute their offices and employments, disabled to sue in law or equity, to be guardian, executor, &c. or to receive any legacy or deed of gift, to be in any office, &c. and to forfeit five hundred pounds.

This extends not to constables, and other parish officers, nor to bailiffs of manors, &c.

The stat. 1 Ann. c. 22, obliges the receiving the Abjuration Oath, with alterations.

The Oath of Allegiance, as administered for upwards of six hundred years, contained a promise "to be true and faithful to the King
and his heirs, and truth and faith to bear of life and limb and ternere
honour, and not to know or hear of any ill or damage intended him,
without defending him therefrom." See Miv. c. 3. § 35: Fleta iii.
makes this remark: that it was short and plain, not intangled with
long and intricate clauses or declarations, and yet is comprehensive
of the whole duty from the Subject to his Sovereign. 1 Hal. P. c. 63.
But at the Revolution, the terms of this Oath being thought perhaps
to favour too much the notion of non-resistance, the present form
was introduced by the Convention Parliament, which is more gener-
al and indeterminate than the former; the Subject only promising
"that he will be faithful, and bear true allegiance to the King," with-
out mentioning "his heirs," or specifying the least wherein that al-
legiance consists. The Oath of Supremacy is principally calculated as
a renunciation of the Pope's pretended authority; and the Oath of Ab-
juration, as introduced by stat. 13 Will. 3. c. 6, and regulated by stat.
6 Geo. 3. c. 53, very amply supplies the loose and general texture of
the Oath of Allegiance; it recognizing the right of his Majesty, de-
derived under the Act of Settlement; engaging to support him to the
utmost of the juror's power; promising to disclose all traitorous con-
spiracies against him, and expressly renouncing any claim of the de-
scendants of the late Pretender, in as clear and explicit terms as the
English language can furnish. This Oath must be taken by all per-
sons in any office, trust, or employment; and may be tendered by two
Justices of the Peace to any person whom they shall suspect of dis-
affection. Stats. 1 Geo. 1. stat. 2. c. 13: 6 Geo. 3. c. 53: But see 31
Geo. 3. c. 32, § 18: and this Dictionary, title Nonjurors. And the Oath
of Allegiance may be tendered to all persons above the age of twelve
years, whether natives, denizens, or aliens, either in the Court-leet of
the manor, or in the Sheriff's tourn, which is the Court-leet of the
county. 2 Inst. 121: 1 Hal. P. c. 64: and see 1 Comm. 367, 8.

By stat. 1 W. & M. c. 8, persons of eighteen years of age refusing
to take the new Oaths of Allegiance on tender by the proper magis-
trate, are subject to the penalties of a praemunire. And by stat. 7 & 8
W. 3. c. 24, serjeants, counsellors, procors, attorneys, and all officers
of Courts practising without having taken the Oaths of Allegiance
[and Supremacy, and subscribing the Declaration against Popery, re-
pealed by stat. 31 Geo. 3. c. 32, § 18. see title Nonjurors,] are guilty of
a praemunire, whether the Oaths be tendered or not. See 4 Comm.
116, 117.

In almost every session of parliament, acts are made for indemnifi-
ying persons who have omitted to qualify themselves for offices and
promotions within the time limited by law, and for allowing further
time for that purpose.

Oaths must be taken in the very words expressed in the acts, and
cannot be qualified; yet the equivocation of using the words in con-
science, instead of my conscience, or Sea of Rome, instead of See of
Rome, shall not, it has been said, invalidate the Oath. 1 Bulst. 197.

See further on the subject of Oaths, this Dictionary, titles Noncon-
formists; Nonjurors; Papists; Parliament, &c.

OBEDIENTIA. In the Canon law, is used for an office, or the ad-
ministration of it: whereupon the word obedientiales, in the provincial
constitutions, is taken for officers under their superiors. Can. Law, c.
Vol. IV. 3 II.
1. And as some of these offices consisted in the collection of rents or pensions, rents were called Obedientia: quia colligibantur ad obedientiaibus. But though Obedientia was a rent, as appears by Hoveden, in a general acceptance of this word, it extended to whatever was enjoined the monks by the abbots; and in a more restrained sense, to the cells or farms which belonged to the abbey to which the monks were sent, vi ejusdem Obedientia, either to look after the farms, or to collect the rents, &c. See Mat. Paris, Ann. 1213.

OBIT; Lat.] Signifies a funeral solemnity or office for the dead, most commonly performed when the corpse lies in the church uninterred; also the anniversary office. 2 Cro. 51; Dyer 313. The anniversary of any person's death was called the Obit; and to observe such day with prayers and alms, or other commemoration, was the keeping of the Obit: in religious houses they had a register, wherein they entered the Obitis or Obitual days of their founders or benefactors, which was thence termed the Obituary. The tenure of Obit, or Obi- tuary, or chantry lands, is taken away and extinct, by stat. 1 Ed. 6. c. 14.


OBLATA, Gifts or offerings made to the King by any of his Subjects, which in the reigns of King John and King Hen. III. were so carefully heeded, that they were entered into the Fine Rolls under the title of Obiata; and if not paid, esteemed a duty, and put in charge to the Sheriff. Philip's of Purveyance. In the Exchequer it signifies old debts, brought as it were together from precedent years, and put on the present Sheriff's charge. Pract. Excheq. 78.

OBLATIONS, oblationes.] Offerings to God and the Church. See Spelm. de Concil. tom. 1, p. 393. The word is often mentioned in our law books; and formerly there were several sorts of Oblations, viz. Oblationes altaris, which the priest had for saying mass; Oblationes defunctorum, which were given by the last wills and testaments of persons dying to the church; Oblationes mortuorum, or funerale, given at burials; Oblationes penitentium, which were given by persons penitent; and Oblationes pentecostales, &c.

The chief or principal feasts for the Oblations of the altar were All Saints, Christmas, Candlemas, and Easter, which were called Oblationes quatuor principales; and of the customary offerings from the parishioners to the parish priest, solemnly laid on the altar, the mass or sacrament offerings were usually three-pence at Christmas, two-pence at Easter, and a penny at the two other principal feasts. Under this title of Oblations were comprehended all the accustomed dues for sacramentalia or Christian offices; and also the little sums paid for saying masses and prayers for the deceased. Kennet's Gloss. See Offerings.

Oblationes funerale were often the best horse of the defunct, delivered at the church gate or grave to the priest of the parish; to which old custom we owe the origin of mortuaries, &c. And at the burial of the dead, it was usual for the surviving friends to offer liberally at the altar for the pious use of the priest, and the good estate of the soul deceased, being called the Soul succat. In North Wales this usage still prevails, where at the rails of the communion-table in churches, is a tablet conveniently fixed, to receive the money offered
at funerals according to the quality of the deceased; which has been
observed to be a providential augmentation to some of those poor
churches. Kennel's Gloss. At first the church had no other revenues
beside these Oblations, till in the fourth century in was enriched with
lands and other possessions. Blount. See title Mortuary.

Oblations, &c. are in the nature of tithes, and may be sued for in
the Ecclesiastical Courts, and it is said are included in the act 7 & 8
W. 3. c. 6, for recovery of small tithes under 40s. by the determina-
tion of Justices of Peace, &c. See title Tithes.

OBLIGATION, obligatio.] A bond, containing a penalty, with a
condition annexed for payment of money, performance of covenants,
or the like; it differs from a bill, which is generally without a penalty
or condition, though a bill may be obligatory. Co. Lit. 172. Obliga-
tions may also be by matter of record; as statutes and recognizances,
to which there are sometimes added defeasances, like the condition
of an Obligation; but when the Obligation is single, or simple, with-
out any defeasance or condition, it is most properly called so. 2 Shep.
Abr. 475. See title Bond.

OBLIGOR, He who enters into an obligation; as Obligee is the
person to whom it is entered into.

Before the coming in of the Normans, writings obligatory were
made firm with golden crosses, or other small signs or marks. But the
Normans began the making such bills and obligations with a print
or seal in wax, impressed with every one's special signet, attested by
three or four witnesses. In former time many houses and lands there-
to passed by grant and bargain, without scrip, charter, or deed, only
with the landlord's sword or helmet, with his horn or cup; and many
tenements were demised with a spur or currycomb, with a bow or
with an arrow. Cowell. See Wang; Bond; Deed, II. 6.

OBLATA TERRÆ, According to some accounts, half an acre of
land; but others hold it to be only half a perch. Spelman. Gloss.

OBREPTION, The obtaining a gift of the king by a false sugges-
tion. Scotch Dict.

OBVENTIONS, Obventiones.] Offerings or titles; and Obla-
tions, Obventions, and Offerings are generally the same thing, though
Obvention has been esteemed the most comprehensive. See Obli-
gations; Tithes.

OCCASIO, Is taken for a tribute which the lord imposed on his
vassals or tenants, propter occasiones bellorum vel aliarum necessi-
tatun. Fleta, lib. 1. c. 24. Rather the cause or pretext of such imposi-
tion.

OCCASIONARI, To be charged or loaded with payments, or oc-
casional penalties. Stat. Ed. 2. Anno 21. So in Fleta, Hæ quod ipsi vi-
gilatores non occasionentur. Lib. 1. cap. 24. par. 7.

OCCASIONES, Assarts, whereof Manwood speaks at large; the
word is derived ab occando, i.e. harrowing or breaking clods. See
Spelman's Glossary, v. Essartum. Lib. Niger Seac, par. 1. cap. 13; and
this Dictionary, Assart.

OCCUPANT, occupans.] He who first gets possession of a thing.
An island in the sea, precious stones on the sea-shore, and treasure
discovered in the ground that has no particular owner, by the Law of
Nations belong to him who finds them and gets the first occupation
of them. Treat. Laws 342.

The Law of Occupancy is founded upon the law of nature, viz.
Quod terra manens vacua occupanli conceditur. So as, upon the first coming of the inhabitants to a new country, he who first enters upon such part of it, and manures it, gains the property; (as is now used in Cornwall, &c. by the laws of the Stannaries, under certain regulations, for which see the Stannary laws;) so that it is the actual possession and manurance of the land which was the first cause of occupancy, and consequently is to be gained by actual entry. Sid. 347.

Where a man finds a piece of land which no other possesses or hath title unto, and enters upon the same, this gains a property, and a title by occupancy; but this manner of gaining property of lands has long since been of no use in England; for lands now possessed without any title are in the Crown, and not in him who first enters. Sid. 218. Though an estate for another's life, by our antient laws, might be gotten by occupancy: as for example; suppose A had lands granted to him for the life of B, and died without making any estate of it; in such case, whoever first entered into the land after the death of A, got the property for the remainder of the estate granted to A for the life of B. For to the heir of A it could not go, not being an estate of inheritance, but only an estate for another man's life; which was not descendable to the heir unless he were specially named in the grant: and the executors of A could not have it as it was not an estate testamentary, that it should go to the executor as goods and chattels; so that in truth no man could entitle himself unto those lands: therefore the law preferred him who first entered, and he was called Occupans, and should hold the land during the life of B, paying the rent, and performing the covenants, &c. Bac. Elem. 1. And not only if tenant pour terme d'autre vie died, living estant que vie, but if tenant for his own life granted over his estate to another, and the grantee died before him, there should be an Occupant. Ca. Lit. 41, 388.

A man could not, however, be an Occupant but of a void possession; and it was not every possession of a person entering that could make an occupancy, for it must be such as would maintain trespass without farther entry. Vaughan 191, 192; Carter 66: 2 Keb. 250. It was also held, that there could be no occupancy by any person of what another had a present right to possess: occupancy by law must be of things which have natural existence, as of land, &c. and not of rents, advowsons, fairs, markets, tithes, &c. which lie in grant, and are incorporeal rights and estates; and there could not be an Occupant of a copyhold estate. Vaughan 190; Mod. Ca. 66: 1 Inst. 41. The title by general occupancy is now universally prevented by statute. 29 Car. 2. c. 3. § 12. 14 Geo. 2. c. 20. § 9. The first statute enacts, that estates par autre vie shall be devisable; and if not devised, chargeable in the hands of the heir as assets by descent where the estate falls on him as special occupant; and if he is not entitled as such, shall go to the grantee's executors or administrators, and be assets. On this statute a doubt arose whether it operated further than by making such estates devisable, and assets for debts; and in one case it was adjudged, that the administrator took the surplus of such estates after payment of debts, if not devised, for his own benefit, as in the place of a general Occupant. See 12 Mod. 103. This gave occasion to the second statute, which expressly makes the surplus, in case of insolvency distributable as personal estate. See further as to Occupancy, 2 Comm. 238; Vaughan 187; Vin. title Occupancy and Estates, R. 2, 3: Com. Dig. Estates, F.
By the old law no right of occupancy was allowed where the King had the reversion of the lands; for the reversioner hath an equal right with any other man to enter upon the vacant possession; and where the King's title and a subject's concur, the King's shall be always preferred: against the King, therefore, there could be no prior Occupant, for nullum tempus occurrit regi. 1 Inst. 41. And even in the case of a subject, had the estate per autre vie been granted to a man and his heirs during the life of estatus qui vie, there the heir might and still may enter and hold possession; and is called in law a special Occupant; as having a special exclusive right, by the terms of the original grant, to enter upon and occupy this hereditas jacens during the residue of the estate granted; though some have thought him so called with no very great propriety, and that such estate is rather a descen-dible freehold. Vaugh. 201. See 2 Comm. c. 16. p. 259.

By the statutes above mentioned, though the title of common or general occupancy is utterly extinct and abolished, yet that of special occupancy by the heir at law continues to this day; such heir being held to succeed to the ancestor's estate, not by descent, for then he must take an estate of inheritance; but as an Occupant specially marked out and appointed by the original grant. And it seems (notwithstanding the opinion of Blackstone to the contrary) that these statutes extend to cases of incorporeal hereditaments; although, as has been already noticed, before the statute, no common occupancy could be had of such incorporeal hereditaments. See 2 Comm. c. 16. p. 260; and Christian's note there; and 3 P. Wins. 264—6, with Coz's notes.

The true ground of occupancy is, that antiently all trials of titles were by real actions, therefore he who had the freehold was one to whom the law had a special regard. The antient law, for many reasons, did not allow leases for above forty years, till the stat. 21 Hen. 8. c. 15. Besides, there was reason too, that not only he who had right paramount, might know how to try his action, but that the lord might know how to avow for his services (which were considerable things formerly); he ought to know who was his tenant, therefore the law provided there should be a person on whom he should avow. See Cart. 57. 1 Sid. 346: 1 Lev. 202. Gray v. Bearcroft.

The subject and object of the Occupant are only such things as are capable of occupancy, and not the freehold at all; into which he neither doth, nor can enter; but the law casts the freehold immediately upon him who hath made himself Occupant of the land, or other real thing whereof he is Occupant, that there may be a tenant to the præcipe: fer Vaughan Ch. J. Hil. 19 & 20 Car. 2, in the case of Holden v. Smallbrooke.


In some cases where the laws of other nations give a right by occupancy, as in lands newly created, by the rising of an island in the sea or in a river, or by the Alluvion or Dereliction of the waters; in these instances the law of England assigns them an immediate owner. For Bracton says that if an island arise in the middle of a river, it belongs in common to those who have lands on each side thereof, but if it be nearer to one bank than another, it belongs only to him who is proprietor of the nearest shore. Bract. i. 2. c. 2. Yet this seems only to be reasonable, where the soil of the river is equally divided.
between the owners of the opposite shores; for if the whole soil is the
freehold of any one man, as it usually is whenever a several fishery
is claimed, there it seems just (and so is the constant practice) that
the eyotts or little islands, arising in any part of the river, shall be the
property of him who owneth the piscary and soil. Salk. 637. How-
ever, in case a new island rise in the sea, though the civil law gave
it to the Occupant, yet ours, gives it to the King. Bract. 1. 2. c. 2:
Callis of Sewers 22. And as to lands gained from the sea, either by
alluvion, by the washing up of sand and earth, so as in time to make
terra firma; or by dereliction, as when the sea shrinks back below the
usual water mark; in these cases the law is held to be, that if this gain
be by little and little, by small and imperceptible degrees, it shall go
to the owner of the land adjoining. 2 Roll. Abr. 170: Dyer 326: For
de minimis non curat lex; and, besides, these owners, being often
losers by the breaking in of the sea, or at charges to keep it out, this
possible gain is therefore a reciprocal consideration for such possible
charge or loss. But if the alluvion or dereliction be sudden and con-
siderable, in this case it belongs to the King; for as the King is lord
of the sea, and so owner of the soil while it is covered with water, it
is but reasonable he should have the soil when the water has left it
dry. Callis 24, 28. So that the quantity of ground gained, and the
time during which it is being gained, are what make it either the
King's or the Subject's property. See Smart v. Dundee Corporation
laws in Parliament. In the same manner if a river running between
two lordships by degrees gains upon the one, and thereby leaves the
other dry, the owner who loses his ground thus imperceptibly has no
remedy; but if the course of the river be changed by a sudden and vio-
lent flood, or other hasty means, and thereby a man loses his ground,
it is said that he shall have what the river has left in any other place
as a recompence for this sudden loss. Callis 28.

Of things Personal, to which a title may be obtained by Occupancy.
Among these Blackstone enumerates, I. The goods of alien ene-
mies: restrained, however to captors authorized by public authority;
and to goods brought into the country by an alien enemy after a decla-
ration of war without a safe conduct. See title Alien, and also title In-
surance, II. 2. The persons of prisoners till their ransom is paid;
and perhaps in some cases negro slaves. See this Dictionary, title
Slaves. 2. Any thing found which does not come under the descrip-
tion of waifs, estrays, wreck, or treasure-trove. See those titles. 3.
The benefit of the elements of light, air; and water, as far as they are
previously unoccupied, or as they may be occupied without injury to
another. See title Nuance. 4. Animals fere naturae, under the restric-
tions of the Game laws. See that title. 5. A special personal property
in corn growing on the ground, or other emblems; though the title
to these, as Mr. Christian observes, is rather the continuation of an
inchoate, than the acquisition of an original right. See title Emble-
ments.—6, 7. Property arising by accession and confusion of goods; as
to the former of which a little shall be said presently. As to the lat-
ter, see title Confusion, property by. 8. Literary Property; as to which
see this Dictionary under that title.

As to property arising from accession. By the Roman laws, if any
given corporeal substance received afterwards an accession by natural
or by artificial means, as by the growth of vegetables, the pregnancy
of animals, the embroidering of cloth, or the conversion of wood or
metal into vessels and utensils, the original owner of the thing was entitled by his right of possession to the property of it under such its state of improvement. This has also long been the law of England; for it is laid down in the Year books, that whatever alteration of form any property has undergone, the owner may seize it in its new shape if he can prove the identity of the original materials; as if leather be made into gloves, cloth into a coat; or if a tree be squared into timber, or silver melted or beat into a different figure. 5 H. 7. 15: 12 H. 8. 10. But if the thing itself by such operation were changed into a different species, as by making wine, oil, or bread, from another's grapes, olives, or wheat, the civil law held, that it belonged to the new operator, who was only to make a satisfaction to the former proprietor for the materials which he had so converted. These doctrines are implicitly copied and adopted by Bracton, and have since been confirmed by many resolutions of the Courts. Bract. l. 2. cc. 2, 3: Bro. Ab. title Property 23: Moor 20: Poph. 38. It hath even been held, that if one takes away and clothes another's wife or son, and afterwards they return home, the garments shall cease to be his property who provided them, being annexed to the person of the child or woman. Moor 214. See 2 Comm. c. 26, and the notes there.

OCCUPATION, occupatio.] Use or tenure; as we say, such land is in the tenure, or Occupation, of such a man, that is, in his possession or management; also it is used for a trade or mystery. Stat. 12 Car. 2. c. 18. Occupations at large are taken for purprestures, intrusions and usurpations; and particularly for usurpation upon the King by the stat. de Bigamis, c. 4: 2 Inst. 272.

OCCUPAVIT, A writ that lay for him who was ejected out of his freehold in time of war; as the writ of novel disseisin lay for one diseised in time of peace. Ingham.

OCHIERN, The Chief of a branch of a great family, Scotch Dict.

ODATE, The eighth day after any feast, inclusive. See Utas.

ODHAL RIGHT; See Tenure, I. 1.

ODIO ET ATIA, Was a writ antiently called breve de bono & male, directed to the Sheriff to inquire whether a man, committed to prison upon suspicion of murder, were committed on just cause of suspicion, or only upon malice and ill-will; and if upon the inquisition it were found that he was not guilty, then there issued another writ to the Sheriff to bail him. See Reg. Orig. 133: Bract. lib. 3. cap. 20: Stats. 3 Ed. 1. cap. 11; 28 Ed. 3. cap. 9, S. P. C. 77; 2 Inst. 42: 9 Rep. 506.

The party committed, if entitled to be bailed, may now have the cause of his commitment inquired into, and be discharged on bail, by suing out an habeas corpus. See this Dictionary, title Habeas Corpus.

Blackstone remarks, that according to Bracton, l. 3. tr. 2. c. 8, this writ ought not to be denied to any man; it being expressly ordered to be made out gratis, without any denial, by Magna Carta, c. 26: and stat. West. 2. 13 E. 1. c. 29. But the statute of Gloucester, 5 Ed. 1. c. 9, restrained in the case of killing by misadventure or self-defence; and the stat. 28 Ed. 3. c. 9, abolished it in all cases whatsoever: But as the stat. 42 Ed. 3. c. 1, repealed all the statutes then in being, contrary to the Great Charter, Sir Edward Coke is of opinion, that the writ de Odio et Atia was thereby revived. 2 Inst. 43, 55, 315. See 2 Comm. c. 8. p. 129.
OECONOMUS, Is sometimes taken for an advocate or defender; as, summus securarium (Economus & protector ecclesie. Matt. Par. anno 1245.

OECONOMICUS, A word used for the executor of a last will and testament, as the person who had the economy or fiduciary disposal of the goods of the deceased. Hist. Dunelm. aphid Whartonii Angli. Sacr. par. 1. pag. 784.

OFFENCE, delictum.] An act committed against a law, or omitted where the law requires it, and punishable by it. West. Symb. Offences are capital or not: capital, those for which the offender shall lose his life: not capital, where an offender may forfeit his lands and goods, be fined, or suffer corporal punishment, or both; but not loss of life. H. F. C. 2, 126, 134. Under capital Offences are comprehended high treason, petit treason, and felony. Offences not capital include the remaining part of the pleas of the Crown, and come under the title of Misdemeanors. An Offence may be greater or less, according to the place wherein it is done. Finch 25. But the Offence will be in equal degree in them, who are equally tainted with it; and those who act and consent thereto, are alike offenders. 5 Rep. 38. See this Dictionary, title Misdemeanor.

OFFERINGS. Are reckoned among personal tithes, payable by custom to the parson or vicar of the parish, either occasionally, as at sacraments, marriages, christenings, churching of women, burials, &c. or at constant times, as at Easter, Christmas. See Stat. 2 & 3 Ed. 6. cr. 13, 20, 21. Stat. 32 Hen. 8. cap. 7. § 2, enforces the payment of Offerings according to the custom and place where they grow due. Vide Oblations.

By stat. 2 & 3 Ed. 6. cap. 13, § 10, all persons who ought to pay Offerings, shall yearly pay to the parson, vicar, proprietary, or their deputies, or farmers of the parishes where they dwell, at such four Offering days as heretofore, within the space of four last years past, hath been accustomed, and in default thereof shall pay for their said Offerings at Easter following.

The four Offering-days are Christmas, Easter, Whitsuntide, and the Feast of the dedication of the parish-church. Gibbs. 739.

OFFERINGS OF THE KING. All Offerings made at the Holy Altar by the King and Queen are distributed amongst the poor by the dean of the chapel: there are twelve days in the year called Offering Days, as to these Offerings, viz. Christmas, Easter, Whitsunday, All Saints, New Year's Day, Twelfth Day, Candlemas, Annunciation, Ascension, Trinity Sunday, St. John Baptist, and Michaelmas Day: all which are high festivals. Lex Constitutionis, 184.

The Offering commonly made by James 1. was a piece of gold, having on one side the portrait of the King kneeling before the altar, with four crowns before him; and circumscribed with this motto, Quid retribuam Domino pro omnibus quibus tribuit mihi? and on the other side, a lamb lying near a lion, with this inscription, Cor contritum & humiliatum non despiciet Deus. Ibid.

OFFERTORIUM. A piece of silk or fine linen, used to receive and wrap up the offerings or occasional oblations in the church. Statut. Eccl. S. Pauli, London, MS. fol. 59. Sometimes this word signifies the offerings of the faithful; or the place where they are made or kept; sometimes the service at the time of sacrament, the Offerory, &c. See Common Prayer in the Communion service.
OFFICE.

OFFICIIUM.] That function by virtue whereof a man hath some employment in the affairs of another, as of the King, or of another person. Cowell.

Offices are classed, by Blackstone, among incorporeal hereditaments; and an office is defined to be, a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging; whether public as those of magistrates, or private as of bailiffs, receivers, or the like. 2 Comm. c. 3. p. 36.

It is said, that the word officium principally implies a duty, and in the next place the charge of such duty; and that it is a rule, that where one man hath to do with another's affairs against his will, and without his leave, that this is an Office, and he who is in it is an officer. Carth. 478.

There is a difference between an Office and an employment, every Office being an employment; but there are employments which do not come under the denomination of Offices; such as an agreement to make hay, plough land, herd a flock, &c. which differ widely from that of steward of a manor, &c. 2 Sid. 142.

By the antient common law, officers ought to be honest men, legal and sage, & qui melius sciant & possint officio illi intendere; and this, says Lord Coke, was the policy of prudent antiquity, that officers did ever give grace to the place, and not the place grace the officer. 2 Inst. 32, 456.

Officers are distinguished into civil and military, according to the nature of their several trusts. Carth. 479.

Officers are public, or private; and it is said, that every man is a public officer who hath any duty concerning the public; and he is not the less a public officer where his authority is confined to narrow limits; because it is the duty of his Office, and the nature of that duty, which makes him a public officer, and not the extent of his authority. Carth. 479.

Also offices are distinguished into antient Offices, and those which are of a new creation; and herein it is observable, that constant usage hath not only sanctioned the first establishment of such antient Offices as have existed time out of mind, but also hath prescribed and settled the manner in which they have existed and are to continue to exist; in what manner to be exercised, how to be disposed, &c. 9 Co. 97: Cro. Eliz. 636: 2 Roll. Abr. 182: Cro. Cur. 513: 1 Show. 436.

There is also another distinction of Offices into judicial and ministerial; the first, relating to the administration of justice, or the actual exercise thereof, must be executed by persons of sufficient capacity, and by the persons themselves to whom they are granted; and herein also antient usage and custom must govern. 1 Jon. 109: Dav. 35: 9 Co. 97.

I. Who hath a Right to create and grant, or assign an Office; and how and to whom; and of one Office being incident to, or compatible with, another.

II. Of the Offence of buying and selling an Office, and what Offices are prohibited to be thus disposed of.

III. What remedies a Person, having a Right to an Office, must pur-
sue, to be let into the Enjoyment of it, and how a Disturbance is punishable.

IV. Of the forfeiture of an Office; and where, for Corruption, Bribery, Extortion, and oppressive Proceedings, Officers are punishable.

1. The King is the universal Officer and disposer of justice within this realm, from whom all others are said to be derived; yet he cannot create a new Office inconsistent with our constitution, or prejudicial to the Subject. 12 Co. 116: 1 Rol. Rep. 206: Carth. 478. See title King.

A man may have an estate in Offices either to him and his heirs, or for life, or for a term of years, or during pleasure only; save only that Offices of public trust cannot be granted for a term of years, especially if they concern the administration of justice, for then they might perhaps vest in executors or administrators. 9 Rep. 97. Neither can any judicial Office be granted in reversion, because though the grantee may be able to perform it at the time of the grant, yet before the Office falls he may become unable and insufficient; but ministerial Offices may be so granted, for these may be executed by deputy. 11 Rep. 4.

There are three things, says Lord Coke, which have fair pretences, yet are mischievous; 1st, new Courts; 2d, new Offices; 3d, new Corporations for trade: and as to new Offices, either in Courts or out of them, these cannot be erected without act of parliament; for that, under the pretence of common good, they are exercised to the intolerable grievance of the Subject. 2 Inst. 540.

An Office granted by letters patent for the sole making of all bills, informations, and letters missive in the Council of York, was held unreasonable and void. 1 Jon. 231.

One Chute petitioned the King to erect a new Office for registering all strangers within the realm, except merchant-strangers, and to grant the Office to the petitioner with or without a fee; and it was resolved by all the Judges, that the erection of such new Office for the benefit of a private person was against all law, of what nature ever. 1 Co. 116: and several cases there cited to this purpose.

The King cannot grant to any person to hold a Court of Equity, though he may grant tenere filiæs; for the dispensation of equity is a special trust committed to the King, and not by him to be intrusted with any other, except his Chancellor. Hob. 63.

The grant of an Office, generally, may be made to any person whom the King pleases, for the King has an interest in his Subject, and a right to his service; and therefore an information lies against him who refuses an Office being duly elected; and he shall not be excused for his neglect to qualify himself according to law. 1 Salk. 168. But see titles Dissenter; Papist.

A woman may be an officer. Thus the grant of any Office of government which may be exercised by deputy is good, as Regent of the kingdom; so of the Keeper of a castle, Forester, Gaoler, Commissioner of sewers, Sexton, and Overseer of the poor. See Com. Dig. title Officer (B). So an Office of inheritance may descend or be granted to a woman, as the Office of Earl-Marshall; Com. Dig.—or Lord Great Chamberlain of England, Bro. P. C.

Wherever one Office is incident to another, such incident Office
is regularly grantable by him who hath the principal Office; and on this foundation it hath been held, that the King’s grant of the Office of County-clerk was void, it being inseparably incident to the Office of Sheriff, and could not by any law or contrivance be taken away from him. 4 Co. 32. Mitton’s case.

So an Office of chamberlain of the King’s Bench prison is inseparably incident to the Office of marshal; therefore a grant of the Office of marshal, with a reservation of the Office of chamberlain, is void. 1 Salk. 439: 1 Leon, 320, 321.

So it hath been resolved, that the Office of Exigenter of London and other counties in England, is incident to the Office of Chief Justice of C. B. and therefore a grant thereof by the King, though in the vacancy of a Chief Justice, is null and void. Dyer 175. a. pl. 25: 1 And. 152: and see Show. Par. Ca. Sir Rowland Holt’s case.

Lord Coke says, that the Justices of Courts did ever appoint their clerks, some of which after, by prescription, grew to be Officers in their Courts; and this right which they had of constituting their own Officers, is further confirmed to them by stat. Westm. 2. 13 E. 1. st. 1. c. 30. The reasons are; 1st, For that the law ever appoints those who have the greatest knowledge and skill to perform that which is to be done. 2dly, The officers and clerks are but to enter, inrol, or effect that which the Justices adjudge, award, or order; the insufficient doing whereof maketh the proceeding of the Justices erroneous; than which nothing can be more dishonourable and grievous to the Justices and prejudicial to the party. 2 Inst. 425: 4 Mod. 173.

If two offices are incompatible, by the acceptance of the latter, the first is relinquished and vacant; even though it should be a superior Office. 2 Term Rep. 81. The subsequent acceptance of an incompatible Office vacates that which was previously held, whether superior or inferior. See 2 Term Rep. 8: and Doug, 398, in n. R. v. Gedwin.

II. The taking or giving of a reward for Offices of a public nature is said to be bribery; and nothing can be more prejudicial to the good of the public, than to have places of the highest concern, (on the due execution whereof the happiness of both King and People depends,) disposed of, not to those who are most able to execute, but to those who are most able to pay for them; nor can any thing be a greater discouragement to industry and virtue, than to see those places of trust and honour, which ought to be the rewards of those who by their industry have qualified themselves for them, conferred on such who have no other recommendation but that of being highest bidders; neither can any thing be a greater temptation to officers to abuse their power by bribery and extortion, and other acts of injustice, than the consideration of the great expences they were at in gaining their places, and the necessity of sometimes straining a point, to make their bargain answer their expectations. 2 Inst. 148: 1 Hawk. P. C. It is said to be malum in se, and indictable at common law. Noy. 102: Moor 781.

For which reasons, among many others, it is expressly enacted by stat. 12 R. 2. c. 2, that the chancellor, treasurer, keeper of the Privy seal, steward of the King’s house, the King’s chamberlain, clerk of the rolls of the justices of the one Bench and of the other, barons of the Exchequer, and all others who shall be called to ordain,
name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the King, shall be firmly sworn that they shall not ordain name, or make any of the above-mentioned officers for any gift or brokage, favour or affection; nor that none who sueth by himself, or by others, privily or openly, to be in any manner of Office, shall be put in the same Office, or in any other; but that they make all such officers and ministers of the best and most lawful men, and sufficient, to their estimation and knowledge.

And by stat. 4 H. 4, c. 5, it is enacted, that no Sheriff shall let his bailiwick to farm to any man for the time he occupieth such Office.

But the principal statute relating to this matter is stat. 5 & 6 Ed. 6. c. 16; whereby it is enacted, "That if any person bargain or sell any Office, or deputation of any Office, or any part of any of them, or receive any money, fee, &c. directly or indirectly, or take any promise, &c. to receive any money, &c. directly or indirectly, for any Office, or for the deputation of any office, or any part of any of them; or to the intent that any person should have, exercise, or enjoy any office, or the deputation of any Office, or any part of any of them, which shall in anywise concern the administration or execution of justice, or the receipt, &c. of any of the King's treasure, &c. or the keeping of any of the King's towns, &c. being for a place of strength and defence; or which shall concern or touch any clerkship to be occupied in any manner of Court of record wherein justice is to be ministered; that then every person that shall so offend shall not only lose and forfeit all his and their right, interest, and estate, in or to any of the said Office or Offices, &c. but also persons who shall give or pay any sum of money, &c. or shall make any promise, &c. shall immediately be adjudged a disabled person in the law to all intents and purposes to have, &c. the said Office, &c.

"It is further enacted, That bargains, sales, promises, bonds, agreements, covenants, and assurances shall be void to and against him and them by whom any such bargain, &c. shall be made.

"Provided always, That this act shall not extend to any Office whereof any person is seised of any estate of inheritance, nor to any Office of parkership, or of the keeping of any park-house, manor, garden, chase, or forest, or to any of them.

"It is also provided, That this act shall not be prejudicial to the Chief Justices of the King's Bench or Common Pleas, or the Justices of assise; but that they may do in every behalf, concerning any Office to be given or granted by them, as they might have done before the making this act."

In the construction of this last-mentioned statute, the following opinions have been holden:

The Office of Chancellor, Registrar, and Commissary in Ecclesiastical Courts are within the meaning of the statute; inasmuch as those Courts do not only determine matters which are brought before them pro salute anima, but also have the decision of disputes concerning the lawfulness of matrimony, and legitimation of children, which touch the inheritance of the Subject; and also hold plea of legacies and tithes, &c. in which respects they are Courts of justice. Cro. Jac. 369; 3 Inst. 148; 12 Co. 73; Salk. 468; 3 Lev. 287; 2 Vent. 187, 267.

Offices in fee are out of the statute; for if the King be seised in fee of a bailiwick, and he demise the same to A. who demises to B, ren-
dering, &c. the demise to B. is not within the statute; for offices in fee being excepted out of the statute, under-leases of such Offices are also excepted inclusively. 2 Lev. 151.

The place of cofferer is within this statute, and a person having once purchased this place is forever disabled to enjoy the same; and the King is bound by this statute, and could not dispense with it by any non obstante. 3 Bulst. 91: Co. Lit. 234: Cro. Jac. 385.

The sale of a bailiwick of a hundred is not within the statute, for such an offence doth not concern the administration of justice, nor is it an office of trust. 4 Leon. 33: 4 Mod. 223.

A seat in the Six-clerks' Office is not within the statute, being a ministerial Office only; and they are but under clerks, who have so much a sheet for copying, &c. but one Judge held it not saleable at common law for the following reasons: 1st, Discouragement of merit and industry. 2dly, It occasions extortion and exaction of excessive fees. 3dly, From its being a great charge to suitors. 4thly, It exempts the persons, who enter, by these means, in a great measure, from the due regulations under which they ought to be; for they are not so easily removed, as if they were at the will of him who had the disposal of them. Pasch. 26 Car. 2. in C. B. Sparrow v. Reynolds.

This statute doth not extend to military officers; and stat. 7 W. & M. which requires, that every commission officer, before his commission is registered, should take the oath there mentioned, that he had not directly or indirectly given any thing for procuring the commission but the usual fees, extended only to horse, foot, and dragoons, but not to the marines. Preced. Chanc. 199.

The sale of the deputation of the Office of Provost-Marshal of Jamaica is not within this statute, because this statute does not extend to the plantations. 4 Mod. 222: Salk. 411: 2 Mod. 45. S. P. undetermined; and there said arguendo, that so good a law should have as extensive a construction as possible.

In a writ on a judgment in Ireland, it was held clearly that the Office of clerk of the Crown, and clerk of the peace, was within the statute; but that this law did not extend to Ireland, not being enacted there. Trin. 9 Geo. 2. in B. R. Maccarty v. Wickford.

It is illegal to sell many offices not within the statute 5 & 6 Ed. 6. c. 16. But many offices, not within that statute, may be sold, provided the sale takes place with the consent of those who have the power of appointment. 8 Term Ref. K. B. 94.

One who makes a contract for an office, contrary to the purport of this statute, is so far disabled to hold the same, that he cannot at any time during life be restored to a capacity of holding it by any grant or dispensation whatsoever. Hob. 75: Co. Lit. 234: Cro. Car. 361: Cro. Jac. 386.

Where an Office is within the statute, and the salary is certain, if the principal make a deputation, reserving a lesser sum out of the salary, it is good; so if the profits be uncertain arising from fees, if the principal make a deputation, reserving a certain sum out of the fees and profits of the Office, it is good: for in these cases the deputy by his constitution is in place of his principal, yet he has no right to his fees, they still continue to be the principal's, so that as to him it is only reserving a part of his own, and giving away the rest to another; but where the reservation or agreement is not to pay out of the profits, but to pay generally a certain sum, it must be paid at all
events; and a bond of performance of such agreement is void by the statute. Salk. 468: 6 Mod. 234: Comb. 336.

This being a public law, the judges ex officio are to take notice of it; but yet it seems the more regular and safe way to plead it: but it hath been resolved, that a person in pleading this statute need not allege that the party against whom it is pleaded is not within any of the provisos or exceptions in the statute; but that if he be, it must come on his side to shew it. Trin. 9 Geo. 2, in B. R. Maccarty v. Wickford. Sed quare? Also vide 2 And. 55, 107: Ed. Raym. 1245.

III. It is held clearly, that an assise lay at common law for an Office, and that therefore though the statute of West. 2. 13 Ed. 1. st. 1. c. 25, speaks only of Offices in fee, yet an assise lies for an office in tail, or for life; but this is to be understood of Offices of profit, for of an Office of charge and no profit an assise doth not lie. 8 Co. 47. a: 2 Inst. 412.

But a man shall not have an assise of the whole Office, unless he be dispossessed of the whole; yet if a man be dispossessed of parcel of the profits of an Office, he may have an assise for that parcel only. 8 Co. 49 b: 2 Inst. 412.

In an assise for an office newly erected and constituted, the demandant in his plaint must shew what fee or profit is granted for the exercise thereof; for this office cannot have a fee or profit appurtenant to it, as an antient Office may, and for an Office without fee or profit no assise lies. 8 Co. 49.

But in assise for an antient Office, the demandant in his plaint need now shew what fee or profit is belonging to it, for it shall be intended there is some fee or profit. 8 Co. 49.

In an assise for an Office, the demandant must shew a seisin; but it hath been held, that taking 3d. for a caufias against B. is sufficient seisin of the office of Filazer de banco. 1 Roll. Abr. 270.

Also in an assise for an Office, the demandant in his patent must set forth a title. 3 Mod. 273.

An assise lies for the office of Registrar of the Admiralty; for though their proceedings are according to the civil law, yet the right of their office is determinable at the common law: so of the mastership of an hospital, being a lay fee. 8 Co. 47: 2 Inst. 412: 11 Co. 99, b: Dyer 152.

A man may bring an action on the case for the profits of an office, though he never had seisin. 1 Mod. 122. And, in general an action by a person claiming an Office against the person in actual possession, and receiving the fees, is now perhaps the most eligible method that can be pursued to try the question of right.

If the King grant the Office of Comptroller of the customs to A. and B. durante beneplacito, and A. dies, and afterwards the King grants the said Office to C. and yet B. under pretence of survivorship, exercises the said office, and receives the profits thereof; C. may have an indebitatus assumptus for so much money had and received to his use. 2 Mod. 260. See 2 Lev. 108: 1 Mod. 122: and further, title Mundamus.

IV. It is laid down in general, that if an officer acts contrary to the nature and duty of his Office, or if he refuses to act at all, that in these cases the Office is forfeited. 11 Ed. 4, 1. b: 2 Roll. Abr. 155.
But herein it will be necessary to consider more minutely what shall be said to be such acts as are contrary to the duty of his Office; and how far the same (whether they are acts of omission or commission) amount to a forfeiture; wherein it hath been clearly agreed, that a gaoler by suffering voluntary escapes, by abusing his prisoners, by extorting unreasonable fees from them, or by detaining them in gaol after having been legally discharged and paid their just fees, forfeits his Office; for that in the grant of every Office it is implied, that the grantee execute it faithfully and diligently. Co. Lit. 233: 9 Co. 50: 3 Mod. 143.

If a gaoler leave his prison door unlocked, and the prisoners escape, it is not only a negligent but a voluntary escape. Cro. Car. 492.

But it is held, that one negligent escape is not a forfeiture, though a voluntary one is, but that two negligent escapes amount to a forfeiture. 39 Hen. 5. 33: 2 Roll. Abr. 195: 2 Vern. 173: and see stat. 8 & 9 W. 3. cap. 27; this Dictionary, title Gaoler.

There are, says Lord Coke, three causes of forfeiture or seizure of Offices by matter in deed. 1st, By abuser. 2dly, Non-user. 3dly, Refusal.

1st. Abuser; as by a marshal or other gaoler’s permitting escapes.

2dly. By Non-user; in which there is this difference, when the Office concerns the administration of justice or the commonwealth, the officer, ex officio ought to attend without request, there by non-user or non-attendance the office is forfeited; but where an officer is not obliged to attend, but upon demand or request made by him whose officer he is, there without such demand or request there can be no forfeiture; and herein also Lord Coke in another place takes the following diversity, viz. that non-user, of itself, without some special damage, is no forfeiture of private Offices, but that it is otherwise of a public one, which concerns the administration of justice.

3dly. As to refusal, he says, that in all cases where an officer is bound upon request to exercise his Office, if he does not do it upon request, he forfeits it; as if the steward of a manor be requested by the lord to hold a Court, if he does not do it, it is a forfeiture. 6 Co. 50: Co. Litt. 233. b.

If conditions in law, which are annexed to Offices, be not observed and fulfilled, the Office is lost for ever, for these conditions are as strong and binding as express conditions; therefore if the Office of forester, &c. descend to an infant or femme-covert, (where by law they may so descend,) and these are not exercised by sufficient deputies, they become forfeited, Co. Litt. 233. b: 8 Co. 44: Cro. Car. 556. Hard. 11.

Insufficiency is an original incapacity which creates the forfeiture of an Office; so if a superior puts in a deputy into an Office, which may be exercised by deputy, who is ignorant and unskilful, this is a forfeiture of the Office. 4 Mod. 29, arguendo.

If the King grants an Office in any of the Courts at Westminster, the judges may remove an officer for insufficiency, and they are the proper judges of his abilities. 4 Mod. 30, arguendo. Where an officer may be removed, but not abridged of his fee, see 1 Roll. Rep. 82-3.

A Filazer of C. B. being absent two years, and having farmed out his Office from year to year, without licence of the Court, was discharged by the Chief Justice, ex assensu sociorum suorum, by word,
spoke openly in Court; and though there was no record made of the discharge, nor no legal summons for him to answer to any accusation, yet the discharge was held good. Dyer 114. b. pl. 64: 1 Roll. Abr. 155.

The Clerk of the Papers, in the King’s Bench prison, cannot act by deputy, but must himself reside within the prison. Clerk of the Papers, and Clerk of the Day-rules, in the King’s Bench prison, was removed by the Court of K. B. for non-residence. 4 Term Rep. K. B. 716: 5 T. R. 511.

An officer was turned out, because he *spoliavit quaedam recorda contra officii sui debitum*; and it was objected, 1st, That it was not certain enough, because not shewn what records; to which the Court answered, that it would be prolix, and then he having spoiled the records, they are not perhaps to be had. 2dly. That it may be he did it by chance, and not wilfully; to which the Court said, that the conclusion *contra officii sui debitum* includes that. 1 Keb. 597.

But if the King grants an Office which concerns trust and diligence to two, and one is attainted, the entire Office is forfeited to the King; for he cannot make one occupy in common with another. *Flowr.* 180.

Wherever an officer, who holds his Office by patent, commits a forfeiture, he cannot *regularly* be turned out without a *scire facias*, nor can he be said to be completely ousted or discharged without a writ of discharge; for his right appearing of record, the same must be defeated by matter of as high a nature. But for this see Dyer 155, 198, 211: 9 Co. 98: Co. Litt. 233: Cro. Car. 60, 61: 1 Sid. 81, 134: 8 Co. 44, b: 1 Roll. Abr. 580: 3 Mod. 335: 3 Lev. 288.

All officers are punishable for corruption and oppressive proceedings, according to the nature of the offence, either by indictment, attachment, action at the suit of the party injured, loss of their Office, &c. 6 Mod. 96.

But besides the punishment by indictment, &c. all Courts of record have a discretionary power over their officers, and are to see that no abuses are committed by them, which may bring disgrace on the Courts themselves: the Court of King’s Bench, by the plentitude of its power, exercises a superintendency over all inferior Courts; and may grant an attachment against the judges of such Courts for oppressive, unjust, or irregular practice, contrary to the obvious rules of natural justice. Dyer 218: *Palm.* 564: 1 Salk. 210.

As to extortion by officers, it is so odious, (being more heinous, as Lord Coke says, than robbery, as it is usually attended with the aggravating sin of perjury,) that it is punishable at common law by fine and imprisonment, and also by removal from the Office in the execution whereof it was committed; and is defined to be, the taking of money, by any officer, by colour of his office, either where none is due, or not so much is due, or where it is not yet due. Co. Litt. 368. b: 2 Inst. 209: 10 Co. 102: 2 Roll. Abr. 32, 37: Cro. Car. 438, 448: *Raym.* 315.

But the stated and known fees allowed by the Courts of justice to their respective officers, for their labour and trouble, are not restrained by the Common Law, or by the statute of Westm. 1. Therefore such fees may be legally demanded, without danger of extortion. 21 Hen. 7. 17: Co. Litt. 368. See further this Dictionary, titles Extortion; Fees; Bribery.

In general, all wilful breaches of the duty of an Office are forfeit-
tures of it, and punishable by fine, &c. for since every Office is instituted, not for the sake of the officer, but for the good of some other, nothing can be more just than that he, who either neglects or refuses to answer the end for which his Office was ordained, should give way to others who are both able and willing to take care of it, and that he should be punished for his neglect or oppressive execution; but the particular instances wherein a man may be said to act contrary to the duty of his Office, though various, are yet so generally obvious, that it is needless to enumerate them. Co. Litt. 233, 234.

For further matter connected with this title, see this Dictionary, titles Mandamus; Quo Warranto, &c.

OFFICE FOUND, is where an inquisition is made to the King's use, of any thing by virtue of his Office who inquires, and it is found by the inquisition. In this signification it is used in stat. 33 H. 8. c. 20; where to traverse an Office, is to traverse an inquisition taken of Office; and to return an Office, is to return that which is found by virtue of the Office. Kitch. 177.

There are two kinds of Offices issuing out of the Exchequer by commission, viz. an Office to entitle the King in the thing inquired of, and an Office of instruction. 6 Rep. 52. The Office of entitling doth vest the estate and possession of the land, &c. in the King, who had therein before only a right or title; as were an alien purchases lands, a person is attaint of felony, or the like; and the other Office is where land is vested and settled before in the King, but the particulars thereof do not appear upon record. 4 Rep. 58: Plowd. 484. The effect of this Office is, that the King, from the time of finding, shall be answered the profits without entry, &c. 5 Rep. 32: 10 Rep. 115. If any Office be wrongfully found, those who are grieved may be relieved by a traverse, or monstrans de droit, by pleading or petition; for every Office is in nature of a declaration, to which any man may plead, and either deny or confess, &c. Plowd. 448. Bro. 506. Where Offices are found before the escheators, they must be delivered by indenture under the hands and seals of the jurors. Dyer 170. See title Inquest of Office.

OFFICIAL, [officialis] In the antient civil law, signifies him who is the minister of, or attendant upon, a magistrate. In the canon law, it is he to whom any bishop generally commits the charge of his spiritual jurisdiction; and in this sense there is one in every diocese called Officialis Principalis, whom the law styles Chancellor; and the rest, if there are more, are by the canonists termed Officialis foranei, but by us commissaries. In our statutes, this word signified properly him whom the archdeacon substitutes for the executing his jurisdiction. The archdeacon hath an Official or church-lawyer to assist him, who is judge of the archdeacon's Court. Wood's Inst. 30, 505.

OFFICIARIIS NON FACIENDIS VEL AMOVEDIS, A writ directed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the Office he hath, until inquiry is made of his manners, &c. Reg. Orig. 126.

OFFICIAM CURTAGII PANNORUM, Granted to William Osborne, anno 2 Ed. 2. Extract. Fin. Cancell.

OIL. The lord mayor of London, and the master and wardens of the tallow-chandlers' company, are to search all Oils brought to London; and if any is deceitfully mixed, they may throw it away, and pun-
nish the offenders; and head officers in corporations have like power.


No lamps to be used in private houses but of fish Oil. 8 Ann. c. 9. § 18. See title Candles.

OLD JEWRY, Vetus Judaismus.] The place or street where the Jews lived in London. See Jews.

OLD STYLE; See Year.

OLERON LAWS, Ubi sunt Leges.] Laws relating to maritime affairs so called, because said to be made by King Richard I. when he was at Oleron, an island lying in the bay of Aequitain, at the mouth of the river Charent. Co. Litt. 260. These laws are recorded in the Black Book of the Admiralty, and are accounted the most excellent composition of Sea Laws in the world. See Selden's Mare Clausum, 222, 254: 1 Comm. 418: 4 Comm. 423: and this Dictionary, title Navy.

OLYMPIAD, Olympias.] An account of time among the Greeks, consisting of four complete years, having its name from the Olympic games, which were kept every fourth year, in honour of Jupiter Olympium, near the city of Olympia; when they entered the names of the conquerors on public records. The first Olympiad began in the year 3938 of the Julian period, 505 years after the taking of Troy, 776 before the birth of Christ, and 24 years before the founding of Rome. Æthelred, King of the English Saxons, computed his reign by Olympiades. Suetin.

OMISSIONS, Are placed among crimes and offences; and Omission to hold a Court-leet, or not swearing officers therein, &c. is a cause of forfeiture. Omissions in law proceedings render them vicious and defective; vide title Amendment; Office.


ONERANDO PRO RATA PORTIONIS, A writ that lies for a joint-tenant, or tenant-in-common, who is distrained for more rent than his proportion of the land comes to. Reg. Orig. 182. See title Joint-tenants.

ONEROUS CAUSE, The Scotch phrase for a good and legal consideration. See Assumpsit.

O. NI. It is the course of the Exchequer, as soon as the Sheriff enters into and makes up his account for issues, amerciaments, and mean profits, to mark upon each head O. NI; which denotes Oneratur Nisi habeat sufficientem exonerationem, and presently he becomes the King's debtor, and a debet is set upon his head; whereupon the parties paravalle become debtors to the Sheriff, and are discharged against the King, &c. 4 Inst. 116. See title Sheriff.

ONUS EPISCOPALE, Antient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, &c. See Episcopalian.

ONUS IMPORTANDI, The charge or burden of importing merchandise, mentioned in the stat. 13 Car. 2.

ONUS PROBANDI, The burden of proving: upon whom it shall be imposed, see title Evidence.

OPEN LAW, Lex Manifesta.] The making or waging of law; which bailiffs may not put men to, upon the bare assertion, except they have witnesses to prove the truth of it. Magna Carta, c. 21.

OPEN TIDE, The time after corn is carried out of the common fields. Brit.

OPERARII, Such tenants, under feudal tenures, who had some little portions of land by the duty of performing many bodily labours and servile works for their lord, being no other than the servit and bondmen: they are mentioned in several antient surveys of manors.

OPERATIO, One day's work performed by a tenant for his lord.

Paroch. Antig. 320.

OPPOSER, An officer belonging to the Green Wax in the Exchequer. See Exchequer.

OPPRESSION, In a private sense, is the trampling upon or bearing down one, on pretence of law, which is unjust: but where the law is known and clear, though it appear hard or unequitable, the Judges must determine according to that. Vaugh. 37. As to the remedy for the Oppression of the Crown, see title King, V. 2.

OPTION, When a new suffragan bishop is consecrated by the Archbishop of the province, by a customary prerogative the Archbishop claims the collation of the first vacant dignity or benefice in that see, at his own choice; which is called his Option. Cowel. See title Bishops.

OPTIONAL WRIT. A praecipe is an optional writ, i.e. it is in the alternative, commanding the defendant to do the thing required, or shew the reason wherefore he hath not done it. There is another species of original writs called Peremptory or a si fecerit te securum, from the words of the writ, which directs the Sheriff to cause the defendant to appear in Court, without any Option given him, provided the plaintiff gives the Sheriff security effectually to prosecute his claim. 3 Comm. 274. See titles Original; Writ.

ORA, A Saxon money or coin, valued at sixteen pence, and sometimes, according to variation of the standard, at twenty pence. The word often occurs in Domedays, and the laws of King Canutus.

ORANDO PRO REGE ET REGNO, An antient writ. Before the Reformation, while there was no standing collect for a sitting parliament, when the Houses of Parliament were met, they petitioned the King that he would require the bishops and clergy to pray for the peace and good government of the realm, and for a continuance of the good understanding between his Majesty and the estates of the kingdom; and accordingly the writ De Orando pro Rege & Regno was issued, which was common in the time of King Edw. III. Nichols. Engl. Hist. par. 3. p. 66.

ORARIUM, The hem or border of a garment. Cowel.

ORBIS, A bonney, a swelling or knot in the flesh, caused by a blow. Bract. lib. 3. title De Corona, cap. 23. num. 2.

ORCHARDS AND GARDENS. Robbing them, or destroying trees in them, how punished, see stats. 43 Eliz. c. 7. 9 Geo. 1. c. 22. The Hundred answerable for damages in destroying of Trees in Orchards. 9 Geo. 1. c. 22. § 7. See Black Act; Gardens.

ORCHEL, or ORCHAL, mentioned in stats. 1 Ric. 3. c. 8. 3 & 4 Ed. 6. c. 2. Seems to be a kind of stone like alum, which dyers use in their colours. It is among the articles liable to a duty on importation.

ORDEAL, or ORDAL, Saxon compounded of or, magnum, and deal, or deles, judicium; or as others, from or, privative, and del, part, that is, expers criminis, or Not guilty.] An antient manner of trial it
criminal cases; for when an offender being arraigned pleaded Not
guilty, he might choose whether he would put himself for trial upon
God and the country, by twelve men, as at this day, or upon God only;
and then it was called The Judgment of God, presuming that he would
deliver the innocent. Terms de Ley: 9 Rep. 32.
This trial, according to Blackstone, arose from the superstition of
our Saxon ancestors, who, like other northern nations, were ex-
tremely addicted to divination; they therefore invented this among
the methods of purgation or trial to preserve innocence from the
danger of false witnesses, and in consequence of a notion that God
would always interpose miraculously to vindicate the guiltless. 4
Comm. 342.
There were of this, two sorts, one by fire, another by water. Of
these see Lambard, in his Explication of Saxon Words, verbo orda-
litum: Holingshed, fol. 98, and Hotoman especially, Disput. de Feud. p.
41. See Skene de verbor. Significat. verbo Machainum.
This seems to have been in use in the time of Henry the Second,
as appeareth by Glanville, lib. 14. cap. 1, 2. See also Verategan, c. 3.
jug. 63, &c. and Hoveden 556. This Ordalian law was condemned by
Pope Stephen the Second, and afterwards totally abolished here by
Parliament, as appears by Rot. Paten. de anno 2 Hen. 3 membr. 5:
Cowel. Vide Leg. Edw. Confess. cap. 9. Blackstone says, Ordeal was
abolished in our Courts of justice, by an act of parliament in 3 H. 3.
according to Coke; or rather by an order of the King in council. See
Spelman, it appears that the order of council alluded to the trial by
Ordeal, as condemned by the Church of Rome; and substituted the
punishment of imprisonment, abjuration of the realm, and security
for good behaviour in the case of suspicion of certain crimes speci-
fied.
The water Ordeal was performed either in hot or cold: in cold wa-
ter, the parties suspected were adjudged innocent, if their bodies
were not borne up by the water contrary to the course of nature; in
hot water, they were to put their bare arms or legs into scalding wa-
ter, which if they brought out without hurt, they were taken to be in-
nocent of the crime.
Those that were tried by the fire ordeal, passed barefooted and
blindfold over nine hot glowing plowshares; or were to carry burning
irons in their hands, usually of one pound weight, which was called
Simple Ordeal; or of two pounds, which was duplex; or of three
pounds weight, which was triplex ordealium; and accordingly as they
escaped, they were judged innocent or guilty, acquitted or condem-
ned; this fire Ordeal was for freemen, and persons of better condi-
tion; and the water Ordeal for bondmen and rustics. Glanv. lib. 4. c. 1.
And the horrible trial by fire Ordeal, in the first degree, Queen
Emma, mother of Edward the Confessor, is said to have undergone
on a suspicion of her chastity; though the truth of the story is now,
we believe, nearly exploded.
Both sorts of Ordeal might be performed by deputy, but the prin-
cipal was to answer for the success of the trial; the deputy only ven-
turing some corporal pain for hire, or perhaps for friendship. 4 Comm.
342, 3.
ORD
ORDEFFE, or ORDELFE, effossio metalli, from the Saxon ore,
metallum, and del/an, effbdere.] A word often used in charters of privileges; signifying a liberty, whereby a man claims the ore found in his own ground; but properly is the ore lying under ground. A delle, coal, is coal lying in veins under ground, before it is dug up. Cowell.

ORDELS, Oaths and Ordels, were part of the privileges and immunities granted in old charters, meaning the right of administering oaths, and adjudging ordeal trials, within such a precinct or liberty. Cowell.

ORDERS, Are of several sorts, and by divers Courts; as of the Chancery, King’s Bench, &c. Orders of the Court of Chancery, either of course or otherwise, are obtained on the petition or motion of one of the parties in a cause, or of some other interested in or affected by it; and they are sometimes made on hearings, sometimes by consent of parties. They are to be pronounced in open Court, and drawn up by the Registrar from his notes; and if there be any difficulty in adjusting the notes, a summons is given by the Registrar for the clerk or solicitor of the other side to attend, whereupon they are settled, or the Court is applied to if it cannot be otherwise done: before the Orders are entered and passed by the Registrar, the other side hath four days allowed to object against them, for which purpose copies are delivered; and when they are perfected, they are to be served on the parties, or the clerk or solicitor employed by them. If an Order is of course, the solicitor usually draws up the notes or minutes, and gives them to the Registrar’s clerk, to draw up the Order from; and when the Order is drawn up, it is to be entered by the entering clerk, which must be within eight days from the pronouncing; then the Registrar passes and signs it, after which is the service, &c. For not obeying an Order, personally served, a party may be committed. See the Books of Practice.

ORDERS OF THE COURT OF KING’S BENCH, Rules made by the Court in causes there depending; which when drawn up and entered by the clerk of the Rules, become Orders of the Court. 2 Lill. 261.

See Sir George Cooke’s Rules and Orders in the Courts of King’s Bench and Common Pleas and Cases in Practice, 2 vols. 8vo. a very excellent work, from which many things in our modern books of practice are taken, though the authors have seldom been so ingenuous, as to acknowledge from whence they were taken, or to refer to any authorities, in many of those instances. And see also this Dictionary, title Motion.

ORDERS OF JUSTICES OF PEACE, or of the SESSIONS; See Justices of the Peace; Sessions.

ORDINALE, A book which contains the manner of performing divine offices, in quo ordinatur modus, &c.

ORDINANCE, ordinatio.] A law, decree, or statute, variously used.

ORDINANCE OF THE FOREST, Ordinatio foresta.] A statute made touching matters and causes of the forest; See the statute 33 & 34 Edw. I.

ORDINANCE OF PARLIAMENT, Is said to be the same with Act of parliament; for Acts of parliament are often called Ordinances, and Ordinances Acts; but originally there seems to be this difference between them; that an Ordinance was but a temporary act, not in-
introducing any new Law, but founded on Acts formerly made: and such Ordinances might be altered by subsequent Ordinances: but an Act of parliament is a perpetual law, not to be altered but by King, Lords, and Commons. *Rot. Parl. 37 Ed. 3: Pryn. on 4 Inst. 13. See title Statute.*

**ORDINARY, ordinarius.** A civil-law term, for any judge who hath authority to take cognizance of causes in his own right, and not by deputation; by the common law it is taken for him who hath Ordinary or exempt and immediate jurisdiction in causes ecclesiastical. *Co. Litt. 544: Stat. Westm. 2, 13 Ed. 1, st. 1, c. 19.*

This name is applied to a Bishop who hath original jurisdiction; and an Archbishop is the Ordinary of the whole province, to visit and receive appeals from inferior jurisdictions, &c. *2 Inst. 398: 9 Repl. 41: Wood’s Inst. 25.*—The word Ordinary is also used for every commissary or official of the bishop, or other ecclesiastical judge having judicial power; an archdeacon is an Ordinary; and Ordinaries may grant administration of intestates’ estates, &c. *stat. 31 Ed. 3, c. 11: 9 Repl. 36.* But the bishop of the diocese is the true and only Ordinary to certify excommunications, lawfulness of marriage, and such ecclesiastical and spiritual acts to the judges of the common law; for he is the person to whom the Court is to write in such things. *2 Shep. Abr. 472.*

For the Ordinary’s power, it is declared by many statutes; as relating to visiting hospitals, by *stat. 2 H. 5, st. 1, c. 1.* The certifying of bastardy, &c. *Stat. 9 H. 6, c. 11.* Concerning questions of tithes, that shall come in debate before him. *Stat. 27 H. 8, c. 20.* Allowance of schoolmasters, &c. *Stats. 23 Eliz. c. 1: 1 Jac. 1, c. 4.* If a man may keep a school without licence of the Ordinary, see *Ld. Raym. 603:* and this Dictionary, title *Schoolmaster.* And the authority of Ordinaries in general is restored, by *stat. 13 Car. 2, st. 1, c. 12.*

The Ordinary’s power and interest in a church is of admitting, instituting, and inducting parsons; of seeing and taking care that it be provided with a pastor; by the patron who has the right of presenting; or in his default to bestow the church on some proper person to serve the cure, &c. *1 Roll. Rep. 453.* Before presentation to a church, the Ordinary may sequester the profits; and during the vacation, it is said, he may make a lease. *1 Keb. 370.* When the Ordinaries or their ministers have committed extortion or oppression, they may be indicted, putting the things in certain, and in what manner, &c. *25 Ed. 3, st. 3, c. 9.*

Formerly clerks accused of crimes were delivered to the Ordinary, and the bodies of such clerks kept in the Ordinary’s prison until tried before him by a jury of twelve clerks; and if condemned, they were liable to no greater punishment than degradation, loss of goods, and the profits of their lands; unless they had been guilty of apostacy, &c. This was when they had the privilege of being tried only by ecclesiastical judges; which was so far indulged them, that after they had been once delivered to the Ordinary, they could not be remanded to any temporal Court, until the *stat. 8 Eliz. c. 4.* See this Dictionary, title *Clergy, Benefit of.*

No ornaments can be set up in a church without consent of the Ordinary. *1 Stram. 576:* see *9 Co. 36; and stats. Westm. 2, cafl. 19: 31 E. 3, c. 11: 21 H. 8, cafl. 5: 2 Inst. cafl. 19.* See further Brooke,
title Ordinary, Lindewode in cap. de Constitutionibus verbo Ordinarii, and this Dictionary, titles Administrator; Bishop; Clergy.

ORDINARY or NEWGATE, The clergyman who is attendant in ordinary upon condemned malefactors in that prison, to prepare them for death; and who records the behaviour of those unhappy culprits.

ORDINATIONE CONTRA SERVIENTES, A writ that lay against a servant for leaving his master contrary to the ordinance or statute 23 & 25 Edw. III. Reg. Orig. 189.

ORDINATION OF THE CLERGY. By common law, a deacon of any age might be instituted and inducted to a parsonage or vicarage: but now, by statute, no man is capable of taking any ecclesiastical benefice with cure, promotion, or dignity, unless he be ordained a priest, to qualify him for the same. A clerk is to be twenty-three years old, and have deacon's orders, before he can be admitted into any share of the ministry; and the priest must be twenty-four years of age, before he shall be admitted into orders to preach, or to administer the sacraments, or to hold any ecclesiastical benefice; but the archbishop may dispense with one to be made deacon at what age he pleases, though he cannot with one who is to be made a priest. See Stat. 13 Eliz. c. 12; 13 & 14 C. 2. c. 4. extended to Ireland by 44 Geo. 3. c. 45. By the latter statute the granting faculties of dispensation appears to be confined to the Archbishops of Canterbury and Armagh.

Deacons and priests are to be ordained only on the four Sundays immediately following the Ember Weeks, except on urgent occasions; and it is to be done in the cathedral or parish church where the bishop resides, in time of divine service, and in the presence of the archdeacon, dean, and two prebendaries, or of four other grave divines. And no bishop shall admit any person into orders without a title or assurance of being provided for; and before any are admitted, the bishop shall examine them in the presence of the ministers, who assist him at the imposition of hands; on pain, if he admits any not qualified, &c. of being suspended by the archbishop from making either deacons or priests for two years. Cam. 31, 34.

If any impediment be objected against one who is to be made either priest or deacon, at the time he is to be ordained, the bishop is bound to succorse from ordaining him, until he shall be found clear of that impediment; and it is generally held, that whatever are good causes of deprivation, are also sufficient causes to deny admission to orders; as incontinency, drunkenness, illiterature, perjury, forgery, simony, heresy, outlawry, bastardy; &c. 2 Inst. 631. 3 Rep. A person to be ordained priest, must bring a testimonial of four persons, known to the bishop, of his life and doctrine; and be able to give an account of his faith in Latin: and a deacon is not to be made a priest, unless he produce to the bishop such a testimonial of his life, &c. and that he hath been found faithful and diligent in executing the office of a deacon.

A bishop shall not make any one deacon and minister on the same day; for there must be some time to try the behaviour of a deacon in his office, before he is admitted to the order of a priesthood, which time is generally a year, but it may be shorter, on reasonable cause allowed by the bishop; priests and deacons are not only to subscribe the thirty-nine articles, but take the oath of the King's supremacy,
ORD

&c. as directed and altered by stat. 1 W. & M. st. 1, c. 1, 8. A priest by his ordination receives authority to preach the word, and adminis-
ter the Holy Sacraments, &c. But he may not preach without licence
from the bishop, archbishop, or one of the universities.

The stat. 31 Eliz. cap. 6, punishes corrupt Ordination of priests
&c. (which, says Blackstone, seems to be the true, though not the com-
mon notion of Simony). If any persons shall take any reward, or
other profit, to make and ordain a minister, or to licence him to
preach, they shall by this statute forfeit 40l. and the party so ordained,
&c. 10l.; and be incapable of any ecclesiastical preferment for seven
years afterwards. See further titles Parson; Clergy.

ORDINES, A general chapter, or other solemn convention of
the religious of such a particular order. Parch. Antig, p. 576.

ORDINES MAJORES ET MINORES. The holy orders of
priest, deacon, and subdeacon, any of which did qualify for presenta-
tion and admission to an ecclesiastical dignity or cure were called
Ordines majores and the inferior orders of chantor, psalmist, ostiary,
reader, exorcist, and acolyte were called Ordines minores; for which
the persons so ordained had their prima tonsura different from the
tonsura clericalis. Cowell.

ORDINUM FUGITIVI, Signified those of the religious who de-
serted their houses, and throwing off the habits, renounced their par-
ticular order, in contempt of their oath and other obligations. Parch.
Antig. 388.

ORDNANCE, Letters patent for making it, are not within the
statute of monopolies, 21 Jac. 1 c. 3. § 10. See stats. 42 Geo. 3. c.
89: 43 Geo. 3. c. 33, 65, 66: 44 Geo. 3. c. 78, 79, 107, for trans-
ferring lands for the service of the Board of Ordnance.

ORDO, That rule which the monks were obliged to observe.
Eadmer, vita S. Anselmi, 3.

ORDO ALBUS, The White Friars, or Augustines; the Cister-
cians also wore white.

ORDO NIGER, The Black Friars. Ingulphus, p. 851. The Clu-

ORFGILD, or CHEAPGELD, from Sax. orf, pecus, and gild,
solutio vel redemptio.] A delivery or restitution of cattle. But Lam-
bard says, it is a restitution made by the hundred, or county, for any
wrong done by one who was in pledge; or rather a penalty for tak-

ORFRAIES, aurifrisium.] A sort of cloth of gold, frizled or em-
broidered, formerly made and used in England, worn by our Kings
and nobility; and the clothes of the King’s guards were called Orf-
raies, because adorned with such works of gold. Mention is made
of these Orfraies in the Records of the Tower.

ORGALLOUS, More truly Orguillous, that is, proud and high-
minded, derived from the French orgueil, pride. 4 Inst. 89.

ORGEYS, mentioned in stat. 31 E. 3. st. 3. c. 2; is the greatest
sort of North-sea fish (for the statute says they are greater than lob
fish); which we call organ-ling, corruptly from Orkney-ling, because
the best are near that island. Cowell.

ORGILD, sine compensatione.] Without recompence; as where no
satisfaction was to be made for the death of a man killed, so that he
was judged lawfully slain. Spelman.
ORIGINAL CHARTER: that which is granted first to the vassal by the superior. Scotch Diet.

ORIGINAL, or ORIGINAL WRIT, The beginning or foundation of a suit. When a person has received an injury and thinks it worth his while to demand a satisfaction for it, he must apply for that specific remedy which he is advised or determined to pursue. To this end he is to sue out an Original, or Original Writ, from the Court of Chancery, the officina justitiae, wherein all the king's writs are framed.

This Original Writ is a mandatory letter from the King in Chancery, sealed with his great seal; and lies in all personal actions, against every person not privileged as an attorney, officer, or prisoner of the Court. Formerly, indeed, it was not usual to proceed in the King's Bench by Original Writ, in debt, detinue, or other action of a mere civil nature. But the modern practice is different, and where the defendant pleaded to the jurisdiction. In an action of debt commenced by Original Writ, the Court gave judgment on demurrer for the plaintiff; and declared that if such a plea should come before them again they would inquire by whom it was signed. See Harde. 317. On the other hand an Original Writ was formerly the most common, if not the only ground of proceeding against peers and members of the House of Commons; but now by stat. 12 & 13 W. 3. c. 3. § 2, they may also be sued by Original bill and summons, attachment and distress infinite. Still, however, an Original Writ is the only ground of proceeding against a Corporation or Hundredors on the statutes of hue and cry, &c., or where by reason of the defendant's being abroad, or keeping out of the way, he cannot be arrested or served with process; [and it is intended to sue him to outlawry.] There is also this benefit attending it, in other cases, that after judgment in an action by Original, a writ of error will not lie in the Exchequer-chamber where it is often brought for the mere purpose of delay; but only in Parliament. 1 Sid. 424. The reason is, that at common law no writ of error lay, except in Parliament, from the judgment of the Court of K. B. and the stat. 27 Ediz. c. 8, which gave a writ of error in the Exchequer-chamber, only extends to such actions as are first commenced in the King's Bench; therefore, though a writ of error will lie in the Exchequer-chamber, on a judgment by bill, which originates in the King's Bench, yet it is otherwise where the judgment is upon an Original Writ, which issues out of Chancery, where the action in that case is first commenced. Run. Ej. 83, &c. Gilb. K. B. 319.

Original Writs are calculated for the commencement or removal of actions. And they are either de curau, or magistralia; the former were framed in the King's Court, before the division of it; the latter were made out by the Masters in Chancery pursuant to the stat. Westm. 2. 13 E. 1. stat. 1. c. 24. In personal actions they are ex contractu vel ex delicto, upon contracts, or for wrongs immediate or consequential. See Tidd's Pract. K. B. cap. 1, and the authorities there cited.

In actions of covenant, debt, and detinue, the Original Writ is called a Precipe, by which the defendant has an option given him, either to do what he is required, or shew cause to the contrary; but in assumpt. sit, and actions for wrongs it is called a pone, or si te fecerit securum;
by which the defendant is peremptorily required to shew cause in the first instance. *Finch. L.* 257.

The use of the *praecipe* is where something certain is demanded by the plaintiff, which it is incumbent on the defendant himself to perform; as to restore the possession of land, to pay a certain liquidated debt, to perform a specific covenant, to render an account, and the like; in all which cases the writ is drawn up in the form of a command, to do thus, or shew cause to the contrary; giving the defendant his choice to redress the injury, or stand the suit. The other sort of Original is in use where nothing is specifically demanded, but only a satisfaction in general; to obtain which, and administer complete redress, the intervention of some judicature is necessary. Such are writs of *trespass,* or *on the case,* wherein no debt or other specific thing is sued for in certain, but only damages to be assessed by a jury. For this end the defendant is immediately called upon to appear in Court, provided the plaintiff gives good security of prosecuting his claim. *3 Comm. c.* 18. *p.* 274.

In point of form the Original Writ is special or general; *nominatum vel innominatum.* 1 *Bac. Abr.* 29: *Gilb.* C. P. 3. The former contains the time, place, and other circumstances of the demand, very particularly; the latter only a general complaint, without expressing the particulars, as the writ of trespass *quare clausum fregit,* &c. But in order to save the great and unnecessary expense of suing forth *special* writs in small and trifling suits, and to void oppression which might otherwise arise, it is enacted by *stat.* 5 *Geo.* 2. *c.* 27. § 5, that “no special writ or process shall be issued out of any superior Court where the cause of action shall not amount to the sum of ten pounds or upwards.” And by a rule of Court *M.* 23 *Geo.* 3. “in all actions in which the plaintiff shall proceed against the defendant by special Original Writ, and shall recover less than the sum of fifty pounds, he shall not, on taxing costs, be allowed any more or other costs than he would be entitled to in case he had proceeded by bill; except in such actions in which he could not proceed by bill, or in which any defendant shall be actually outlawed.”

The Original Writ should be directed to the Sheriff or Sheriffs of the county where the action is brought and intended to be tried, and the *venue* should be laid in that county. But as to this latter circumstance there is a difference between local and transitory actions; as to which see titles *Action; Venue.*

The Original Writ, issuing out of Chancery, should be *testa’d,* (that is witnessed) in the King’s name at Westminster, or wherever else the Chancery is holden; and as that Court is supposed to be always open, it may be *testa’d* in vacation as well as in term-time. It should, however, be *always testa’d* after the cause of action accrued, and should be made returnable on a general return day in term-time, *ubicunque,* i.e. wheresoever the King shall then be in *England.* In proceeding to out-lawry, if the instructions be carried to the Cursitor within the first week of a term, and the cause of action will admit of it, he will, for the sake of expedition, make the Original returnable on the first or any other return of the preceding term. Otherwise it is usually made returnable in the same or the next term; or, as it does not affect the liberty of the defendant, it may be made returnable at the distance of two or three terms. But there should be fifteen days at least between the *testa* and return of an Original; the law requiring
that distance of time, between the service and return of it, to enable the defendant to come from any part of the kingdom, though if there be less, it will be aided by the defendant's appearing and pleading in chief.

The want of an Original is aided after verdict, by stat. 13 Eliz. c. 14; but not after judgment by default, &c. And a bad Original is not aided, even after verdict; nor a good one, which does not warrant the declaration: the Court, however, will amend any defect in the Original, arising from the misprision of the clerk, in not pursuing his instructions; or from his ignorance in form, though not in substance. See title Amendment.

See further titles Latitat; Practice; Privilege; Process, &c.

ORIGINALIA. In the Treasurer's-Remembrancer's office in the Exchequer; the Transcripts, &c. sent thither out of the Chancery are called by this name, and distinguished from Recorda, which contain the judgments and pleadings in suits tried before the Barons.

These Transcripts contain extracts of all grants of the Crown inrolled on the Patent and other Rolls in Chancery, wherein any rent is received, any salary payable, or any service to be performed. They commence temp. Hen. III. and are continued to a late period. Report on Records, 1800.

ORPED, Some Orped knight, i. e. a knight whose cloaths shone with gold. Blount.

ORPHAN; orphanus,] A fatherless child: and in the city of London there is a Court of Record established for the care and government of orphans. 4 Inst. 248.

The Lord Mayor and Aldermen of London had the custody of Orphans under age and unmarried, of freemen that died, and the keeping of their lands and goods: and if they committed the custody of an Orphan to any man, he should have the writ of ravishment of ward, if the Orphan were taken away; or the Mayor and Aldermen might imprison the offender until he produced the infant. 2 Danv. Abr. 311. If any one, without consent of the Court of Aldermen, marries such an Orphan under the age of twenty-one years, though out of the city, they may fine, and imprison him until the fine is paid.

1 Lev. 32: 1 Vent. 178. Executors and administrators of freemen dying, are to exhibit true inventories of their estates before the Lord Mayor and Aldermen in the Court of Orphans, and must give security to the Chamberlain of London and his successors, by recognizance, for the Orphan's part; which if they refuse to do, they may be committed to prison until they obey. Wood's Inst. 532. If any Orphan, who by the custom of London is under the government of the Lord Mayor and Aldermen, sue in the Spiritual Court for any legacy, &c. a prohibition shall be granted; because the Lord Mayor and Aldermen only have jurisdiction of them. 5 Rep. 73. But an Orphan may waive the benefit of suing in the Court of Orphans, and file a bill in equity for discovery of the personal estate, &c.

The Lord Mayor and Commonalty of London being answerable for the Orphans' money paid into the chamber of the city, and having become indebted to the Orphans and their creditors, in a greater sum than they could pay; by stat. 5 & 6 W. & M. cap. 10, it is enacted, that the lands, markets, fairs, &c. belonging to the city of London, shall be chargeable for raising eight thousand pounds per ann. to be appropriated for a perpetual fund for Orphans; and, towards raising
such a fund, the Mayor and Commonalty may assess two thousand pounds yearly upon the personal estates of inhabitants of the city, and levy the same by distress, &c. Also a duty is granted of four shillings per ton on wines imported, and on coals; and every apprentice shall pay 2s. 6d. when he is bound; and 5s. when he is admitted a freeman, for raising the fund; the fund is to be applied for payment of the debts due to Orphans, by interest after the rate of 4½ per cent. &c. And by § 18. of the said statute, no person shall be compelled of virtue of any custom in the city, to pay into the chamber of London any sum of money or personal estate belonging to an Orphan of any freeman for the future. By stat. 21 Geo. 2. c. 29, the duty of 6d. per chaldron on coals, given by the stat. 5 & 6 W. & M. c. 10, towards the Orphan debt, is continued for thirty-five years; and by stat. 7 Geo. 3. c. 37, for forty-six years more; and various provisions are made for the security and application of the Orphans' fund. See also the act 39 G. 3. c. 69, and the several acts for improving the port of London.

ORTELLI, [Fr.] A forest word, signifying the claws of a dog's foot. Kitch. See Carta de Foresta. c. 6.


ORYAL, oriolum.] A room, or cloister, of a monastery, priory, &c. whence it is presumed that Oriel or Oryel College in Oxford took name. Matt. Paris, in vit. Abb. St. Alban.

OSCULUM PACIS, a custom formerly of the church, that in the celebration of the mass, after the priest had spoken these words, viz. Pax Domini vos bibiscum, the people kissed each other, was called Osculum Pacis; afterwards, when this custom was abrogated, another was introduced; which was, whilst the priest spoke the aforementioned words, a deacon offered the people an image to kiss, which was commonly called Pacem. Matt. Paris, anno 1100.

OSMONDS, A kind of iron ore, antiently brought into England. See the obsolete statute 32 H. 8. c. 14.

OSTENSIO, A tribute antiently paid by merchants for leave to expose their goods for sale in markets. Leg. Ethelred, c. 23.

OSWALD'S LAW, Lex Oswaldis.] The law by which was effected the ejecting married priests, and introducing monks into churches, by Oswald Bishop of Worcester, about the year 964.

OSWALD'S LAW HUNDRED, an antient hundred in Worcestershire, so called from Bishop Oswald, who detained it of King Edgar, to be given to St. Mary's church in Worcester; it is exempt from the jurisdiction of the Sheriff, and comprehends 300 hides of lands. Cant. Brit.

OTHO, Was deacon-cardinal of St. Nicholas, in carcere Tulliano alegate for the Pope here in England, 22 H. 3, whose constitutions we have at this day. Stow's Annals, 303. Cowell.

OTHOEONUS, Was a deacon-cardinal of St. Adrian, and the Pope's legate here in England, 15 H. 3, as appeareth by the award made betwixt the said King and his commons at Kenilworth. His Constitutions we have at this day in use. Cowell.

OUCH, A collar of gold, or such like ornament, worn by women about their necks. See the old statute 24 H. 8. c. 13. Cowell.

OVEALTY; Equality; see Owelty.

OVER, Sax. ofer, ripa.] In the beginning or ending of the names
of places, signifies a situation near the bank of some river; as St. Maryover, in Southwark, Andover, in Hampshire, &c.

OVERCYTED, or OVERCYHSED, from the Sax. ofer, i. e. super, & cythan, offendere.] Proved guilty or convict. Is used where a person is convicted of any crime; that it is found upon the offender: this word is mentioned in the laws of Edward; ajud Brompton, p. 836. Blount: Cowell.

OVERHERNISSA, Contumacy, or contempt of Court. In the laws of Athelstan, cap. 25. it is used for Contumacy: but in a council held at Winchester, anno 1027, it signifies a forfeiture paid to the bishop by one who came in after excommunication. See Shelman, and this Dict. title Laghslite.

OVERSAMESSA, Seems to have been an antient fine before the statute for hue and cry, laid upon those who, hearing of a murder or robbery, did not pursue the malefactor. 3 Inst. 116: Lib. Rub. cap. 36. See Cowell, who says it is elsewhere written Oversegenesse and Overseessenesse. It seems confounded with the preceding word, Overhernissa; and that all these terms signify a forfeiture for contempt or neglect.

OVERSEERS OF THE POOR, Public officers created by the stat. 43 Eliz. c. 2. to provide for the poor of every parish: and are sometimes two, three, or four, according to the extent of parishes. Churchwardens by this statute are called Overseers of the Poor, and they join with the Overseers in making a Poor’s rate, &c. But the churchwardens having distinct business of their own, usually leave the care of the Poor to the Overseers only; though antiently they were the sole Overseers of the Poor. Dall. ch. 27: Wood's Inst. 93. See title Poor.

OVERSEWENESSE; See Overhernissa.

OVERT, Fr.] Open; Overture, an opening, also a proposal. Law Fr. Dict.

OVERT-ACT, apertum factum.] An open act which by law must be manifestly proved. 3 Inst. 12. Some Overt-act is to be alleged in every indictment for high treason; such as for treason in compassing the death of the King, the providing arms to effect it, &c. 3 Inst. 6, 12. And no evidence shall be admitted of any Overt-act, that is not expressly laid in the indictment by stat. 7 W. 3. c. 3. See title Treason.

OVERT-WORD, An open plain word, not to be mistaken. Stat. 1 Mar. sess. 2. c. 3.

OVRES, Fr.] Acts, deeds, or works: Ouvrages, or Ouvrages, are days’ works. 8 Rep. 131.

OURLOP, The leirwite or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debauched. Petr. Bles. Contin. Hist. Croyland, 115.

OUSTED, from the Fr. ouster, to put out.] As Ousted out of possession is where one is removed or put out of possession. 3 Cro. 349.

OUSTER LE MAIN, amovere manum.] A livery of land out of the King’s hand, on a judgment given for him that sued a monstrans de droit; for when it appeared upon the matter, that the King had no title to the land he seised, judgment was given in the Chancery that the King’s hands he amoved; and thereupon an amovias mans was awarded to the escheator, to restore the land, it being as much as if
the judgment were given that the party should have his land again. *Staunf.* Prærog. cap. 24: see stat. 28 Ed. 1. stat. 3. cap. 19. It was also taken for the writ granted upon a petition for this purpose, F. N. B. 256. But now all wardships, liverys, and Ouster le Mains, &c. are taken away by stat. 12 Car. 2. cap. 24. See titles Monstrans de Droit; Tenures.

**OUSTER LE MER, outre, i. e. ultra, & le mer, mare.]** One cause of essoin or excuse, if a man appeared not in Court on summons, for that he was then beyond the seas. See Essoin.

**OUTFANGTHEIF,** from the Sax. ut, i. e. extra, fang, captus, & theyf, fur ] A liberty or privilege, as used in the antient Common Law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own Court. Rastal: Bract. lib. 2. tract. 2. cap. 35: stat. 1 & 2 P. & M. c. 15.

**OUTHEST,** or Outhorn; A calling men out to the army, by the sound of an horn.

**OUTHOUSES,** Are those belonging and adjoining to dwelling-houses; and taking away any money, goods, &c. from such Outhouses, in the day-time, of 5s. value, is felony without benefit of clergy. *Dalt.* c. 99. See *Larceny* II. 2.

**OUTLAND.** The Saxon Thanes divided their hereditary lands into Inland, such as lay nearest their dwelling, which they kept to their own use; and Outland, which lay beyond the demeans, and was granted out to tenants, at the will of the lord, like copyhold estates. This Outland they subdivided into two parts; one part they disposed amongst those who attended their persons, called *Theodans,* or lesser Thanes; the other part they allotted to their husbandmen, or churls. *Spelm., de Feud.* cap. 5.

**OUTLAW, Sax. utlaghe, Lat. utlagatus.]** One deprived of the benefit of the law, and out of the King's protection. *Fleta,* lib. 1. cap. 47. When a person is restored to the King's protection, he is inlawed again. See Outlawry.

**OUTLAWRY.**

**UTLAGARIA.]** The being put out of the Law—The loss of the benefit of a subject, that is, of the King's protection. *Cowell.*

Outlawry is a punishment inflicted for a contempt, in refusing to be amenable to the justice of that Court, which hath authority to call a defendant before them; and as this is a crime of the highest nature, being an act of rebellion, against that State or Community of which he is a member, so it subjects the party to forfeitures and disabilities; for he loseth his *liberam legem,* is out of the King's protection, &c. *Co. Litt.* 128: *Doct. & Stud. dial.* 2. cap. 3: 1 *Roll. Abr.* 802.

And as to forfeitures for refusing to appear, the law distinguishes between Outlawries in capital cases, and those of an inferior nature; for as to outlawries in treason and felony, the law interprets the party's absence a sufficient evidence of his guilt, and without requiring further proof, accounts him guilty of the fact, on which ensues corruption of blood, and forfeiture of his estate, real and personal. *Co. Litt.* 128: 3 *Inst.* 161.

But Outlawry in personal actions does not occasion the party to be looked on as guilty of the fact, nor does it occasion an entire forfeiture of his real estate, yet it is very fatal and penal in its conse-
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quences; for hereby he is restrained of his liberty, if he can be found; forfeits his goods and chattels, and the profits of his lands, while the Outlawry remains in force. Plow. 541: 9 H. 6. 20 b; Show. Parl. Ca. 73.

Outlawry in civil actions, is putting a man out of the protection of the law, so that he is not only incapable of suing for the redress of injuries, but may be imprisoned and forfeits all his goods and chattels, and the profits of his lands; his personal chattels immediately upon the Outlawry, and his chattels real, and the profits of his lands, when found by inquisition. 1 Salk. 395. So penal were the consequences of an Outlawry, that until some time after the Conquest, no man could have been outlawed except for Felony, the punishment whereof was death; but in Bracton's time, and somewhat earlier, process of Outlawry was ordained to lie in all actions vi et armis. Bract. lib. 5. p. 425, and since by a variety of statutes, (the same as introduced the capias) process of Outlawry lies in account, debt, dehinue, and divers other common or civil actions. See post, Div. I.

If the defendant be a woman, the proceeding is called a waiver; for as women were not sworn to the law, by taking the oath of allegiance in the leet, (as men antiently were when of the age of twelve years, or upwards,) they could not properly be outlawed, or put out of the law, but were said to be waived; that is, derelicta, left out, or not regarded. Litt. 186: § Co. Litt. 122 b. And for this same reason, an infant cannot be outlawed under the age of twelve years. Co. Litt. 128 a. See post, Div. II.

Antiently Outlawry was looked upon as so horrid a crime, that any one might as lawfully kill a person outlawed, as he might a wolf, or other noxious animal; but it is now holden that no man is entitled to kill an outlaw wantonly or wilfully; but in so doing is guilty of murder. 1 Hal. P. C. 497: unless it happens in the endeavour to apprehend him. Bracton, fol. 125. See post, Div. IV.

Also, from the heinousness of the offence, the Sheriff may, on a capias utlagatum, break open the house of the person outlawed; for it would be unreasonable, that the protection, allowed in other cases, should extend to him who is declared a contemner and violater of the law; therefore the seizing him as an outlaw, implies the liberty of entering and seizing him wherever he lies hid. 2 Hale's Hist. P. C. 202: 9 Co. 91. 1 Buls. 146: Cro. Eliz. 908: Moor 605, 668: Yelv. 28: Cro. Car. 537: 4 Leon. 41: 2 Jon. 233.

I. In what Cases Process of Outlawry lies; and by what Jurisdiction such Processes are to issue.

II. Against whom Process of Outlawry may be awarded; whether it may be awarded against a Peer, an Infant, Feme-sole or Covert, several Defendants, Principal and Accessory.

III. To what Place Process of Outlawry is to issue; of the Quinto exactus, and Proclamations on an Outlawry.


V. What the Party must do in order to entitle him to a Reversal; and of the Effects and Consequences of a Reversal.

I. Where the defendant is abroad, or keeps out of the way, so that he cannot be arrested or served with process, the plaintiff on the
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return of Non est inventus to the plurica capias (see Capias), may have a writ of exigas facias (see post III.) and proceed to Outlawry: or if there be several defendants in a joint action, and one of them be abroad, or keep out of the way, the plaintiff may have a writ of exigis facias against that defendant, and must proceed to Outlawry against him before he can go on against the others. 1 Stra. 473: 1 Wis. 78: 2 Stra. 1269: 1 Black. Ref. 20: See Tind's Pract. K. B. cap. 4.

Process of Outlawry lies in all appeals, and in all indictments of conspiracy and deceit, or other crimes of a higher nature than trespass vi & armis; but it lies not in an action, nor, as some say, on an indictment on a statute, unless it be given by such statute, either expressly, as in the case of praemunire; or impliedly, as in cases made treason or felony by statute; or where a recovery is given by an action in which such process lay before, as in case of forcible entry. Staundf. 192: Bro. title Outlawry, 26, 36, 59: Co. Litt. 128 b: Dyer 213, 214: 2 Hawk. P. C. c. 27. § 113: and several authorities there cited.

In an assise, a capias pro fine lies; and, upon that, process of Outlawry, if the assise be found with force; but being a mixt action, as favouring of the reality, it is out of the statute of Additions, 1 Hen. 5. cap. 5, which extends only to personal actions, appeals, and indictments. 2 Inst. 665: 6 Mod. 85.

So process of Outlawry lies in replevin, and is given by the statute 25 Ed. 3. st. 5. cap. 17, which gives the capias in this manner; when on the plurica repiegiari facias the Sheriff returns averia elongata, then a capias in withernam issues, and on that being returned nulla bona, a capias issues, and so to Outlawry: but it does not lie on the Original writ of replevin, which is vicontiel and determined; therefore as no addition is required in such Original writ, so neither ought there to be any in the second writ; for where a writ or process is founded on a former, it must pursue the former, and cannot vary from it. 6 Mod. 84: 1 Salt. 5.

By the Common Law, in all actions of trespass, quare vi & armis, and in which there is a fine to the king, a capias was the process; and herein process of Outlawry lay by the Common Law. 35 H. 6. 6 b: 22 H. 6. 13: Rast. Ent. 239: 10 Co. 72: 2 Roll. Abl. 805.

But in account, debt, detinue, annuity, covenant, and such actions as are grounded upon negligence or laches merely, no capias lay at Common Law, but only summons and distress infinite; therefore the capias and outlawry in these actions were introduced by acts of parliament. Co. Litt. 128 b: 3 Co. 12: 2 Bulst. 63: 2 Inst. 143: Cro. Jac. 222, 261: Yel. 158: Raym. 128: 1 Keb. 890. 908: 1 Sid. 248, 258: of detinue of charters. Dyer 223, a dubitat.

By the statute of Marlbridge, (52 H. 3.) cap. 23, the writ of monstravit de compito was given, where before the process in account was summons, attachment, and distress infinite; and by stat. Westm. 2. (13 E. 1. st. 1.) cap. 11. process of Outlawry is given in account. 2 Inst. 145. 380: F. N. B. 259.

By stat. 25 Ed. 3. stat. 5. cap. 17, such process shall be made in a writ of debt and detinue of chattels, and taking of beasts by writ of capias, and by process of exigent, by the Sheriff's return, as is used in a writ of account. 3 Co. 12: 2 Roll. Ref. 293: 2 Bulst. 63.

And by stat. 19 Hen. 7 cap. 9, it is enacted, that like process be had in actions upon the case, as in actions of trespass or debt.
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But it hath been adjudged, that process of Outlawry lies in no case but where a capias lies; that therefore where the proceeding is by bill, and not by original, as there can be no capias, so there can be no process of Outlawry, as in a bill of privilege by or against an attorney. 1 Leon. 329: 1 Roll. Abr. 76: 1 Sid. 159: 1 Keb. 577. See title Original.

The stat. 25 G. 3. stat. 5. c. 14. does not apply to a court of oyer and terminer and gaol delivery. 4 Term Rep. K. B. 521.

Outlawry is either upon mesne process before, or upon final process after judgment; upon mesne process the plaintiff cannot proceed to Outlawry, unless the action be commenced by original writ. 1 Sid. 159. Nor can the defendant be outlawed after judgment, unless the action were so commenced; therefore where the defendant was outlawed after judgment, in an action commenced by bill of privilege, it was held, that process of Outlawry did not lie, as there was no capias in the Original action. 1 Leon. 329. See title Original. After judgment the plaintiff may have an exigii faciis, and proceed to Outlawry, upon a capias ad satisfaciendum without an alias or pluries; because the defendant having been already in Court before judgment, and having cognizance of the debt ought to pay it on the first suing out of the capias; and his not performing the judgment is a contumacy, for which he is put out of the King’s protection. Gilb. C. P. 17. And no writ of Proclamation is required upon an exigent after judgment, but only upon mesne process. Cro. Jac. 577. See post III.

It is clear, that the Courts at Westminster may issue process of Outlawry, and that the Court of King’s Bench, either upon an indictment originally taken there, or removed thither by certiorari, may issue process of capias and exigent into any county of England, upon a non est inventus returned by the Sheriff of the county where he is indicted, and a testatum that he is in some other county. 2 Hale’s Hist. P. C. 198.

Also Justices of oyer and terminer may issue a capias or exigent, and so proceed to the Outlawry of any person indicted before them, directed to the Sheriff of the same county where they held their sessions at Common Law; and by the statute of 5 Ed. 3. capi 11, they may issue process of capias and exigent to all the counties of England, against persons indicted or outlawed of felony before them. 2 Hale’s Hist. P. C. 31, 199.

But Justices of gaol delivery regularly cannot issue a capias or exigent; because their commission is to deliver the gaol de prisonibus in ead existentibus; so that those whom they have to do with, are always intended in custody already. 2 Hale’s Hist. P. C. 199.

Justices of the peace may make out process of Outlawry upon indictments taken before themselves, or upon indictments taken before the Sheriff, and returned to the justices of the peace, by the statute of 1 Ed. 4. capi. 2; but the power of the Sheriff, to make any process upon indictments, taken before him, is taken away by that statute. 2 Hale’s Hist. 199.

It is made a quare by Hale, whether a coroner can by law make out process of Outlawry, against a man indicted by inquisition before him. 2 Hale’s Hist. P. C. 199. See 4 Term Rep. K. B. 521.

It hath been held, that though the process in inferior Courts be a
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capias, that yet they cannot proceed to outlaw the party. Yelv. 158. Cro. Jac. 222. 261: Raym. 128: 1 Sid. 248, 259: 1 Kerb. 890, 908. The process to the Outlawry, viz. the capias and exigent, must be in the King's name, and under the judicial seal of the King; appointed to that Court, which issues that process, and with the test of the chief justice or chief judge of that Court or Sessions. 2 Hale's Hist. P. C. 199.

II. If a Peer of the realm be indicted, and cannot be found, process of Outlawry shall be awarded against him, and he shall be outlawed per judicium coronatorum. 2 Inst. 49: 3 Inst. 31: Staunoff. 130: 2 Hawk. P. C. c. 44. § 16.

But in civil actions, between party and party, regularly a capias or exigent lies not against a peer; yet in case of an indictment for treason or felony, or for trespass vi et armis, as an assault or riot, process of Outlawry shall issue against a peer; for the suit is for the King, and the offence a contempt against him; therefore, if a rescue be returned against a peer; or if a peer be convict of a disseisin with force, or denies his deed, and it be found against him, a capias pro fine and exigent shall issue, for the King is to have a fine; and the same reason holds upon an indictment of trespass or riot, much more in the case of felony. 2 Hale's Hist. P. C. 199, 200: Cro. Eliz. 170, 503: 5 Co. 54: 1 Roll. Abr. 220.

An infant above the age of fourteen may be outlawed, and the outlawry is not erroneous; but an infant under the age of fourteen cannot be outlawed; if he be, it is erroneous. 3 Hen. 5. Utlagat. Fitz. title Outlawry 11: 2 Roll. Abr. 805. Dyer 104: 2 Hale's Hist. P. C. 207, 208. Lord Coke says, within the age of twelve years. 1 Inst. 128 a.

But the Outlawry of such infant is not void, it being of record, but is voidable only by writ of error. Dyer 239 a: 2 Roll. Abr. 805.

A woman, it has been already remarked, is said to be waived and not outlawed; therefore where a capias and exigent were awarded against three men and two women, and the return was utlagat. existunt, where, as to the women, it ought to have been waivitae existunt, this was held to be error. Cro. Jac. 358: 1 Roll. Rep. 407: 1 Roll. Abr. 804.

If in an action against husband and wife, the husband is outlawed, and wife waived, and she is taken upon the capias utlagat., though she is to be discharged of the imprisonment, (because the plaintiff cannot proceed against her alone,) yet she still remains waived, and when her husband is taken he must bring her in. See Dyer 271 b: Cro. Jac. 445: Cro. Eliz. 370: Hut. 86: 1 Sid. 21: Cro. Car. 38, 39: Hut. 86.

If two are sued in a joint action, and neither of them will appear, process of Outlawry must be taken out against both. Cro. Eliz. 648.

If an exigent be awarded against two, and the return primo exacti fuerunt & non comparuerunt, without saying nec corum aliquis comparut, it is erroneous. 2 Roll. Abr. 802.

As to Outlawry in action of account, vide 41 Ed. 3. 3: 1 Roll. Abr. 127: 1 Brownl. 25: 41 Ed. 3. 13 b: Moor 188: 2 Leon. 76: Dyer 239. pl. 203: N. Bendl. 148. pl. 205: Moor 74. pl. 203: 1 And. 10: 1 Sid. 173: 1 Kerb. 642.
As to awarding Outlawry against principal and accessory, by the stat. of Westm. 1 3 E. 1. c. 14, it is provided, that none be outlawed upon appeal of commandment, force, aid, or receipt, unless he who is appealed of the deed be attainted, so that one like law be used therein through this realm; nevertheless he that will so appeal, shall not, by reason of this, intermit or leave off to commence his appeal at the next county, against them, no more than against their principals which he appealed of the deed; but their exigent shall remain, until such as be appealed of the deed, be attainted of Outlawry or otherwise.

In the construction of this statute, the following particulars are laid down by Hawkins, as most remarkable:

1st, That it seems agreed, that it extends as well to indictments as to appeal; not only because the word appeal in the statute may in a large sense be taken for any accusation in general; but because indictments are certainly as much within the reason of the statute as appeals; and the Common Law (for the setting whereof this statute was made) did not make any distinction in this respect between appeals and indictments. 2 Inst. 183: 2 Hawk. P. C. c. 27. §129.

2dly, That it seems agreed, that wherever some of the defendants are expressly charged as principals, and others as accessories, before the award of this exigent, the Outlawry thereon, of those charged as accessories, cannot but be reversible; because it appears upon record that the exigent issued, contrary to the direction of the statute; but if several be outlawed, on a writ of appeal, which chargeth them all alike without any distinction, there can be no advantage taken of the appellant’s not having pursued the statute, since it appears not, but that he might have charged them all as principals. 2 Hawk. P. C. c. 27. §130, 306: 2 Hale’s Hist. P. C. 200.

3dly, That it is strongly holden, that if an appellant take out the exigent, at the same time, against all the defendants, he must, when they appear, count against them all as principals, and shall be concluded from charging any of them as accessories, because he has taken out such process as is erroneous, where all are not principals; but he makes a doubt, whether this be law at this day, since all errors, as the law seems now to be holden, are salved by appearance. 2 Hawk. P. C. c. 27. §131: and vide 2 Hale’s Hist. P. C. 200.

4thly, That it seems the better opinion, that where there are more than one principal, the exigent shall not issue, till all of them are arraigned; and herein it is said by Hale, that if A. and B. be indicted as principals in felony, and C. as accessory to them both, the exigent against the accessory shall stay till both be attainted by Outlawry or plea; for that it is said, if one be acquitted, the accessory is discharged, because indicted as accessory to both, therefore shall not be put to answer till both be attaint; but hereof he adds a dubitatur, because though C. be accessory to both, he might have been indicted as accessory to one, because the felonies are in law several; but if he be indicted as accessory to both, he must be proved so. 2 Hawk. P. C. c. 27. §132: 2 Hale’s Hist. P. C. 200, 201. If one exigent be awarded against the principal and accessory together, it is error only as to the latter. 4 Term Rep. K. B. 521.

In treason all are principals; therefore process of Outlawry may go against him who receives, at the same time, as against him that did the fact. 1 Hale’s Hist. P. C. 238. See tit. Process.
III. Formerly the exigent must have been sued in the county where the party really resided, for there all actions were originally laid: and because Outlawries were at first only for treason, felony, or very enormous trespasses, the process was to be executed at the Torn, which is the Sheriff's criminal Court; and this held not only before the Sheriff, but before the coroners, who were antient conservators of the peace, being the best men in each county, to preside with the Sheriff in his Court, and who pronounced the Outlawry in the county Court on the party's being quinto exactus; therefore antiently there was no occasion for any process to any other county than that in which the party actually resided. Fitz. Exigent, 26: Dyer 295.

It is enacted by stat. 6 Hen. 6. cap. 1, "That before any exignents be awarded against persons indicted in the King's Bench, of treason or felony, writs of capias shall be directed as well to the Sheriff of the county in which they are indicted, as to the Sheriff of the county whereof they may be named in the indictments; the capias having at least six weeks before the return thereof."

And it is further enacted, by stat. 3 H. 6. cap. 10, "That upon every indictment or appeal, before any exigent awarded, presently after the first writ of capias returned, another writ of capias shall be awarded, directed to the Sheriff of the county, whereof he who is indicted is or was supposed to be conversant, by the same indictment, containing, according to the circumstances, three, or four, months from the date to the return; by which second writ of capias, the Sheriff shall be commanded to take him, if he can be found within his bailiwick; and if he cannot, to make proclamation in two counties, before the return of the same writ; after which writ so served and returned, if he which is so indicted or appealed, come not at the day of such writ returned, the exigent shall be awarded."

This statute not to extend to indictments, or appeals, taken within the county of Chester.

It is enacted by stat. 10 H. 6. cap. 6, "That such second capias as is required by 8 Hen. 6. cap. 10, shall be awarded upon indictments or appeals removed into the King's Bench, or elsewhere, by certiorari or otherwise."

In the construction of these statutes, the following opinions have been held:

That though the words are express, that any Outlawry pronounced, contrary to the directions of the statute, shall be void; yet it is not to be taken, as if such outlawries were absolutely void, but only voidable by writ of error. Cro. Eliz. 179: 3 Co. 59: Plowd. 137: Hob. 166.

If a defendant be expressly named of the same county wherein he is indicted, or appealed, and be also named under an alias dictus of another, it hath been adjudged that there is no need of any capias, with a command for proclamation according to 8 Hen. 6. c. 10, because that which comes under the alias dictus is not traversable nor material; also if a defendant be named of B. and late of D. there is no need of any capias to the Sheriff of the county wherein D. lies; because it appears, the defendant is at present conversant at B. but if a defendant be named of no certain place at present, but only late of B, and late of D. and late of E. &c. being all in different counties from that in which the prosecution is commenced, a capias shall go to the Sheriff of each county. 2 Hawk. P. C. c. 27. § 126: 2 Hale's Hist. P. C. 195, 6. Vide Cre. Jac. 167.
In civil cases, the writ of *exigifacias* (see this Dictionary, title *Exigent*) is a judicial writ made out by the *filazer*, as clerk of the *exigents* and directed to the Sheriff of the county where the action is laid; commanding him to cause the defendant to be required or extracted from county Court to county Court, or from hustings to hustings, if in London; that is, at five successive county Courts or hustings, until he be outlawed, if he do not appear, and if he appear, to take him, &c. This writ should be teste'd on the *quarto die post* of the return of the *filuries capias* before, or of the *capias* after judgment; and if there be not five county Courts between the teste and return of it, there issues an *exigent de novo*, grounded upon the Sheriff's return to the former writ with a clause (from whence it is called an *allocatur exigent,* directing the Sheriff to allow the several county Courts at which the defendant has already been required. 1 *Plowd.* 371. In London the Hustings are holden once every fortnight; on which account the action is generally laid there, when the plaintiff intends to proceed to Outlawry. See *Tidd's Pract.* K. B.

It hath been holden, that in London, where the holding of the Hustings is uncertain, no *exigifacias* shall issue with an *allocato.* Because the Court cannot take notice of the set times of holding it, as they may of the times of holding the county Courts; but it is now agreed, that if an *exigent* issues in London, and they begin "Hustings de placito terre," (as they may,) they shall proceed along at that Hustings to the Outlawry, without mingling their *Hustings de communibus plactis*; but if an *allocato* Hustings comes, they shall proceed without omitting any Hustings. *Palm.* 287; 2 *Leon.* 14; 2 *Hale's Hist. P.* C. 202.

In addition to the *exigent*, a writ of *Proclamation* was introduced by *stat.* 6 *Hen.* 8. c. 4, which requires it to be directed to the Sheriff of the county of which the defendant is called, or described in the original; for there he was supposed to dwell; and if he did not in fact dwell there, he might have avoided the Outlawry, by the statute of Additions. *Dyer* 214. See *Gilb.* C. P. 19: *Thes. Brev.* 88. But the writ of proclamation is at present governed by *stat.* 31 *Eliz.* c. 3. § 1, which enacts, that, "in every action personal, wherein any writ of *exigent* shall be awarded out of any Court, a writ of *Proclamation* shall be awarded and made out of the same Court, having day of teste and return, as the said writ of *exigent* shall have directed, and delivered of record to the Sheriff of the county where the defendant at the time of the *exigent* so awarded shall be dwelling; which writ of *Proclamation* shall contain the effect of the same action; and that the Sheriff of the county unto whom any such writ of *Proclamation* shall be delivered, shall make three *Proclamations*, one in the open county Court, another at the general quarter sessions of the peace, in those parts where the defendant at the time of the *exigent* awarded shall be dwelling, and the third one month at the least before the *quinto exactus* by virtue of the said writ of *exigent*, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be so dwelling; and if the defendant shall be dwelling, out of any parish, (i.e. in any extraparochial place) than in such place as aforesaid of the next adjoining parish in the same county, and upon a Sunday immediately after divine service, and sermon, (if there be one.) and if there be no sermon, then forthwith after divine service; and that all Outlawries had and pronounced, whereupon no writs
of proclamations shall be awarded and returned according to the form
of this statute, shall be utterly void and of none effect.”

Outlawry in Felony reversed because it appeared on the writ of
Proclamation and the return to it that the person indicted was out-
lawed after a day had been given him in Court, and before such day
arrived. 3 Term Repi. K. B. 599.

IV. Upon the defendant’s being put in exigent he is either taken
by the Sheriff, appears voluntarily, or makes default. If he be taken,
he either remains in custody of the Sheriff, or gives bail, &c. as upon
a common arrest. Formerly, if the defendant had appeared volun-
tarily, at any time before the return of the exigent, he might have ob-
tained a writ of supersedeas from the filazer, as clerk of the super-
sedeas, on entering a common appearance of the term in which the
exigent issued, and he may still do so where the action does not re-
quire special bail. But upon a question, whether in a case originally
requiring special bail, if the defendant stand out to an exigent, he can
in come in and appear to the exigent, without putting in special bail; it
was ruled by the Court of K. B. that there ought to be special bail.
It would be very unreasonable, they said, that the defendant should
gain an advantage, by standing out till process of Outlawry: he cer-
tainly ought not to be in a better condition then than if he had ap-
peared at first. And accordingly the direction given was, that the fila-
zor should not issue a supersedeas till the defendant should put in spe-
cial bail. 3 Burr. 1920.

If the defendant be neither arrested nor appear, but make default
at five successive county Courts, or Husdings, he is outlawed if a man,
or if a woman, she is waived, by the judgment of the coroners, or of
the Recorder, in London; and the judgment of Outlawry being re-
turned by the Sheriff upon the exigent, the filazer, as clerk of the
Outlawries, will make out a writ of capias utlagatum, which is either
general or special, and may be issued into any county, without a tes-
tatum; nor is there any occasion upon an Outlawry after judgment, to
revive the judgment by seire facias, after a year and a day.

By the general writ of capias utlagatum, the Sheriff is commanded,
“that he do not omit by reason of any liberty of his county, but that
he take the defendant, if he be found in his bailiwick, and him safely
keep, so that he may have his body in Court on a general return day,
&c. wheresoever, &c. to do and receive what the Court shall consider of
him.” The defendant, being taken by the Sheriff on this writ, either
gives bail to appear and reverse the Outlawry, or remains in custody
until he actually reverse it, or obtain a charter of pardon, or be re-
lieved under an insolvent act.

At Common Law the defendant could not have been bailed when
taken by the Sheriff on a capias utlagatum. 3 Burr. 1484: 4 Burr.
2540. And this case is particularly excepted out of the stat. 23 H. 6.
c. 9: 13 Car. 2. st. 2. c. 2. § 4; by the latter of which statutes it is ex-
pressly declared, that “no Sheriff, &c. shall discharge any person or
persons taken upon any writ of capias utlagatum out of custody with-
on: a lawful supersedeas first had and received for the same.” But
now by stat. 4 & 5 W. & M. c. 18. §§ 4, 5, “if any person outlawed
in the Court of King’s Bench, other than for treason or felony, shall
be taken and arrested upon any capias utlagatum out of the said Court,
the Sheriff making the arrest may, in all cases where special bail is not
required by the said Court, take an attorney's engagement under his hand to appear for the defendant, and reverse the Outlawry, and may thereupon discharge the defendant from such arrest; and in those cases where special bail is required by the said Court, the said Sheriff shall and may take security of the defendant by bond, with one or more, sufficient Surety or Sureties in the penalty of double the sum for which special bail is required, and no more, for his appearance, by attorney in Court, at the return of the writ, and to do and perform such things as shall be required by the said Court; and after such bond taken may discharge the defendant from the said arrest. Or in case the defendant shall not be able to give security as aforesaid, before the return of the writ, he shall and may be discharged, whenever he shall find sufficient security to the Sheriff for his appearance by attorney in the said Court, at some return in the ensuing term, to reverse the Outlawry, and to do and perform such other thing and things as shall be required by the said Court. This statute has been construed not to extend to criminal cases, at least not to misdemeanors after conviction. 4 Burr. 2539. And even in civil cases the defendant cannot be bailed where he was not bailable upon the process to Outlawry. Id. 2540. For it was the design of the statute, to put him in the same condition as if he had not been outlawed; and therefore he is not bailable when taken upon an Outlawry after judgment; neither upon this statute will the Court restore goods taken upon a special capias utlagatum, but they will of course be restored upon the reversal of the Outlawry. Carth. 459: 1 Lds. Raym. 349.

When there is no affidavit of a bailable cause of action, the Sheriff is authorized by the statute to discharge the defendant on an attorney's undertaking to appear and reverse the Outlawry; but when an affidavit has been made, he ought not to be discharged without giving the security required by the statute; which is not a common bail bond, but a bond with one or more sufficient Surety or Sureties for appearance by attorney at the return of the writ, and to do and perform such things as shall be required by the Court, that is, to put in bail to a new action, plead within a limited time, put the plaintiff in the same condition, and such like matters. 3 Burr. 1483: 4 Burr. 2540; and it is not necessary that the affidavit should be made before the Outlawry. 2 Stra. 1178, 9: 1 Wils. 3: Fort. 59. Or the sum sworn to be indorsed, on the capias utlagatum, 2 Burr. 1482. But it is sufficient if there be an affidavit before the defendant is discharged; the Court having determined that process of Outlawry is not within the statute for preventing frivolous and vexatious arrests. See 3 Burr. 1483.

By the special writ of capias utlagatum the Sheriff is commanded not only to take the defendant, as by the general writ, but also to inquire by the oath of honest and lawful men of his county, what goods and chattels, lands and tenements, he hath or had on the day of his Outlawry, or at any time afterwards; and by their oath to extend and appraise the same according to the true value, and to take them into the King's hands, and safely keep them, so that he may answer to the King for the true value and issues of the same, making known what he shall do thereupon to the Court, on the return day." Off. Brev. 35: Thess. Brev. 59. Upon this writ the Sheriff is to impanel a jury who are to make inquiry of the goods and chattels of the defendant including his debts. Co, 95: Lane 23: Lutw. 329, 1513: Gilb. C, P.
Witnesse may be sub*penaed to attend the execution of the inquiry, and when made, the Sheriff is to take possession of the goods and chattels of the defendant, and of the leasehold tenements in his own occupation. 9 Hen. 6. 20. 21. But he must not oust or disturb the possession of his tenants, 1d. 21 H. 7. 7. And can only take the issues or profits of his leasehold tenements, 1d. Plowd. 541: Hardr. 106, 176: Bust. 103, 105. The inquisition should set forth, with convenient certainty, the appraised value of the goods; the particulars of the debts; of what lands, &c. the defendant is seized or possessed; the different parcels; in whose tenure; and of what annual value beyond reprises. But the inquisition being merely an office of instruction or information does not require so much certainty as an office of entitling, 2 Sle. 469: Bust. 103. And if the lands, &c. be undervalued, there may be a melius inquirendum, Hardr. 106.

When the special writ of capias utlagatum is returned, it should be delivered, with the inquisition annexed, to the flazer as clerk of the exigents and Outlawries, and afterwards filed in the office of the custos brevium, 3 T. R. 578, 9; from whence a transcript is sent into the Exchequer, Gib. C. P. 16. Out of this Court there issues a venditioni exponas to sell the goods, a scire facias to recover the debts, and a levati facias to levy the issues and profits; under which latter writ the Sheriff may not only take the rent and moveables of the party outlawed, but also the cattle of a stranger, levant and couchant, on the lands extended, 1 Ld. Raym. 305, and the cases there cited in the last edition. In aid of these writs a bill may be exhibited in the exchequer against the outlawry to compel a discovery of his real and personal estate, &c. either by the plaintiff to enable him to take out execution, or by the Attorney General on behalf of the Crown, Hardr. 22. And it is said to be the course of that Court, upon an Outlawry, to prefer an information in the nature of an action of trover and conversion against him who hath the goods of the party outlawed, 1 Mod. 90.

The money raised by the Sheriff under these writs belongs to the Crown, but the plaintiff may have it paid to him in satisfaction of his debt and costs, by applying to the Court of Exchequer, or Lords of the Treasury; and he may also obtain a lease of the lands, &c. under the Exchequer seal, Hardr. 106, 422: T. Raym. 17: 1 Lev. 33. On a grant of the King's right to levy the profits, 9 H. 6. 20: 2 Roll. Abr. 808: Gib. C. P. 17. If the money raised by the Sheriff do not exceed the sum of fifty pounds, the Court of Exchequer, on motion, will order it to be paid to the plaintiff; but if it exceed that sum, the plaintiff must petition for it to the Lords of the treasury, stating the amount of his debt, a short abstract of the proceedings, with the expenses he has been put to, and praying, in respect thereof, that the Attorney-General may be authorized to consent, on behalf of the Crown, that the money remaining in the Sheriff's hands may be paid over to the petitioner. The petition is referred by the Lords of the Treasury, to their solicitor, who should be furnished with an affidavit, sworn before a baron, of the amount of the debt and costs, and a
V. There are two ways of reversing an Outlawry; first, by writ of error returnable coram nobis. Co. Litt. 259 b: Fort. 38 2dly, By motion founded on a plea, averment or suggestion of some matter apparent; as in respect of a supersedeas, omission of process, variance, or other matter apparent on the record; and yet in these cases some have held that in another term the defendant is driven to his writ of error. But for any matter of fact, as death, imprisonment, beyond sea at the time of the exigent awarded; (Carth. 259: 1 Ld. Raym. 349: 2 Stra. 1178: 1 Wils. 3.) service of the King, &c. he is driven to his writ of error, unless it be in the case of felony, and there in favorem vitae he may plead to it. It seems, however, to be discretionary in the Court to relieve by motion, or put the parties to a writ of error; and of late years they have gone farther than heretofore upon motion, the more effectually to expedite justice, save expense, and preserve the credit and character of the defendant. Tidd's Pract. K. B. c. 4.

Regularly, in all Outlawries, as well personal as criminal, the party in order to reverse the same, was to appear in person, and could not appear by attorney. 2 Leon. 22: Cro. Jac. 462: 2 Salk. 496.

But now by stat. 4 & 5 W. & M. cap. 18, already referred to, no person who shall be outlawed in the court of B. R. for any cause whatsoever (treason and felony only excepted,) shall be compelled to appear in person in the said Court to reverse such Outlawry; but may appear by attorney and reverse the same without bail in all cases, except where bail shall be ordered by the said Court.

By stat. Westm. 1. (3 E. 1.) cap. 9. it is expressly provided, that those who are outlawed, have abjured the realm, &c. should be excluded the benefit of replevin; yet it hath been always held, that the Court of King's Bench may in their discretion, in special cases, bail a person upon an Outlawry of felony; as where he pleads that he is not of the same name, and therefore not the same person with him that was outlawed, or alleges any other error in the proceedings. 2 Hawk. P. C. c. 15. § 40.

By stat. 31 Eliz. cap. 3. § 3, it is enacted, "That before any allowance of any writ of error, or reversing of any Outlawry be had by plea or otherwise; through or by want of any proclamation to be had or made according to the form of this statute, the defendant and defendants in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit in a new action to be commenced by the said plaintiff for the cause mentioned in the first action, but also to satisfy the condemnation, if the plaintiff shall be..."
gin his suit before the end of two terms next after the allowing the writ of error, or otherwise avoiding of the said Outlawry."

On reversing the Outlawry for any other error in law, besides the want of proclamations, it was long unsettled whether the defendant should be obliged to put in special bail. In the earliest cases upon the subject, it was determined that he should. Litt. Ref. 301: CARTH. 459: 1 Ld. Raym. 349: Gib. C. P. 19. But there are cases to the contrary in the time of Holt, Chief Justice, 12 Mod. 545: 1 Ld. Raym. 605: 2 Salk. 496: And in one of them (2 Salk. 496.) it is said that if the party outlawed come in gratis, upon the return of the exigit, &c. he may be admitted, by motion, to reverse the Outlawry, for any other cause but want of proclamations without putting in bail; but if he come in by cefi corpus, he shall not be admitted to reverse it without appearing in person, as in such case he was obliged to do at Common Law; or putting in bail with the Sheriff for his appearance upon the return of cefi corpus, and for doing what the Court shall order.

In two subsequent cases, however, special bail was put in upon reversing the Outlawry, for errors in law, though it does not appear the party came in gratis. Wail v. Walton, E. 12 G. 1, cited, 1 Wils. 4: 2 Stra. 951: 2 Barn. K. B. 298. At length, in the case of Serecold v. Hambson, the Court upon considering the words of stat. 4 & 5: W. & M. c. 18. § 3, which empowers the outlaw to appear by attorney, and says, "the Outlawry shall be reversed without bail in all cases, except where special bail shall be ordered by the Court," declared they were of opinion they had a discretion ary power to require it or not; and that the want of an affidavit before the Outlawry was no objection, because that is only requisite to warrant an arrest; and though the stat. 31 Eliz. c. 3, § 3, be the only act that expressly requires bail, it is not to be inferred from thence that in other cases it ought not to be insisted on; for that act makes a new error, and the bail upon it is absolutely to pay the condemnation money. 2 Stra. 1178, 9: 1 Wils. 3. And it is now settled, that on reversing an Outlawry, for any other error in law, besides the want of proclamations, the bail is common or special, in like manner as upon the arrest. Where special bail is required, it need not be put in before the allowance of the writ of error, but it is well enough if put in at any time before the reversal. 1 Ld. Raym. 605: 2 Stra. 951: 2 Barn. K. B. 928. The recognizance, in such case, is usually taken in the common form; but see 12 Mod. 545: per Holt; and 2 Salk. 496. And it is settled that the bail may render the defendant, and are not, at all events, answerable for the debt. Tidd’s Pract. K. B. and the authorities there cited.

In general, an Outlawry can only be reversed upon payment of costs; but if the process have been abused, and made subservient to purposes of oppression, as where a man has been outlawed, who was already in prison at the plaintiff’s suit, or being at large, did not abscond but appeared publicly, and might have been arrested or served with process, the Court on motion will order the plaintiff to reverse the Outlawry at his own expense. 2 Vent. 46: 2 Salk. 495: Barnes 321: T. Jon. 311: Comb. 19: 12 Mod. 413.

It is clearly agreed, that an attainder of felony of a person who had any lands shall never be reversed by writ of error, without a scire facias against all the tennants and lords mediate and immediate; but it is settled, that such scire facias is not necessary in the case of high

Also it is said, that it is not necessary in the case of felony, when it is suggested on the roll that the party had no lands, and the Attorney-General confesses it. 2 Salk. 495.

It is agreed, that after an Outlawry of treason or felony is reversed, the party shall be put to plead to the indictment, for that still remains good, and he may be tried at the King's Bench bar; or the record may be remitted into the country, if it were removed into the King's Bench by certiorari, with a command to the justices below to proceed by the statute of 6 Hen. 6, c. 1. Cro. Jac. 645: Cro. Car. 365: 3 Mod. 42: 6 Mod. 115: 2 Hale's Hist. P. C. 209.

So if a man be outlawed by process in an information, and comes in and reverses the Outlawry, he must plead instanter to the information. 1 Salk. 371: 5 Mod. 141.

The law is the same in civil cases; and therefore, if an Outlawry in a personal action be reversed, the original remains. March 9: 8 Lev. 245.

Generally speaking, when the Outlawry is reversed, or the defendant has obtained a charter of pardon, he may be discharged, if in custody, by writ of supersedeas. See stat. 13 Car. 2. st. 2. c. 2. § 4. And his property, if taken into the King's hands, shall be restored to him by writ of amovias manus, or otherwise, according to the course of the Exchequer. As to chattels real, see Cro. Eliz. 278: 2 Vern. 312: Bumb. 105. And as to chattels personal, see 5 Mod. 61. Where he has obtained a charter of pardon, he must sue out a scire facias to give notice thereof to the plaintiff, in order that he may further prosecute his action, if he think proper. See Tidd's Pract. K. B. c. 4.

It hath been adjudged, that if the King grant over the lands of a person outlawed for treason or felony, and afterwards the Outlawry be reversed, the party may enter on the patentee, and need neither sue a petition to the King, nor a scire facias against the patentee. 1 And. 168. A person shall, after Outlawry reversed, be restored to his law, and be of ability to sue. da. Litt. 238 b.

If the goods of a person outlawed are sold by the Sheriff upon a capias utlagatum, and after the Outlawry is reversed by writ of error, he shall be restored to the goods themselves; because the Sheriff was not compellable to sell these goods, but only to keep them to the use of the King. 5 Co. 90: 1 Roll. Abr. 778.

If an advowson come to the King, by forfeiture upon an Outlawry, and the church becoming void, the King presents, and then the Outlawry is reversed: yet the King shall enjoy that presentment, because the presentment there came to the King as the profit of the advowson. Moor 269.

But if the church be void at the time of the Outlawry, and the presentation is thereby forfeited as a chattel principally and distinct of itself, there, upon reversal of the Outlawry, the party shall be restored to the presentation. Cro. Eliz. 170.

If a tenant being outlawed for felony, grants over his term, after the Outlawry is reversed, the grantee may have trespass for the profits taken between the reversal of the Outlawry and the assignment; for by the reversal it is as if no Outlawry had been. and there is no record of it. Cro. Eliz. 170: 13 Co. 20. 32.
It is said, that if a man be outlawed in the King's Bench, and the party's goods are seized into the King's hands, and then the Outlawry is reversed, there can be no restitution; the reason whereof is, for that the Court of King's Bench cannot send a writ to the treasurer; and the Court of Exchequer have no record before them to issue out a warrant for restitution. 5 Mod. 61. See 2 Vern. 312; 2 Lev. 49.

For more learning on this subject, see 3 New Abrid. and 22 Vin. Abrid. title Outlawry.

OUTPARTERS, mentioned in stat. 9 H. 5, st. 1, c. 7. A kind of thieves in Riddlesdale, that stole cattle, or other things without that liberty; some are of opinion, that those which in the fore-named statute are termed Outparters, are now called outputers, being such as set matches for the robbing any man or house. Cowell. See Intakers.

OUTRIDERS, Bailiffs errant, employed by the Sheriff, or their deputies, to ride to the farthest place of their counties or hundreds, with the more speed to summon such as they thought good to their county or hundred courts. See stat. 14 E. 3, st. 1, c. 9.

OUTSUCKEN MULTURES: Quantities of Corn paid by persons voluntarily grinding corn at any Mill, to which they are not thirled or bound by tenure. See Thrilage.

OWEL, An old French word for equal. Law Fr. Dict.

OWELTY, Equality. Co. Litt. 169. When there is lord, mesne, and tenant, and the tenant holds of the mesne by the same service that the mesne holds over of the lord above him, this is called Owelty of services. F. N. B. 136.

OWLERS, Persons that carry wool, &c. to the sea-side by night, in order to be shipped off contrary to law. See Wool.

OWLING, The offence of exporting, &c. wool by night. See Wool.

OXEN; See Cattle.

OXFILD, A restitution antiently made by a hundred or county, for any wrong done by one that was within the same. Lamb, Archaion, 125.

OXFORD, See University: Courts of Universities.

OXGANG, from Ox, i. c. bos and gang, or gate, iter.] Is commonly taken for fifteen acres of land, or as much as one ox can plough in a year. Skene says 13 acres. See Spelman.


OYER. This word was antiently used for what we now call assises. Anno 13 Ed. 1. See Oyer and Terminer.

OYER, Fr. Audire, Lat. To hear.] Previous and preparatory to pleading in bar, the defendant may crave Oyer of the writ, or bond, or other specialty upon which the action is brought, that is, to hear it read to him; the generality of defendants in the times of antient simplicity being supposed incapable to read it themselves: whereupon the whole is entered verbatim upon the record, and the defendant may take advantage of any condition or other part of it, not stated in the plaintiff's declaration. 3 Comm. c. 20, p. 299.

To demand Oyer of an obligation, is not only to desire the plaintiff's attorney to read the same; but to have a copy thereof, that the defendant may consider what to plead to the action. Hob. 217.
Oyer of Deeds, &c. is demandable by the plaintiff, or by the defendant. If the plaintiff in his declaration necessarily makes a profert in curiâ of any deed, writing, letters of administration, or the like, the defendant may pray Oyer, and must have a copy thereof delivered to him, if demanded; paying for the same after the rate of 4d. per sheet, and also for the stamps. 2 Salk. 497: R. T. 5 & 6 Geo. 2, So likewise if the defendant in his plea makes a necessary profert in curiâ of any deed, &c. the plaintiff may pray Oyer, and shall have a copy at the like rate. Id.: 6 Mod. 122. And the party of whom Oyer is demanded, is bound to carry it to the adverse party. 2 Term Rep. 40. Formerly, all demands of Oyer were made in Court, (as it is now in case of criminal appeals,) where the deed is, by intendment of law, when it is pleaded with a profert in curiâ 12 Mod. 598: 3 Salk. 119. And therefore when Oyer is craved, it is supposed to be of the Court, and not of the party; and the words ei legitur in hac verba, &c. are the act of the Court. Id.: 1 Sid. 108. But see 2 Lutw. 1644; contra. In practice, however, Oyer is now usually demanded, and granted by the attorneys. 6 Mod. 28. And where the plaintiff is entitled to have Oyer of a deed, it cannot be dispensed with by the Court, nor can the defendant be compelled to plead without it, even though the deed be lost. 2 Litt. P. R. title Oyer 266: 2 Keb. 274: 6 Mod. 28: 2 Str. 1186: 1 Wils. 16. But where the deed is in the hands of a third person, the Court will oblige him to give Oyer, and produce it. 2 Str. 1198.

When a deed is shewn in Court, it remains there in contemplation of law, all the term in which it is shewn; for all the term is considered in law but as one day. And at the end of the term, if the deed be not denied, the law doth adjudge it to be in the custody of the party to whom it belongs; but if it be denied, then it shall remain in Court till the plea is determined, and if it eventually turn out not to be the plaintiff’s deed, it shall be destroyed. Co. Litt. 231. b: 5 Co. 74. b: 2 Lutw. 1644. But letters testamentary, or of administration, are not supposed to remain in Court all the term; for the plaintiff may have occasion to produce them elsewhere. 2 Salk. 497: 12 Mod. 598; hence it is, that Oyer of a deed cannot, in strictness, be demanded, but during the same term it is pleaded. 5 Co. 74. b: 2 Lutw. 1644: 1 Term Rep. 149. And as a general imparlance is always to a subsequent term, it follows that Oyer of a deed cannot be demanded after such imparlance. 1 Keb. 32: 2 Lev. 142: Freem. 400: 3 Keb. 480, 491: 6 Mod. 28. A different doctrine is, indeed, laid down in one place, which must be understood of a special imparlance to another day in the same term. 12 Mod. 29, and see 2 Show. 310.

Though Oyer is not, in strictness, demandable of a record, (1 Ld. Raym. 347, 4th edition, note (q): Dougf. 476, 7: 1 Term Rep. 149, 50.) yet if a judgment or other matter of record in the same court be pleaded, the parties pleading it must give a note in writing, of the term and number-roll whereon such judgment or matter of record is entered and filed; or in default thereof the plea is not to be received. Keilw. 96: Carth. 4: 1 Ld. Raym. 347: Carth. 517: 1 Ld. Raym. 550: 2 Str. 823: R. T. 5 & 6 Geo. 2. (b.) And probably, on this account, the party was not antiently permitted to plead nul sicut record of a judgment or matter of record in the same Court. 5 H. 7. 24, her Brian. 3 Keb. 76. But where a judgment or matter of record is pleaded in a different Court, the party not being entitled to an account of the term and number-roll, must plead nul sicut record. And
it seems, that Oyer is not demandable of an act of parliament. Dougl. 476: Godeb. 186, contra.

Formerly the defendant was allowed Oyer of the Original Writ, in order to demur or plead in abatement, for any apparent insufficiency or variance. Gilb. C. P. 52: 12 Mod. 35, 189: 2 Lutw. 1644: 6 Mod. 27: 2 Salk. 498: 2 Ld. Raym. 970: R. T. 5 & 6 Geo. 2, b. 2 Wils. 97: Co. Ent. 320. But this indulgence having been abused and made an instrument of delay, it is now holden, that if the defendant demand Oyer of the Original Writ, the plaintiff may proceed, as if no such demand had been made. Dougl. 227, 8: Barnes 340: and see Bro. Abr. title Oyer, pl. 19.

The demand of Oyer is a kind of plea, and should regularly be made, before the time of pleading is expired. If it be not made, till after that time, the plaintiff may consider the demand as a nullity, and sign judgment. Tidd's Prac. K. B. But though Oyer be not in strictness demandable, yet if it be given, the party demanding has a right to make use of it. Dougl. 476, 7. If the defendant would insist upon his demand of Oyer, he should move the Court to have it entered upon record. 6 Mod. 28. If the plaintiff on the other hand would contest the Oyer, he may either counterplead it, or strike out the rest of the pleading, and demur. 2 Lev. 142: 2 Salk. 497: and see 2 Ld. Raym. 970. Upon which the judgment of the Court is, either that the defendant have Oyer, or that he answer without it. 2 Lev. 142. On the latter judgment, the defendant may bring a writ of error; for to deny Oyer where it ought to be granted is error, but not à converso. 2 Salk. 497: 6 Mod. 28: 2 Ld. Raym. 970. 2 Stra. 1186: 1 Wils. 16.

There is no settled time prescribed for the plaintiff to give Oyer, though if not given when demanded, the defendant shall have the same time to plead, after Oyer given, as he had at the time of demanding it. 1 Str. 705: R. T. 5 & 6 Geo. 2. (6). And he may either set forth the Oyer in his plea, or not, at his election. 2 Str. 1241: 1 Wils. 97. If he set it forth, the Court must adjudge upon it as parcel of the record, though it was not strictly demandable at the time of granting it. 3 Salk. 119: Carth. 513: 6 Mod. 27: Dougl. 460. But the defendant is not bound to set it forth in his plea. 2 Str. 1241: 1 Wils. 97: Barnes 127, contra; and if he do not, the plaintiff may pray an inspissation, and so make it part of his replication.

The time allowed for the defendant to give Oyer of a deed, &c. to the plaintiff, is two days exclusive after it is demanded. Carth. 454: 2 Term Rep. 40. And if it be not given in that time, the plaintiff may sign judgment as for want of a plea. 6 Mod. 122. If given, the plaintiff shall have the same time to reply after Oyer given him by the defendant, as he had at the time of demanding it. R. T. 5 & 6 Geo. 2. (6).

Where there may be Oyer, the party demanding it is not bound to plead without it, but the defendant may plead without it if he will, on taking upon him to remember the bond or deed; though if he plead without Oyer, he cannot after waive his plea, and demand Oyer. Mod. Cas. 28: 3 Salk. 119. After a plea in abatement, Oyer may not be had the same term, to plead another dilatory plea. Mod. Cas. 27.

When on Oyer of a deed, it is entered, the whole case appears to the Court as if the deed were in the plea, and the deed is become parcel of the record: though Oyer of a deed can only be demanded.
during the time it is produced in Court; and then it may be entered
in hac verba, and there may be a demurrer, or issue upon it, &c. 5
Ref. 76: Lutw. 1644: 3 Salk. 119.

If a bond is brought into Court, Oyer is grantable only the first
term, for afterwards it is adjudged in the possession of the party. Yet
Oyer of a recognizance was granted in a term subsequent to the de-
claration. Ld. Raym. 84.

A defendant ought to crave Oyer of the plaintiff’s deed, on which
he hath declared; and cannot set forth another to plead performance
thereof. Mod. Cas. 154.

So where a deed is pleaded, the other party cannot allege that there
is other matter contained in the deed, but must set it forth on Oyer.
Strange 227.

If the defendant, after craving Oyer of a deed, do not set forth the
whole of it, the plaintiff may sign judgment as for want of a plea. 4
Term Ref. 370.

If there is misnomer in a bond, &c. the defendant is to plead the
misnomer, and that he made no such deed without craving Oyer; for
if he doth, he admits his name to be right. 1 Salk. 7.

If defendant will take advantage of a variance between the writ
and count, he must crave Oyer of the writ, and spread it on the re-
cord. i. e. shew it to the Court. 2 Wils. 395.

Oyer de Record, audire recordum.] A petition made in Court,
that the Judges, for better proof-sake, will hear or look upon any re-
cord. See the preceding title Oyer.

Oyer and Terminer, Fr. Ouir & Terminus, Lat. Audiendo
& Terminando.] A commission directed to the Judges, and other gen-
tlemen of the county to which it is issued, by virtue whereof they
have power to hear and determine treasons, and all manner of felonies
statutes the term is often printed Oyer and Determiner. 4 Inst. 162.
See this Dictionary, title Justices of Oyer, &c. and the references there,
to which the following observations may be added.

The usual commission of Oyer and Terminer of Justices of assise
is general; and when any sudden insurrection, or trespass is com-
mited, which requires speedy reformation, then a special commission
is immediately granted. See stat. Westm. 2. 13 Ed. 1. c. 29. F. N. B.
110.

A man may have a special commission of Oyer and Terminer, to in-
quire of extortions and oppressions of under sheriffs, bailiffs, clerks
of the markets, and all other officers, &c. on the complaint and suit of any
one who will sue it out; and the King may make a writ of Association
unto the Justices of Oyer and Terminer, to admit those into their
company whom he hath associated unto them; also another writ may
be sent to the Judges to proceed, although all the Justices do not
come at the day of the sessions; and this writ is called the writ of
112.

As to these commissions, it is said, that if a commission of Oyer
and Terminer, &c. be awarded to certain persons to inquire at such
a place, they can neither open their commission at another, nor ad-
journ it thither, or give judgment there; if they do, all their proceed-
ings are, as coram non j udice. But it is held, that justices appointed
pro hac vice may adjourn their commission from one day to another, though there be no words in their commission to such purpose; for a general commission authorising persons to do a thing, implicitly allows them convenient time for the doing it. 2 Hawk. P. C. c. 5. § 14.

Upon the general commission of Oyer and Termine, there should issue a precept to the Sheriff in the name of the commissioners, bearing date fifteen days before their sessions, that he return twenty-four persons for a grand jury ad inquiritendum, &c. on such a day; and the Sheriff is to return his panel annexed to the precept.

As the same justices, at the same time, may execute the commission of Oyer and Termine, and also that of gaol delivery, they may proceed, by virtue of the one, in those cases where they have no jurisdiction by the other, and make up their records accordingly. 2 Hale. P. C. 20; and see 2 Hawk. P. C. c. 5. On indictments found before the Justices of Oyer and Termine, they may proceed the same day against the parties indicted.

O YES, A corruption of the Fr. Oyez, i. e. Audite, hear ye.] The term used by a public crier, to enjoin silence and attention.

OYSTER-FISHERY, (in the river Medway,) is regulated by stat. 2 Geo. 2. c. 19; and a Court is kept for that purpose at Rochester yearly, where, by a jury of free dredger-men of the Oyster-fishery, the same is to be inquired into; and they may make rules and orders when Oysters shall be taken, what quantities in a day, and to preserve the brood of Oysters, &c. And may impose penalties not exceeding 5l. Also water bailiffs shall be appointed to examine boats, &c. By stat. 31 Geo. 3. c. 51, amended by 48 G. 3. c. 144, for regulating Oyster-fishing in general, fine and imprisonment may be inflicted on persons unlawfully fishing for Oysters. And those who steal them are punishable as Felons, by 7 years’ transportation. But this act not to affect any other local statutes. See titles Fish; Navigation Acts.

OZE, or Ozy ground, solum uliginosum.] Moist, wet, and marshy land. Lit. Dict.

END OF THE FOURTH VOLUME.