estate for life, so that the feoffment made by her is a forfeiture of her estate. Sid. 63: 3 Nels. Abr. 100.

If land be given to a woman in tail, the remainder to another and a third in tail, remainder to a fourth in fee; the feme takes husband, and he discontinues the lands in fee, and after an estate is made to the husband and wife for their lives, or other estate: This is a Remitter to all in Remainder, and, if she die without issue, they may enter; and so it is of them who have the reversion after such intails. Lit. § 673.

Where a person lets land for term of life to another, who granteth it away in fee; if the alience make an estate to the lessor, it will be a Remitter to him, because his entry is lawful. Lit. § 694.

If one be disseised, and the disseisor makes a feoffment to the disseisee; in this case, the disseisee may be remitted to his elder title, or he may choose to take by the feoffment; and if it be with warranty, he may, if he will, make use of the warranty. 1 H. 7. c. 20: 3 Sheft. Abr. 257.

Tenant in tail hath two sons, and leases the land intailed to his elder son for life, remainder to his younger son; it is no Remitter to the eldest: But, if he die without issue of his body, the youngest son shall be remitted. Lit. § 682.

If tenant in tail make a feoffment to the use of himself and his heirs, he shall not be remitted; but his issue shall. 3 Nels. 100. On Remitter of issue in tail, leases, and other charges on the lands, are avoided. Lit. §§ 659, 660.

For more learning on this subject, see 18 Vin. Abr. title Remitter. REMITTITUR; In cases of appeal, the Record itself, or a transcript thereof, is sent from the Court of B. R. to the Exchequer-Chamber, or House of Lords: When judgment is given in the superior Court, or the Writ of Error abates, or is discontinued, the record or transcript is returned (Remittitur, sent back) to the Court of K. B., and the entry of this circumstance is termed a Remittitur. See Tidd's and Selton's Pract.

There is also a Remittitur or Release of Damages. See title Damages II.

REMOVAL OF THE POOR. See title Poor VI.

REMOVER, Is where a suit or cause is removed out of one Court into another; and for this there are divers writs and means. 11 Ref. 41. Remanding of a cause, is sending it back into the same Court, out of which it was called and sent for. March 106. See titles Appeal; Habemas Corpus.

RENANT, Or rather reniant, i.e. negans, denying; from the Fr. renier, negare, to deny or refuse. 32 H. 8. c. 2.

RENCOUNTER, a sudden meeting, as opposed to a duel which is deliberate. See title Homicide.

RENDER, Fr. rendre, reddere.] To yield, give again, or return.

This word is used in levying a fine, which is either single, where nothing is rendered back by the cognizee; or double, when it contains a grant and render back again of the land, &c. to the cognizer. West's Symb. See title Fine of Lands.

There are certain things in a manor which lie in prender, that is, which may be taken by the lord or his officers when they happen, without any offer made by the tenant, such as escheats, &c.; and certain which lie in Render, i.e. must be rendered or answered by the
tenant, as rents, heriots, and other services: Also some services consist in seisean; and some in render. West. Symb. par. 2; Perkin's Res. 696.

RENOVANT, From renovare, to renew, or make again.] A person sued one for tithes, to be paid of things renovant, &c. Cro. Jac. 430. See title Tithes.

TO RENOUNCE, To give up a right. See Renunciation.

RENT.

REDDITUS. [Said to be from redendo, because, Retroit & quotannis redit. Fleta, lib. 3. c. 14: Rather à reddendo, from its being rendered. See post.; and title Deed. A sum of money; or other consideration, issuing yearly out of lands or tenements. Plowd. 132. 138. 141. Generally taken as the consideration payable by a tenant for lands or tenements held under a Lease or Demise.

Rents are classed, by Blackstone, among incorporeal hereditaments. The word Rent or Render, reditus, according to him, signifies a compensation or return, it being in the nature of an acknowledgment, given for the possession of some corporeal inheritance. See 1 Inst. 144. It is defined to be a certain profit issuing yearly out of lands and tenements corporeal. It must be a profit; yet there is no occasion for it to be, as it usually is, a sum of money; for spurs, capons, horses, corn, and other matters may be rendered, and frequently are rendered, by way of Rent. Co. Litt. 142. It may also consist in services or manual operations; as, to plough so many acres of ground, to attend the King or the lord to the wars, and the like; which services, in the eye of the Law, are profits. This profit must also be certain; or that which may be reduced to a certainty by either party. It must also issue yearly; though there is no occasion for it to issue every successive year; but it may be reserved every second, third, or fourth year: yet as it is to be produced out of the profits of lands and tenements as a recompence for being permitted to hold or enjoy them, it ought to be reserved yearly, because those profits do annually arise, and are annually renewed. It must issue out of the thing granted, and not be part of the land or thing itself; wherein it differs from an exception in the grant, which is always of part of the thing granted. Plowd. 13: 8 Refl. 71. It must, lastly, issue out of lands and tenements corporeal; that is, from some inheritance whereunto the owner or grantee of the Rent may have recourse to distraint. Therefore, a Rent, strictly speaking, cannot be reserved out of an advowson, a common, an office, a franchise, or the like; but a grant of such annuity or sum (e. g. by a lessee of tithes, or other incorporeal hereditament) may operate as a personal contract, and oblige the grantor to pay the money reserved, or subject him to an action of debt for the amount of the Rent agreed upon; though it doth not affect the inheritance, and is no legal Rent in contemplation of Law. 1 Inst. 47. 144. See 2 Woodd. 69. and post. II. ad fin. And the King might always reserve a Rent out of incorporeal hereditaments: the reason of which is, that he, by his prerogative, can distraint on all the lands of his lessee. 1 Inst. 47. a. in n.

I. Of the Nature and Properties of the several Sorts of Rent.

II. Statutes concerning Rent: and of the Remedies for Recovery thereof; See also title Distress; Sufferance; Ejectment.

III. In what Cases a Demand of Rent is necessary.
IV. Of the Time of demanding Rent, and the Place where the Demand is to be made.

I. There are, at Common Law, three manner of Rents; Rent-service, Rent-charge, and Rent-seck. Lit. § 213.

Rent-service is so called, because it hath some corporeal service incident to it; as, at the least, fealty, or the feodal oath of fidelity. 1 Inst. 142. For, if a tenant holds his lands by fealty, and 10s. Rent; or by the service of ploughing the lord's land, and 5s. Rent; these pecuniary Rents, being connected with personal services, are therefore called Rent-service. And for these, in case they be behind, or arriere, at the day appointed, the lord may distrain of common right, without reserving any special power of distress; provided he hath in himself the reversion, or future estate of the lands and tenements, after the lease or particular estate of the lessee or grantee is expired. Lit. § 215.

The services are of two sorts, either expressed in the lease or contract, or raised by implication of Law. When the services are expressed in the contract, the quantum must be either certainly mentioned, or be such as, by reference to something else, may be reduced to a certainty; for if the lessor's demands be uncertain, it is impossible to give him an adequate satisfaction or compensation for them, as the Jury cannot determine what injury he has sustained. Co. Lit. 96, a: Stil. 397: 2 Ld. Raym. 1160.

The services implied are such as the Law obliges the tenant to perform when there are none contracted for in the grant; and these are more or less, according to the duration of the gift; as at Common Law, before the statute Quia emptores terrarum, if the tenant made a feoffment in fee without any reservation of services, the feoffee held by the same services by which the feoffor held over; because the services being an incumbrance, on the land, which the tenant could not discharge without his lord's consent, must follow the land, into whose hands soever it comes. Co. Litt. 22, 23.

A Rent-charge, is where the owner of the Rent hath no future interest, or reversion expectant, in the land; as where a man, by deed, maketh over to others his whole estate in fee-simple, with a certain Rent payable thereout; and adds to the deed a covenant or clause of distress, that if the Rent be arriere, or behind, it shall be lawful to distrain for the same. In this case, the land is liable to the distress, not of common right, but by virtue of the clause in the deed; and therefore it is called a Rent-charge, because in this manner, the land is charged with a distress for the payment of it. 1 Inst. 143.

A clear Rent-charge must be free from the land-tax. Doug. 602.

Where a man, seised of lands, grants by deed-poll, or indenture, a yearly rent to be issuing out of the same land, to another in fee, in tail, for life or years, with a clause of distress; this is a Rent-charge, because the lands are charged with a distress by the express grant or provision of the parties, which otherwise it would not be. So, if a man make a feoffment in fee, reserving Rent, and if the Rent be behind, that it shall be lawful for him to distrain; this is a Rent-charge, the word reserving amounting to a grant from the feoffee. Litt. § 217: Co. Litt. 170, a: Plowd. 134.

A Rent granted for equality of partition by one coparcener to another, is a Rent-charge, and distrainable of common right, without clause of distress; and although there be no tenure of the sister who grants it, for as the Law, for the convenience of coparceners, allows
RENT, I.

of such grants, it must consequently give a remedy to the grantee for recovery of it. Lit. § 252.

An Annuity is a thing very distinct from a Rent-charge, with which it is frequently confounded: A Rent-charge being a burden imposed upon and issuing out of lands; whereas an annuity is a yearly sum chargeable only upon the person of the grantor. Therefore if a man by deed grant to another the sum of 20l. per annum, without expressing out of what lands it shall issue, no land at all shall be charged with it; but it is a mere personal annuity; which is of so little account in the law, that, if granted to an eleemosynary corporation, it is not within the Statutes of Mortmain; and yet a man may have a real estate in it, though his security is merely personal. 2 Comm. c. 3. See 1 Inst. 144.

Rent-seck, redditus siccus, or barren Rent is in effect nothing more than a Rent reserved by deed, but without any clause of distress.

A Rent-seck is so called, because it is unprofitable to the grantee; as, before seisin had, he can have no remedy for recovery of it; as where a man seised in fee grants a Rent in fee for life or years, or where a man makes a feoffment in fee or for life, remainder in fee, reserving Rent, without any clause of distress, these are Rents-seck; for which, by the policy of the ancient Law, there was no remedy, as there was no tenure between the grantor and grantee, or feoffor and feoffee; consequently, no fealty could be due. Lit. § 215. 218: Cro. Car. 520: Kelw. 104: Cro. Eliz. 656.

And it hath been ruled in equity, where an annuity was devised by will to A., and the land subject to the annuity, to B., that B. should give seisin of the Rent-seck to A., that he might have remedy for recovery of it at Common Law; it being the original intention of the gift, that the devisee should have some benefit from it. Moor 626: 3 Chan. Ca. 92.

So, when a bill was brought for 3l., for a Rent of 5s. arrear for twelve years, the equity of the bill being that the deeds by which the Rent was created were lost, consequently no remedy for the Rent at Law; the Court, on the plaintiff’s proving constant payment till the last twelve years, decreed the defendant to pay the arrears and growing Rent; for since, by payment it was evident the plaintiff had a right to the Rent, and that he could not, without his deeds, make a title at Law; therefore the Court decreed the defendant to pay the Rent, and so subjected his person, which possibly might not have been liable by the deed which created the Rent. 1 Chan. Ca. 120. This was previous to stat. 4 Geo. 2. c. 28. See post. II.

Though a Rent is an incorporeal hereditament, it is susceptible of the same limitations as other hereditaments. Hence it may be granted or devised for life, or in tail, with remainders or limitations over. But there is this difference between an intail of lands, and an intail of Rent; that the tenant in tail of lands, with the immediate reversion in fee in the donor, may, by a common recovery, bar the intail and the reversion: See title Recovery. Whereas the grantee in tail of a Rent de novo, without a subsequent limitation of it in fee, acquires, by a common recovery only a base fee, determinable upon his decease, and failure of the issues in tail: but if there is a limitation of it in fee, after the limitation in tail, the Recovery of the tenant in tail gives him the fee-simple. This was resolved in the cases of
The reason of this difference is, that it would be unjust that the conveyance of a grantee of a Rent, should give a longer duration or existence to the Rent, than it had in its original creation. It is true that the barring of an estate-tail in land, is equally contrary to the intention of the grantor. But a rent differs materially from land. The old principles of the feudal law looked upon every modification of landed property, which was considered to be against common right, with a very jealous eye. Now a Rent-charge was supposed to be against common right; the grantee of the Rent-charge being subject to no feudal services, and being a burden on the tenant who was to perform them. Upon this principle, the Law, in every instance, avoided giving, by implication, a continuation to the Rent, beyond the period expressly fixed for its continuance. Thus, if a tenant in tail of land die without issue, his wife is entitled to dower for her life out of the land, notwithstanding the failure of the issue; but the widow of a tenant in tail of Rent is not entitled to her dower against the donor. So, if a rent is granted to a man and his heirs, generally, and he dies without an heir, the Rent does not escheat, but sinks into the land. It is upon this principle, that, when there is not a limitation over in fee, a tenant in tail of Rent acquires by his Recovery no more than a base fee; as has been already stated: But if there is a limitation in fee; after the particular limitation in tail, the grantor has substantially limited the Rent in fee; and therefore it is doing him no injustice, that the Recovery should give the donee who suffers it an estate in fee-simple. 1 Inst. 298, a. in n.

The case of Chaplin v. Chaplin was, that Lady Hanby, the grandmother of Porter Chaplin, being seised in fee, conveyed certain lands, to the use and intent that the trustees, named in the deed, should receive and enjoy a Rent-charge of £51 per annum, and to them and their heirs, with power to distrain for it, and to enter and hold the land on nonpayment for 40 days: and then the Rent was declared to be to the use of Porter Chaplin in tail; remainder to the use of the same person who had the land in fee. P. C. died, leaving issue, who married, and died without issue; and the question was, Whether the widow was entitled to dower in this Rent? and determined she was not. It is stated to have been afterwards disclosed to the Court, that the legal estate of the Rent in fee was in the trustees: but it is observable, that it was not necessary that any new matter should be adduced to disclose this to the Court, as it appeared on the face of the deed: for a conveyance to A. and his heirs, to the use and intent that B. and his heirs may receive a Rent out of the estate, gives B. the legal fee of the Rent; so that if it is afterwards declared that B. and his heirs are to stand seised of the Rent to uses, the intended cestuis que use take only trust or equitable estates. If, therefore, it is intended to limit a Rent in strict settlement, it is necessary to do it by way of grant at Common Law, to some person and his heirs, to the uses intended to be limited. This gives the grantee the mere seisin to the uses, and the uses declared upon it will be executed by the statute. See 1 Inst. 298, a. in n.

There are also other species of Rents, which are reducible to these
three. Rents of Assize are the certain established Rents of the freeholders and antient copyholders of a manor, which cannot be departed from or varied. 2 Inst. 19. Those of the freeholders are frequently called Chief-Rents, reeditus capitatione; and both sorts are indifferently denominated Quit-Rents, quieti reeditus; because thereby the tenant goes quit and free of all other services. When these payments were reserved in silver or white money, they were antiently called White-Rents, or Blanch-farms, reeditus albi; in contradistinction to Rents reserved in work, grain, or base money, which were called reeditus nigri, or Black Mail. 2 Inst. 19. See those several titles. Rack-rent is only a Rent of the full value of the tenement, or near it. A Fee-farm Rent is a Rent-charge issuing out of an estate in fee; of at least one-fourth of the value of the lands, at the time of its reservation: for a grant of lands, reserving so considerable a Rent, is indeed only letting lands to farm in fee-simple, instead of the usual methods for life or years. 1 Inst. 143. It seems that the quantum of the Rent is not essential to create a fee-farm. See 1 Inst. 145, b. n. 5: And also, whether a fee-farm must necessarily be a Rent-charge; or may not also be a Rent-seck; and Doug. 605.

These are the general divisions of Rent; but the difference between them (in respect to the remedy for recovering them) is now totally abolished; and all persons may have the like remedy by distress for Rents-seck, Rents of Assise, and Chief-Rents, (if paid for three years within twenty years preceding the act, or if created since,) as in case of Rents reserved upon lease. Stat. 4 Geo. 2. c. 28. § 5.

II. By stat. 32 Hen. 8. c. 37. The executors or administrators of tenants in fee-simple, tenants in fee-tail, and tenants for term of life, of Rents-service, Rent-charges, Rents-seck, and Fee-farms, unto whom any such Rent or Fee-farm be due, shall have an action of debt for such arrears against the tenants, who ought to have paid in the life-time of their testator, or against their executors and administrators, and distress for the arrears on the land charged with the payment, so long as the lands continue in the seisin or possession of the tenant in demesne, who ought to have paid the Rent or Fee-farm, or in the seisin or possession of any other person claiming only from the same tenant by purchase, gift, or descent, in like manner as their testator might have done. § 1.

This act shall not extend to any manor in Wales, whereof the inhabitants have used to pay to every lord, at his first entry, any sum of money for discharge of all duties and penalties wherewith the inhabitants were chargeable to any of the lord's ancestors. § 2.

If any man have, in right of his wife, any estate in Rents or Fee-farms, and the same be unpaid in the wife's life, the husband, after the death of his wife, his executors, and administrators, shall have action of debt for the arrears, or may distress. § 3.

If any have any Rents or Fee-farms for term of life of any other person, and the Rent, &c. be unpaid in the life of such person, and after the said person doth die, he to whom the Rent or Fee-farm is due, his executors and administrators, shall have an action of debt, or distress for the same. § 4.

The only clause in stat. 12 Car. 2. c. 24. for converting military into common socage tenures, which seems to affect Rents, is a proviso
(§ 5.) to preserve Rents certain, and to make the reliefs on them universally the same as on the death of tenant in common socage. 1 Inst. 162, b. in n.

By stat. 8 Ann. cap. 14. No goods, upon any tenements leased, shall be taken by any execution, unless the party, at whose suit the execution is sued out, shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for Rent for the premises; provided the arrears do not amount to more than one year’s Rent: And in case the arrears shall exceed one year’s Rent, then the party, paying the said landlord, or his bailiff, one year’s Rent, may proceed to execute his judgment: and the sheriff is required to levy and pay to the plaintiff, as well the money paid for Rent, as the execution-money. § 1.

The Act contains a proviso to prevent prejudice to the Crown, in recovering and seizing debts, fines, and forfeitures. § 8. See Ogilvy v. Wingate, Parl. Cas.

Landlord dead, and, after execution executed, administration is granted to A.; he is not entitled to a year’s Rent. 1 Strange 97.

The administrator of the landlord may have an action against the officer for taking the goods in execution and removing them from the premises before the landlord was paid a year’s Rent. 1 Strange 212.

On motion on behalf of the landlord, the sheriff was ordered to pay him his year’s Rent, without deducting poundage. 1 Strange 643.

This statute extends to the immediate landlord, and not to the ground landlord. 2 Strange 787. After the landlord had been paid a year’s Rent on one execution, another execution came in, and he moved to be paid another year’s Rent on the last execution, but was denied; for the intent of the Act was only to continue a lien as to one year, and to punish him for his laches, if he lets more run in arrear. 2 Strange 1024.

It shall be lawful for any person having Rent due on any lease for life, years, or at will, determined, to restrain for such arrears after determination of the leases: Provided, That such distress be made within six calendar months after the determination of such lease, and during the continuance of such landlord’s title, and during the possession of the tenant from whom such arrear became due. Stat. 8 Ann. c. 14. §§ 6, 7. The above clauses were made to remedy the defect of the Common Law, under which the power of distress ceased with the tenure. 1 Inst. 162, b. in n.

By stat. 4 Geo. 2. cap. 28. In case any tenant for life or years, or other person who shall come into possession of any lands, &c. under or by collusion of such tenant, wilfully hold over, after the determination of such term, and after demand made in writing, for delivering possession, such person holding over shall pay double the yearly value of the lands, &c. so detained. § 1.

In all cases between landlord and tenant, on half a year’s Rent being in arrear, the landlord having a right by Law to re-enter for non-payment, may, without any formal demand or re-entry, serve a declaration in ejectment; and in case of judgment, or non-suit for not confessing lease, entry, and ouster, it shall appear that half a year’s Rent was due before a declaration served, and no sufficient distress to be found, and that the lessor in ejectment had power to re-enter; the lessor in ejectment shall recover judgment. § 2. See title Ejectment.

Lessees, &c. filing a bill in equity, shall not have an injunction
against proceedings at law, unless they shall, within forty days after answer filed, bring into Court such money as the lessors in their answer shall swear to be in arrear, over and above all just allowances, and costs taxed, there to remain till the hearing of the cause, or to be paid to the lessors on good security, subject to the decree of the Court; and in case such bill shall be duly filed, and execution executed, the lessors shall be accountable for only so much as they shall really make of the premises from the time of their re-entry; and if the same shall happen to be less than the usual Rent reserved, the lessees shall not be restored to the possession until they shall make up the deficiency to the lessors. § 3.

If the tenant, at any time before trial, tender or pay into Court all arrears with costs, proceedings on ejectment shall cease. § 4.

Previous to the above statute the Courts, both of Law and Equity, had exercised a discretionary power of staying the lessor from proceeding at Law, in cases of forfeiture for non-payment of Rent, by compelling him to take the money really due to him. See Andr. 341: 2 Salk. 597: 8 Mod. 345: 10 Mod. 383: 2 Vern. 103: Wils. 75: 2 Stra. 900.

In debt for double the yearly value under stat. 4 Geo. 2. c. 18. the plaintiff, after stating a demise to the defendant's wife, and the subsequent intermarriage with the defendant, alleged in the first count a notice to quit, and demand of possession delivered to the defendant and his wife: and in the second count alleged a notice to quit and demand of possession delivered to the wife previous to the intermarriage; the Court of C. P. held that to support the second count the husband need not be joined for conformity, and that to sustain the action it was not necessary to have given a notice to the husband subsequent to the marriage. 1 New Rept. C. P. 174.

By stat. 11 Geo. 2. c. 19. It shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the tenements occupied by defendants, in an action on the case, for the use and occupation of what was held; and if in evidence on the trial any parol demise or agreement, not by deed, whereon a certain Rent was reserved, shall appear, plaintiff may make use thereof as an evidence of the quantum of the damages. § 14.

Where any tenant for life dies before or on the day, on which any Rent was reserved, on any demise which determined on the death of such tenant for life, the executors or administrators of such tenant for life may, in an action on the case, recover of the under-tenants, if such tenant for life die on the day on which the same was made payable, the whole, or if before such a day, then a proportion of such Rent, according to the time such tenant for life lived of the last year, or quarter, or other time, in which the Rent was growing due; making all just allowances. § 15.

The above clause gives action on the case to executors of a lessor or landlord, being only tenant for his own life, where he dies before or on a Rent-day; and by his death the lease or demise determines: In which case the lessee or under-tenant, by the Common Law, might have avoided paying any Rent. 1 Inst. 162, b. in n.

If any tenant holding tenements at a Rack-rent, or where the Rent reserved be full three-fourths of the yearly value of the premises, who shall be in arrear for one year's Rent, desert the premises, and leave the same uncultivated or unoccupied, so as no sufficient dis-
tress can be had to countervail the arrears; it shall be lawful for two Justices of the Peace (having no interest in the premises) to go upon and view the same, and to affix, on the most notorious part, notice in writing, what day (at the distance of fourteen days at least) they will return to take a second view; and if, on such second view, the tenant, or some person on his behalf, shall not appear and pay the Rent in arrear, or there shall not be sufficient distress on the premises, the Justices may put the landlord in possession, and the lease to such tenants as to any demise therein contained only, shall become void. § 16.

In case any tenant give notice of his intention to quit, and shall not accordingly deliver up the possession at the time in such notice contained, the tenant, his executors or administrators, shall pay to the landlord double the Rent which he should otherwise have paid. § 18.

The general remedy for Rent is by distress, under the restrictions and directions of the foregoing statutes; and, as to which, see further at length this Dict. title Distress: But there are also other remedies particularised by Blackstone, 3 Comm. c. 15. which it will be sufficient here to notice in a summary manner; as they are treated of under the several titles in this Dictionary.

By action of Debt, for the breach of the express contract. This is the most usual remedy, when recourse is had to any action at all for the recovery of pecuniary Rents: to which species of renders, almost all free services are now reduced since the abolition of the military tenures: But for a freehold Rent, reserved on a lease for life, &c. no action of Debt lay, by the Common Law, during the continuance of the freehold, out of which it issued; for the Law would not suffer a real injury to be remedied by an action that was merely personal. 1 Roll. Abr. 595. But by stat. 8 Ann. c. 14. § 4. an action of Debt is given for Rents on leases for life or lives, as upon a lease for years: And by stat. 5 Geo. 3. c. 17. which enables ecclesiastical persons to lease tithes and other incorporeal inheritances; action of debt is given (by § 3.) for recovery of Rent on such leases; and perhaps the first of these statutes extends to leases of incorporeal hereditaments. See 1 Inst. 47, a. in n.

An assise of mort d'ancestor, or novel disseisin, will lie of Rents, as well as of lands; if the lord for the sake of trying the possessory right, will make it his election to suppose himself ousted or disseised thereof. This is now seldom heard of; and all other real actions to recover Rent; being in the nature of writs of right, and therefore more dilatory in their progress, are entirely disused, though not formally abolished, by Law.—Such are the writ de consuetudinibus & Serviciis; the writ of Cessavit; and the writ of right sur Disclaimer: As to which, see this Dict. under those titles; and see also title Gavelet. On the other hand, the writ of Ne injuste vexes; (see that title;) and the writ of Mesne, (see Mean,) are remedies for the tenant against the oppression of the lord.

The rent in a lease must be reserved to the lessor, or his heirs, &c. and not to a stranger. See 1 Inst. 213, 6. The principle which gave rise to this rule is, that Rent is considered as a retribution for the land, and is therefore payable to those who would otherwise have had the land. It is to be observed, that remainder-men in a settlement, being at first view neither feoffors, donors, lessors, nor the heirs of feoffors,
donors, or lessors, there seems to have been, for some time after the statute of Uses, a doubt whether the Rents of leases, made by virtue of powers contained in settlements, could be reserved to them. In Chudleigh’s case, 1 Rep. 159. it is positively said, that if a feoffment in fee be made to the use of one for life, remainder to another in tail, with several remainders over, with a power to the tenant for life to make leases, reserving the Rent to the reversioners, and the tenant for life accordingly make leases; neither his heirs, nor any of the remainder-men, shall have the Rent. But, in Harcourt v. Pole, 1 And. 273. it was adjudged, that the remainder-men might distrain in these cases: And in T. Jones 35. the dictum in Chudleigh’s case is denied to be Law. The determination in Harcourt v. Pole will appear incontrovertibly right, if we consider that both the lessees and remainder-men derive their estate out of the reversion or original inheritance of the settler; and therefore the Law, to use Coke’s expression in Whitlock’s case, 8 Rep. 71. will distribute the Rent to every one to whom any limitation of the use is made. 1 Inst. 214, a. in n.; and see Id. 213, b. in n.

III. Many of the decisions under this and the following division are, by reason of the statute remedies against non-payment of Rent, become of less consequence than they were at the time of their determination, but seem still worthy of being preferred; as shewing, in some measure, the evils remedied by those statutes.

With respect to the necessity of demanding Rent, there is a material difference between a remedy by re-entry, and a remedy by distress, for non-payment of the Rent; for where the remedy is by way of re-entry, for non-payment, there must be an actual demand made, previous to the entry, otherwise it is tortious; because such condition of re-entry is in derogation of the grant, and the estate at Law being once defeated, is not to be restored by any subsequent payment: and it is presumed, that the tenant is there residing on the premises, in order to pay the Rent for preservation of his estate, unless the contrary appears by the lessor’s being there to demand it: Therefore, unless there be a demand made, and the tenant thereby, contrary to the presumption, appears not to be on the land ready to pay the Rent, the Law will not give the lessor the benefit of re-entry, to defeat the tenant’s estate, without a wilful default in him; which cannot appear without a demand hath been actually made on the land. Co. Litt. 201, b. Hob. 207. 331: 5 Co. 56: Dy. 51: Plowd. 70: 7 Co. 56: Vaugh. 32. This was at Common Law; but now see the stat. 4 Geo. 2. c. 28. § 2: ante Div. II.; and this Dict. title Re-entry.

So, if there had been a nomine bona given to the lessor for non-payment, the lessor must demand the Rent before he can be entitled to the penalty. Hut. 114: Hob. 207. 331: 7 Co. 56.

Where the remedy for recovery of Rent is by distress, there needs no demand previous to the distress; though the deed says, that if the Rent be behind, being lawfully demanded, that the lessor may distrain; but the lessor, notwithstanding such clause, may distrain when the Rent becomes due. So it is, if a Rent-charge be granted to A., and if it be behind, being lawfully demanded, that then A. shall distrain; he may distrain without any previous demand, because this remedy is not in destruction of the estate, for the distress is only a pledge for payment of it, and the taking a distress is a legal demand
of the tenant to pay the Rent, which was all that was required by the deed; and the tenant is not injured by the taking of the distress, because, on tender of the Rent, the pledges are immediately to be restored, or a writ of detinue lies after the quantum of the Rent has been settled in the replevin; whereas in the case of re-entry; or of a penalty, the tenant is really injured, either by loss of his estate, or the payment of a greater sum than the Rent, which cannot be restored on payment of the Rent; therefore he shall not be punished in such cases without a wilful default in him, which cannot otherwise appear than by the proof of a demand, which was not answered by the tenant. *Hob. 207: Hut. 13. 23: Moor 883: 2 Roll. Abr. 426.*

But this general distinction must be understood with these restrictions:

That if the King makes a lease, reserving Rent, with a clause of re-entry for non-payment, he is not obliged to make any demand previous to his re-entry; but the tenant is obliged to pay his Rent for the preservation of his estate, because it is beneath the King to attend his subject to demand his Rent. 4 *Co. 73: 5 Co. 56: Latch. 28: Moor 152: Dyer 87, 88.*

But this exception is not to be extended to the Duchy lands, though they be in the hands of the King, for the King must make a demand before he can re-enter into such lands; but this is by the *stat. 1 H. 4. c. 18.* which provides, that, when the Duchy lands come to the King they shall not be under such government and regulations as the demesnes and possessions belonging to the Crown. *Moor 149. 160.*

So, if a prebendary make a lease, rendering Rent, and if the rent be in arrear and demanded, that it shall be lawful for the prebendary to re-enter; if the reversion in this case comes to the King, the King must in this case demand the Rent, though he shall be by his prerogative excused of an implied demand; for the implied demand is the act of the Law, the other, the express agreement of the parties, which the King's prerogative shall not defeat. Therefore, in case of the King, if he makes a lease, reserving rent, with a proviso, that if the rent be in arrear for such a time, (being lawfully demanded, or demanded in due form,) that then the lease shall be void; it seems that not only the patentee of the reversion in this case, but also the King himself, whilst he continues the reversion in his own hands, is obliged to make an actual demand by reason of the express agreement for that purpose. *Dyer 87. 210.*

But if the King, in cases where he need not make a demand, assigns over the reversion, the patentee cannot enter for non-payment, without a previous demand, because the privilege is inseparably annexed to the person of the King. 4 *Co. 73: Moor 404: Cro. Eliz. 462: Dyer 87.*

Another exception is, where the Rent is payable at a place off the land, with a clause that if the rent be behind, being lawfully demanded at the place off the land, or where the clause is, that if the Rent be behind, being lawfully demanded of the person who is to pay it, that then he may distrain; in these cases, though the remedy be by distress only, yet the grantee cannot distrain without a previous demand: because here the distress and demand being not complicate, but different acts, to be performed at different places and times, the demand must be previous to the distress; for distress is an act of grace, not of common right, and therefore must be used in the manner that
it is given. *Hob.* 208; 2 *Roll. Abr.* 426; *Moor* 83; *Brownl.* 171: But see *Hutt.* 23. *contra*.

But where the clause is no more than that, if the Rent be behind, being lawfully demanded, (without saying at any place off the land, or of the person of the grantor,) that then the grantee may distress, there needs no actual demand; because here the distress and demand is but one complicate act, the one included in the other, and all done at one time and place, viz. on the land; for the distress is in itself a lawful demand, therefore needs no actual demand previous to it; because all that was required by the deed was a lawful demand, which the distress in its own nature is. 2 *Roll. Abr.* 426; *Hob.* 208: and see *Dyer* 348.

And there seems to have been formerly another exception admitted, that where the remedy was by way of *entry for non-payment*, that yet there needed no demand, if the rent were made payable at any place off the land; because they looked on the money payable off the land to be in nature of a sum *in gross*, which the tenant had at his own peril undertaken to pay; but this opinion has been entirely exploded, for the *place of payment* does not change the *nature of the service*, but it remains in its nature a Rent, as much as if it had been made payable on the land; therefore the presumption is, that the tenant was *there* to pay it, unless it be overthrown by the proof of a demand; and without such demand, and a neglect or refusal, there is no injury to the lessor, consequently the estate of the lessee ought not to be defeated. *Plovrd.* 70; 4 *Co.* 73; *Moor* 408. 598; *Cro. Eliz.* 415. 435. 536.

But when the power of re-entry is given to the lessor for *non-payment*, without any further demand, there it seems that the lessee has undertaken to pay it, whether it be demanded or not; and there can be no presumption in his favour in this case; because by dispensing with the demand, he has put himself under the necessity of making an actual proof that he was ready to tender and pay the Rent. *Dyer* 68.

There is another exception when the remedy is by distress, and that is, when the tenant was ready on the land to pay the Rent at the day, and made a tender of it; there it seems there must be a demand previous to the distress; because, where the tenant has shewn himself ready on the day by the tender, he has done all that in reason can be required of him; for it would put the tenant to endless trouble to oblige him every day to make a tender; it being altogether uncertain when the lessor will come for his Rent, when he has omitted to receive it the day he appointed by the lease for payment and receipt; wherefore as the lessee must expect the lessor, and be ready to pay it at the day appointed, or else the lessor may distress for it without any demand; so where the lessor has lapsed the day of payment, and was not on the land to receive it, he must give the tenant notice to pay it before he can distress; for the tenant shall be put to no trouble where it appears that he has omitted nothing on his part. *Hob.* 207: 2 *Roll. Abr.* 427.

And where the tender was made by a tenant on the land at the day, there a demand on the land is sufficient to justify a distress after the day; because the demand in such case is of equal notoriety with the tender, and by parity of reason the tenant ought to take notice of such demand, as well as the lessor of the tender on the land. *Hob.* 207.
But if the tenant had tendered the Rent on the day to the person of the lessor, and he refused it, it seems, by the better opinion, that the lessor cannot distrain for that Rent, without a demand of the person of the tenant; because the demand ought to be equally notorious to the tenant, as the tender was to the lessor. *Hob.* 207: 2 *Roll. Abr.* 427.

So, if the services by which the tenant holds be personal, as homage, fealty, &c. the demand must be of the person of the tenant; because this service is only performable by the very person of the tenant; therefore a demand, where he is not, would be improper. *Hut.* 13: *Hob.* 207.

Again, if the Rent be Rent-seck, and the tenant be ready at the last instant of the day of payment to pay the Rent, and the grantor is not there to receive it, he must afterwards demand it of the person of the tenant on the lands, before he can have his assise; because the tenant, by the tender at the day, has done all that was required on his part; and if the grantee might have his assise, after such tender on the day, without a demand of the person, the tenant might be made a disseisor, and damages for the disseisin laid on him without any wilful default in him; but in the case of a Rent-charge, after such tender of the tenant on the land, the grantee may afterwards demand the Rent on the land, because he has his remedy by distress, which is no more than a pledge for the Rent; and this being to be found and taken on the land, the grantee need only demand his Rent where he can find his remedy, which is on the land; but in this case if the grantee cannot find the tenant on the land to demand the Rent, he may, on the next feast on which the Rent is payable, demand all the arrears on the land; and if the tenant is not there to pay it, he has failed of his duty; and is guilty of a wilful default which amounts to a denial; and that denial being a disseisin of the Rent, the grantee may have his assise, and by that shall recover the arrears. *Cro. Car.* 508: 7 Co. 57: *Hob.* 207: 2 *Roll. Abr.* 427.

But if there has been neither a tender of the Rent, nor a demand of the grantee on the day, there the grantee may afterwards demand the Rent on the land; because the tenant having omitted to do his duty by a tender on the day, he is still obliged to answer the legal demands of the grantee, which is well made on the land, because the Rent issues thereout; for where there is no tender on the day of payment, the Rent is due and payable every day afterwards; therefore a demand in the same manner as the Law requires is sufficient; consequently the non-payment, after a demand on the land, is a denial and disseisin, for which the grantee may have his assise. *Litt.* § 233: 7 Co. 57: 2 *Roll. Abr.* 427.

If a lease be made, reserving Rent, and a bond given for performance of covenants and payment of the Rent, the lessor may sue the bond without demanding the Rent. *Cro. Eliz.* 332: *Cro. Car.* 76: *Hob.* 8.

If there be several things demised in one lease, with several reservations, with a clause, that, if the several yearly Rents reserved be behind or unpaid in part, or in all, by the space of one month, after any of the days on which the same ought to be paid, that then it shall be lawful for the lessor, into such of the premises, whereupon such Rents, being behind, is or are reserved, to re-enter; these are in the nature of distinct demises, and several reservations; consequently
there must be distinct demands on each demise to defeat the whole estate demised. *Vaugh. 71, 72.* But see *stat. 4 Geo. 2. c. 28. § 2.*

Also as to the necessity of a demand of the Rent, there is a difference between a condition and a limitation; for instance, if tenant for life (as the case was by marriage settlement with power to make leases for twenty-one years, so long as the lessee, his executors or assigns, shall duly pay the Rent reserved) makes a lease pursuant to the power; the tenant is at his peril obliged to pay the Rent without any demand of the lessor; because the estate is limited to continue only *so long* as the Rent is paid; therefore, for non-performance, according to the limitation, the estate must determine; as if an estate be made to a woman *dum sola fuerit,* this is a word of limitation which determines her estate on marriage. *Vaugh. 31, 32:* Vide *Hob. 331:* 2 *Roll. Abr. 429:* 2 *Mod. 264:* 3 *Co. 64: Dyer 87, 88: Noy 145.

**IV. Rent** is regularly due and payable upon the land from whence it issues, if no particular place is mentioned in the reservation: *Co. Litt. 201:* But, in case of the king, the payment must be either to his officers at the Exchequer, or to his receiver in the country. *4 Ref. 75.* And, strictly, the Rent is demandable and payable before the time of sun-set of the day wherein it is reserved; though, perhaps not absolutely due till midnight. *Co. Litt. 302:* 1 *Anders. 253:* 1 *Saund. 287:* *Prec. Chanc. 555:* *Saalk. 578.

If the lessor dies before sun-set on the day upon which the Rent is demandable, it is clearly settled, that the Rent unpaid is due to his heir, and not to his executor: But if he dies after sun-set, and before midnight, it seems to be the better opinion, that it shall go to the executor, and not to the kin. 1 *P. Wms. 178.*

There is a material difference between the reservation of a Rent payable on a particular day, or within a certain time after; and the reservation of a Rent payable at a certain day, with a condition that, if it be behind, by the space of any given time, the lessor shall enter; in both cases, a tender on the first or last day of payment, or on any of the intermediate days, to the lessor himself, either upon or out of the land, is good: But, in the former case, it is sufficient, if the lessee attends on the first day of payment at the proper place; and if the lessor does not attend there to receive the Rent, the condition is saved. In the latter case, to save the lease it is not sufficient that the lessee attends on the first day of payment, for he must equally attend on the last day. 10 *Ref. 129,* a: *Plowd. 70,* a, b: *Cro. Eliz. 48.* See 1 *Inst. 202,* a. in n.

The other effects of this question of the time of the Rent becoming due, are now in equal measure superseded by the statute regulations already stated and alluded to. But the following determinations on the subject may, notwithstanding, be requisite to be known.

The time for payment of Rent, and consequently for a demand is such a convenient time before the sun-setting of the last day, as will be sufficient to have the money counted; but if the tenant meet the lessor on the land at any time of the last day of payment, and tenders the Rent, that is sufficient tender, because the money is to be paid indefinitely on that day, therefore a tender on the day is sufficient. *Co. Litt. 202,* a: *Dajst. 44:* *Saav. 263:* 4 *Leon. 171:* 1 *Saund. 287.

If a lease is made, rendering Rent at Michaelmas, between the hours of one and five in the afternoon, with a clause of re-entry, and the
lessor comes at the day, about two in the afternoon, and continues toive, this is sufficient. Cro. Eliz. 15. The demand may be by Attorney.
4 Leon. 479. But the power must be special, for such land and of such tenant. Yelv. 37: 1 Brownl. 138. Demand must be proved by
witnesses. Dyer 68. Must be made of the precise sum due. 1 Leon.
305: Sav. 121: Mo. 207.

If a lease be made, reserving Rent on condition that if the Rent be
behind at the day, and ten days after, (being in the mean time de-
mallowed,) and no distress to be found upon the land, that the lessor
may re-enter; if the Rent be behind at the day, and ten days after,
and a sufficient distress be on the land till the afternoon of the tenth
day, and then the lessee takes away his cattle, and the lessor demands
the Rent at the last hour of the day, and the lessee does not pay it,
and there is not any distress on the land; yet the lessor cannot enter,
because he made no demand in the mean time between the day of
payment and the ten days, which by the clause he was obliged to do.
Cro. Eliz. 63.—But see stat. 4 Geo. 2. c. 28: ante II.

As to the place of demanding Rent, there is a difference between a
remedy by re-entry and distress; for when the Rent is reserved, on
condition that, if it be behind, that the lessor may re-enter, in such
case the demand must be upon the most notorious place on the land;
therefore, if there be a house on the land, the demand must be at the
fore-door thereof, because the tenant is presumed to be there residing,
and the demand being required to give notice to the tenant that he
may not be turned out of possession, without a wilful default, such
demand ought to be in the place where the end and intention will be

And it seems the better opinion, that it is not necessary to enter
the house, though the doors be open, because that is a place appro-
priated for the peculiar use of the inhabitant, into which no person is
permitted to enter without his permission; and it is reasonable that
the lessor shall go no further to demand his rent, than the tenant
should be obliged to go, when he is bound to tender it; and a tender
by the tenant at the door of the house of the lessor is sufficient, though
it be open, without entering; therefore by parity of reason, a demand
by the lessor at the door of the tenant, without entering, is sufficient.
Dalst. 59: Co. Litt. 201: 1 And. 27: 3 Leon. 4: and see Cro. Eliz. 13.

But when the demand is only in order for a distress, there it is suf-
ficient, if it be made on any notorious part of the land, because this
is only to entitle him to his remedy for his Rent; therefore, the whole
land being equally debtor, and chargeable with the Rent, a demand
on it, without going to any particular part of it, is sufficient. Co. Litt.
153.

See other cases, on this subject, Co. Litt. 202: Bendil. 59: Cro. Eliz.
324: Cro. Car. 507. 521: Co. Litt. 153. 201: 4 Co. 73: Cro. Eliz. 462:

For more learning on this subject, see 4 New Abr.: and 18 Vin,
Abr. title Rent.

RENTAL, (corrupted from Rent-roll.) A roll wherein the Rents
of a manor are written and set down, by which the lord’s bailiff col-
llects the same. It contains the lands and tenements let to each tenant,
and the names of the tenants, the several Rents arising, and for what
time, usually a year. Compl. Court Keep. 475.

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3 P
Rental-right. A species of lease given usually at a low Rent and for life; where they were given to a tenant and his heirs they were a good ground of possession to the first heir after the decease of the original tenant. Such Tenants were called Rentalers, or kindly-tenants. See Bell's Scotch Dict.

Rental'd Teind Bolls, is when the teinds (tithes) have been liquidated, and settled for so many bolls of Corn yearly, by Rental, or an old use of payment. Scotch Dict.

RENTS of ASSISE. The certain Rents of freeholders and antient copyholders; so called, because they were assised, and different from others which were uncertain, paid in corn, &c. 2 Inst. 19. See title Rent I.

RENTS resolute, Redditius resoluti.] Are accounted among the Fee-Farm Rents to be sold by stat. 22 Car. 2. c. 6. being such Rents or tenths as were antiently payable to the Crown, from the lands of abbeys and religious houses; and after their dissolution, notwithstanding the lands were demised to others, yet the Rents were still reserved, and made payable again to the Crown. Cowell.

RENUCIATION; the act of renouncing a right: as executors may renounce or refuse to take probate of a will. See title Executors.

REPARATIONS. A tenant for life or years may cut down timber-trees to make Reparations, although he be not compelled thereto; and where a house is ruinous at the time of the lease made, and the lessee suffers it to fall, he is not bound to rebuild it; and yet if he fell timber for Reparations, he may justify the same. Co. Lit. 54.

Lessees covenants, that from and after the amendment and Reparation of the houses by the lessor, he at his own charges will keep and leave them in repair: In this case the lessee is not obliged to do it, unless the lessor first make good the Reparations: And if it be well repaired at first, when the lease began, and after happen to decay; the lessor must first repair, before the lessee is bound to keep it so. Cro. Jac. 645; see also 2 Leon. c. 72: and this Dict. titles Lease; Covenant; Waste.

Reparatione facienda, An antient writ which lies in many cases; one whereof is where there are tenants in common or joint-tenants of a house, &c. which is fallen into decay, and one is willing to repair it, but the others are not: In this case, the party willing to repair the same shall have this writ against the others. F. N. B. 127.

And if a man have a house adjoining to my house, and he suffer his house to lie in decay, to the annoyance of my house, I may have a writ against him to repair his house. So, if a person have a passage over a bridge, and another ought to repair the bridge, who suffers it to fall to decay, &c. New N. Br. 281.

REPETUNDARUM CRIMEN. The crime of receiving a bribe to prevent justice: See titles Bribery; Barratry; Extortion, &c.

REPEAL, from the Fr. rappel, i. e. revocatio.] A Revocation; as the repealing of a statute is the revoking or disannulling it. Rastal.

It is said, a pardon of felony, &c. may be repealed on disapproving the suggestion, 1 Keb. 19. See title Pardon.

A deed or will may stand good as to part, and be repealed for the Rest. Style 241. A defendant, in a suit cannot repeal or revoke his Warrant of Attorney given to an attorney to appear for him, &c. 2 Litt. Abr. 452; without first paying his bill. See title Attorney.
REPLEVIN. 483

REPLEADER, Replacitare.] To plead again. See title Pleading
1. 3. ad finem.

Repleader is to be had where the pleading hath not brought the issue in question, which was to be tried: Also, if a verdict be given where there was no issue joined, there must be a Repleader to bring the matter to trial, &c. 2 Lit. Abr. 460.

It was held, that, at Common Law, a Repleader was granted before trial, because a verdict did not cure an immaterial issue; but that now a Repleader ought never to be awarded before trial, because the fault in the issue may be helped by the statutes of Jecfails: That if a Repleader is denied where it should be granted, or è converso, it is error; and the judgment in Repleader is general (viz.) Quod partes replacitent: They must begin again at the first fault, which occasioned the immaterial issue; if the declaration and the bar, and the replication be all ill, they must begin de novo; but if the bar be good, and the replication ill, they must begin at the replication; and no costs are allowed on either side; and a Repleader cannot be awarded after a default. 2 Salk. 579.

Though a Repleader is allowed after verdict; it has been adjudged, not to be awarded after demurrer: (But a Repleader hath formerly been granted after demurrer, and likewise after the demurrer argued; and that a Repleader can never be awarded after a writ of error; but only after issue joined, &c. Latch. 147: 3 Lev. 440: Mod. Ca. 102. See the Form of a Repleader, Latw. 1622.

REPLEGIARE, To redeem a thing detained or taken by another, by putting in legal sureties. See Replevin.

Repledging is applied in the Scotch Law to the power of reclaiming a criminal and trying him under a different jurisdiction from that of the Court before which he is accused.

REPLEGIARE DE AVERIS, a Writ brought by one whose cattle are distrained, or put in the pound, on any cause, by another person, on surety given to the Sheriff to prosecute or answer the action at Law. F. N. B. 68: Reg. Orig.; Stat. 7 H. 8. c. 4. See Replevin.

REPLEVIN,

PLEVINA; from replegiare, to re-deliver to the owner on Pledges; 1 Inst. 145, b.: or, to take back the Pledge; 3 Comm. 13: It is sometimes incorrectly used for the bailing a man.

I. The Definition of the Term; and the general Principles of the Law of Replevin.

II. More particularly; for what Things a Replevin lies; and for whom.

III. Of the different Kinds of Replevin; out of what Courts they issue; and of the Power and Duty of the Sheriff.

IV. 1. Of the Pledges, and the Proceedings against them. 2. Of the Pleadings and Damages.

V. Of the Original Writ, and the Writ of Withernam.

VI. 1. Of the Writ of second Deliverance; and, 2. the Writ De Proprietate probanda.

VII. Of the Writ De Retorno habendo; of Return irreplevisable; and in what Manner the Sheriff is to return and execute such Processes.
I. A Replevin is a remedy grounded and granted on a Distress; being a re-deliverance of the thing distrained, to remain with the first possessor, on security (or pledges) given by him to try the right with the distrainer, and to answer him in a course of Law.—Or, it is bringing the Writ called Replegiari facias, by him who has his cattle or goods distrained by another, and putting in surety to the Sheriff, that on delivery of the thing distrained, he will prosecute the action against the distrainer. Lit. lib. 2. c. 12. § 219: 1 Inst. 145, b.

Replevin is a writ, and usually granted in cases of distress, and is a matter of right; so that if a man grants a rent with clause of distress, and grants further, that the distress taken shall be irrepleivable, yet it may be repleived; for such restraint is against the nature of a distress, and no private person can alter the common course of the Law. Co. Lit. 145.

An action of Replevin is founded upon, and is the regular way of contesting the validity of a distress: being a re-delivery of the pledge, or thing taken in distress, to the owner, by the Sheriff; or his deputy: upon the owner’s giving security to try the right of the distress, and to restore it, if the right be adjudged against him: after which, the distrainer may keep it, till tender made of sufficient amends, but must then re-deliver it to the owner. 3 Comm. c. 9. ft. 147, cites 1 Inst. 145: 8 Rep. 147.

In this writ, or action, both plaintiff and defendant are called Actors; the one, i.e. the plaintiff, suing for damages; and the other, the avowant, or defendant, to have a return of the goods or cattle. 2 Bentl. 84: Cro. Eliz. 799: 2 Mod. 149. Therefore, either party may carry down the cause; and if the defendant give notice, and do not go on to trial, the Court will give costs against him: for the same reason, the defendant may not move for judgment of nonsuit, unless the plaintiff has given notice of trial. Bull. N. P. 61.

That the avowant (the person making the distress) is in nature of a plaintiff, appears, 1st, from his being called an Actor, which is a term in the Civil Law, and signifies plaintiff; 2dly, from his being entitled to have judgment de retorno habendo, and damages, as plaintiff; 3dly, from this, that the plaintiff may plead in abatement of the avowry, consequently such avowry must be in nature of an action. Carth. 122: 6 Mod. 103: Yelv. 148.

The avowant, being in nature of a plaintiff, need not aver his avowry with an hoc paratus est verificare, more than any other plaintiff need aver his count. Plowd. 263. See post. IV.

Nor shall he have a protection cast for him more than any other plaintiff. 2 Inst. 339.

But though an avowry be in nature of an action, yet one tenant in common may avow for taking cattle damage-feasant. Cro. Eliz. 330.

Replevin is an action founded on the right, and different from trespass. Carth. 74: Yelv. 148: Hob. 16: Cro. Eliz. 799.

It is now held, that, as no lands can be recovered in this action, it cannot, with any propriety, be considered as a real action; though the title of lands may incidentally come in question, as it may do in an action of trespass or even of debt, which are actions merely personal. Finch’s Law 316: and see Comb. 476: Fitzg. 109.

Formerly, when the party distrained upon intended to dispute the right of the distress, he had no other process by the old Common Law, than by a writ of Replevin, replegiari facias; which issued out
of chancery, commanding the sheriff to deliver the distress to the owner, and afterwards to do justice, in respect to the matter in dispute, in his own County-court. F. N. B. 68. But, this being a tedious method of proceeding; the beasts, or other goods, were long detained from the owner, to his great loss and damage. 2 Inst. 139. For which reason, the statute of Marlbridges, (52 Hen. 3.) c. 21 directs, (that without suing a writ out of the chancery) the sheriff immediately, upon plaint to him made, shall proceed to replevy the goods. See post. III. And for the greater ease of the parties, it is farther provided by stat. 1 & 2 P. & M. c. 12. that the sheriff shall make at least four deputies in each county for the sole purpose of making Replevin. See post. III. Upon application, therefore, either to the sheriff, or one of his said deputies; security is to be given, in pursuance of the statute of West. 2. 13 Edw. 1. c. 2; 1st, That the party repleving will pursue his action against the distrainor; for which purpose he puts in plegios de prosequendo, or pledges to prosecute: 2dly, That if the right be determined against him, he will return the distress again; for which purpose he is also bound to find plegios de retorno habendo. See post. IV. Besides these pledges, the sufficiency of which is discretionary, and at the peril of the sheriff, the stat. 11 Geo. 2. c. 19. § 23, requires, that the officer granting a Replevin on a distress for rent, shall take a bond with two sureties in a sum of double the value of the goods distrained, conditioned to prosecute the suit with effect and without delay, and for return of the goods; which bond shall be assigned to the avowant, or person making cognizance on request made to the officer; and, if forfeited, may be sued in the name of the assignee. See post. IV. And certainly as the end of all distresses is only to compel the party distrained upon, to satisfy the debt or duty owing from him, this end is as well answered by such sufficient sureties, as by retaining the very distress, which might frequently occasion great inconvenience to the owner; and that the Law never wantonly inflicts. The sheriff, on receiving such security, is immediately, by his officers, to cause the chattels taken in distress, to be restored into the possession of the party distrained upon; unless the distrainor claims a property in the goods so taken. For if, by this method of distress, the distrainor happens to come again into possession of his own property in goods, which before he had lost, the Law allows him to keep them, without any reference to the manner by which he thus has regained possession; being a kind of personal Remitter. See title Remitter. If, therefore, the distrainor claims any such property, the party repleving must sue out a writ de proprietate profamba, in which the sheriff is to prove by an inquest, in whom the property, previous to the distress, subsisted. Finch. L. 316. And if it be found to be in the distrainor, the sheriff can proceed no farther; but must return the claim of property to the court of King's Bench or Common Pleas, to be there farther prosecuted, if thought advisable, and there finally determined. Co. Litt. 145: Finch. L. 450.

But if no claim of property be put in, or if (upon trial) the sheriff's inquest determines it against the distrainor; then the sheriff is to replevy the goods; (making use of even force, if the distrainor makes resistance; 2 Inst. 193;) in case the goods be found within his county. But if the distress be carried out of the county or concealed, then the sheriff may return, that the goods, or beasts are eloigned; elon-
gata, carried to a distance, to places to him unknown: and thereupon
the party replevying shall have a writ of captias in withernam; in velito
(or more properly, repetito) namio; a term which signifies a second
or reciprocal distress, in lieu of the first which was eloigned. It is
therefore a command to the sheriff to take other goods of the dis-
trainor, in lieu of the distress formerly taken, and eloigned, or with-
held from the owner. F. N. B. 69. 73. So that here is now distress
against distress; one being taken to answer the other, by way of re-
prisal, and as a punishment for the illegal behaviour of the original
distrainor. For which reason, goods taken in withernam, cannot be
replevied, till the original distress is forth-coming. 3 Comm. c. 9.
See post. III.

But, in common cases, the goods are delivered back to the party
repleving, who is then bound to bring his action of Replevin; which
may be prosecuted in the County-court, be the distress of what value
it may. 2 Inst. 159. But either party may remove it to the superior
courts of King’s Bench or Common Pleas, by writ of recordari, or
pone; 2 Inst. 23; the plaintiff at pleasure, the defendant upon rea-
sonable cause; F. N. B. 69, 70: And also, if in the course of pro-
cceeding any right of freehold comes in question, the sheriff can pro-
cceed no farther; so that it is usual to carry it up, in the first instance,
to the courts of Westminster-Hall. Finch. L. 317. Upon this action
brought, and a declaration delivered, the distrainor, who is now the
defendant, makes A Bowenry; that is, he avows taking the distress in
his own right, or the right of his wife; and sets forth the reason of
it, as for rent arre, damage done, or other cause: or else, if he
justifies in another’s right, as his bailiff or servant, he is said to make
Cognizance: that is, he acknowledges the taking, but insists that such
taking was legal, as he acted by the command of one who had a right
to distrain; and on the truth and legal merits of this avowry or cogni-
zance the cause is determined. If it be determined for the plaintiff,
viz. that the distress was wrongfully taken, he has already got his
goods back into his own possession, and shall keep them, and more-
over recover damages. F. N. B. 69. See stat. 21 H. 8. c. 19: and post.
IV. But if the defendant prevails, by the default or nonsuit of the
plaintiff, then he shall have a writ de retorno habendo, whereby the
goods or chattels (which were distrained and then replevied) are re-
turned again into his custody; to be sold, or otherwise disposed of, as
if no replevin had been made. And at the Common Law, the plaintiff
might have brought another Replevin, and so in infinitum, to the in-
tolerable vexation of the defendant. Wherefore the statute of Westm.
2. c. 2. restrains the plaintiff, when nonsuited, from suing out any
fresh Replevin; but allows him a judicial writ, issuing out of the
original record, and called a writ of Second Deliverance, in order to
have the same distress again delivered to him, on giving the like
security as before. And, if the plaintiff be a second time nonsuit, or if
the defendant has judgment upon verdict or demurrer in the first Re-
plevin, he shall have a writ of Return irreplevisable: after which no
writ of Second Deliverance shall be allowed. 2 Inst. 340. But in case
of a distress for rent arre, the writ of Second Deliverance is in
effect taken away by stat. 17 Car. 2. c. 7; which directs that, if the
plaintiff be nonsuit before issue joined, then, upon suggestion made
on the record in nature of an avowry or cognizance; or if judgment
be given against him on demurrer, then, without any such sugges-
tion; the defendant may have a writ to inquire into the value of the distress by a Jury, and shall recover the amount of it in damages, if less than the arrear of rent; or, if more, then so much as shall be equal to such arrear, with costs; or, if the nonsuit be after issue joined, or if a verdict be against the plaintiff, then the jury impaneled to try the cause shall inquire concerning the sum of the arrears, and the value of the goods, &c. distrained: and thereupon the defendant shall have judgment for such, or so much thereof, as the goods, &c. distrained amounted unto: And if (in any of these cases) the distress be insufficient to answer the arrears distrained for, the defendant may take a farther distress, or distresses. See 1 Vient. 64. But otherwise, if, pending a Replevin for a former distress, a man distrains again for the same rent or service, then the party is not driven to his action of Replevin, but shall have a writ of recaption, and recover damages for the defendant, the re-distrainor's, contempt of the process of the Law. F. N. B. 71. 3 Comm. c. 9. See title Recaption.

II. It is a general rule, that the plaintiff ought to have the property of the goods in him at the time of the taking: and not only a general property, which every owner hath, but also a special property, such as a person hath who hath goods pledged with him, or who hath the cattle of another to manure his lands, &c. is sufficient to maintain a Replevin, and in such cases either party may bring a Replevin. Co. Litt. 145: Winch. 26.

A Replevin doth not lie of things which are fera nature, as conies, hares, monkies, dogs, &c. but if things, wild by nature, are made tame, or are reclaimed, so long as they continue in that condition, they belong to the person who hath the possession of them, and he may bring Replevin; and the general rule herein seems to be, that a Replevin lies for any thing that may by Law be distrained. 2 Roll. Abr. 430: Godd. 124. See title Distress.

We read of canes replegiati, hounds replevied, in a case between the abbot of St. Alban's and Geoffrey Childwick, 24 Hen. 3.

Goods may be replevied by writ, which is by the Common Law, or by plaint, which is by Statute Law, for the more speedy having again their cattle and goods.

A Replevin lies of a leveret; for it has animum revertendi; for the same reason it lies of a ferret; but it is said not to lie for a mastiff dog, though an action of trespass will. Br. Repl. 64: 2 Roll. Abr. 430. Sed quære?

Replevin lies of a swarm of bees. F. N. B. 68.

But not of trees, or timber growing; nor of things annexed to the freehold, because such things cannot be distrained; yet Replevin lies of certain iron belonging to the party's mill. F. N. B. 68.

So Replevin doth not lie of deeds or charters concerning lands; for they are of no value, but as they relate thereto. Br. Repl. 34.

Nor of money, or leather made into shoes. Moor 394: 2 Brownl. 139.

If a mare in foal, a cow in calf, &c. are distrained, and they happen to bring forth their young, whilst they are in the custody of the distrainor, a Replevin lies for the foal, calf, &c. Bro. Repl. 41: F. N. B. 69: 1 Sid. 82.

Replevin lies for a ship; so for the sails of the ship. March. 110:
Raym. 232. Replevin lies not for goods taken beyond sea, though brought hither by the defendant afterwards. 1 Show. 91.

He that brings Replevin must have an absolute, or at least a special, property in the thing distrained; and therefore several men cannot join in a Replevin, unless they be joint-tenants, or tenants in common. Executors may have a Replevin of a taking in _vita testatoris_. So, if the cattle of a _feme sole_ be taken, and she afterwards intermarry, the husband alone may have Replevin; but, if they join after verdict, judgment will not be arrested, because the Court will presume them jointly interested; (as they may be, if a distress be taken of goods of which a man and woman were joint-tenants, and afterwards intermarry;) the avowry admitting the property to be in the manner it is laid. Bull. N. P. c. 4. p. 53.

If I distress another’s cattle damage-feasant, and, before they are impounded, he tenders me sufficient amends; now, though the original taking was lawful, my subsequent detainment of them, after tender of amends, is wrongful, and he shall have an action of Replevin against me to recover them; in which he shall recover damages only for the detention, and not for the caption, because the original taking was lawful. F. N. B. 69. See 3 Comm. c. 9. But if the tender were before the taking, the taking is tortious; if after impounding, neither the taking nor detaining is tortious. And after the avowant has had return irreplevisable, yet if the plaintiff make sufficient tender, he may have his action of _detinue_ for the detainee after. Bull. N. P. 60.

III. _Replevin_ may be made either by original writ of Replevin, at Common Law, or by plaint, under the _stat._ of Marl. 52 H. 3. c. 21: Co. Litt. 145: F. N. B. 69.

The following are the words of this statute: “That if the beasts of any person be taken, and wrongfully withholden, the sheriff after complaint made to him thereof, may deliver them, without let or gainsaying of him that took the beasts, if they were taken out of liberties; and if the beasts were taken within any liberties, and the bailiff of the liberty will not deliver them, then the sheriff, for default of those bailiffs, should cause them to be delivered.”

The mischiefs before this act, as has been already hinted, were the great delay and loss the party was at, by having his beasts or goods withheld from him; as also, that when cattle were distrained and impounded within any liberty which had return of writs, the sheriff was obliged to make a warrant to the bailiff of the liberty to make deliverance; and there was another mischief, when the distress was taken without and impounded within the liberty. To remedy which, by this statute, the sheriff, _on plaint made to him without writ_, may, either by parol or precept, command his bailiff to deliver the beasts or goods, that is, to make _Replevin_ of them; and by these words, (post querimoniam sibi fact’;) the sheriff may take a plaint out of the County-court, and make a _Replevin_ presently, which he is to enter in the Court; as it would be inconvenient, and against the scope of the statute, that the owner, for whose benefit the statute was made, should tarry for his beasts till the next County-court, which is holden from month to month. And, by this act, the sheriff may hold plea in the County-court on _Replevin_ by plaint, though the value be of 40s. or above; and yet, in other actions, he shall only hold plea where the
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matter is under 40s. value. 2 Inst. 139: 1 Keb. 205: Dalt.
Sh. 430.

Replevins by writ issue, properly, out of chancery, returnable into
Distr. & Repl. 68. and post. V.

Replevins by plaint are made by the sheriff by force of the above-
mentioned statute of Marlbridge; by which he is directed on com-
plaint made to him by the party, that his goods or cattle are distain-
ed, to command his bailiff, (which may be by parol or precept) to
make deliver.nce; and which plaint may be taken at any time, and as
well out of, as in Court. Bro. Repl. fil. 4: Co. Litt. 145: 2 Inst. 139.

It becomes the sheriff's duty, on complaint, by parol or by precept
to his bailiff, to replevy the cattle, which (precept may be given before
any County-court; but such plaint is afterwards to be entered by the
party who made the complaint, and not by the sheriff. 2 Com. Rep.
591.

The action of Replevin is of two sorts: 1. In the detinuit. Where the party has had his goods redelivered to him by
the sheriff, upon a writ of Replevin, or upon a plaint levied before
him, the action is in the detinuit; but where the sheriff has not made
such Replevin, but the defendant still has the goods, the action is in
the detinuit. However, of late years, no action has been brought in the
detinuit, though there is much curious learning in the old books con-
cerning it. The advantage the plaintiff has in bringing an action of
Replevin in the detinuit, in preference to an action of trespass de bonis
asportatis, is, that he can oblige the defendant to re-deliver the goods
immediately, in case, upon making his avowry, they appear to be re-
plevisable: but as, in such cases, he may more speedily have them
delivered to him by application to the sheriff in the common way, it
is of no use; unless the distrainor have eloigned the goods, so that
the sheriff cannot get at them to make Replevin; and in such case
the plaintiff may bring an action of Replevin in the detinuit, and after
avowry, pray that the defendant may gage deliverance; or he may,
on return of an elongavit to the plurics writ of Replevin, have a
writ to the sheriff, commanding him to take other beasts, &c. of the
defendant in withernam: But if the defendant, before the return of the
withernam, appear to the writ of Replevin, and offer to plead non
ceptit; it shall stay the withernam; for the defendant shall not be con-
cluded by the return of an elongavit, since the sheriff can make no
other return where he cannot find the thing to be replevied. Bull.
N. P. c. 4.

The hundred court, and courts of lords of manors, may by pre-
scription hold plea in Replevin, so may incidentally have power to re-
plevy goods or cattle; but that, it seems, must be by process of the
court after a plaint entered, but not by parol complaint out of court.
Carth. 380.

Therefore, where in trespass for taking goods, &c. the defendant
justified that the place where, &c. was a hundred, and time out of
mind had a court of all actions, Replevins, &c. grantable in or out of
court, virtute cujus, &c. The question was, If good or not? And the
reason of the doubt was, because the County-court could not hold
plea in Replevin at Common Law; but were enabled by the statute
of Marlbridge, which extends not to the hundred court, which is a
court derived out of the County-courts; but per Cur. clearly, Suppo-
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sing they may grant them in court, yet they cannot prescribe to grant them out of court. 2 Salk. 580: 5 Mod. 252: Skin. 674: Carth. 380: 1 Ld. Raym. 219.

The sheriff is obliged to grant Replevins in all such cases as they are allowed by Law; and the officer who takes the goods, by virtue of a Replevin issuing for what cause soever, is not liable to an action of trespass, unless the party, in whose possession the goods were, claims property in them: And note; that in all cases of misbehaviour by the sheriff, or other officers, in relation to Replevins, they are subject to the control of the King's superior courts, and punishable by attachment for such misbehaviour. Carth. 381.

And though the sheriff may grant Replevins by plaint, and may proceed thereon in his County-court, yet if any thing touching freehold come in question, or antient demesne be pleaded, the sheriff can proceed no further; nor can any such proceedings be carried on in the hundred court, court baron, or any other court claiming a jurisdiction herein by prescription. 2 H. 7. 6: 4 H. 6. 30: Co. Litt. 145. b.

So, when the King is party, or the taking is in right of the Crown, in these cases the sheriff is to suervease. Bro. Repl. fl. 3: 1 Brownt. 3.

Where an act of Parliament orders a distress and sale of goods, this is in nature of an execution, and Replevin does not lie; but if the sheriff grants one, yet it is not such a contempt as to grant an attachment against him; and Powell, Justice, said, He remembered a case in the Exchequer, where a distress was taken for a fee-farm rent due to the King and a Replevin granted, yet, on debate, no attachment was granted, though it was in the King's case. Trin. 12 W. 3, in C. B. Bradshaw's case. But it is now determined that, if goods be taken in execution, (or on a conviction before Justices,) the sheriff shall not make Replevin of them; and if in such case the sheriff should make Replevin, he would subject himself to an attachment; for goods are only replevissable where they have been taken by way of distress. Bull. N. P. c. 4. p. 53.

Whether goods taken under a warrant of distress by commissioners of sewers may be repleved while in the hands of the officer; and whether they may be repleved by the sheriff or his deputy, is doubtful: But if they be actually repleved, and the proceedings in Replevin be removed into K. B. that Court will not quash the proceedings on a summary application, but will leave it to the defendant in Replevin to put his objection on record. 6 Term Rep. K. B. 522.

The following is the provision of stat. 1 & 2 P. & M. c. 12. already alluded to: “That the sheriff shall at his first county-day, or within two months after he receives the patent, depute and proclaim in the shire-town four deputies to make Replevins, not dwelling twelve miles distant from one another; on pain to forfeit, for every month he wants such deputy or deputies, 5l. to be divided between the King and the prosecutor.”

IV. 1. When the sheriff makes Replevin he ought to take two kinds of pledges; plegii di proseguendo, by the Common Law, and plegii de retorno habiendo, by the statute of West. 2. c. 2. by which it is provided, “That sheriffs or bailiffs, from thenceforth, shall not only receive of the plaintiff pledges for pursuing the suit, before they make deliverance of the distress, but also for return of the beasts, if return be awarded; and if any take pledges otherwise, he shall an-
swer for the price of the beasts, and the lord that distrains shall have
his recovery by writ, that he shall restore to him so many beasts or
cattle; and if the plaintiff be not able to restore, his superior shall
restore."

By stat. 11 Geo. 2. c. 19. Officers, having authority to grant Re-
plevins, shall, in every Replevin of a distress for rent, take in their
own names, from the plaintiff and two sureties, a bond in double the
value of the goods distrained; (such value to be ascertained by the
oath of one or more witnesses not interested, which oath the person
granting such Replevin is to administer;) conditioned for prosecuting
the suit with effect, without delay, and for returning the goods, in
case a return shall be awarded, before any deliverance be made of
the distress; and such officer, taking such bond, shall, at the request
and costs of the avowant, or person making consuance, assign such
bond to the avowant, &c. by indorsing the same, and attesting it un-
der his hand and seal, in the presence of two witnesses; which may
be done without stamp, provided the assignment be stamped before
any action brought thereon; and if the bond be forfeited, the avowant,
&c. may bring an action thereupon in his own name, and the Court
may by rule give such relief to the parties on such bond, as may be
agreeable to justice; and such rule shall have the effect of a defea-
sance.

In the construction of these statutes the following points have been
ruled, and opinions holden:

Under stat. Westm. 2. c. 2. an action lies against the sheriff, if he
omit to take pledges, or if he take those that are insufficient; and the
party may have a seire facias against the pledges, where the suit is in
any Court of Record; and though in the County-court, &c. a seire
facias will not lie against the pledges, because these are not Courts of
Record, and every seire facias ought to be grounded on a Record,
yet there the party may have a precept, in nature of a seire facias,
against the pledges. 1 Ld. Raym. 278: See 1 Comb. 1, 2: Com. 593.

An action will lie against the sheriff not only for not taking a bond,
but also for taking insufficient pledges. Rouv. v. Patterson, Hal. 13
Geo. 2. B. R. on a writ of error from C. B. 16 Vin. Ab. 399. pl. 4.;
under the name of Prowse v. Pattison, Bull. N. P. 60. In such an
action some evidence must be given by the plaintiff of the insuffi-
ciency of the pledges or sureties; but very slight evidence is suffi-
cient to throw the proof upon the sheriff. Saunders v. Darling, West-
minster Sittings, Trin. 10 Geo. 3. C. B. Bull. N. P. 60. Though there
have been contradictory determinations respecting the extent of the
sheriff’s liability in such an action, the point seems now to be settled.
In Prowse v. Pattison, the party recovered damages to the amount of
the rent in arrear added to the costs of Replevin: but the whole to-
gether did not exceed the value of the distress. 4 T. R. K. B. 434. n.
So in the case of Gibson v. Burnell, 30 Geo. 3, Gould, J. who tried
the cause, was of opinion that the plaintiff was entitled to recover
the costs in the Replevin as well as the rent in arrear, ib. But in Yea v.
Lethbridge, M. 32 Geo. 3. the court of K. B. on a question reserved
at the trial for their opinion, held that the plaintiff could not recover
beyond the value of the distress taken, which was not equal to the
rent in arrear, 4 T. R. K. B. 433. And though this decision was af-
terwards questioned in the Court of C. P. (the Court consisting of
Lord Loughborough, Ld. Ch. J. Gould, J. Heath, J. and Wilson, J.) in
Concanen v. Lethbridge, E. 32 Geo. 3. 2 H. Bl. Rep. 36. where it was ruled after great consideration that the plaintiff might recover damages to the extent of the injury which he had sustained, though they exceeded double the value of the goods distraint; yet the authority of the case of Yea v. Lethbridge was again established in a subsequent case, Evans v. Brander, Tr. 35 Geo. 3. where the Court of Common Pleas (then consisting of Eyre, Ld. Ch. J.—Buller, J. Heath, J. Rooke, J. three of the Judges being then changed) decided that the sheriff was not liable for more than double the value of the goods distraint. 2 H. Bl. Rep. 547. The foundation of the last decision, and of that of Yea v. Lethbridge is this: that the sheriff is liable no further than the sureties would have been, if he had done his duty by taking a bond under the statute. 11 Geo. 2. c. 19 and the sureties had been sufficient; and that the extent of their responsibility is limited by the statute to double the value of the goods distraint.

The remedy in case of insufficient pledges is by action only; and the Court of C. P. refused to make an order on an officer to pay costs recovered by a defendant in Replevin. 1 New Rep. C. P. 292.

This action must be brought by the person making cognizance, where there is no avowant on the record, 1 Bos. and Pul. 378. A Replevin bond under 11 Geo. 2. c. 19 may be assigned to the avowant only, and he may bring his action without joining the party making cognizance, 1 Bos. & Pul. 381. n.

If the sheriff returns insufficient pledges, he shall answer according to the statute; for insufficient pledges are no pledges in Law; and such pledges must not only be sufficient in estate, viz. capable to answer in value, but likewise sufficient in law, and under no incapacity; therefore infants, feme covert, persons outlawed, &c. are not to be taken as pledges, nor are persons politic, or bodies corporate. Co. Litt. 145: 2 Inst. 340: 10 Co. 102.

In Replevin the sheriff did not return any pledges, and after issue joined and found, it was moved, if they could be put in by the court after verdict; and the court held they might, notwithstanding the statute of Westm. 2. as before that statute the Court might take pledges on the omission of the sheriff; and a diversity was taken between pledges for prosecuting, which were at Common law, and fiero retorno habendo given by this statute; and the Court held, that though on default of the sheriff he was subject to the action of the party, that yet the taking of pledges by the Court did not make the judgment erroneous. Noy 156. And that the omission of pledges of the first description is error; but the omission of pledges de retorno habendo does not vitiate the proceedings, but subjects the sheriff to an action. See 1 Jon. 439: Cro. Car. 594. And if the sheriff omit to take bond, pursuant to the statute. 11 Geo. 2. c. 19, (see ante I. and post.) an attachment will not be granted, but the remedy is by action against him. 2 Term Rep. 617.

A Replevin by plaint was sued in the sheriff’s court in London, and pledges were found de retorno habendo, &c. &c. this plaint was removed according to their custom into the mayor’s court, and after into the King’s Bench by certiorari, and there order of certiorari being demanded, the party declared in B. R. On this a return was awarded, and on an elongat’ returned, a scire facias went against the pledges in the sheriff’s court of London. On demurrer, the question was, Whether, this case being removed by certiorari, the pledges in the
in inferior court are discharged, or whether they remain liable to be charged by this seire facias? It was adjudged, that the pledges were not discharged. Skin. 244: 2 Show. 421. Comb. 1, 2, 3 Mod. 56. S. C.

The plaintiff declared, that he distrained for 7l. 10s. rent, reserved on a lease, and that the defendant delivered the cattle without taking pledges; to which the defendant pleaded, that the plaintiff in Replevin delivered to him 3l. 10s. for pledges, which he accepted; and on demurrer the Court held, that pledges being to be found to answer the party, if he had good cause of avowry, and to be answerable for amercement to the King, if nonsuited, or if it be found against him; the taking of money for a pledge was not lawful; and that although he might take money for pledges, yet he ought not to accept less than the plaintiff’s demand: on which account the Court likewise held the plea vicious; but they agreed, that if the defendant had taken but one pledge, (if he had been sufficient,) it had been well enough. Cro. Car. 446: 1 Jon. 378.

A bond taken by the sheriff, conditioned that if the party applying for the Replevin should appear at the next County-court, &c. and prosecute his action with effect, and should make return of the thing replevied, if return should be adjudged, and save the sheriff harmless, &c. is good in law; and agreeable to the intent of the statute of Marlbridge which requires pledges or sureties, of which nature the obligors are; and this method of taking bond instead of pledges was said to be of antient usage; and that in the old books plegii signified the same as sureties; and that there being a proper remedy on such bond, it differed from the case of taking a deposit or sum of money; but the Court agreed, that at Common Law this bond had been void, because it had been to save the sheriff harmless in making Replevin by plaint, which he could not have done before the statute of Marlbridge. 1 Ld. Raym. 278: 2 Lutw. 686.

If in Replevin in an inferior Court, the condition of the bond is, if he prosecute his suit commenced with effect in the court of, &c. and make return, &c. if a return be adjudged by Law, and it happens, that the plaintiff hath judgment in the court below, which is afterwards reversed on a writ of error in B. R. in such case, unless the party make a return, he forfeits his bond; for though he had judgment in the court below, yet the words, “if he prosecute his suit commenced,” &c. extend to the prosecution of the writ of error, which is part of the suit commenced in the court below; and in this case, the taking such bond was held to be lawful, and said to be common practice. Earth. 248: 1 Show. 400: Fitzg. 158.

In debt on a Replevin-bond taken by the sheriff, conditioned that if C. B. appear at the next County-court and prosecute with effect for taking, &c. and make return, &c. if return be adjudged, and save harmless the sheriff, &c. then, &c. the defendant after overt pleaded that at the next County-court, held on such a day, he did appear, and prosecuted, &c. until it was removed by recordari, and did save the sheriff harmless, but doth not say, that no return habend was adjudged on demurrer, the Court inclined for the plaintiff; for the defendant should have said, that no return was adjudged at all; and though he prosecuted to the recordari, yet return habend’ might be adjudged afterwards; and the condition goes to any adjudication of return. Comb. 228.

The condition of a Replevin bond is not satisfied by a prosecution
of the suit in the County-court, but that the plaintiff, if removed by the recordari facias loguelam into a superior court must be prosecuted there with effect, and a return made, if adjudged there. 1 Bos. & Put. 410.

An action was brought on a bond in Replevin to prosecute his suit with effect, and also to make return, &c. the defendant pleaded that E. G. did levy a plaint in Replevin in the Court before the steward of Westminster, and that afterwards, and before the suit was determined, viz. such a day, &c. E. G. died; per quod the suit abated; the plaintiff replied, that true it is, that E. G. levied such a plaint against the defendant, who immediately afterwards exhibited an English bill in the Exchequer against the plaintiff in that suit, and by injunction hindered the proceedings below until such a day, &c. on which E. G. died; so that he did not prosecute his suit with effect: On demurrer to this replication the defendant had judgment; for, per Holt, this was a prosecution with effect, because there was neither a nonsuit or verdict against E. G. Carth. 519.

In an action on a Replevin-bond common bail shall be filed. 1 Salk. 99. See title Bail.

2. The declaration in Replevin ought to be certain in setting forth the numbers and kinds of cattle distrained: because, otherwise, the sheriff cannot tell how to make deliverance, if it should be necessary: yet an avowry may make that good, which would be bad on demurrer; both parties agreeing what the quantum and nature of the goods are. And the sheriff may require the defendant to shew him the goods; and it would be a good return to say, "that no one came, on the part of the defendant, to shew the goods and chattels." Alcyn. 32: Stile 71.

The declaration ought to be not only of a taking in a ville or town, but also "in a certain place called," &c.; but if the defendant would take advantage of this, he must demur to the declaration. Hob. 16.

A man may count of several takings, part at one day and place, and part at another; and if the plaintiff allege two places, and the defendant only answer one, i.e. if the plea begin only as an answer to part, and be in truth but an answer to part, it is a discontinuance; and the plaintiff must not demur, but must take his judgment for that by nihil dicit; for if he demur or plead over, the whole action is discontinued. But if a plea begin with an answer to the whole, but is in truth only an answer to part, the whole plea is nought; and the plaintiff may demur. F. N. B. 68: Salk. 176. Where the defendant avows at a different place, in order to have a return, he must traverse the place in the count, because his avowry is inconsistent with it; but where he does not insist upon a return, he may plead non ceptit, and prove the taking to be at another place, for the place is material. Stra. 507. This is to be understood where the defendant never had the cattle in the place laid in the declaration at all; for if on the plea of non ceptit the plaintiff prove that the defendant had the cattle in the place laid in the declaration, he will have a verdict; and if the fact be, that the defendant took the cattle in another place, and only had them in the place mentioned in the declaration, in the way to the pound, he ought to plead that matter specially. Bull. N. P. c. 4. p. 54.

The general issue in Replevin is non ceptit; upon which property cannot be given in evidence, for that ought to be pleaded; and if he plead property in himself, he may either plead it in bar, or in abatement; but if he pleads it in a stranger, it ought strictly to be pleaded
in abatement; though it may likewise be pleaded in bar. 2 Vent. 249:
1 Salk. 5: Co. Litt. 45: 2 Lev. 92.

If the defendant plead property, whether it be in himself or a
stranger, he shall have a return without making an avowry for it; but
where the plea in abatement is of a collateral matter, such as *cepit in
alio loco*, he must make an avowry in order to have a return; for he
must shew a right to the property, or at least to the possession, to
have a return; but the plaintiff ought not to traverse the matter of
the consuance; and if he do, and demurrer be joined upon it, it is a
discontinuance, and the defendant will have judgment. Salk. 94: Bull.
N. P. 54.

The defendant may either avow the taking, or justify it; if he
avow, it must be upon a right subsisting, such as rent-arrere, &c. and
then he entitles himself to a return; but where, by matter subsequent,
he is not to have the thing for which the distress was taken, there
he will not be entitled to a return, and therefore cannot avow, but
must justify; as, if a lord distrain for homage, and afterwards the
tenant die, and then his executor bring Replevin. But a man may
distrain for one thing, and avow for another. 3 Co. 26, a: Bull. N. P.
54, 55.

By stat. 11 Geo. 2. c. 19. § 22. any person distraining for rent, relief,
heriot, or other service, may in Replevin avow or make cognizance
generally, without setting out a title. But this does not extend to an
avowry for a rent-charge. 1 New Rep. 56.

If a defendant make cognizance as bailiff to *J. S.*, the plaintiff
may traverse his being bailiff, for this is different from trespass *quaere
clausum fregit*; for there if the defendant justify an entry by com-
mand, or as bailiff to one in whom he alleges the freehold to be, the
plaintiff shall not traverse the command, because it would admit the
truth of the rest of the plea, *viz.* that the freehold was in *J. S.* which
would be sufficient to bar his action. But in trespass *de bonis aspor-
tatis*, *e. g.* for taking the plaintiff’s sheep, if the defendant justify the
taking them, damage-feasant, as servant to *J. S.*, the plaintiff may
traverse the command or authority; for though *J. S.* had a right to
take the cattle, yet a stranger, who had no authority from him,
would be liable. And there is a great difference between a justifica-
tion in trespass, and an avowry in Replevin, in another respect, *e. g.*
for an amerciament in a court leet; in the justification it is necessary
for the defendant to set forth a warrant or precept, &c. but not to
aver the matter of the presentment, because his plea is only in ex-
cuse: but in avowry he ought to aver, in fact, that the plaintiff com-
mitted the crime for which he is amerced; because he is an actor,
and is to recover, which must be upon the merits. Bull. N. P. 55:
cites 1 Salk. 107.

If an avowry be made for rent, and it appear by the defendant’s
own shewing, that part of it is not yet due, yet the avowry will be
good for the residue. In such case the avouant must abate his avowry,
*quoad* the rent not due, and take judgment for the rest; but if it appear
that he has title only to two undivided parts of the rent; the avowry
shall abate. 1 Saund. 285: Moor 281: Salk. 580. So if the avowry be
for part of a quarter or half a year’s rent, he must shew how the rest
is satisfied, or it will be bad. Hardw. 84: Comb. 346: 1 Saund. 191. In
avowry for rent, and a *nomine pana* together, without alleging any
demand of rent, the *avowry* is good for the rent, though it will be ill
for the penalty. 1 Sound. 286: Hob. 133. Avowry for rent due at a latter day, is no bar to avowry for rent due at a former day; but an acquittal under seal is; if not under seal, contrary proof will be admitted. Bull. N. P. 56. See further, this Dictionary, titles Avowry; Rent; Distress.

By stat. 21 H. 8. c. 19. If the avowry, cognizance, or justification be found for the avowant, or the plaintiff be nonsuited, the defendant shall recover such damages and costs as the plaintiff would have had if he had recovered. But this act mentions only persons avowing or making cognizance, for rent-service, customs, services, damage-tenant, or for other rent or rents; so that it does not extend to an avowry for a nomine fruens, or for an estray; and therefore, if in such, damages and costs were given, the judgment would be reversed. 1 Jon. 135; and see Bull. N. P. 57.

The avowant or defendant in Replevin, though not within the words is plainly within the meaning of the stat. & Ann. c. 16; (by which a plaintiff in Replevin, which to certain purposes an avowant is, may plead as many pleas as he may think necessary:) And, accordingly, where some issues in Replevin are found for the plaintiff, which entitle him to judgment, and some for the defendant; the latter must be allowed the costs of the issues found for him, out of the general costs of the verdict; unless the Judge certify, that the plaintiff had a probable cause for pleading the matters on which those issues are joined. 2 Term Repr. 335.

If issue be joined on the property, the defendant may give in evidence the plaintiff’s having the cattle, in mitigation of damages. Godb. 98. If the plaintiff plead rien arrere in bar to an avowry for rent, he cannot, upon such issue give in evidence non-tenure. Bull. N. P. 59. In an avowry for rent, the plaintiff may plead a tender and refusal, without bringing the money into court; because, if the distress were not rightfully taken, the defendant must answer the plaintiff his damages. Bull. N. P. 60. See also as to payment into court in Replevin, 1 H. Black. 24: 1 Bos. & Pul. 382: 3 Bos. & Pul. 603.

A defendant in Replevin is not entitled to move for judgment as in case of a nonsuit under stat. 14 Geo. 2. c. 17. § 1. 3 Term Repr. K. B. 661: 5 T. R. 400.

V. The original writ of Replevin issues out of chancery, and neither it nor the alias Replevin are returnable, but are only in nature of a justicies, to empower the sheriff to hold plea in his County-court, when a day is given the parties; but the pluries Replevin is always with this clause, vel causam nobis significe, and it is a returnable process. F. N. B. 69, 70: Doct. Pl. 313, 314: 2 Inst. 139: Salk. 410. It is usual to take out the alias and pluries at the same time. Dalt. Sh. 273.

A pluries Replevin returned in Michaelmas Term, the defendant claimed property, and nothing was afterwards done, nor any appearance nor continuance till Easter Term following at which term they appeared and pleaded, and judgment was thereupon given; though no continuance was between Michaelmas and Easter, yet this was not any discontinuance, because there is not any continuance, till appearance; for the parties have not any express day in Court, and where there is not any continuance, there cannot be any discontinuance.

1 Rol. Abr. 485.
The _pluries_ Replevin supersedes the proceedings of the sheriff, and the proceedings are on that, and not on the plaint, as they are when that is removed by _recordari_; and though there is no summons in the writ, yet it gives a good day to the defendant to appear; and if he does not appear, then a _pone_ issues, and then a _capias_. 1 _Ld. Raym._ 617.

_Capias_ and process of outlawry lie in Replevin; for when on the _pluries_ _replegiari fac._ the sheriff returns _averia elongata_, then a _capias_ in _withernam_ issues; and on that being returned _nulla bona_, a _capias_ issues; and so to outlawry. _Capias_ and process of outlawry in Replevin were given by _stat._ 25 _Ed._ 3. _st._ 5. _c._ 17: 6 _Mod._ 84.

If on the _pluries_ Replevin the sheriff return, that the cattle are eloined to places unknown, &c. so that he cannot deliver them to plaintiff, then shall issue a _withernam_, directed to the sheriff, commanding him to take the cattle or goods of the defendant, and detain them till the cattle or goods distraint are restored to the plaintiff; and if, on the first _withernam_, a _nilil_ be returned, there an _alias_ and _pluries_ Replevin issue; and so to a _capias_ and _exigent_. _F. N._ B. 73.

The writ of _withernam_ ought to rehearse the cause which the sheriff returns, for which he cannot replevy the cattle or goods; so that it does not lie on a bare suggestion, that the beasts are eloined, &c. _F. N._ B. 69. 73. See _ante_ III.

If on the _withernam_ the cattle are restored to the party who eloined them, yet he shall pay a fine for his contempt. 2 _Leon._ 147.

_Cattle_ taken in _withernam_ may be worked; or, if cows, may be milked; for the party has them in lieu of his own. 1 _Leon._ 220: _Dyer_ 280.

And as the party is to have the use of the cattle, he is not to have any allowance made him for the expences he has been at in maintaining them. _Owen_ 46: _Cro. Eliz._ 162: 3 _Leon._ 235.

_Scire facias_ against an executor, reciting, that where Replevin was brought against his testator for a cow, and judgment against him _de retorno habendo_, which was not executed, that he should shew cause why he should not have execution. The executor pleads _piene administravit_, upon which the plaintiff demurred; and _Wyld_, Justice, said, that upon the judgment the cow is in the custody of the Law; therefore he ought to have execution; but the doubt is, because the Replevin is determined by the death of the party; (yet by him and _Rainesford_, being only in Court) the plaintiff shall have execution, for the defendant cannot be prejudiced: for if the sheriff return _averia elongata_, he shall not have a _withernam_, but of the goods of the testator; or, if there are no goods of the testator, the sheriff can take nothing; but shall return _nulla bona_, and then the plaintiff hath his ordinary way to charge the defendant if he hath made a _devastavit_; and it was adjudged for the plaintiff. _Pasch._ 20 _C._ 2. in _B. R._ _Sucklin v. Green._

_W._ sues a Replevin, _B._ removes it by _recordari_ into the King’s Bench, the plaintiff does not declare, and on that a return awarded to _H._ upon which the sheriff returns _averia elongata_, and then a _withernam_ was awarded and executed; and now the plaintiff comes and prays he may be admitted to declare, and prays a deliverance of the _withernam_; and it was testified by the clerks, that on the plaintiff’s submission to a fine for not declaring; and that being imposed on him by the Judges, he shall have deliverance of the _withernam_; and a fine of 3s. 4d. being accordingly imposed on the

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plaintiff, he then declared, and had deliverance. *Voy* 50. The course of *B. R.* is contrary to that of *C. B.*

If, on an *elongata* returned, the sheriff's cattle are taken in *withernam*, yet on the defendant's appearance, and pleading *non cefitis*, on claiming property, the defendant shall have his cattle again; and if they are eloigned, a *withernam* against the plaintiff; for if the property or taking be in question, there is no reason that the plaintiff should have the defendant's cattle. *1 Ld. Raym.* 614.

The *withernam* is but mesne process, and cannot be on execution, because it is granted before judgment. *1 Ld. Raym.* 614: and see *Cmb. 201*: *Salk.* 582.

VI. The writ of *Second deliverance* is a judicial writ depending upon the first original, and is given by *stat.* *Westm.* 2. 13 *E. 1. c. 2*; which recites, that, after the return is awarded, the party distressed does replevy again, and so the judgments given in the King's courts take no effect; wherefore it enacts, that when return is awarded to the distrainor the sheriff shall be commanded by a judicial writ to make return, in which it shall be expressed that the sheriff shall not deliver them without writ making mention of the judgment: and it further enacts, that if the party make default again, or, for any other cause, return of the distress be awarded, being now twice repleived, the distress shall remain irrepleivable. See *ante* I.

If a defendant in Replevin has return awarded on nonsuit of a plaintiff, on which he sues a writ de *retorno habendo*, upon which writ the sheriff returns *averia elongata per querentem*, and on this a *withernam* is awarded, and on the *withernam* the defendant has *tot catalla* to him delivered of the goods of the plaintiff, and thereupon the plaintiff sues a Second Deliverance; he shall sue it for the first distress taken, not for the *withernam*; and this by the nature and form of the writ of Second Deliverance. *2 Roll. Abr.* 435.

If a *retorno habendo* be awarded to the sheriff after a writ of Second Deliverance prayed by plaintiff, this is *supercedes* to the *retorno habendo*, and closes the sheriff's hand from making any return thereto; and if the sheriff will not execute the writ of Second Deliverance, the party has his remedy against him. *Dyer* 41: *Dalt. Sh.* 275.

The statute of *Westm.* 2. gives the writ of Second Deliverance out of the same court where the first Replevin was granted, and a man cannot have it elsewhere; for if he may, then he shall vary from the place limited as to this by the statute. *Plowd.* 206.

In Replevin a defendant avowed, that the plaintiff being nonsuited brought a writ of Second deliverance, whereupon it was moved to stay the writ of Inquiry of Damages: And *per curiam*, this is a *supercedes* to the *retorno habendo*, but not to the writ of Inquiry of Damages; for these damages are not for the thing avowed for, but are given by *stat.* 21 *H. 8. c. 19* as a compensation for the expence and trouble the avowant has been at. *1 Salk.* 95. See *Palm.* 403: *Latch.* 72.

Error of judgment in *C. B.* in a Second Deliverance on demurrer in pleading, the error assigned was, because there was not any writ of Second Deliverance certified: and *in nullo est erratum* being pleaded, it was moved not to be material, because it is awarded on the roll, and the parties had appeared and pleaded to it; but it was adjudged ill, and reversed for that cause; for there ought to be a writ, and if
it vary from the declaration in the replevin, it shall be abated. *Cro. Jac.* 424.

No Second Deliverance lies after a judgment on a demurrer, or after verdict, or confession of the avowry; but, in all these cases, the judgment must be entered with a return irreplevisable; but on a non-suit, either before or after evidence, a Second Deliverance will lie, because there is no determination of the matter, and there a writ of Second Deliverance lies to bring the matter in question; but, in the case of demurrer and verdict, the matter is determined by confession of the party. *2 Litt. Reg.* 457.

If the plaintiff's writ abates; he may have a new writ; and is not put to his writ of Second Deliverance. *Com.* 122.

If the plaintiff in Replevin be non-suited for want of delivering a declaration, if it happened through sickness of the person employed to prosecute, the Court will order the defendant to accept a declaration on payment of costs; otherwise plaintiff would be remediless, the writ of Second Deliverance being taken away by *stat.* 17 *C. 2. c.* 7. in case of distresses for rent arrear. See ante. I.

If the person taking the goods claims property, the sheriff cannot make Replevin of them; for property must be tried by *Writ,* and in this case the plaintiff may have the writ *de proprietate probandâ* to the sheriff; and if it be found for the plaintiff, then the sheriff is to make Replevin; if for the defendant, then he is to proceed no further; but as this is but an inquest of office, though the property be found in the defendant, yet the plaintiff is not concluded, for he may still have his action of Replevin, or of trespass: But if in his action of Replevin the defendant plead property, and it be found for him, the plaintiff is concluded: And if the sheriff return the claim of property, yet shall it proceed in *C. B.* where the property shall be put in issue, and finally tried. *Co. Litt.* 145, b.; *F. N. B.* 77; *Dyer* 173; *Com.* 592: *Bull. N. P.*

None but he who is party to the Replevin shall have the writ *de proprietate probandâ*; so that if on a Replevin the beasts of a stranger are delivered to the plaintiff, such stranger, being no party to the Replevin, shall not have this writ. *14. Hen. 4. 25.* 2 *Roll. Abr.* 431.

The sheriff is to return the claim of property on the *flurîes,* before which time the writ *de proprietate probandâ* does not issue, for it recites the *flurîes.* *Reg.* 83; *Com.* 595.

The writ *de proprietate probandâ* is an inquest of office, and the sheriff is to give notice to the parties of the time and place of executing it. *Dalt. Sh.* 274.

If the defendant claims property in Replevin, the plaintiff may have the writ *de proprietate probandâ* without continuance of the Replevin, though it be two or three years after; because, by claim of property, the first suit is determined. *Moor* 403.

If the plaintiff has property, and omits to claim it before the sheriff, he may notwithstanding plead property in himself or in a stranger, either in abatement or in bar; though it was formerly held, that property in a stranger could only be pleaded in abatement. *Cro. Eliz.* 475; *Winch.* 26; *1 Show.* 402; *Salk.* 594; *6 Mod.* 81.

In Replevin the defendant in his avowry pleads, that the beasts taken belong to a third person, and not to the plaintiff, therefore prays a return; to which the plaintiff demurs; for on the avowant's own shewing he ought not to have return, having admitted the property of the beasts to be in another; but judgment was given for the
defendant; for the prior possession was in him, and he hath a right against all others but the right owner, and the plaintiff by his demurrer hath admitted, that he hath no property in them. *Com. 477:* See 6 *Mod.* 68. 139; 2 *Mod.* 242.

**VII. The retorno habendo** is a judicial writ which lies for him who has avowed the distress, and proved the same to be lawfully taken; or where, on removal of the plaint into the courts above, the plaintiff, whose cattle were replevied, makes default, or does not declare or prosecute his action; and thereby becomes nonsuited, &c. and by this writ the sheriff is commanded to make a return of the cattle to the defendant in the Replevin. 35 *Hen.* 6. 40; *Dyer* 280: *Co. Litt.* 145. See ant. I.

A bailiff who makes conusance may have judgment of a return, and consequently a writ de retorno habendo grounded on such judgment, *Co. Ent.* 59.

If a defendant hath a return awarded him, and he sueth a writ de retorno habendo, and the sheriff return on the pluries, quod averia elongata sunt, &c. he shall have a seire facias against the pledges, &c. according to the statute of *West.* 2; and if they have nothing, then they shall have a withernam against the plaintiff, of the plaintiff’s own cattle. *F. N.* B. 172.

Since the *stat.* 17 *Car.* 2. c. 7. (see ante I,) it has been the custom, as it was before, to enter judgment for a retorno habendo: but, notwithstanding, the defendant may enter a suggestion on that statute, and a writ of Second Deliverance will be no supersedas to such writ. The whole fact is to be proved, and may be litigated in the writ of Inquiry, directed by that statute. *Bull. N.* P. 58. And if the Jury, impaneled to try a cause in Replevin, omit to inquire the value of the rent arrear, or of the distress, according to the directions of the said statute, it cannot be supplied by a writ of Inquiry, because the statute confines the inquiry to the Jury impaneled in the cause. Therefore, in such case, the defendant must take judgment de retorno habendo at Common Law: but it is not the same upon *stat.* 21 *H.* 8. c. 19; (see ante IV. 2;) nor upon *stat.* 43 *Eliz.* c. 2. if the defendant avow as overseer for a distress for a poor’s rate; because, if the jury had inquired, it had been as an inquest, on which no attainder would have lain, and the statute does not tie it up to the same jury. And if the plaintiff, being nonsuited, bring a writ of Second Deliverance, though it will be a supersedas to the writ de retorno habendo, yet it will be none to the writ of Inquiry *Bull. N.* P. 58.

A Judgment in Replevin, “that the defendants have a return of the cattle, and recover their damages and costs assessed by the jury, &c.,” is good either as a judgment at Common Law, though the Return be not judged irreplevisable, or as a judgment under *stat.* 21 *H.* 8. c. 19, which entitles the defendant to damages and costs. *4 Term Refi.* K. *B.* 509. See ante IV. 2.

Return irreplevisable is a judicial writ, directed to the sheriff, for the final restitution or return of cattle unjustly taken by another, and so found by verdict, or after a nonsuit in a Second Deliverance. *2 Roll.* *Abr.* 434.

If the plea be to the writ, or any other plea be tried by verdict, or judged on demurrer, return irreplevisable shall be awarded, and no
new Replevin shall be granted, nor any Second Deliverance by the
stat. West. 2, but only on nonsuit. 2 Inst. 340: Dyer 280. See I. V.

If, on issue joined in Replevin, the plaintiff does not appear on
the trial, being called for that purpose, yet return irreplevisable shall
not be awarded, as in case of a verdict's being given, but the party
may have a writ of Second Deliverance, as well as if it had been a
non-suit before declaration, or appearance. 3 Leon. 49. See ante VI.

If a man has return irreplevisable, and a beast die in the pound, he
may distrain anew, so, if the beast die before judgment. Hob. 61.

If return irreplevisable be awarded, the owner of the cattle may
offer the arrears; and if the defendant refuses to deliver the distress,
the plaintiff may have his action of detinue, because the distress is
only in nature of a pledge. 1 Id. Raym. 720.

By the statute of Westm. 1. 3 E. 1. c. 17. If the party who distrains,
conveys the distress into any house, park, castle, or other place of
strength, and refuses to suffer them to be repleived, the sheriff may
take the *posse comitatus*, and, on request and refusal, break open such
house, castle, &c. and make deliverance; and this was a necessary
law so soon after the irregular time of Hen. III. 2 Inst. 193: 5 Co.
93: Dalt. Sh. 373.

If the sheriff returns, that the beasts are inclosed in a park among
savages, or inclosed in a castle, &c. he shall be amerced, and another
writ of Replevin shall be awarded; for he ought to have taken the
*posse com.* for this was a denial. F. N. B. 257.

If the sheriff return, *quo mandavi ballivo libertatis, &c. qui nullum
dedit mihi responsum*, or that the bailiff will not make deliverance of
the cattle, these are not good returns; for by statute of West. 1. the
sheriff, on such return made to him by the bailiff, ought presently to
enter into the franchise, and make deliverance of the cattle taken.
F. N. B. 157.

If a man sue a Replevin in the County-court without writ, and the
bailiff return to the sheriff, that he cannot have view of the cattle to
deliver them, the sheriff, by inquest of office, ought to inquire into
the truth thereof; and if it be found by a jury, that the cattle are
eloquent, &c. the sheriff in the County-court may award a *withernam*
to take the defendant's cattle; and if the sheriff will not award a
*withernam*, then the plaintiff may have a writ out of Chancery, di-
rected to the sheriff, rehearsing the whole matter, commanding him
to award a *withernam*, &c.; and he may have an alias, and after a *plu-
ries*, and an attachment against the sheriff, if he will not execute the
King's command. F. N. B. 158.

If the sheriff return, *quod averia elongata ad locum incognitum*, this
is a good return, and the party must pursue his writ of *withernam*; but
if the sheriff return *averia elongata ad locum incognitum infra comi-
tatum meum*, he shall be amerced, for the Law intends that he may
have notice in his county. Bro. Retur. de Br. pl. 100.

If in Replevin the sheriff return, *quod averia morta sunt*, that is
a good return. Bro. Retur. de Br. pl. 125.

If the sheriff be shewn a stranger's goods, and he takes them, an
action of trespass lies against him, for otherwise he could have no re-
medy; for being a stranger he cannot have the writ *de proprietate
probanda*, and were he not entitled to this remedy, it would be in the
power of the sheriff to strip a man's house of all his goods; but Kiel-
way seems to hold, that the action lies more properly against the person who shews the goods. 2 Roll. Abr. 552: Com. 596.

The sheriff comes to make Replevin of beasts impounded in another man's soil; if the place be inclosed, and has a gate open to the inclosure, he cannot break the inclosure, and enter thereby, when he may enter by the open gate; but if the owner hinders him so that he cannot go by the open gate for fear of death, he may break the inclosure, and enter there. 20 Hen. 6. 28: 2 Roll. Abr. 532.

The sheriff is to return, that the cattle are eloigned, or that no person came to shew, &c. or a delivery; but he cannot return, that the defendant non cepit the cattle, because it is supposed in the writ, and is the ground of it, which the sheriff cannot falsify. 1 Ld. Raym. 613: 1 Lutw. 581.

For further information on this subject, see Vin. Abr. title Replevin.

REPLEVISH, To let one to mainprise on surety. Stat. 3 Ed. 1. c. 11.

REPLICATION, Replicatio.] An exception or answer made by a plaintiff to a defendant's plea. And it is also that which the complainant replies to the defendant's answer in Chancery, &c. West. Symb. par. 2. See title Pleading I. 2: and as to Replications in criminal cases, see Pleading II.

REPORT, from Lat. reportare.] A public relation, or bringing again to memory, of cases judicially adjudged in Courts of Justice, with the reasons as delivered by the Judges. Co. Litt. 293. See title Law Books.

There are likewise Reports, when the Court of Chancery, or other Court, refer the stating some case, settling some account, &c. to a Master of Chancery, or other referee, his certificate therein is called a Report. This Report may be excepted to, disproved, or overruled; or otherwise it is confirmed and made absolute, by order of the Court. See 3 Comm. 453.

A master in Chancery, having an order of reference, is to issue his summons for the parties to attend him at a certain time and place; when and where they may come with their counsel, clerk, or solicitor, to defend themselves, and maintain, or object against, his Report, or certificate, &c. And Masters are to draw their Reports briefly and as succinctly as may be, preserving the matter clearly for the judgment of the Court; without recital of the several points of the order of reference, or the debates of Counsel before them; unless in cases doubtful, when they may shortly represent the reasons which induce them to what they do.

None shall take any money for report of an order, or cause, referred to them by any Judges, on pain of 100l. &c. so as not to prohibit the clerk from taking 12d. for the first, and 2d. for every other sheet. Stat. 1 Jac. 1. c. 10.—But by stat. 13 Car. 2. st. 1. c. 12. Masters in Chancery, may take for every Report, or certificate, made on an order on hearing of a cause, 20s. And for any other Report, &c. made on petition or motion, 10s. And their clerks shall have 5s. for writing every Report. See further, title Reference.

A Report by a Master in Chancery, is as a judgment of the Court. 1 P. Wms. 653.

By a standing order of the Court of Chancery, made by the Lords Commissioners, in the 4 W. & M. it was directed, that all Reports
should be filed within four days after the making, otherwise no decree or proceedings to be had thereupon; but the Register reporting, that it was sufficient if the Report were filed before any proceedings had thereupon, though not done within four days after making, Ld. C. J. King, agreed thereto. And the Court took it to be well enough; though, in this case, the motion to confirm the Report, nisi causa, was made the same day that the Report was filed. 2 P. Wms. 517.

It is not usual to confirm Reports of Receiver’s accounts, per Master of the Rolls. 2 P. Wms. 661.

There are also Reports from Committees of both, or either, Houses of Parliament. See title Parliament.

REPOSITION of the FOREST, Repositio Foreste, i. e. a re-putting to.] A statute, whereby certain Forest-grounds, being made jurtieu, on view, were, by a second view, put to the Forest again. Manw. par. 1.

REPOSITION, or Retrocession, the returning back of a right assigned from the assignee, to the person granting the right. Scotch Dict. REPOSITORYUM, Lat.] A storehouse or place wherein things are kept; a warehouse. Cro. Car. 555.

REPRESENTATION, Representatio.] The personating another: There is an heir by Representation, where a father dies in the life of the grandfather, leaving a son, who shall inherit his grandfather’s estate, before the father’s brother, &c. Bro. Abr. 303. Also, executors represent the person of the testator, to receive money and assets. Co. Litt. 209. See titles Heir; Executor.

The term Representation is also used to express the written pleading presented to a Lord Ordinary of the Court of Session in Scotland, when his judgment is brought under Review.

REPRIEVE, from the Fr. Repris.] The taking back or suspending a prisoner from the execution and proceeding of Law for that time. Terms de Ley. see title Execution of Criminals.

REPRISAL, Reprisale; Reprisalia.] The taking one thing in satisfaction for another, derived from the Fr. Reprise; and is all one in the Common and Civil Law.

Reprisals are ordinary and extraordinary; ordinary reprisals are to arrest and take the goods of merchant-strangers within the realm; and the other is for satisfaction out of the realm, and is under the Great Seal, &c. Lex Mercat. 120.

If any person be killed, wounded, spoiled, or any ways damaged in a hostile manner, in the territories of any potentate, to whom letters of request are transmitted, and no satisfaction be made, there is no necessity to resort to the ordinary prosecution, but letters of reprisal issue forth; and the prince against whom the same are issued is obliged to make satisfaction out of the estates of the persons committing the injuries; and in case of a deficiency there, it will then be adjudged a common debt on his country. But where misfortunes happen to persons, or their goods, residing in a foreign country in time of war, reprisals are not to be granted: In this case they must be contented to sit down under the loss, for they are at their liberty to relinquish the place on the approach of the enemy, when they foresee the country is subject to spoil: and if they continue, they must partake of the common calamity. Lex Mercat.

Reprisals may be granted on illegal prosecutions abroad; where
wrong judgment is given in matters not doubtful, which might have been redressed, either by the ordinary or extraordinary power of the country or place, and which was apparently denied, &c. See further, title Letters of Marque; and as to Reprising of Goods, see title Reception.

REPRISES, Fr. Resumptions, taking back.] Is used for deductions and payments out of a manor or lands, as rent-charges, annuities, &c. Therefore when we speak of the clear yearly value of a manor, or estate, or land, we say it is so much per annum, ultra Repri ses, besides all Repri ses.

REPROBATOR, action of; an action intended to convict a witness of perjury in Scotland: to which action the witness must be made a party. Bell's Scotch Dict.

REPUBLICATION or WILLS; See title Will.

REPUGNANT, Repugnant,] What is contrary to any thing said before: Repugnancy in deeds, grants, indictments, verdicts, &c. make them void. 3 Nels. 135. See title Deeds, &c.

The common law abhors repugnancies, and all incongruities; but the former part of a deed, &c. shall stand, where the latter part is repugnant to it. Jenk. Cent. 251. 256.

Where contrarieties are in several parts of deeds or fines, the first part shall stand; in wills, the last, if the several clauses are not reconcilable. Jenk. 96. pt. 86.

In contracts, gifts, verdicts, evidences, &c. where direct contrarieties are for the same thing at the same time, all is void. Jenk. 96. pt. 86.

A proviso, good in the commencement, may by consequence become repugnant, as grant of rent by deed for life, provided that it shall not charge his person; the proviso is good, but if the rent be arrear, and the grantee die, his executors shall charge the person of the grantor in debt; for otherwise they be remediless; and so it is now repugnant, by consequence void. 6 Rep. 41, b. See further, titles Condition; Proviso.

REPUTATION, Reputatio,] Is defined by Coke to be vulgaris opinio ubi non est veritas. 4 Rep. 104. That is not Reputation which this or that man says; but that which generally hath been, and many men have said or thought. 1 Leon. 15.

A little time is sufficient for gaining reputation, which needs not a very antient pedigree to establish it; for general acceptance will produce a reputation. Cro. Jac. 308. But it has been held, that common reputation cannot be intended of an opinion which is conceived of four or five years, standing; but of long time. And some special matter must be averred to induce a reputation. 2 Lill. Abr. 464.

Land may be reputed parcel of a manor, though not really so. 1 Vent. 51: 2 Mod. 69: 3 Nels. Abr. 137. And there is a parish, and office, in Reputation, &c.

REPUTATION OR FAME, Is under the protection of the law, as all persons have an interest in their good name; and scandal and defamation are injurious to it, though defamatory words are not actionable, otherwise than as they are a damage to the estate of the person injured. Wood's Inst. 37. See Libel.

The security of Reputation, or good name, from the arts of de- traction and slander, are rights to which every man is entitled, by reason and natural justice; since, without these, it is impossible to
have the perfect enjoyment of any other advantage or right. 1 Comm. 134. See title Liberty.

REQUEST; of things to be done: Where one is to do a collateral thing, agreed on making a contract, there ought to be a request to do it. 2 Litt. Abr. 464. If a duty is due, it is payable without Request; on promise to pay a duty precedent on Request, there needs no actual Request; but on a promise for a penalty, or collateral sum, there should be an actual Request before the action is brought. Cro. Eliz. 74: 1 Saund. 33: 1 Lev. 289.

If a debt is before a promise, a Request is not necessary, for then a Request is not any cause of the action; though upon a promise generally to pay on Request, the action arises on Request, and not before. Cro. Jac. 201: 1 Lev. 48. See post.

Action of debt for money due on a bond, may be brought without alleging a special Request. Cro. Eliz. 229. 523.

A man promises to re-deliver, on Request, such goods as were delivered to him; if an action of detinue is brought, the plaintiff need not allege a special Request, because the action is for the thing itself; but if an action on the case is had for these goods, then the Request must be specially alleged; as it is not brought for the thing itself, but for damages. Sid. 66: 3 Salk. 309.

If a promise is made to pay money to the plaintiff, on Request, no special Request is required: But where there are mutual promises between two persons to pay each other money on Request, if they do not perform such an award, the Request is to be specially alleged. And if there is a promise to pay money to a man on Request, and he dies before any Request made, it shall be paid to his executors; but not till request made. 3 Salk. 309: 3 Bulst. 259.

Where a person promises to pay a precedent duty, the general allegation is sufficient, because there was a duty without a promise: As for instance; if one buys or borrows a horse, and promises to pay so much on Request: But where the promise is collateral, as to pay the debt of a stranger on Request, &c. the Request is part of the agreement, and traversable, there being no duty before the promise made; and for that reason the request must be specially alleged, for bringing the action will not be a sufficient Request. Latch. 93: 3 Leon. 200: 3 Salk. 308.

Where the thing is a duty before any Request made, a Request is only alleged to aggravate damages, and such Request is not traversable; but if the Request makes the duty, as in assumptio to do such a thing on Request, there the day, &c. of the Request ought to be alleged, because it is traversable. Palm. 389.

If a Request is to be specially made, the day and year when made should be specially alleged. 1 Lutw. 231: 2 Lill. Abr. 466: Cro. Car. 280. But when a person is not restrained to make the Request by a time limited, if made at any time during his life, it has been held to be good. Cro. Eliz. 136. And a Request at any other time than named may be given in evidence. Sid. 268.

If a debt or duty does not accrue on a promise, until Request made, the Statute of Limitations runs from the time of the Request, only, and not from the time of the precedent promise. Cro. Car. 98. See title Limitation of Actions.

Unreasonable Requests are not regarded in Law; and there is no

Unreques
difference where a thing is to be done on Request, and reasonable Request. Dyer 218: Cro. Car. 176: 3 Nels. Abr. 140. 142. See titles Action; Declaration; Pleading; Rent, &c.

Requests, Court of; See Court of Requests.

REQUISITION; In Scotch Law, a notarial demand of a debt made by a creditor, in consequence of a clause in the securities for debt previous to the Reformation, when a personal obligation was deemed illegal. Bell’s Scotch Diet.

RERE COUNTY; See Rier County.

RESCEIT, or RECEIT, Receptio.] An admission or receiving of a third person to plead his right in a cause formerly commenced between two other persons; as, where an action is brought against tenant for life or years, or any other particular tenant, and he makes default, in such case he in the Reversion may move that he may be received to defend his right, and to plead with demandant.

Resceit is likewise applied to the admittance of a plea, where the controversy is between the same two persons. Broke 205: Co. Litt. 192: 3 Nels. Abr. 146.

He in reversion may come into Court, and pray to be received in a suit against his particular tenant; and after such Resceit the business shall be hastened, as much as may be by Law, without any delay of either side. Stat. 13 R. 2. c. 17. But Resceit is admitted only for those who have estates depending on particular estates for life, tenants by the curtesy, or after possibility, &c. and not for him in remainder after an estate-tail, which is perdurable. 1 And. 133.

Husband and wife were tenants for life, remainder to another in fee; a formedon was brought against the husband, who made default after default; and thereupon the wife prayed that she might be received to defend her right; but it was denied by the Court, because, if defendant should recover against her husband, it would not bar her right if she survived him, therefore it would be to no purpose. Then he in remainder prayed to be received, which at first the Court doubted, by reason if the husband should recover he might falsify such Recovery; and because his estate did not depend on the estate of the husband alone, but on the estate of the husband and wife; but at last he was received. 1 Leon. 86.

The statute of Gloucester, 6 E. 1. c. 11. enacts, that a termor may be received to falsify, if he hath a deed, and comes before judgment; this is where he in reversion causeth himself to be impleaded by collusion, to make the termor lose his term, &c. And by stat. 20 E. 1. st. 3. if any stranger come in by a collateral title, before he is received, he shall find surety to satisfy the demandant the value of the lands, if he recovers from that time till final judgment; and demandant recovering, he shall be grievously amerced, &c.

RESCEIT of HOMAGE, Receptio Homagii.] The lord’s receiving Homage of his tenant, at his admission to the land. Kitch. 148. See title Homage.

Rescissory Action; An action to rescind a contract, one of the principal divisions of Actions in the Law of Scotland, and includes all those by which Deeds, &c. are declared void.
RESCOUS, or RESCUE.

Rescussus, from the Fr. Rescouse, i. e. Liberatio.] A resistance against lawful authority.

I. Of the different Kinds of Rescues, &c.

II. Of the Offence of making Rescue of a Prisoner; and how the Offenders are to be proceeded against, and punished. And see title Escafe (B) IV. 3.

III. Of the Form of the Proceedings on a Rescue.

IV. In what Cases the Sheriff may return a Rescue; of the Form of a Return, and for what Defects it may be quashed.

I. In the case of a distress, the goods being, from the first taking, considered as in the custody of the Law, and not merely in that of the distrainor, the taking them back by force is looked upon as an atrocious injury, and denominated a Rescous; for which the distrainor has a remedy in damages, either by writ of Rescous, in case they were going to the pound; or by writ de parco fracto, or Pound-breach, in case they were actually impounded. F. N. B. 100, 101. He may also, at his option, bring an action on the case for this injury, and shall therein, if the distress were taken for rent, recover treble damages. Stat. 2 W. & M. c. 5; see post. II.; and this Dictionary, titles Distress; Rent; Replevin; Pound-breach.

The term Rescous is likewise applied to the forcible delivery of a defendant, when arrested, from the officer who is carrying him to prison. In which circumstances, the plaintiff has a similar remedy by action on the case, or of Rescous; or if the sheriff makes a return of such Rescous to the Court out of which the process issued, the Rescuer will be punished by attachment. 6 Mod. 211. Cro. Jac. 419: Salk. 586. See 3 Comm. c. 9: and post. II. III. IV.

If a bailiff, or other officer, on a writ, arrest a man, and others by violence take him away, or procure his escape; this is a Rescous in fact. So, if one distress beasts damage-feasant, in his ground, as he drives them in the highway towards the pound, they enter into the owner’s house, and he withholds them there, and will not deliver them on demand, this detainer is a Rescous in Law. Co. Litt. 119, 12. c. 12. 161. Cassanaeus, in his book De Consuetud. Barg. f. 294. hath the same words coupled with resistentia.

In other terms, Rescue is the taking away and setting at liberty, against Law, any distress taken for rent, or services, or damage-feasant; but the more general notion of Rescous is, the forcible freeing another from an arrest, or some legal commitment; which, being an high offence, subjects the offender not only to an action at the suit of the party injured, but likewise to fine and imprisonment at the suit of the King. Co. Litt. 160: F. N. B. 226. See post. II.

But there can be no Rescous but where the party has had the actual possession of the cattle, or other things whereof the Rescous is supposed to made; for if a man come to arrest another, or to distrain, and is disturbed, regularly his remedy is by action on the case. Co. Litt. 161, a; Litt. Rep. 296: Hetl. 145.

If on fi. fa. the sheriff seizes goods, which are taken away by a stranger, this is not properly a Rescue; for by seizure of the goods, by virtue of the fieri facias, the sheriff has a property in them, and
may maintain trespass, or trover, for them: also the party injured may have an action on the case against the wrong-doer. *Hett.* 1457; *Litt.* Ref. 296.

If the lord distrain for Rent when none is due, the tenant may lawfully make Rescous; so may a stranger, if his beasts be distrained when no rent is due. So, if the tenant tender the Rent when the lord comes to distrain, and yet he does distrain, or if he distrain any thing not distrainable, as beasts of the plough, when other sufficient distress may be taken, the tenant may make Rescous; so, if the lord distrain in the highway, or out of his fee. *Co. Litt.* 47: 160, b: 161, a.

But though there must be reason for the distress, and that otherwise the Rescue cannot be unlawful, yet it hath been held, in a *parco fracie*, that a defendant cannot justify breaking the pound and taking out the cattle, though the distress was without cause, because they are now in the actual custody of the law. *Salk.* 247.

There is a difference between a man’s being arrested by a warrant on record, and by a general authority in Law; for if a *capias* be awarded to the sheriff to arrest a man for felony, though he be innocent, he cannot make Rescue; but if the sheriff will, by the general authority committed to him by Law, arrest any man for felony, if he be innocent he may rescue himself. *Co. Litt.* 161. See 5 *Co.* 68: 6 *Co.* 54: *Cro. Jac.* 486.

II. Rescue is classed by *Blackstone*, amongst offences against public justice; and is defined to be the forcibly and knowingly freeing another from an arrest or imprisonment: and it is generally the same offence in the stranger so rescuing as it would have been in a gaoler to have voluntarily permitted an escape. A Rescue, therefore, of one apprehended for felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor also. But here, likewise, as upon voluntary escapes, the principal must be first attainted, or receive judgment, before the Rescuer can be punished; and for the same reason, because perhaps, in fact it may turn out that there has been no offence committed. 4 *Comm.* c. 10. p. 131: 1 *Hal. P. C.* 607: *Post.* 344. And see this Dictionary, title Escape.

By *stat.* 16 *Geo.* 2. c. 31. to convey to any prisoner, in custody for treason or felony, any arms, instruments of escape, or disguise, without the pivity of the gaoler, though no escape be attempted; or any way to assist such prisoner to attempt an escape, though no escape be actually made, is felony and subjects the offender to transportation for seven years: or if the prisoner be in custody for petty larceny, or other inferior offence, or charged with a debt of 100l. it is then a misdemeanor, punishable with fine and imprisonment. See title Escape (B) IV. 3.

By several special statutes, to rescue or attempt to rescue, any person committed for the offences enumerated in those acts, is felony without benefit of clergy. See *stats.* 6 *Geo.* 1. c. 23. § 5: 24 *Geo.* 3. c. 56. as to Transportation; and this Dictionary under that title, and title Escape: *Stats.* 9 *Geo.* 1. c. 22: 27 *Geo.* 2. c. 15; as to offences against the Black Act; *stat.* 8 *Geo.* 2. c. 20, as to destroying turnpikes; and this Dictionary, title Highways VI, (B) 10; *stat.* 19 *Geo.* 2. c. 34, as to Smuggling; *stat.* 25 *Geo.* 2. c. 37: 43 *Geo.* 3. c. 58. as to Murder.

Under 25 *Geo.* 2. c. 37. to rescue, or attempt to rescue, the body of a felon executed for murder, is single felony, punishable by trans-
portation for seven years; and a like punishment is inflicted by *state.*
11 Geo. 2. c. 26. 24 Geo. 2. c. 40. § 28; against persons assembling,
to the number of five, or more, to rescue any unlawful retailers of
spiritsuous liquors, or to assault the informers against them.
Even if any person, charged with any of the offences against the
Black Act, *stat.* 9 Geo. 1. c. 22. and being required by order of the
Privy Council to surrender himself, neglects so to do for forty days,
both he and all that knowingly conceal, aid, abet, or succour him, are
declared felons without benefit of clergy.
By 43 Geo. 3. c. 58. to shoot at, &c. any person with intent to
rescue any offender is felony without benefit of clergy. See title
Homicide.
It seems agreed, that the rescuing a person imprisoned for felony,
is also felony by the Common Law. 1 Hal. P. C. 606.
Also it is agreed that a stranger who rescues a person committed
for, and guilty of, high treason, knowing him to be so, is in all cases
guilty of high treason. Staundf. P. C. 11: 1 Jon. 455. Whether he
knew that the prisoners were so committed or not. Cro. Car. 583.
To make a Rescue felony, it is necessary that the felon be in cus-
tody, or under arrest for felony; therefore if *A.* hinder an arrest,
whereby the felon escapes, the township shall be amerced for the
escape, and *A.* shall be fined for the hindrance of his taking; but is
not felony in *A.* because the felon was not taken. 1 Hal. P. C. 606:
3 Ed. 3. Coron. 333: Staundf. 31.
So, to make a Rescue felony, the party rescued must be under
custody for felony, or suspicion of felony; and it is all one whether
he be in custody for that account by a private person, or by an officer,
or warrant of a Justice; for where the arrest of a felon is lawful, the
Rescue of him is felony; but it seems necessary that he should have
knowledge that the person is under arrest for felony, if he be in the
custody of a private person. 1 Hal. P. C. 606.
But if he be in the custody of an officer, there at his peril, he is to
take notice of it; so if there be felons in a prison, and *A.* not knowing
it, breaks the prison, and lets out the prisoners, though he knew not
that there were felons there, it is felony. 1 Hal. P. C. 606: Cro. Car.
383.
A person committed for high treason, who breaks the prison, and
escapes, is guilty of felony only; unless he lets others also escape,
whom he knows to be committed for high treason; in which case he
is guilty of high treason, not in respect of his own breaking of prison,
but of the Rescous of the other. 2 Hawk. P. C. c. 21. § 7.
If the person rescued were indicted or attainted of several felonies,
yet the escape or Rescue of such a person makes but one felony. 1
Hal. P. C. 599.
Wherever the imprisonment is so far groundless or irregular, or
the breaking of a prison is occasioned by such a necessity, &c. that
the party himself, breaking prison, is either by the common law, or
by the statute *de frangentibus prisonam,* saved from the penalty of a
capital offender, a stranger who rescues him from such imprisonment
is, in like manner also excused; & *sic è converso,* 2 Hawk. P. C. c.
The return of a Rescue of a felon, by the sheriff against *A.* is not
sufficient to put him to answer for it as a felony, without indictment
or presentment, by the statute 25 E. 3. st. 5. c. 4: 1 Hal. P. C. 606.
As in case of an escape, so in case of a Rescue, if the party rescued be imprisoned for felony, and rescued before indictment, the indictment must surmise a felony done, as well as an imprisonment for felony, or suspicion thereof; but if the party be indicted, and taken by a capias, and rescued, then there needs only a recital that he was indicted prior, and taken and rescued. 1 Hal. P. C. 607.

Though the Rescuer may be indicted, before the principal is convicted and attainted, yet he shall not be arraigned or tried before the principal be attainted; but if the person rescued were imprisoned for high treason, the Rescuer may immediately be arraigned, for in high treason all are principals: Sed querc.—But it seems that he may be immediately proceeded against for a misprision only, if the King please. 2 Hawk. P. C. c. 21. § 8.

The Rescuer of a prisoner for felony, though not within clergy, yet shall have his clergy. 1 Hal. P. C. 607. unless where it is otherwise declared by statute.

As the offence of rescuing persons in cases of high treason and felony is usually punished by indictment, so the offence of rescuing a person arrested on mesne process, or in execution after judgment, subjects the offender to a writ of Rescous, or a general action of trespass vi et armis, or an action on the case, in all which damages are recoverable. Also it is the frequent practice of the Courts to grant an attachment against such wrong-doers, it being the highest violence and contempt that can be offered to the process of the Court. Co. Lit. 161: Co. Ent. 614: Rast. Ent. 577.

He who rescues a prisoner from any of the Courts of Westminster Hall, without striking a blow, shall forfeit his goods and profits of his lands, and suffer imprisonment during life: but not lose his hand, because he did not strike. 22 Ed. 3. 13: 3 Inst. 141: 1 Hawk. P. C. c. 21. § 5.

It is clearly agreed, that for a Rescous on mesne process, the party injured may have either an action of trespass vi et armis, or an action on the case, in which he shall recover his debt and damages against the wrong-doer; and the rather, because on mesne process he can have no remedy against the sheriff. Cro. Jac. 486: Hob. 180. Sec post. IV.

Also it hath been adjudged, that for Rescous of a person in execution on a ca. sa. or ca. utlag. an action will lie against the Rescuer, though the party injured hath his remedy against the sheriff, and the sheriff hath his remedy against the wrong-doer; for perhaps the sheriff may be dead or insolvent; but herein it hath been held, that if he bring his action against the party who made the Rescue, he may plead it in bar to an action brought by the sheriff; so, if against the sheriff, or his bailiff, they may plead that he had satisfaction from the party, so that if he recovers against one, the other is discharged. Hetl. 95: Cro. Car. 109: Hut. 38: Hob. 180.

By stat. 2 W. & M. st. 1. c. 5. § 5. on Pound-breache, or Rescous of goods distrained for rent, the person grieved shall in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his use.

In an action on the case for a Rescous, on the statute, it hath been held, that the plaintiff shall recover treble costs as well as treble damages, for the damages are not given by the statute, but increased;
an action on the case lying for a Rescous at Common Law. 1 Salk. 205.

An attachment will be granted not only against a common person, but even against a peer of the realm, for rescuing a person arrested by due course of Law: so that if the sheriff in any case return to the Court, that a person arrested, or goods seized, or possession of lands delivered by him, by virtue of the King's writ, were rescued or violently taken from him, &c. they will award an attachment against the Rescuers. Dyer 212: 2 Jon. 39: Salk. 322.

But it seems to be the practice, not to grant an attachment in any case for a Rescous, unless the officer will return it: for it hath been found by experience, that officers will take on them to swear a Rescous where they will not venture to return one. 2 Hawk. P. C. c. 22. § 34.

A distinction was taken where an attachment is prayed for a Rescous in the first instance, and where a rule to shew cause is only asked; in this affidavits of the fact are sufficient; in the other case, the sheriff's return is requisite. Trin. 5 Geo. 2. in B. R. Young v. Payne.

Where on the return of a Rescue, an attachment is granted, and the party examined on interrogatories, upon answering them he shall be discharged; but if the Rescous is returned to the filazer, and process of outlawry issues, and the Rescuer is brought into Court, he shall not be discharged on affidavits. Salk. 586.

III. An indictment of a Rescous ought to set forth the special circumstances of the fact, with such certainty, as to enable defendant to make a proper defence. Dyer. 164. No defect can be aided by the verdict. 1 Roll. Abr. 781.

Therefore, if an indictment lay the offence on an uncertain or impossible day, as where it lays it on a future day, or lays one and the same offence at different days, or lays it on such a day which makes the indictment repugnant to itself, it is void. Moor 555: Rast. Ent. 263.

It has been adjudged, on exceptions taken to an indictment for a Rescous, that it was not necessary to allege the place where the Rescue was made, and that it should be intended that where the arrest was, there also was the Rescue. Cro. Jac. 345: 2 Bulst. 208.

An exception was taken to an indictment of Rescous, that it wanted the words "vi et armis, or manu fortis;" but overruled, it being held by the Court, that the word "rescussit" implies it to be done by force. Cro. Jac. 345. The same exception taken in Cro. Jac. 473. over-ruled, and there held, that though it were error at Common Law, yet it is made good by the stat. 37 Hen. 8. c. 8.

It is said, that an indictment of Rescous is not within the statute of Additions, and that naming the person indicted of such a parish, without giving him any title, is sufficient. 2 Inst. 665: 2 Show. 84.

Note: on an indictment of Rescous, if it were on an arrest upon mesne process, and the party has appeared, the Court will be easily induced to quash it; so if it be on process out of an inferior court, though the party has not appeared, for no aid is given to inferior jurisdictions.

In an action for a Rescue, the plaintiff must allege in his declaration all the material circumstances; as that such a writ issued, that he
was arrested and in custody, and that he was rescued, &c. Godb. 125; 1 Lutw. 130.

In an action on the case for a Rescous on mesne process, the evidence was, the bailiff stood at the street door, and sent his follower up three pair of stairs, in disguise, with the warrant, who laid hands on the party, and told him that he arrested him; but he with the help of some women, got from the follower, and ran down stairs, and the defendant, hearing a noise, ran up, and put the party into a room, locked the door, and would not suffer the bailiff to enter. Holt doubted whether this was a lawful arrest, being by the bailiff's servant, and not in his presence; but said, that the plaintiff must prove his cause of action against the party; that he must prove the writ and warrant by producing sworn copies of them; he must prove the manner of the arrest, that it may appear to the Court to be legal; and, in point of damage, he must prove the loss of his debt, viz. that the party became insolvent, and could not be retaken. 6 Mod. 211.

Form of the Writ of Rescous.

GEORGE the Third, &c. To the Sheriff of M. greeting: If A. B. shall make you secure, &c. then put C. D. &c. to show, wherfore, whereas the said A. B. at, &c. certain beasts of the said C. D. had taken and distrained for rent, &c. And those, there, according to the Law and custom of our kingdom of England, would have impounded, the said C. D. the beasts aforesaid, with force and arms, rescued, and other enormities there did, to the contempt of us, and grievous damage of the said A. B. and against our peace, &c. ——— OR THUS:

Put E. F. and G. H. to answer, &c. wherfore, whereas the said A. B. according to the duty of his office, C. D. whom by our Sheriff of the county aforesaid, by writ to him directed, we commanded to be taken at L. by virtue of our said Writ had taken, and him to our prison of, &c. there to abide, would have conveyed the said E. F. and G. H. him the said C. D. at L. aforesaid, with force of arms, rescued, and other enormities, &c.

IV. The distinction laid down in a variety of books and cases is, that on a Rescue on mesne process the sheriff may return the Rescue, and is subject to no action; for that on a mesne process he was not obliged to raise his posse comitatus, nor would it be convenient so to do on the execution of every mesne process. Cro. Eliz. 868: 1 March 1: 1 Jon. 201: 3 Bulst. 198: 2 Roll. Rep. 389: Noy 40: Moor 852: 2 Lev. 144: 6 Mod. 141: Lutw. 130, 131. But the sheriff may, if he pleases, take his posse to arrest one on mesne process. Noy 40.

But if the sheriff takes a man on an execution, as on a ca. sa. and he is rescued from him before he can bring him to prison, though he returns the Rescue, yet this shall not excuse him; for when judgment is passed, and he and his bail do not surrender him, nor pay the condemnation-money, and then a capias issues, to which there can be no bail, there it is presumed that he will not be forth-coming, because neither he nor his bail have satisfied the judgment; therefore the sheriff ought to take the posse comitatus; consequently it cannot be a good return, that he took the body, but that it was rescued; and the party may have an action of escape against the sheriff on this return; and this is provided by the stat. West. 2. 13 E. 1. st. 1. c. 39:

In an action on the case against the sheriff for an escape on mesne process, the defendant pleaded a Rescue, which on demurrer was held a good plea, though he did not shew that the Rescue was returned. 3 Lev. 46.

But if one taken on mesne process be once in prison, the sheriff cannot return a Rescue, for the Law presumes that he hath a power to keep him there. 1 Roll. Rep. 441: 3 Bulst. 198: Cro. Jac. 419. Unless the prison is broken by the King’s enemies, which shall excuse the sheriff. 4 Co. 84: 1 Vent. 239. But not if broken by rebels and traitors, for the sheriff or gaoler hath his remedy over against them. 4 Co. 84: Cro. Eliz. 815: 2 Mod. 28: 1 Vent. 239.

If a felon be attainted, and in carrying him to execution he is rescued from the sheriff, the sheriff is punishable notwithstanding the Rescue; for there is judgment given, and the sheriff should have taken sufficient power with him; therefore in that case the township is not finable. 1 Hal. P. C. 602: and there said that a Rescue is no excuse in felony.

It hath been adjudged, that the return of a Rescue by a sheriff must shew the year and day on which it was made, such return being in lieu of an indictment. 3 H. 7. 11. pl. 3. Bro. Return de Brief 97: Fiz. Coro. 45: Attach. 1.

But it hath been held, that the sheriff’s return of a Rescue on a tuitio, without mentioning the day of the caption, was sufficient; all the clerks in court affirming the precedents to have been so. Palm. 332.

The sheriff’s return of a Rescue, without mentioning the place where it was made, was held bad, and the party discharged. Moor 422. pl. 585.

Where the sheriff returned virtute brevis mihi direct. feci warrant A. & B. bailivis meis qui virtute inde eferunt the defendant & in custodia mea habuerunt quousque such and such rescusserunt him ex custodia bailivorum meorum; this return was on motion quashed; for per Holt, when bailiffs have arrested the party, he is in fact in their custody, but in Law he is in custody of the sheriff; an answer either way is good, viz. that he was rescued out of the bailiff’s custody, or that he was rescued out of the sheriff’s custody; but to say that he was in the custody of the sheriff, and yet rescued out of the custody of the bailiff, is repugnant. 2 Salk. 586.

It seems that antiently when the sheriff returned a Rescue, the party was admitted to plead to it as to an indictment; but the course of late has been not to admit any plea to it, but drive the party to his action against the sheriff, in case the return were false; hence it is now settled that the return of a Rescue is not traversable, but yet it hath been held that submission to the fine doth not conclude the party relieved from bringing his action for the false return, if it were so. Cro. Eliz. 781: Dyer 212: 2 Jon. 29: 1 Vent. 224: 2 Vent. 174: Comb. 295.

If on a fieri facias the sheriff returned that he had seized the goods, but that they were rescued by B. and C. &c. this is not a good return, but he shall be amerced; the party also, at whose suit the

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execution issued, may charge him by scire facias for the value of the goods. 1 Vent. 21: 2 Saund. 343: 1 Show. 180.

RESCUSSOR. The party making a Rescue.

RESER, Reseisire.] The taking lands into the hands of the King; where a general livery or ouster le maine was formerly misused, contrary to the order of Law. Staundf. Prerog. 26.

RESERVATION, Reservatio.] A keeping aside, or providing; as when a man lets or parts with his land, but reserves or provides for himself a rent out of it for his own livelihood; sometimes it has the force of a saving or exception. Co. Litt. 143.

Exception is always of part of the thing granted, and of a thing in being; and a Reservation is of a thing not in being, but is newly created out of the lands or tenements demised; though Exception and Reservation have been used promiscuously. Co. Litt. 47. The proper place for a Reservation is next after the limitation of the estate; and Reservation of rent may be every two, three, or more years; as well as yearly, half-yearly, quarterly, &c. Co. Litt. 47: 8 Rep. 71.

It must be out of an house, or lands; and be made either by the words yielding and paying, &c. or the word covenant; which is of both lessor and lessee, therefore makes a Reservation. Roll. Rep. 80.

The Reservation of rent is good, although it is not reserved by apt and usual words, if the words are equivalent. Plowd. 120. But Reservation of a rent secundum ratum, is a void Reservation. 2 Vent. 272. See titles Deed; Redendum; Rent, &c.

RESIANCE, Resiantia.] Residence; abode or continuance; whence comes the participle Resiant, that is, continually dwelling or abiding in any place. Old Nat. Br. 85: Kitch. 33.

RESIANT ROLLS, i. e. Rolls containing the Resiants in a tithing, &c. which are to be called over by the steward on holding courts-leet. Comp. Court Keep.

RESIDENCE, Residentia.] Is peculiarly used both in the Canon and Common Law, for the continuance of a parson or vicar on his benefice.

This was formerly regulated by stat. 21 H. 8. c. 13. and now in England, by 43 Geo. 3. c. 84 & 89, &c. in Ireland by 48 Geo. 3. c. 66. the provisions of which acts are in this respect very similar. Under these acts bishops are empowered to issue monitions to non-resident clergy, and proceed to compel them to residence by sequestration of their benefices; on disobedience, or incurring sequestration three times in three years, after three continued years, the benefice becomes void. Chaplains to his Majesty, to peers of the realm and persons holding certain offices and dignities are exempted from the penalties of non-residence. Archbishops and bishops are also exempted from such penalties.

Independent of the statutes, the bishop in his court may compel the residence of all the clergy, who have the cure or care of souls within his diocese. 3 Burn's Ecc. Law 281: Gibs. 887.—This statute is not confined to parsonages and vicarages, but extends to all archdeaconries, deaneries, and dignities in cathedral and collegiate churches. Those who have two benefices or dignities, upon each of which Residence is required, must reside upon one or the other. But the incumbent of an augmented curacy cannot be prosecuted under the statute for the penalties of Non-residence. 4 Term Rep. 665.

Bishops are liable to ecclesiastical censures for Non-Residence on
their Bishoprick; and the King may issue a mandatory writ to enforce their attendance, and compel them to it, by seizing their temporali-
ties; as King Henry III. did by the bishop of Hereford. 2 Inst. 625.

One of the great duties incumbent on clergymen, is that they be re-
sident on their livings: And on the first erecting parochial churches,
every clergyman was obliged to reside on his benefice, for reading
of prayers, preaching, &c. by the laws and canons of the church;
and by statute, the parson ought to abide on his rectory in the parson-
age-house; for the statute is intended not only for serving the cure,
and for hospitality, but to maintain the house in repair, and prevent
dilapidations: though lawful imprisonment, sickness, &c. being things
of necessity, are good cause of excuse for absence, and excepted out
of the act by construction of Law: And it is the same where a person
is employed in some important business for the church or King; or
is entertained in the King's service. 6 Rep. 21: Cro. Eliz. 580: Gibs.
Cod. 887.

In an information on the statute 21 H. 8. it was adjudged, that the
parson is to live in the parsonage-house, and not in any other, though
in the same parish. Under stat. 13 Eliz. cap. 20. leases made by par-
sons are declared void, where the parson is absent above eighty days
in any one year, &c. On this act, the defendant pleaded to an agree-
ment for tithes, that the parson was absent from his parsonage by the
space of eighty days in one year; and the jury found that he dwelt in
another town adjoining, and came constantly to his parish church four
days in every week, and there read divine service; and it was held,
that this was not such an absence as is intended by the statute to avoid
any agreement or lease made by the parson. 1 Bulst. 112. See title
Lease II.

A parson allowed to have two benefices, may demise or lease one
of them (on which he is non-resident) to his curate only; but if the
curate leases over, such lease shall last no longer than during the cu-
rate's residence, without absence above forty days in any one year.
1 Leon. 100. See Cro. Eliz. 123. Some words in the act 13 Eliz. c.
20. as to leases by Parsons not resident, repealed. See stat. 14 Eliz.
c. 11.

An incumbent presented by the University to a recusant's living,
shall lose it by sixty days' absence in a year. 1 W. & M. c. 26. § 6.

RESIDUARY LEGATEE, is he to whom the residuum of the
estate is left by will. See titles Executor; Legacy.

RESIGNATION, Resignatio.] The yielding up a benefice into
the hands of the ordinary, called, by the canonists, Renunciation; and
though it is all one in nature with the word Surrender, yet it is, by
use, restrained to yielding up a spiritual living to the bishop; as Sur-
render is the giving up of temporal land into the hands of the lord.
And a Resignation may now be made into the hands of the King as
well as the diocesan, because he has supremam autoritatem ecclesiast-
icam, as the Pope had in antient times; though it has been adjudged
that a Resignation ought to be made only to the bishop of the diocese,
and not to the King; because the King is not bound to give notice of
the Resignation to the patron, as the ordinary is; nor can the King
make a collation himself, without presenting to the bishop. Plowd.
498: Rot. Abr. 358.

Every parson who resigns a benefice, must make the Resignation
to his superior; as an incumbent to the bishop, a bishop to the archi-
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bishop, and an archbishop to the King, as supreme ordinary: A do-
native is to be resigned to the patron, not the ordinary; for in that
case the clerk received his living immediately from the patron. 1
Ref. 137.

A common benefice is to be resigned to the ordinary, by whose ad-
mission and institution the clerk first came into the church: And the
Resignation must be made to that ordinary who hath power of insti-
tution; in whose discretion it is either to accept or refuse the Resig-
tion; as the Law hath declared him the proper person to whom it
ought to be made, it hath likewise empowered him to judge thereof.
Cro. Jac. 64. 198.

The instrument of Resignation is to be directed to the bishop; and
when the bishop hath accepted of it, the Resignation is good, to make
void the church, and not before; unless it be where there is no cure,
when it is good without the acceptance of the bishop. A Resigna-
tion may be made before a public notary, but without the bishop's
acceptation, it doth not make the church void: the notary can only at-
test the Resignation, in order to its being presented, &c. Cro. Jac
64. 198.

Before acceptance of the Resignation by the bishop, no presenta-
tion can be had to the church; but, as soon as the acceptance is made,
the patron may present to the benefice resigned: And when the clerk
is instituted, the church is full against all men in case of a common
person; though, before induction, such incumbent may make the

It seems to be clear, that the bishop may refuse to accept a Resigna-
tion upon a sufficient cause for his refusal: But whether he can,
merely at his will and pleasure, refuse to accept a Resignation with-
out any cause, and who shall finally judge of the sufficiency of the
cause, and by what mode he may be compelled to accept, are ques-
tions undecided. In the case of the Bishop of London v. Effytche, the
Court of K. B. held, that the Ordinary could not refuse to admit a
clerk to a rectory to which he was presented, because he had given
a general bond to resign upon the request of his patron. 1 East's
Ref. 487. But this judgment was reversed in the House of Lords,
and the Judges in general declined in that case to answer whether a
bishop was compellable to accept a Resignation: one thought he was
compellable by Mandamus, if he did not shew sufficient cause; and
another observed, that, if he could not be compelled, he might pre-
vent any incumbent from accepting an Irish bishoprick; as no one
can accept such bishoprick till he has resigned all his benefices in
England. But Lord Thurlow seemed to be of opinion, that he could
not be compelled, particularly by Mandamus, from which there is no
appeal on writ of error. 1 Comm. c. 11. ft. 393, in n. See title Simony.

A parsonage is not to be granted over by the incumbent, but it may
be resigned; and Resignations are to be absolute, and not conditional;
for it is against the nature of a Resignation to be conditional, being a
judicial act. 3 Nels. Abr. 157.

If any incumbent corruptly resign his benefice, or take any reward
for resigning the same, he shall forfeit double the value of the sum,
&c. given, and the party giving it, be incapable to hold the living.
Stat. 31 Eliz. c. 6. § 8. But a man may bind himself by bond to re-
sign, and it is not unlawful, but may be on good and valuable reasons;
as, where he is obliged to resign if he takes a second benefice, or if
he be non-resident by the space of so many months, or to resign on request, if the patron shall present his son or kinsman, when he shall be of age capable to take the living, &c. Cro. Jac. 249, 274. Though bonds for Resignation of benefices have no encouragement in Chancery; for on such bonds, generally, the incumbent is relieved, and not obliged to resign. 1 Rol. Abr. 443. On debt upon a bond to resign a benefice, the Court would not let the defendant’s counsel argue the validity of the bond, these bonds having been so often established even in a Court of Equity. 1 Strange 227. But such a bond will not be allowed, where money has been paid on it. Ibid. 534.

The Court of K B. determined that a bond given by a schoolmaster of an antient public school; who had a freehold in his office, to resign at the request of his patron, was good at Law; but Equity will restrain any improper use of it by the patron. 1 East’s Rep. K B. 391. On error brought in this case in the Exchequer Chamber, that Court thought it did not appear that it was a freehold office, and therefore affirmed the judgment without giving any opinion on the principal point. 3 Bos. & Pul. 231. See further, title Simony.

A parson’s refusal to pay his tenth, it is said, is a Resignation, for which he may be deprived. Owen 5. And where Resignation is actually made de ecclesia, it extends to all the lands and possessions of the church. Cro. Jac. 63.

The usual words of a Resignation are renuncio, cedo, dimitto, and resigno; and the word resigno is not a proper term alone. 2 Rol. 350.

As to Resignation of fees in the Scotch Law. See title Procuratory of Resignation.

As to Resignation of temporal offices.—Declaring, at an assembly of the corporation, that he would hold the place of alderman no longer, is a good Resignation, especially since the corporation accepted it, and chose another in his place; but, till such election, he had power to waive his Resignation, but not afterwards. 2 Salt. 433.

A burgess of a corporation came to the mayor, and desired the mayor to remove and dismiss him from the place of burgess. On return of this, a Mandamus was denied to restore him; for having resigned voluntarily, he is estopped to say, that the mayor had no power to remove him; and the case being sent to Hale, Ch. B. he agreed, and said, that a corporation, as such, have power to take such Resignation. Sid. 14.

But giving consent to be removed, does not amount to a Resignation. A man may resign an office by parol. Holt’s Rep. 450.

Resignation by a common-council-man need not be by deed. Lutw. 405.

Where an alderman is a justice of peace for life, by force of the patent of the King, who created the corporation, he cannot resign his office of justice of peace; because he cannot resign it but to a superior; fer Coke, Ch. J.: Rol. Rep. 135. pl. 19.

So, if a man can have no title to the profits of an office, without the admission or confirmation of a superior, there the Resignation of that office must be to him. 3 Nels. Abr. 158. See titles Corporation; Mandamus; Quo Warranto.

RESORT, Resortum; The authority or jurisdiction of a Court.

Dernier Resort, the last refuge.—The House of Lords is the Dernier Resort in cases of appeal.
RESPECTU COMPUTI VICECOMITIS HABENDO, a writ, for respiteing a sheriff's account, directed to the treasurer and barons of the Exchequer. Reg. Orig. 139. See title Sheriff.

RESPITE, Respektus.] A delay, forbearance, or continuation of time. Glanvil, lib. 12. c. 9. See this Dict. title Execution of Criminals.

Respite of Homage, Respexit Homagii.] The forbearance or delay of Homage, which ought to be performed by tenants holding by Homage, &c. It was most frequently in use for such as held by knights-service and in capite, who formerly paid into the Exchequer, every fifth term, some small sum of money to be respiteed their homage: But this charge being incident to, and arising from knights-service, it is taken away by stat. 12 Car. 2. c. 24. See titles Tenures; Homage.

Respite of Jury; See titles Jury; Nisi Prius; Trial.

RESPONDEAS, or RESPONDEAT OUSTER. To answer over in an action, to the merits of the cause, &c. If a demurrer is joined on a plea to the jurisdiction, person, or writ, &c. and it be adjudged against the defendant, judgment is given that he shall answer over. See titles Judgment; Demurrer.

RESPONDEAT SUPERIOR. If sheriffs of London are insufficient, the Mayor and Commonalty must answer for them: And fur insufficiencc del bailiff d'un liberty, respondat dominus libertatis. 4 Inst. 114: Stat. 44 Edw. 3. cap. 13.

If a coroner of a county is insufficient, the county as his Superior shall answer for him. Wood's Inst. 83.

A gaoler constitutes another under him, and he permits an escape, if he be not sufficient, Respondat Superior; and superior officers must answer for their deputies in civil actions, if they are insufficient to answer damages. Doct. & Stud. c. 24. See titles Deputy; Officer.

RESPONDE-BOOK in Exchequer: A book kept by the Directors of Chancery, in Scotland, in which are kept the accounts of all non-entry and relief duties; payable by heirs, who take precepts from Chancery. Bell's Scotch Dict.

RESPONDENTIA; See Bottomry; Insurance IV.

RESPONSALIS, Qui responsum defert.] He who appears and answers for another in court at a day assigned. Glan. lib. 12. c. 1. Fleta makes a difference between responsaem, atturratum, and essoniatorem; he says that responsalis was for the tenant, not only to excuse his absence, but to signify what trial he meant to undergo, the combat or the country. Fleta, lib. 6. c. 21.

This word is made use of in the Canon Law for a proctor.

RESTITUTION, Restitutio.] The restoring any thing unjustly taken from another: It signifies also the putting him in possession of lands or tenements, who had been unlawfully disseised of them. Cromp. Just. 144. And Restitution is a writ, which lies where judgment is reversed, to restore and make good to the defendant what he hath lost: The Court which reverses the judgment, gives, on reversal, a judgment for Restitution; whereon a scire facias quare restitutionem habere non debet, reciting the reversal of the judgment, and the writ of execution, &c. must issue forth. But the Law doth often restore the possession to one without a writ of Restitution, i.e. by writ of habere facias possessionem, &c. in the common proceeding of justice on a trial at Law. 2 Lill. Abr. 472, 3. See title Execution.
There is a Restitution of the possession of lands in cases of forcible entry; a Restitution of lands to an heir, on his ancestor's being attainted of treason or felony; and Restitution of stolen goods, &c.

A writ of Restitution is not properly to be granted but where the party cannot be restored by the ordinary course of Law; and the nature of it, is to restore the party to the possession of a freehold, or other matter of profit, from which he is illegally removed; and it extends to Restitution on Mandamus to any public office. 2 Litt. 472, 473.

Where a judgment for land is reversed in B. R. by writ of error, the Court may grant a writ of Restitution to the sheriff to put the party in possession of the lands recovered from him by the erroneous judgment; though there ought to be no Restitution granted of the possession of lands, where it cannot be grounded on some matter of record appearing to the Court. Hil. 22 Car. And persons who are to restore, are to be parties to the record; or they must be made so by special scire facias. Cro. Car. 328: 2 Salk. 587.

If a lease is taken in execution on a Fi. fa. and sold by the sheriff, and afterwards the judgment is reversed; the Restitution must be of the money for which it was sold, not the term. Cro. Jac. 246: Moor 788. But where a sheriff extended goods and lands on an elegit, and returned that he took a lease for years, which he sold and delivered to the plaintiff as bona & catalla of the defendant for the debt, and afterwards the judgment was reversed for error; it was adjudged, that the party shall be restored to the lease, because the elegit gave the sheriff no authority to sell the term, therefore a writ of Restitution was awarded. Yetv. 179. And there has been, in this case, a distinction made between compulsory and voluntary acts done in execution of justice; where the sheriff is commanded by the writ to sell the goods, and where he is not, when the goods are to be restored, &c. 8 Rep. 96.

If a plaintiff hath execution, and the money is levied and paid, and afterwards the judgment is reversed, there the party shall have Restitution without a scire facias, for it appears on the record what the party hath lost and paid; but if the money was only levied, and not paid, then there must be a scire facias suggesting the sum levied, &c. And where the judgment is set aside after execution for an irregularity, there needs no scire facias for Restitution; but an attachment of contempt, if, on the rule for Restitution, the money is not restored. 2 Salk. 588.

In a scire facias quare restitutionem, &c. the defendant pleaded payment of the money mentioned in the scire facias, and it was held to be no plea, Cro. Car. 328. But now payment is a good plea to a scire facias by the stat. 4 & 5 Ann. c. 16. § 12: 2 Litt. Abr. 479.

Upon a writ of Vi laica removenda a parson was put out of possession; and on a suggestion thereof, and affidavit made, Restitution was ordered. Cro. Litz. 465.

The justice of peace, before whom an indictment for forcible entry is found, must give the party Restitution of his lands, &c. who was put out of possession by force. Stat. H. 6. c. 9.—But where one is indicted for a forcible entry, and the party indicted traverses the indictment, there cannot be Restitution before trial and a verdict, and judgment given for the party, though the indictment be erroneous; it being too late to move to quash the indictment after the traverse,
which puts the matter on trial. 2 Lill. 473, 474. See Forcible En-
try II.
A person being attainted of treason, &c. he or his heirs may be re-
stored to his lands, &c. by the King’s charter of pardon; and the
heir, by petition of right, may be restored if the ancestor is executed: But Restitution of blood must be by act of Parliament; and Rest-
itutions by Parliament are some of blood only, some of blood, ho-
nour, inheritance, &c. The King may restore the party, or his heirs,
to his lands, and the blood, as to all issue begotten after the attainer.
3 Inst. 240: Co. Litt. 8. 391. See titles Attainder; Forfeiture, &c.

On a conviction of larceny, the prosecutor shall have Restitution of
his goods, by virtue of stat. 21 H. 8. c. 11: for, by the Common Law,
there was no Restitution of goods upon an indictment, it being con-
sidered as at the suit of the King only; and therefore the party was
enforced to bring an appeal of robbery, in order to have his goods
again. 3 Inst. 242. But it being considered, that the party prose-
cuting the offender by indictment deserves, to the full, as much en-
couragement as he who prosecutes by appeal; this statute was made,
which enacts, that if any person be convicted of larceny, by the evi-
dence of the party robbed, he shall have full Restitution of his mo-
ney, goods, and chattels, or the value of them, out of the offender’s
goods, if he has any, by a writ to be granted by the justices. And the
construction of this act having been in a great measure conformable
to the Law of Appeals, it has therefore in practice superseded the
use of appeals of larceny. For instance: As formerly upon appeals,
so now upon indictments of larceny, this writ of Restitution shall
reach the goods so stolen, notwithstanding the property of them is
endeavoured to be altered by sale in market-overt. 1 Hal. P. C. 543.
And, though this may seem somewhat hard upon the buyer, yet the
rule of law is, that spoliatus debet, ante omnia, restitutus; especially
when he has used all the diligence in his power to convict the felon.
And, since the case is reduced to this hard necessity, that either the
owner or the buyer must suffer, the law prefers the right of the owner,
who has done a meritorious act, by pursuing a felon to condign
punishment to the right of the buyer, whose merit is only negative,
that he has been guilty of no unfair transaction. See 2 Inst. 714:
3 Inst. 242: 5 Rep. 109. And it is now usual for the court, upon the
conviction of a felon, to order (without any writ; no instance of the
suing out of which has occurred for three hundred years) immediate
Restitution of such goods, as are brought into court, to be made to
the several prosecutors. Or, else, secondly, without such writ of Re-
titution, the party may peaceably retake his goods, wherever he hap-
pens to find them, unless a new property be fairly acquired therein.
Or, lastly, if the felon be convicted and pardoned, or be allowed his
clergy, the party robbed may bring his action of trover against him
for his goods; and recover a satisfaction in damages. But such action
lies not before prosecution; for so felonies would be made up and
healed: 1 Hal. P. C. 546. And also recaption is unlawful, if it be
done with intention to smother or compound the larceny; it then be-
coming the heinous offence of Theftbote. See 4 Comm. c. 27. p. 363.

If goods stolen are not waived by flight, or seized for the King, the
party robbed may take his goods again without prosecuting the felon:
but after they are seized for the King, they may not be restored with-
out appeal or indictment. Kel. 48: 2 Hawk. P. C. c. 23. § 49.
A servant took gold from his master, and changed it into silver; the master shall have Restitution of the silver by this statute. *Cro. Eliz.* 661. *pl. 9.*

A stole cattle and sold them at Coventry, in an open market, and immediately he was apprehended by the sheriff of Coventry, and they seized the money; and afterwards the thief was arraigned and hanged, at the suit of the owner of the cattle: And, by the Court, the party shall have Restitution of the money, notwithstanding the words of the *stat.* 21 *H. 8. c. 11. the goods stolen, &c. *Noy* 128.

A bank note of 50L. was stolen from Golightly, by one Ferguson. He was apprehended, and several articles of silver plate, a bank note of 20L., and ten guineas in gold, which were found upon him, were produced at the trial, and placed in the custody of Reynolds, clerk of the arraigns. Golightly gave evidence against Ferguson at the Old Bailey, and he was convicted of stealing the 50L. note. The owner demanded Restitution from Reynolds of the goods found upon Ferguson; but, as they were not the identical goods which Golightly had lost, Reynolds refused to restore them. But on trover being brought in *B. R.* they were ordered to be restored, they being the produce of the 50L. bank note. *Lofft.* 90.

The owner of goods stolen, who has prosecuted the thief to conviction, cannot recover the value of his goods from a person who has purchased them, and sold them again, even with notice of the theft, before conviction. *2 Term Repl* 750. But the plaintiff has a right to the Restitution of the goods in specie, and perhaps would be entitled to recover damages in trover against any person who is fixed with the goods after conviction, and refuses to deliver them; for then the goods are converted to the prejudice of the owner. *Per Kenyon, C. J.*

If the owner of goods loses them by a fraud, and not by a felony, and afterwards convicts the offender, he is not entitled to Restitution; or to retain them, against a person (as a pawnbroker) who has fairly acquired a new right of property in them. *5 Term* *Repl.* 175.

See further, this Dictionary, title Market; and the *Stat.* 1 *Jac.* 1. *c.* 21. there noticed, by which the sale of goods, wrongfully taken, to a pawnbroker within London or two miles thereof shall not alter the property. See also *stat.* 56 *Geo.* 3. *c.* 87. §. 10. and this Dictionary, title Pawnbrokers, as to goods illegally pawned. As to stolen horses, see this Dictionary, title Horses; and *stat.* 31 *Eliz.* *c.* 12. whereby the owner may, within six months, on paying the buyer what he actually paid, recover his horse without prosecution.

Re-restitution, Takes place when there hath been a writ of Restitution before granted: And Restitution is generally matter of duty; but Re-restitution is matter of grace. *Raym.* 85.

A writ of Re-restitution may be granted on motion, if the Court see cause to grant it. And on quashing an indictment of forcible entry, the Court of *B. R.* may grant a writ of Re-restitution, &c. *2 Litt. Abr.* 474. See title Forcible Entry II.

*Restitutio* *nem* *ex* *t* *rac* *t* *i* *m* *ab* *Eccl* *es* *i* *a*, A writ to restore a man to the church, which he had recovered for his sanctuary, being suspected of felony. *Reg. Orig.* 69.

*Restitutio* *nem* *ex* *t* *rac* *t* *i* *m* *ab* *Eccl* *es* *i* *a*, A writ directed to the sheriff, to restore the Temporalities of a bishoprick to the bishop elected and confirmed. *F. N.* *B.* 169: *1 Roll. Abr.* 880.

*Restitution* *in* *Min* *ors*, In the Scotch Law, a restoring them to *Voll.* V.
rights lost by deeds executed during their minority. See Quadrien-
nium Utile.

RESULTING USE. Whenever the use limited by a deed ex-
pires, or cannot vest, it returns back to him who raised it, after such
expiration, or during such impossibility, and is styled a Resulting
Use. As, if a man makes a feoffment to the Use of his intended wife
for life, with remainder to the use of the first-born son in tail: Here,
till he marries, the Use results back to himself; after marriage it is
executed in the wife for life; and if she dies without issue, the whole
results back to him in fec. Bacon of Uses 350: 1 Rep. 120. See title
Uses.

RESUMMONS, Resummonitio.] A second Summons or calling a
man to answer an action, where the first Summons is defeated by any
occasion; and when, by death, &c. of the judges, they do not come
on the day to which they were continued, for trial of causes; such
causes may be revived or continued by Resummons. There is also
a writ of Resummons, which issues after parol demurrer. See titles
Parol Demurrer; Re-attachment.

RESUMPTION, Resumption] Is particularly used for taking again
into the King’s hands such lands or tenements, &c. as on false sug-
gestion he had granted by letters patent to any man. Broke 298. It
is said, that the King cannot grant a prerogative of power so but that
he may resume it; otherwise it is of a grant of an interest. Skinner’s
Repl. 236. Many acts have been heretofore passed for resuming im-
provendent grants of the crown. See title Grant of the King.

RETAINER, from the Latin Retinere.] Signifies, in a legal sense,
a servant, but not menial or familiar; that is, not continually dwelling
in the house of his master, but only wearing his livery, and attending
sometimes upon special occasions. This livery was wont to consist
of hats, (or hoods,) badges, or other suits of one garment by the year;
and was many times given by great men, on design of maintenance
and quarrels; and was therefore justly forbidden by several statutes;
as by stat. 1 R. 2. c. 7. on pain of imprisonment and forfeiture to the
King; and again, by stat. 16 R. 2. c. 4: 20 R. 2. c. 1: 1 H. 4. c. 7. by
which the offender should make ransom at the King’s will; and any
knight or esquire thereby duly attainted should lose his livery, and
forfeit his fee for ever, &c. which statutes were further confirmed
and explained by stats. 2 H. 4. c. 21: 7 H. 4. c. 3: 8 H. 6. c. 4. Yet
this offence was so deeply rooted, that Edward the Fourth was ne-
cessitated to confirm the former statutes, and further to extend their
meaning; as appears by stat. 8 Edw. 4. c. 2. adding a special penalty
of five pounds on every man who gave such livery, and as much on
every one so retained, either by writing, oath, or promise, for every
month.

These were by the feudists, called Affidati, sic enim dicuntur qui
in alicujus fidem & tutelam recepti sunt. And as our Retainers were
thus forbidden, so were those affidati in other countries. But most of
the above-mentioned statutes were repealed by stat. 3 Car. 1. c. 1.
Cowell. And the provisions of these obsolete and expired laws, are
rendered useless by the alteration of manners. See further, title Main-
tenance.

RETAINER OF DEBTS, By an executor or administrator. See title
Executor V. 6.

RETAINING FEE, Merces retinens.] The first fee given to any ser-
jeant or counsellor at law; whereby to make him sure that he shall not be on the contrary part.

RETAILIATION; See Lex Talionis.

RETEMENENTUM, is a word used for detaining, withholding or keeping back. And sineulloretatemento was an usual expression in old deeds and conveyances of lands. Cowell.

RETECTOR, the right of withholding a debt, or retaining property until a debt due to the person claiming the right of Retention, shall be paid. See Lien.

RETTINENTIA, a Retinue, or persons retained to a prince or nobleman. Pat. 14 R. 2.

RETOPO HABENDO; See Retorno habendo; Replevin.

RETOUR, in Scotch Law; this name is given to an extract from the chancery of the service of an heir to his ancestor. The brief of inquest, after the jury have pronounced their sentence is retoruable to the chancery whence it issued; and it is the duty of the judge to whom it is directed, to return it; nor is the service complete till this is done. The extract or copy from chancery is what is termed the Retour. Bell's Scotch Dict.

RETOURED DUTY, is the valuation, both new and old, of lands, expressed in the retour to the chancery, when any is returned, or served heir. Scotch Dict.

RETRACTUS AQUÆ, The ebb or return of a tide. Plac. 30 Ed. 1.

RETRACTUS FEUDALIS, In Scotch Law a power antiently claimed by the superior of an estate to pay off a debt adjudged, and to take a conveyance of the estate. Bell's Scotch Dict.

RETRACTIT, Is when a plaintiff cometh in person where his action is brought, and saith he will not proceed in it; and this is a bar to that action for ever. It is so called, because it was the emphatical word in the Latin entry. See Sellon's Pract. and this Dictionary, titles Nonsuit; Nolle Prosequi.

A Retractit must be always in person; if it is by attorney, it is error. 8 Rep. 58: 3 Salk. 245.

A Retraxis is a bar to any action of equal nature, brought for the same cause or duty: but a nonsuit is not. 1 Inst. 208: See Wils. 90.

If a plaintiff says, he will not appear, this is not a Retractit, but a nonsuit: But if the plaintiff says he will not sue, it is a Retractit. 2 Danv. Abr. 471. And Retraxis is always on the part of the plaintiff or demandant; and it cannot be before a declaration, for before the declaration it is only a nonsuit. 3 Leon. 47: 2 Litt. Abr. 476.

If a plaintiff enter a Retraxis against one joint-trespasser, it is a release to the other. Cro. Eliz. 762. Sed. qu.? For if a Retraxis be entered as to one appellee in appeal of murder, the suit may be continued against the rest; because the appellant is to have a several execution against every one of them. H. P. C. 190. In a prohibition by three, a Retraxis of one shall not bar the other two plaintiffs. Moor 469: Nels. Abr. 165. A Retraxis in its operation is mostly similar to a Nolle prosequi, entered to the whole cause of action. See that title.

RETTE, Fr.] A charge or accusation. Stat. West. 1 c. 2. Co. Lit. 173, b. and n.

RETURN, Returna, or Retorna, from the Fr. retour, i. e. reddito. recursus.] Hath many applications in Law; but is most commonly
used for the return of writs, which is the certificate of the sheriff made to the court, of what he hath done touching the execution of any writ directed to him; and where a writ is executed, or the defendant cannot be found, &c. then this matter is endorsed on the back of the writ by the officer, and delivered into the court whence the writ issued, at the day of the return thereof in order to be filed. Stat. Westm. 2. 13 E. 1 c. 39: 2 Lill. Abr. 476. See titles Sheriff; Writ.

The name of the sheriff must always be to Return of writs; otherwise it doth not appear how they came into court: if a writ be returned by a person to whom it is not directed, the Return is not good, it being the same as if there was no Return on it. And after a Return is filed, it cannot be amended; but before, it may. Cro. Eliz. 310.

If the sheriff doth not make a Return of a writ, the Court will a merce him: So, if he makes an insufficient Return; and if he makes a false Return, the party grieved may have an action on the case against him. Wood's Inst. 71.

If a sheriff return a vouchee summoned, where in truth he is dead, and there is no such person; or in a praecipe quod reddat that the tenant is dead, &c. there may be an averment against such Returns, by the stat. 14 Ed. 3. c. 18: Jenk. Cent. 121, 122.

Some returns are kind of declaration of an accusation; as the Return of a rescous, and the like; and these must be certain and perfect, or they will be ill. 11 Rep. 40: Flow. 63. 117: Kelcv. 65.

Writs to do things in franchises, are directed to, and returned by the sheriff, to whom bailiffs make their returns: And an action will lie against a sheriff who takes the return of one who is no bailiff, and against him who makes it; and likewise against the bailiff of a franchise, for negligence in execution, &c. 7 Ed. 4. 14: 12 Ed. 4. 15: Moor c. 606.

There is also a Return of juries by sheriffs; and Returns of commissions by commissioners, &c. See the several appropriate titles.

Return-Days, certain days in term, for the return of writs, or days in bank. See Term.

Returno-Habendo. A writ which lies where cattle are distrained and repleved, and the person who took the distress justifies the taking, and proves it lawful; on which the cattle are to be returned to him.

This writ also lieth when the plaint in replevin is removed by recordari into the King's Bench or Common Pleas, and he whose cattle are distrained makes default, and doth not prosecute his suit. F. N. B. 74. See title Replevin.

Returns of Members to Parliament; See Parliament.

Returnum Averiorum, A judicial writ, the same with Returno habendo. Reg. Judic. 4.

Returnum Irreplegiabile, A writ judicial, directed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict; and it is granted after a nonsuit in a second deliverance. Reg. Judic. 27. See title Replevin.

REVE, or Gereve, from the Saxon word Græfa, Prefectus, Lambard's explication of Saxon words, verb. Prefectus.] The bailiff of a franchise or manor, especially in the western part of England. Hence Shire-reve for Sheriff. See Kitchin 43.
REVELACH, Rebellion, from *revelare*, to rebel. Gale. Domes-
day, title Cestrescire.

REVELAND, Terra Regis. *Hac terra fuit tempore Edwardi Re-
gis Tainland, sed postea conversa est in Reveland. Et item dicunt*
legati Regis quod *ipsa terra & census qui inde exit, furtim auctur-
t à Rege. Domesd. Herefordsc.*

The land here said to have been Thaneland, T. E. R. and after con-
verted into Reveland, seems to have been such land as having revert-
ed to the King after the death of his Thane, who had it for life, was
not since granted out to any by the King, but rested in charge on the
account of the reve or bailiff of the manor; who (as it seemeth) being
in this lordship of Hereford, like the reve in Chaucer, a false bro-
ther, concealed the land from the auditor, and kept the profit of it;
till the surveyors, who are here called *Legati Regis*, discovered this
falsehood, and presented to the King that *furtim auctur à Rege*.

This passage from Domesday-book is imperfectly quoted by Sir
Edward Coke, who from these words draws a false inference, that land
holden by knight-service was called Thainland, and land holden by
socage was called Reveland. *Cowell. See* *Stielman of Feuds*, c. 24: 1
Inst. 86, a and n.

Dalrymple attempts to establish a distinction between *Bockland*,
or *Thaneland*, and Reveland, also called *Folkland*; and to shew that
the former was feudal, and the latter allodial. *Dalrymple. Feud*, prop.
9. See titles *Tenures; Copyhold; Bockland; Folkland*.

REVELS, Sports of dancing, masking, &c. formerly used in princes'
courts, the inns of court, and noblemen's houses; commonly perform-
ed by night; there was an officer to order and supervise them, who
was entitled Master of the Revels. *Cowell*.

REVENUE, *Fr.*] Properly the yearly rent which accrues to any
man from his lands and possession; and is generally used for the re-
venues or profits of the Crown.

Whoever chooses to be informed of the fiscal prerogatives of the
King, or such as regard his revenue; which the British constitution
hath vested in the royal person, in order to support his dignity, and
maintain his power, will find them very curiously and learnedly treat-
ed of by Blackstone, in the 8th chapter of the first volume of his Com-
mentaries. And see this Dict. titles *King; Taxes*.

REVERSAL, Of judgment; Is the making it void for error; and
when, on the return of a writ of error, it appears that the judgment
is erroneous, then the court give judgment Quod *judicium revocetur*
*omnuletur & penitus pro nullo habeatur*. 2 *Litt. Abr.* 481.

The eldest Judge of the court, or, in his absence, the next in seni-
ority, always pronounces the reversal of an erroneous judgment
openly in court, on the prayer of the party; formerly it was the course
to pronounce it in French, to this effect, *Pur les errors avandit, & auter
errors manifest in le record, soit le judgment reverse*, &c. *Trin. 22 Car.*
B. R. The Judge now only says, *Judgment affirmed, or Judgment re-
versd*, as the case happens.

Reversal of a judgment may be pronounced conditionally, *i. e.* That
the judgment is reversed if the defendant in the writ of Error doth
not shew good cause to the contrary at an appointed time; and this
is called a *revocetur nisi*; and if no cause be then shewn, it stands re-
versd without further motion. 2 *Litt. 482*.

By the statute of Limitations, *stat. 21 Jac. 1* c. 16. § 4. where judg-
ment is given for a plaintiff; and reversed by writ of Error; or if judg-
ment for a plaintiff be arrested, or if a defendant in an action by original be outlawed, and the outlawry reversed, the plaintiff may commence a new action within twelve months after such Reversal, or arrest of judgment, or Reversal of outlawry: though it be beyond the time of limitation directed by the statutes. See title Limitation of Actions.

See further, this Dictionary, titles Attainder; Error VI: Judgment II.


REVERSION, Reversio, from Revertor. A returning again. 1 Inst. 142.

A Reversion hath two significations; the one is an estate left, which continues during a particular estate in being; and the other is the returning of the land after the particular estate is ended: It is said to be an interest in the land, when the possession shall fall, and so it is commonly taken; or it is when the estate, which was parted with for a time, ceaseth, and is determined in the persons of the alienees or grantees, &c. and returns to the grantor or donor, or their heirs, from whence derived. Plowd. 160: 1 Inst. 142.

But the usual definition of a Reversion is, that it is the residue of an estate left in the grantor after a particular estate granted away, continuing in him who granted the particular estate; and where the particular estate is derived out of his estate. Also a Reversion takes place after a Remainder, where a person makes a disposition of a less estate, than that whereof he was seised at the time of making thereof. 1 Inst. 22, 142: Wood’s Inst. 151.

The difference between a Reversion and a remainder is, that a remainder is general, and may be to any man, except to him who granteth the land, for term of life, or otherwise; and a Reversion is to himself from whom the conveyances of the land proceeded, and is commonly perpetual, &c. Remainder is an estate, appointed over at the same time: But the Reversion is not always at the same time appointed over. See title Remainder.

Blackstone, with his usual accuracy and perspicuity, shortly defines a Reversion thus: “The residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him.” Coke describes a reversion to be the returning of land to the grantor, or his heirs, after the grant is over: As, if there be a gift in tail, the Reversion of the fee is, without any special reservation vested in the donor by act of Law; and so also the Reversion, after an estate for life, years, or at will, continues in the lessor: For the fee-simple of all lands must abide somewhere; and if he, who was before possessed of the whole, carves out of it any smaller estate, and grants it away, whatever is not so granted, remains in him. A Reversion is never therefore created by deed or writing, but arises from construction of law; a remainder can never be limited, unless by either deed or devise. But both are equally transferrable, when actually vested, being both estates in praesenti, though taking effect in futuro. 2 Comm. c. 11. cites 1 Inst. 22, 142.

The doctrine of Reversions is plainly derived from the feudal constitution: For, when a feud was granted to a man for life, or to him and his issue male, rendering either rent, or other services; then, on his death, or the failure of issue male, the feud was determined and resulted back to the lord or proprietor, to be again disposed of
at his pleasure: and hence the usual incidents to Reversions are said to be fealty and rent. When no rent is reserved on the particular estate, fealty however results of course, as an incident quite inseparable, and may be demanded as a badge of tenure or acknowledgment of superiority; being frequently the only evidence that the lands are holden at all. Where rent is reserved, it is also incident, though not inseparably so, to the Reversion. 1 Inst. 143. The rent may be granted away, reserving the Reversion; and the Reversion may be granted away, reserving the rent; by special word: but by a general grant of the Reversion, the rent will pass with it, as incident thereunto; though by the grant of the rent generally, the Reversion will not pass. The incident passes by the grant of the principal, but not è converso. 1 Inst. 151, 2.

These incidental rights of the reversioner, and the respective modes of descent, in which remainders very frequently differ from Reversions, have occasioned the law to be careful in distinguishing the one from the other; however inaccurately the parties themselves may describe them: For if one, seised of a paternal estate in fee, makes a lease for life, with remainder to himself and his heirs, this is properly a mere Reversion, to which rent and fealty shall be incident; and which shall only descend to the heirs of his father's blood, and not to his heirs general, as a remainder limited to him by a third person would have done: For it is the old estate, which was originally in him, and never yet was out of him. And so likewise, if a man grants a lease for life to A., reserving rent, with Reversion to B. and his heirs, B. hath a remainder descendible to his heirs general, and not a Reversion to which the rent is incident; but the grantor shall be entitled to the rent, during the continuance of A.'s estate. 2 Comm. c. 11, cites Cro. Eliz. 321: 3 Lev. 407: 1 And. 23.

When the particular estate determines, then the Reversion comes into possession, and before it is separated from it; for he who hath the possession cannot have the Reversion, because, by uniting them, the one is drowned in the other. 2 Lill. Abr. 484. See title Merger.

The Reversion of land when it falls, is the land itself; and the possession of the tenant preserves the Reversion of the lands, with the rents, &c. in the donor or lessor. 1 Inst. 324.

A Reversion of an estate of inheritance may be granted by bargain and sale inrolled, lease and release, fine, &c. And by the grant of lands a Reversion will pass; though by the grant of a Reversion, land in possession will not pass. 6 Rep. 36: 5 Rep. 124: 10 Rep. 107.

If one have a Reversion in fee, expectant on a lease for years, he may make a bargain and sale of his Reversion for one year, and then make a release to the bargainee in fee; by which the Reversion in fee will pass to the bargainee. 2 Lill. Abr. 483. And a Reversioner may covenant to stand seised of a Reversion to uses, &c. 11 Rep. 46. Likewise a Reversion may be devised by will; and a testator being seised in fee of lands which he had in possession, and of other lands in Reversion, devised all his lands for payment of debts; adjudged that by the words "all his lands," the Reversion as well as the possession passed. 2 And. 59: Cro. Eliz. 159.

A person devised a manor to A. B. for six years, and some other lands to C. D. and his heirs: and all the rest of his lands to his brother, and the heirs male of his body: and it was held that these words, "the rest of his lands," did not only extend to the lands which were
not devised before, but to the reversion in fee of the manor, after the
determination of the estate for years. *Allen* 28. And by devise of all
lands, tenements, and hereditaments, undisposed of before in a will, a
Reversion in fee will pass. 2 *Vent.* 285: 3 *Nels. Abrid.* 166.

One scised of lands in fee, devises part thereof to *B.* for life, and
after, by the same will, gives to *C.* all his lands not before particularly
disposed of, by this devise of "all lands," &c. the Reversion of the
part given for life passes to *C.* *Preced.* Chan. 202. See title *Will.*

There was lessee for years, remainder for life, Reversion in fee, the
tenant for life died, and the lessee for years did not attorn to him
in the Reversion; yet it was resolved, that it passed without attorn-
ment, and he might bring an action of debt, or avow. *Hellt.* 75. See
title *Attornment.*

If tenant for life, and he in Reversion, join in a lease for life, or
gift in tail, rendering rent, it shall enure after the death of tenant for
life, to him in Reversion. 1 *Inst.* 214.

The particular estate for life or years, and the estate of him in
Reversion, are divers and distinct; therefore aid may be prayed of
him in Reversion: Yet these estates have relation one to another. 3
*Shep. Abrid.* 220.

Copyholder for life, cannot, by forfeiture or otherwise, destroy the
estate in Reversion: And he who hath a Reversion cannot be put out
of it, unless the tenant be ousted of his possession also. 39 *Hen.* 6:
*Plowd.* 162: *Yelv.* 1.

Reversions expectant on an estate-tail, are not assets, or of any
account in law, because they may be cut off by fine and recovery;
but it is otherwise of a Reversion on an estate for life, or years. 1

No lease, rent-charge, or estate, &c. made by tenant in tail in re-
mainder, shall charge the possession of the reversioner. 2 *Lit.* 448.
But as no statute hath made any provision for those who have remain-
ders, or Reversions on any estate-tail they are barred by a recovery.
10 *Repl.* 32. See title *Recovery.*

There were no Reversions or remainders on estates in tail, at Com-
mon Law: And by the Common Law, no grantee of a Reversion
could take advantage of any condition or covenant broken by the
lessees of the same land; but by statute, grantees of Reversions may
take advantage of conditions and covenants against lessees of the
same lands, as fully as the lessors and their heirs; and the lessees
may have the like remedies against the grantees of Reversions, &c.
1 *Inst.* 327. See *stat.* 32 H. 8. c. 34: And titles *Condition; Lease.*

A reversioner may bring an action on the case for spoiling trees;
so for any injury to his Reversion, he may have this action, but he
cannot have trespass, which is founded on the possession. 3 *Lev.* 209.
333: 3 *Co.* 55.

He in Reversion shall have a writ of *entry ad communem legem,*
where tenant for life, &c. aliens the lands: And writ of intrusion after

How to plead a Reversion in fee. 2 *Lutw.* 1174.

In order to assist such persons as have any estate in remainder,
Reversion, or expectancy after the death of others, against fraudulent
concealments of their deaths, the *stat.* 6 *Ann.* c. 18. provides, that all
persons on whose lives any lands are holden, shall, (on application to
the Court of Chancery, and order made thereon,) once in every year,
if required, be produced to the court, or its commissioners; or, upon
neglect or refusal, they shall be taken to be actually dead, and the
person entitled to such expectant estate may enter upon and hold the
lands and tenements till the party shall appear to be living. See title
Life-Estate.

Reversions in Offices; Vide Office.

Review, Bill of; in Chancery. The object of this is to procure
an examination and reversal of a decree, made upon a former bill,
and signed by the person holding the great seal, and inrolled. It may
be brought upon error of law appearing in the body of the decree
itself, or upon discovery of new matter. In the first case the decree
can only be reversed upon the ground of the apparent error; as if an
absolute decree be made against a person, who, upon the face of it,
appears at the time to have been an infant. A bill of this nature may
be brought without leave of the Court previously given. But if it is
sought to reverse a decree signed and inrolled upon discovery of
some new matter, the leave of the court must be first obtained; and
this will not be granted but upon allegation, upon oath, that the new
matter could not be produced or used by the party claiming, at the
time when the decree was made. If the Court is satisfied, that the
new matter is relevant and material, and such as might probably have
occasioned a different determination, it will permit a bill of Review
to be filed. See Mitf. Treat. on Chance. Pleadings 78; and the authori-
ties there cited: See also this Dictionary, title Chancery; Decree.

A Bill of Review, upon new matter discovered, has been permitted,
even after an affirmation of the decree in Parliament; but it may be
doubted, whether a bill of review, upon error in the decree itself, can
be brought after such affirmation. If, upon a Bill of Review, a decree
has been reversed, another Bill of Review may be brought upon the
decree of reversal: But see 1 Vern. 417. But when twenty years have
elapsed from the time of pronouncing a decree, which has been
signed and inrolled, a Bill of Review cannot be brought: and after
a demurrer to a Bill of Review has been allowed, a new bill of Re-
view on the same ground cannot be brought. It is a rule of the Court,
that the bringing a Bill of Review shall not prevent the execution of
the decree impeached; and if money is directed to be paid it ought
regularly to be paid before the Bill of Review is filed, though it may
afterwards be ordered to be refunded. Mitf. Treat. 79, 80.

In a bill of this nature it is necessary to state the former bill, and
the proceedings thereon; the decree, and the point in which the party
exhibiting the Bill of Review conceives himself aggrieved by it; and
the ground of Law, or new matter discovered, upon which he seeks
to impeach it; and if the decree is impeached on the latter ground,
it seems necessary to state in the bill the leave obtained to file
it, and the fact of the discovery; though it may be doubted,
whether after leave given to file the bill that fact is traversable.
The bill may pray simply, that the decree may be reviewed, and
reversed in the point complained of, if it has not been carried
into execution. If it has been carried into execution, the bill may
also pray the farther decree of the Court, to put the party complain-
ing of the former decree, into the situation in which he would have
been if that decree had not been executed. If the bill is brought to
review the reversal of a former decree, it may pray that the origi-
nal decree may stand. The bill may also, if the original decree has become abated, be at the same time a bill of Revivor: (See title Revivor:) A supplemental bill may likewise be added, if any event has happened which requires it; and, particularly, if any person, not a party to the original suit, becomes interested in the subject, he must be made a party to the Bill of Review, by way of supplement. Mitif. Treat. 80, 81.

To render a Bill of Review necessary, the decree sought to be impeached must have been signed and inrolled. If, therefore, this has not been done, a decree may be examined and reversed upon a species of supplemental bill in nature of a Bill of Review, where any new matter has been discovered since the decree. As a decree not signed and inrolled may be altered upon a re-hearing, without the assistance of a Bill of Review, if there is sufficient matter to reverse it appearing upon the former proceedings; the investigation of the decree must be brought on by a petition of re-hearing; and the office of the supplemental bill, in nature of a Bill of Review, is to supply the defect which occasioned the decree upon the former bill. It is necessary to obtain the leave of the Court to bring a supplemental bill of this nature; and the same affidavit is required for this purpose, as is necessary to obtain leave to bring a Bill of Review on discovery of new matter. The bill, in its frame, nearly resembles a bill of Review; except, that instead of praying that the former decree may be reviewed and reversed, it prays that the cause may be heard with respect to the new matter, made the subject of the supplemental bill, at the same time that it is re-heard upon the original bill; and that the plaintiff may have such relief as the nature of the case made by the supplemental bill requires. Mitif. Treat. 81—83.

If a decree is made against a person who had no interest at all in the matter in dispute, or had not such an interest as was sufficient to render the decree, against him, binding upon some person claiming the same, or a similar interest, relief may be obtained against error in the decree by a bill in the nature of a Bill of Review. Thus, if a decree is made against a tenant for life only, a remainder-man in tail, or in fee, cannot defeat the proceedings against the tenant for life, but by a bill shewing the error in the decree, the incompetency in the tenant for life to sustain the suit, and the accruer of his own interest; and thereupon praying that the proceedings in the original cause may be reviewed, and, for that purpose, that the other party may appear to, and answer this new bill, and that the rights of the parties may be properly ascertained. A bill of this nature, as it does not seek to alter a decree made against the plaintiff himself, or against any person under whom he claims, may be filed without leave of the Court. Mitif. Treat. 83.

Review of Appeal of Delegates, A commission granted by the King to certain Commissioners, &c. See title Appeal to Rome.

REVILING CHURCH ORDINANCES, Is a positive offence against religion, that affects the established church; and the reviling the sacrament of the Lord's Supper, is punished by stats. 1 Ed. 6. c. 1:1 Eliz. c. 1. with fine and imprisonment: And by stat. 1 Eliz. c. 2. if any minister shall speak any thing in derogation of the book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the first offence, and for life for the second: And if he be beneficed, he shall for the first offence be imprisoned six months, and forfeit a
year's value of his benefice: for the second offence he shall be deprived, and suffer one year's imprisonment; and for the third, shall, in like manner, be deprived, and suffer imprisonment for life. And if any person whatsoever shall, in plays, songs, or other open words, speak any thing in derogation, defaming, or despising of the said book, or shall forcibly prevent the reading of it, or cause any other service to be used in its stead, he shall forfeit for the first offence one hundred marks; for the second, four hundred; and for the third shall forfeit all his goods and chattels, and suffer imprisonment for life. The policy and propriety of these punishments, even at this distance from the Reformation, are well stated by Blackstone. 4 Comm. c. 4: p. 51.

REVIVAL OF PERSONS HANGED; See Execution of Criminals.

REVIVING, A word metaphorically applied to rents and actions, and signifies renewing them after they are extinguished. Of which see many examples in Broke, title Revivings of Rents, Actions, &c. 23. See also 19 Vin. Abr. 228—230.

REVIVOR, BILL OR; When a bill hath been exhibited in Chancery, against one who answers, and before the cause is heard, or if heard, and the decree is not inrolled, either party dies, or a female plaintiff marries; in these cases a bill of Revivor must be brought.

A bill of Revivor must state the original bill, and the several proceedings thereon, and the abatement: It must shew a title to revive, and charge that the cause ought to be revived, and stand in the same condition, with respect to the parties in the Bill of Revivor, as it was in with respect to the parties to the original bill, at the time the abatement happened; and it must pray, that the suit may be revived accordingly. It may likewise be necessary to pray that the defendant may answer the bill of Revivor; as in the case of a requisite admission of assets, by the representative of a deceased party. In this case, if the defendant does admit assets, the cause may proceed against him on an order of Revivor merely; but if he does not make that admission, the cause must be heard for the purpose of obtaining the necessary accounts of the estate of the deceased party, to answer the demands made against it by the suit; and the prayer of the bill, therefore, in such cases, usually is, not only that the suit may be revived, but also that in case the defendant shall not admit assets, to answer the purposes of the suit, those accounts may be taken; and so far the bill is in the nature of an original bill. If a defendant to an original bill dies before putting in an answer, or after an answer to which exceptions have been taken, or after an amendment of the bill, to which no answer has been given, the bill of Revivor, though requiring in itself no answer, must pray that the person, against whom it seeks to revive the suit, may answer the original bill, or so much of it as the exceptions taken to the answer of the former defendants extend to, or the amendment remaining unanswered. See Mitf. Treat. on Pleadings in Chancery. 70, 71; and the authorities there referred to.

Upon a bill of Revivor the defendant must answer in eight days after appearance, and submit that the suit shall be revived, or shew cause to the contrary; and in default, unless the defendant has obtained an order for further time to answer, the suit may be revived without answer, by an order made upon motion as a matter of course. The ground for this is an allegation, that the time allowed the defendant to answer by the course of the Court is expired, and that no
answer is put in; it is therefore presumed, that the defendant can shew no cause against reviving the suit in the manner prayed by the bill. *Mis. Treat.* 71, 72.

An order to revive may also be obtained, in like manner, if the defendant puts in an answer submitting to the Revivor; or even without that submission if he shews no cause against the Revivor. Though the suit is revived of course, in default of the defendant’s answer within eight days, he must put in an answer if the bill requires it; as if the bill seeks an admission of assets, or calls for an answer to the original bill; the end of the order of Revivor being only to put the suit and proceedings in the situation, in which they stood at the time of the abatement, and to enable the plaintiff to proceed accordingly. And notwithstanding an order for Revivor has been thus obtained, yet if the defendant conceives that the plaintiff is not entitled to revive the suit against him, he may take those steps which are necessary to prevent the farther proceeding on the bill; and though these steps should not be taken, yet if the plaintiff does not shew a title to revive, he cannot finally have the benefit of the suit, when the determination of the Court is called for on the subject. *Mis. Treat.* 72, 73.

After a decree, a defendant may file a bill of Revivor, if the plaintiffs, or those standing in their right, neglect to do it. For then the rights of the parties are ascertained, and plaintiffs and defendants are equally entitled to the benefit of the decree, and equally have a right to prosecute it. The bill of Revivor, in this case therefore, merely substantiates the suit, and brings before the Court the parties necessary to see to the execution of the decree, and to be the objects of its operation; rather than to litigate the claims made by the several parties in the original pleadings, except so far as they remain undecided. In the case of a bill by creditors, on behalf of themselves and other creditors, any creditor is entitled to revive. A suit, become entirely abated, may be revived as to part only of the matter in litigation; or as to part by one bill, and as to the other part by another. Thus, if the rights of a plaintiff in a suit, upon his death, become vested, part in his real, and part in his personal representatives, the real representative may revive the suit so far as concerns his title; and the personal so far as his demand extends. *Mis. Treat.* 73, 74.

When the interest of a party dying is transmitted to another, in such a manner that the transmission may be litigated in a Court of Equity, as in the case of a devise, the suit cannot be revived by or against the person to whom the interest is so transmitted; but such person, if he succeeds to the interest of a plaintiff, is entitled to the benefit of the former suit; and if he succeeds to the interest of a defendant, the plaintiff is entitled to the benefit of the former suit against him: This benefit is to be obtained by an original bill, in nature of a bill of Revivor. A bill for this purpose must state the original bill, the proceedings upon it, the abatement, and the manner in which the interest of the party dead has been transmitted; and it must charge the validity of the transmission, and state the rights which have accrued by it. The bill is said to be original, merely for want of that privity of title, between the party to the former and the party to the latter bill, though claiming the same interest, which would have permitted the continuance of the suit by bill of Revivor. Therefore, when the validity of the alleged transmission of interest is esta-
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blished, the party to the new bill shall be equally bound by, or have advantage of, the proceedings on the original bill, as if such privity had actually existed: And the suit is considered as pending, from the time of filing the original bill; so as to save the Statute of Limitations; to have the advantage of compelling the defendant to answer, before an answer can be compelled, to a cross-bill; and every other advantage which would have attended the institution of the suit by the original bill, if it could have been continued by bill of Revivor merely. Mist. Treat. 88, 89.

If the interest of a plaintiff or defendant, suing or defending in his own right, wholly determines, and the same property becomes vested in another person, not claiming under him, the suit cannot be continued by a bill of Revivor; nor can its defect be supplied by a supplemental bill, but the benefit of the former proceedings must be obtained by an original bill in the nature of a supplemental bill. Mist. Treat. 89, 90.

REVOCATION. Revocatio.] The calling back of a thing granted; or a destroying or making void of some deed that had existence, until the act of Revocation made it void. 2 Litt. Abr. 483. A Revocation may be either general, of all acts and things done before; or special, to revoke a particular thing: And where any deed or thing is revoked, it is as if it never had been. 5 Rep. 90: Perk. § 105. In voluntary deeds and conveyances, there are frequently provisos containing power of Revocation, which being coupled with an use, and tending to pass by raising of uses, according to the Stat. 27 Hen. 8. c. 10. are allowed to be good, and not repugnant; as where one seised of an estate in fee, covenants to stand seised thereof to the use of himself for life, and after to the use of his son in tail, remainder over, &c. with proviso that he may revoke any of the said uses; now, if afterwards he revokes them, he is seised again in fee, without entry or claim: But in case of a feoffment or other conveyance, whereby the feoffee or grantee is in by the Common Law, such proviso would be merely repugnant and void. 1 Inst. 237. See title Uses.

Voluntary estates made with power of Revocation, as to purchasers, are held in equal degree with conveyances made by fraud and covin to defraud purchasers, under Stat. 27 Eliz. c. 4: 3 Rep. 82. See title Frauds.

Where a power of Revocation is reserved for a man to dispose of his own estate, it shall always have a favourable construction; but it shall be taken strictly when it is to charge the estate of another. 2 Vent. 250.

If power is reserved to a man to revoke a deed by writing, subscribed and sealed in the presence of two or more credible witnesses: if he makes his will in writing, without making any express Revocation, it will be a good Revocation, and the will a good execution of the power. Hob. 312: Raym. 295. But see title Power.

If a person make a feoffment in fee, or levy a line, &c. of the lands, before the deed of Revocation is executed; these amount to a Revocation in law, and extinguish the power of Revocation. 1 Vent. 371: 1 Rep. 111. —Power of Revocation may be released; and where a man has an entire power of Revocation, and he suspends or extinguishes it as to part, he may revoke as to the residue, if the conveyance was by way of use; but not where a condition is annexed to the land. 1 Rep. 174: Moor. 615.

A will is revocable; and a last will revokes the former: And a new
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publication of the first will, if made in due form, will revoke the last. Perk. 479: 2 Sid. 2: 3 Mod. 207. See title Wills.

Letters of attorney and other authorities may be revoked, by the persons giving the powers; and as they are revocable in their nature, it has been adjudged, that they may be revoked, though they are made irrevocable. 8 Refs. 82: Wood’s Inst. 286. These Revocations of all powers regularly must be made after the same manner they are given; and there ought to be notice to the party, &c. But if once the power be executed, a Revocation after will come too late. Dyer 210.

A warrant of attorney from a defendant to appear and accept a declaration and plead for the defendant, may not be revoked with an intent to stay the plaintiff’s proceedings; but the defendant on good cause shewn to the Court may change his attorney, so as he plead by another in due time. 2 Lit. 486.

As to the Revocation of Letters of Administration, and Presentations to benefices, see those titles.

REVOCATIONE PARLIAMENTI, An antient writ for recalling Parliament: and anno 5 Ed. 3. the Parliament being summoned, was recalled by such writ before it met. Prynn’s Animad. on 4 Inst. fol. 44. See title Parliament.

REWARDS. In order to encourage the apprehending of certain felons, Rewards, and immunities are bestowed on such as bring them to justice, by divers statutes. The stat. 4 & 5 W. & M. c. 8. enacts, That such as apprehend a highwayman, (and by stat. 6 Geo. 1. c. 23.) highway robbers in the streets of London, or other towns, and prosecute him to conviction, shall receive a reward of 40l. from the public; to be paid to them (or, if killed in the endeavour to take him, their executors) by the sheriff of the county; besides the horse, furniture, arms, money, and other goods taken upon the person of such robber; with a reservation of the right of any person from whom the same may have been stolen: to which stat. 8 Geo. 2. c. 16. superadds 10l. to be paid by the hundred indemnified by such taking. By stat. 6 & 7 W. 3. c. 17: 15 Geo. 2. c. 28. persons apprehending and convicting any offender against those statutes respecting the coinage, (shall in case the offence be treason or felony) receive a Reward of forty pounds; or ten pounds, if it only amount to counterfeiting the copper coin. By stat. 10 & 11 W. 3. c. 23. any person apprehending and prosecuting to conviction a felon guilty of burglary, house-breaking, horsestealing, or private larceny to the value of 5s., from any shop, warehouse, coach-house, or stable, shall be excused from all parish offices: (which is vulgarly termed, having a Tyburn-ticket): And by stat. 5 Ann. c. 31. any person so apprehending, and prosecuting a burglar, or felonious housebreaker, (or, if killed in the attempt, his executors,) shall also be entitled to a Reward of 40l. By stat. 6 Geo. 1. c. 23. persons discovering, apprehending, and prosecuting to conviction, any person taking Reward for helping others to their stolen goods, shall be intituled to 40l.—By stat. 14 Geo. 2. c. 6. explained by stat. 15 Geo. 2. c. 34. any person apprehending and prosecuting to conviction, such as steal, or kill with intent to steal, any sheep, lamb, bull, cow, ox, steer, bullock, heifer, or calf, shall for every such conviction receive a Reward of 10l.—Lastly, by stats. 16 Geo. 2. c. 15: 8 Geo. 3. c. 15. persons discovering, apprehending, and convicting felons, and others, being found at large during the term for which they are ordered to be transported, shall receive a Reward of 20l.

The stats. 4 & 5 W. & M. c. 8: 6 & 7 W. 3. c. 17: 5 Ann. c. 31:
together with stat. 3 Geo. 1. c. 15. § 4, which directs the method of reimbursing the sheriffs, are extended to the county palatine of Durham, by stat. 14 Geo. 3. c. 46.

In the spirit of the above statutes, the stats. 9 Geo. 1. c. 22: 10 Geo. 2. c. 32. allow a recoupment of 50l. to persons maimed in endeavouring to apprehend offenders against the Black act, destroyers of seabanks, cutters of hopbinds, and firers of collieries. And by stat. 19 Geo. 2. c. 34. several strong regulations are made for recompensing persons wounded or plundered by smugglers; and Rewards of 50l. are given to accomplices in smuggling, discovering two or more offenders; and one of 500l. for detecting proclaimed smugglers in certain cases.

REW, A term among clothiers, signifying cloth unevenly wrought, or full of Rewes. See stat. 43 Eliz. cap. 10.

RHANDIR, A part in the division of Wales before the Conquest: Every township comprehended four gavels, and every gavel had four Rhandirs, and four houses or tenements constituted every Rhandir. Taylor's Hist. Gov. p. 69.

RIAL, from the Span. Reale, i. e. Real Money, because it is stamped with the King's effigies: In England, a Rial was a piece of gold coin, current for 10s. in the reign of King Henry VI. at which time there were Half Rials passing for 5s. and Quarter Rials, or Rial Farthings, going for 2s. 6d. In the beginning of Queen Elizabeth's reign, golden Rials were coined at 1s. a-piece; and 3 Jac. I. there were Rose Rials of gold at 30s. Spur Rials at 1s. Lowndes's Essay on Coins. p. 38.

RIBAUD, Fr. Ribaud, Ribaldus.] A rogue, vagrant, whoremonger, or person given to all manner of wickedness: Anno 50 E. 3. there was a petition in parliament against Ribauds and sturdy beggars.

RICE, As to the importation of, see titles Navigation Acts; Customs on Merchandise.

RIDER-ROLL, A schedule, or small piece of parchment, often added to some part of a roll, record, or act of parliament.

RIDGE-WASHED KERSEY, Kersey cloth made of fleece wool, washed only on the sheep's back. See stat. 35 Eliz. c. 10.

RIDING ARMED; See Armour and Arms.

RIDING CLERK, One of the six Clerks in Chancery, who in his turn, for one year, keeps the controilment-books of all grants that pass the Great Seal. Blount.

RIDINGS, corrupted from Trithings.] Are the names of the parts or divisions of Yorkshire, which are three, viz. East-Riding, West-Riding, and North-Riding, mentioned in stat. 22 Hen. 8. c. 5: And, in indictments for offences in that county, the town and the Riding must be expressed, &c. West. Symb. p. 2. See 1 Comm. 116: and this Dictionary, titles Rafe; Registry of Deeds.

RIENS ARREAR, A plea used in an action of debt for arrearages of account, whereby the defendant alleges that there is nothing in arrear. Book Entr. See titles Account; Issue; Pleading.

RIENS PASSE PER LE FAIT, Nothing passes by the Deed; The form of an exception taken in some cases to an action. Broke. See title Pleading.

RIENS PER DESCENT, The plea of an heir, where he is sued for his ancestor's debt, and hath no land from him by Descent, or assets in his hands. 3 Cro. 151. In an action of debt against the heir, who
pleads *Riens per Descent*, judgment may be had presently; and when assets descend, a *seire facias* lies against the heir, &c. 8 Rep. 134. See title Heir.

RIER COUNTY, Retro Comitatus, from the Fr. Arrear, i. e. posterior.] Is opposed to full and open county; and appears to be some public place, which the sheriff appoints for receipt of the King’s money, after the end of his county-court. See stat. 2 Ed. 3. c. 5: and also stat. West. 2. 13 Ed. 1. c. 38: Fleta, l. 2. c. 67.

RIFFLARE, from the Saxon, riefe, rafina.] To take away any thing by force; from whence comes our English word rifle. Leg. Hen. 1. c. 57.

RIFFLUAR, A slight wound in the flesh. Fleta, lib. 1. c. 41.

RIGHT, Jus.] In general signification, includes not only a Right for which a writ of Right lies, but also any title or claim, either by virtue of a condition, mortgage, or the like, for which no action is given by law, but only an entry. Co. Litt. l. 3. c. 8 § 445.

There is *jus proprietatis*, a Right of property, *jus possessionis*, a Right of possession; and *jus proprietatis & possessionis*, a Right both of property and possession; and this was antiently called *jus duplicatum*: For example, if a man be disseised of an acre of land, the disseissee hath *jus proprietatis*, the disseisor hath *jus possessionis*; and if the disseissee release to the disseisor, he hath *jus proprietatis & possessionis*. Co. Litt. l. 3. § 447. See Title.


The disseisor has only the naked possession, because the disseissee may enter and evict him; but against all other persons the disseisor has Right, and in this respect only can be said to have the Right of possession; for in respect to the disseissee, he has no right at all. But when a descent is cast, the heir of the disseisor has *jus possessionis*, because the disseissee cannot enter upon his possession, and evict him, but is put to his real action, being the freehold cast upon the heir. The notions of the law do make this title to him, that there may be a person in being to do the feudal duties, to fill the possession, and to answer the actions of all persons whatever; and since it is the law that gives him this Right, and obliges him to these duties; antecedent to any act of his own, it must defend such possession from the act of any other person whatever; till such possession be evicted by judgment; which being also the act of law may destroy the heir’s title. Gibl. Ten. 18. See further, titles *Estate; Property; Release; Title*.

There is also a present and future Right; a *jus in re*, which may be granted to a stranger; and what is called a naked Right, or *jus ad rem*, where an estate is turned to a Right, on a discontinuance, &c. Co. Litt. 345.

Right doth also include an estate in *esse* in conveyances; and therefore if tenant in fee-simple makes a lease and release of all his Right in the land to another, the whole estate in fee passes. Wood’s Inst. 115, 116.

Sir Edward Coke tells us, That of such an high estimation is Right, that the law preserveth it from death and destruction; trodden down it may be, but never trodden out: And there is such an extreme enmity between an estate gained by wrong and an antient Right, that the Right cannot possibly incorporate itself with the estate gained by wrong. 1 Inst. 279: 6 Rep. 70: 8 Rep. 105. A Right may sometimes
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sleep, though it never dies; a long possession, exceeding the memory of man, will make a Right; and if two persons are in possession by divers titles, the law will adjudge the possession in him that hath the Right. Co. Litt. 478; 6 Litt. § 158: When there is no remedy, there is presumed to be no Right by law. Vaugh. 38.

Right Close, Writ of; See title Recto, Writ of Right.

Right Close, secundum Consuetudinem Manerii.] A writ which lies for the King's tenants in antient demesne, and others of a similar nature, to try the Right of their lands and tenements in the court of the lord exclusively. See Writ.

Right in Court; See Rectus in Curia.

Rights and Liberties; See title Liberty.

RINGE, Saxon, Rynge.] A water-course, or little stream, which rises high with floods.

RINGA, A military girdle; from the Sax. Ring, i. e. annulus circulus, because it was girt round the middle: But, according to Bracton, Ringa enim dicuntur quod renes circundant, unde dicitur accingere gladio. Bract. lib. 1. c. 8.

RINGHEAD, An engine used in stretching of cloth. See stat. 43 Eliz. c. 10.

RINGILDRE, A kind of bailiff or serjeant; and such Rhingyl signifies in Welsh. Chart. Hen. 7.

RIOT;

Rout; and Unlawful Assembly.

Riot, Riota and Riotum, from the French, Riotte; quod non solum rixam & jurgium significat, sed vinculum etiam, quo plura in unum, fasciculorum instar, colligantur.] The forcible doing of an unlawful thing by three, or more persons assembled together for that purpose. West. Symbol. part 2. title Indictments, § 65.

The difference, between a Riot, Rout, and unlawful Assembly, see in Lamb. Eiren. lib. 2. c. 5: Kitchin 19; the latter of whom gives these examples of Riots; the breach of inclosures, banks, conduits, parks, pounds, houses, barns, the burning of stacks of corn, &c. Lamb. ubi supra, mentions these; to beat a man, to enter upon a possession forcibly. Cowell.

I. What are considered as Riots, Routs, and unlawful Assemblies, at Common Law.

II. The Punishment of these Offences: And the Provisions against them, by statute Law.

I. Holt, Ch. J. in delivering the opinion of the Court, said, That the books are obscure in the definition of Riots, and that he took it, that it is not necessary to say, they assembled for that purpose; but there must be an unlawful assembly; and as to what act will make a Riot or trespass, such an act as will make a trespass will make a Riot; as, if a number of men assemble with arms, in terrem hotful, though no act is done; so if three come out of an alehouse, and go armed. 11 Mod. 116, 117. See Hob. 91.

Hawkins says, a Riot seems to be a tumultuous disturbance of the peace by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a pri
rioter, I. private nature; and afterwards actually executing the same in a violent turbulent manner to the terror of the people, whether the act intended was of itself lawful or unlawful. 1 Hawk. P. C. c. 65. § 1.

A riot seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intent to do a thing, which, if it was executed, would make them rioters, and actually making a motion towards the execution thereof; but, by some books, the motion of a riot is confined to such assemblies only as are occasioned by some grievance common to all the company, as the inclosure of land, in which they all claim a right of common, &c. However, inasmuch as it generally agrees with a riot, as to all the rest of the above-mentioned particulars, requisite to constitute a riot, except only in this, that it may be a complete offence without the execution of the intended enterprise, it seems not to require any farther explication. 1 Hawk. P. C. c. 65. § 8.

An unlawful assembly, according to the common opinion, is a disturbance of the peace by persons rarely assembling together, with an intention to do a thing; which, if it was executed, would make them rioters, but neither actually executing it, nor making a motion towards the execution of it; but (says Hawkins) this seems to be much too narrow a definition; for any meeting whatsoever of great numbers of people, with such circumstances of terror, as cannot but endanger the public peace, and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly; as where great numbers, complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an assembly. 1 Hawk. P. C. c. 65. § 9.

These offences are thus defined and distinguished by Blackstone: An unlawful assembly is, when three or more do assemble themselves together to do an unlawful act, as, to pull down inclosures, to destroy a warren, or the game therein; and part, without doing it, or making any motion towards it. 3 Inst. 176. A riot is where three or more meet to do an unlawful act upon a common quarrel; as, forcibly breaking down fences, upon a right claimed of common, or of way, and make some advances towards it. Bro. Abr. title riot 4, 5. A riot, is where three or more actually do an unlawful act of violence, either with or without a common cause or quarrel: 3 Inst. 176: As if they beat a man, or hunt and kill game in another's park, chase, warren, or liberty: or do any other unlawful act, as removing a nuisance in a violent and tumultuous manner. 4 Comm. c. 11. p. 146.

If a man be in his house, and he hears that J. S. will come to his house to beat him, he may well make an assembly of people of his friends and neighbours to assist and aid him in safe keeping his person. Per Fineux, Ch. Jus. Br. Riots, pt. 1. cites 21 Hen. 7. 39.

But if a man be menaced or threatened, that if he comes to the market of B. or to W. that he shall be beat, he cannot make an assembly of people to assist him to go there, and this in safeguard of his person; for he need not go there, and he may have remedy by surety of the peace; but the house of a man is to him his castle and his defence, and where he properly ought to abide, &c. Br. Riots, pt. 1, cites 21 Hen. 7. 39.

Hawkins, citing the above case, remarks, That such violent methods
cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace.——Though a man may ride with arms, yet he cannot take two with him to defend himself, even though his life is threatened; for he is in the protection of the law, which is sufficient for his defence. See 1 Hawk. P. C. c. 65. § 10: Dalt. J. c. 137: 11 Mod. 116, 117.

If a number of people be assembled together in a lawful manner, and upon a lawful occasion, as for electing a Mayor, or the like, and during the assembly a sudden affray happens, this will not make it a Riot ab initio; but it is only a common affray. Ld. Raym. 965.

If a number of people assemble in a riotous manner to do an unlawful act, and a person, who was upon the place before upon a lawful occasion, and not privy to their first design, comes and joins himself with them, he will be guilty of a Riot equally with the rest. Ld. Raym. Refh. 965.

If several are assembled lawfully without any ill intent, and an affray happens, none are guilty but such as act; but if the assembly was originally unlawful, the act of one is imputable to all. Per Holt; Ch. J. 2 Satk. 595.

It seems agreed, that if a number of persons, being met together at a fair, or market, or church-ale, or any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a Riot, but of a sudden affray only, of which none are guilty, but those who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly without any previous intention concerning it; yet it is said that if persons innocently assemble together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promise of mutual assistance, and then make affray, they are guilty of a Riot; because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design; however, it seems clear, that if, in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal shall be started of going together in a body to pull down a house or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to and executed accordingly, the persons concerned cannot but be Rioters, because their associating themselves together for such a new purpose is no way extenuated by their having met at first upon another.

1 Hawk. P. C. c. 65. § 3.

II. The punishment of unlawful Assemblies, if to the number of twelve, may, as hereafter fully noticed, be capital; according to the circumstances that attend them; but from the number of three to eleven, is by fine and imprisonment only. The same is the case in Riots and Routs by the common law; to which the pillory, in very numerous cases, has been sometimes superadded 4 Comm. c. 11.

By statute 34 E. 3. c. 1. Justices of the peace have power to restrain Rioters, &c. to arrest and imprison them, and cause them to be duly punished. By stat. 17 R. 2. c. 8. the sherif, and other the King's ministers, generally have power to arrest Rioters with force. And by stat. 18 H. 4. c. 7. any two justices, together with the sherif or
under-sheriff of the county, may come with the *fideicommis* of the whole transaction; which record alone shall be a sufficient conviction of the offenders: And if the offenders be departed from, the said justices, &c. shall within a month after, make inquiry thereof, and hear and determine the same; and if the truth cannot be found, then, within a further month, the justices and sheriffs are to certify to the King and council; &c. on default whereof the justices, &c. shall forfeit 100l.

These statutes are understood of great and notorious Riots: And the record of the Riot within the view of the justices, by whom it is recorded, is such a conviction as cannot be traversed, the parties being concluded thereby; but they may take advantage of the insufficiency of the record, if the justices have not pursued the statute, &c. It is said that the offenders being convicted upon the record of their offence, in the presence of the justices, ought to be sent immediately to gaol, till they pay a fine assessed by the same justices; which fine is to be estreated into the exchequer; or the justices may record such Riot, and commit the offenders, and after certify the record into B. R. or to the assizes or sessions: If the offenders are gone, then the justices shall inquire by a jury; and the Riot being found, they are to make a record of it, and fine them, or receive their traverse, to be sent by the justices to the next quarter sessions, or into the King's Bench, to be tried according to Law. Datt. 200, 201, 202.

It hath been adjudged, that where Rioters are convicted upon the view of two justices, the sheriff must be a party to the inquisition on the *stat.* 13 Hen. 4. c. 7. But if they disperse themselves before conviction, the sheriff need not be a party; for in such case the two justices may make the inquisition without them; and this is *pro domino Rege*: And if the justices neglect to make an inquisition within a month after the Riot, they are liable to the penalty for not doing it within that time; but the lapse of the month doth not determine their authority to make an inquisition afterwards. 2 *Salb.* 592.

In the interpretation of the above *stat.* 13 Hen. 4. c. 7. it hath also been held, that all persons, noblemen and other, except women, clergymen, persons decrepit, and infants under fifteen, are bound to attend the justices, in suppressing a Riot, upon pain of fine and imprisonment: And that any battery, wounding, or killing the Rioters, that may happen in suppressing the Riot, is justifiable. 1 *Hal.* P. C. 495: 1 *Hawk.* P. C. c. 65. § 20, 21.

On the above, *Blackstone* remarks, that our antient law seems pretty well to have guarded against any violent breach of the public peace; especially as any Riotous Assembly, on a public or general account, as to redress grievances, or pull down all inclosures, and also resisting the King's force, if sent to keep the peace, may amount to overt acts of high treason, by levying war against the King.—This observation will appear confirmed, by a statement of the following statutes, also made on this subject. And see further 1 *Hawk.* P. C. c. 65.

Rioters convicted on view of two justices, and of the sheriff of the county, are to be fined by the two justices and the sheriff; and if the sheriff do not join in setting the fine, it is error; for the statute requires that he should be joined with the justices in the whole proceedings. *Raym.* 386. By *stat.* 2 *Hen.* 5. st. 1. c. 8. If the Justices
RIOT, II.

make default in inquiring of a Riot, at the instance of the party griev-
ed, the King's commission shall be issued to inquire as well of the
Riots as of the default, by sufficient and indifferent men of the county,
at the discretion of the chancellor; and in case the sheriff is in de-
fault, the coroners shall make the panel of inquest upon the said
commission, which is returnable into the chancery, &c. and by this
statute heinous Rioters are to suffer one year's imprisonment.

The lord chancellor, having knowledge of a Riot, may send the
King's writ to the justices of peace, and to the sheriff of the county, &c. requiring them to put the statute in execution; and the
chancellor, upon complaint made, that a dangerous Riotor is fled
into places unknown. And on suggestion, under the seals of two
justices of peace and the sheriff, that the common fame runneth
in the county of the Riot, may award a caufias against the parties, re-
turnable in chancery upon a certain day, and afterwards a writ of
proclamation, returnable in the King's Bench, &c. Stat. 2 H. 5. st. 1.
c. 9: 8 H. 6. c. 14.

Where Riots are committed, the sheriff, upon a precept directed
to him, is to return twenty-four persons, dwelling within the county,

A mayor and alderman of a town making a Riot, are punishable in
their natural capacities; but where they have countenanced danger-
ous Riots within their precincts, their liberties have been seised, or
the corporation fined. 3 Cro. 252: Dalt. 204. 326. Women may be
punished as Rioters; but infants under the age of fourteen years are

The riotous assembling of twelve persons, or more, and not dis-
persing upon proclamation, was first made high treason by stat. 3 &
4 Edw. 6. c. 5. when the King was a minor; and a change in religion
to be effected; but that statute was repealed by stat. 1 Mar. c. 1.
among the other treasons created since the 25 Ed. 3. though the
prohibition was in substance re-enacted, with an inferior degree of
punishment by stat. 1 Mar. st. 2. c. 12. which made the same
offence a single felony. These statutes specified and particularized
the nature of the Riots they meant to suppress; as for example, such
as were set on foot with intention to offer violence to the privy
council, or to change the laws of the kingdom, or for certain other
specific purposes: in which cases, if the persons were commanded by
proclamation to disperse, and they did not, it was by the statute of
Mary made felony, but within the benefit of clergy; and the act also
indemnified the peace-officers and their assistants, if they killed any
of the mob in endeavouring to suppress such Riot. This was thought
a necessary security in that sanguinary reign, when popery was in-
tended to be re-established, which was like to produce great dis-
contents; but at first it was made only for a year, and was afterwards
continued for that Queen's life. And by stat. 1 Eliz. c. 16. when a
reformation in religion was to be once more attempted, it was re-
vived and continued during her life also; and then expired. From the
accession of James I. to the death of Queen Anne, it was never once
thought expedient to revive it: but, in the first year of George I. it
was judged necessary, in order to support the execution of the act
of settlement, to renew it, and at one stroke to make it perpetual,
with large additions. For, whereas the former acts expressly defined
and specified what should be accounted a Riot, the statute 1 Geo. 1.
RIOT, II.

st. 2. c. 5. enacts, generally, That if any persons, to the number of

12, are unlawfully assembled, to the disturbance of the peace, and

any one justice of the peace, sheriff, under-sheriff, or mayor of a
town, shall think proper to command them by proclamation to

disperse, if they contemn his orders, and continue together for one hour

afterwards, such contempt shall be felony without benefit of clergy.

And farther, if the reading of the proclamation be by force opposed,
or the reader be in any manner wilfully hindered from the reading of
it, such opposers and hinderers are felons without benefit of clergy:

and all persons to whom such proclamation ought to have been made,
and knowing of such hindrance, and not dispersing, are felons with-
out benefit of clergy. There is in this act also an indemnifying clause,
in case any of the mob be unfortunately killed in the endeavour to
disperse them; and, by a subsequent clause, if any person, so riotously
assembled, begin, even before proclamation, to pull down any church,
chapel, meeting-house, dwelling-house, or out-houses, they shall be
felons without benefit of clergy: and inhabitants of towns and hundreds
are to yield damages for rebuilding or reparation, to be levied and
paid in such manner as money recovered against the hundred, by
persons robbed on the highway, &c. (and see as to the mode of lev-
ying such money, 5 Term Rep. K. B. 541.) Prosecutions on this act
are to be commenced within one year after the offence: This statute,
being wholly, in the affirmative, doth not take away any authority in
the suppressing a Riot by Common law, or by other statutes. Wood's
Inst. 430. See 4 Comm. 125. 433.

The owners of houses may recover damages for the destruction of
their furniture, or for any injury to their property, done at the same
time that the buildings are demolished, or in part pulled down.

A person, present aiding and abetting Rioters, is a principal in the
second degree under this statute. 4 Burr. 2073.

The Hundred is not liable in an action for damages brought by a
person injured by a mob beginning to pull down his house, &c. unless
the Riot be of such a kind as to amount to felony within stat. 1 Geo.
1. st. 2. c. 5. The breaking the plaintiff’s windows by a mob because
he would not illuminate his house on a particular occasion was held
not within the act. 7 Term Rep. K. B. 496.

Where a mob attacked a baker’s house and broke his windows and
compelled him to sell flour at a price named by themselves below the
marketable value; this was held evidence for the jury of a felonious
beginning to demolish the house; and that the plaintiff might be
allowed to recover for the damage done to the house, but not for
the value of the flour sold. 1 East’s Rep. 615. But the value of flour
spoiled, on the premises, may be recovered in such action. 1 East’s
Rep. 636.

To support an action against the hundred for a riotous demolition
of a house it is not necessary to prove that twelve rioters were as-
sembled at the time. 5 Term Rep. K. B. 14. And such action may be
sustained by a trustee in whom the legal estate of the house is vest-
ed. Id.

Nearly related to this head of Riots, is the offence of Tumultuous
Petitioning; which was carried to an enormous height in the times
preceding the grand rebellion. Wherefore, by stat. 13 Car. 2. st. 1.
c. 5. It is enacted, That not more than twenty names shall be signed
to any petition to the King, or either house of parliament, for any
alteration of matters, established by law, in church or state; unless
the contents thereof be previously approved, in the country, by three
justices, or the majority of the grand jury at the assizes or quarter
sessions; and in London, by the Lord mayor, aldermen, and common
council; and that no petition shall be delivered by a company of more
than ten persons, on pain, in either case, of incurring a penalty not
exceeding 100l. and three months' imprisonment. See this Diction-
ary, titles Petition; Liberty.

Proceedings of the same nature, and manifestly tending to the
same end, as the tumultuous petitions above alluded to, had arrived
to such a height in the year 1795, that the legislature found it neces-
sary to interpose by a temporary act, 36 Geo. 3. c. 8. for more effect-
ually preventing seditious meetings and assemblies. But this act,
after being revived by 41 Geo. 3. c. 30. (for a short period) was allow-
ed to expire.

A Record of a Riot on View.

BE it remembered, That on the — day of, &c. in the — year
of the reign of our Sovereign Lord George the Third, now King of
Great Britain, &c. We A. B. and C. D. Esquires, two of the Justices
of our said Lord the King assigned to keep the peace in the county of,
&c. aforesaid, and E. F. Esquire, then sheriff of the said county, upon
the complaint and humble supplication of L. B. of, &c. in the county
aforesaid, in our own proper persons have come to the mansion-house of
the said L. B. in the parish, &c. in the county aforesaid; and then and
there do find G. H. of, &c. and J. K. and L. M. of, &c. in the county
aforesaid, and other malefactors and disturbers of the peace of our said
Lord the King, to us unknown, to the number of — persons, armed
with swords, staves, &c. unlawfully, riotously and routously assembled
at the said house, and the same house besetting, threatening great da-
mage to the said L. B., to the disturbance of the peace of the said Lord
the King, and terror of his people, against the form of the statute, &c.
And therefore we the said A. B. and C. D. do then and there cause the
said G. H., J. K., and L. M. to be arrested, and carried to the next
great of our said Lord the King in the county aforesaid, by our view and
record, being convicted of the unlawful assembly, riot, and rout aforesaid,
there to remain every and each of them respectively, until they
shall severally and respectively have paid to our said Lord the King
the several sums of 10l. each, which we do impose upon them and every
of them separately for their said offences. In witness whereof we have
set our seals to this our present record, dated at, &c. aforesaid, the day
and year above-mentioned.

Form of an Inquisition of a Riot.

South'ton, ss. AN Inquisition for our Sovereign Lord the King,
taken at, &c. in the county aforesaid, the — day of, &c. in the — year
of the reign, &c. by the oath of A. B., C. D., E. F., G. H., &c.
(the jury) honest and lawful men of the said county, before T. D. and
J. B. Esquires, two justices of our said Sovereign Lord the King, as-
signed to keep the peace in the said county, &c. Which said jurors upon
their oath aforesaid say, that J. K. of, &c. L. M., N. O., &c. and other
malefactors and disturbers of the peace of our said Lord the King, to
the said jurors unknown, on the — day of, &c. last past, with force
and arms, that is to say, with swords, staves, &c. and other offensive
weapons, unlawfully, riotously and routously did assemble to disturb
the peace of our said Lord the King: And, so being then and there assembled, into the messuage of T. W. in the parish, &c. aforesaid, in the said county, between the hours, &c. of the same day, unlawfully, riotously and routously entered, and him the said T. W. assaulted, beat and wounded, to the great disturbance of the peace of our said Lord the King, and terror of his people; and against the form of the statute in such case made and provided.

An Indictment for a Riot.

THE Jurors, &c. do present, that J. K. late of, &c. in the county of, &c. aforesaid, yeoman, L. M. late of, &c. and N. O. late of, &c. and divers other persons, (to the Jurors aforesaid yet unknown) on the day, &c. in the year of the reign, &c. at, &c. with force and arms, unlawfully, riotously and routously did meet, assemble and gather together, to disturb the peace of our said Lord the King; and being so assembled and met together, did then and there unlawfully, riotously and routously make an assault upon one L. B. then being in the peace of God and of our said Sovereign Lord the King; and then and there beat, wounded, and evilly treated the said L. B. and other injuries did to him, to the great damage of the said L. B. and against the peace of our said Lord the King, his crown and dignity, &c.

Proclamation for Rioters to disperse.

OUR Sovereign Lord the King, chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peacefull to depart to their habitations, or to their lawful business, upon the pains contained in the Act, made in the 1st year of King George, for preventing Tumults and Riotous Assemblies.

God save the King!

For other forms, see Burn's Justice, title Riot.

RIPARIA, from ripa, a bank of a river.] A river; or water running between the banks. Magna. Cart. c. 5: stat. Westm. 2. c. 47: 2 Inst. 478. It has usually been translated a Bank, but this seems erroneous. Aqua vocata le Lee, magna Riparia existit, is a great river. Rot. Parl.

RIPIERS, ripariis, à fiscellâ, quâ in devehendia piscibus utuntur, Anglice, a rip.] Those that bring fish from the sea coast to the inner parts of the land. Camd. Britan. 234.

RIPPERS, Reapers or cutters down of corn: Hence Riptowel was a gratuity or reward given to customary tenants when they had reaped their lord's corn. Cowell.

RIVAGIUM, rivage, or riverage.] A duty paid to the King on some rivers for the passage of boats or vessels.——Quieti sint ab omni lastagio, passagio, tallagio, rivagio, &c. Placit. temp. Ed. 1.

RIVEARE, To have the liberty of a river for fishing and fowling. Pat. 2 Ed. 1.

RIVERS, By the statute of Westm. 2. c. 47. The King may grant commissions to persons to take care of Rivers, and the fishery therein:——The Lord Mayor of London is to have the conservation in breaches and ground overflown as far as the water ebb and flows in the River Thames. Stat. 4 Hen. 7. c. 15.——Persons annoying the River Thames, making shelves there, casting dung therein, or taking away stakes, boards, timber-work, &c. off the banks, incurred a for-
feiture of 5l. under stat. 27 Hen. 8. c. 18. Commissioners appointed to prevent exactions of the occupiers of locks, weirs, &c. upon the River Thames westward from the City of London, to Cricklake, in the county of Wilts, and for ascertaining the rates of water carriage, on the said River, &c. stat. 6 & 7 W. 3. c. 16. Which statute was revived with authority for the commissioners to make orders and constitutions, to be observed under penalties, &c. stats. 3 Geo. 2. c. 11: 24 Geo. 2. c. 8.

As to annoyances in Rivers, either positively by actual obstructions, or negatively, by want of reparations, the persons so obstructing, or such individuals, as are bound to repair and cleanse them, or (in default of these last) the parish at large, may be indicted, distraint ed to repair and amend them, and in some cases fined. 4 Comm. 167. See title Nuisance.

By stats. 6 Geo. 2. c. 37: 10 Geo. 2. c. 32. it is made felony, without benefit of clergy, maliciously to cut down any River or sea-bank, whereby lands may be overflowed. See title Mischief, Malicious. By stat. 1 Geo. 2. st. 2. c. 19. (now expired,) To destroy the toll-houses, or any sluice or lock on any navigable River, was made felony to be punished with transportation for seven years. And by stat. 3 Geo. 2. c. 20, Destroying sluices upon Rivers, or rescuing any person in custody for the same, is made felony without benefit of clergy, and the offence may be tried as well in an adjacent county, as in that where the fact is committed. By stat. 4 Geo. 3. c. 12. Maliciously to damage or destroy any banks, sluices, or other works on such navigable River, to open the flood-gates or otherwise obstruct the navigation, is again made felony, punishable with fourteen years' transportation. Persons may justify the going of their servants or horses upon the banks of navigable Rivers, for towing of barges, &c. to whomsoever the right of the soil belongs. 1 Ld. Raym. 725.

The public are not entitled at Common Law to tow on the banks of antient navigable Rivers; such right must be founded either on statute or usage. 3 Term Ref. K. B. 253.—An antient towing path on the bank of a River, is not within the jurisdiction of commissioners, under the general terms of an Inclosure act. 2 Bos. & Pul. 296.

The owner of land through which a River runs, cannot by enlarging a channel of certain dimensions, through which the water had been used to flow, before any appropriation of it by another, divert more of it to the prejudice of any other land-owner lower down the River, who had at any time, before such enlargement, appropriated to himself the surplus water, which did not escape by the former channel. 6 East's Ref. 209.

RIVERS making navigable, and Canals: Divers acts of parliament pass for this purpose every session, which it would be no less tedious than useless to particularize in such a work as the present.

ROBA, A robe, coat, or garment. Walsingham. 267. See Retainer. ROBBERY, Robaria.] A felonious taking away of another man's goods, from his person or in his presence, against his will, by putting him in fear, and of purpose to steal the same. West's Symbol, part 2. title Indictments. § 60. And this offence was called Robbery, either because they bereaved the true man of some of his robes or garments, or because his money or goods were taken out of some part of his garment or robe about his person. Co. 3 Inst. c. 16. This is sometimes called violent theft. West. Symbol, ub. sup.: Kitchin. fol. VOL. V. 3 Z
Robbery is a felony by the Common Law, committed by a violent assault, upon the person of another, by putting him in fear, and taking from his person his money, or other goods of any value whatsoever. 3 Inst. 68. c. 16.

What is or amounts to a Robbery in respect of the Manner, or the Person from whom any thing is taken.

Open and violent larceny from the person, or Robbery, is the felonious and forcible taking, from the person of another, of goods or money to any value, by violence or putting him in fear. 1 Hawk. P. C. c. 34. 1st, There must be a taking, otherwise it is no Robbery. A mere attempt to rob was indeed held to be felony, so late as Henry the Fourth's time: 1 Hal. P. C. 532. But afterwards it was taken to be only a misdemeanor, and punishable with fine and imprisonment; till the statute 7 Geo. 2. c. 21. which makes it a felony, (transportable for seven years,) unlawfully and maliciously to assault another, with any offensive weapon or instrument,—or by menaces, or by other forcible or violent manner, to demand any money or goods; with a felonious intent to rob. If the thief, having once taken a purse, return it, still it is a Robbery; and so it is, whether the taking be strictly from the person of another, or in his presence only: As, where a Robber by menaces and violence puts a man in fear, and drives away his sheep or his cattle before his face. 1 Hal. P. C. 533. But if the taking be not either directly from his person, or in his presence, it is no Robbery. Com. 478: Stra. 10. 15.

2dly, It is immaterial of what value the thing taken is: a penny as well as a pound, thus forcibly extorted, makes a Robbery. 1 Hawk. P. C. c. 34. § 5.

Lastly, The taking must be by force, or a previous putting in fear; which makes the violation of the person more atrocious than privately stealing. This previous violence, or putting in fear, is the criterion that distinguishes Robbery from other larcenies. For if one privately steals sixpence from the person of another, and afterwards keeps it by putting him in fear, this is no Robbery, for the fear is subsequent: Neither is it capital, as privately stealing, being under the value of twelve-pence. 1 Hal. P. C. 534. Not that it is indeed necessary, though usual, to lay in the indictment that the Robbery was committed by putting in fear; it is sufficient, if laid to be done by violence, and against the will of him robbed. Post. 128. And when it is laid to be done by putting in fear, this does not imply any great degree of terror or affright in the party robbed: It is enough that so much force, or threatening by word or gesture, be used, as might create an apprehension of danger, or induce a man to part with his property without or against his consent. Thus, if a man be knocked down without previous warning, and stripped of his property while senseless, though strictly he cannot be said to be put in fear, yet this is undoubtedly a Robbery. Or, if a person with a sword drawn begs an alms, and I give it him through mistrust and apprehension of violence, this is a felonious Robbery. 1 Hawk. P. C. c. 45. § 6. So if, under a pretense of sale, a man forcibly extorts money from another, neither shall this subterfuge avail him. But it is doubted, whether the forcing a higler, or other chapman, to sell his wares, and giving
ROBBERY.

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him the full value of them, amounts to so heinous a crime as Robbery.

2 Hawk. P. C. c. 34. § 7.

This species of larceny is debarred of the benefit of clergy by stat. 23 Hen. 8. c. 1. and other subsequent statutes; not indeed in general, but only when committed in a dwelling-house, or in or near the King's highway. A Robbery therefore in a distant field, or foot-path, was not punished with death; 1 Hal. P. C. 535. but was open to the benefit of clergy, till the stat. 3 & 4 W. & M. c. 9.; which takes away clergy from both principals and accessories before the fact, in Robbery, whereby committed. 4 Comm. c. 17. p. 243. 4. Principals and accessories, before the fact, were debarred of clergy by stat. 23 Hen. 8. c. 1. And accessories, after, by stat. 4 P. & M. c. 4. in the cases above-mentioned. The words of the stat. 23 Hen. 8. are still pursued in indictments for this offence. 1 Hawk. P. C. c. 34. § 11. n.

The circumstance of putting one in fear, makes the difference between a Robbery and a cut-purse; both take it from the person, but this takes it clam et secretè without assault or putting in fear, and the Robber by violent assault and putting in fear. 3 Inst. 68. c. 16.

Wherever a person assaults another, with such circumstances of terror as put him in fear, and causes him, by reason of such fear, to part with his money, the taking thereof is adjudged Robbery; whether there were any weapon drawn or not, or whether the person assaulted delivered his money upon the other's command, or afterwards gave it to him upon his ceasing to use force, and begging an alms; for he was put into fear by his assault, and gives him his money to get rid of him. 1 Hawk. P. C. c. 34. § 9.

In the case of Macdaniel and others, at the Old Bailey Sessions in December 1755, Mr. Justice Foster was of opinion, that if a man attacked by an highwayman and robbed, previous to the robbery resists, and is overpowered, without being under any fear at all, it is not the less Robbery upon that account. Foster. 128.

If the fact appear, upon the evidence, to have been attended with those circumstances of violence or terror which, in common experience, are likely to induce a man to part with his property against his consent, either for the safety of his person, or for the preservation of his character and good name, it will amount to a Robbery; and this, though no express demand of money is made. Thus if an officer feloniously take money from a prisoner, not to take him to gaol, under colour of authority: Or if one obtain property by threatening to accuse another of having been guilty of an unnatural crime, these acts, particularly the latter, on the solemn opinion of all the judges, have been held acts sufficient to raise, in the mind of the party menaced, such a terror and apprehension of mischief, as to constitute the offence of Robbery, by putting in fear. 1 Hawk. P. C. c. 34. § 6. Leach's note.

The following distinction has also been frequently admitted in prosecutions for Robbery; viz. That if any thing is snatched suddenly from the head, hand, or person of any one without any struggle on the part of the owner, or without any evidence of force or violence being exerted by the thief, it does not amount to Robbery. But if any thing is broken or torn in consequence of the sudden seizure, it would be evidence of such force as would constitute a Robbery: As where part of a lady's hair was torn away by snatching a diamond
pin from her head, and an ear was torn by pulling off an ear-ring, each of these cases was determined to be a Robbery. 4 Comm. c. 17. p. 244. n. cites Leach 238.

The words of the indictment, violenter et felonie ceptit, must be understood to imply that there is an actual taking in deed, and a taking in Law, and that may be when a thief receives, &c. For example: If thieves rob a true man, and finding but little about him, take it, this is an actual taking; and by threats of death compel him to swear upon a book to fetch them a greater sum, which he does and delivers it to them, which they receive, this is a taking in Law by them, and adjudged Robbery; for fear made him take the oath and the oath and fear continuing, made him bring the money, which amounts to a taking in Law; and in this case there needs no special indictment, but the general indictment (Quod violenter & felonie ceptit) is sufficient. And so it is, if at the first the true man for fear delivers his purse, &c. to the thief. 3 Inst. 68. c. 16.

See 1 Hawk. P. C. c. 34. § 4. That the theft must be in possession of the thing stolen, or otherwise he is not guilty of Robbery. 3 Inst. 69. c. 16. S. P.

The words of the indictment are from the person, &c. If the true man, seeking to escape for the safeguard of his money, casts it into a bush, which the thief perceiving, takes it: This is a taking in Law from the person, because it is done at one time. 3 Inst. 69. c. 16. And so, if one drive my cattle in my presence out of my pasture, or takes my hat, which fell from my head, he may be indicted as having taken things from my person. 1 Hawk. P. C. c. 34. § 8. See also 3 Inst. 69. c. 16. And. 116. Pl. 161: Sty. 156.

In some cases, a man may be said to rob me, where in truth he never actually had any of my goods in his possession; as where I am robbed by several in one gang, and one of them takes my money, in which case, in judgment of Law, every one of the company shall be said to take it, in respect of that encouragement which they give to another through the hopes of mutual assistance in their enterprise: Nay, though they miss of their first intended prize, and one of them afterwards rides from the rest, and robs a third person in the same highway, without their knowledge, out of their view, and then returns to them, all are guilty of Robbery; for they came together with an intent to rob, and to assist one another in so doing. 1 Hawk. P. C. c. 34. § 7.

If a carrier's man or son conspire to rob him, and do it accordingly, the carrier not being privy to it, he may sue the hundred on the statute of Winton; but the conspiracy may be given in evidence in mitigation of damages. Style 427.

If a man-servant be robbed of his master's goods, in his master's sight, this shall be taken for a robbing of the master. Style 156.

Taking cattle from A. which he is driving on the highway, is a taking from his person, and so a Robbery. 2 Salk. 651.

As to recovering against the Hundred, see this Dictionary, title Hue and Cry; And as to Robberies from the person without violence and others, see title Larceny. — Stealing privately from the person was by 8 Eliz. c. 4. made felony, without clergy; but this is repealed by 48 Geo. 3. c. 129. and persons guilty of stealing from the person without such force or putting in fear as is sufficient to
constitute the crime of Robbery, are punishable by transportation, or imprisonment to hard labour.

ROBBERSMEN, or ROBBERDSMEN, Were a sort of great thieves, mentioned in the statutes 5 Edw. 3. c. 14: 7 R. 2. c. 5: of whom Coke says, That Robin Hood lived in the reign of King Rich. I. on the borders of England and Scotland, by robbery, burning of houses, rapine and spoil, &c. and that these Robberdsmen took name from him. 3 Inst. 197.

ROCHET, That linen garment which is worn by bishops, gathered at the wrists; It differs from a surplice, for that hath open sleeves hanging down; but a Rochet hath close sleeves. Lindewode, lib. 3. tit. 27.

ROCK-SALT; See Salt.

ROD, Roda terrae.] A measure of sixteen feet and a half long, otherwise called a Perch.

ROD KNIGHTS, From the Sax. Rad. Equitatio & Cnyt, Famulus, quasi Ministri Equitantes.] Certain servitors who held their land by serving their lords on horseback. Bract. lib. 2. c. 35.

ROGATION-WEEK, Dies Rogationum; Robigalia.] A time so called, because of the special devotion of prayer and fasting then enjoined by the church for a preparative to the joyful remembrance of Christ's ascension. Cowell.

ROGUE, Fr.] An idle sturdy beggar, who, by antient statutes, for the first offence, was called a Rogue of the first degree, and punished by whipping, and boring through the gristle of the right ear, with a hot iron; and for the second offence, he was termed a Rogue of the second degree, and executed as a felon, if he were above eighteen years old; stats. 27 H. 8. c. 25: 14 Eliz. c. 5: but repealed by stat. 33 Eliz. c. 7. § 24: as relates to vagabonds of the second degree. See further title Vagrants.

ROGUS, Lat.] A funeral pile: A great fire wherein dead bodies were burned; and sometimes it is taken simply for a pile of wood. Claus. 5 Hen. 3.

ROLL, Rotulus.] A schedule of parchment that may be turned up with the hand in the form of a pipe. Staundf. P. C. 11. Rolls are parchments on which all the pleadings, memorials, and acts of Courts are entered and filed with the proper officer; and then they become records of the Court. 2 Litt. Abr. 491. By a rule made by the Court of King's Bench, every attorney is to bring in his Rolls into the office fairly engrossed by the times thereby limited, viz. The Rolls of Trinity, Michaelmas and Hilary terms, before the essoin day of every subsequent term; and the Rolls of Easter term before the first day of Trinity term; and no attorney at law, or any other person, shall file any Rolls, &c. but the clerks of the chief clerks of this court. Ord. B. R. Mich. 1705. If Rolls are not brought into the office in time, it has been ordered that they shall not be received without a particular rule of court for that purpose. Mich. 9 W. 3. See titles Practice; Pleadings.

ROLL of COURT, Rotulus Curiae.] The Court-roll in a manor, wherein the names, rents, and services of the tenants were copied and inrolled. See title Cotyhold.

ROLLS OFFICE OF THE CHANCERY, An office in Chancery Lane, London, which contains Rolls and records of the High Court of Chancery, the Master whereof is the second person in the Chancery,
Among these are the inrolments of acts of parliament, &c. See titles Chancery; Master of Rolls.

ROLLS OF THE EXCHEQUER, Are of several kinds, as the great Wardrobe Roll, the Cofferer's Roll, the subsidy Roll, &c. See title Exchequer.

ROLLS OF PARLIAMENT, The manuscript registers of the proceeding of our old Parliaments; in these Rolls are likewise a great many decisions of difficult points in law; which were frequently in former times, referred to the determination of this supreme Court by the Judges of both benches, &c. Nichol. Hist. Libr. part 3. cap. 3. edit. 1714. The inrolments of acts in chancery are sometimes termed Parliament Rolls, and sometimes Statute Rolls. See title Statutes.

ROLLS OF THE TEMPLE. In the two Temples is a roll called the Calves-head Roll, wherein every bencher, barrister, and student, is taxed yearly at so much to the cook and other officers of the houses, in consideration of a dinner of calves-head provided in Easter term. Orig. Jurid. 199.

ROMAN CATHOLICS. See Papists.


ROME, Church of, its encroachments of power here, and how suppressed. See titles Papists; Pope; Præmunire.

ROME-SCOT; See Peter-Pence.

ROMNEY-MARSH, A large tract of land in the county of Kent, containing 24,000 acres; and is governed by certain antient and equitable laws of sewers composed by Henry de Bathe, a venerable Judge in the reign of King Henry III.; from which laws all commissioners of sewers in England may receive light and direction. 4 Inst. 276. King Henry III. granted a charter to Romney-Marsh, empowering twenty-four men thereunto chosen, to make distresses equally upon all those who have lands and tenements in the said Marsh, to repair the walls, and water-gates of the same against the dangers of the sea. There are also several laws and customs observed in the said Marsh, established by ordinance of justices thereto appointed in 42 Hen. 3: 16 E. 1: 33 E. 3. &c. The commissioners of sewers, in other parts of England, may act according to the laws and customs of Romney-Marsh, or otherwise at their own discretion. See title Sewers.

ROÔD, or Holy Rood, Holy Cross.

ROOD OF LAND, Rodata Terra.] The fourth part of an acre.

ROOTS, Trees, shrubs, or plants. See this dict. title Mischief, Malicious.

ROPE-DANCERS, &c. are public nuisances, and may, upon indictment be suppressed and fined. 1 Hawk. P. C. 75. § 6. See title Play Houses.

ROS, A kind of rushes, which some tenants were obliged, by their tenures, to furnish their lords withal. Brady.

ROSE-TILE, Tile to lay upon the ridge of a house; is mentioned in the statute 17 Edw. 4. c. 4.

ROSETUM, A low watery place of reeds and rushes; and hence the covering of houses with a thatch made of reeds, was so called. Cartular. Glaston. MSS. 107.

ROSOLAND, Brit. Rhos.] Heathy land, or ground full of ling; also watery and moorish land. 1 Inst. 5.

ROTHER-BEASTS. Under this name are comprehended oxen,
cows, steers, heifers, and such like horned beasts. See stat. 21 Jac. c. 18.

ROTULUS WINTONIÆ, Was an exact survey of all England, fer Comitatibus, Centurias & Decurias, made by King Alfred, not unlike that of Domesday; and it was so called, for that it was of old kept at Winchester among other records of the kingdom; but this roll time hath consumed. Ingulfth. Hist. 516.

ROT, Fr. Route, i.e. a company or number.] In a legal sense, signifies an assembly of persons, going forcibly to commit an unlawful act, though they do not do it. West. Symb. par. 2. A rout is the same which the Germans call Rot, meaning a band or great company of men gathered together, and going to execute, or indeed, executing any riot or unlawful act. See title Riot.

ROYAL ASSENT, Regius assensus.] That Assent which the King gives to a thing formerly done by others, as to the election of a bishop by dean and chapter; which given, then he sends a special writ for the taking of fealty. See F. N. B. fol. 170. When the royal Assent is given to an act of parliament, it is indorsed in the proper terms upon the act. See title Parliament, 7.

ROYAL BOROUGHS. Incorportations in Scotland created by Royal Charter giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. A borough is called a Royal Borough, if it holds of His Majesty: if it holds of a subject it is termed a Borough of Barony. Bell's Scotch Dictionary.

ROYAL FAMILY. See titles King; Queen; Prince.

ROYALTIES, Regalitates.] See title King. Those Royalties which concern government in an high degree, the King may not grant or dispose of. Jenk. Cent. 79.

ROYNESS. Streams, currents or other usual passages of rivers and running waters. Cowell.

ROZIN, Is among the numerous articles, the importation of which is regulated by the Navigation Acts. See that title.

RUBRICAS, a rubro Colore, because antiently written in red letters.] Constitutions of the church, founded upon the statutes of uniformity and public prayer, viz. statutes 5 & 6 Ed. 6. c. 1: 1 Eliz. c. 2: 13 & 14 Car. 2. c. 4. See titles Nonconformists; Religion, &c.

RUBRIC of a statute is its title, which was antiently writ in red letters. It may serve to shew the object of the legislature, and hence afford the means of interpreting the body of the act. Hence the phrase of an argument, a rubro ad nigrum.

RUDMAS-DAY, From the Sax. Rode, Cruce, and mass-day.] The feast of the Holy Cross: there are two of these feasts, one on the 5th of May, the invention of the cross, and the other the 14th of September, called Holy Rood-day, the exaltation of the cross.

RULE OF COURT; an order made either between parties to a suit on motion: Or to regulate the practice of the court. See titles Motion in Court; Practice.

Rule of Court is also granted to prisoners in the King's Bench or Fleet prisons, every day the Court sits, to go at large, if such prisoner have business in law of his own to follow. By rule of Court of K. B. Easter term, 30 Geo. 3. on this subject, no prisoner within the King's Bench prison, or the Rules thereof, shall have day rules
above three days in each term; when they are to return within the walls or rules before nine o'clock in the evening. 3 Term Rep. 584.

The rules of the King’s Bench Prison, are certain limits without the walls, within which prisoners in custody are allowed to live, on giving security to the marshal, not to escape. The benefit of these rules may be had by one in custody in an excom. cap. but is never granted to a prisoner in execution on a criminal account, or for a contempt. See Rule Easter, 30 Geo. 3. 3 Term Rep. 383: Tidd’s Pract. K. B.

RUMNEY-MARSH; See Romney-Marsh.

RUMOURS, Spreading. See title False News.

RUNCARIA, from Runca.] Land full of brambles and briars. 1 Inst. 5, a.

RUNCILUS, RUNCINUS; is used in Domesday (says Shelman) for a load-horse, Equus operarius colonicus; or a sumpter-horse, and sometimes for a cart-horse, which Chaucer, in the Seaman’s Tale, calls a Rowney. Cowell.

RUNDLET; RUNLET; a measure of wine, oil, &c. containing eighteen gallons and a half. Stat. 1 R. 3. c. 13.

RUNNERS or FOREIGN GOODS; See titles Customs on Merchandise; Smuggling.

RUNRIG-LANDS, in Scotland, Lands where the ridges of a field belong alternately to different proprietors. Antiently this kind of possession was advantageous in giving an united interest to tenants to resist inroads. By the act 1695, c. 23. a division of these Lands was authorised; with the exception of Lands belonging to Corporations.

RUPTARII, Soldiers, or rather robbers, called also Ruttarii; and Rutta was a company of robbers: Hence we derive the word rout and bankrupt. Mat. Paris, anno 1250. Articuli Magne Carte Johannis.

RUPTURA, Arable land or ground broke up; A word used in antient charters.

RURAL DEANS; See title Dean.

RURAL DEANERY. As every diocese is divided into archdeaconries (of which there are sixty) so each archdeaconry is divided into Rural Deaneries, which are the circuit of the Archdeacon’s and Rural Dean’s jurisdiction: And every Deanery is divided into parishes. 1 Comm. 111.

RUSCA, A tub or barrel of butter, which in Ireland is called a Ruskin: Rusca aputum signifies a hive of bees. Mon. Ang. ii. 986.

RUSCATIA, The place where kneeholm or broom grows. Co. Litt. 5.

RUSH-LIGHTS; See Candles.

RUSSIA COMPANY, (or as it has sometimes been termed The Muscovy Company,) subsisted by virtue of a charter granted by Philip and Mary, in the first and second year of their reign, which was confirmed by a private statute, passed in the 8th of Elizabeth. The charter was granted to them under the style of The Merchants Adventurers of England for the Discovery of Lands, Territories, Isles, Dominions, and Seigniories unknown, and not, before their late Adventure or Enterprise, by Seas or Navigation commonly frequented. In the statute they were described by the name of The Fellowship of English Merchants for the Discovery of new Trades. The extent of their rights under the statute was the sole privilege of trading to and from the dominions and territories of the Emperor of Russia, lying north-
ward, north-eastward, and north-westward from London, as also to the countries of Armenia Major, or Minor, Media, Arcania, Persia, or the Caspian Sea. It was said in stat. 10 & 11 W. 3. c. 6. to be commonly called the Russian Company.

In the reign of King Will. III. it was thought this trade might be considerably enlarged, if the admission of persons into the Company was made more easy; and that it would be very proper to ascertain the fee of admission, which had not been done either by the charter or the statute [of Elizabeth.] It was accordingly enacted by the said statute of 10 & 11 W. III. c. 6. § 1, 2. that every subject of this realm might be admitted into the Company on payment of 5l. only.

For the charter and other matters relating to this Company, see Hakluyt, vol. 1. p. 258—274. And for the particulars of stat. 14 Geo. 2. c. 36. as to the trade to Persia, through Russia, see Reeves’s Law of Shipping and Navigation.

RUSTICI. The churls, clowns, or inferior country tenants, who held cottages and lands by the services of ploughing, and other labours of agriculture for the lord. The land of such ignoble tenure was called by the Saxons Gafalloid, as afterwards socage tenure, and was sometimes distinguished by the name of terra rusticorum. Paroch. Antiq. 136. See title Tenures.

RUTTARI. See Ruptarii.

RYE, A grain, of which bread is made in some parts of England. See title Corn.

RYE AND WINCHELSEA, An antient statute was made against ballast cast into the channel at Rye and Winchelsea, &c. Stat. 2 Ed. 6. c. 30. See title Cinque Ports.

END OF VOLUME FIFTH.