It is agreed in the Books, that a wife may, without her husband, execute a naked authority, whether given before or after coverture, and though no special words are used to dispense with the disability of coverture; and the rule is the same where both an interest and an authority pass to the wife, if the authority is collateral to, and doth not flow from the interest; because then the two are as unconnected, as if they were vested in different persons. Finch Rep. 346. As too, a feme covert may without her husband convey lands in execution of a mere Power or authority, so may she with equal effect in performance of a condition where land is vested in her on condition to convey to others. W. Jones 137, 8. The reason why in these instances the wife may convey without her husband, seems to be, that he can receive no prejudice from her acts, but a great one might arise to others, if his concurrence should be essential. 1 Inst. 112. a. in n. See title Baron and Feme.

As to the Suspension and Extinction of Powers, see 1 Inst. 342. b. in n.: and as to the rules by which the creation and execution of Powers in general are governed; see Powell on Powers: and further with respect to subjects connected therewith, this Dictionary, titles Authority; Estate; Limitation of Estate; Lease; Remainder; Trust; Use, &c.

POWERS OF THE COUNTY; See Posse Comitatus.
POWERS OF THE CROWN; See title King.
POWERS OF THE PARENT; See Parent.
POYNDING, See Poinding.
POYNING'S LAW, An act of Parliament made in Ireland, in the reign of Hen. VII. so called because sir Edward Poyning was Lieutenant there when it was made, whereby all the statutes in England were declared of force in Ireland; which before that time they were not. 12 Rept. 109. See title Ireland.
PRACTICE, This term is sometimes applied, in an unfavourable sense, to signify fraud or bad practice. Thus clandestine proceedings are said to be by Practice.

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By this is understood the form and manner of conducting and carrying on suits or prosecutions at Law or in Equity, civil or criminal, through their various stages, from the commencement of the process to final judgment and execution; according to the principles of Law, and the rules laid down by the several courts.

Though the knowledge of this Practice is to be acquired chiefly by experience, it is founded on the original structure and progressive improvements of our Laws. Several modern treatises have been written on the Practice of the several Courts of King's Bench, Common Pleas, Chancery, and Exchequer; some of which are by no means liable to the censure passed on former productions of that nature, by the learned and ingenious writer, from whom the following abridgment is extracted. The nature of this Dictionary precludes the possibility of entering into any thing like a general detail on so complicated a subject: the various points of which are incidentally noticed, under the several heads to which they apply.

Some idea of the Visible Practice of the Courts is given under title Motion in Court; and which the following summary may serve further to illustrate. It is taken from a work, which would probably
have secured to its author a fame more adequate to his deserts, had not the splendour of the Commentaries obscured all inferior exertions of ingenuity and elegance. See Eunomus, Dial. 2. § 23—40.

It must be owned, (says that writer,) that the knowledge of Practice can be acquired only by Practice: though, as its rules depend on principles, it is as much a science, as any other part of the Law. It is impossible even to recollect those rules, and often difficult to investigate them. The very few books of any credit that have been written on this subject are written on a loose and unconnected plan, and after all, speak only to the learned. This branch of Law is more than any other destitute of any elementary treatise.

But this defect has since been very much supplied by Crompton's Book of Practice in the Courts of K. B. and C. P. since enlarged by Sellen; Impey's Practice in the same courts; Tidd's Practice in the Court of K. B. and perhaps others which might be named, if not as of equal merit, yet of considerable utility.

The following idea of Practice, given by the author of Eunomus, is new, and it is believed, accurate as far as it goes: it may afford a pleasing view of the rationale of Practice, even to adepts; but it is chiefly adapted to the instruction of those who are first setting out in the profession: who, either from lectures in the University, or in their own private studies, have a tolerable notion of the general principles of Law: though they may have barely set foot in Westminster-Hall, and consequently have but little idea of the Practice of a Court. It arises on the following case:

A person who has a cause of complaint, either for a right detained, or an injury done, is determined to bring his Action: and by his attorney takes out Process against the party complained of; in consequence of which, the latter (who is called the defendant) puts in Bail: either common or special, as the case requires. The defendant being thus secured, the plaintiff declares in proper form the nature of his cause; the defendant answers this declaration; and the charge and defence, by due course of Pleading, (in the course of which may be introduced a Demurrer on either side,) are brought to one or more plain simple facts: these facts arising out of the pleadings, and thence called Issues, come next to Trial by a Jury; who, having heard the Evidence on an issue before them, find (let it be supposed) a Verdict for the plaintiff; on which verdict Judgment is afterwards entered. The plaintiff's costs of suit are then taxed by the Officer of the Court; and the judgment is put in Execution, by levying on the defendant's effects the Damages given by the Jury, and the Costs allowed by the Court; which being done, there is an end of the suit, and both parties are once more out of Court. [By referring to the titles in this Dictionary, Distinguished by Italic words, in the above sentence, further information on each head will be obtained.]

But the Practice of a Court in civil suits arises, in a great measure from the interruption in the above regular stages, and course of a cause. Those regular stages (as to the time and manner of carrying them on) are themselves the legitimate offspring of the established Practice of the Court where the cause is brought: when they are pursued, the course of the Proceeding runs on smooth and silent, transacted by the Attornies in the cause, and the Officers of the Court, without ever being heard of in open Court: and the method of transacting this business is that Practice, the knowledge of which
more immediately concerns the Attornies and Officers. The irregularities and informalities, that push a cause out of its course, must be redressed by the interposition of the Court; and it is this kind of business that furnishes and makes up a great part of the visible Practice of the Courts of Law in Term time.

It was above stated, that the Attorney first takes out process against the defendant, in order to make him appear. But this process may be irregular, and then it will produce motions to set it aside; as for instance, where the defendant is a privileged person, it may not only be irregular, but highly oppressive; and then it grounds a motion for an attachment against the parties executing the process, as for a constructive contempt of the Court. This is a general motion, and may, as the oppression which produces it, arise in any stage of the cause. The suit itself, as well as the process, may be irregular, and then it will occasion a motion to stay proceedings in a cause: as where the parties have agreed to compromise the matters in difference, and a release is not executed; for the release when executed may be pleaded in bar of the action. The first process may be regular, and the Bail may not, and thence arise various motions, either to discharge the defendant on common bail, where it appears from the affidavit that he is not liable to give special bail; or where the affidavit to hold to bail is defective.—To set aside a Judge's order, made at his chambers, relating to the bail: which kind of motion may be made on other grounds. If the bail is regular in the manner of putting it in, but suspicious as to the competency of the bail, the plaintiff gives notice, and the defendant moves to justify bail in open Court.

The Declaration may furnish several motions; as to the delivery of it; its frame and structure; or the neglect of it by the defendant. Perhaps it cannot be delivered in the common form, the party abandoning to avoid it; and then the plaintiff moves that some other service of the declaration may be sufficient. The declaration being delivered, the defendant may apprehend it to be immoderately prolix and impertinent; in which case he will move to strike out some counts in the declaration. The Court usually upon this order it to be referred to the Master of the Plea Office, and the Master's report is the ground of the rule afterwards made. A motion for the Master's Report is another motion, that may arise in various parts of a cause. In action, that is in its nature transitory, if the declaration lays the cause of action in one county, and it did in reality arise in another, the defendant may avail himself of that circumstance; and upon affidavit apply to the Court for the plaintiff to change the Venue, (that is, the place where the cause of action is declared to have happened,) from the first county to the latter. The venue may likewise be changed from any county in England, wherever the cause of action arose, to that of Middlesex, where the Court sits, if the defendant is privileged as attendant on that Court. Where the Jury, and not the venue, is to be changed, as where the material evidence arises in the place laid, but no jury, common or special, can be had, disinterested, (as in case of a county cause about a bridge, or the like,) it is usual to move for a trial in the adjoining county, upon entering a suggestion on the roll. See this Dictionary, titles Venue; Trial.—A suggestion on the roll is sometimes entered for other purposes; as where the Sheriff who regularly returns the process is partial. See titles Jury; Sheriff; Coroner.
If a declaration is substantially defective, the defendant, instead of answering, demurs to it. See title Demurrer. If, on the other hand, the declaration is delivered, and is unexceptionable, and the defendant neglects to answer it in due time, the plaintiff has his judgment by default; but if the plaintiff is over-hasty in signing this judgment, the Court will interpose on a motion to set it aside; in consequence of which, the defendant will be at liberty to plead. The motion to set aside a judgment, obtains, in other instances; and the motion for judgment, as in case of a nonsuit, arises on another ground, as will be shewn hereafter; and see title Nonsuit.

When the defendant comes to plead to the declaration, instead of making, in due time, a plain denial of the charge, called the General Issue, he may find it necessary to vary the common course, either by enlarging the time, or the manner of pleading: he may therefore move for time to plead, which being a matter of indulgence, the Court, on the equity of the case, may refuse or grant; and grant without or upon terms. At Common Law, a defendant could only plead a single matter; but this is now remedied by statute; (see title Pleading) and, if necessary, the defendant accordingly moves the Court for leave to plead several matters, which he mentions. Sometimes this expedient is in after-thought, and then, as it tends to delay the plaintiff, the defendant moves for leave to withdraw the general issue, and to be at liberty to plead specially; sometimes he moves the contrary.

The plea, replication, rejoinder, &c. are at length settled on record, and come to an issue; which remains to be settled by a Jury; in order to which all the record down to the issue, which it includes, is transcribed from what is called the plea-roll, and which is only part of a large bundle, comprehending the cases of many other persons; and never stirs out of the custody of the Court: That manuscript is called the Nisi Prius Roll; as the Nisi Prius roll, after it is returned from the trial, assumes the name of the Postea. See titles Pleading; Nisi Prius; Postea; Record.

Between the issue and the trial, several motions may happen, which may either put off the trial or not; of the latter kind, and at this stage, is a motion by the defendant for leave to pay money into Court. See title Money into Court.

Many circumstances may make it necessary to postpone a trial, or vary the common forms of examination. The necessary witnesses in the cause may reside altogether abroad, or being there for a time, may not be likely to return at the regular time of the trial: In the first case, the Court is moved for a commission to examine witnesses on interrogatories; which are settled here, sent over, and with their answers properly attested, are sent back, and read in evidence at the trial. See title Depositions. In the latter case, the trial is delayed on motion, to put it off for the absence of a material witness: But if, by this delay, the other party is likely to lose evidence that is ready at the time; either in case a witness is so old and infirm, as not to be likely to survive the arrival of the evidence on the other side; or in case his necessary business obliges him to leave England before the trial can come on; in this case, a motion is made by the party affected, to examine such witness de bene esse: that is, to admit the depositions, so taken, as evidence, if the person cannot afterwards be examined at the trial: If a witness, under none of these capacities, being duly summoned, neglect to attend, he is liable to an action on
the statute (5 Eliz. c. 9.) for damages; or the Court will punish him criminally for the contempt on a motion for an Attachment. See title Evidence II. 2. Motions may also arise respecting written evidence, as for leave to inspect and take copies of Corporation books; or for an order to produce them at the Trial.

Not only the Witnesses in a cause, but the Jury, may occasion particular applications to the Court: so may the nature of the cause in question; and so may the course of Judicature itself. The nature of the cause sometimes requires the Jury to see the very spot where the matter in dispute arises; in which case, after issue joined, the Court is moved for a view. See titles Jury I; View. In cases also where the cause is either of a nature to exceed the apprehension, or to inflame the passions, of a common Jury, a Special Jury will be moved for. See title Jury I. Sometimes the cause is apparently likely to be very long, intricate, and important, either in its value or its consequences; from whence arises a motion for a Trial at Bar. See title Trial.

When the cause is brought to the Assises, the Jury sworn, and the Witnesses examined; the trial goes on, or it does not; if it goes on, either a verdict is given, or it is not: if a verdict is given, it is either for the plaintiff or the defendant. The Jury may be sworn, and the Witnesses may be in part examined; and yet the trial may stop; because the parties, may then, or at any time, compromise the matter in difference, or agree to refer it to arbitrators; in either case, a rule is made at the Assises (called an order of Nisi Prius,) and motion is afterwards made, to make the order of Nisi Prius a Rule of Court. See title Award VI.

But the cause may go on, and yet not get to a verdict; for if the plaintiff does not prove his case, the defendant calls no evidence; and, instead of a verdict on either side, there is a Nonsuit. Wherever a verdict is given, the plaintiff at least must give evidence to maintain his declaration. Where evidence is produced on both sides, the verdict is given for the plaintiff or defendant, according to the superior weight of evidence. See title Jury III.

Here closes the trial; and from this period it is that the record assumes the name of the Postea; and if the trial is decisive, neither the Law nor the fact being afterwards controverted, the postea is delivered by the proper officer to the Attorney of the victorious party to sign his judgment: but in many cases, after a verdict given, there is room to question its validity; in which case, the postea remains in the custody of the Court. The verdict may be exceptional, either from misdirection of a Judge in point of Law, or the misbehaviour of the Jury; in which case, a motion may be made to set it aside: as it may on other grounds; as from its being clearly contrary to evidence, or in the damages given greatly exceeding the injury sustained; on both which accounts, a new trial may be moved for. See title Trial. If the verdict itself stands unimpeached, yet some original defect may appear on the face of the record, which shews that no verdict ought to have been given; or though given, no judgment can be had on it; and when this happens, the motion is in Arrest of Judgment. See title Judgment III.

Supposing the verdict and record to stand clear of all objections, the judgment follows of course; and after judgment, Execution; the purpose of which execution is, to levy the damages assessed by the.
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Jury, and the costs allowed by the Court. The execution however may for a short time be interrupted, in case any objection arises to the taxation of costs, and then a motion may be made, for the Master to review his taxation: this, and every act of the Master, being liable to be reviewed on appeal to the Court; though in judging of ordinary stages of practice, he is invested with original, and competent jurisdiction. If the Sheriff, or his Officers, misbehave in respect to the execution, (as in any other service of a writ,) this may produce a motion for an Attachment against them.

When execution is over, the cause is over: but a cause may, on many occasions, come much sooner to an end, and in a direction very different from what has been mentioned; it may come sooner to a trial, or it may come to execution without a trial.

In the case put at setting out, and, in the general exposition of the case, it has been supposed that the defendant pleaded to the declaration: but it was intimated, that if he neglected to plead, judgment would be had against him by default; in consequence of this default of a plea, the truth of the fact is confessed, and cannot be afterwards litigated, as on a trial; but this judgment, though it operates so as to preclude the defendant from controverting the fact, which is the cause of action, does not go to a confession of the damages laid in the declaration; which must be ascertained on a Writ of Inquiry. See title Judgment I.—In this course of proceeding, motions may arise to set aside the judgment, and writ of Inquiry issued thereon, as irregular;—to execute a writ of Inquiry before a Judge, instead of a Sheriff, where it is a matter of importance;—and sometimes for a new writ of Inquiry, for excessive damages, in the same manner as for a new trial on those grounds. See title Trial.

There are two cases however, where the admission of the defendant silences all future inquiry, either as to the truth of the fact, or the quantity of the damages; that of a direct confession of the action; and a warrant of attorney to confess a judgment: this latter occasions a motion very often; for where it is above a year standing, motion must be made for leave to file the Warrant of Attorney, on affidavit of the defendant being still alive, and the debt unpaid: And motions may be made to set aside the Warrant of Attorney, if not regularly executed. See title Judgments acknowledged for Debts.

A matter may come sooner to a trial, by means of an Issue directed by the Court; which obtains, in a Court of Law, principally where a question of civil right is involved in a criminal prosecution for a misdemeanor; in which case, it is the usual lenity of the Court, to suspend the latter till the former has been tried: Or where a Court of Equity directs facts to be inquired of at Law, and does not rest the case on depositions. See title Feigned Issue.

What has been said relates merely to the Practice of the Courts in civil Suits: and, in general, concerns the trial of a cause. To give a full or general idea of Practice, it may be necessary to establish a distinction between such motions, as are in their nature previous to the trial itself, or subsequent to it: Of the former sort, are motions to stay proceedings in a cause; motions relating to bail; to declarations; to the time and manner of pleading; for changing venues; Special Jurys; and many others above particularized: Of the latter sort necessary, are motions; to set aside verdicts; for new trials; in arrest of judgment; on writs of inquiry; and others, that are easily classed
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according to this division. There are some motions that in the abstract are of an ambiguous nature, and may arise in any part of the cause, either before or after a trial; as, Motions for an Attachment; for a Master’s report; and others.

Every motion hitherto has been supposed to have some relation to the trial of a cause: there are some few entirely independent of it; as a Motion for a Prohibition; applications for summary relief, under various statutes, relating to articles of Clerks; to Attorneys; Insolvent debtors; and others of that stamp. See further title Motion in Court.

Part of the visible Practice of the Court also arises from Cases directed out of Chancery; Special Verdicts and Writs of Error; all of which are argued at the bar, and determined by the Judges.

The Practice of Courts of Equity may be deduced in a manner similar to the above, by attending to the several stages, from the filing of the bill to the execution of the decree. See title Chancery.

The Crown Business, or Criminal Practice, of which the Court of K. B. has exclusive jurisdiction, does not admit of the application of the same idea: much the greatest part of it is independent of any solemn trial; and the trials themselves are too simple to endure much interruption, or branch out into many points of Practice. This Crown Practice may be divided into such matters as originally commence in that Court; and such as are removed into it, from other inferior jurisdictions: Of both which kinds, taken together, are, motions for an Habeas Corpus; Mandamus; (though this and the motion for a Quo Warranto, in cases relating to Corporations, partake also of a civil as well as a criminal nature;) to exhibit Articles of the Peace; motions relating to the discharge of Recognizances; to remove Indictments, orders of Sessions, Convictions, made by Justices, &c. from their common ordinary course of proceeding, by writ of Certiorari, into this Court, on some foundation of complaint against them. The visible Practice, that occasions this removal, and that arises from it, may be resolved into these few motions, very simple in their kind, though infinitely diversified as to their objects, viz. The general Motion to remove the indictment, order or conviction by Certiorari; Motion to quash the indictment, &c. when it is removed. In the case of an indictment, removed, either on a demurrer, it is set down to be argued; or motion is made to quash it before trial; or Motion in Arrest of Judgment; or Motion for Judgment after the trial.

But the most extensive Jurisdiction is involved in matters of original cognisance, whether it regards indictments or informations; or such matters as are entirely independent of either, or any solemn trial; such as begin and end on motions.

There is little or no difference between an indictment commenced in this Court, or removed from another jurisdiction, as to motions concerning them. As to Informations, though altogether the Creature of this Court, they admit but of three motions; the application to the Court to grant it: when granted, and tried, a casual motion, in arrest of Judgment, on grounds arising from the record itself or, where the charge, in the information and the verdict are both incontestable, the motion for judgment.

To recapitulate all in a few words:—Practice in general, it appears, is either in civil or Crown causes. In civil causes, it is either independent of a trial, or relative to it: if relative to it, it arises from
something applied for either before or after a trial. In Crown causes, the only distinction made was, either as it concerned the original jurisdiction of the Court, or such as is exercised, as it were, on appeal. "And unless (concludes the Writer, from whom the foregoing sketch has been extracted and abridged) I was to read over to you a hundred (he might have added or more) rules of Court, and the several cases and books on this subject, (which, by the bye, I would not wish any enemy I have to do,) I cannot undertake to be more explicit on this subject."

Pæceptories, Pæceptoria.] A kind of benefices, having their name from being possessed by the more eminent Templars, whom the Chief Master by his authority created and called Preceptores Templi. And of these Pæceptories there are recorded sixteen, as belonging to the Templars in England, viz. Cressing Temple, Balsal, Shingay, Newland, Yeveley, Witham, Templebrure, Willington, Rothley, Owenington, Temple Combe, Trebigh, Ribstone, Mount St. John, Temple Nusum, and Temple Hurst, Mon. Angl. ii. 543. But some authors say, these places were cells only, subordinate to their principal mansion in the Temple in London. See stat. antiqu. 32 Hen. 3. c. 24.
Pæcipe; See title original.
Pæcipe in capite, The writ of right for the King's immediate tenants in capite, when they are deforced of lands or tenements. 3 Comm. c. 10. p. 195. See title Writ of Right.
Pæcipe quod reddat; See titles Fine of lands; Recovery. Pæcipitium, A punishment inflicted on criminals, by casting them from some high place. Malms. lib. 5. p. 155.
Pæfectus ville, Is the same as praepositus ville, i. e. the Mayor of a town. Leg. Ed. Confess. c. 28.
Pæfiné, That fine, which on suing out the writ of covenant, on levying fines, is paid before the fine is passed. See title Fine of Lands.

Pæmunire.

Corrupted from, or apparently synonymous with, Præmoneri, "to be forewarned;" and therefore, according to the proverb, fore-armed; see Du Cange in v.] The writ so called, or the offence wherein the writ is granted; the one may be understood by the other. The offence is of a nature highly criminal, though not capital, and more immediately affecting the King or his Government. It is named, from the words of the writ, preparatory to the prosecution thereof, "Pæmunire facias A. B. —Cause A. B. to be forwarned—that he appear before us to answer the contempt wherewith he stands charged;" which contempt is particularly recited in the preamble to the writ. It took its original from the exorbitant power claimed and exercised in England by the Pope; and was originally ranked as an offence immediately against the King; because it consisted in introducing a foreign power into this land, and creating imperium in imperio, by paying that obedience to papal process, which constitutionally belonged to the King alone, long before the Reformation in the reign of Henry VIII. See 4 Comm. c. 8.

The church of Rome, under pretence of her supremacy, and the dignity of St. Peter's chair, took on her to bestow most of the ecclesiastical livings, of any worth in England, by mandates, before they were void; pretending therein great care to see the Church pro-
vided of a successor before it needed. Whence these mandates or bulls were called *gratia ejc/iectaliva* or *provisiones*, whereof see a learned discourse in *Duarenus de Beneficiis*, lib. 3. c. 1.—These provisions were so common, that at last it was necessary to restrain them by the Laws of the Land.

In the 35th year of Edw. I. was made the first statute against papal provisions, stat. 35 E. 1. st. 1; being, according to Coke, the foundation of all the subsequent statutes of *Præmunire*. It recites, that the abbots, priors, and governors, had, at their own pleasure, set divers impositions upon the monasteries and houses in their subjestion; to remedy which, it was enacted, that in future, religious persons should send nothing to their superiors beyond the sea; and that no imposition whatever should be taxed by priors-aliens. By stat. 25 E. 3. st. 5. c. 22. it was enacted, that if any one purchased a provision of an abbey or priory, he should be out of the King’s protection. And by stat. 25 E. 3. st. 6. (c. 2.): 27 E. 3. st. 1. c. 1: 38 E. 3. st. 1. c. 4; and stat. 2. cc. 1, 2, 3, 4. it was enacted, that the Court of Rome should not present or collate to any Bishopric or living in England: and that whoever disturbed any patron in the presentation to a living, by virtue of a papal provision, such person should pay fine and ransom to the King, at his will; and be imprisoned till he renounced such provision. The same punishment was inflicted on such as should cite the King, or any of his subjects, to answer in the Court of Rome. By stats. 3 R. 2. c. 3: 7 R. 2. c. 12. it was enacted, that no alien should be capable of letting his benefice to farm; in order to compel such as had crept in, at least to reside on their preferments; and that no alien should be capable of being presented to any ecclesiastical preferment, under the penalty of the statutes of Provisors. By stat. 12 R. 2. c. 15, all liegemen of the King, accepting of a living by any foreign provision, were put out of the King’s protection, and the benefice made void; to which stat. 13 R. 2. st. 2. c. 2. adds banishment and forfeiture of lands and goods; and by c. 3. of the same statute, it was enacted, that any person bringing over any citation or excommunication from beyond sea, on account of the execution of the foregoing statutes of Provisors, should be imprisoned, forfeit his lands and goods, and moreover suffer pain of life and member.

In the writ for the execution of these statutes, the words *Præmunire facias* being used to command a citation from the party, have denominated in common speech, *not only the writ, but the offence itself*, of maintaining the papal power by the name of *Præmunire*. The stat. 16 R. 2. c. 5. which is the statute generally referred to by all subsequent statutes, is, accordingly, usually called the *statute of Præmunire*. It enacts, that whoever procures at Rome or elsewhere, any translations, processes, excommunications, bulls, instruments, or other things, which touch the King, against him, his Crown and Realm, and all persons aiding and assisting therein, shall be put out of the King’s protection; their lands and goods forfeited to the King’s use; and they shall be attached by their bodies to answer to the King and his Council; or process of *Præmunire facias* shall be made out against them as in other cases of Provisors. By stat. 2 H. 4. c. 3. all persons who accept any provision from the Pope, to be exempt from canonical obedience to their proper Ordinary, were also subjected to the penalties of *Præmunire*. This is said to be the last antient statute concerning this offence till the Reformation.
But by stat. 2 Hen. 4. c. 4. whoever shall put in execution bulls purchased by those of the order of Cisteaux, to be discharged of tithes, shall incur the like penalty: they were also further restrained by stats. 6 Hen. 4. c. 1: 7 Hen. 4. c. 8: 9 Hen. 4. c. 8: and 3 Hen. 5. cap. 4; by which, the statutes above mentioned are enforced and explained: And by stat. 23 Hen. 8. c. 2. § 22. whoever shall sue for or execute any licence, dispensation, or faculty from the see of Rome: and by stat. 28 Hen. 8. c. 16. (by which all bulls, briefs, &c. obtained from Rome, are made void,) whoever shall use, allege, or plead the same in any Court, unless they were confirmed by this statute, or afterwards by the King, shall incur the like penalty. Vide Reg. 54: 3 Inst. 127.

The penalties of Praemunire have been since applied to other offences, some of which bear more, some less, and some no relation to this original offence, as shall be hereafter noticed.

Whenever it is said, that a person, by any act, incurs a Praemunire, it is meant to express, that he thereby incurs the penalties which, by the different statutes above mentioned, are inflicted for the offences therein described. See 4 Comm. c. 8: 1 Inst. 391. in n. 2.

Prosecutions on a Praemunire, it is remarkable, are unheard of in our Courts: there is only one instance of such a Prosecution in the State Trials: in which case, the penalties of a Praemunire were inflicted upon some persons, for refusing to take the Oath of Allegiance (see post, I.) in the reign of King Charles II. Harg. St. Tr. ii. 263.

Having said thus much generally, we may proceed further to consider the subject under the following heads:

I. What Offences, besides those already specified, come under the Notion of a Praemunire.

II. Of the Punishment in a Praemunire.

I. At the time of the Reformation, the penalties of Praemunire were extended to more papal abuses than before; as the kingdom then entirely renounced the authority of the see of Rome, though not all the doctrines of the Roman Church. And therefore, by the several statutes 24 Hen. 8. c. 12: 25 Hen. 8. cc. 19, 21. to appeal to Rome from any of the King's Courts, which (though illegal before) had at times been connived at; to sue to Rome for any licence or dispensation; or to obey any process from thence; are made liable to the pains of Praemunire. And, in order to restore to the King, in effect, the nomination of vacant bishoprics, and yet keep up the established forms, it is enacted by stat. 25 Hen. 8. c. 20. that if the Dean and Chapter refuse to elect the person named by the King, or any Archbishop or Bishop to confirm or consecrate him, they shall fall within the penalties of the statutes of Praemunire.

Exercising the jurisdiction of a Suffragan, without the appointment of the Bishop of the diocese, is also made a Praemunire: by stat. 26 H. 8. c. 14.; which sets forth at large how Suffragans are to be nominated, &c. See title Bishops.

Also by stat. 5 Eliz. c. 1. to refuse the Oath of Supremacy will incur the pains of Praemunire; and to defend the Pope's jurisdiction in this realm, is a Praemunire for the first offence, and High Treason for the second. So too, by stat. 13 Eliz. c. 2. any person importing any Agnus Dei, crosses, beads, or other superstitious things pretended to be hallowed by the Bishop of Rome, and tendering the same to be used; or
receiving the same with such intent, and not discovering the offender; or a Justice of the Peace, who, knowing thereof, shall not within 14 days declare it to a Privy Councillor; all incur a Præmunire. Lastly, to contribute to the maintenance of a Jesuit’s college, or any popish seminary whatever, beyond sea; or any person in the same; or to contribute to the maintenance of any jesuit or popish priest in England, is by stat. 27 Eliz. c. 2. made liable to the penalties of Præmunire.

Thus far the penalties of Præmunire seem to have kept within the proper bounds of their original institution,—the depressing the power of the Pope: but they being pains of no inconsiderable consequence, it has been thought fit to apply the same, as already hinted, to other heinous offences.

Derogating from the King’s Common Law Courts, is said to have been an high offence at Common Law, and is made a Præmunire by many antient statutes; for, by the stat. 27 Ed. 3. c. 1. of Provisors, If any Subject draw any out of the realm in plea, whereof the cognizance pertains to the King’s Court, or of things whereof judgments be given in the King’s Courts, or sue in any other Court to defeat or impeach the judgments given in the King’s Courts, he shall be warned to appear, &c. in proper person, at a day, containing the space of two months, at which if he appear not, he and his proctors, &c. shall be put out of the King’s protection, his lands and chattels forfeited, his body imprisoned, and ransomed at the King’s will, &c. See also stat. 16 R. 2. c. 5.

In the construction of these statutes, it hath been held, that certain Commissioners of Sewers, for summoning one before them who had got a judgment at law, and imprisoning him till he would release it, were guilty of a Præmunire. 2 Bulst. 299: 3 Inst. 125: Cro. Jac. 336.

Also suits in the Admiralty or Ecclesiastical Courts within the Realm for matters which, upon the face of the libel itself, appear to belong only to the cognizance of the temporal Courts, are said to be within stat. 16 Rich. 2. by force of the words, “or elsewhere.” 1 Hawk. P. C. c. 19. § 14—19.

And it hath been formerly holden, that even suits in a Court of Equity, to relieve against a judgment at Law, were within the danger of these statutes; especially if they tended to controvert the very point determined at Law, or to relieve in a matter relievable at Law. 4 New Abr. 140.

By stat. 1 & 2 P. & M. c. 8. § 40, to molest the possessors of abbey lands, granted by Parliament to Hen. VIII and Edw. VI. is a Præmunire.—So likewise is the offence of acting as a broker or agent in any usurious contract, where above 10 per cent. interest is taken; by stat. 13 Eliz. c. 8.—To obtain any stay of proceedings, other than by arrest of judgment or writ of error, in any suit for a monopoly, is likewise a Præmunire; by stat. 21 Jac. 1. c. 3. § 4.—To obtain an exclusive patent for the sole making or importation of gunpowder or arms, or to hinder others from importing them, is also a Præmunire by two statutes: the one, stat. 16 Car. 1. c. 21. the other, stat. 1 Jac. 2. c. 8.—On the abolition, by stat. 12 Car. 2. c. 24. of purveyance, and the prerogative of pre-emption, or taking any victual, beasts, or goods for the King’s use, at a stated price, without consent of the proprietor, the exertion of any such power for the future was declared to incur the penalties of Præmunire. See title Pourveyance.—To assert, ma-
liciously and advisedly, by speaking or writing, that both or either House of Parliament have a legislative authority without the King, is declared a Præmunire by stat. 13 Car. 2. stat. 1. c. 1.—So, to conspire to avoid the seizure or forfeiture, upon the importation of cattle, as mentioned in stat. 20 Car. 2. c. 7.—By the Habeas Corpus Act also, stat. 31 Car. 2. c. 2, it is a Præmunire, and incapable of the King's pardon, besides other heavy penalties, to send any subject of this realm a prisoner into parts beyond the seas. See title Habeas Corpus, —By stat. 1 W. & M. st. 1. c. 8, persons of eighteen years of age, refusing to take the new Oaths of Allegiance, (and formerly of Supremacy, see title Nonjurors; Oaths,) upon tender by the proper magistrate, are subject to the penalties of a Præmunire; and, by stat. 7 & 8 W. 3. c. 4, Serjeants, Counsellors, Proctors, Attorneys, and all Officers of Courts, practising without having taken the Oaths of Allegiance, (and formerly of Supremacy, and subscribed the declaration against Popery,) are guilty of a Præmunire, whether the oaths be tendered or not. See title Oaths.—By stat. 6 Ann. c. 7, to assert maliciously and directly, by preaching, teaching, or advised speaking, that the then pretended Prince of Wales, or any person other than according to the Acts of Settlement and Union, hath any right to the throne of these kingdoms; or that the King and Parliament cannot make laws to limit the descent of the Crown; such preaching, teaching, or advised speaking, is a Præmunire: as writing, printing, or publishing the same doctrines amount to High Treason.—By stat. 6 Ann. c. 23, if the Assembly of Peers of Scotland, convened to elect their sixteen representatives in the British Parliament, shall presume to treat of any other matter, save only the election, they incur the penalties of a Præmunire.—The stat. 6 Geo. 1. c. 18, (enacted in the year after the infamous South Sea project had beggared half the nation,) makes all unwarrantable undertakings by unlawful subscriptions, then commonly known by the name of Bubbles, subject to the penalties of a Præmunire: with power to the Court to moderate the judgment.—The stat. 12 Geo. 3. c. 11, subjects to the penalties of the statute of Præmunire all such as knowingly and willingly solemnize, assist, or are present at, any forbidden marriage, of such of the descendants of the body of King George II. as are by that act prohibited to contract matrimony without the consent of the Crown. See titles Marriage; King.

II. The punishment of this offence may be learned from the foregoing statutes, which are thus shortly summed up by Coke: "That from the conviction, the defendant shall be out of the King's protection, and his lands and tenements, goods and chattels, forfeited to the King; and that his body shall remain in prison at the King's pleasure; 1 Inst. 129; or (as other authorities have it) during life;" 1 Bulst. 199: both which amount to the same thing; as the King, by his prerogative, may any time remit the whole, or any part of the punishment, 2 Bulst. 299; except in the case of transgressing the statute of Habeas Corpus. These forfeitures, here inflicted, do not (by the way) bring this offence within the general definition of felony; being inflicted by particular statutes, and not by the Common Law. But so odious, Sir Edw. Coke adds, was this offence of Præmunire, that a man who was attainted of the same, might have been slain by any other man, without danger of Law: because it was provided by stat.
25 Edw. 3. st. 6. c. 22. that any man might do to him as to the King's enemy; and any man may lawfully kill an enemy. However, the position itself, that it is at any time lawful to kill an enemy, is by no means tenable: it is only lawful by the law of nature and nations, to kill him in the heat of battle, or for necessary self-defence. And to obviate such savage and mistaken notions, the stat. 5 Eliz. c. 1. provides, that it shall not be lawful to kill any person attainted in a Pramunire; any law, statute, opinion, or exposition of Law to the contrary notwithstanding. But still such delinquent, though protected, as a part of the public, from public wrongs, can bring no action for any private injury, how atrocious soever; being so far out of the protection of the Law, that it will not guard his civil rights, nor remedy any grievance which he, as an individual, may suffer. 1 Inst. 130. And no man, knowing him to be guilty, can with safety give him comfort, aid, or relief. 1 Hawk. P. C. c. 19. See 4 Comm. c. 8.

If the defendant be condemned on his default of not appearing, whether at the suit of the King or party, the same judgment shall be given as to the being out of the King's protection and the forfeiture; but instead of the clause, that the body shall remain in prison, there shall be awarded a capiatur. Co. Litt. 129. b: 3 Inst. 125. 218.

A statute by appointing that an offender shall incur the penalty and danger mentioned in stat. 16 Ric. 2. c. 5. does not confine the prosecution for the offence to the particular process thereby given. 1 Vent. 173.

It is holden that the statute of Pramunire, which gives a general forfeiture of all the lands and tenements of the offender, extends not to lands in tail. Co. Litt. 130.

It is said, the statute of Pramunire doth not extend to the forfeiture of rents, annuities, fairs, &c. or any other hereditaments that are not within the word terre. 3 Inst. 126.

This suit need not be by original in B. R. for if defendant be in custodia Mareschall, the suit may be against him by bill; and defendants cannot be sued in any other Court when they are in custodia Mareschall. And if a defendant come not at the day, &c. or if he appears and pleads, and the issue be found against him, or he demurs in law, &c. judgment shall be given, that he shall be out of protection, &c. 3 Inst. 124.

Tenant in tail is attainted in a Pramunire, he shall forfeit his lands only during life; and afterwards the issue in tail shall inherit. 11 Recf. 56.

A person, being seised in fee of lands, was indicted for a Pramunire upon stat. 13 Eliz. c. 2. but before conviction he made an entail of his lands; and it was adjudged, that the attainer should relate to the time of the offence, and that was before he entailed the lands, and not the time of the judgment which was afterwards; and the freehold being in him at the time of the attainer, shall not be divested without an inquisition under the Great Seal. Cro. Car. 123, 172.

It hath been adjudged, that a pardon of all misprisions, trespasses, offences, and contempt, will pardon a Pramunire Cro. Jac. 336; 2 Bulst. 299.

The defendant in a Pramunire must regularly appear in person, whether he be a Peer or Commoner, unless he is dispensed with by some writ or grant for that purpose; but in the case of Sir Anthony Mildmay, he was allowed to plead a pardon to a Pramunire by Attor-
ney; but it has been thought, that there was some clause to this effect in the pardon. 3 Inst. 125: 1 Roll. Rep. 190: 2 Bulst. 290.

On an indictment of a Premonire, a Peer of the Realm shall not be tried by his Peers. 12 Co. 92.

On an information on the stat. 6 Geo. 1. c. 18. for setting up a bubble called the South Sea, it was determined that the Court was not obliged by that act to give the whole judgment, as in case of a Premonire against a defendant, but only such parts of it as in their discretion they should think fit; and accordingly a fine of 5l. was set on the party convicted, and judgment that he should remain in prison during the King's pleasure. 2 Ld. Raym. 361.

PREPOSITUS ECCLESIE. A Church reeve, or Churchwarden; See that title.

PREPOSITUS VILLE. Sometimes is used for the constable of a town, or petit constable. Crompt. Jurisd. 205. Yet the same author, 194, seems to apply it otherwise; for there quatuor homines prepositi are those four men, who must appear for every town, before the justices of the forest in their circuit. It is sometimes used for an head or chief Officer of the King, in a town, manor, or village, or a reeve. See Reeve. Animulia & res inventae coram ipso (preposito) & sacerdote ducenda vrant. LL. Edw. Confessor. cap. 28. This Prepositus Ville, in our old records, does not answer to our present constable, or head-borough of a town; but was no more than the reeve, or bailiff, of the Lord of the Manor, sometimes called Serviens Ville.

By the Laws of Henry I. the Lord answered for the town where he was resident; where he was not, his dapifer, or seneschal, if he were a Baron: but if neither of them could be present, then Propositus & quatuor de unaquaque villa, i.e. the reeve and four of the most substantial inhabitants were summoned. See Brady's Glossary to Introduction to English History, page 57. in voc. Prepositor.

PREROGATIVE; See Prerogative.

PRAYER; See Service and Sacraments.

PRAYERS OF THE CHURCH; See Common Prayer.

PREACHING, Every beneficed Preacher, residing on his benefice, and having no lawful impediment, shall in his own cure, or some neighbouring church, preach one sermon every Sunday of the year. And if any beneficed person be not allowed to be a Preacher, he shall procure sermons to be preached in his cure by licenced Preachers; and every Sunday, whereon there shall not be a sermon, he or his curate is to read one of the homilies: No person, not examined and approved by the Bishop, or not licenced to preach, shall expound the Scripture, &c.; nor shall any be permitted to preach in any church, but such as appear to be authorized thereto, by shewing their licence; and Churchwardens are to note in a book the names of all strange clergymen who preach in their parish; to which book every Preacher is to subscribe his name, the day he preached, and the name of the Bishop of whom he had licence to preach. Can. 44, 45, 49.

If any parson licenced to preach, refuses to conform to the Ecclesiastical laws, after admonition, the licence of every such Preacher shall be void: And if any parson preach doctrine contrary to the word of God, or the Articles of Religion, notice is to be given of it to the Bishop by the Churchwardens, &c. So likewise of matters of contention and impugning the doctrine of other preachers in the same Church; in which case, the Preacher is not to be suffered to preach,
except he faithfully promise to forbear all such matter of contention in the Church, until the Bishop hath taken further order therein. Can. 53, 54.

No minister shall preach or administer the sacrament in any private house, unless in times of necessity, as in case of sickness, &c. on pain of suspension for the first offence, and excommunication for the second; which last punishment is also inflicted on such Ministers as meet in private houses, to consult on any matter tending to impeach the doctrine of the Church of England. Can. 71, &c.

PREAMBLE, Premium, from the preposition pre, before, and ambulo, to walk.] The beginning of a statute is called the Preamble; which is a key to the intent of the makers of the act, and the mischief which they would remedy by the same. See title Statute.

PRE-AUDIENCE, In the Courts, is of considerable consequence; the following short table of precedence, which usually obtains among the practisers, is taken from 3 Comm. c. 3. p. 97. in n.
1. The King's premier Serjeant; (so constituted by special patent.)
2. The King's antient Serjeant, or the eldest among the King's Serjeants.
3. The King's Advocate-General.
4. The King's Attorney-General.
5. The King's Solicitor-General.
6. The King's Serjeants.
7. The King's Counsel, with the Queen's Attorney and Solicitor, and those who have patents of precedence. See title Barrister.
8. Serjeants at Law.
10. Advocates of the Civil Law.

In the Court of Exchequer, two of the most experienced Barri- ters, called the Post-man and the Tub-man, (from the places in which they sit,) have also a precedence in motions. See title Motion in Court.

PREBEND, Prebenda.] The portion which every Prebendary of a Cathedral Church receives, in right of his place, as one of the Chapter of the Dean, for his maintenance; as canonica portio is properly used for that share, which every canon receiveth yearly out of the common stock of the Church. And Prebenda is a several benefice arising from some temporal land, or some Church appropriated towards the maintenance of a Clerk, or Member of a Collegiate Church; and is commonly named of the place where the profit arises.

Prebenda, strictly taken, is that maintenance which daily prebetur to another; but now it signifies the profits belonging to the Church, divided into those portions called Prebenda, and is a right of receiving the profits for the duty performed in the Church sufficient for the support of the Parson in that divine office where he resides. Decret. title De Prebend.

The Spirituality and Temporality make a Prebend, but the Spirituality is the highest and most worthy: and a person is not a complete Prebendary, to make any grant, &c. before installation and induction. Dyer 221.

Prebends are simple and dignitary.
A simple Prebend hath no more than the revenue for its support: but a Prebend with dignity hath always a jurisdiction annexed; and for this reason the Prebendary is stiled a dignitary, and his jurisdiction is gained by prescription.

Prebends are some of them donative; and some are in the gift of laymen; but in such case they must present the Prebendary to the Bishop, and the Dean and Chapter inducts him, and places him in a Stall in the Cathedral Church, and then he is said to have locum in choro: At Westminster, the King collates by patent, and, by virtue thereof, the Prebendary takes possession without institution or induction. 2 Rot. Abr. 356.

As a Prebend is a benefice without cure, &c. a Prebend and a parochial benefice are not incompatable promotions; for one man may have both without any avoidance of the first: For though Prebendaries are such as have no cure of souls, yet there is a sacred charge incumbent on them in those Cathedrals where they are resident, and they are obliged to preach by the canons of the Church; and it is not lawful for a Prebendary to possess two Prebends in one and the same Collegiate Church. Rol. Abr. 361.

Prebendaries are said to have an estate in fee-simple in right of their Churches, as well as Bishops of their Bishoprics, Deans of their Deaneries, &c.

Corpus Prebenda, is that which is received by a Prebendary above the profits which are always for his daily maintenance. See further titles Chapter; Clergy; Dean.

Prebenda and Probanda were also in old deeds used for provisions, provand or provender. Pro quo suo unum bushel avemarum pro Prebenda capienda. Coucher Book in Dutche Office, i. 4s; Cowell.

PREBENDARY, Prebendarius.] He who hath a prebend; so called, not a prebenda auxilium & consilium episcopi, &c. but from receiving the prebend: And if a manor be the body of a prebend, and is evicted by title paramount; yet the Prebend is not destroyed. 5 Reph. 75.

There is a golden Prebendary of Hereford, otherwise termed Prebendarius Episcopi, who is one of the twenty-eight minor Prebendaries there, and has, ex officio, the first canon's place that falls: he was antiently confessarius of the Cathedral Church, and to the Bishop, and had the offerings at the altar; whereby, in respect of the gold commonly given there, he had the name of Golden Prebendary. Blount.

PRECARIAE, Days-works, which tenants of some manors were bound, by reason of their tenure, to do for their lord in harvest; and, in divers places, are still vulgarly called Bind days, for biden-days, which, in the Saxon, dies Precarius sonat: Foridden is to pray or intreat. This custom is plainly set forth in the great book of the Customs of the Monastery of Battel, title Aitfielderham, fol. 60. Cowell.

PRECEDENCE. The Commonalty of the Realm, like the Nobility, are divided into several degrees: and as the Lords, though different in rank, yet all of them are Peers in respect of their Nobility; so the Commoners, though some are greatly superior to others, yet all are in Law Peers, in respect of their want of Nobility. 2 Inst. 29. See 1 Comm. c. 12.

The rules of precedence, in England, are reduced by Blackstone to the following table: in which those marked* are entitled to the rank here allotted them, by stat. 31 Hen. 8. c. 10.—those marked †, by
stat. 1 W. & M. c. 21.—those marked ||, by letters patent 9, 10, and 14 Jac. I. which see in Seld. tit. of Hen. II. 5. 46. and II. 11. 3.—those marked †, by antient usage and established custom; for which see (among others) Camden’s Britannia, title Ordines; Mille’s Catalogue of Hon. edit. 1610; and Chamberlayn’s present State of England, b. 3. c. 3.

**Table of Precedence.**

* The King’s children and grandchildren.
  * .......... brethren.
  * .......... uncles.
  * .......... nephews.
  * Archbishop of Canterbury.
  * Lord Chancellor or Keeper, if a Baron.
  * Archbishop of York.
  * Lord Treasurer.
  * Lord President of the Council. 
  * Lord Privy Seal.
  * Lord Great Chamberlain. But see private stat. 1 Geo. 1. c. 3.
  * Lord High Constable.
  * Lord Marshal.
  * Lord Admiral.
  * Lord Steward of the Household.
  * Lord Chamberlain of the Household.
  * Dukes.
  * Marquesses.
  † Duke’s eldest sons.
  * Earls.
  † Marquesses’ eldest sons.
  † Duke’s younger sons.
  * Viscounts.
  † Earls’ eldest sons.
  † Marquesses’ younger sons.
  * Secretary of State, if a Bishop.
  * Bishop of London.
  * .......... Durham.
  * .......... Winchester.
  * Bishops.
  * Secretary of State, if a Baron.
  * Barons.
  † Speaker of the House of Commons.
  † Lords Commissioners of the Great Seal.
  † Viscount’s eldest sons.
  † Earls’ younger sons.
  † Barons’ eldest sons.
  || Knights of the Garter.
  || Privy Counsellors.
  || Chancellor of the Exchequer.
  || Chancellor of the Duchy.
  || Chief Justice of the King’s Bench.
  || Master of the Rolls.
  || Chief Justice of the Common Pleas.
  || Chief Baron of the Exchequer.
  || Judges and Barons of the Coif.
Married women and widows are entitled to the same rank among each other, as their husbands would respectively have borne between themselves; except such rank is merely professional or official;—and unmarried women to the same rank as their eldest brothers would bear among men, during the lives of their fathers. 3 Comm. c. 21. p. 405. in n.

PRECEDENT CONDITIONS; See Condition IV.

PRECEDENTS, Authorities to follow in determinations in Courts of Justice.

Precedents have always been greatly regarded by the Sages of the Law: The Precedents of the Courts are said to be the Laws of the Courts; and the Court will not reverse a judgment, contrary to many Precedents. 4 Rep. 93: Cro. Eliz. 65: 2 Lit. Abr. 344. But new Precedents are not considerable; Precedents without judicial decision on argument are of no moment; and an extrajudicial opinion given in or out of our Court, is no good Precedent. Vaugh. 169. 382. 399. 429.

It has been held that there can be no Precedent in matters of Equity, as Equity is universal truth; but, according to Lord Keeper Bridgman, Precedents are necessary in Equity to find out the reasons thereof for a guide; and, besides the authority of those who made them, it is to be supposed they did it on great consideration, and it would be strange to set aside what has been the course for a long series of time. 1 Mod. 307. If a man doubt whether a case be equitable, or no, in prudence he will determine as the Precedents have been; especially if made by men of good authority and learning. Ibid. See titles Chancery; Equity.

Lord C. Talbot said, He thought it much better to stick to the known general rules, than to follow any one particular Precedent, which may be founded on reasons unknown to us. Such a proceeding would confound all property. Cases in Chan. in Lord Talbot’s Time, 26, 27. 196.

PRECE PARTIUM, When a suit is continued by the prayer, assent, or agreement of both parties. See stat. 13 Ed. 1. st. 1. c. 27.
PRECEPT, Præceptum.] Is diversely taken in Law; as sometimes for a command in writing by a Justice of Peace, or other Officer, for bringing a person or records before him; of which there are many examples in the table of the Register Judicial. And in this sense it seems to be borrowed from the customs of Lombardy, where Præceptum signifieth scriptura vel instrumentum. Hotom. in verb. Feudal, &c. Staundf. Pl. Cor. 105: Bracton, lib. 3. tract. 2. cap. 9, calls it præceptum or mandatum. Whence we may observe three divisions of offending in murder, præceptum, fortiæ, consilium; præceptum being the instigation used beforehand; fortiæ, the assistance in the fact, as to help to bind the party murdered or robbed; consilium, advice either before or in the fact. The Civilians use mandatum in this case. Cowell.

PRE-CONTRACT, mentioned in stat. 2 & 3 Ed. 6. c. 23.] A contract made before another contract; the term hath relation especially to marriage. See Marriage.

PREDIAL TITHES, Decima preadiæ.] Are those which are paid of things arising and growing from the ground only, as corn, hay, fruit of trees, and such like. See stat. 2 & 3 Ed. 6. c. 13: 2 Inst. 649: 2 Comm. c. 3: and this Dictionary, title Tithes.

PRE-EMPTION, Pre-emption.] The first buying of a thing; it was a privilege heretofore allowed the King's Purveyor, but abolished by stat. 12 Car. 2. c. 24: See title Purveyance.

PREGNANCY (Plea of). Where a woman is capitally convicted, and pleads her pregnancy, though this is no cause to stay the judgment, yet it is to respite the execution, till she is delivered. See title Execution of Criminals.

PREMISES, (or Premisses.) That part in the beginning of a deed, the office of which is to express the grantor and grantee, and the land, or thing granted or conveyed. 5 Rep. 55. See title Conveyance; Deed II.

No person, not named in the Premises, can take any thing by the deed, though he be afterwards named in the habendum, because the Premises of the deed make the gift; therefore, when the lands are given to one in the Premises, the habendum cannot give any share of them to another, because that would be to retract the gift made, and consequently, to make a deed repugnant in itself. Thus, for instance; If a charter of feoffment be made between A. of the one part, and B. and D. of the other part, and A. gives land to B. habendum to B. and D. and their heirs; D. takes nothing by the habendum, because all the lands were given to B. consequently D. cannot hold those lands which are given before to another; but in this case, if the habendum had been to B. and D. and their heirs, to the use of B. and D.; this had been a good limitation of a use; consequently, the statute of uses would carry the possession to the use, and B. and D. thereby become joint-tenants. Co. Lit. 6. a: 9 Co. 47. b: Hob. 275. 313: 2 Rol. Abr. 65: Cro. Jac. 564: Cro. Eliz. 58: 13 Co. 54: Poph. 126.

If lands be given to a husband, habendum to him and his wife, and to the heirs of their two bodies, the wife takes nothing, because she was not mentioned in the Premises; therefore shall take nothing of that which was before given entirely to her husband. 2 Rol. Abr. 61.

But there are four exceptions to this rule: 1. If the lands be given
in frank-marriage, the woman, who is the cause of the gift, may take by the habendum, though she be not named in the Premises; as if lands be given to J. S. habendum maritagium una cum the woman who is daughter of the donor; this is a good estate in frank-marriage to them both; because the gift being totally on her account, it is necessary to the creation of the estate in the husband that the wife should take. Co. Litt. 21: Plowd. 158: Cro. Jac. 455: Poph. 126: 2 Rol. Abr. 67.

2. In grants of copy of Court-roll; as if a copy-holder surrenders to his lord, without limiting any use, and then the lord grants it in this manner; J. S. cæpit de Domino, habendum to the said J. S. and his wife, and the heirs of their bodies begotten, this is a good estate-tail in the wife; for these customary grants that are made in pursuance of a former surrender, are construed according to the intention of the parties, as wills are; besides, the custom of the manor is the rule for the exposition of such sorts of grants, and, in many manors, such form is usual. Poph. 125, 126: Cro. Jac. 434: 2 Rol. Abr. 67: Cro. Eliz. 323.


4. In wills; for if a man devises lands to J. S. habendum to him and his wife, this is a good devise to the wife; because, in construction of wills, the intention of the devisor is chiefly regarded; and wherever that discovers itself it shall take place, though it be not expressed in those legal forms that are required in conveyances executed in a man's lifetime. Plowd. 158. 414: 2 Rol. Abr. 68.

PREMIUM. Premium.] A reward: Among merchants it is used for the money the insured gives the insurer for insuring the safe return of any ship or merchandize. See title Insurance.

PREMUNIRE. See Premunire.

PRENDER, The power or right of taking a thing before it is offered; from the French prendre, i.e. accipere: hence the phrase of Law, it lies in render, but not in Prender. Rep. 1.

PRENDER DE BARON, To take an husband.] It is used for an exception to disable a woman from pursuing an appeal of murder, against one who killed her former husband. St. P. C. lib. 3. c. 59.

PREPENSED, Prepensus.] Forethought; as prepensed Malice is Multitia Præcogitata; which makes killing, murder: and when a man is slain on a sudden quarrel, if there were malice Prepensed formerly between the parties, it is murder, or as it is called by the statute Prepensed murder. See title Homicide III. 3.

PREROGATIVE, from pre and rogo, to ask or demand, before or above others.] A word of large extent including all the rights, which, by Law, the King hath as Chief of the Kingdom; and as intrusted with the execution of the Laws. See this Dictionary, title King V.

PREROGATIVE COURT, Curia Prerogativa Archiepiscopi Cantuariensis.] The Court wherein all wills are proved, and all administrations taken which belong to the Archbishop by his Prerogative; that is, in case where the deceased had goods of any considerable value out of the diocese wherein he died; and that value is ordinarily 5l. except it be otherwise by composition between the Archbishop, and some other Bishop, as in the diocese of London it is
and if any contention grow between two or more, touching such will or administration, the cause is properly decided in this Court: The Judge whereof is termed Judex curie Prerogati ve Cantuariensis, the Judge of the Prerogative Court of Canterbury. See titles Courts Ecclesiastical; Will.

The Archbishop of York hath also the like Court, which is termed his Exchequer, but inferior to this in power and profit. 4 Inst. 335. As to the Prerogative of the Archbishop of Canterbury or York, see the book intitled De Antiquitate Britannica Ecclesiae Cantuariensis Historia, especially the eighth chapter. pag. 25. Cowell.

PRESBYTER, A priest, elder or honourable person. Isidore, lib. 7.
PRESBYTERIUM, A Presbytery; that part of the church where divine offices are performed, applied to the choir, or chancel; because it was the place appropriated to the Bishop, priests, and other clergy, while the laity were confined to the body of the church. Mon. Ang. i. 243.
PRESBYTERIAN, A sectarist, or disserter from the church. See titles Nonconformists; Dissenters.

PRESCRIPTION.

Praescriptio.] A title acquired by use and time, and allowed by Law; as when a man claims any thing, because he, his ancestors, or they whose estate he hath, have had or used it all the time, whereof no memory is to the contrary: or it is, where for continuance of time, ultra memoriam hominis, a particular person hath a particular right against another. Kitch. 104: Co. Lit. 114: 4 Rep. 32.

Blackstone classes Title by Prescription among the methods of acquiring real property by purchase; as when a man can shew no other title to what he claims, than that he, and those under whom he claims, have immemorially used to enjoy it. As to customs, or immemorial usages, in general, with the several requisites and rules to be observed, in order to prove their existence and validity, see this Dictionary, title Custom.

I. Of the Distinction between a Prescription and a Custom or Usage; and who may prescribe.

II. What Sort of Things may be prescribed for.

I. Custom is properly a local usage, and not annexed to any person; such as a custom in the manor of Dale, that lands shall descend to the youngest son: Prescription is merely a personal usage; as, that such an one and his ancestors, or those whose estate he hath, have used time out of mind to have such an advantage or privilege. 1 Inst. 113.—As for example: If there be a usage in the parish of Dale, that all the inhabitants of that parish may dance on a certain close, at all times, for their recreation; (which is held to be a lawful usage, 1 Lev. 176. See post II;) this is strictly a custom, for it is applied to the place in general, and not to any particular persons: but if the tenant, who is seised of the manor of Dale in fee, alleges that he and his ancestors, or all those whose estate he hath in the said manor have used time out of mind to have common of pasture in such a close, this is properly called a Prescription; for this is an usage annexed to the person of the owner of his estate. 2 Comm. c. 17.

The difference between Prescription, custom, and usage, is also thus stated: Prescription hath respect to a certain person, who by 

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intendment may have continuance for ever; as for instance, he and all
they whose estate he hath in such a thing, this is a Prescription.

Custom is local, and always applied to a certain place; as, time
out of mind there has been such a custom in such a place, &c. And
Prescription belongeth to one or a few only; but custom is common
to all.—Usage differs from both, for it may be either to persons or
places; as to inhabitants of a town, to have a way, &c. 2 Nels. Abr.
1277.

A custom and Prescription are in the right; usage is in posses-
sion; and a Prescription that is good for the matter and substance,
may be bad by the manner of setting it forth; but where that which
is claimed as a custom, in or for many, will be good, that regularly will
be so when claimed by Prescription for one. Godb. 54.

Prescription is to be time out of mind; though it is not the length
of time that begets the right of Prescription, nothing being done by
time, although every thing is done in time; but it is a presumption
in Law that a possession cannot continue so long quiet, if it was
against right, or injurious to another. 3 Salk. 278.

All Prescription must be either in a man and his ancestors, or in
a man and those whose estate he hath; which last is called prescrib-
ing in a quœ estate. 4 Repr. 32. And formerly a man might, by the
Common Law, have prescribed for a right which had been enjoyed
by his ancestors or predecessors at any distance of time, though his
or their enjoyment of it had been suspended for an indefinite series
of years. Co. Litt. 113. But by the stat. of Limitation, 32 Hen. 8. c.
2, it is enacted, that no persons shall make any Prescription by the
seisin or possession of his ancestor or predecessor, unless such seisin
or possession hath been within threescore years next before such
Prescription made. See title Limitation of Actions, II. 1.

Prescriptions properly are personal, therefore are always alleged
in the person of him who prescribes, viz. That he, his ancestors, or
all those whose estate he hath, &c. or of a body politic or corporation,
they and their predecessors, &c. Also a parson may prescribe, quod
ipse & prædecessores sui, and all they whose estate, &c. for there is
a perpetual estate, and a perpetual succession, and the successor
hath the very estate which his predecessor had, which continues,
though the person alters, like the case of ancestor and heir.
3 Salk. 279.

A Prescription must always be laid in him that is tenant of the fee.
A tenant for life; for years, at will, or a copyholder, cannot prescribe,
by reason of the imbecility of their estates. 4 Repr. 31, 32. For as
Prescription is usage beyond time of memory, it is absurd that they
should pretend to prescribe for any thing, whose estates commenced
within the remembrance of man. And therefore the copyholder must
prescribe, under cover of his lord’s estate, and the tenant for life un-
der cover of the tenant in fee-simple. As, if tenant for life of a manor
would prescribe for a right of commons as appurtenant to the same,
he must prescribe under cover of the tenant in fee-simple, and must
plead that John Stiles and his ancestors had immemorially used to
have this right of commons appurtenant to the said manor, and that
John Stiles demised the said manor, with its appurtenances, to him
the said tenant for life. 2 Comm. c. 17.

Tenants in fee-simple are to prescribe in their own names, and te-
nants for life or years, &c. though they may not prescribe in their
own names, yet they may in the name of him who hath fee: and
where a person would have a thing that lies in grant by Prescription,
he must prescribe in himself and his ancestors, whose heir he is by
descent; not in himself and those whose estate, &c.; (unless the que
estate is but a conveyance to the thing claimed by Prescription;) for
he cannot have their estate that lies in grant without deed, which
ought to be shewn to the Court. Co. Litt. 113.

Parishioners cannot generally prescribe, but they may allege a cus-
tom; and inhabitants may prescribe in a matter of easement, way
to a Church, burying place, &c. 2 Saund. 325: 1 Lev. 253: Cro.
Eliz. 441: Cro. Car. 419. 2 Rel. 290.

A custom for all the inhabitants of a parish to play at all kinds of
lawful games, sports and pastimes in a certain close, at all seasonable
times of the year, at their free will and pleasure, is good. But a sim-
ilar custom for all persons, for the time being, in the said parish, is
bad. 2 H. Black. Refh. 393. See post II.

A Prescription may be laid in several persons, where it tends only
to matters of easement or discharge; though not where it goes to
matter of interest or profit in alieno solo, for that is a title, and the
title of one doth not concern the other; therefore several men, having
several estates, cannot join in making a Prescription. 1 Mod. 74: 3
Mod. 250.

Where a man prescribes for a way to such a close, he must shew
what interest he hath in the close: Alter, if he prescribes for a way
to such a field; because that may be a common field by intendment.
Latch. 160.

Plaintiff declared, that the occupiers of the adjoining field, have,
time out of mind, repaired the fences, which being out of repair, his
beasts escaped out of his own ground, and fell into a pit; it is good
without shewing any estate in the occupiers; but it had not been so
if the defendant had prescribed. 1 Ventr. 264.

It should seem that a Prescription by the owner of land, adjoining
to a wood, to take underwood there growing to repair the fence be-
longing to the wood, is not good: for of common right the making of
the hedge doth appertain to the owner of the wood; and the Prescrip-
tion is no more than to take wood in the lands of another, to make
the hedges of the same land in which the wood groweth, which can-
not be a good Prescription, for it sounds only in charge, and not to
the profit of him who prescribes. 1 Leon. 313.

Estates gained by Prescription are not, of course, descendible to
the heirs general, like other purchased estates, but are an exception
to the rule. For, properly speaking, the Prescription is rather to be
considered as an evidence of a former acquisition, than as an acqui-
sition de novo: and therefore, if a man prescribes for a right of way
in himself and his ancestors, it will descend only to the blood of that
line of ancestors in whom he so prescribes; the Prescription in this
case being indeed a species of descent. But, if he prescribes for it in a
que estate, it will follow the nature of that estate in which the Pre-
scription is laid, and be inheritable in the same manner, whether that
were acquired by descent or purchase: for every accessory followeth
the nature of its principal. 2 Comm. c. 17. p. 266.

II. Nothing but incorporeal hereditaments can be claimed by
Prescription; as a right of way, a common, &c.; but no Prescription
can give a title to lands and other corporeal substances, of which more
certain evidence may be had. Dr. & St. Dial. 1. c. 8. Finch. 132.—
For a man shall not be said to prescribe, that he and his ancestors
have immemorially used to hold the castle of Arundel: for this is
clearly another sort of a title; a title by corporal seisin and inheri-
tance, which is more permanent, and therefore more capable of
proof, than that of prescription. But as to a right of way, a common,
or the like, a man may be allowed to prescribe; for of these there is
no corporal seisin, the enjoyment will be frequently by intervals, and
therefore the right to enjoy them can depend on nothing else but im-
memorial usage. See title Comm. Pex, &c.

A Prescription cannot be for a thing which cannot be raised by
grant. For the Law allows Prescription only in supply of the loss of
a grant, and therefore every prescription presupposes a grant to have
existed. Thus, the Lord of a Manor cannot prescribe to raise a tax
or toll upon strangers; for, as such claim could never have been good
by any grant, it shall not be good by Prescription. 1 Ventr. 387.

What is to arise by matter of record cannot be prescribed for, but
must be claimed by grant, entered on record; such as for instance,
the Royal franchises of deodands, felons' goods, and the like. These,
not being forfeited till the matter on which they arise is found by the
inquisition of a Jury, and so made a matter of record, the forfeiture
itself cannot be claimed by any inferior title. But the franchises of
treasure-trove, waifs, estrays, and the like, may be claimed by Pre-
scription; for they arise from private contingencies, and not from any

Among things incorporeal, which may be claimed by Prescription,
a distinction must be made with regard to the manner of prescribing;
that is, whether a man shall prescribe in a que estate, or in him-
self and his ancestors. For, if a man prescribe in a que estate, (that
is, in himself, and those whose estate he holds,) nothing is claimable
by this prescription, but such things as are incident, appendant, or
appurtenant to lands; for it would be absurd to claim any thing as the
consequence, or appendix, of an estate, with which the thing claimed
has no connexion: but, if he prescribes in himself and his ancestors,
he may prescribe for any thing whatsoever that lies in grant; not
only things that are appurtenant, but also such as may be in gross.
Litt. § 183: Finch. L. 104.—Therefore a man may prescribe, that he,
and those whose estate he hath in the manor of Dale, have used to
hold the advowson of Dale, as appendant to that manor: but, if the
advowson be a distinct inheritance, and not appendant, then he can
only prescribe in his ancestors. So also, a man may prescribe in a
que estate for a common appurtenant to a manor; but if he would
prescribe for a common in gross, he must prescribe in himself and
his ancestors. 2 Comm. c. 17.

A person may make title by prescription, to an office, a fair, mar-
ket, toll, way, water, rent, common, park, warren, franchise, Court-
leet, waifs, estrays, &c. But no person can prescribe against an Act
of Parliament, or against the King, where he hath a certain estate and
interest; against the public good, religion, &c. Nor can one Pre-
scription be pleaded against another, unless the first is answered or
traversed; or where one may stand with the other. Lutw. 381: Raym.
115: 2 Lil. 346.
The word easement is a genus to several species of liberties, which one may have in the soil of another, without claiming any interest in the land itself; but where the thing set forth in a Prescription, was to catch fish in the water of another, &c. and no instance could be given of a Prescription for such a liberty by the word easement, a rule was made to set the Prescription right, and to try the merits. 4 Mod. 362. See title Easement.

In trespass for breaking the plaintiff’s close, the defendant prescribed, that the inhabitants of such a place, time out of mind, had used to dance there, at all times of the year, for their recreation, and so justified; issue being taken on this Prescription, defendant had a verdict; it was objected against it, that a Prescription to dance in the freehold of another, and spoil his grass, was ill, especially as laid in the defendant’s plea, viz. at all times of the year, and not at seasonable times, and for all the inhabitants; who, though they may prescribe in easements which are necessary, as a way to a church, &c. they cannot in easements for pleasure only: but adjudged that the Prescription is good, issue being taken on it, and found for the defendant; although it might have been ill on demurrer. 1 Lev. 175. See ante I.

A custom that the farmers of such a farm have always found ale, &c. to such a value, at perambulations, was held naught; because it is no more than a Prescription in occupiers, which is not good in matter to charge the land. 2 Lev. 164.

Prescription by the inhabitants of a parish to dig gravel in such a pit, the soil of W. K., it was doubted whether this was good or not, though it was to repair the highway; but the inhabitants may prescribe for a way, and, by consequence, for necessary materials to repair it. 2 Luw. 1346. Sed qua? and see Gatewood’s case, 6 Co. 60: where Prescription for common, for every inhabitant of an antient messuage in a parish is held not to be good.

Defendant pleaded, that within such a parish, all occupiers of a certain close habent, & habere consueverent, a way leading over the plaintiff’s close to the defendant’s house; this was held ill, for it is not like a Prescription to a way to the Church or market, which are necessary, et pro bono publico. 2 Ventr. 186.

A man may claim a fold-course, and exclude the owner of the soil by Prescription. 1 Saund. 153.—But a diversity hath been taken where a Prescription takes away the whole interest of the owner of the land; and where a particular profit is restrained: in one case it is good; in the other void. 1 Leon. 11.

If a person prescribes for common appurtenant, it is ill, unless it be for cattle levant & couchant, &c. And the reason is, because by such a prescription the party claims only some part of the pasture and the quantum is ascertained by the levancy and couchancy, the rest being left for the owner of the soil; therefore, if he who thus prescribes, should put in more cattle than are levant and couchant on his tenement, he is a trespasser. Noy 145: 2 Saund. 324.

In a Prescription to have Common, the Jury found it to be, paying every year a penny. Here the Prescription is entire, whereof the payment of one penny is parcel; which ought to be entirely alleged in the Prescription in the plea, or it will not be good. Cro. Eliz. 563. 564. But where the payment is collateral from the Prescription, a Prescription may be good without alleging it. Cro. Eliz. 405.
Common for cattle levant and couchant, or a right of common without stint, cannot be claimed by Prescription, as appurtenant to a house without any curtilage or land. 5 Term Rep. K. B. 46. 8 T. R. 396.

It was a question, whether a toll, independent of markets and fairs, might be claimed by Prescription, without shewing that the subject hath some benefit; and some arguments were brought for it, from an authority in Dyer 352. Though by Holt, this Prescription cannot be good, because there was no recompense for it; and every Prescription to charge the subject with a duty, must import some benefit to him who pays it; or else some reason must be shewn why the duty is claimed. 4 Mod. 319.

A Court-leet is derived out of the hundred; and if a man claims a title to the leet, he may prescribe that he and his ancestors, and all those whose estate he hath in the hundred, time out of mind, had a leet. Co. Litt. 125.

There may be a prescription for a Court to hold pleas of all actions, and for any sum or damage; and it will be good. Jenk. Cent. 327. If a Court held by Prescription is granted and confirmed by letters patent, this doth not destroy the Prescription; but it is said the Court may be held by Prescription as before. 2 Rol. Abr. 271.

A grant may enure as a confirmation of a Prescription; and the Prescription continue unaltered by a new charter, &c. where the charter is not contrary to the Prescription. Moor 818, 830. But in some cases it is intended, that a Prescription shall begin by grant; and as to Prescriptions in general, the Law supposes a grant, or purchase originally. Cro. Eliz. 709: Co. Litt. 113.

Every Prescription is taken strictly: and a man ought not to prescribe to that which the Law, of common right gives. 3 Leon. 13: Noy 20.

A Prescription must have a lawful commencement, and peaceable possession and time are inseparably incident to it. Co. Litt. 113. Though a title gained by custom or Prescription, will not be lost by interruption of the Possession for ten or twenty years; but it may be lost, by interruption in the right. Co. Litt. 114: 2 Inst. 653.

Prescriptions against Actions and Statutes; See title Limitation of Actions II. 2.

Prescriptions by the Ecclesiastical Law, as to tithes, &c. See Modus Decimandi; Tithes.

PreSENE. Sometimes the Presence of a superior Magistrate takes away the power of an inferior. 9 Rep. 118. And the Presence of one may serve for all the feoffees or grantees, &c. 3 Rep. 26. When the Presence of a man, in the place where an offence is due, may make him guilty, vide Accessory.

PRESENTATION, [Presentatio.] The act of a patron, offering his clerk to the Bishop of the diocese, to be instituted in a church or benefice of his gift, which has become void. See titles Advowson; Parson.

Presentee. The clerk presented to a church by the patron. In stat. 13 R. 2. st. 1. c. 1. the King's Presentee, is he whom the King presents to a benefice.

Presentment, A mere denunciation of Jurors, or some officers, &c. (without any information) of an offence, inquirable in the
Court where it is presented. *Lamb. Eiren. lib. 4. c. 5.* Or it may be
defined to be an information made by the Jury in a Court, before a
Judge who hath authority to punish an offence. 2 Inst. 739.

The Presentment is drawn up in *English* by the Jury, in a short
note, for instructions to draw the indictment by; and differs from
an indictment, in that an indictment is drawn up at large, and
brought ingrossed to the Grand Jury to find. 2 Litt. Abru. 353.

There are also Presentments of Justices of Peace in their Sessions
of offences against statutes, in order to their punishiment in superior
Courts; and Presentments taken before Commissioners of Sewers,
&c. Presentments are made in Courts-leet and Courts-baron, before
stewards; and, in the latter of surrenders, grants, &c. Also by
constables, churchwardens, surveyors of the highways, &c. of things
belonging to their offices. See this Dictionary, titles, *Copyhold; Sur-
render.*

A *Presentment*, generally taken, is a very comprehensive term;
including not only Presentments, properly so called, but also inquisitions
of office, and indictments by a grand Jury. A *Presentment, pro-
erly speaking*, is the notice taken by a Grand Jury of any offence
from their own knowledge or observation, without any bill of indict-
ment laid before them, at the suit of the King. *Lamb. Eiren. l. & c.
5.*—As the Presentment of a nuisance, a libel, and the like; upon
which the officer of the Court must afterwards frame an indictment
before the party presented can be put to answer it. 2 Inst. 739. An
inquisition of office is the act of a Jury, summoned by the proper
officer to inquire of matters relating to the Crown, upon evidence
laid before them. See title *Inquest.* Some of these are in themselves
Convictions, and cannot afterwards be traversed or denied; and there-
fore the inquest or Jury ought to hear all that can be alleged on both
sides. Of this nature are all Inquisitions of *felo de se* of flight in
persons accused of felony; of deodands, and the like: and Present-
ments of petty officers in the Sheriff's-tourn or Court-leet, where-
upon the presiding officer may set a fine. Other Inquisitions may be
afterwards traversed or examined; as particularly the Coroner's in-
quisition of the death of a man, when he finds any one guilty of
homicide: for in such cases the offender so presented must be ar-
raigned upon this inquest, and may dispute the truth of it, which
brings it to a kind of indictment. See further title *Indictment; High-
ways.*

**PRESIDENT, Prases.]** The king's lieutenant in any province; as,
President of *Wales,* &c.

**PRESIDENT OF THE COUNCIL,** Is the fourth great officer of
State. See title *Precedence.* He is as antient as the reign of King
John; and hath sometimes been called *Principalis Consiliarius,* and
other times *Capitallis Consiliarius.*—During the reign of Q. Elizabeth,
the office remained dormant. It appears to have been exercised in
the reign of Jac. I. and was revived by Charles II. See title *Privy
Council.*

The office of President of the Council has been always granted by
letters patent under the Great Seal *durante bene placito:* and this
officer is to attend on the King, to propose business at the Council-
table, and report to His Majesty the transactions there: also he may
associate the Lord Chancellor, Treasurer, and Privy Seal, at naming
of Sheriffs; and all other acts limited by any statute, to be done by them. 21 Hen. 8. c. 20. See 1 Comm. 250.

PRESS, Liberty of the; See Libel, IV.; Jury.

PRESSING, for the Sea-service; See this Dictionary, title Impressing Seamen.

PRESSING TO DEATH; See Mute.

PREST, A duty in money to be paid by the Sheriff on his account, in the Exchequer, or for money left, or remaining in his hands. See stat. 2 & 3 Ed. 6. c. 4.

PRESTATION-MONEY, Praestatio, a paying or performing.] Is a sum of money paid by Archdeacons yearly to their bishop pro exteriore jurisdictione—Et sint quieti a Praestatione muragii. Chart. H. 7. Burgens. Mount-Gomer. Praestatio was also antiently used for Purveyance. See Philip's's book on that subject, p. 222.

PREST-MONEY, from the French prest, promptus, expeditus; for that it binds those who receive, to be ready at all times appointed, being meant commonly of soldiers. See stats. 18 H. 6. c. 19: 7 H. 7. c. 1: 2 & 3 Ed. 6. c. 2.

PREMPTUARY, Was antiently taken for intrusion, or the unlawful seizing of any thing. Leg. Hen. 1. c. 11.

PREMPTION, Premptio.] A supposition, opinion, or belief previously formed. Co. Litt. 6, 375: Wood's Inst. 599.

Though Premption is what may be doubted of, yet it shall be accounted truth, if the contrary be not proved. 2 Lill. Abr. 354. But no Premotions ought to be admitted against the Premotions of Law, and wrong shall never be presumed. Co. Litt. 232, 273.

If the eldest son be beyond sea at the death of the ancestor, and the youngest enters into the land, he is not accounted in Law a disseisor: because the Law presumes, that he preserves the possession for his brother: but if on his brother's return he keeps him out of possession, then the Law looks on him as a disseisor. Latch. 68. See titles Evidence; Life Estate.

Where the Law intrusts persons with the execution of a power, the Court will presume in favour of their execution of that Power: though if they make a false return whereby the party and Justice are abused, they may be punished. 12 Mod. 382.

Premptions are said to be either juris & de jure, or juris, or hominis vel judicis. The presumption juris & de jure is that where Law or Custom establishes the truth of any point, on a presumption that cannot be traversed on contrary evidence: Thus a Minor, or infant under age with Guardians is deprived of the Power of acting without their consent, on a presumption of incapacity which cannot be traversed. The presumiptio juris is a presumption established in law till the contrary be proved, as the property of goods is presumed to be in the possessor: Every Presumption of this kind must necessarily yield to contrary proof.—The presumiptio hominis vel judicis is the conviction arising from the circumstances of any particular case.

PREMPTIVE EVIDENCE; See titles Evidence; Felony; Homicide, &c.

PREMPTIVE HEIRS, Such Persons who, if the ancestor should die immediately, would, in the present circumstances of things, be his heirs; but whose right of inheritance may be defeated by the contingency of some nearer heir being born. See title Descent I.
PRETENDED TITLES, Buying or selling; See titles Champer

PRETENDED RIGHT, Jus Pretensum.] Where one is in pos-

session of Land, and another who is out of possession claims and sues

for it; here the Pretended Right or title is said to be in him who so

claims and sues for the same. See Mod. Cas. 302.

PRETIIUM AFFECTIONIS; an imaginary value put on a thing

by the fancy of the owner, in his affection for it.—Bell's Scotch Dict.

PRETIIUM SEPULCHRI; See title Mortuary.

PRICE; See titles Consideration; Agreement, &c.

PRIDE GAVEL, from prid, the last syllable of lamprid, and gavel,

a rent or tribute.] In the manor of Rodeley in the county of Glouces-
ter, is a rent paid to the Lord, by certain tenants, in duty and acknow-

ledgment to him for the privilege of fishing for lampreys or lamprids


PRIESTS, In general signification, are any ministers of a church;

but in our Law, this word is particularly used for ministers of the

church of Rome. See title Papists.

PRIMAGE, A duty at the Water-side, due to the master and

mariners of a ship; to the master for the use of his cables and ropes,

to discharge the goods of the Merchant; and to the Mariners for lading

and unlading in any port or haven; it is usually about 12d. per

ton, or sixpence per pack or bale, according to custom. Merch. Dict.


PRIMATE, an Archbishop who has a distinguishing rank from

all other Archbishops and Bishops.

PRIMO-FINE, On suing out the writ or praecipe, called a writ

of covenant, there is due to the King, by antient prerogative, a Pri-

mer Fine, or a Noble for every five marks of Land sued for; that is,
one-tenth of the annual value. See title Fine of Lands I. 1.

PRIMICERIUS, The first of any degree of men; sometimes it

signifies the nobility. Primicerios totius Angliæ, the Nobility of Eng-

land. Mon. Angli. i. 838.

PRIMIER SEISIN, Prima seisina.] The first possession, or seisin;

heretofore used as a branch of the King’s prerogative whereby he

had the first possession, that is, the entire profits for a year of all the

lands and tenements, whereof his tenant (who held of him in capite)
died seised in his demesne as of fee, his heir being then at full age,

until he did homage, or, if under, until he were of age. Staundf. Præ-

rog. cap. 3, and Bracton, t. 4. tr. 3. c. 1. But all the charges arising

by Primier Seisins are taken away by stat. 12 Car. 2. c. 24. See title

Tenures.

PRIMIER SERGEANT, The King’s first Serjeant at Law. See

title Precedence.

PRIMO BENEFICIO, The first Benefice in the King’s gift, &c.

See Beneficio prius, &c.

PRIMOGENITURE, Primogenitura.] The title of an elder

son or brother in right of his birth: the reason of which Coke says, is,

Qui prior est tempore, potior est jure; affirming moreover, That, in

King Alfred’s time, knights’ fees descended to the eldest son; be-

cause, by the division of such fees between males, the defence of the

realm might be weakened. And Dodderidge, in his treatise of No-

bility, saith, (pag. 119.) it was antiently ordained, That all knights’

fees should come unto the eldest son by succession of heritage;

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whereby he, succeeding his ancestors in the whole inheritance, might be the better enabled to maintain the wars against the King's enemies, or his Lord's: and that the socage should be partible among the male children to enable them to increase into many families, for the better furtherance in, and increase of husbandry. Cowell, and Leg. Alfred. Dodd. Treat. Nobil. 119. See title Descent.

PRINCE, Princeps.] Sometimes taken at large for the King himself; but more properly for the King's eldest son, who is called PRINCE OF WALES. See title King II.

It is said by some writers, that the King's eldest son is Prince of Wales by Nativity; but others say, that he is born Duke of Cornwall, and afterwards created Prince of Wales, though from the day of his birth he is stiled Prince of Wales, a title originally given by Edward I. to his son. His titles are, Prince of Wales, Duke of Cornwall, and Earl of Chester.

Before Edward II. who was the first Prince of Wales, and born at Caernarvon in that Principality, (his mother being sent there big with child by Edward I. to appease the tumultuous spirit of the Welch,) the eldest son of the King was called Lord Prince; but Prince was a name of dignity long before that time in England. Stow's Prærog. c. 22, 75. Seestats. 27 H. 8. c. 26: 28 H. 8. c. 3. And Stow's Annals, p. 303. In a charter of King Offa, after the Bishops had subscribed their names, we read Brordonus Patricius, Binnanus Princeps: and afterwards the Dukes subscribed their names. And in a charter of King Edgar, in Mon. Angl. tom. 3. p. 302; Ego Edgarus Rex rogatus ab eistiscofo meo Decrivolfe, & Principe meo Alfredo, &c. And in Matt. Paris, p. 155; Ego Halden Princeps Regis pro viribus assensum præbo, & ego Turketillus Dux concoed.

As Duke of Cornwall, and likewise Earl of Chester, the Prince of Wales is to appoint the Sheriffs, and other Officers, in those Counties. The Prince of Wales, besides the revenues of the Principality of Wales, Duchy of Cornwall, &c. has also an income settled on him, from time to time, by Parliament. See stat. 33 Geo. 3. c. 78, enabling the Prince to make leases in the Duchy of Cornwall; and stat. 35 Geo. 3. c. 125, for preventing the accumulation of debts by any future Heir-Apparent of the Crown, and for regulating his mode of expenditure from the time of his having a separate establishment.

PRINCIPAL, Principium.] Is variously used in our law; as an heir loom, &c.

The word principal was also sometimes antiently used for a mortuary, or corse-present. See title Mortuary.

In Urchenfield in the county of Hereford, certain Principals, as the best beast, the best bed, the best table, &c. pass to the eldest child, and are not liable to partition.

The chief person in some of the Inns of Chancery is called Principal of the house. Cowell.

PRINCIPAL AND ACCESSARY; See this Dictionary, title Accessary.

PRINCIPAL CHALLENGE, a species of the challenge to Jurors for suspicion of partiality. This takes place where the cause assigned carries with it prima facie evident marks of suspicion, either of malice or favour. See titles Jury II; Challenge.

PRINTING; See Books; Libel; Literary Property.

By 39 Geo. 3. c. 79. § 23—33. certain restrictions are imposed on
Printers and others for the preventing of Treasonable and Seditious Publications.—Printers, Letter-Founders, and Printing press makers, are to register their Names with the Clerk of the peace. The name and abode of the printer is to be printed at the beginning and end of every book, and on the front of every paper printed; and one copy thereof is to be kept by the Printer with the name of his employer written thereon, and to be produced on demand any time within six months after the time of printing. One justice of Peace may empower a Peace Officer to search for presses and types suspected to be illegally used: which may be seized, together with any printed papers found on the premises. The King’s Printer, the public presses in the universities, and the papers printed by authority of parliament, or other public boards, are excepted from the operation of this act. See 39 & 40 Geo. 3. c. 95, and 41 Geo. 3. (U. K.) c. 80.

PRINTS AND ENGRAVINGS; See title Literary Property.

PRIOR, Was in dignity next to the Abbot, or the chief of a convent, &c. See title Abbot.

PRIORS ALIENS, Priores Alieni.] Were certain religious men, born in France and Normandy, Governors of Religious Houses erected for foreigners here in England; but were suppressed by Henry V. and afterwards their livings were given to other monasteries and houses of learning, and especially towards the erecting of the King’s Colleges, at Cambridge and Eton. 2 Inst. 584. See Stow’s Annals, 582: and stat. 1 Hen. 5. c. 7.

PRIORITY, Prioritas.] An antiquity of tenure, in comparison of another less antient. Old Nat. Br. 94. Crompt. in his Jurisd. fol. 117, useth this word in the same signification. The Lord of the Priority shall have the custody of the body, &c. and fol. 120: if the tenant hold by priority of one, and by Posterity of another, &c. To which effect, see also F. N. B. 142. and tit. Posterity.

PRIORITY OF DEBTS AND SUITS; See titles Action; Abatement; Pleading, &c.—As to payment of Debts by an Executor in order of Priority; see this Dictionary, title Executor V. 6.—As to Priority of mortgages, see title Mortgage III.

There is no Priority of time in Judgments; for the Judgment first executed shall be first paid. See title Judgment.

Wherever any suit on a penal statute may be said to be actually depending, it may be pleaded in abatement of a subsequent prosecution, being expressly averred to be for the same offence. Neither will it be any exception to such a plea, that the Offence in a subsequent prosecution is laid on a day different from that in the former. Neither doth a mistake in such a plea of the very day, whereon the suit pleaded as prior was commenced, seem to be material on the issue of null tie record, if it appear in truth to have been commenced before the other, and for the same matter.

And if two informations be exhibited on the very same day, it seems that they may mutually abate one another; because there is no Priority to attach the right of the suit in one informer, more than in the other. Also it seems, that an information or bill the same day that they are filed, may be so far said to be depending before any process sued on them, that they may be pleaded in abatement of any other suit on the same statute. And from the same reason it seems also, that a writ of debt may be so pleaded in abatement of any other suit on the same statute; and from the same reason it seems also that
a writ of debt may be so pleaded after it is returned; because then it seems to be agreed, that it may be properly said to be depending; and whether it may not also be so pleaded before it be returned, seems questionable; because, according to some opinions, a writ may be said to be depending as soon as purchased. 2 Hawk. P. C. c. 26. § 63. See title Information.

Those points of law, where Hawkins seems to doubt, are now, in general, pretty clearly settled, according to what appeared to be his opinion.

PRISAGE, Prisagium.] That share which belongs to the King, or Admiral, out of such merchandises as are taken at sea, by way of lawful prize, which is usually a tenth part. See stat. 31 Eliz. c. 5.

PRISAGE OF WINES is an antient duty or custom on wines, payable at certain ports, except London, Southampton, &c. It is where the King claims out of every ship or vessel laden with wine, containing twenty tons or more than two tons of wine, the one before, the other behind the mast, at his price, which is twenty shillings for each ton; but this varies according to the custom of places; and at Boston every bark laden with ten tons of wine or above, pays Prisage. This word is almost out of use, being now called Butlerage, because the King’s chief butler receives it. See title Customs on Merchandise.

By 43 G. 3. c. 156. the Treasury were empowered to purchase the duties of Prisage, and the butlerage in Great Britain, and a contract for that purpose with the Duke of Grafton, is confirmed by 46 G. 3. c. 79.—By 46 G. 3. c. 94. the Treasury of Ireland were empowered to purchase the duty of Prisage in that country from the Earl of Ormond.

PRISE; See Prize.

PRISO, A prisoner taken in war. Hoveden, p. 541.

PRISON, Prisona.] A place of confinement for the safe custody of persons, in order to their answering any action, civil or criminal. See title Gaol.

PRISON BREAKING; See title Gaol, III.

PRISONER, Prisonarius, Fr. Prisonnier.] One confined in prison, on an action, or commandment: and a man may be a prisoner on matter of record, or of fact: a prisoner on matter of record, is he who, being present in Court, is by the Court committed to prison; and the other is on arrest, by the Sheriff, &c. Staundf. P. C. 34, 35. See titles Gaol, II; Debtors; Execution, III. 4; Insolvent Debtors.

PRIT; See Pleading.

PRIVATEERS, A kind of private men of War, the persons concerned wherein administer, at their own costs, a part of a war, by fitting out these ships of force, and providing them with all military stores; and they have instead of pay, leave to keep what they take from the enemy, allowing the Admiral his share, &c.

Privateers may not attempt any thing against the laws of nations; as to assault an enemy in a port or haven, under the protection of any Prince or Republic, whether he be friend, ally, or neater; for the peace of such places must be inviolably kept; therefore by a treaty made between King William and the States of Holland, before a commission shall be granted to any Privateer, the commander is to give security, if the ship be not above 150 tons, in 1500l. and if the ship exceed that burden, in 3000l. that they will make satisfaction for all damages which they shall commit in their courses at sea, contrary to the treaties with those States, on pain of forfeiting their commissions; and the ship is made liable. Lex Mercat. 177, 178.
Besides these private commissions, there are special commissions for Privateers, granted to commanders of ships, &c. who take pay, and are under a marine discipline: and if they do not obey their orders, may be punished with death. And the wars in latter ages, have given occasion to Princes to issue these commissions, to annoy the enemies in their commerce, and hinder such supplies as might strengthen them, or lengthen out the war; and likewise to prevent the separation of ships of greater force from their fleets or squadrons. See titles Letters of Marque; Admiralty.

PRIVATION, Privatio.] A taking away or withdrawing: most commonly applied to a Bishop or Rector, when by death, or other act, they are deprived of their preferments; it seems to be an abbreviation of the word Deprivation. Co. Litt. 239.

PRIVEMENT ENSIENT, The term to signify a woman being with child; but not quick with child. Wood's Inst. 662.

PRIVIES, from the Fr. Prive, i.e. Familiaris.] Those who are parakers, or have an interest in any action or thing, or any relation to another; as every heir in tail is privy to recover the land entailed, &c. Old Nat. Br. 117.

There are five several kinds of Privies, viz. Privies of blood, such as the heir to the ancestor; Privies in representation, as executors or administrators, to the deceased; Privies in estate, between donor and donee, lessor and lessee, &c. Privies in respect of contract; and Privies on account of estate and contract together. 3 Rep. 23. 123:

It is also said, that there are three sorts of Privies and Privities; in estate, in blood, and in law.

Privies in blood are intended of Privies in blood inheritable, and this in three manners, viz. inheritable as general heir, or as special heir, or as general and special heir.

Privies in estate, as joint tenants, baron and feme, donor and donee, lessor and lessee, &c.

Privies in law are, when the law, without blood or privity of estate, casts the land on one, or makes his entry lawful; as lord by escheat, lord who enters for mortmain, lord of villein, &c. 8 Rep. 42, b: Jo. 32.

The Author of the New Terms of the Law maketh many sorts of Privies, viz. Privies in estate, Privies in deed, Privies in law, Privies in right, and Privies in blood. See Perkins, 831, 832, 833. Coke, lib. 3. f. 23. and lib. 4. 123, 124. mentions four kinds of Privies, viz. Privies in blood, as the heir to his father; Privies in representation, as executors or administrators to the deceased; Privies in estate, as he in reversion, and he in the remainder, when land is given to one for life, to another in fee, for that their estates are created both at one time: the fourth is Privy in tenure, as the lord by escheat, that is, when the land escheath to the lord for want of heirs. Cowell.

If a fine be levied, the heirs of him who levied it are termed Privies. See title Fine of Lands I. If a lessor grants his reversion, the grantee and lessee are Privies in estate: Privies in contract extend only to the persons of the lessor and lessee; and where the lessee assigns all his interest, here the lessor and lessee remain Privy in contract, but not in estate, which is removed by the assignment. 3 Rep. 23.
Privies, in respect of estate and contract, appear, where the lessee assigns his interest; but the contract between the lessor and lessee, as to action of debt, continues, the lessor not having accepted of the assignee. 3 Lev. 295.

If the lessor grants over his reversion, or if the reversion escheat, now between the grantee, or the lord by escheat, and the lessee, there is Privity in estate only.

Privity of contract only, is personal Privity, and extends only to the person of the lessor, and to the person of the lessee; as when the lessee assigned over his interest, notwithstanding his assignment, the Privity of the contract remained between them, though Privity of the estate be removed by the act of the lessee himself; and the reason of this is,

1st. Because the lessee himself shall not prevent by his own act such remedy, which the lessor had against him by his own contract; but when the lessor granted over his reversion, there, against his own grant, he cannot have remedy, because he has granted the reversion to the other, to which the rent is incident.

2dly. The lessee may grant the term to a poor man who shall not be able to manure the land, and who will by indigence, or for malice, permit it to lie fresh, and then the lessor shall be without remedy, either by distress, or by action of debt, which shall be inconvenient, and will concern in effect every man (because for the most part every man is a lessor, or a lessee); and for those two reasons all the cases of entry by tort, eviction, suspension, and apportionment of the rent are answered; for in such cases, it is either the act of the lessor himself, or the act of a stranger; and in none of the cases, the sole act of the lessee himself shall prevent the lessor of his remedy, for that it will introduce such inconvenience as has been said. See title Lease I. 3.

Privity of contract and estate together, is between the lessor and lessee himself. 3 Ref. 23.

Where there are Privies in contract, and the Privity is altered by assignment of an executor, &c. before any rent due, and after the Privity of estate, by the assignment of the executor's assignee, nothing remains whereby to maintain any action. Latch. 260.

There are likewise Privies indeed, or in Law; where the deed makes the relation; or the Law implies it, in case of escheats to the lord, &c. And only parties and Privies shall take advantage of conditions of entry on lands, &c. Co. Litt. 516.

If I deliver goods to a man, to be carried to such a place, and he, after he hath brought them thither, steal them, it is felony; because the Privity of delivery is determined as soon as they are brought thither. Staundf. Pl. Cor. lib. 1. cap. 15. 25. Merchants privy are opposed to merchant strangers in stat. 2 Ed. 3. c. 9. 15.

Privies inheritable, as heir general, shall take benefit of the infancy; as if infant tenant in fee-simple makes feoffment, and dies, his heir shall enter. The same law of him who is heir general and special, and also of him that is heir special, and not general. But Privies in estate (unless in some special cases) shall not take advantage of the infancy of the other. 8 Ref. 42. b. 43.
PRIVILEGE.

PRIVILEGIIUM. Is defined by Cicero, in his oration pro domo sua to be lex privato homini irrogata. It is, says another, Jus singulare, whereby a private man, or a particular Corporation, is exempted from the rigour of the Common Law. It is sometimes used in Law for a place which hath some special immunity. Kitchin 118.

Privilege is either personal or real: a personal Privilege is, that which is granted to any person, either against or beyond the course of the Common Law in other cases; as for example, Privilege of Parliament.

A Privilege real is that which is granted to a place, as to the Universities, that none of either may be called to Westminster Hall, on any contract made within their own precincts, or prosecuted in other Courts: and one belonging to the Court of Chancery, cannot be sued in any other Court, certain cases excepted; and if he be, he may remove it by writ of Privilege, grounded on the statute 18 E. 3. Cowell. Officers of that Court are to be sued in the petty bag office.

Privilege is an exemption from some duty, burden, or attendance, to which certain persons are entitled; from a supposition of Law, that the stations they fill, or the offices they are engaged in, are such as require all their care; that therefore, without this indulgence, it would be impracticable to execute such offices, to that advantage which the public good requires. 4 New Abr. 215.

I. Of Privilege in Suits, allowed Officers and Attendants in the Courts of Justice; and see titles Abatement I. 3. (a); Attorney.

II. Of the Privilege of Peers and Members of Parliament; in addition to what is said under titles Parliament; Peer.

III. Of the Proceedings in Courts, by and against Persons entitled to Privilege of Parliament.

I. The Officers, Ministers, and Clerks of the Courts in Westminster Hall are allowed particular Privileges in respect of their necessary attendance on those Courts; they are regularly to sue and be sued in the Courts they respectively belong to, and cannot (except in certain cases) be impleaded elsewhere; which Privilege arises from a supposition of Law, that the business of the Court, or their clients' causes would suffer by their being drawn into another than that in which their personal attendance is required. 2 Inst. 551: 4 Inst. 71: Vaugh. 154: Dyer 377. a. 31. 30.

The following extract from Tidd's Pract. K. B. applies in general, not only to Attornies, but to all other Officers of the Court; and details the nature of the Practice by and against them; authorities are cited by Mr. Tidd for all the positions laid down.

Where an Attorney is plaintiff, he is entitled to sue in his own Court, by attachment of Privilege, and may lay the venue in Middlesex. But an Attorney or other privileged person, defendant, has not the privilege of changing the venue into Middlesex, when it is laid in another county. Where he is defendant, he must be sued in his own Court by bill, even as acceptor of a bill of exchange, or for a debt under forty shillings; and cannot be arrested or holden to special bail. It is also said, that an Attorney is entitled to have his cause tried at bar. These Privileges are allowed not so much for the benefit of Ar-
tornies, as of their clients; and are therefore confined to Attornies
who practise, or at least have practised within a year: and they are
never allowed against the King; but actions *qui tam* are not consider-
ed as the King's actions. Neither are they allowed to Attornies, as
against each other: It being a general rule, that there can be no Privi-
lege against Privilege. But this rule only applies to Attornies of the
same Court; for where they are of different Courts, the plaintiff is
entitled to his Privilege. It is also settled, that an Attorney shall not
be allowed his Privilege, where he sues or is sued *in outer droit*, as
executor or administrator; or jointly with his wife, or other person
who is not privileged; or where there would otherwise be a failure or
defect of justice; as where an appeal, which only lies in the Court of
K. B. is brought against an Attorney of the Common Pleas, or such
an Attorney is in the actual custody of the Marshal: but where an
Attorney of the Common Pleas puts in bail, to an action depending
in the Court of K. B. he does not thereby lose his Privilege; but may
plead it in that action, or in any other brought against him by the
bye; for it would be absurd, that he who founds his action on that of
another, should be in a better condition than the original plaintiff.
Yet where an Attorney, having put in bail, waives his Privilege, by
pleading in chief, in one action, it is construed to be a waiver of
Privilege, in all other actions brought against him by the bye, during
the same term.

The Attachment of Privilege, at the suit of an Attorney, is in
nature of a *Latitat*: therefore, in replying to it to a plea of the statute
of Limitations, the plaintiff must set forth the continuances: and, like
a *Latitat*, it may be sued out, and will warrant proceedings, against
several defendants for distinct causes of action. In suing it out, the
rule is, that "every Attorney shall leave a *precipe* with the signer of
the writs, containing the defendants' names, not exceeding four in
each writ, with the return and day of signing such writ, and the
agent's or Attorney's name who sued out the same; and that all such
*precipes* shall be entered on the roll, where the *precipes* of Latitats,
and all other writs issuing out of this Court are entered; and the
Officer, that signs the writs in this Court, shall not sign such attach-
ment, till a *precipe* be left with him for that purpose." *R. Hil.* 20
Geo. 2.

An Attorney was formerly permitted to hold the defendant to spe-
cial bail upon an attachment of Privilege, for fees or disbursements,
however trifling. But now, since the statutes for preventing frivolous
and vexatious arrests, the defendant cannot be arrested and holden to
special bail, upon an attachment of Privilege, or any other process,
unless the cause of action amount to ten pounds or upwards. Where
it is under that amount, the defendant must be served with a copy of
the process, and notice to appear, as in other cases.

The time allowed for declaring upon an attachment of Privilege,
is the same as upon a *Latitat*, or other process in trespass. And if
an Attorney sue out an attachment of Privilege, and deliver or file
his declaration, and give notice thereof, four days exclusive before the
end of the term wherein the attachment is returnable, the defendant
must plead as that of term; the plaintiff having entered a rule to
plead, and demanded a plea; but if he do not declare within that time,
the defendant may imparl to the next term; and if he do not declare
before the essoin day, the defendant will have an imparlance to the
term following.
The bill against an Attorney is a complaint in writing, describing the defendant as being present in Court; and generally concludes with a prayer of relief, though the declaration upon the bill is not demur- rable for want of it. Formerly, the bill against an Attorney could only have been filed in term time, sedente curia, and not in vacation. But now it may be filed in vacation, as well as in term time: though if it be filed in vacation, otherwise than to avoid the statute of Limitations, the plaintiff will not be allowed his costs, if the action be settled before the ensuing term.

In practice, it is usual to file the bill on stamped parchment, with the Clerk of the declarations, in the King's Bench Office; and to deliver a copy of it, on stamped paper, to the defendant, with notice thereon to plead in four days. And if the bill be filed, and a copy thereof delivered, four days exclusive before the end of the term, including Sunday, the defendant must plead as of that term; the plaintiff having entered a rule to plead, and demanded a plea: but if the bill be not filed, and a copy delivered within that time, the defendant is entitled to an imparlance. See title Pleading.

The rest of the Proceedings, by and against Attornies, are the same as in other cases; only that they are not bound to pay for copies of the pleadings.

Where J. S. was arrested in B. R. and after the arrest he procured himself to be made an Attorney of C. B. and prayed his privilege, it was disallowed, because it accrued pendente lite. 2 Rol. Rep. 115.

If an Attorney lays his action in London, the Court will change the venue on the usual affidavit; for, by not laying it in Middlesex, he seems regardless of his privilege, and is to be considered in the same light as an unprivileged person. 2 Vent. 47; Salk. 668.

As to other persons than Attornies claiming Privilege; the following cases are deserving notice:

Anderson, Ch. J. of C. B. brought trespass by bill for breaking his house in the city of Worcester, against a citizen of that city; the Mayor and Commonalty came and showed a Charter granted by Edward VI. and demanded conusance of pleas; but it was refused, because the Privilege of that Court, of which the plaintiff was a Chief Member, is more antient than the patent; for the Justices, Clerks, and Attornies, ought to be there attending their business, and shall not be imploade or compelled to imploade others elsewehre; and this privilege was given the Court on the original erection of it. 3 Leon. 149.

In debt against the Warden of the Fleet, by bill of Privilege, he refused to appear; the Court doubted how they could compel him, as they could not forejudge him the Court, he having an inheritance in his office; but it being surmised that he made a lease of his office, it was held that he should not have his Privilege, for that the lessee, and not he was the officer during the lease. 2 Leon. 173.

So, if the Marshal of B. R. grants his place for life; the grantor has no Privilege during that time. 1 Vent. 65.

A Clerk of B. R. was sued in an inferior Court for a debt under five pounds, and had a writ of Privilege allowed; for the stat. 21 Jac. 1. c. 23. never intended to take away the Privilege of Attornies. Palm. 403.

In the Court of Exchequier there are three sorts of Privilege: 1st. As Debtor. 2dly, As Accountant. 3dly, As Officer. Hard. 362. Vol. V.
J. S. was sued in London, which he removed into B. R. and afterwards prayed his Privilege of the Court of Exchequer; and on the puisne Baron's coming into Court, and bringing the red book of the Exchequer, which showed that he was an Escheator, and so an Accountant to the King, the privilege was allowed. *Noy 40. Sed gu?* The Officer having chosen the court of B. R. for determination of his suit, and thereby, as it seems, submitted to the jurisdiction.

If one holds of the Queen as of her manor, he shall not have the Privilege of the Exchequer for that cause: but if the King grants tithes, and thereupon reserves a rent *nomine decima*, and a tenure of him, there he shall have Privilege. 2 *Leon. 21.*

A *latitat* being sued out against the Commissioners of the Treasury, the puisne Baron of the Exchequer came into the Court of B. R. and brought the red book of the Exchequer, which is deemed a Record in that Court; and thereby it appeared, that the Treasurer had Privilege of being sued only in that Court; and the patent being produced in Court which constituted the defendants, &c. and granted them the office of Treasurer of *England*, their Privilege was allowed without putting them to bring a writ of Privilege: the Court grounding themselves on the Record before them. 2 *Show. 299.*

It hath been held, that the Treasurer of the Navy is *eo ipso* an accountant; and that an accountant's Privilege will hold against a special Privilege in another Court, as officer of the Court or otherwise, though it be not alleged, that such an accountant is entered on his account, for that every accountant may be attached by the Court, to make up his account, and must attend for that purpose *de die in diem.* *Hard. 316.* See *Moor 753: 2 Inst. 23. 551: Bro. Privilege 16.*

In debt in B. R. against J. S. he pleaded to the jurisdiction, That none of the Privy Chamber ought to be sued in any other Court, without the special licence of the Lord Chamberlain of the household, and that he was one of the Privy Chamber; on demurrer to this plea, the Court overruled it with great resentment, and awarded a *Respondeas ouster.* *Raym. 34: 1 Kebar. 137.*

It was agreed, that the Privilege of the Court of C. B. which Sergeants claimed, extended only to inferior Courts, not to the Courts in *Westminster Hall*; and that a Sergeant may be sued in any of these, because he is not confined to that Court alone, but may practise in any other Court; but it is otherwise as to Attornies or Filasers, who cannot practise in their own name in any other Court but such as they respectively belong to; and that a Sergeant at Law is to be sued by original, not by bill of Privilege. 2 *Lev. 129: 3 Kebar. 42: Moor 296: S. C.*

So, in an action by bill brought in C. B. against a Sergeant at Law, he pleaded that he *ought to have been sued by original, and not by bill*; and on demurrer, the Court held, that the case of a Sergeant and Prothonotary's Clerk were on the same footing, neither of them being bound to personal attendance, as Prothonotaries and Attornies were, that therefore he ought to have been sued by original; and accordingly gave judgment for the defendant. *Trin. 7 G. 2. Sergeant Girdler's case.*

J. S. being arrested by a writ out of C. B. brought his writ of Privilege as Clerk of the Crown Office; but, it appearing that he was only a Clerk to a Clerk of that Office, and not an immediate Clerk of the Office, a *supersedeeus* to the writ of Privilege was granted, on
motion; the Court having agreed, that he had no more Privilege than
an Attorney's Clerk. 2 Show. 287.

A Serjeant at Law, or Barrister, as well as an Attorney, or other
privileged person, whose attendance is necessary in Westminster Hall,
may lay his action in Middlesex, though the cause of action accrued
in another county; and the Court on the usual affidavit will not change
the venue. Stil. 460: Moor 64: 2 Show. 242.

On a motion to discharge a rule which had been obtained for
changing the venue, it appeared, that the plaintiff was a Barrister and
Master in Chancery; and the Court held that he had Privilege, by
reason of his attendance, to lay his action in Middlesex, therefore
discharged the rule. 2 Raym. 1556.

As to the obstructions of public Justice, by means of pretended
privileged places, see this Dictionary title Arrest. The following is a
fuller statement of the statutes there referred to.

By stat. 8 & 9 W. 3. c. 27. § 15. for preventing the many ill prac-
tices used in privileged places to defraud persons of their debts; the
pretended Privileges of White Friars, the Savoy, the Salisbury Court,
Ram Alley, Mitre Court, Fuller's Rents, Baldwin's Gardens, Monta-
gue Close, the Minorics, Mint, Clink, or Deadman's Place, are taken
away. And the Sheriffs of London or their Officers are enabled to
take the posse comitatus, and such other power as shall be requisite,
and enter such privileged places to make any arrest on legal process,
and in case of refusal to break open doors.

The stat. 9 Geo. 1. c. 28. enacts, That if any person within Suffolk
Place, or the Mint, or the pretended limits thereof, wilfully obstruct
persons executing any writ, &c. or abuse any person executing the
same, whereby he receive damage or bodily hurt, the person offend-
ing shall be transported. And on complaint to three Justices, &c. by
any person who shall have a debt owing from any one who resides
in the Mint, having a legal process taken out for recovery thereof,
if the debt be above 50l. on oath thereof, the Justices are empowered
to issue their warrant to the Sheriff of Surrey, to raise the posse,
and to enter the pretended privileged place, and arrest the party, &c. See
also stat. 11 Geo. 1. c. 22, enforcing the above penalties.

II. In an indictment for treason or felony, trespass, vi & armis, assault or riot, process of outlawry shall issue against a Peer; for the
suit is for the King, and the offence is a contempt against him; but
in civil actions between party and party, regularly a Capias or Exig-
Hawk. P. C. c. 44. § 16. See post III. & title Outlawry.

If a Peer of Parliament be convicted of a diseseisin with force, a
capias pro fine and exigent shall issue; for the fine is given by statute,
in which no person is exempted. Cro. Eliz. 170: See Dyer 314.

So, in debt on an obligation against the Earl of Lincoln, who
pledged non est factum, which being found against him, the judgment
was ideo capiatur; on a writ of error brought by him, it was objected
that a capias does not lie against a Peer; sed non allocatur: for by this
plea found against him, a fine is due to the King, against whom none
shall have any Privilege. Cro. Eliz. 503.

An information was exhibited in B. R. against the Earl of Devon-
shire, for striking in the King's Palace; which being in time of Par-
liament, he insisted on his Privilege, and refused to plead in chief,
but sent in his plea of Privilege, to which there was a demurrer and the plea over-ruled, and he was fined 30,000l. *Comb. 49.*

Peers are punishable by attachment for contempts in many instances; as for rescuing a person arrested by due course of Law; for proceeding in a cause against the King’s writ of prohibition; for discharging other writs, wherein the King’s Prerogative, or the liberty of the Subject are nearly concerned; and for other contempts which are of an enormous nature. *2 Hawk. P. C. c. 22. § 33.*

If a Peer be returned on a Jury, on his bringing a writ of Privilege he may be discharged; also it seems the better opinion, that without such writ he may either challenge himself or be challenged by the party. *Dyer 314: Moor 767: 9 Co. 49: Co. Lit. 137: 1 Jon. 153.* See title Jury.

So, if a Peer be made Steward of a base Court, or Ranger of a forest, he may, from the dignity of his person, and the presumption that he is engaged in the more weighty affairs of the Commonwealth, exercise these Offices by deputy; though there are no words for this purpose in his creation. *9 Co. 49. a.*

So if a licence be granted to a Peer to hunt in a chase or forest, he may take such a number of attendants with him as are suitable to his dignity. *2 Co. 49. b.*

If a Peer bring an appeal, the defendant shall not be admitted to wage battle, by reason of the dignity of his person. *2 Hawk. P. C. c. 45. § 5.*

III. There are two ways of proceeding against Peers of the Realm and Members of the House of Commons; first, by original writ; and, secondly, by bill. See title *Original.*

The method of proceeding by Original is by Summons, Attachment, and Distress infinite. The Original should issue into that county where the defendant lives; and a copy of it is usually made out by the plaintiff’s Attorney for the Sheriff, and served as the summons on the defendant. And it is said, that a Peer or Peeress, cannot be attached (on civil process,) but should be brought in by summons. Before, or on the quarto die post of the return of the Original, the defendant either appears or makes default; for he cannot cast an esjoin. If he make default, the plaintiff should sue out a *distringas,* and after that (if necessary) an *alias or pluries distringas;* upon which he may move to increase and sell the issues, as before directed. Or if the Sheriff return, upon the distringas, &c. that the defendant hath nothing by which he can be distrained, the plaintiff may have a *testatum distringas* into another county.

The distringas and other subsequent process upon the Original, state the cause of action at large; and must be made returnable on a general return day, ubiucunque, or wheresoever the King shall then be in England. Each succeeding writ must be teste’d on the quarto die post of the return of the preceding one; and there must be fifteen days at least between the teste and return.

If the defendant appear, upon any of these writs, he should enter his appearance with the Filaser; and when the purpose of the writ is thus answered, “the issues (if any have been levied) shall be returned; or, if sold, what shall remain of the money arising by such sale shall be repaid to the party distrained upon.” See *stat. 10 Geo. 3. c. 50. § 4.* But the plaintiff, in such case, is entitled to his *costs,* and where he had obtained rules for selling the issues levied
upon a *distringas*, alias, and *pluries*, and also a rule for an attachment against the Sheriff, but the defendant appeared before any issues had been actually levied; the Court ordered, that upon payment of the costs of issuing the writs, the rules should be discharged; being of opinion, that these costs were not to abide the event of the suit, but were to be paid to the plaintiff immediately; and at all events, whether he should finally succeed in the suit or not.

At Common Law, it was not usual to proceed by bill against Peers of the Realm, or Members of the House of Commons; but now by statute 12 & 13 W. 3. c. 3. extended by stat. 10 Geo. 3. c. 50. to Scotland, "Any person or persons, having cause of action against any Knight, Citizen, or Burgess of the House of Commons, or any other person entitled to Privilege of Parliament, may prosecute such Knight, &c. in His Majesty's Courts of King's Bench, Common Pleas, or Exchequer, by summons and distress infinite, or by original bill and summons, attachment and distress infinite, which the said respective Courts are empowered to issue against them, or any of them, until he or they shall enter a common appearance, or file common bail, to the plaintiff's action, according to the course of each respective Court." Since the making of this statute, Peers of the Realm, and Members of the House of Commons, may be sued by bill and summons, &c. as well as by original writ. But this mode of proceeding is not allowed as against unprivileged persons.

The bill against a Peer of the Realm, or Member of the House of Commons, is a complaint in writing, describing the defendant as having Privilege of Parliament; and concludes with a prayer by the plaintiff, of process to be made to him, according to the form of the statute, &c. This bill is filed on stamped parchment, with the Clerk of the Declarations, in the King's Bench Office: and the first process thereon is a writ of Summons; which is a judicial writ, issuing out of the same Office, and directed to the Sheriff of the county where the *venue* is laid, commanding him to summon the defendant. Upon this writ the defendant should be summoned, in like manner as upon the Original; and, if he do not appear at the return of it, is subject to the like process of *Distringas*, &c.

The writ of Summons, and other subsequent process upon the bill, differ from the process by Original, in the following particulars; first, that they do not state the cause of action at large, but only require the defendant to answer the plaintiff, generally, in a plea of trespass on the case, to his damage of, &c. (according to the plea), as he can reasonably shew, that thereof he ought to answer; secondly, that they are teste'd on the very return, and not on the *quarto die post* of the return of each other; thirdly, that they are made returnable on days certain, and not on general return days; and fourthly, that there need not be fifteen days between the teste and return of them.

If the defendant appear, he files common bail; and the plaintiff declares against him. The time of declaring against a Peer of the Realm, or Member of the House of Commons, is the same as in other cases. But there are these differences in the manner of declaring: first, that the declaration by bill begins with a *Memorandum*; and secondly, that in assigning the breach in *Assumptio*, against a Peer of the Realm, whether by Bill or Original, as well as in the Bill or Original itself, the plaintiff must not charge the defendant with "contriving and fraudulently intending craftily and subtilly to deceive and defraud him;" for the House of Lords have adjudged it a
very high contempt and misdemeanor, to charge a Member of their House with any species of fraud or deceit.

If a Peer, having Privilege of Parliament, be in the King's Bench prison, a declaration may be filed against him, as being in custody of the Marshal, and no summons need be issued. 5 Term Rep. K. B. 361.

All further proceedings against Peers of the Realm, and Members of the House of Commons, are the same as against other persons; only it should be remembered, that as no capias lies against them in civil actions, they cannot be taken in execution; unless where the judgment is obtained upon a statute-staple, or statute-merchant, or upon the statute of Acton Burnel; in which cases a capias lies, even against Peers of the Realm: And see ante II.

The Court of K. B. refused to grant an attachment against a Peer for not paying money awarded, though the defendant consented it should issue on condition it should lie in the Office for a certain time. Walker v. Grosvenor, (E.) 7 Term Rep. K. B. 171. And so against a Member of Parliament. Id. 448.

Lord Stourton brought a bill against Sir Thomas Meers, to compel him to a specific performance of articles for purchasing Lord Stourton's estate. Sir Thomas in his defence insisted, that there were defects in Lord Stourton's title to the estate; and it being ordered that Lord Stourton should be examined on interrogatories touching his title; it was objected, that Lord Stourton, being a Peer, ought to answer on Honour only; but it was ruled by Lord Harcourt, that though Privilege did allow a Peer to put in his answer on Honour only, yet this was restrained to an answer; and as to all affidavits, or where a Peer is examined as a witness, he must be on oath; and that this examination on interrogatories, being in a cause wherein his Lordship was plaintiff, to force the execution of an agreement, as his Lordship would have Equity, so he should do Equity; and allow the other side the benefit of a discovery, and that in a legal manner; and accordingly ordered Lord Stourton to put in his examination on oath. 1 P. Wms. 145.

Peers, in suits in Equity, are entitled to a letter missive, which method was introduced on a presumption that Peers would pay obedience to the Chancellor's letter; and is founded on that respect which is due to the Peerage. Jenk. 107. If the Lord doth not appear on the letter, a subpœna, on motion, is awarded against him; because no subsequent process can be awarded but on a contempt to the Great Seal; and the Chancellor's letter is only ex gratia. If, on the service of the subpœna, the Peer doth not appear; or if he appears, and does not put in his answer, no attachment can be awarded against him, because his person cannot be imprisoned; but the proceedings must be by sequestration, unless cause, &c. and this is regularly made out, on affidavit made of the service of the latter and subpœna, though sometimes it is moved for without, since the Peer may shew want of service at the day assigned to shew cause why the sequestration should not issue; and this order for a sequestration is never made absolute without an affidavit of the service of the order to shew cause, and a certificate of no cause shewn. 2 Vent. 342. See title Chancery.

A sequestration was granted, unless cause, against Lord Clifford, for want of an answer; he afterwards put in an answer, which being reported insufficient, it was moved for a sequestration absolutely, an
insufficient answer being as no answer; but the Court thought it a hardship, in the case of a Peer or Member of the House of Commons, that a sequestration, which in some respects is in nature of an execution, should be the first process against them; therefore allowed, that in case of an answer which is reported insufficient, the plaintiff is to move again de novo, for a sequestration nisi. 2 P. Wms. 385. See 3 Atk. 730.

It was moved for a sequestration nisi, for want of an answer, against a menial servant of a Peer, as the first process for contempt, in the same manner as in the case of the Peer himself; and though the motion was granted by the Master of the Rolls, yet the Registrar refused to draw it up, as thinking it against the course of the Court; which being moved again before the Chancellor, his Lordship, on reading the stat. 12 & 13 W. 3. c. 3. likewise granted the motion, it appearing to be both in the meaning and words of the statute; and if it were not so, as it was plain no attachment would lie against their persons, consequently there would be no remedy against them, and they would have a greater privilege than their Lord, if the process against such menial servant were to be a subj. xna. 1 P. Wms. 535.

PRIVILEGED DEBTS. This term is applied to such debts as an executor may pay in preference to all others, such as sick-bed and funeral expenses, mournings, servants' wages, &c. See title Executor.

PRIVILEGIUM CLERICALE, Or, in common speech, the Benefit of Clergy. See Clergy, Benefit of.

PRIVILEGIUM Property propter. A man may have a qualified property in animals fera natura, propter Privilegium: that is, he may have the Privilege of hunting, taking and killing them, in exclusion of other persons. 2 Comm. c. 25. p. 394. See title Game.

PRIVITY, Privitas.] Private familiarity, friendship, inward relation. If there be Lord and tenant, and the tenant holds of the Lord by certain services, there is a Privity between them in respect of the tenure Cowell. See title Privies.

PRIVY, from the French privé, familiaris.] Signifies him who is partaker, or hath an interest in any action or thing; Old Nat Brev. 117. See title Privies.

PRIVY-COUNCIL.

Consilium Regis. Privatum Consilium.] A most Honourable Assembly of the King himself and his Privy Counsellors in the King's Court or Palace, for matters of State. 4 Inst. 53.

This is the principal Council belonging to the King, and is generally called, by way of eminence. The Council. According to Coke's description of it at length, it is a Noble, Honourable, and Reverend Assembly, of the King and such as he wills to be of his Privy Council, in the King's Court or Palace. The King's will is the sole constituent of a Privy Counsellor; and this also regulates their number, which, of antient time, was twelve or thereabouts. Afterwards it increased to so large a number, that it was found inconvenient for secrecy and dispatch; and therefore King Ch. II. in 1679 limited it to thirty: whereof fifteen were to be the Principal Officers of State, and those to be counsellors, virtute officii; and the other fifteen were composed of ten Lords and five Commoners of the King's choosing. But since that time the number has been much augmented, and now continues indefinite. At the same time also, the antient office of Lord
President of the Council was revived in the person of Anthony Earl of Shaftesbury. See title President of the Council.

Next to the Lord President of the Council, the Lord Privy Seal sits in Council, the Secretaries of State, and many other Lords and Gentlemen: And in all debates of the Council, the lowest delivers his opinion first, and the King declares his judgment last; and thereby the matter of debate is determined. 4 Inst. 55.

No inconvenience now arises from the extension of the number of the Privy Council, as those only attend who are especially summoned for that particular occasion, upon which their advice and assistance are required. The Cabinet Council, as it is called, consists of those Ministers of State, who are more immediately honoured with His Majesty's confidence, and who are summoned to consult upon the important and arduous discharge of the Executive Authority: their number and selection depend only on the King's pleasure; and each Member of that Council receives a summons or message for every attendance. 1 Comm. c. 5. p. 230. in n.

Privy Counsellors are made by the King's nomination, without either patent or grant; and on taking the necessary oaths, they become immediately Privy Counsellors, during the life of the King that chooses them, but subject to removal at his discretion.

As to the qualifications of Members to sit at this Board: any natural-born Subject of England is capable of being a Member of the Privy Council; taking the proper oaths for security of the Government, and the test for security of the Church. But, in order to prevent any persons under foreign connections from insinuating themselves into this important trust, as happened in the reign of King William in many instances, it is enacted by the act of Settlement, Stat. 12 & 13 W. 3. c. 2. that no person born out of the dominions of the Crown of England, unless born of English parents, even though naturalized by Parliament, shall be capable of being of the Privy Council.

The duty of a Privy Counsellor appears from the oath of Office, which consists of seven articles: 1. To advise the King, according to the best of his cunning and discretion. 2. To advise for the King's honour and good of the public, without partiality through affection, love, meed, doubt or dread. 3. To keep the King's Counsel secret. 4. To avoid corruption. 5. To help and strengthen the execution of what shall be there resolved. 6. To withstand all persons who would attempt the contrary. And, lastly, in general, 7. To observe, keep, and do all that a good and true Counsellor ought to do, for his Sovereign Lord. 4 Inst. 54.

The Power of the Privy Council is to inquire into all offences against the Government; and to commit the offenders to safe custody, in order to take their trial in some of the Courts of Law. But their jurisdiction herein is only to inquire, and not to punish: and the persons committed by them are entitled to their Habeas Corpus by stat. 16 C. 1. c. 10; as much as if committed by an ordinary Justice of the Peace. By the same statute the Court of Star-chamber and the Court of Requests, both of which consisted of Privy Counsellors, were dissolved; and it was declared illegal for them to take cognisance of any matter of property, belonging to the Subjects of this kingdom. But, in Plantation or Admiralty causes, which arise out of the jurisdiction of this kingdom; and in matters of lunacy or idiocy, being a special power of the prerogative; with regard to these, al-
though they may eventually involve questions of extensive property, the Privy Council continue to have cognizance, being the Court of Appeal in such cases: or, rather, the Appeal lies to the King’s Majesty himself in Council; which is, in fact, a Court of Justice, which must at least consist of three Privy Counsellors. See 3 P. Wms. 108: 1 Comm. c. 5. Whenever also a question arises between two provinces in America or elsewhere, as concerning the extent of their Charters and the like, the King in his Council exercises original jurisdiction therein, upon the principles of feodal Sovereignty. And so likewise when any person claims an island or a province, in the nature of a feodal Principality, by grant from the King or his Ancestors, the determination of that right belongs to His Majesty in Council: as was the case of the Earl of Derby, with regard to the Isle of Man, in the reign of Queen Elizabeth; and the Earl of Cardigan and others, as representatives of the Duke of Montague, with regard to the Island of St. Vincent in 1764. But from all the dominions of the Crown, excepting Great Britain and Ireland, an appellate jurisdiction (in the last resort) is vested in the same tribunal; which usually exercises its judicial authority in a committee of the whole Privy Council, who hear the allegations and proofs, and make their report to His Majesty in Council, by whom the judgment is finally given. See 3 Inst. 182: 4 Inst. 53.

The Court of Privy Council cannot decree in personam in England, unless in certain criminal matters: nor the Court of Chancery in rem out of the kingdom. See Lord Hardwicke’s argument in Pen v. Baltimore, where the jurisdiction of the Council and Chancery upon questions arising upon subject-matters abroad, is very fully discussed. 1 Ves. 444.

The privileges of Privy Counsellors, as such, (abstracted from their honorary precedence, see title Precedence,) consist principally in the security which the Law has given them against attempts and conspiracies to destroy their lives. For, by stat. 3 Hen. 7. c. 14. if any of the King’s servants, of his household, conspire or imagine to take away the life of a Privy Counsellor, it is felony, though nothing be done upon it. The reason of making this statute, Coke says, was because such a conspiracy was, just before this Parliament, made by some of King Henry IV.‘s household servants, and great mischief was like to have ensued thereupon. 3 Inst. 38. This extends only to the King’s menial servants. But the stat. 9 Ann. c. 16. goes further; and enacts, that any person who shall unlawfully attempt to kill, or shall unlawfully assault, and strike, or wound, any Privy Counsellor in the execution of his office, shall be a felon without benefit of clergy. This statute was made upon the daring attempt of the Sieur Guiscard, who stabbed Mr. Harley, afterwards Earl of Oxford, with a penknife, when under examination for high crimes in a Committee of the Privy Council. And antiently if one did strike another in the house of a Privy Counsellor, or in his presence, the party offending was to be fined. 4 Inst. 53.

The dissolution of the Privy Council depends upon the King’s pleasure; and he may, whenever he thinks proper, discharge any particular member, or the whole of it, and appoint another. By the Common Law also it was dissolved ipso facto by the King’s demise; as deriving all its authority from him. But now, to prevent the inconveniences of having no Council in being at the accession of a new

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Prince, it is enacted by stat. 6 Ann. c. 7. § 8. that the Privy Council shall continue for six months after the demise of the Crown, unless sooner determined by the successor. See 1 Comm. c. 5.

It is consistent with safety for a Privy Counsellor to give the King counsel when demanded; and the best counsel is ever given to a Prince, when the question is evenly propounded, so as the Counsellor cannot discern which way the King himself inclines; resolution should never precede deliberation, nor execution go before resolution: and when, on debate and deliberation, any matter is well resolved by the Council, a change of it on some private information is neither safe nor honourable. 4 Inst.

The Court of Privy Council is of great antiquity: The Government in England was originally by the King and Privy Council; though at present the King and Privy Council only intermeddle in matters of complaint on certain emergencies; their constant business being to consult for the public good in affairs of State. 4 Inst. 53.

The Lords and Commons assembled in Parliament have often transmitted matters of high concern to the King and Privy Council: And acts of the Privy Council, whether orders or proclamations, were of great authority. Hen. VIII. procured an act of Parliament to be made, that, with the advice of his Privy Council, he might set forth proclamations, which should have the force of acts of Parliament; but that statute was repealed in the reign of Ed. VI.

Acts of the Privy Council continued of great authority until the reigns of K. Charles I. and II.: And by these were controversies sometimes determined touching lands and rights, as well as the suspension of penal Laws, &c. But this seemed to be contrary to stat. 25 Ed. 3. st. 5. c. 4. And by stat. 16 Car. 1. cap. 10. § 5. it is declared, that neither the King, nor the Privy Council, have authority by petition, &c. to determine or dispose of lands, &c. of any Subject. By 6 Ann. c. 6. the Privy Council of Scotland was absorbed in the British Privy Council: it being in that act provided, that the Queen and her successors should have but one Privy Council in or for the kingdom of Great Britain: and that such Privy Council should have the same powers and authorities as the Privy Council of England lawfully had used and exercised at the time of the Union with Scotland, and none other.—See title Liberty.

The King, with advice of his Council, publishes proclamations binding to the Subject: but they are to be consonant to, and in execution of, the Laws of the land.

It is in the power of the Privy Council to inquire into crimes against Government; they may commit persons for Treason, and other offences against the State, in order for their trial in other Courts; and any of the Privy Council may lawfully do it. See title Commitment I.

By stat. 33 Hen. 8. c. 23, persons examined by the Privy Council, on treasons, &c. done within or without the realm, may be tried before Commissioners of Oyer and Terminer, appointed by the King in any county of England. This statute, as far as it relates to treason committed within the kingdom, is repealed by stat. 1 & 2 P. & M. c. 10. See title Treason.

If a person be killed beyond sea, out of the Realm, the fact may be examined by the Privy Council, and the offender tried according to the aforesaid statute. See title Homicide.
**PRO 299**

**PRIVY SEAL, Privatum Sigillum.** A Seal which the King useth to such grants or things, as pass the Great Seal. 2 Inst. 554. See Keeper of the Privy Seal.

No protection can be granted under the Privy Seal, but under the Great Seal: But a warrant of the King under the Privy Seal to issue money out of his coffers, is sufficient; though not under the Privy Signet. 2 Inst. 555: 2 Reft. 17: 2 Rol. Abr. 183. The Privy Seal is sometimes used in things of less consequence, that never pass the Great Seal; as to discharge a recognizance, debt, &c. But no writ shall pass under the Privy Seal, which toucheth the Common Law. 2 Inst. 555. Matters of the Privy Seal are not issuable, or returnable in any Court, &c. 3 Nels. Abr. 211. See title Grant of the King; Treason, 7, &c.

**PRIVY VERDICT;** See title Jury.

**PRIZES, Captio; præda; from the Fr. prendre.** A booty taken from an enemy in time of war: generally applied to the cases of Capture at Sea.

The Prize Courts in the Admiralty, and the Courts of Lords Commissioners of Appeals, have the sole and exclusive jurisdiction over the question of Prize or no Prize, and who are the Captors, notwithstanding any of the Prize Acts: and if they pronounce a sentence of condemnation, adjudging also who are the Captors, the Courts of Common Law cannot examine the justice or propriety of it, even though, perhaps, they would have put a different construction on the Prize Acts. And the same Courts have power to enforce their decrees. 4 Term Reft. 382. See this Dict. titles Admiral; Navy; Seamen; &c.

**PRO, A preposition, signifying for, or in respect of a thing; as pro consilio, &c.** And in Law, pro in the grant of an annuity pro consilio, shewing the cause of the grant, amounts to a condition: But in a feoffment, or lease for life, &c. it is the consideration, and doth not amount to a condition; and the reason of the difference is, because the state of the land by the feoffment is executed, and the grant of the annuity is executory. Plowd, 412. See titles Condition; Grant.

**PROBARE, To claim a thing as a man’s own. Leg. Canut. c. 44.**

**PROBATE OF TESTAMENTS, Probatio Testamentorum.** The exhibiting and proving Wills and Testaments before the Ecclesiastical Judge, delegated by the Bishop, who is Ordinary of the place where the party dies. If all the deceased’s goods, chattels, and debts owing to him, were in the same diocese, then the Bishop of the diocese, &c. hath the Probate of the Testament; but if the goods and chattels were dispersed in divers dioceses, so that there were any thing out of the diocese where the party lived, to make what is called bona notabilia, then the Archbishop of Canterbury, or York, is the Ordinary to make Probate by his prerogative. Blount. See title Executor V. 3.

The Probate of a will is usually made in the Spiritual Court, and is done by granting letters testamentary to the executor under seal of the Court, by which the executor is enabled to bring any action, &c. And if such letters testamentary are granted to the party who exhibits the will, merely on his oath, by swearing that he believeth it to be the last will of the deceased, this is called proving it in common form; and such a Probate may be controverted at any time but if the
executor, besides his own oath, produces witnesses to prove it to be
the last will of the deceased, and this in the presence of the parties
who claim any interest, or in their absence, if they are summoned,
and do not appear; this is termed a Probate per testes, which cannot
be questioned after thirty years. 2 Nels. Abr. 1301.

On an issue whether the deceased made an executor or no, the
Probate of the will was adjudged good proof. 2 Litt. Abr. 375. And
where the Probate of a will is produced in evidence at a trial, the
defendant cannot say that the will was forged, or that the testator
was non compos mentis; because it is directly against the seal of the
Ordinary, in a matter where he had a proper jurisdiction: but the de-
defendant may give in evidence that the seal itself was forged, or that
the testator had bona fide, or he may be relieved on appeal.
1 Lev. 235: Raym. 403: 1 Strange 481. The Probate is evidence
only in questions relating to the personal estates; as a will relating
to real estate only need not be proved. See title Will.

As the judge of the Spiritual Court only can determine the validity
of wills for things personal; therefore the Probate of such a will is
undeniable evidence to a Jury, and may not be controverted at Com-
mon Law. 1 Ld. Raym. 262.

A Probate, according to Holt, is evidence of a will only as to chat-
tels: but if a will of lands be lost, it shall be allowed for such a will
concerning lands. 1 Ld. Raym. 731. 735.

When Probate is to be granted of a will, wherein a legacy is inter-
lined in a different hand, and supposed to be forged, the executor has
no remedy but in the Spiritual Court; where the will ought to be
proved, with a special reservation as to that clause. 1 P. Wms. 388.

Notwithstanding appeal from a will, a person is complete executor
by the Probate; though the Probate may be traversed, if an exec-
cutor plaintiff do not conclude with a profert hic in curia, or the de-
defendant may demand oyer of the will. 3 Bulst. 72.

An executor being made by the act of the party deceased, the law
entitles him to the Probate of the will, and the Probate cannot be re-
voked or altered which would in effect make a new will; yet it may
be suspended by an appeal: but if administration be granted to one,
this is by act of the Court; and if he afterwards become bankrupt,
&c. the administration may be repealed. 1 Rol. Rep. 226: Show. 293:
1 Salk. 36: 2 Nels. Abr. 1302. See title Executor V. 3.

By stat. 21 H. 8. c. 5. which first settled the fees to be taken by a
Registrar and Judge in the Probate of wills, it is enacted, that if the
officer takes more than his due fees, he shall forfeit 10l. to be
divided between the King and party grieved.

The power of granting Probates and administration of the goods of
persons dying, for wages or work done in the King’s docks and yards,
shall be in the Ordinary of the diocese where the person dieth; or in
him to whom power is given by such Ordinary, to the exclusion of
the Prerogative Court, &c. Stat. 4 & 5 Ann. c. 16.

By several acts of Parliament, stamps are imposed on the Pro-
bates of wills and letters of administration, according to the value of
the property of the deceased. By these acts the expence of Probates
for the wills of soldiers and sailors is made very small.

PROBATOR, an Accuser, or approver, or one who undertakes to
prove a crime charged upon another.

The word was strictly meant of an accomplice in felony, who, to
save himself, confessed the fact, and accused any other principal or accessory against whom he was bound to make good the charge by duel, or trial by the country, and then was pardoned life and members, but yet to suffer transportation. Bracton: Fleta, lib. 2. c. 52. § 42. 44. See titles Accessory; Afsirover.

PROCEDENDO. or Procedendo in toquelâ.] A writ which lieth where an action is removed from an inferior to a superior Jurisdiction, as the Chancery, King's Bench, or Common Pleas, by Habeas Corpus, Certiorari, or writ of privilege; to send down the cause to the Court from whence removed, to proceed on it; it not appearing to the higher Court that the suggestion is sufficiently proved, F. N. B. 153: § 5 Reft. 63. See stat. 21 Jac. 1. c. 23. So, where a cause has been removed from an inferior Court, the Court of K. B. will grant a Procedendo if the debt or damages appear to be under 40s. Tidd's Pract. K. B.

If the party who sues out the Habeas Corpus, or Certiorari, doth not put in good bail in time, (where good bail is required) then there goes this writ to the inferior Court to proceed notwithstanding the Habeas Corpus, &c. Rule, Mich. 1564. § 8.

If a Certiorari or Habeas Corpus, to remove a cause, be returned before a Judge, the Judge will give a rule thereon to put in good bail, by such a day, which if the defendant, on serving his attorney with a copy of the rule, doth not do, then the Judge will sign a note or warrant for a Procedendo, to remove the cause where the action was first laid, unless bail is perfected in four days after service of the rule: Also if bail be put in at the time, and do not prove good, the Judge will grant a rule for better bail to be put in by a certain day, or else to justify the bail already put in: which if defendant doth not do, the Judge will then likewise grant a warrant for a Procedendo. Tidd. Pract. K. B. See titles Certiorari; Habeas Corpus.

Where bail, put in on removal of a cause into B. R. is disallowed by the Court, if the defendant on a rule for that purpose, and notice given, refuse to put in better bail, such as the Court shall approve of, a Procedendo may be granted; for disallowing the bail makes the defendant in the same condition as if he had put in no bail, and until the bail is put in and filed, the Court is not possessed of the cause so as to proceed in it. Mich. 24 Car. B. R.

After a record returned, and the defendant hath filed bail in B. R. on a cause being removed, a Procedendo ought not to be granted; because by giving and filing bail in this Court, the bail below is discharged. Sid. 313.

The Procedendo removes the suspension created by the Habeas Corpus, and a cause once remanded thereby, cannot afterwards be removed or stayed before judgment. Stat. 21 Jac. 1. c. 23. § 5.

This writ may also be awarded when it appears upon the return of the Habeas Corpus, that the Court above cannot administer the same justice to the parties, as the Court below. As where an action is brought in London on a custom or bye-law, which is only suable there. See titles Habeas Corpus IV. ad fin.

Where an Habeas Corpus is brought, after interlocutory, and before final, judgment in an inferior Court, and the defendant dies before the return of it, a Procedendo shall be awarded; because, by stat. 8 & 9 W. 3. c. 11. the plaintiff may have a scire facias against the executors, and proceed to judgment, which he cannot have in
another Court: and by this means he would be deprived of the effect of his judgment, which would be unreasonable. Satk. 352. So where an action was brought in the Sheriff's Court of London against two partners, and one of them brought a Habeas Corpus, and put in bail for himself only, a Procedendo was granted; for otherwise the plaintiff would have been disabled from going on in either Court. 1 Stra. 527.

If an indictment for felony is removed into K. B. from an inferior Court in order to issue process of Outlawry upon it, and the party accused comes in, the Court of K. B. will award a Procedendo to carry the record back. 5 Term Rep. K. B. 478.

Procedendo on Aid Prayer. If a man pray in aid of the King, in a real action, and aid be granted; it shall be awarded that he sue to the King in Chancery, and the Justices in the Common Pleas shall stay until the writ of Procedendo de loquela come to them: And if it appear to the Judges by pleading, or shewing of the party, that the King hath interest in the land, or shall lose rent, &c. there the Court ought to stay until they have from the King a Procedendo in loquela; and then they may proceed in the plea, until they come to give judgment; when the Justices ought not to proceed to judgment, without a writ for that purpose. So in a personal action, if defendant pray in aid of the King, the Judges are not to proceed till they receive a Procedendo in loquela. And though they may then proceed and try the issue joined, they shall not give judgment until a writ comes to proceed to judgment. New Nat. Brev. 342.

Procedendo ad Judicium; A remedial writ in case of refusal or neglect of justice, which issues out of the Court of Chancery, where Judges of any subordinate Court do delay the parties; for that they will not give judgment, either on the one side or the other, when they ought so to do. In this case a writ of Procedendo shall be awarded, commanding them, in the King's name, to proceed to judgment; but without specifying any particular judgment: for that (if erroneous) may be set aside in the course of appeal, or by writ of error, or false judgment: and upon further neglect or refusal the Judges of the inferior Court may be punished for their contempt by writ of attachment, returnable in the Court of King's Bench or Common Pleas. 3 Comm. c. 7: P. N. B. 153, 154. 240.

If a verdict pass for the plaintiff in assise of novel disseisin before the Justices of assise, and before they give Judgment, by a new commission, new Justices are made; the plaintiff in assise may sue forth a Certiorari, directed to the other Justices to remove the record before the new Justices; and another writ to the new Justices to receive and inspect the record, and then proceed to judgment, &c. New Nat. Brev. 342, 343.

Where the authority of Commissioners of Oyer and Terminer, &c. or of Justices of the Peace, is suspended by writ of supersedeas, their power may be restored by a writ of Procedendo. Regist. 124: 12 Ass. 21: H. P. C. 162.

Processus; à procedendo ab initio usque ad finem.] Is so called, because it proceeds or goes out, upon former matter, either original or judicial; and hath two significations: First, it is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end: Secondly, that is
termed the Process by which a man is called into any temporal Court; because it is the beginning or principal part thereof, by which the rest is directed; or, taken strictly, it is the proceeding, after the original, before judgment. Britton 138: Lamb. lib. 4: Crompit. 133: 8 Ref. 157.

I. Of Process in civil Cases.

II. In criminal Cases.

I. Blackstone considers Process in civil cases as the means of compelling the defendant to appear in Court. This is sometimes called original Process, being founded upon the original writ; and also to distinguish it from mesne or intermediate Process, which issues, pending the suit, upon some collateral interlocutory matter; as to summon Juries, Witnesses, and the like. Finch. L. 436. Mesne Process is also sometimes put in contradistinction to final Process, or Process of execution; and then it signifies all such Process as intervenes between the beginning and end of a suit. 3 Comm. c. 19.

Process therefore, as it is now to be considered, is the method taken by the law to compel a compliance with the original writ; of which the primary step is by giving the party Notice to obey it. This notice is given upon all real praecipes, and also upon all personal writs for injuries not against the peace, by summons; which is a warning to appear in Court at the return of the original writ, given to the defendant by two of the Sheriff’s messengers called Summoners, either in person or left at his house or land. Finch. L. 436. This warning on the land is given, in real actions, by erecting a white stick or wand on the defendant’s grounds. Dall. Sher. c. 31. And by stat. 31 Eliz. c. 3. the notice must also be proclaimed on some Sunday before the door of the parish church.

If the defendant disobey this verbal monition, the next Process is by writ of attachment, or Pone; so called from the words of the writ, “pone per vadum et salvos pelgios;” “Put by gage and safe pledges. A. B. the defendant, &c.” This is a writ not issuing out of Chancery, but out of the Court of Common Pleas, being grounded on the non-appearance of the defendant at the return of the original writ; and thereby the Sheriff is commanded to attach him, by taking gage, that is, certain of his goods, which he shall forfeit if he doth not appear; or by making him find safe pledges or sureties, who shall be amerced in case of his non-appearance. This is also the first and immediate Process, without any previous summons, upon actions of trespass ve et armis, or for other injuries, which though not forcible are yet trespasses against the peace, as deceit and conspiracy; where the violence of the wrong requires a more speedy remedy, and therefore the original writ commands the defendant to be at once attached, without any precedent warning. 3 Comm. 280.

If, after attachment, the defendant neglects to appear, he not only forfeits this security, but is moreover to be farther compelled by writ of Distringas, or distress infinite; which is a subsequent Process issuing from the Court of Common Pleas, commanding the Sheriff to distrain the defendant from time to time, and continually afterwards by taking his goods and the profits of his lands, which are called issues; and which by the Common Law he forfeits to the King if he doth not appear. But now the issues may be sold, if the Court shall
so direct, in order to defray the reasonable costs of the plaintiff. *Stat. 10 Geo. 3. c. 50*. See title *Privilege*.

And here, by the Common Law, the Process ended in cases of injury *without force*: the defendant, if he had any substance, being gradually stript of it all by repeated distresses, till he rendered obedience to the King’s writ; and if he had no substance, the Law held him incapable of making any satisfaction; and therefore looked upon all farther Process as nugatory: but by degrees the *Capias*, which was originally applied only to cases of injury, accompanied by force, was found to be a convenient remedy in cases merely civil, and was accordingly introduced into practice. If, therefore, a defendant, being summoned or attached, makes default; and neglects to appear; or if the Sheriff returns a *nihil*; (i. e. that the defendant hath *nothing* whereby he may be summoned, attached, or distrained;) or taking all or any of these circumstances for granted, the *Capias* now usually issues; being a writ commanding the Sheriff to *take* the body of the defendant and have him in Court at the day of the return. As to the origin and application of this writ in civil suits, see further this Dict. titles *Capias; Common Pleas*.

This writ, and all others, subsequent to the original writ, not issuing out of Chancery, but from the Courts into which the original was returnable, and being grounded on what has passed, (or supposed to have passed) in that Court, in consequence of the Sheriff’s return, are called *judicial*, and not *original* Writs: they issue under the Private Seal of that Court, and not under the Great Seal of *England*; and are teste’d not in the King’s name, but in that of the Chief (or if there be no chief, of the senior) Justice only. And these several writs, when actually grounded on the Sheriff’s return, must respectively bear date the same day on which the writ immediately preceding was returnable. See 3 *Comm. c. 19. p. 282*.

Such is the first Process in the Court of Common Pleas: as to the proceeding by *Original quare clausum fregit*; See this Dict. title *Common Pleas*.

In the *King’s Bench* they may also, and frequently do, proceed in certain causes, particularly in actions of *Ejectment* and *Trespass*, by original writ, with attachment and *capias* thereon; returnable, not at Westminster where the Common Pleas are now fixed in consequence of *Magna Charta*, but *ubi cunque fuerimus in Anglia*, wheresoever the King shall then be in *England*; the Court of King’s Bench being removable into any part of *England* at the pleasure and discretion of the Crown. But the more usual method of proceeding therein is without any original, but by a peculiar species of Process called a *bill of Middlesex*: and which is so intitled, because the Court now sits in that county; for if it sate in *Kent*, it would then be a *bill of Kent*. Forthwith, as the Justices of this Court have, by its fundamental Constitution, power to determine all offences and trespasses, by the Common Law and custom of the realm, it needed no original writ from the Crown to give it cognizance of any misdemeanor in the county wherein it resides; yet, as by this Court’s coming into any county, it immediately superseded the ordinary administration of justice by the general commissions of *Eyre* and of *Oyer and Terminer*, a Process of its own became necessary within the county where it sate, to bring in such persons as were accused of committing any forcible injury. The *bill of Middlesex*, (which was formerly always founded on a
plaint of trespass *quate clausum fregit*, entered on the records of the Court, is a kind of *capias*, directed to the Sheriff of that county, and commanding him to take the defendant, and have him before our Lord the King at Westminster on a day prefixed, to answer to the plaintiff of a plea of trespass. For this accusation of trespass it is, that gives the Court of King's Bench jurisdiction in other civil causes; since, when once the defendant is taken into custody of the Marshal, or prison-keeper of this Court, for the supposed trespass, he, being then a prisoner of this Court, may here be prosecuted for any other species of injury. Yet, in order to found this jurisdiction, it is not necessary that the defendant be actually the Marshal's prisoner; for, as soon as he appears, or puts in bail to the Process, he is deemed, by so doing, to be in such custody of the Marshal, as will give the Court a jurisdiction to proceed. And, upon these accounts, in the bill, or Process, a complaint of trespass is always suggested, whatever else may be the real cause of action. This bill of *Middlesex* must be served on the defendant by the Sheriff, if he finds him in that county; but, if he returns *"non est inventus,"* then there issues out a writ of *Latitat*, to the Sheriff of another county, as *Berks*; which is similar to the *Testatum Capias* in the Common Pleas, and recites the bill of *Middlesex* and proceedings thereon, and that it is testified that the defendant *"latitat et discurririt,"* lurks and wanders about in *Berks*; and therefore commands the Sheriff to take him, and have his body in court on the day of the return. But, as in the Common Pleas the *Testatum capias* may be sued out upon only a supposed, and not an actual, preceding *Capias*; (see title *Capias*) so in the King's Bench a *Latitat* is usually sued out upon only a supposed, and not an actual, bill of *Middlesex*. So that, in fact, a *Latitat* may be called the first Process in the Court of King's Bench, as the *Testatum Capias* is in the Common Pleas. Yet, as in the Common Pleas, if the defendant lives in the county wherein the action is laid, a common *Capias* suffices; So in the King's Bench likewise, if he lives in *Middlesex*, the Process must be by bill of *Middlesex* only. See further this Dictionary title *Latitat*.

In the *Exchequer* the first Process is by writ of *Quo-minus*, in order to give the Court a jurisdiction over pleas between party and party. In which writ the plaintiff is alleged to be the King's farmer or debtor, and that the defendant hath done him the injury complained of; *quo minus sufficiens existit, "by which he is the less able,"* to pay the King his rent, or debt. And upon this the defendant may be arrested as upon a *Capias* from the Common Pleas.

Thus differently do the three Courts set out at first, in the commencement of a suit in order to entitle the two Courts of King's Bench and Exchequer to hold plea in causes between subject and subject, which by the original constitution of Westminster Hall they were not empowered to do. Afterwards when the cause is once drawn into the respective Courts, the method of pursuing it is pretty much the same in all of them.

If the Sheriff has found the defendant upon any of the former writs, the *Capias*, *Latitat*, &c. he was antiently obliged to take him into custody, in order to produce him in Court upon the return; however small and minute the cause of action might be. For not having obeyed the original summons, he had shewn a contempt of the Court and was no longer to be trusted at large. But when the summons
fell into disuse, and the Capias became in fact the first Process, it was thought hard to imprison a man for a contempt which was only supposed: and therefore in common cases by the gradual indulgence of the Courts (at length authorized by stat. 12 Geo. 1. c. 29. amended by stat. 5 Geo. 2. c. 27. made perpetual by stat. 21 Geo. 2. c. 3. and extended to all inferior Courts by stat. 19 Geo. 3. c. 70.) the Sheriff or proper officer can now only personally serve the defendant with the copy of the writ or Process, and with notice in writing to appear, by his attorney, in Court, to defend this action; which in effect reduces it to a mere summons. And if the defendant thinks proper to appear upon this notice, his appearance is recorded, and he puts in sureties for his future attendance and obedience; which sureties are called Common Bail, being the same two imaginary persons as are pledges for the plaintiff’s prosecution, John Doe and Richard Roe. See title Pledges. Or, if the defendant does not appear upon the return of the writ, or within eight days after, exclusive of the return day, the plaintiff may enter an appearance for him, as if he had really appeared in the Common Pleas; and may file common bail in the King’s Bench in the defendant’s name, and proceed thereupon as if the defendant had done it himself.

But if the plaintiff will make affidavit, or assert upon oath, that the cause of action amounts to 10l. or upwards, then he may arrest the defendant, and make him put in substantial sureties for his appearance, called Special Bail. In order to which, it is required by stat. 3 Car. 2. st. 2. c. 2. that the true cause of action should be expressed in the body of the writ or Process; else no security can be taken in a greater sum than 40l. This statute (without any such intention in the makers) had like to have ousted the King’s Bench of all its jurisdiction over civil injuries without force; for, as the bill of Middlesex was framed only for actions of trespass, a defendant could not be arrested and held to bail thereupon for breaches of civil contracts. But to remedy this inconvenience, the officers of the King’s Bench devised a method of adding what is called a clause of ac etiam to the usual complaint of trespass; the bill of Middlesex commanding the defendant to be brought in to answer the plaintiff of a plea of trespass, and also to a bill of debt: the complaint of trespass giving cognizance to the Court, and that of debt authorizing the arrest. In imitation of which the Lord Chief Justice of the Common Pleas a few years afterwards, in order to save the suitors of that Court the trouble and expense of suing out special originals, directed that, besides the usual complaint of breaking the plaintiff’s close, a clause of ac etiam might also be added to the writ of Capias, containing the true cause of action: as, “that the said Charles the defendant may answer to the plaintiff of a plea of trespass in breaking his close: and also, ac etiam, may answer him, according to the custom of the Court, in a certain plea of trespass upon the case upon promises, to the value of 20l.” &c. The sum sworn to by the plaintiff is marked upon the back of the writ; and the Sheriff, or his officer, the bailiff, is then obliged actually to arrest or take into custody the body of the defendant; and, having so done, to return the writ with a ceili corpus indorsed thereon. See this Dictionary, titles Arrest; Bail.

From the foregoing it appears, that Process is only meant to bring the defendant into Court, in order to contest the suit, and abide the
determination of the Law. When he appears, then follow the Pleadings, &c. between the parties. See that title.

As to the origin and foundation of the above modes of Process, and of the jurisdiction of the several Courts, see more at large the Introduction to Cromfton's Practice; and the Appendixes to Sellon's Practice, founded on that Introduction.

As to the language of the Process and Records of Law, see this Dictionary, title Pleading III; and for further matter, explanatory of the several sorts of writs and Processes, various apposite titles throughout the whole of this work.

Original Process to call persons into Court, &c. must be in the name of the King; and if it issue from the Court of King's Bench, it ought to be under the teste of the Chief Justice, or of the senior Judge of the Court, if there be no Chief Justice: and if it issueth from any other Court, it is to be under the teste of the first in commission, &c. Dull. ch. 132: Finch. 436: Cro. Car. 393.

If Process is awarded out of a Court, which hath not jurisdiction of the principal cause, it is coram non judice and void: and the Sheriff executing it will be a trespasser. 2 Leon. 89.

II. THERE is no need of Process on an Indictment, &c. where the defendant is present in Court; but if he hath fled, or secretes himself, in capital cases, or hath not, in smaller misdemeanors, been bound over to appear at the Assises or Sessions, still an indictment may be preferred against him in his absence; since, were he present, he could not be heard before the Grand Jury against it. And, if it be found, then Process must issue to bring him into Court; for the indictment cannot be tried, unless he personally appears: according to the rule of equity in all cases, and the express provision of stat. 28 Edw. 3. c. 3. in capital ones, that no man shall be put to death, without being brought to answer by due Process of Law.

No Process shall regularly issue in the King's name, and by his writ to apprehend a felon or other malefactor, unless there be an indictment or matter of record in the Court, upon which the writ issues. 1 Hale's Hist. P. C. 575.

The proper Process on an indictment for any petty misdemeanors, or on a penal statute, is a writ of Venire Facias, which is in the nature of a summons to cause the party to appear. And if by the return to such Venire it appears, that the party hath lands in the county whereby he may be distrained, then a distress infinite shall be issued from time to time till he appears. But if the Sheriff returns that he hath no lands in his bailiwick, then (upon his non-appearance) a writ of Capias shall issue, which commands the Sheriff to take his body, and have him at the next assizes; and if he cannot be taken upon the first Capias, a second and a third shall issue; called an Alius, and a Pluries Capias. But on indictments for treason or felony, a Capias is the first Process; and for treason or homicide, only one shall be allowed to issue, or two in the case of other felonies, by stat. 25 Edw. 3. c. 14; though the usage is to issue only one in any felony; the provisions of this statute being in most cases found impracticable. 2 Hal. P. C. 195. And so, in the case of misdemeanors, it is now the usual practice for any Judge of the Court of King's Bench, upon certificate of an indictment found, to award a writ of Capias immediately in order to bring in the defendant. But if he absconds, and it is
thought proper to pursue him to an outlawry, then a greater exactness is necessary. For, in such case, after the several writs have issued in a regular number, according to the nature of the respective crimes, without any effect, the offender shall be put in the exixent in order to his outlawry; that is, he shall be exacted, proclaimed, or required to surrender at five county courts; and if he be returned quinto exactus, and does not appear at the fifth exactation or requisition, then he is adjudged to be outlawed, or put out of the protection of the Law; so that he is incapable of taking the benefit of it in any respect, either by bringing actions or otherwise. See stat. 8 H. 6. c. 10.; and this Dictionary, title Outlawry III.

The punishment for outlawries upon indictments for misdemeanors, is the same as for outlawries upon civil actions; (as to which, and the previous Process by writs of capias, exigi facias, and proclamation, see this Dictionary, title Outlawry; viz. forfeiture of goods and chattels. But an outlawry in treason or felony amounts to a conviction and attainer of the offence charged in the indictment, as much as if the offender had been found guilty by his country. 2 Hal. P. C. 205. 4 Term Rep. K. B. 521. His life is however still under the protection of the Law, so that though antiently an outlawed felon was said to have caput luditum, and might be knocked on the head like a wolf, by any one that should meet him: because, having renounced all law, he was to be dealt with as in a state of nature, when every one that should find him might slay him: yet now, to avoid such inhumanity, it is helden that no man is entitled to kill him wantonly or wilfully; but in so doing is guilty of murder, unless it happens in the endeavour to apprehend him. 1 Hal. P. C. 497: Bracton, fol. 125. For any person may arrest an outlaw on a criminal prosecution, either of his own head, or by writ of warrant of capias uttagatum, in order to bring him to execution. But such outlawry may be frequently reversed by writ of error; the proceedings therein being (as it is fit they should be) exceedingly nice and circumstantial; and if any single minute point be omitted or misconducted, the whole outlawry is illegal, and may be reversed: upon which reversal the party accused is admitted to plead to, and defend himself against, the Indictment. See further title Outlawry, V.

The above is the Process to bring in the offender after indictment found: during which stage of the prosecution it is, that writs of Certiorari facias are usually had: though they may be had at any time before trial, to certify and remove the indictment, with all the proceedings thereon, from any inferior Court of criminal jurisdiction into the Court of King's Bench; which is the sovereign ordinary Court of justice in causes criminal. And this is frequently done for one of these four purposes; either, 1. To consider and determine the validity of criminal appeals or indictments, and the proceedings thereon; and to quash or confirm them as there is cause: or, 2. Where it is surmised that a partial or insufficient trial will probably be had in the Court below, the indictment is removed, in order to have the prisoner or defendant tried at the bar of the Court of King's Bench, or before the Justices of Nisi Prius: or, 3. It is so removed, in order to plead the King's pardon there: or, 4. To issue Process of outlawry against the offender in those counties or places where the Process of the inferior Judges will not reach him. 2 Hal. P. C. 210. Such writ of Certiorari, when issued and delivered to the inferior
Court for removing any record or other proceeding, as well upon indictment as otherwise, supersedes the jurisdiction of such inferior Court, and makes all subsequent proceedings therein entirely erroneous and illegal; unless the Court of King's Bench remands the record to the Court below, to be there tried and determined. A Certiorari may be granted at the instance of either the prosecutor or the defendant: the former as a matter of right, the latter as a matter of discretion; and therefore it is seldom granted to remove indictments from the Justices of gaol-delivery, or after issue joined, or confession of the fact, in any of the Courts below. 4 Comm. c. 24. See this Dictionary, title Certiorari.

At this stage of prosecution also it is, that indictments found by the Grand Jury against a Peer must in consequence of a writ of Certiorari be certified and transmitted into the Court of Parliament, or into that of the Lord High Steward of Great Britain; and that in places of exclusive jurisdiction, as the two Universities, indictments must be delivered (upon challenge and claim of cognizance) to the Courts therein established by charter, and confirmed by act of Parliament, to be there respectively tried and determined. 4 Comm. c. 24.

By 48 Geo. 3. c. 58, it is enacted, that when any person is charged with any offence (not being Treason or Felony) for which he might be prosecuted by indictment or information in the Court of K. B. upon affidavit thereof made, or on certificate of indictment or information being filed, any Judge of the Court may issue his warrant to apprehend the party, who shall be thereupon held to bail to answer the charge, or on failure of bail shall be committed: and if any person in custody on any such charge for want of bail, shall not plead within eight days after copy of the indictment or information, and notice to plead, are delivered at the gaol, the prosecutor may enter the plea of Not Guilty, and proceed to trial: and the party may be convicted or acquitted as if he had actually appeared. By the same act the powers given by the act 13 Geo. 3. c. 31. and 45 Geo. 3. c. 92. for executing in Scotland the warrants of Justices of Peace in England, is extended to warrants issued by any Judge of the Court of King's Bench, as also the Courts of Great Sessions in Wales, and any Judge of Oyer and Terminer, or other person having authority to issue such warrant. See the acts 44 Geo. 3. c. 92. and 45 Geo. 3. c. 92. as to persons committing an offence in one part of the United Kingdom, and who shall go into, reside, or be in any other part of the United Kingdom; and this Dictionary, titles, Arrest; Justices, &c.

Obstructing the execution of lawful Process, is an offence against public justice, of a very high and presumptuous nature; but more particularly so, when it is an obstruction of an arrest upon criminal Process. And it hath been holden, that the party opposing such arrest becomes thereby particeps criminis; that is, an accessory in felony, and a principal in treason. 4 Comm. c. 10. p. 129. See titles Arrest; Privilege; Accessary; Misdemeanor, &c.

PROCESSION. In cathedral and conventual churches, the members had their stated Processions, wherein they walked in their most ornamental habits, with music, singing hymns, and other suitable solemnity: and in every parish, there was a customary annual Procession of the parish priest, the patron of the church, with the chief flag, or holy banner, and the other parishioners, to take a circuit
round the limits of the parish or manor, and pray for a blessing on the fruits of the earth; to which we owe our present custom of perambulation, which in most places is still called processoning and going in Procession, though we have lost the order and devotion, as well as pomp and superstition of it. See Perambulation.

PROCCESSUM CONTINUANDO. A writ for the continuance of Process, after the death of the Chief Justice, or other Justices in the commission of Oyer and Terminer. Reg. Orig. 128.

PROCHEIN AMY, Proximus amicus.] The Next Friend, or next of kin to a child in his nonage; who in that respect is allowed to deal for the infant in the management of his affairs; as to be his guardian if he holds land in socage, and in the redress of any wrong done him. See stat. West. 1. 3 Ed. 1. c. 47: West. 2. 13 E. 2. st. 1. c. 15: 2 Inst. 261; and this Dict. title Infant V.

Prochein Amy is commonly taken for guardian in socage; but otherwise it is he who appears in Court for an infant who sues any action, and aids the infant in pursuit of his action: for to sue, an infant may not make an attorney, but the Court will admit the next friend of the infant plaintiff; and a guardian for an infant defendant.

If no guardian is appointed by the father, &c. of an infant, the course of B. R. hath been used to allow one of the officers of the Court to be Prochein Amy to the infant to sue. Terma de Ley: 2 Lil. Abr. 52.

Prochein Amy was never before the statute Westm. 1. and was appointed in case of necessity, where an infant was to sue his guardian, or the guardian would not sue for him. 2 Nels. Abr. 997.

The plaintiff infant may sue by guardian, or by Prochein Amy; and if the admission is to sue by Guardian when it should be by Prochein Amy, it will be well enough, there being many precedents both ways: but if he is sued, it must be by Guardian. Cro. Car. 86. 115: Hut. 92.

If an infant be elogioned or disturbed by his guardian, or any other, so that he cannot bring assise, his Prochein Amy shall be admitted. Stat. 3 Ed. 1. c. 47. So generally, by stat. 13 Ed. 1. c. 15. Since these statutes, the common rule seems to have been that the infant shall sue by Prochein Amy, and defendant by Guardian.

To constitute a Prochein Amy (or Guardian), the person intended, who is usually some near relation, goes with the infant before a Judge, at his chambers; or else a petition is presented to the Judge on behalf of the infant, stating the nature of the action; or if he is defendant, that he is advised, and believes, he has a good defence thereto; and praying in respect of his infancy, that the person intended may be assigned him as his Prochein Amy, or Guardian, to prosecute or defend the action. This petition should be accompanied with an Agreement, signifying the assent of the intended Prochein Amy, or Guardian: and an affidavit made by some third person, that the petition and agreement were duly signed: On one or other of these grounds, the Judge will grant his fiat; upon which a rule or order is drawn up, with the Clerk of the Rules for the admission of the Prochein Amy, or Guardian; which admission is either special, to prosecute or defend a particular action, or general, to prosecute or defend all actions whatsoever: though it is said, that by the practice of the Court of King's Bench, a special admission of a Guardian to
appears in one cause, will serve for others. 1 Stra. 304, 5. See Tidd's Pract. K. B.; and Selton's Pract.

PROCHEIN AVOIDANCE, A power to present a minister to a church when it shall become void: as where one hath presented a clerk to a church, and then grants the next Avoidance to another, &c. See titles Avoidance; advowson.

PROCLAMATION, Proclamation.] A notice publicly given of any thing, whereof the King thinks fit to advertise his Subjects; and so it is used in stat. 7 R. 2. c. 6. See title King V. 3.

PROCLAMATION OF COURTS, Is used particularly in the beginning or calling of a Court, and at the discharge or adjourning thereof; for the attendance of persons and despatch of business.

Before a Parliament was dissolved, it was antiently held, that public Proclamation was to be made, that if any person had any petition, he should come in and be heard. Lex Constitut. 156. See title Parliament.

Proclamation is made in Courts Baron, for persons to come in and claim vacant copyholds, of which the tenants died seised since the last Courts; and the lord may seize a copyhold, if the heir come not in to be admitted on Proclamation, &c. 1 Lev. 63. See title Copyhold.

PROCLAMATION OF EXIGENTS, On awarding an Exigent, in order to outlawry, a writ of Proclamation issues to the Sheriff of the county where the party dwells to make three Proclamations for the defendant to yield himself, or be outlawed. See title Outlawry III.

PROCLAMATION OF A FINE, When any fine of land is passed, Proclamation is solemnly made thereof in the court of Common Pleas where levied, after engrossing it; and transcripts are also sent to the Justices of Assise and Justices of the Peace of the county in which the lands lie, to be openly proclaimed there. Stat. 1 R. 3. c. 7. See title Fine of Lands V.

PROCLAMATION OF NUISANCES, Proclamation is to be made against Nuisances, and for the removal of them, &c. Stat. 12 R. 2. c. 13. See title Nuisance.

PROCLAMATION OF REBELLION, Is a writ whereby a man not appearing upon a subject, or an attachment in the Chancery, is deputed and declared a rebel, if he render not himself by a day assigned. See titles Commission of Rebellion; Chancery.

PROCLAMATION OF RECUSANTS. A Proclamation whereby Recusants were heretofore convicted, on non-appearance at the assises. See stat. 29 Eliz. c. 6; 3 Jac. 1. cc. 4, 5. and this Dict. title Papists.

PRO CONFESSO, Where a bill is exhibited in Chancery, to which the defendant appears, and is afterwards in contempt for not answering; the matter contained in the bill shall be taken as if it were confessed by defendant. Terms de Ley.

If a defendant is in custody for contempt in not answering, on a Habeas Corpus, which is granted by order of Court to bring him to the bar, the Court assigns him a day to answer; and the day being expired, and no answer put in, a second Habeas Corpus is issued, and the party being brought into Court, a further day is assigned; by which day, if he answer not, the bill on the plaintiff's motion shall be taken pro confesso, unless cause be showed by a day; and for want of such cause shewed on motion, the substance of the bill shall be decreed to the plaintiff. Hill. 1662. Also after a fourth insufficient an-
swor, the matter of the bill, not sufficiently answered unto by the
defendant, shall be taken pro confesso, and decreed accordingly.

If in any suit in equity any defendant, against whom any process
shall issue, shall not cause his appearance to be entered according to
the rules of the Court, in case such process had been served, and
affidavit shall be made, that such defendant is beyond the seas; or
that, on inquiry at his usual place of abode, he could not be found, so
as to be served, and there is just ground to believe that such defen-
dant is gone out of the realm, or absconds to avoid being served;
the Court may make an order, appointing the defendant to appear at
day therein to be named, and a copy of such order shall, within
fourteen days, be inserted in the London Gazette, and published on
some Lord's Day, after divine service, in the parish church where
the defendant made his usual abode within thirty days next before his
absenting; and a copy of such order shall be posted up, viz. a copy of
such order made in Chancery, Exchequer or Duchy Chamber, shall
be posted up at the Royal Exchange; and a copy of every such order
made in any of the Courts of Equity of the counties palatine, or of
the Great Sessions in Wales, shall be posted up in some market town
within the jurisdiction of the Court, nearest to the place where the
defendant made his usual abode, such place of abode being also within
the jurisdiction of the Court; and if the defendant do not appear
within such time as the Court appoints, then, on proof, made of
publication of such order as aforesaid, the Court may order the plain-
tiff's bill to be taken pro confesso, and make such decree as shall be
just; and the defendant's estate shall be sequestered: and the Court
may order the plaintiff to be paid his demands, out of the estate se-
questered according to the decree; such plaintiff giving security, to
abide such order touching the restitution of such estate, as the Court
shall make on the defendant's appearance. But in case the plaintiff
refuse to give security, then the Court shall order the effects seque-
tered to remain under the direction of the Court, until the appearance
of the defendant to defend such suit.—Provided, that this act shall
not affect persons beyond the seas, unless affidavit be made of their
being in England within two years before the subhaena: nor extend to
Courts having a limited jurisdiction, unless oath be made of personal
residence in such jurisdiction one year before the subhaena. Stat. 5
Geo. 2. c. 25.

It is not sufficient on this statute to make affidavit, that the party
making it was informed, and believes, that the defendants withdrew
themselves in order to avoid being served with the process of the
Court. But it must be likewise sworn by whom the deponent received
such information. Barn. 401.

A defendant appeared, and stood out to a sequestration, and after-
wards, on getting time, put in an answer, which was reported insuf-
ficient in near twenty exceptions, and was served with a subhaena to
make a better answer. The defendant put in another answer, alike
insufficient. It was insisted for the defendant, that the practice of
taking bills pro confesso is not of long standing, the antient way being
to put the plaintiff to make proof of the substance of the bill; and
that, in this case, taking all the bill pro confesso, where part had been
sufficiently answered, seemed very strange. But it was answered,
that an insufficient answer is as no answer, therefore the whole to be
taken pro confesso; and the Master of the Rolls decreed for the plain-
tiff; but Lord Chancellor King, on an appeal, said, he would consider how matters stood at the time of such decree, and that it was sufficient that there then was an answer, and which the plaintiff had admitted to be so by suing his process for a better; and that so to make the defendant confess the whole bill true, when by the Master’s report (which was a record of the same Court) he had answered the greatest part, and when the plaintiff himself had taken the first answer to be an answer in part by serving the defendant with process to put in a better; was against common sense: and reversed the former decree. 2 P. Wms. 556.

If, on demurrer to a bill in equity, the defendant obstinately insists on his demurrer, and refuses to answer, where the Court is of opinion, that sufficient matter is alleged in the bill to oblige him to answer, and for the Court to proceed upon, the Court will decree the matter of the plaintiff’s bill; for by the demurrer are confessed all matters of fact that are alleged. Curs. Canc. 209. See further, title Chancery.

PROCTOR, Procurator.] He who undertakes to manage another man’s cause, in any Court of Civil or Ecclesiastical Law, for his fee: Qui aliena negotia gerenda suscepit. A Proctor not to practise, if a Popish recusant. Stat. 3 Jac. 1. c. 5. But see title Papists. Not to act as Justice of Peace. 5 Geo. 2. c. 18. See title Justices of the Peace, III.

Proctors of the Clergy, Procuratores Cleri.] They who are chosen and appointed to appear for cathedral or other collegiate churches; as also for the common Clergy of every diocese, to sit in the Convocation-house in the time of Parliament.

On every new Parliament the King directeth his writ to the Archbishop of each province for the summoning of all Bishops, Deans, Archdeacons, &c. to the convocation, and generally of all the Clergy of his province, assigning them the time and place in the writ; then the Archbishop of Canterbury, on his writ received, according to custom directs his letters to the Bishop of London, as his provincial Dean, first citing him peremptorily, and then willing him to cite in like manner all the Bishops, &c. and generally all the Clergy of his province, to the place, and against the day prefixed in the writ; but directeth withal, that one Proctor be sent for every cathedral or collegiate church, and two Proctors for the body of the inferior Clergy of each diocese; and by virtue of these letters authentically sealed, the Bishop of London directs his like letters severally to the Bishop of every diocese of the province, citing them in like sort, and willing them not only to appear, but also to admonish the Deans and Archdeacons personally to appear; and the cathedral and collegiate churches, and the common Clergy of the diocese, to send their Proctors to the place at the day appointed; and also willeth them to certify to the Archbishop the names of every person so warned by them in a schedule annexed to their letter certificate: then the Bishops proceed accordingly, and the cathedral and collegiate churches, and the body of the Clergy make choice of their Proctors; which being done and certified to the Bishop, he returneth all at the day. Cowell. See title Convocation.

PROCONSULES, A name applied to Justices in eyre, or Justiciariorum errante, in England. Cowell.

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PROCURATIONS, Procurationes. Certain sums of money which parish priests pay yearly to the Bishop or Archdeacon, ratione visitationis; formerly the visitor demanded a proportion of meat and drink for his refreshment, when he came abroad to do his duty, and examine the state of the church; afterwards these were turned into annual payments of a certain sum, which is called a Procuration, being so much given to the visitor, ad procurandum cibum & potum. And complaints were often made of the excessive charges of the Procurations, which were prohibited by several councils and bulls; and that of Clement IV. is very particular, wherein mention is made that the Archdeacon of Richmond, visiting the diocese, travelled with one hundred and three horses, twenty-one dogs, and three hawks, to the great oppression of religious houses, &c.

A libel was brought in the Spiritual Court for Procurations by the Archdeacon of York, setting forth, that for ten or twenty years, &c. there had been due and paid to him so much yearly by a Parson and his predecessors; who suggested for a prohibition, that a duty had been payable, but denied the prescription, and that the Ecclesiastical Court cannot try prescriptions; but it was adjudged, that Procurations are payable of common right, as tithes are, and no action will lie for the same at Common Law; if he had denied the quantum, then a prohibition might go. Raym. 360. See stat. 34 & 35 H. 8. c. 19.

These are also called Proxies; and it is said there are three sorts of Procurations or Proxies; ratione visitationis, consuetudinis, & facti; and that the first is of ecclesiastical cognizance, but the two last are triable at law. Hardr. 180.

PROCURATOR, One who hath a charge committed to him by any person; in which general signification it hath been applied to a vicar or lieutenant, who acts instead of another: and we read of Procurator regni, and Procurator reipublica, which is a public magistrate: also Proxies of Lords in Parliament are in our law Books called Procuratores: the Bishops are sometimes termed Procuratores ecclesiaram; and the advocates of religious houses, who were to solicit the interests, and plead the causes, of the societies, were denominated Procuratores monasterii; and from this word comes the common word Proctor. It is likewise used for him who gathers the fruits of a benefice for another man; and Procuracy is used in stat. 3 R. 2. c. 3. for the writing or instrument whereby he is authorised.

Procuratores Ecclesiæ Parochialis. The Churchwardens; so called because they were to act as proxies and representatives of the church, for the true honour and interest of it. Paroch. Antig. 562.

PROCURATORIUM, The procuracy, or instrument by which any person or community did constitute or delegate their proctor or proctors, to represent them in any judicial Court or cause.

PROCURATORY OF RESIGNATION. A term in the Law of Scotland, by which the vassal authorises the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation ad remanuuniam, or for the purpose of the superior’s giving out the fee to a new vassal, or to the former vassal, and a new series of heirs; this is termed a resignation in favouur. These are analogous to the surrenders of Copyholds in England. See that title, and title Tenures, in this Dictionary.

PRODES HOMMES, A title often given in our old books to the Barons of the Realm, or other military tenants, who were summoned
to the King's Council; *discreti et fideles* (probi) homines, who, according to their prudence and knowledge, were to give their counsel and advice.

**PRODITORIE, Treasonably.**] The technical word in indictments for treason, when indictments were in Latin.

**PROFANENESS, Quasi proficul à fano.**] A disrespect to the name of God, and to things and persons consecrated to Him. Wood's Inst. 396.

Profaneness is punishable by statute; as for reviling the Sacrament of the Lord's Supper, profanely using the name of God in plays, &c. Profaning the Lord's Day; cursing and swearing, &c. See *stats. 1 Ed. 6. c. 1: 1 Eliz. c. 1: 3 Jac. 1. c. 21: 1 Car. 1. c. 1: and this Dictionary, titles Blasphemy; Swearing; Sunday.

**PROFER, Proferum, vel proferum, from the Fr. proferer, i.e. produce.**] The time appointed for the offices of accounts in the Exchequer, which is twice in the year. *Stat. 51 H. 3. st. 5."

As to the Profers of Sheriffs, though the certain *debit* of the Sheriff could not be known before the finishing of his accounts; yet it seems there was antiently an estimate made of what his constant charge of the annual revenue amounted to, according to a medium, which was paid into the Exchequer at the return of the writ of summons of the Pipe; and the sums so paid were and are to this day called *Profer vicecomitis*; but although these Profers are paid, if on the conclusion of the Sheriff's accounts, and after allowances and discharges had by him, it appears that there is a surplusage, or that he is charged with more than he could receive, he hath his Profers paid or allowed him again. Hale's Sher. Account, 52. See title Sheriff.

There is a writ *de attornato vicecomitis pro profro faciendo. Reg. Orig. 139*. And we read of Profers in the *stat. 32 H. 8. c. 21; in which place Profers signifies the offer and endeavour to proceed in an action. See Brit. c. 28: Fleta, lib. 1. c. 38.

**PROFER THE HALF-MARK; To offer or tender the Half-mark.** See title Halfmark.

**PROFERT IN CURIA.** Where the Plaintiff in an action declares on a deed, or the defendant pleads a deed, he must do it with a *Profert in curia*, to the end that the other party may at his own charges have a copy of it, and until then he is not obliged to answer it. 2 *Litt. Abr. 382*. And if a man pleads by virtue of an indenture, which is lost, on affidavit made thereof, the Court will compel the plaintiff to shew the counterpart, that the defendant may plead thereto; or will grant an imparlance. *Cro. Jac 429*.

When he who is party or privy in estate or interest, or who justifies in the right of him who is party or privy, pleads a deed; notwithstanding the party privy claims but part of the original estate, yet he must shew the original deed. But where a man is a stranger to a deed, and claims nothing in it, &c. there he may plead the patent or deed, without a *Profert in curia*. 10 *Ref. 92, 93*.

A man may claim under a deed of uses, without shewing it: because the deed doth not belong to him, (though he claims by it), but to the covenantees, and he hath no means to obtain it; and for that it is an estate executed by the statute of Uses, so as the party is in by law, like to tenant in dower, or by statute, &c. who may have a rent charge extended, and need not shew the deed. *Cro. Car. 442*. And
in things executed, or Estates determined, there need not be any 
Profert in curia. 3 Lev. 204.

No advantage or exceptions shall be taken for want of a Profert in 
curia; but the Court shall give judgment according to the very right 
of the cause, without regarding any such omission and defect, except 
the same be specially and particularly set down, and shewn for cause 
of demurrer. Stat. 4 & 5 Ann. c. 16. See title Amendment; and also 
Deed IV; Monstrans de fait; Oyer, &c.

PROFESSION, Professio.] Was used particularly for the enter-
ing into any religious order, &c. This entering into religion, whereby 
a man was shut up from all the common offices of life, was termed a 
Civil Death. See 1 Comm. 132.

PROFITS. A devise of the Profits of lands, is a devise of the 

A husband deviseth the Profits of his lands to his wife, until his son 
came of age, this was held to be a devise of the lands until that time: 
though if the lands were devised to the son, and that his mother 
should take the profits of it until he came of age, &c. this would give 
the mother only an authority, not an interest. 2 Leon. 221.

By devise of Profits, the lands usually pass; unless there are other 
words to shew the intention of the testator to be otherwise. Moor 
753. 758: 2 Nels. Abr. 1051. See title Wills.

PROFITS of COURTS. The Profits arising from the King's ordinary 
Courts of Justice make a branch of his revenue. And these consist 
not only in fines imposed upon offenders, forfeitures of recognizances 
and amercements levied on defaulters; but also in certain fees due 
to the Crown in a variety of legal matters; as for setting the Great 
Scal to charters, original writs, and other forensic proceedings, and 
for permitting fines to be levied of lands in order to bar entails, or 
otherwise to insure titles. As none of these can be done without the 
immediate intervention of the King, by himself or his officers, the 
law allows him certain perquisites and profits, as a recompence for 
the trouble he undertakes for the Public. These in process of time, 
have been almost all granted out to private persons, or else appropri-
ated to certain particular uses. So that, though our law proceedings 
are still loaded with their payment, very little of them is now return-
ed into the King's Exchequer; for part of whose royal maintenance 
they were originally intended. All future grants of them, however, 
by stat. 1 Ann. st. 2. e. 7. are to endure for no longer time than the 
life of the Prince who grants them. 4 Comm. c. 8. p. 289.

PROHIBITION. 

PROHIBITION.] A Writ to forbid any Court to proceed in any cause 
there depending, on suggestion that the cognizance thereof belong-
eth not to the Court. F. N. B. 39. But it is now most usually taken 
for that writ which lieth for one who is implored in the Court-chris-
tian, for a cause belonging to the temporal jurisdiction, or the conu-
sance of the King's Court; whereby as well the party and his coun-
sel, as the judge himself, and the Registrar, are forbidden to proceed 
any further in that cause. Cowell.

The writ of Prohibition is the remedy provided by the Common 
Law, against the encroachment of jurisdiction; where one is called 
coram non judice, to answer in a Court that has no legal cognizance 
of a cause; which is enumerated by Blackstone among the griev-
ances cognizable by the Courts of Common Law. See 3 Comm. cap. 7.
As all external jurisdiction, whether ecclesiastical or civil, is derived from the Crown, and the administration of justice is committed to a variety of Courts; hence it hath been the care of the Crown, that these Courts keep within the limits and bounds of the several jurisdictions prescribed them; for this purpose the writ of Prohibition was framed; which issues out of the superior Court of Common Law to restrain inferior Courts, whether such Courts be temporal, ecclesiastical, maritime, military, &c. on a suggestion that the cognizance of the matter belongs not to such Courts, and in case they exceed their jurisdiction, the officer who executes the sentence, and in some cases the judge who gives it, are punishable in such superior Courts, sometimes at the suit of the King, sometimes at the suit of the party, sometimes at the suit of both, according to the variety of the case. 2 Inst. 601: F. N. B. 40: 12 Co. 6: 1 And. 279: 2 Jon. 213: Skin. 628.

The reason of Prohibitions in general is, that they preserve the right of the King's Crown and Courts, and the quiet of the Subject; that it is the wisdom and policy of the Law, to suppose both best preserved when every thing runs in its right channel, according to the original jurisdiction of every Court; as by the same reason that one might be allowed to encroach, another might; which would produce nothing but confusion in the administration of justice. Show. Par. Ca. 63.

So that Prohibitions do not import that the ecclesiastical or other inferior temporal Courts are alia than the King's Courts, but signify that the cause is drawn ad aliud examen than it ought to be; therefore it is always said in all Prohibitions. (be the Court ecclesiastical or temporal to which it is awarded,) that the cause is drawn ad aliud examen contra coronam & dignitatem regiam. 2 Inst. 602: 1 Roll. Rep. 252: 3 Bulst. 120: Palm. 297.

A Prohibition is a writ issuing, properly, out of the Court of King's Bench, being the King's prerogative writ; but, for the furtherance of Justice, it may now also be had, in some cases, out of the Courts of Chancery, Common Pleas, or Exchequer; see post I. It is directed to the Judge and parties of a suit in any inferior Court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other Court. This writ may issue either to inferior Courts of Common Law; as, to the Courts of the Counties palatine or principality of Wales, if they hold plea of land or other matters not lying within their respective franchises; to the County Courts, or Courts Baron, where they attempt to hold plea of any matter of the value of 40s.: or it may be directed to the Courts-christian, the University Courts, the Court of Chivalry, or the Court of Admiralty, where they concern themselves with any matter not within their jurisdiction; as if the first should attempt to try the validity of a custom pleaded, or the latter a contract made, or to be executed, within this kingdom. Or if, in handling of matters clearly within their cognizance, they transgress the bounds prescribed to them by the laws of England; as where they require two witnesses to prove the payment of a legacy, a release of tithes, or the like; in such cases also a Prohibition will be awarded. For, as the fact of signing a release, or of actual payment is not properly a spiritual question, but only allowed to be decided in those Courts, because incident or accessory to some original
question clearly within their jurisdiction, it ought, therefore where
the two laws differ, to be decided, not according to the spiritual, but
the temporal law; else the same question might be determined differ-
et ways, according to the Court in which the suit is depending; an
impropriety, which no wise government can or ought to endure, and
which is therefore a ground of Prohibition. And if either the Judge
or the party shall proceed after such Prohibition, an attachment may
be had against them, to punish them for the contempt, at the discre-
tion of the Court that awarded it; and an action will lie against them,
to repair the party injured in damages. 3 Comm. c. 7. p. 112, 113.

So long as the idea continued among the Clergy, that the Ecclesi-
stical State was wholly independent of the civil, great struggles were
constantly maintained between the temporal Courts and the spiritual,
concerning the writ of Prohibition and the proper objects of it; even
from the time of the constitutions of Clarendon, made in opposition to
the claims of Archbishop Becket in 10 H. 2. to the time of exhibiting
certain articles of complaint to the King by Archbishop Bancroft in 3
Jac. 1. on behalf of the Ecclesiastical Courts; from which, and from
the answers to them signed by all the Judges of Westminster Hall,
much may be collected, concerning the reasons of granting, and
methods of proceeding upon Prohibitions. See 2 Inst. 601—618.

I. What Courts may grant a Prohibition; and whether the
granting it be discretionary, or ex debito justitiae.

II. Who have a right to, and may demand, and join in a Pro-
hibition.

III. Of the Suggestion for, and Manner of obtaining a Prohibi-
tion; and the Decision of the Court thereon.

IV. In what Cases it may be granted, to inferior Temporal Courts,
or Jurisdictions; and at what Time.

V. In what Cases to the Spiritual Courts; and at what Time.

1. The Superior Courts of Westminster, having a superintendence
over all inferior Courts, may in all cases of innovation, &c. award a
Prohibition; in this the power of the Court of B. R. has never been
doubted, being the Superior Common Law Court in the kingdom.

Also the Court of Chancery may award a Prohibition: which may
issue as well in vacation as in term time, but such writ is returnable
43. 476.

If one be sued in an inferior Court for a matter out of the jurisdic-
tion, the defendant may either have a Prohibition from one of the
Common Law Courts of Westminster-Hall; or in regard this may
happen in vacation, when only the Chancery is open, he may move
that Court for a Prohibition; but then it must appear by oaths, that the
fact did arise out of the jurisdiction, and that the defendant tendered a
foreign plea, which was refused; and if a Prohibition has been
granted out of Chancery improvido, and without these circumstances
attending it, the Court will grant a supersedeas thereto. 1 P. Wms.
476.

As the jurisdiction of the Court of C. B. is founded on original
writs issuing out of Chancery, it hath been doubted, whether this
Court could, without writ or plea depending, award a Prohibition; but
PROHIBITION, 1.

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this point has been determined, viz. that this Court may on a suggestion grant Prohibitions, to keep as well Temporal as Ecclesiastical Courts within their jurisdiction, and that without any original writ or plea depending; the Common Law being, in these cases, a Prohibition of itself, and standing instead of an original. Bro. Prohibition, pt. 6: Noy 155: 12 Co. 58. 108: Bro. Consultation, pt. 3: 4 Inst. 99: 2 Brow. 17.

Accordingly it hath been adjudged, that a Prohibition ought to be granted by C. B. to the Court of Delegates, for suing there to avoid the institution of a clerk to a church in Lancashire, after induction; though the quare impedit for the church could not be brought in C. B. but only in the county of Lancaster; because the title of the advowson was not questioned by this Prohibition, but the intrusion on the Common Law, of which this Court has special care. Moor 861: 2 Rot. Abr. 317: Hob. 15.

But as to the Courts of B. R. and C. B. this difference hath been made. That in the first of those Courts a Prohibition may be awarded on a bare surmise, without any suggestion on record; and such writ is only in nature of a commission prohibitory, which is discontinued by demise of the King; but that as to a Prohibition issuing out of C. B. the suggestion must be on record, therefore is considered as the suit of the party, and in which he may be nonsuited, and is not discontinued by demise of the King. Noy 77: Palm. 422: Latch. 114. Yet, if insisted on, a prosecution cannot be moved for in B. R. till the suggestion be entered on the roll. And indeed it is the constant practice, to enter the suggestion on the roll, and to leave a copy thereof with the clerk of the papers, previous to the motion. See 1 Salk. 136.

The Court of C. B. has no power to issue an original writ of Prohibition to restrain a Bishop from committing waste in the possessions of his See: at least at the suit of an uninterested person. Query if any Court of Common Law has that power: and if the Court of Chancery has not? 1 Bos. & Pul. 105.

If the King’s farmer, or copyholder of the King’s manor, be sued in the Ecclesiastical Court, for tithes, on a suggestion in the Court of Exchequer that he prescribes to pay a certain modus in lieu of tithes, he shall have a Prohibition, and such modus shall be tried there. Palm. 523—5: Lane 39: 1 Roll. Abr. 539.

The Grand Sessions of North Wales may send a Prohibition, and write to the Spiritual Courts there. 1 Sid. 92. but for this see Cro. Car. 341: 1 Jon. 330: Vaugh. 411.

It is laid down, that though a surmise be a matter of fact, and triable by a Jury, yet it is in the discretion of the Court to deny a Prohibition, when it appears to them that the surmise is not true. Hob. 67.

But it hath been held, that awarding a Prohibition is a matter discretionary: that is, that from the circumstances of the case, the superior Courts are at liberty to exercise a legal discretion therein; but not an arbitrary one in refusing Prohibition, where in such like cases they have been granted, or where by Law they ought to be granted. Winch. 78.

It hath been determined in the House of Lords, that no writ of error will lie on the refusal of a Prohibition; but when a consultation
is awarded, it is within an *ideo consideratum est*, and then a writ of error will lie. 1 *Ld. Raym.* 545.

If the master of a ship sues in the Admiralty for his wages, and a Prohibition is moved for, on a suggestion that the contract was made on land, and the Court is of opinion that a Prohibition ought to be granted; in this case they will not compel the party to find special bail to the action in the Court above. *Salb.* 33; *Carth.* 518; *Cum.* 74: 1 *Ld. Raym.* 576.

If there is judgment against a simonist, who by the assent of parties is to continue for a certain time on the benefice, and who at the expiration of the time refuses to remove, but commits waste, a Prohibition to stay waste may be had by the patron, incumbent, or any other person, because that is the King's writ; and any one may pray a Prohibition for the King, and it is grantable *ex debito justitiae*, and not in the discretion of the Court. 1 *Sid.* 65: *Hob.* 247.

II. The King may sue for a Prohibition, though the plea in the Spiritual Court be between two common persons; because the suit is in derogation of his Crown and dignity, *F. N. B.* 40.

If the Ecclesiastical Court hold plea of any matter which belongs not to their jurisdiction, it has been already stated, that, on information thereof to the King's Courts, a Prohibition will issue. 2 *Inst.* 607. And if a man libels in the Spiritual Court for a matter which does not appertain to that Court, but to the Common Law, as a matter of frank-tenement; yet he himself, against his own suit, may pray a Prohibition, and have it. 2 *Roll. Abr.* 312: 1 *Leon.* 130: *Goulds.* 149. 12 *Co.* 56.

So, where the plaintiff in the Spiritual Court brought a Prohibition to stay his own suit there, for that he suing for tithes by virtue of a lease made by the vicar of *A.* for three years, the defendant claimed to be discharged of tithes by a former lease and composition by deed; and in this case it was held, that the plaintiff himself may have a Prohibition to stay the suit; for the ecclesiastical Judges are not to meddle with the trial of leases or real contracts, though they have jurisdiction of the original cause, (*viz.* the tithes); for the lease is in the realty, and is not merely accidental; and it makes no difference, that the plaintiff brings Prohibition to stay his own suit; for if the Temporal Court has knowledge by any means, that the Spiritual Court meddles with temporal trials, a Prohibition ought to be awarded. *Cro. Jac.* 351: 2 *Bulst.* 283: *Litt. Rep.* 20.

If a vicar sues a parishioner for tithes in the Spiritual Court, and the parson appropriate appears there *pro interesse suo*, and prays a Prohibition, it shall be granted. 2 *Roll. Abr.* 312: *Cro. Eliz.* 251: *Keitz.* 110.

If lessee for years is sued in the Spiritual Court for tithes, he in reversion may have a Prohibition. *Moor.* 915: *Cro. Eliz.* 55.

But no man is entitled to a Prohibition, unless he is in danger of being injured by some suit actually depending; therefore, on a petition to the Archbishop, or other Ecclesiastical Judge, no Prohibition lies. *March.* 22. 45. A Prohibition *quia timet* does not lie. *Allen.* 56.

If several libels are exhibited against *A.* and *B.* in a matter in which the Court hath not consuance, *A.* and *B.* cannot join in a Prohibition; so if the griefs be several, as some books say. *Noy.* 131: 1 *Leon.* 286: *Cro. Car.* 129.
But where the vicar of A. libelled several persons severally, for
vitiates, who joined in a Prohibition, suggesting a modus; though the
Court held in this case, that the Prohibition was not regularly brought,
being in all their names, when there were several libels; yet inas-
much as this was on a custom, and matter triable at Common Law,
in which the Ecclesiastical Court was properly prohibited, though
not in exact form, they refused to award a consultation; but directed
that the parties should put in several declarations, as if there had
been several Prohibitions. 1 Ew. 128—9; Owen 13.

So if A. libels against B. and C. for defamation, and they sue a
Prohibition, they shall join in attachment on it; and it is no objection
to say, that the defamation was several. 1 Ld. Raym. 127; and see 1
Vent. 266; Raym. 425: Comb. 448.

Where two or more are allowed to join in a Prohibition, and one
dies, the writ shall not abate; because nothing is to be recovered;
they are only to be discharged. Owen 13.

III. The party aggrieved in the Court below applies to the su-
perior Court, setting forth, in a suggestion upon record, the nature
and cause of his complaint, in being drawn ad aliud examen, by a ju-
risdiction or manner of process disallowed by the laws of the king-
dom; upon which, if the matter alleged appears to the Court to be
sufficient, the writ of Prohibition immediately issues; commanding
the Judge not to hold, and the party not to prosecute, the plea.

But sometimes the point may be too nice and doubtful to be decid-
ed merely upon a motion: and then, for the more solemn determina-
tion of the question, the party applying for the Prohibition is directed
by the Court to declare in Prohibition; that is, to prosecute an action,
by filing a declaration, against the other, upon a supposition or fic-
tion (which is not traversable) that he has proceeded in the suit
below, notwithstanding the writ of Prohibition. And if, upon demurrer
and argument, the Court shall finally be of opinion, that the matter
suggested is a good and sufficient ground of Prohibition in point of
law, then judgment with nominal damages shall be given for the
party complaining, and the defendant, and also the inferior Court,
shall be prohibited from proceeding any farther. On the other hand,
if the superior Court shall think it no competent ground for restrain-
ing the inferior jurisdiction, then judgment shall be given against him
who applied for the Prohibition in the Court above, and a writ of con-
sultation shall be awarded; so called, because, upon deliberation and
consultation had, the judges find the Prohibition to be ill-founded, and
therefore by this writ they return the cause to its original jurisdiction,
to be there determined, in the inferior Court. 3 Comm. c. 7: 2 H.
Black. Rpf. 533.

Leave to declare in Prohibition will be granted only when the
Court inclines to prohibit, not when it inclines to the contrary.
1 Black. Rpf. 81: Doug. 620. (528).—The party applying for a Pro-
hibition has no right to insist on declaring; when the Court is satisfied
that his application is groundless; but the defendant in Prohibition
may, when the opinion of the Court is against him. 1 Burr. 198.

Even in ordinary cases, the writ of Prohibition is not absolutely
final and conclusive. For, though the ground be a proper one in
point of law, for granting the Prohibition, yet, if the fact that gave
rise to it be afterwards falsified, the cause shall be remanded to the
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prior jurisdiction. If, for instance, a custom be pleaded in the Spiritual Court, a Prohibition ought to go, because that Court has no authority to try it; but, if the fact of such a custom be brought to a competent trial, and be there found false, a writ of consultation will be granted. For this purpose the party prohibited may appear to the Prohibition, and take a declaration, (which must always pursue the suggestion,) and so plead to issue upon it; denying the contempt, and traversing the custom upon which the Prohibition was grounded: and, if that issue be found for the defendant, he shall then have a writ of consultation.

The writ of consultation may also be, and is frequently, granted by the Court without any action brought; when, after a Prohibition issued, upon more mature consideration the Court are of opinion that the matter suggested is not a good and sufficient ground to stop the proceedings below. 3 Comm. c. 7.

Where the matter suggested for a Prohibition appears on the face of the libel, to be out of the jurisdiction of the Inferior Court, an affidavit of the truth of the suggestion, is never insisted on; but if it does not appear on the face of the libel, or if a Prohibition is moved for, for more than appears on the face of the libel, to be out of their jurisdiction, there ought to be an affidavit. 2 Salk. 549: 1 P. Wms. 65. 477: Andr. 304.

The suggestion in the Temporal Courts may be traversed. 2 Inst. 611: 2 Co. 44: Moor 525.

On a rule to show cause, why a Prohibition should not be granted, to stay a suit in the Court of the Archdeacon of Litchfield, against one for not going to church, nor receiving the sacrament thrice a year, on suggestion of the statute of Eliz. and Toleration Act, and then qualifying himself within the act, and alleging, that he pleaded it below, and they refused to receive his plea; cause was shewn, that this fact was false, and that the plaintiff was not a Dissenter, nor had qualified himself ut supra, and that there was no affidavit of the fact by the plaintiff; by which means any person might come and suggest a false fact, and oust the Spiritual Court of their jurisdiction; which the Court admitted, therefore for want of such affidavit the rule was discharged. 1 Ld. Raym. 1211.

If a plea to an inferior jurisdiction be properly tendered, which they refuse, though this be a good cause for a Prohibition, yet an affidavit must be made of the refusal. Skin. 20: Hard. 406: 3 Keb. 217.

A motion was made for a Prohibition to the Ecclesiastical Court of London, for calling a woman whore, on a suggestion that the words were actionable there by the custom of the place; but the Court would not grant a Prohibition without oath made, that if any such words were spoken, it was in London, and not elsewhere. 4 Mod. 367.

On a libel for calling the plaintiff old thief and old whore; the defendant suggested for a Prohibition, that if any such words were spoken, they were spoken at the same time; but this suggestion was held ill, because the words ought to have been fully confessed. 1 Vent. 10.

By stat. 2 & 3 Ed. 6. c. 13. it is enacted, "That if, in cases of suits in the Ecclesiastical Court for Tithes, any party sue for any Prohibition, that then the same party, before any Prohibition shall be granted, shall bring and deliver to the hands of some of the Judges of the same Court, where such party demanded Prohibition, the very true
copy of the libel depending in the Ecclesiastical Court, concerning the matter where the party demandeth Prohibition, subscribed with the hand of the same party;” and under the copy of the libel shall be written the suggestion, wherefore the party demandeth the Prohibition; and in case the suggestion, by two witnesses at the least, be not proved true, in the Court where the Prohibition shall be granted, then the party that is hindered of his suit in the Ecclesiastical Court by such Prohibition, shall, on his request, without delay have a consultation granted in the same case, in the Court where the Prohibition was granted; and shall recover double costs and damages against the party that so pursued the Prohibition; the costs and damages to be assessed by the Court where the consultation shall be granted; for which costs and damages the party to whom they shall be awarded may have an action of debt by bill, plaint, or information, in any Court of Record. See stats. 27 H. 8. c. 20; 32 H. 8. c. 7. to which this act refers.

In the construction of the above-mentioned statute the following opinions have been held.

That this statute, referring to stats. 27 H. 8. c. 20; 32 H. 8. c. 7; which extend to tithes and offerings generally, all such tithes and church duties as are mentioned in those statutes are as much within this act as if particularly enumerated. 2 Inst. 662: Dyer 170. b.

Therefore it extends to Prohibitions to suits of small tithes as well as great. Yelv. 102; 2 Ld. Raym. 1172.

So it hath been adjudged, that the suggestion of a modus decimandi ought to be proved within six months, being within the act. Noy 148: Yelv. 104.

So where one, who was sued for tithe of hay in the Spiritual Court, suggested for a Prohibition, that he was to pay so much on an arbitrament; and it was held, that this suggestion ought to be proved, as well as one made of a modus decimandi: so on a suggestion on the stat. 31 H. 8. c. 13. § 21. that lands are tithe-free, because the clause requiring the proof of a suggestion, is general, and not limited to real composition. 1 Roll. Reph. 55.

So on a suggestion, that the suit in the Spiritual Court was for tithes of heath and barren ground improved, within seven years after the improvement, contrary to the statute; in this case proof of the suggestion within six months was held necessary. 1 Jon. 231: Cro. Car. 208.

But it hath been held, that there needs no proof of the suggestion where the suit is for tithes contrary to common right, or where the contract of the party is suggested. Comb. 147.

It hath been held, that the suggestion need not be proved strictly, nor with precise certainty as to all its circumstances; but that if it be proved in substance, or in such a manner as to shew that the Ecclesiastical Court has not jurisdiction, it is sufficient. Cro. Eliz. 736: Moor 911.

The suggestion must be proved by honest and sufficient witnesses, which is required by the express words of the statute; therefore the testimony of one attainted of felony, excommunicated or convicted of recusancy, is, as in other cases, to be rejected. 2 Bulst. 154.

But it hath been held, that persons such as parishioners, &c. who may not be sufficient and able witnesses at a trial at Law, may notwithstanding be sufficient witnesses to prove the suggestion;
the chief intent of the statute being to prevent vexatious suggestions; also it hath been held, that after the admitting and recording the proof of the suggestion, nothing is to be objected against the persons of the evidence. Mich. 27 Car. 2. in C. B.

If a suggestion consists of two parts, it is said to be sufficient to produce one witness to one, and another to another. 1 Vent. 107.

It hath been held, that the six months, for proof of the surmise, shall be accounted according to the calendar; for that this being a computation which concerns the church, it is but reasonable that it should be done according to the computation used in the Ecclesiastical Law. Hob. 197; Lit. Ref. 19: 2 Mod. 58.

It is said, that the time of six months, given by the statute to prove the suggestion, ought to be intended six months in term time, and that the vacation should be no part of the time; but this hath been since adjudged otherwise, and that the time shall commence from the teste of the writ of Prohibition, and not from the time of the rule made for awarding it. Moor 573: Noy 30: 2 Ld. Raym. 1172: 2 Salk. 554.

If the surmise be proved before one of the Judges within the six months, although it be not recorded till after the six months by the Court, it is well enough. Noy 30. It must be entered in the office. 2 Show. 308.

It hath been held, that proof which is not sufficient, may be supplied by better proof within the six months, but not after. Litt. Refn. 155.

The party on failure of proof of the suggestion, shall not only have double costs and damages, but also his costs and damages in the action he brings for recovery of them. Bendt. 143. See stat. 8 & 9 W. 3. c. 11. § 8; and this Dictionary, title Costs.

But if the Prohibition be grounded partly on a modus, which needs no proof, and partly on the contract of the parties which doth need proof, there ought not to be double costs; for mixing the contract with the manner of tithing privileges the whole. Brownl. 99: Yelv. 119.

So, where for a variance between the libel and suggestion, a consultation was awarded, and double costs adjudged to the defendant, this was held to be error by the very letter of the statute, which gives double costs only for want of proving the suggestion, and for no other cause. Yelv. 79, 80.

So, where a Prohibition was obtained, on a suggestion which was not proved within the six months, in which the defendant took issue with the plaintiff, which was found for the plaintiff; in this case it was resolved, that the defendant should not have double costs for want of the suggestion’s being proved; for the statute is, that he shall have a consultation and double costs; but in this case he could not have a consultation, the matter in issue being found against him; but ought to have prayed a consultation on the suggestion not being proved, and then should have had his double costs. Latch. 140.

The surmise or suggestion may be brought in by attorney, and need not be in proper person. 1 Leon. 286.

A prohibition is not to be granted the last day of term; but on motion a rule may be obtained to stay proceedings till the ensuing term. Latch. 7: 3 Roll. Ref. 456.

By stat. 50 E. 3. c. 4, no Prohibition shall go after a consultation;
unless the libel be enlarged, or otherwise changed. And therefore, regularly, where a consultation is awarded upon the merits, the party shall not have another Prohibition on the same suggestion. But if a consultation is awarded, for want of form in the suggestion or proceeding thereon, another Prohibition may be allowed; or if a consultation goes for a collateral matter, as if the plaintiff is nonsuited. So if a consultation goes, and the party against whom it is granted, appeals, the appellee may have a Prohibition, though the appellants cannot. So, if after consultation the plaintiff pleads the same matter (which was suggested and found against him at Common Law) in the Spiritual Court, which is accepted, and proceeds there for trial, the former defendant may have a new Prohibition. See Com. Dig. title Prohibition (K. 3.)

A suggestion for Prohibition begins thus;

BE IT REMEMBERED, That on, &c. comes before our Lord the King at Westminster, C. D. in his proper person, and gives this Court here to understand and be informed, That whereas A. B. &c. (setting forth the complaint and proceeding in the other Court) contrary to the laws and customs of the kingdom: Wherefore the said C. imploiring the aid of this Honourable Court, before the King himself, prayeth to be relieved, and that he may have his Majesty’s writ of Prohibition, directed to the Judge of the said Court, &c. to prohibit him and them from taking any further cognizance of the said plea before them, touching or concerning the premises: And it is granted him accordingly, &c.

The common form of a Prohibition runs thus:

GEORGE, &c. To A. B. &c. Greeting. We prohibit you, that you hold not plea in the Court, &c. of, &c. whereof C. D. complains, that E. F. draws him into plea before you, &c. And to the party himself; We prohibit or forbid you E. F. that you follow not the plea in the Court of, &c. whereof C. D. complains, that you draw him into the Court, &c.

IV. A Prohibition doth lie as well to a Temporal Court as to the spiritual, Court of Admiralty, or other Court, whose proceedings are different from those in the Superior Courts of Common Law; if such Temporal Court exceed the bounds of its jurisdiction, or take cognizance of matters not arising within its jurisdiction. F. N. B. 45: 2 Inst. 229. 243. 601: 2 Roll. Rep. 379: 1 Roll. Rep. 252: 2 H. Blackst. 100—107: 533: 6 Parl. Cases (8vo) 203.

A Prohibition lies to a Court of Appeal, where it appears they have no jurisdiction over the subject; even after they have remitted the suit to the Court below, and awarded costs against the appellant, and though the party applying for the Prohibition be the appellant, 1 Term Rep. 552. See post. V. and Com. Dig. title Prohibition D. as to the time when a Prohibition shall be granted.

If trespass vi et armis be brought in the County-court, a Prohibition lies for the Plaintiff. F. N. B. 47.

So if one sues another in a Court-Baron or other Court, which is not a Court of Record, for charters concerning inheritance or freehold, he shall have a Prohibition. F. N. B. 47.

A person having obtained judgment in B. R. for his debt and damages, brought action for recovery of them against the bail in the
Court of the Tower of London, in which action the party was taken on a cafiias, and was rescued, after which the plaintiff brought his action on the case in that Court for the rescue; and all this appearing to the Court of B. R. they granted a Prohibition. 1 Rol. Rep. 54.

So where an action of debt was brought in the Marshalsea, on a judgment in B. R. a Prohibition was granted. 2 Salk. 439.

A suit was surmised to be before the Lord President of the Marches, for an office, between the grantee of the Lord President and a stranger, wherein the only question would be, whether the grant of that office belonged to the Lord President; and because in this case he would be as it were both judge and party, a Prohibition was granted. 1 Keb. 648.

If there be one entire contract above 40s. and a man sues for it in a Court Baron, severing it into small sums under 40s. a Prohibition shall be granted, because this is done to defraud the Court of the King. 19 Hen. 6. 54: 2 Rol. Abr. 280: F. N. B. 46.

An action was brought in the Hundred Court for 40s. in which the plaintiff confessed that he was satisfied one shilling, which being done with an intent to give that Court jurisdiction, and to defraud the superior Courts, a Prohibition was granted. Palm. 564.

If there be several contracts between A. and B. at several times for divers sums, each under 40s. but amounting in the whole to a sum sufficient to entitle the superior Court to a jurisdiction, they shall be sued for in such superior, and not in an inferior Court, which is not of record. 1 Vent. 65.

So in a Prohibition to the Court of the Honour of Eye, where the case was; one contracted with another for divers parcels of malt, the money to be paid for each parcel being under 40s. he levied divers plaintiffs thereupon in the said Court; wherefore the Court of K. B. granted a Prohibition; because though there be several contracts, yet as the plaintiff might have joined them all in one action, he ought to have so done, and sued in B. R.; and not put the defendant to unnecessary vexation; any more than he can split an entire debt into divers, to give the inferior Court jurisdiction in fraudem legis. 1 Vent. 73: 2 Keb. 617: 1 Show. 11.

It is laid down by Coke, and admitted in a variety of cases, that no inferior Court can hold plea of any transitory action, if not made within the jurisdiction, and that the cause of action must be alleged to arise within such jurisdiction. 2 Inst. 231: 1 Saund. 74: 2 Jon. 230: 1 Show. 10: and see titles Courts; County Court.

Therefore, in an action on a promise in an inferior Court, not only the promise, but the consideration must be alleged to arise within the inferior jurisdiction, and must be so proved on the trial. 1 Rol. Abr. 545.

But if the plaintiff had shewn that the money had been lent within the Jurisdiction of the Court, or if it had been for goods there sold, the plaintiff would have had no need to say, that the defendant assumed to pay within the jurisdiction; because the law creates the promise on the creation of the debt, which debt being within the jurisdiction, the promise shall be intended there also. Ld. Raym. 241.

In all cases where inferior Courts assume a jurisdiction, or hold plea of a matter not arising within their limits, the party hath his remedy, and may stay their proceedings by Prohibition; but such Prohibition can only regularly be obtained by its appearing, on oath
made, that the fact did arise out of the jurisdiction, and that the defendant tendered a foreign plea; which was refused. 6 Mod. 146. Carth. 402: 1 Salk. 201: 1 P. Wms. 476.

In the case of Mendoza v. Sint it was greatly insisted upon, that though the party neglected to plead to the jurisdiction, yet the matter arising out of the inferior jurisdiction, the superior Courts ought to grant a Prohibition; for otherwise the parties, their counsel, and attorneys, would give a jurisdiction to inferior Courts which they were not entitled to by law; but it was otherwise adjudged; and it seems to be now agreed, that after admitting the jurisdiction, or after imparlance, the party cannot apply for a Prohibition. 2 Mod. 271.

But these things were agreed by the Court.

If any matter appears in the declaration, which sheweth that the cause of action did not arise within the jurisdiction, there a Prohibition may be granted at any time. If the subject matter in the declaration be not proper for the judgment and determination of such Court, there also a Prohibition may be granted at any time. If the defendant, who intended to plead to the jurisdiction, is prevented by any artifice, as by giving a short day, or by the Attorney's refusing to plead it, &c. or if his plea be not accepted, or is over-ruled; in all these cases a Prohibition likewise will lie at any time. 2 Mod. 273.

When the spiritual Court incidentally determines any matter of Common Law cognizance, such as the construction of an act of Parliament, otherwise than as the Common Law requires, Prohibition lies after sentence: although the objection do not appear on the face of the libel, but is collected from the whole of the proceedings in the Spiritual Court. 3 East's Rep. 472: 5 East's Rep. 345.

A motion was made for a Prohibition, to be directed to the Sheriff's Court in Bristol, on suggestion that causes of action arising out of the jurisdiction of the Sheriff's Court ought not to be sued there; and this motion was made in behalf of a defendant in an action, before he had appeared, to stay the proceedings in the Court, who proceeded to attach his goods in the hands of a garnishee; and the motion was opposed; because the defendant could not pray a Prohibition on suggestion of a matter which he could not plead; and as here he could not plead this before appearance, so he ought not to make such a motion before appearance. And per Holt, a man shall not plead to the jurisdiction until he appear; but if the original cause of action arose out of the jurisdiction of the Court, the garnishee may plead it; and of that opinion was Hale Ch. J. but if it was debt on a simple contract, it is attachable where the person of the debtor is. 1 Ld. Raym. 346.

So, where a prohibition was moved for to the Court of the Sheriffs of London to stay proceeding, where they attached the debt of the garnishees, because it arose out of the jurisdiction, it was denied, because the debt was on simple contract, which follows the person of the debtor. Ld. Raym. 347.

V. The general grounds for a Prohibition to the Ecclesiastical Courts, are either a defect of jurisdiction, or a defect in the mode of trial. If any fact be pleaded in the Court below, and the parties are at issue, the Court has no jurisdiction to try it, because it cannot proceed according to the rules of the Common Law; and in such case a Prohibition lies: Or where the Spiritual Court has no original juris-
diction, a Prohibition may be granted, even after sentence. But where it has jurisdiction, and gives a wrong judgment, this is the subject of appeal, and not of Prohibition. 2 Term Reph. 4.—But when a Prohibition is granted after sentence, the want of jurisdiction must appear upon the face of the proceedings of the Spiritual Court. Ibid. Comb. 422: 4 Term Reph. 382.

In all cases where it appears on the face of the libel, that the Spiritual Court, &c. have not a jurisdiction, a Prohibition may be awarded, and is grantable as well after as before sentence; for the King's superior Courts have a superintendency over all inferior jurisdictions, and are to take care that they keep within their due bounds. 2 Inst. 602: 2 Rol. Abr. 319: Noy 137: 1 Sid. 65: Cro. Eliz. 571: Moor 462. 907: Skin. 299: Carth. 463: March 153: 2 Rol. Reph. 24: Comb. 356.

But where the Court has a natural jurisdiction of the thing, but is restrained by some statute; as by stat. 23 H. 8. c. 9. for not citing out of the diocese, there the party must come before sentence; for after pleading and admitting the jurisdiction of the Court below, it would be hard and inconvenient to grant a Prohibition. See the authorities sustrà, and Cro. Car. 97: 2 Show. 145: Vent. 61: 6 Mod. 252: 7 Mod. 137: Godb. 163. 243: 5 Mod. 341: Hett. 19: 12 Co. 76: Salk. 543.

On a motion for Prohibition the case was, the defendant libelled in the Spiritual Court for tithes of faggots made of loppings of trees; and the suggestion for a Prohibition was, that these loppings were cut from the stumps of timber trees above the growth of twenty years: and it was alleged, that sentence was given in the Spiritual Court, therefore the plaintiff comes here too late to have a Prohibition: but per Holt, the sentence will not hinder the having a Prohibition in any case, but in the case of Prohibitions grounded on stat. 23 H. 8. c. 9. for citing out of the diocese; but because the plaintiff had not pleaded this matter in the Spiritual Court, they denied the Prohibition, because the spiritual Court has a general jurisdiction of tithes; and if any special matter deprives them of their jurisdiction, it must be pleaded there: and if it had been pleaded there, and issue joined on it, and on the trial it had been found not to be silva cadua, it had been well; but if they had refused to admit the plea, a Prohibition should have been granted. 2 Ld. Raym. 835.

If one sues another in the Spiritual Court for a chattel or debt, the defendant shall have a Prohibition. So if he sues for a trespass. F. N. B. 40.

If the Spiritual Courts take on them to try the boundaries of a parish, a Prohibition lies. 2 Rol. Abr. 291: 7 Co. 44: 1 Rol. Reph. 332; Cro. Eliz. 228: 2 Leon. 829: 3 Keb. 286. S. P. because the prescription is the ground thereof.

If a suit be by a parson for tithes, and the defendant plead, that the place where, is in another parish, a Prohibition lies; because they meddle with that which is out of their jurisdiction, though the original thing be of their cognizance, and this comes in obliquely. 2 Rol. Abr. 282: 1 Show. 10: Noy 147.

So if the vicar of a parish libels against another to avoid his institution to the church of D. which he supposes to be a chapel of ease, appertaining to his vicarage, and the defendant suggests, that D. is a
parish of itself and not a chapel of ease; a Prohibition will be granted, for they shall not try the bounds of the parish. 2 Rol. Abr. 291.

So, if the question be in the Court-Christian, whether a church be a parochial church, or a chapel of ease, a Prohibition lies. Ibid.

But if the bounds of two vills lying in the same parish come in question in the Spiritual Court, no prohibition lies; for such bounds are triable in the Ecclesiastical Court, though those of parishes are not. 1 Lev. 78.

The Ecclesiastical Courts have cognizance of a way to a church; and for not repairing such way the parties may be proceeded against in the Spiritual Court. March 45.

So, if a parson is prevented from carrying away his tithe, by the stopping up the usual way, he may have his remedy in the Ecclesiastical Court, grounded on the statute 2 & 3 Ed. 6. c. 13: Bulst. 67: 1 Jon. 230.

But if the question be, whether he is to have one way or another, or whether such a way be a highway or not; this cannot be tried in the Spiritual Court. March 15: 1 Bulst. 67: 2 Rol. Abr. 287.

So if the Churchwardens of a church sue for a way to the church, which they claim to appertain to all the parishioners by prescription, a Prohibition shall be granted; for this right being grounded on the prescription, is to be tried in the Temporal Courts. 2 Roll. Rep. 41. 287.

If a man be admitted, instituted, and inducted, and a suit is commenced in the Ecclesiastical Court to avoid the institution, supposing it not valid; though the thing be of their cognizance, yet, because the induction, which is temporal, and gives a lay right, may depend on it, a Prohibition lies. Hob. 15: Latch. 205: 1 Bulst. 179: Litt. Rep. 165: Poph. 133: 1 Rol. Abr. 282: 1 Show. Rep. 10.

If there be a suit for tithes in the Ecclesiastical Court, and the tenant pleads, that the party who sues is not incumbe, but that J. S. is; and this plea, because it goes to the right of the incumbency, is rejected, a Prohibition lies; for by denying the tenant this liberty he might be twice charged for tithes. Cro. Eliz. 228: 3 Leon. 255.

There are frequent instances of Prohibitions being granted to the Ecclesiastical Courts, to stay suits for fees by chancellors, registrars, and proctors in those Courts; on this foundation, that demands for work and labour, are properly determinable at Common Law, and fees cannot be settled by the canon law; and that the Spiritual Court can only give costs and expenses of suit, but that no action of debt will lie for such costs at Common Law; and that the profits of an office being temporal, the remedy for them ought to be by quantum meruit; or, in case it be an office of freehold by assize; the denial of just fees being a disessein; therefore it seems to be now settled, that neither a proctor nor registrar can sue for fees in the Spiritual Court, but that the proper remedy is, in case of a fee certain, by an indebitatus assumptisit, or in case of an uncertain fee, by quantum meruit; and in such suits it is not necessary to prove a retainer, that being implied by law. 2 Rol. Rep. 59: 3 Leon. 268: 1 Mod. 176: 2 Kebr. 615: 3 Kebr. 303: 441. 516: 1 Salk. 533: 4 Mod. 254.

If a legatee takes a bond from the executor for payment of the legacy, and afterwards sues him in the Spiritual Court for the legacy, a Prohibition will be granted; for by taking the obligation the nature of the demand is changed, and becomes a debt or duty recoverable in Vol. V. 2 T.


As in a feoffment of tithes and lands, where there is no livery, if they adjudge the tithes to pass, notwithstanding there is no livery, a prohibition will lie. Cro. Jac. 270: 1 Vent. 41.

So, if a man devises, that his lands shall be sold for the payment of his debts, and that the overplus shall be paid to such persons in certain shares; the legatees in this case cannot sue in the Ecclesiastical Court; for the provisions intended them arise originally out of lands, and their proper remedy in this case is in a Court of Equity. Dyer 151. 264: Hob. 265: 2 Rol. Abr. 284, 5: 2 Show. 50: Cro. Car. 16.

But if a rent be devised out of a farm for years, the Ecclesiastical Courts may hold plea thereof; for the term for years, being only a chattel, is testamentary, consequently the rent devised thereout. 1 Sid. 279: 2 Keb. 5: 1 Lev. 179.

The rights to offices for life in the Ecclesiastical Courts, or Courts of Admiralty, are determinable at Common Law; as in the question concerning the validity of two patents, by which the office of Registrar to a Bishop was granted; it was held, that this should not be tried in the Spiritual Court, though the subject-matter be spiritual; because the office itself being matter of freehold, is for that reason, of temporal cognizance. 2 Rol. Abr. 285, 6: Noy 91: Latch. 228: Palm. 450: Godb. 390: Cro. Car. 65: 2 Rol. Rep. 306: Raym. 88: 1 Lev. 125: 4 Mod. 27: Comb. 306.

When the right of election to the office of Canon-residentiary, a freehold office, is in the Dean and Chapter, a Prohibition shall go to the Bishop, claiming a right to present by lapse, under pretence of his visitatorial authority. 1 Term Rep. 650.

Trespass on a glebe, being freehold, cannot be determined in the Ecclesiastical Court. Bro. Jurisdiction, pl. 41.

A parson libelled against the defendant in the Spiritual Court of York for having cut elms in the church-yard; and a Prohibition was granted, on suggestion that they grew on his freehold. 1 Ld. Raym. 212.

If a remedy be given in any case by statute, in a Temporal Court, a Prohibition lies to the Spiritual Court, if a suit be there, though the matter be of a spiritual nature; except where the jurisdiction of the Spiritual Court is saved by the same statute. 1 Inst. 96, b.

Preaching without licence is within the act of Uniformity, and therefore Prohibition lies to a suit in the Spiritual Court for it. Fort. 345.

A Prohibition lies to a suit for marrying without banns or licence, since stat 26 Geo. 2. c. 33. by which it is made felony. 2 Wils. 79.

But Prohibition does not lie to a suit in the Ecclesiastical Court against a Quaker for repairs of the church, on stat. 7 & 8 W. 3. c. 34; though the act gives a remedy before Justices of the Peace; for the old remedy is not taken away: nor in the case of small tithes, under stat. 7 & 8 W. 3. c. 6. Fort. 347.
For more learning on this subject, see 4 New Abr. and 17 & 18 Vin. Abr. and Kyd's Com. Dig. under title Prohibition.


A Prohibition shall be granted to any one who commis waste, either in the house or buildings of the incumbent of a spiritual living or who cuts down trees on the glebe, or doth any other waste. Moor 917.

PRO INDIVISO, For undivided.] The possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion; as coparceners before partition. Bract. lib. 5. See title Particures.

PROLES, Lat.] Progeny; Such issue as proceeds from a lawful marriage; though if the word be used at large, it may denote others.

PROLOCUTOR OF THE CONVOCATION-HOUSE, Prolocutor domus convocationis.] An officer chosen by ecclesiastical persons, publicly assembled in convocation by virtue of the King's writ at every Parliament: there are two Prolocutors, one of the higher House of Convocation, the other of the lower House; the latter of which is chosen by the lower House, and presented to the Bishops of the higher House as their Prolocutor, that is the person by whom the lower House of Convocation intend to deliver their resolutions to the upper House, and have their own House especially ordered and governed: his office is to cause the clerk to call the names of such as are of that House, when he sees cause; to read all things propounded, gather suffrages, &c. See further title Convocation.

PROMISE; See Assumptis.

PROMISSORY NOTES: See title Bill of Exchange.

PROMOTERS, Promotores.] Persons who in popular and penal actions prosecuted offenders, in their name and the King's, as informers, having part of the fines or penalties for their reward; they belonged chiefly to the exchequer and King's Bench; and Sir Edward Coke calls them turbidum hominum genus. 3 Inst. 191.

To PROMULGE A LAW, Promulgare Legem.] To declare, publish, and proclaim a Law to the people; and so promised, promulgatus, signifies published or proclaimed. See stat. 6 H. 6. c. 4: 1 Comm. 45: and this Dictionary, title Statute.

PRONOTARY; See Prothonotary.

PROOF, The shewing the truth of any matter alleged, or the trial, or making out, of any thing, by a Jury, witnesses, &c.

Bracton says, there is Probatio duplex, viz. Vivax voce, by witnesses; and Probatio mortua, by deeds, writings, &c.

Proof, according to Lilly, is either in giving evidence to a Jury on a trial, or else on interrogatories, or by copies of records, or exemplifications of them. 2 Lil. Abr. 393.—Though where a man speaks generally of Proof, it shall be intended of Proof by a Jury, which in the strict signification is legal Proof. 3 Bulst. 56.

Condition of a bond was to pay such money as an apprentice should mispend, on Proof made by the confession of the apprentice otherwise; and it was held, that although generally Proof shall be intended to be made on a trial by Jury, in this case it being referred to the confession of the party, it is sufficient if he confess it under his hand. Cro. Jac. 381.
It hath been insisted, that the Law knows no other Proof but before a Jury in a judicial way, and that which is on record; but if the Proof is modified by the agreement of the parties, that it shall be in such a manner, or before such a person, that modification which allows another manner of Proof shall be observed and prevail against the legal construction of the word Proof. *Sid.* 318: 2 *Lutw.* 436.

In articles the parties bound themselves in the penalty of 100l. &c., to be paid on due Proof of a breach; Proof at a trial will maintain the action. *Lutw.* 441. See further title Evidence.

**PROPER FEUDS;** See title Tenures I.

**PROPERTY, Proprietas.]** The highest right a man can have to any thing; being used for that right which one hath to lands or tenements, goods or chattels, which no way depend on another man's curry.

Before men entered into society there was not any Property, but an universal right instead of it; every man might then take to his use what he pleased, and retain it, if he had sufficient power: but when men entered into society, and industry, arts and sciences were introduced, Property was gained by various means; for the securing whereof, proper laws were ordained.

It seems, that the abstract right of Property originates in Occupancy, or when any thing is separated for private use from the common stores of nature: and this appears agreeable to the reason and sentiments of mankind, prior to all civil establishments. See 2 *Comm.* c. 1; and n.; and this Dictionary, titles Occupant; Liberty; Title.

According to our law, Property in lands and tenements is acquired either by entry, descent by law, or conveyance; and in goods or chattels, it may be gained many ways, though usually by deed of gift, or bargain and sale. 2 *Lit. Abr.* 400.

For preserving Property the Law hath these rules:  
1st, No man is to deprive another of his Property or disturb him in enjoying it.  
2dly, Every person is bound to take due care of his own Property, so as the neglect thereof may not injure his neighbour.  
3dly, All persons must so use their right, that they do not, in the manner of doing it, damage their neighbour's Property.

There are also three sorts of Properties, viz. Property absolute; Property qualified; and Property possessory; an absolute proprietor hath an absolute power to dispose of his estate as he pleases, subject to the laws of the land. The husband hath a qualified property in his wife's land, real chattels and debts; but in her chattels personal, he hath an absolute Property. *Plovdiv.* 5.

The right of possession of real Property, though it carries with it a strong presumption is not always conclusive evidence of the right of Property, which may still subsist in another man; for as one man may have the possession, and another the right of possession, which is recovered by possessory actions; so one man may have the right of possession, and so not be liable to eviction by any possessory action, and another may have the right of Property which cannot be otherwise asserted than by a *Writ of Right.* 3 *Comm.* c. 10. See this Dict. titles Action; Writ of Right.

Property in chattels personal may be either in possession; which is
where a man hath not only the right to enjoy, but hath the actual enjoyment of the thing; or else it is in action; where a man hath only a bare right, without any occupation or enjoyment: and of these the former, or Property in possession, is divided into two sorts, an absolute and a qualified Property. Property in possession absolute may be in all inanimate things, and in all such animals as are naturally tame; a qualified Property is had, under certain circumstances, in wild animals, being tamed; or being unable to escape propter impotentiam, as birds in the nest; or may be obtained propter privilegium, by the privilege of hunting, &c. in exclusion of others. So a qualified Property exists in the elements of light, air, and water. See 2 Comm. c. 25.

Every owner of goods, &c. hath a general Property in them; though a legatee of goods hath no Property in the goods given him by will until actually delivered him by the executor, who hath the lawful possession. See title Legacy.

And though, by a bare agreement, a bargain and sale of goods may be so far perfected, without delivery or payment of money, that the parties may have an action of the case for non-performance, yet no Property vests until delivery; therefore it is said, if a second buyer gets delivery, he has the better title. 3 Salk. 61, 62.

But if one covenant with me, that if I pay him so much money such a day, I shall have his goods in such a place, and I pay him the money: this is a good sale, and by it I have the Property of the goods. 27 H. 8. 16. See titles Agreement; Fraud.

As to property of Things in Possession or Action; in Possession, it is generally, when no other can have them from the owner, or with him, without his act or default; or specially, when some other hath an interest with him, or where there is a Property also in another as well as in the owner; as by bailment, delivery of things to a carrier, or innkeeper, where goods are pawned or pledged, distrained or leased, &c. And property in Action, is when one hath an interest to sue at law for the things themselves, or for damages for them; as for debts, wrongs, &c. and all these things, in possession, or action, one may have in his own right, or in the right of another, as executor. Wood's Inst. 314.

A person hath such a special Property in goods delivered him to keep, that he may maintain actions against strangers who take them out of his possession; so of things delivered to a carrier, and when goods are pawned, &c. Lit. Abr. 400, 401.

An executor or administrator hath the property of the goods of the deceased. But a servant hath neither a general or special Property in his master's goods; therefore to take them from his master may be trespass or felony, according to the value and other circumstances. Goldsb. 72. See titles Servant; Apprentice.

If a man hires a horse, he hath a special property in the horse during the time, against all men, even against the right owner; against whom he may have an action, if he disturbs him in the possession. Cro. Eliz. 236. But it hath been adjudged, that if a man deliver goods, &c. to another to keep for a certain time, and then to re-deliver them; if he to whom they were delivered sell them in open market, before the day appointed for the re-delivery, the owner may seize them wherever he finds them, because the general Property was always in him, and not altered by the sale. Goldb. 160: 3 Nels. Abr. 18. And if one delivers a horse or other cattle; or goods, to another to keep, and he
kills the horse or spoils the goods, trespass lies against him; for by the killing or spoiling, the Property is destroyed. 5 Refl. 13. See title Bailment.

If a swarm of bees light on a tree, they are not the owner’s of the tree, till covered with his hive; no more than hawks that have made their nests there, &c. But their young ones will be his Property, and for them he may have trespass. Doct. & Stud. c. 5: Co. Litt. 145.

A man’s geese, &c. fly away out of sight, wherever they go, he hath still a Property in them. Staunif. lib. 1. c. 162. 3 Shefri. Abr. 111.

Wild beasts, deer, hares, conies, &c. though they belong to a man on account of his game and pleasure, none can have an absolute real Property in; but if they are inclosed and made tame, there may be a qualified and possessory Property in them. See title Game.

One may have absolute Property in things of a base nature, as mastiff dogs, hounds, spaniels, &c. but not in things _fere nature_, unless when dead. Dalt. 371: Finch 176: 11 Refl. 50: Raym. 16.

Property in lands, goods, and chattels, may be forfeited or lost, by treason, felony, flight, outlawry; also of goods by their becoming deodand, waif, estray, &c. Back. Elem. 77, 78. See title Forfeiture.

Property in Highways, &c. He who hath the land which lies on both sides the Highway, hath the Property of the soil of the Highway in him, notwithstanding the King hath the privilege for his people to pass through it at their pleasure; for the Law presumes that the way was at first taken out of the lands of the party who owns the lands lying on both sides the way: And divers lords of manors claim the soil as part of their waste. 2 Lill. Abr. 400. See title Highway.

If the sea or a river, by violent incursion, carries away the soil or ground in so great a quantity, that he who had the property in the soil can know where his land is, he shall have his land: but if his soil or land be insensibly wasted by the sea or river, he must lose his Property, because he cannot prove which is his land. Pasch. 1650. See title Occupant.

A tenant hath only a special property in the trees on the lands demised, so long as they remain part of the freehold; for, when they are severed, his Property is gone. 11 Refl. 82.

Property altered. A man borrows or finds my goods, or takes them from me: neither of these acts will alter the Property. Bro. Propert. 27.

If one having taken away corn, make it into malt; turn plate into money, or timber into a house, &c. the Property of them is altered. Dodderidge Law 132, 133.

And where goods are generally sold in a market overt, for a valuable consideration, and without fraud, it alters the Property thereof. 5 Refl. 83. Except in some particular cases. See title Market.

To alter or transfer Property, is lawful; but to violate Property is never lawful, Property being a sacred thing which ought not to be violated. And every man (if he hath not forfeited it) hath a Property and a right allowed him, to defend his life, liberty, and estate; and if either be violated, the Law gives an action to redress the injury and punish the wrong. 2 Lill. Abr. 400. See title Liberty.

PROPHECIES, _Prophetie._] The foretelling of things to come, in hidden mysterious speeches; whereby commotions have been often caused in the kingdom, and attempts made by those to whom such speeches promised good success, though the words were mystically
framed, and pointed only to the cognizance, arms, or some other quality of the parties. But these, for distinction sake, are called false or fantastical Prophecies.

False Prophecies, (where persons pretend extraordinary commissions from God) to raise jealousies in the people, to terrify them from impending judgments, &c. are punishable at Common Law, as impositions: They are reckoned by Blackstone among offences against the public peace; and were punished capitally by stat. 1 E. 6. c. 12. which was repealed in the reign of Queen Mary. And now by stat. 5 Eliz. c. 15. none shall publish or set forth any false Prophecy, with an intent to make any rebellion or disturbance, on pain of 10l. for the first offence, and a year’s imprisonment; and for the second offence to forfeit all his goods and chattels, and suffer imprisonment during life: The prosecution to be within six months. See 3 Inst. 128, 129. and this Dict. title Conjuration.

PROPORTION, Proportion.] See De Onerando pro Rata Portionis.

PROPORTUM, Purport.] Intent or meaning. Cowell.

PROPONDERS. The 85th chapter of Coke’s 3d Institute is intitled, against Monopolists, Propounders, and Projectors, where it seems to signify the same as Monopolists. Cowell:—rather as Projectors.

PROPRIETARY, Proprietarius.] He who hath a property in any thing, quæ nullius arbitrio est obnoxia; but was heretofore chiefly used for him who had the fruits of a benefice to himself, his heirs and successors, as abbots and priors had to them and their successors. See title Appropriations.

PROPRIETATE PROBANDA, A writ to the Sheriff to inquire of the property of goods distrained, when the defendant claimeth property on a Replevin sued; for the Sheriff cannot proceed till that matter is decided by writ; and if it is found for the plaintiff, then the Sheriff is to make replevin; but if for the defendant, he can proceed no further. F. N. B. 77: Finch 316. 450: Co. Lit. 145. b. See title Replevin.

PRO RATA, Pro proportione.] In proportion:—As joint-tenants, &c. are to pay pro Rata, i.e. in proportion to their estates. The term is also applied to an obligation, where two or more have become bound jointly to pay a sum of money. In such a case, each of the obligors is said to be liable pro rata parte, or proportionally: in contradistinction to these obligations by which the obligors are bound jointly and severally, by which each is liable for the whole debt. See titles Joint tenants; Partners.

PROROGUE, To prolong or put off to another day. See title Parliament.

PROTECTION, Protectio.] Is generally taken for that benefit and safety which every Subject hath by the King’s Laws; every man who is a loyal Subject is in the King’s Protection; and, in this sense, to be out of the King’s Protection, is to be excluded the benefit of the Law. See title Premunire.

In a special signification, a Protection of the King is an act of grace, by writ issued out of Chancery, which lies where a man passes over the sea in the King’s service; and by this writ (when allowed in Court) he shall be quit from all personal and real suits between him
and any other person; except assises of novel disseisin, assise of
rein presentment, attains, &c. until his return. 2 Lit. Abr. 398.

This term is thus further explained, viz. Protection is an immu-
nity granted by the King to a certain person, to be free from suits at
Law for a certain time, and for some reasonable cause; and it is a
branch of the King’s prerogative so to do: There are two sorts of
these Protections, one is *cum clausula, Volumus*; and of that Protec-
tion there are three particulars; one is called *quia protecturus*, and is
for him who is going beyond sea in the King’s service; another is
*quia moraturus*, which is for him who is already abroad in the King’s
service, as an ambassador, &c. and another is for the King’s debtor;
that he be not sued till the King’s debt is satisfied. The other sort of
Protection is *cum clausula, Notumus*, &c. which is granted to a spiri-
tual corporation, that their goods or chattels be not taken by the Of-
ficer of the King, for the King’s service; it may likewise be granted
to a spiritual person single, or to a temporal person. Reg. Orig. 23.

By the Common Law the King might take his debtor into his Pro-
tection, so that no one might sue or arrest him till the King’s debt
were paid. F. N. B. 28: Co. Lit. 131: But by stat. 25 E. 3. st. 5. c.
19. notwithstanding such Protection, another creditor may proceed to
judgment against him with a stay of execution, till the King’s debt
be paid: unless such creditor will undertake for the King’s debt, and
then he shall have execution for both. 3 Comm. c. 19.

On a person’s going over sea in the service of the King, writ of
Protection shall issue, to be quit of suits till he return; and then a re-
summons may be had against him: But one may proceed against a de-
fendant having such Protection, until he comes and shews the Pro-
tection in Court, and hath it allowed; when his plea or suit shall go
*sine die*; though if after it appears that the party who hath the Protec-
tion goes not about the business for which the protection was granted,
the plaintiff may have a repeal. &c. Terms de Ley: 2 Lit. Abr. 398.
And by stat. 33 E. 1. st. 1. the plaintiff may challenge the Protection,
and aver, that the defendant was within the four seas; or not in the
King’s service, &c.

A Protection is to be made for one year, and may be renewed from
year to year; but if it be made for two or three years, the Justices will
not allow it: And if the King grant a Protection to his debtor, that he
be not sued till his debt is paid; on these Protections none shall be de-
layed; the party is to answer and go to judgment, and execution shall
be said. Co. Lit. 150: See ante, and stat. 25 Ed. 3. c. 19.

The King granted a Protection to one of his debtors; and on de-
murrer it was alleged, that by stat. 25 Ed. 3. st. 5. c. 19. Protections
of this kind are expressly, that none shall be delayed on them; and
the Court ordered, that when it came to execution they would advise;
so a *respondeas ouster* was awarded. Cro. Jac. 477.

In all Protections there ought to be a cause shewn for granting
them: If obtained pending the suit, they are bad; and a person giving
bail to an action on arrest, it is said, may not plead his Protection; one
may not be discharged out of prison to which he is committed in ex-
cution, by Protection to serve the King, &c. Nor will a Protection
be allowed where a person is taken on a *capias utlagatum*, after judg-
ment; for though the *capias utlagatum* is at the King’s suit in the first
place, it is in the second degree for the Subject. Latch. 197. 1 Leon.
185: Dyer 162: Hob. 115.
But in action on assumpsit a Protection under the Great Seal was brought into Court, for that defendant was in the wars in Flanders, &c. and it was allowed though after an exigent. 3 Lev. 332.

A Plaintiff in an action cannot cast a Protection; for the Protection is for the defendant, and shall be always for him, if it be not in special cases where the plaintiff becomes defendant. New Nat. Br. 62. And no protection shall be allowed against the King. Co. Lit. 131.

A Protection to save a default, is not good for any place within the kingdom of England: And regularly it lies only where the defendant or tenant is demandable; for the Protection is to excuse his default, which cannot be made when he is not demanded. Jenk. Cent. 66. 94.

These Protections are now very rarely used; the last instance of one was in 1692, when King William III. granted one to Lord Cutts, to protect him from being outlawed by his tailor. 3 Lev. 332.

Form of the Writ of Protection:

George the Third, &c. To all and singular Sheriffs, &c. and others, who shall see and hear our present letters, Greeting. Know you, that we have taken into our special Protection A. B. and all his servants, lands, and tenements, goods and chattels, in, &c. in the county of S. and in, &c. and also all his writings whatsoever: Therefore We command you, that you protect and defend the said A. B. and his servants, &c. aforesaid, not doing to him or them, or any of them, or permitting to be done to them, any injury, damage, or violence, on pain of grievous forfeiture, &c. In testimony of which, &c. for one year to endure. In Witness, &c.

Protection of Ambassadors; See Ambassadors.

Protection of Children; See titles Parent; Bastard; Poor; Homicide.

Protection of Parliament; See titles Parliament; Privilege.

Protection of the Courts at Westminster. The Protection of the Court of B. R. is allowed for any person who attends his own business in that Court, or by virtue of any subject. See titles Arrest; Privilege.

Protectionibus, The statute allowing a challenge to be entered against a Protection, &c. 33 Ed. 1. st. 1. See title Protection.

Protest, Protestatio. Hath two applications; one, by way of caution, to call witnesses, (as it were,) or openly affirm that he doth either not at all, or but conditionally, yield his consent to any act, or unto the proceeding of a Judge in a Court, wherein his jurisdiction is doubtful, or to answer on his oath further than by Law he is bound. See Plowden 676. and Reg. Orig. 306.

The other is by way of complaint, as to protest a man's bill. See title Bills of Exchange.

Each Peer has a right, by leave of the House, when a vote passes contrary to his sentiments, to enter his dissent on the Journals of the House, with the reasons of such dissent; which is usually styled his Protest. See title Parliament V. 1.

Protestation, Protestatio. A defence or safeguard to the party who maketh it, from being concluded by the action he is about to do, that issue cannot be joined by it. Plowd. 276. See title Pleading.

It is a form of pleading when one does not directly affirm or deny Vol. V. 2 U
any thing alleged by another, or which he himself allegeth. Cowell. As, protestando that he made no testament pro placito, that he made not the plaintiff his executor; because if he made no testament he could make no executor. Heath's Max. 26. cites Pl. C. 276.

Coke defines a Protestation to be an exclusion of a conclusion. 1 Inst. 124. For the use of it is, to save the party from being concluded with respect to some fact or circumstance, which cannot be directly affirmed or denied without falling into duplicity of pleading; and which yet, if he did not thus enter his Protest, he might be deemed to have tacitly waived or admitted. Thus, while tenure in villenage subsisted, if a villein had brought an action against his lord, and the lord was inclined to try the merits of the demand, and at the same time to prevent any conclusion against himself that he had waived his signiory; he could not in this case both plead affirmatively that the plaintiff was his villein, and also take issue upon the demand; for then his plea would have been double, as the former alone would have been a good bar to the action: but he might have alleged the villenage of the plaintiff, by way of protestation, and then have denied the demand. By this means the future vassalage of the plaintiff was saved to the defendant, in case the issue was found in his (the defendant's) favour: for the protestation prevented that conclusion, which would otherwise have resulted from the rest of his defence, that he had enfranchised the plaintiff; since no villein could maintain a civil action against his lord. Co. Lit. 126. So also, if a defendant, by way of inducement to the point of his defence, alleges (among other matters) a particular mode of seisin or tenure, which the plaintiff is unwilling to admit, and yet desires to take issue on the principal point of the defence, he must deny the seisin or tenure by way of Protestation, and then traverse the defensive matter. So lastly, if an award be set forth by the plaintiff, and he can assign a breach in one part of it, (viz. the non-payment of a sum of money) and yet is afraid to admit the performance of the rest of the award, or to aver in general a non-performance of any part of it, lest something should appear to have been performed; he may save to himself any advantage he might hereafter make of the general non-performance, by alleging that by Protestation; and plead only the non-payment of the money. 3 Comm. c. 20. p. 312.

Protestation is said to be of two kinds, 1st, When a man pleads any thing which he dare not directly affirm, or cannot plead, for fear of making his plea double; as if in conveying to himself by his plea a title, he ought to plead divers descents by divers persons; and he dare not affirm that they were all seised at the time of their death, or although he could do it, yet it will be double to plead two descents, of both which each one by itself may be a good bar, then the defendant ought to plead and allege the matter, introducing the word protestando; as to say (by Protestation) that such a one died seised, &c. and that the adverse party cannot traverse. 2dly, When one is to answer two matters, and yet by law he ought to plead but to one, then in the beginning of his plea he may say protestando & non cognoscendo such part of the matter to be true, (and then making his plea further) sed pro placito in hac parte, &c. and so he may take issue on the other part of the matter; and then he is not concluded by any of the rest of the matter which he hath by Protestation so denied. Reg. Plac. 70, 71. See 18 Vin. Abr. title Protestation.
In other terms, the use of a Protestation in pleading seems to be this, viz. When one party alleges or pleads several matters, and the other party can only offer, or take issue on one of them, he protests against the others: in such case should the issue, on trial, be found against the latter party, the record would not be evidence against him in another suit, as to those matters or points, against which he protested; which it otherwise might be, had he admitted, or not protested against them. \textit{Dict.}

\textbf{PROTESTANT CHILDREN of PAPISTS and JEWS.} The Lord Chancellor, how to make an order on Popish and Jewish parents refusing to allow their Protestant Children a maintenance. \textit{Stats. 11 & 12 Will. 3. c. 4. § 7: 1 Ann. st. 1. c. 30. See title Poor.}

\textbf{PROTESTANT DISSENTERS.} See titles Dissenters; Nonconformists. \textbf{Protestant Successions.} See title King I.

\textbf{PROTHONOTARY, Protonotarius, vel Primus Notarius.} A chief Officer or Clerk of the Common Pleas and King's Bench; for the first Court there are three Prothonotaries, and the other hath but one: He of the King's Bench records all civil actions; as the Clerk of the Crown Office doth all criminal causes in that Court: Those of the Common Pleas, since the order 14 Jac. 1. on agreement entered in between the Prothonotaries and Filazers of that Court, enter and inroll all manner of declarations, pleadings, assises, judgments, and actions: They make out all judicial writs, except writs of \textit{Habeas Corpus} and \textit{Distringas Jurator}; (for which there is a particular office erected, called the \textit{Habeas Corpora Office}) also writs of execution, and of seisin, of privilege for removing causes from inferior Courts, writs of \textit{procedendo}, \textit{scire facias's}, in all cases, and writs to inquire of damages; and all process upon prohibitions, on writs of \textit{audita querela}, false judgment, &c. They likewise enter recognizances acknowledged in that Court; and all common recoveries; and make exemplifications of records, &c. See \textit{stat. 5 H. 4. c. 14.}

\textbf{PROTOCOL,} the first copy. The entry of any instrument in the book of a Notary or public Officer, and which in case of the loss of the instrument may be admitted as evidence of its contents.

\textbf{PROVER, Probator,} mentioned in \textit{stats. 28 Ed. 1. st. 2: 5 H. 4. c. 2.} See title Approver, and 3 Inst. 129. A man became an approver, and appealed five, and every of them joined battle with him: \textit{Et duellum percussum fuit cum omnibus,} & Probator devicit omnes quinque in duello; quorum guatuer suspendebantur, & quintus clamabat esse clericum & allocatur, & Probator pardonatur. \textit{Mic. 39 E. 3. coram Rege; Rot. 97. Suff.}

\textbf{PROVINCE, Provincia.} An out country, governed by a Deputy or Lieutenant. \textit{Lit. Dict.} See this Dict. title Plantation.

It was used among the Romans for a country, without the limits of Italy, gained to their subjection by the sword; whereupon that part of France next the Alps was so called by them, and still retains the name Provence.

But in England a Province is most usually taken for the circuit of an Archbishop's jurisdiction; as the Province of Canterbury, and that of York: Yet it is mentioned in some of our statutes, for several parts of the realm; and sometimes for a county.

Ireland is divided civilly into four Provinces, Ulster, Leinster, Connaught, and Munster: and ecclesiastically into four Archbishopricks, Armagh, Dublin, Cashel, and Tuam.
PROVINCIAL, Provincialis.] Of or belonging to a Province; also a chief Governor of a religious order; as of friars, &c. Stat. Antiq. 4 H. 4. c. 17.

PROVISON, Proviso.] Was used for the providing a Bishop, or any other person, an Ecclesiastical Living, by the Pope, before the incumbent was dead: It was also called gratia expectativa, or mandatum de providendo: The great abuse whereof produced the statutes of Provisors and Premunire: See the latter title.

PROVISIONES. The acts to restrain the exorbitant abuse of arbitrary power, made in the Parliament at Oxford 1258, were called Provisiones by Rishanger, who continued, Mat. Paris, anno 1260; being to provide against the King's absolute will and pleasure. See Mat. Paris sub annis 1244 & 1254. Several statutes are also called Provisiones, particularly Stat. Merton, 20 H. 3. Provisiones signifies also Providentiae, or Provisions of viucal. Cowell.

PROVISIONS, Selling unwholesome, Is reckoned by Blackstone among offences against public health. To prevent which the stat. 51 Hen. 3. st. 6. and the ordinance for bakers, c. 7. prohibit the sale of corrupted wine, contagious or unwholesome flesh, or flesh that is bought of a Jew; under pain of amercement for the first offence, pilory for the second, fine and imprisonment for the third, and abjuration of the town for the fourth. And by st. 12 Car. 2. c. 25. §11. any brewing or adulteration of wine is punished with the forfeiture of 100l. if done by the wholesale merchant; and 40l. if done by the vintner or retail trader. 4 Comm. c. 13. See title Victuals.

PROVISO, A condition inserted in any deed, on the performance whereof the validity of the deed depends; sometimes it is only a covenant, secundum subjectam materiam. 2 Rep. 70.

Proviso, in the most common acceptation, is that clause in a mortgage, whereby the deed is declared to be void, on payment of principal and interest. See title Mortgage.

The word Proviso is generally taken for a condition; but it differs from it in several respects; for a condition is usually created by the grantor or lessor, but a Proviso by the grantee or lessee; there is likewise a difference in placing the Proviso; as if, immediately after the Habendum, the next covenant is that the lessee shall repair, provided always that the lessor shall find timber, this is no condition; nor is it a condition, if it comes among other covenants after the Habendum, and is created by the words of the lessee; as if the lessee covenants to scour the ditches, Proviso, that the lessor carry away the soil, &c. 3 Nels. Abr. 21.

It hath been held, that the Law hath not appointed any proper place in a deed to insert a Proviso; but that when it doth not depend on any other sentence, but stands originally by itself, and when it is created by the words of the grantor, &c. and is restrictive or compulsory, to enforce the grantee to do some act, in such case the word Proviso makes a condition, though it is intermixed with other covenants, and doth not immediately follow the Habendum. 2 Rep. 70. See title Deed.

A Proviso always implies a condition, if there be no words subsequent which may change it into a covenant: Also it is a rule in Provisoes, that where the Proviso is, that the lessee, &c. shall do, or not do a thing, and no penalty is added to it; this is a condition; or it is void; but if a penalty be annexed, it is otherwise. Cro. Eliz. 242: 1
Lev. 155. And where a Proviso is a condition, it ought to do the office of a condition, i.e. make the estate conditional, and shall have reference to the estate, and be annexed to it; but shall not make it void without entry, as a limitation will. See title Condition.

A lease was made for years, rendering rent at such a day, Proviso, if the rent be in arrear for one month after, the lease to be void: the question was, whether this was a condition or limitation; for if it was a condition, then the lease is not determined without entry; adjudged, that it was a limitation, though the words were conditional; because it appeared by the lease itself, that it was the express agreement of the parties that the lease shall be void on non-payment of the rent; and it shall be void without entry. Moor. 291. See titles Lease; Ejectment; Rent.

If a Proviso be the mutual words of both parties to the deed, it amounts to a covenant: and a Proviso by way of agreement to pay, is a covenant, and an action well lies upon it. 2 Rep. 72. See title Covenant I.

Plaintiff conveyed an office to defendant, Proviso that out of the first profits he pay plaintiff 500l. And it was resolved, that an action of covenant lay on this Proviso; for it is not by way of condition or defeasance, but in nature of a covenant to pay the money. 1 Lev. 155. But where defendant in consideration of 400l. granted his lands to plaintiff for ninety-nine years, Proviso if he pay so much yearly during the life of S. T. &c. or 400l. within two years after his death, then the grant to be void, and there was a bond for performance of covenants; in action of debt brought on this bond, it was adjudged, that there being no express covenant to pay the money, there could be no breach assigned on this Proviso. 2 Mod. 36. Sed qu. and see ante.

In articles of agreement to make a lease, Proviso that the lessee should pay so much rent, &c. although there be no special words of reservation of rent, the Proviso is a good reservation. Cro. Eliz. 486. And Proviso with words of grant added to it, may make a grant and not a condition. Moor 174: See 1 And. 19.

When uses are raised by covenant, in consideration of paternal love to children, &c. and after, in the same indenture, there is a Proviso to make leases, without any particular consideration, it is void; though such a Proviso might be good, if the uses were created by fine, recovery, &c. because of the transmutation of the estate: and for that, in this case, uses arise without consideration. 1 Rep. 176: Moor 144: 1 Lev. 30. See title Use.

In a deed, a Proviso, that if the son disturb the other uses, &c. that then a term granted to him, and the uses to the heirs of his body, shall be void; this Proviso is sufficient to cease the other uses, on disturbance. 8 Rep. 90, 91. But a Proviso to make an estate, limited to one and the heirs male of his body, to cease as if he was naturally dead, on his attempting any act by which the limitation of the land, or any the estate in tail, should be undone, barred, &c. hath been adjudged not good; because the estate tail is not determined by the death of tenant in tail, but by his dying without issue male. Dyer. 351: 1 Rep. 83: See title Limitation of Lands.

A testator devised lands to one and the heirs male of his body, Proviso, that if he attempt to alien, then his estate to cease and remain to another; the Proviso is void. 1 Vent. 521.

A Proviso that would take away the whole effect of a grant, as not
to receive the profits of lands granted, &c. is void; and so is a Proviso which is repugnant to the express words of the grant; in a will, testator made another his executor; provided he did not administer his estate, adjudged this Proviso is void for repugnancy. Cro. Eliz. 107; Dyer 3.

And if a Proviso is good at first, and afterwards it happens that there is no other remedy but that which was restrained; the remedy shall be had notwithstanding the restraint. Wood’s Inst. 231. Where a Proviso is parcel of, or abridgeth a covenant, it makes an exception; when it is annexed to an exception in a deed, it is an explanation; and where added at the end of any covenant, there it extends only to defeat that covenant. 4 Leon. 72, 73: Moor 105. 471. See Deed; Condition; Covenant.

PROVISO, TRIAL BY; is where the plaintiff in an action desists in prosecuting his suit, and doth not bring it to trial in convenient time, the defendant in such case may take out the venire facias to the sheriff, which hath in these words, Proviso, quod, &c. i. e. provided that, if plaintiff take out any writ to that purpose, the sheriff shall summon but one Jury on them both, and this is called going to trial by Proviso. Old Nat. Br. 159. See title Trial.

Process may be taken out by a defendant in criminal cases by Proviso in appeals, in the same manner as in other actions, on default of the appellant: but not in indictments, nor in actions where the King is sole party; and it hath been questioned, whether there can be any such process in informations qui tam. 2 Hawk. c. 41. § 10. See stat. 7 & 8 W. 3. c. 52: 7 Term Rep. K. B. 661: 2 East’s Rep. 202. 206; and this dictionary, title Trial.

PROVISOR, One who sued to the Court of Rome for a provision. See title Præmunire. It is sometimes also taken for him who hath the care of providing things necessary; a Purveyor. Cowell.

PROVISOR MONASTERII, The Treasurer or Steward of a Religious House, who had the custody of goods and money, and supervised all accounts. Cowell.

PROVISOR VICTUALIUM, The King’s Purveyor, who provided for the accommodation of his Court, is so called in our historians. Cowell.

PROVOICE, To make killing a person manslaughter, &c. See title Homicide III. 2.

PROVOST. The principal Magistrate of a Royal Borough in Scotland. A Governing Officer of an University or College.

PROVOST MARSHAL, Is an Officer of the King’s Navy, who hath the charge of prisoners taken at sea; and is sometimes used for like purpose at land. See stat. 13 Car. 2. c. 9. and title Marshal.

PROXIES, Persons appointed instead of others, to represent them.

Every Peer of the Realm, called to Parliament, hath the privilege of constituting a Proxy to vote for him in his absence on a lawful occasion; but such Proxies are by licence of the King, and sometimes Proxies have been denied by the King; particularlyannis 6, 27, & 39 Ed. 3. See title Parliament V. 1.

Proxies are also annual payments made by Parochial Clergy to the Bishop, &c. on visitations. See Procuration.

 Bryan, a kind of service or tenure; according to Blount, it signifies an old-fashioned spur, with one point only, which the tenant, holding land by this tenure, was to find for the King.
In the time of Hen. VIII. light horsemen in war were called Prickers; because they used such spurs or Pryks to make their horses go with speed.

PUBERTY, Pubertas.] The age of fourteen in men and twelve in women; when they are held fit for, and capable of contracting, marriage. See titles Ages; Infant.

PUBLICATION, Is used of depositions of witnesses in a cause in a Chancery, in order to the hearing; it signifies the shewing the depositions openly, and giving out copies of them, &c. pursuant to the rules of the Court. See titles Chancery; Depositions.—As to the Publication of Libels and Wills, see those titles.

PUBLIC ACCOUNTS; See title Accounts, Public.

All the Lands, tenements, and hereditaments, which an accountant hath, shall, for the payment of debts to the Crown be liable and put in Execution, in like manner as if he had stood bound by writing obligatory, having the effect of a statute staple, &c. Stat. 13 Eliz. c. 4.

PUBLIC ACT of Parliament, See Statute.

PUBLIC FAITH, Fides Publica.] In the reign of Charles I. there was a pretence or cheat, to raise money of the seduced people, upon what was termed the Public Faith of the nation, to make war against the King, about the year 1642. Stat. 17 C. 1. c. 18.

PUBLIC WORSHIP; See Nonconformists; Papists; Recusants; Service and Sacraments.

PUERITIA; See Puberty; Pugiillarity.

PUIS DARREIN CONTINUANCE, Is a plea of new matter, pending an action, post ultimum continuationem. See title Pleading.

PUISNE, Fr. Puisne.] Younger, puny, born after, junior. See Mullier. The several Judges and Barons, not chiefs, are called Puisne Judges, Puisne Barons.

PULSATOR, The plaintiff or actor; from pulsare, to accuse any one. Leg. Hen. 1. c. 26.

PUNISHMENT, Punam.] The penalty for transgressing the Law: and as debts are discharged to private persons by payment, so obligations to the public for disturbing society, are discharged when the offender undergoes the Punishment inflicted for his offence. See title Judgment, Criminal.

PUPILLARITY, The age of Infants preceding Puberty. See that title.

PUR AUTER VIE. Where lands, &c. are held for another's life. See title Occupant.

PURCHASE.

ACQUISITUM, PERQUISITUM, PERQUISITIO.] The buying or other acquisition of lands, or tenements, with money, or by gift, deed, or agreement; as distinct from the obtaining them by descent or hereditary right; conjunctum perquisitum is where two or more persons join in the Purchase. Litt. § 2: Reg. Orig. 143.

Purchase taken in its largest and most extensive sense, is thus defined: The possession of lands and tenements, which a man hath by his own act or agreement, and not by descent from any of his ancestors or kindred. In this sense it is contradistinguished from acquisition by right of blood; and includes every other method of coming to an estate, but merely that by inheritance: wherein the title is vested in a person not by his own act or agreement, but by the single ope-
RATION OF LAW, LIT. § 12: 1 INST. 18. What is termed in the Common Law Purchase, was by the feudists called Conquest, conquastus or conquissitio: and in this sense it was that William the First was called Conqueror, or the Conqueror, signifying, that he was the first of his family who acquired the Crown and Realm of England. See 2 Comm. e. 15.

This is the legal signification of the word fierquisitio, or Purchase; and in this sense it includes the five following methods of acquiring a title to estates: Escheat, Occupancy, Prescription, Forfeiture, Alienation. See this Dictionary, under those and other titles connected therewith; and further, titles Remainder; Executory Devise; Limitation of Estate, &c.

Mr. Hargrave, after some remarks on the peculiar nature of Escheats, observes, that instead of distributing all the several titles to land under Purchase and Descent, it would be more accurate to say, that the title to land is either by Purchase, to which the act or agreement of the party is essential, or by mere act of Law: and under the latter to consider, first, Descent; and then Escheat, and such other titles, not being by descent, as yet like them accrue by mere act of Law. 1 INST. 18. b.

One cometh in by Purchase when he comes to lands by legal conveyance, and hath a lawful estate; and a Purchase is always intended by title, either from some consideration, or by gift; (for a gift is in Law a Purchase:) whereas descent from an ancestor cometh of course by act of Law; also all contracts are comprehended under this word Purchase. Co. Litt. 18: Doct. & Stud. cap. 24.

Purchase in opposition to Descent is taken largely; if an estate comes to a man from his ancestors without writing, that is a Descent; but where a person takes any thing from an ancestor, or others, by deed, will, or gift, and not as heir at Law; that is a Purchase. 2 Lit. Abr. 403.

When an estate doth originally vest in the heir, and never was nor could be in the ancestor; such heir shall take by way of Purchase; but when the thing might have vested in his ancestor, though it be first in the heir, and not in him at all, the heir shall have it in nature of Descent. 1 REP. 95. 106.

Consistent with the above rule is Mr. Fearne's explanation of the much contested point, in what case an heir shall be said to take by limitation, and in what by Purchase: or, in the language of conveyancers, what are words of limitation, and what are words of Purchase. See fully this Dictionary, title Remainder: and post. Div. I. of this title.

I. IN WHAT CASES HEIRS SHALL BE DEEMED PURCHASERS; AND OF THE EFFECT OF THEIR TAKING BY PURCHASE.

II. OF PURCHASERS FOR A VALUABLE CONSIDERATION; AND HOW PROTECTED OR MADE ANSWERABLE IN EQUITY. SEE ALSO THIS DICTIONARY, UNDER TITLES FRAUD; CONSIDERATION; TRUST; MORTGAGE, &C.

I. PURCHASE, IN ITS VULGAR AND CONFINED ACCEPTATION, IS APPLIED ONLY TO SUCH ACQUISITIONS OF LAND AS ARE OBTAINED BY WAY OF BARGAIN AND SALE FOR MONEY, OR SOME OTHER VALUABLE CONSIDERATION. BUT THIS FALLS FAR SHORT OF THE LEGAL IDEA OF PURCHASE: FOR IF I GIVE LAND FREELY TO AN-
other, he is in the eye of Law a Purchaser; and falls within Littleton's definition, for he comes to the estate by his own agreement, that is, he consents to the gift. 1 Inst. 18. A man who has his father's estate settled upon him in tail, before he was born, is also a Purchaser; for he takes quite another estate than the law of descents would have given him. Nay, even if the ancestor devises his estate to his heir at law by will, with other limitations, or in any other shape than the course of descents would direct, such heir shall take by Purchase. Ld. Raym. 728. Thus if a man having two daughters, his heirs, devises his land to them and their heirs; they shall take by Purchase as joint-tenants; for the estate of joint-tenants, and tenants in common, is different in its nature and quality from that of co-parce-ners. Cro. Eliz. 431. But if a man seised in fee, devises his whole estate to his heir at law, so that the heir takes neither a greater nor a less estate by the devise than he would have done without it, he shall be adjudged to take by descent, even though it be charged with incumbrances; this being for the benefit of creditors, and others, who have demands on the estate of the ancestor. 1 Rol. Abru. 626: Salk. 241: Ld. Raym. 728. If a remainder be limited to the heirs of A., here A. himself takes nothing; but, if he dies, during the continuance of the particular estate, his heirs shall take as Purchasers. 1 Rol. Abru. 627: 1 Term Rep. K. B. 634. But if an estate be made to A. for life, remainder to his right heirs in fee, his heirs shall take by descent: for it is an antient rule of Law, that wherever the ancestor takes an estate for life, the heir cannot by the same conveyance take an estate in fee by Purchase, but only by descent. 1 Refl. 104: 2 Lev. 60: Raym. 334. And, if A. dies before entry, still his heir shall take by descent, and not by Purchase; for where the heir takes any thing that might have vested in the ancestor, he takes by way of descent. 1 Refl. 98. The ancestor, during his life, beareth in himself all his heirs; and therefore, when once he is, or might have been, seised of the lands, the inheritance so limited to his heirs vests in the ancestor himself: and the word "heirs" in this case is not esteemed a word of Purchase, but a word of limitation, enuring so as to increase the estate of the ancestor, from a tenancy for life to a fee simple. Co. Litt. 22. And, had it been otherwise, had the heir (who is uncertain till the death of the ancestor) been allowed to take as a Purchaser originally nominated in the deed, as must have been the case if the remainder had been expressly limited to him by name; then, in the times of strict feudal tenure, the lord would have been defrauded, by such a limitation of the fruits of his signiory, arising from a descent to the heir. 2 Comm. c. 15. f1. 242. See further, this Dictionary, titles Remainder; Heir II. The difference in effect, between the acquisition of an estate by descent and by Purchase, consists principally in these two points: First, That by Purchase the estate acquires a new inheritable quality, and is descendible to the owner's blood in general, and not to the blood only of some particular ancestor. See title Descent. Secondly, That an estate taken by Purchase will not make the heir answerable for the acts of the ancestor, as an estate by descent will. For, if the ancestor by any deed, obligation, covenant, or the like, bindeth himself and his heirs, and dieth; this deed, obligation, or covenant, shall be binding upon the heir; so far forth only as he (or any other in trust for him, stat. 29 Car. 2. c. 3. § 10;) had any estate of inheritance, vests.
ed in him by descent from, (or any estate per alter vie, coming to him by special occupancy, as heir to [§ 12, of the same statute,]) that ancestor sufficient to answer the charge; whether he remains in possession, or hath aliened it before action brought. See 1 P. Wms. 777; stat. 3 & 4 W. & M. c. 14.: Therefore if a man covenants, for himself and his heirs, to keep my house in repair, I can then (and then only) compel his heir to perform this covenant, when he has an estate sufficient for this purpose, or assets, by descent from the covenantor: for though the covenant descends to the heir, whether he inherits any estate or no, it lies dormant, and is not compulsory, until he has assets by descent. Finch Rep. 86. See title Assets.

II. It is the rule of Equity that where a man is Purchaser for valuable consideration, without notice, he shall not be annoyed in equity; not only where he has a prior legal estate, but where he has a better title or right to call for the legal estate, than the other. Treat. Eq. lib. 2. c. 6, § 2. cites 2 Vern. 599: 2 P. Wms. 678, &c.

This rule is founded on an obvious principle of equity. It seems, however, to have been broken in upon by the decisions in Burgh v. Burgh; [Burgh v. Francis:] Finch 28: and Williams v. Lambe, 3 Bro. C. R. 264. In the former of which cases the Court appears to have interposed to the prejudice of a judgment-creditor, without notice of the plaintiff’s equity; and in the latter to the prejudice of a Purchaser, without notice of the plaintiff’s title as Dowress. With respect to those instances in which a bona fide Purchaser has in equity been postponed, in respect of his conniving at the subsequent fraud of him under whom he derived his title, they are evidently exceptions to the general rule, which is confined to the claim of the Purchaser at the time of completing his Purchase; a claim which he may forfeit as to third persons, by subsequent misconduct. Fonblanque’s Note on Treat. Eq. ubi sup.: and see Treat. Eq. i. c. 3. § 4, in n.; and this Dictionary, title Mortgage III.

It has been said, that by taking a conveyance with notice of a trust, the Purchaser himself becomes the trustee; and must not, to serve himself, be guilty of a breach of trust, notwithstanding any consideration paid. 2 Vern. 271. But this proposition seems to be stated too generally; for though an immediate or first Purchaser, with notice of an equitable claim in another, shall certainly not be allowed, though a Purchaser for valuable consideration, to protect himself against such equitable claim; yet if a person, having notice of an equitable claim in another, purchase from one who had not notice of such claim, he may protect himself by what of notice in his vendor; such protection being necessary to secure to the bona fide Purchaser without notice, the full benefit of his Purchase. Pre. Ch. 51: 1 Atk. 571: 2 Bro. C. R. 66. Neither shall a Purchaser without notice, from a Purchaser with notice, be considered in equity as bound by the trust. 2 Vern. 384: Ambi. 313. See post.—it may be material to remark, that notice is not confined to the time of the contract; for if a person who has a lien in equity on the premises, give notice thereof before actual payment of the Purchase-money, it is sufficient. 3 P. Wms. 507: 2 Atk. 630: 3 Atk. 304: Or before the execution of the conveyance, though the Purchase-money be actually paid. 1 Atk. 384: Cases in C. 34.

Where there is a general trust, as to pay debts, though the Purchaser has notice of them, it seems that he is not obliged to see the
Purchase-money applied: otherwise if the debts be particular, as for payment of debts in a schedule. Treat. Eq. ii. c. 6. § 2. But though the Purchaser be bound to see to the application of the money, as to the schedule debts, he is not bound to see that only so much real estate is sold or mortgaged, as will discharge such debts; unless there be a collusion between the heir and trustee. 1 Vern. 301: 2 Ch. Ca. 115. 221.—Neither is he bound to see to the payment of Legacies, if the estate be charged generally with debts and legacies; for not being in such case bound to see to the discharge of debts, he cannot be expected to see to the discharge of the legacies, which cannot be paid till after the debts. Fontblanque’s Note on Tr. Eq. ubi sup. cites Jebb v. Abbot, 1 Bro. C. R. See 1 Inst. 291. in n. and title Trust.

As a Purchaser for valuable consideration has an equal claim to the protection of a Court of Equity, to defend his possession, as the plaintiff has to the assistance of the Court to assert his right, a Court of Equity will not, in general, compel a Purchaser for valuable consideration, without notice of the plaintiff’s title, to make any discovery which may affect his own title; but such discovery will be enforced in favour of a Dowress. See 1 Vern. 179: 3 Bro. C. R. 264.

Thus an assignee of a lease, shall not be forced to discover whether the lease is expired: but lessee for years of conusor of a statute has been compelled to discover what estate he had from the conusor to the end that he might be liable to the statute. 8 Vin. 554. pl. 2; cited Treat. Eq. lib. 6. c. 3. § 3.

Purgation, Purgatio. | The clearing a man’s self of a crime, whereof he is publicly suspected, and accused before a Judge: of which there was formerly great use in England.

Purgation is either canonica or vulgaris.

Canonical Purgation is, that which is prescribed by the Canon Law, the form whereof, used in the Spiritual Court, is that the person suspected take his oath, that he is clear of the fact objected against him; and bring his honest neighbours with him to make oath, that they believe he swears truly.

The Vulgar Purgation, according to the antient manner, was by fire or water ordeal, or by combat, abolished by canon. Statudif. P. C. lib. 2. c. 48. See title Ordeal.

The canonical doctrine of Purgation, whereby the parties were obliged to answer upon oath to any matter, however criminal, that might be objected against them, (though long ago over-ruled in the Court of Chancery,) continued till the middle of the last century to be upheld by the Spiritual Courts; when the Legislature was obliged to interpose, to teach them a lesson of moderation, similar to that of the English Law. By stat. 13 Car. 2. c. 12. it is enacted, that it shall not be lawful for any Bishop or Ecclesiastical Judge, to tender or administer to any person whatsoever, the oath usually called the oath ex officio, or any other oath whereby he may be compelled to confess, accuse, or purge himself of any criminal matter, or thing, whereby he may be liable to any censure or punishment, 3 Comm. 100. See further, titles Wager of Law; Chancery; Clergy, Benefit of.

The stat. 13 Car. 2. c. 12. having thus taken away the oath ex officio, of persons accusing or purging themselves, &c. some maintain that all the proceedings of Purgation on common fame fall too; others say, there is still a legal Purgation left, but not canonical. Wood’s Inst. 506, 507.
PURIFICATIO BEATÆ MARIE VIRGINIS. Candlemas; February 2. The Purification of the Blessed Virgin Mary, is one of the general returns of writs still in use, viz. the third in Hilary term. See Candlemas.

PURLIEU, or PURLUE, sometimes written purallee, from Fr. pur, purus, & lieu locus. All that ground near a forest, which, being added to the ancient forests by King Hen. II., Rich. I., and King John, was afterwards deforested and severed by the Charta de Foresta, and the perambulations and grants thereon, by Hen. III. So that it becomes Purlue, viz. pure and free from the laws and ordinances of the forest. Manw. For. Laws, par. 2. c. 20.

Our ancestors called this ground Purlieu, purum locum, because it was exempted from that servitude, which was formerly laid on it: As Manwood and Crompton call it Pourallee, we may derive it from pur, purus, & allee, ambulatio; because he who walketh or courseth within that circuit is not liable to the laws and penalties incurred by those who hunt within the forest precincts; but Pourallee is said to be properly the perambulation whereby the Purlieu is deforested. Stat. 33 Ed. 1. st. 5: 4 Inst. 304.

Owners of grounds within the Purlieu by deforestation, may fell timber, convert pastures into arable, &c. inclose them with any kind of inclosure; erect edifices, and dispose of them as if they had never been deforested; and a Purlieu-man may as lawfully hunt, to all intents, within the Purlieu, as any man may in his own grounds which were never deforested: he may keep his dogs within the Purlieu unexpeditated; and the wild beasts belong to the Purlieu-man ratione soli, so long as they remain in his grounds, and he may kill them. 4 Inst. 303.

If the Purlieu-man chase the beasts with grey-hounds, and they fly towards the forest for safety, he may pursue them to the bounds of the forest; and if he then do his endeavour to call back and take off his dogs from the pursuit, although the dogs follow the chase in the forest, and kill the King’s deer there, this is no offence, so as he enter not into the forest, nor meddle with the deer so killed: and if the dogs fasten on the deer before he recover the forest, and the deer drag the dogs into the forest, in such case the Purlieu-man may follow his dogs and take the deer. 4 Inst. 303. 314.

But in the case of Sir Richard Weston, it was said, that there was no Purlieu in law to hunt; that it cannot be by prescription, and there is nothing in statutes as to hunting; therefore Purlieu-men may only keep out the deer, but cannot kill them though they be in their ground. 1 Jones’s Rep. 278. See Moor 706. 987.

And notwithstanding Purlieus are absolutely deforested, it hath been permitted, that the ranger of the forest shall, as often as the wild beasts of the forest range into the Purlieu, with his hounds rechallenge them back to the forest. 4 Inst.

PURLIEU-MEN, Those who have ground within the Purlieu, and being able to dispense forty shillings a year freehold; who, on these two points, are licenced to hunt in their own Purlieus, observing what is required. Manw. For. Laws 151. 157. 180. 186. See Purlieu.

PURLOINING, STEALING. See title Felony; Larceny.

PURPARTY; See Pourparty.

PURPRESTURE; See Pourpresture.

PURSE, A certain quantity of money, amounting to 500 dollars, or 125l. in Turkey. Merch. Dict.
PURSIVANT; See Poursivant.

PURVEYANCE. See Pourveyance.

PURVIEW, Fr. purveu, a patent or grant. The body, or that part of an act of Parliament which begins with, Be it enacted, &c. The statute 3 Hen. 7. stands upon a preamble and Purview. 2 Inst. 403: 12 Rep. 20. See title Statute.

PUTAGE, Putagium, from the Fr. putaine, Italian putta, meretrix. Fornication.

By the feudal laws, if any heir female under guardianship were guilty of this crime she forfeited her part to her coheirs; or if she were an only heiress, the lord of the fee took it by escheat. Spelman; Cowell.

PUTATIVUS, Putative, reputed, or commonly esteemed; in opposition to notorious and unquestionable. —Pater fuerti putativus, the reputed father of the child. Jo. Brompton 909.

When a single woman, with child, swears that such a man is the father, he is called the Putative father. See title Bastard.

PUTTING IN FEAR; See title Robbery.

PUTURA, q. Potura. A custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse meat, and dog's meat, of the tenants and inhabitants within the perambulation of the forest, hundred, &c.; and in the liberty of Knaresburgh it was long since turned into the payment of 4d. in money by each tenant. M. S. de Tempi. Ed. 3.: 4 Inst. 307. The land subject to this custom is called Terra Putura, Plac. afiud Cestr. 31 Ed. 3.

PYKER, or PYCAR, A small ship or herring boat. See stat. 31 Ed. 3. c. 2.