A MODERN LAW DICTIONARY,
CONTAINING
THE PRESENT STATE OF THE LAW
IN THEORY AND PRACTICE;
WITH
A DEFINITION OF ITS TERMS, AND THE HISTORY OF ITS RISE AND PROGRESS.

S.

SABBATH-BREAKING. The profanation of the Lord's Day. See title Sunday.

SABBATUM, The Sabbath, or day of rest; the seventh day from the Creation: It is used for peace in the book of Domesday.

SABALLINÆ PELLES. Sable furs mentioned in Hoved. p. 578: Bromft. anno 1188.

SABBULONARIUM, A gravel pit: or liberty to dig gravel and sand; also the money paid for the same. Pet. Parl. temp. Ed. III.

SAC; See Soke.

SACA, In the Saxon is properly synonymous with Causa in Latin, whence we in England still retain the expression, For whose sake, i.e. For whose cause, &c.

SACABURTH; Sacabere; Sakabere: He that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon with fresh suit. Brit. c. 15 & 29; with whom agrees Bracton, l. 3. c. 32. The Scots term it Sikorborgh, that is certum vel securum plegium vel pignus; for with them Sikor signifieth securus, and borg legius. Sjelm.

SACCINI, Monks so called, because they wore next their skins a garment of goats' hair; and saccus is applied to coarse cloth made of such hair. Walsing.

SACCIS, Fratres de Saccis, the sack-cloth brethren, or the penitential order. Placit. 8 Ed. 2.

SACCUS CUM BROCHIA, A service or tenure of finding a sack and a broach (pitcher) to the King, for the use of his army. Bracton, lib. 2. c. 16. See Brochia.

SACK OF WOOL, A quantity of twenty-six stone of sheep's wool; and of cotton wool, from one hundred and a half to four hundred. Stat. Antiq. 14 Ed. 3. st. 1. c. 2.
SACRAMENT, Sacramentum.] Usually applied to the Holy Sacrament of The Lord’s Supper. By the Rubrick there must be three at the least to communicate, and a minister is not without lawful cause to deny it to any who shall devoutly and humbly desire it: But notorious sinners are not to be admitted to it till they have repented; nor those who maliciously contend, until they are reconciled, &c. also the Sacrament is not to be administered to such who refuse to be present at the prayers of the church, or to strangers; for a minister is not obliged to give it to any but those of his own parish; and the partakers of the Holy Sacrament ought to signify their names to the curate at least a day before it is administered. Can. 27.

If a minister refuse to give the Sacrament to any one, being required by the bishop, he is to certify the cause of such refusal; and a parson refusing to administer the Sacrament to any without just cause, is liable to be sued in action on the case: because a man may have a temporal loss by such refusal. 1 Sid. 34. See the Corporation and Test Acts, this Dictionary, title Nonconformists.

In every parish church the Sacrament is to be administered three times in the year, (whereof the feast of Easter to be one), and every layman is bound to receive it thrice every year, &c. In colleges and halls of the universities, the Sacraments are to be administered the first or second Sunday of every month; and in cathedral churches, upon all principal feast days. Canon 21, 22, 23.

The churchwardens, as well as the minister, are to take notice whether the parishioners came so often to the Sacrament as they ought; and on a churchwarden’s presenting a man for not receiving the Sacrament, he may be libelled in the ecclesiastical court and excommunicated, &c. See further, title Reviling, &c.

SACRAMENTUM, An oath: The common form of all inquisitions might, in Latin, by a Jury, run thus; Quic dicunt supra Sacramentum suum, &c. whence possibly the proverbial offering to take the Sacrament of the truth of a thing, was first meant by attesting upon oath.

SACRAMENTUM ALTARIS, The sacrifice of the mass, or what is now called, the Sacrament of the Lord’s Supper. Paroch. Antiq. 488.

SACRILEGE, Sacrilegium.] Church robbery, or a taking of things out of a holy place; as where a person steals any vessel, ornament, or goods of the church: And it is said to be a robbery of God, at least of what is dedicated to his service. 3 Cro. 153. If any thing belonging to private persons, left in a church, be stolen, it is only common theft, not Sacrilege: But the canon law determines that also to be Sacrilege; as likewise the stealing of a thing known to be consecrated, in a place not consecrated. Treat. Laws 360.

By the civil law, Sacrilege is punished with greater severity than other thefts; and the common law distinguished this crime from other robberies; for it denied the benefit of the clergy to the offenders, which it did not do to other felons: But by statute it is put upon a footing with other felonies, by making it felony excluded of clergy, as most other felonies are. 2 Inst. 250.

All persons not in holy orders, who shall be indicted, whether in the same county where the fact was committed, or in a different county, of robbing any church, chapel, or other holy place, are excluded from their clergy, by stats. 24 Hen. 8. c. 1: 25 Hen. 8. c. 3: 5 & 6 Ed. 6. c. 10. And all persons in general are stopped of their cleri-
SAFE-CONDUCT.

for the felonious taking of any goods out of any parish church, or other church or chapel, by stat. 1 Ed. 6. c. 12. See title Larceny II. 1. But the word robbing being always taken to carry with it some force, it seems no Sacrilege is within these statutes, which is not accompanied with the actual breaking of a church, &c. Kel. 58. 69: Dyer 224. And the stat. 23 Hen. 8. c. 1 is the only act which extends to accessories to these robberies; except the offence amount to burglary, in which case accessories before are ousted of clergy, by stat. 3 & 4 W. & M. c. 9. See titles Accessory; Burglary.

The term Sacrilege was also antiently applied to the alienation to laymen, and to profane or common purposes, of what was given to religious persons and to pious uses: This was a guilt which our forefathers were very tender of incurring; and therefore when the order of the knights templars was dissolved, their lands were, under this pretext, afterwards violated, given to the knights hospitalers of Jerusalem, for this reason: Ne in filios usus erogata contra donatorum voluntatem in alios usus distraherentur. Paroch. Antiq. 390.

SACRISTA, Lat.] A sexton, belonging to a church, in old times called Sagerson and Sagiston.

SAFE-CONDUCT, Salus Conductus.] A security given by the prince, under the great seal, to a stranger, for his safe coming into, and passing out of, the realm; the form whereof is in Reg. Orig. 25.

The royal prerogative of granting Safe-conducts is considered by Blackstone as nearly related to, and plainly derived from, that of making war. See this Dictionary, title King V. 3.

Great tenderness is shewn by our laws, not only to foreigners in distress, (see title Wreck,) but with regard also to the admission of strangers who come spontaneously; for as long as their nation continues at peace with ours, and they behave themselves peaceably, they are under the King’s protection; though liable to be sent home whenever the King sees occasion. But no subject of a nation at war with us can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized by our subjects, unless he has letters of Safe-conduct; which by divers ancient statutes must be granted under the King’s great seal, and inrolled in chancery, or else are of no effect; the King being supposed the best judge of such emergencies, as may deserve exception from the general law of arms. But passports under the king’s sign-manual, or licences from his ambassadors abroad, are now more usually obtained, and are allowed to be of equal validity. 1 Comm. c. 7. p. 259, 260. See stats. 15 H. 6. c. 3: 18 Hen. 6. c. 8: 20 Hen. 6. c. 1: and further title Alien.

Indeed the law of England, as a commercial country, pays a very particular regard to foreign merchants in innumerable instances. One is highly proper to be mentioned in this place. By Magna Carta, c. 30. it is provided, that all merchants (unless publicly prohibited beforehand) shall have Safe-conduct to depart from, to come into, to tarry in, and go through England, for the exercise of merchandise, without any unreasonable imposts; except in time of war: And, if a war breaks out between us and their country, they shall be attached (if in England) without harm of body or goods, till the king or his chief justiciary be informed how our merchants are treated in the land with which we are at war; and, if ours be secure in that land,

The Violation of Safe-conducts or Passports, or the committing acts of hostility against such as are in amity, league, or truce with us, who are here under a general implied Safe-conduct, are breaches of public faith; without the preservation of which there can be no intercourse or commerce between one nation and another; and they are considered as one just ground of national war. And as, during the continuance of any Safe-conduct, either express or implied, the foreigner is under the protection of the king and the law; and, more especially, as we have seen that it is one of the articles of Magna Carta, that foreign merchants should be entitled to Safe-conduct and security throughout the kingdom; there is no question but that any violation of either the person or property of such foreigner may be punished by indictment in the name of the king, whose honour is more particularly engaged in supporting his own Safe-conduct. And when this malicious rapacity was not confined to private individuals, but broke out into general hostilities, by stat. 2 Hen. 5. st. 1. c. 6. the breaking of truce and safe-conducts, or abetting and receiving the truce-breakers, was (in assurance and support of the law of nations) declared to be high treason against the crown and dignity of the king; and conservators of truce and Safe-conducts were appointed in every port, and empowered to hear and determine such treasons (when committed at sea) according to the ancient marine law, then practised in the Admiral's Court; and together with two men learned in the law of the land, to hear and determine according to that law the same treasons, when committed within the body of any county. Which statute, so far as it made these offences amount to treason, was suspended by stat. 14 Hen. 6. c. 8. and repealed by stat. 20 Hen. 6. c. 11, but revived by stat. 29 Hen. 6. c. 2. which gave the same powers to the lord chancellor, associated with either of the chief justices, as belonged to the conservators of truce and their assessors; and enacted that, notwithstanding the party be convicted of treason, the injured stranger should have restitution out of his effects, prior to any claim of the crown. And it is farther enacted by stat. 31 Hen. 6. c. 4. that if any of the King's subjects attempt to offend, upon the sea, or in any port within the King's obeisance, against any stranger in amity, league or truce, or under Safe-conduct; and especially by attaching his person, or spoiling him or robbing him of his goods; the lord chancellor, with any of the justices of either the king's bench, or common pleas, may cause full restitution and amends to be made to the party injured.

It is observed that the suspending and repealing acts of 14 & 20 Hen. 6. and also the reviving act of 29 Hen. 6. were only temporary; so that it should seem that, after the expiration of them all, the stat. 2 Hen. 5. continued in full force; but yet it is considered as extinct by the stat. 14 Ed. 4. c. 4. which revives and confirms all statutes and ordinances, made before the accession of the house of York, against breakers of amities, truces, leagues, and Safe-conducts, with an express exception to the stat. 2 Hen. 5. But (however that may be) it seems to have been finally repealed by the general statutes of Ed. VI. and queen Mary, for abolishing new-created treasons; though Hale seems to question it as to treasons committed on the sea. 1 Hal. P. C. 267. But certainly the stat. 31 Hen. 6. remains in full force till this day. 4 Comm. c. 5. ft. 69, 70.
SAFEGUARD, Salva Guardia.] A protection of the king to one, who is a stranger, that fears violence from some of his subjects, for seeking his right by course of law. Reg. Orig. 26.

SAFE-PLEDGE, Salvus plegius.] A surety given for a man's appearance at a day assigned. Bract. lib. 4. c. 2. See Pledge.

SAGAMAN, from Saxon Saga, Fabula.] A taleteller; or secret accuser. Leg. Hen. I. c. 63.

SAGIBARO, alias SACHBARO, is the same that we now call Justiciarvus, a judge. Leg. Inx, c. 6.

SAGITTA BARBATA, A bearded arrow. Blount.

SAGITTARI, A sort of small ships or vessels, with oars and sails. R. de Dicto, ano, 1176.

SAIL-CLOTH. For encouraging the manufacture of Sail-cloth, any person may import into this kingdom undressed flax, without paying any duty for the same, so as a due entry be made thereof at the custom house, &c. And no drawback is to be allowed on re-exportation of foreign Sail-cloth: But an allowance shall be made of 1d. per ell for British Sail-cloth exported, &c. All foreign Sail-cloth imported, from which duties are granted shall be stamped, expressing from whence imported, &c. And manufacturers of Sail-cloth in this kingdom are to affix to every piece by them made, a stamp containing their names, and places of abode; or exposing it to sale shall forfeit 5l. And if any persons cut off or obliterate such stamps, they incur a forfeiture of 5l. upon conviction before one or more justices, to be levied by distress, &c. Stat. 4 Geo. 2. c. 27.

Ships built, on first setting out to sea, to have one complete set of sails manufactured here, on pain of 50l. No sail-maker may work up into sails foreign Sail-cloth not stamped, under 20l. penalty: Sail-cloth made in Great Britain, the pieces being made of certain lengths and breadths, shall weigh so many pounds each bolt, and the warp wrought of double yarn, &c. Flax yarn used in British Sail-cloth not to be whitened with lime, on forfeiture of 6d. a yard. Sail-makers, &c. are to cause this act to be put up in their shops and work-houses, under the penalty of 40s. Stat. 9 Geo. 2. c. 37.

Masters of ships are to make entry of all foreign-made sails on board, under the penalty of 50l. and pay duty for the same, unless they choose to deliver up the sails as forfeited: Sails brought from the East Indies are exempted from duty: Foreign made Sail-cloth imported, is to be stamped at the landing: Forger of stamps, &c. shall forfeit 50l. A sail-maker making foreign Sail-cloth unstamped into sails, shall forfeit 50l. A sail-maker shall not repair or amend the same under the penalty of 20l. Stat. 19 Geo. 2. c. 27.

SAINT MARTIN LE GRAND, Court of. The chief of the several courts in London are the sheriff's courts, holden before their steward or judge; from which a writ of error lies to the court of hussings, before the mayor, recorder, and sheriffs; and from thence to Justices appointed by the king's commission, who used to sit in the church of Saint Martin le Grand; and from the judgment of those justices a writ of error lies immediately to the house of lords. 3 Comm. 80. n. cites F. N. B. 32.

SAIO, A tipstaff, or serjeant at arms; derived from the Saxon, Sagol. Fustis, because they used to carry a rod or staff. Spelm.

SALARY, Salarium.] A recompence or consideration made to a person for his pains and industry in another man's business; The
word is used in the stat. 23 Ed. 3. c. 1. Salarium at first signified the rents or profits of a Sala, hall or house; (and in Gascoigne they now call the seats of the gentry Sala’s, as we do halls;) but afterwards it was taken for any wages, stipend, or annual allowance. Cowell.

SALE, Venditio. The transferring the property of goods from one to another, upon valuable consideration: If a bargain is that another shall give me 5l. for such a thing, and he gives me earnest, which I accept, this is a perfect Sale. Wood’s Inst. 316. On Sale of goods if earnest be given to the seller, and part of them are taken away by the buyer, he must pay the residue of the money upon fetching away the rest, because no other time is appointed; and the earnest given binds the bargain, and gives the buyer a right to demand the goods; but a demand without paying the money is void: And it has been held that, after the earnest is taken, the seller cannot dispose of the goods to another, unless there is some default in the buyer; therefore if he doth not take away the goods and pay the money, the seller ought to require him so to do; and then if he doth not do it in convenient time, the bargain and Sale is dissolved, and the seller may dispose of them to any other person. 1 Salk. 113. A seller of a thing is to keep it a reasonable time, for delivery: But where no time is appointed for delivery of things sold, or for payment of the money, it is generally implied that the delivery be made immediately, and payment on the delivery. 3 Salk. 61. Where one agrees for wares sold, the buyer must not carry them away before paid for; except a day of payment is allowed him by the seller. Noy 87.

A Sale may be of any living or dead goods in a fair or market, be they whose they will, or however the seller come by them; if made with the cautions required by law: But if one sell my goods unduly, I may have them again. Doct. & Stud. 328: Perk. § 93. If a man affirm a thing sold is of such a value when it is not, this is not actionable; but if he actually warrants it, at the time of the sale, and not afterwards, it will bear an action, being part of the contract. 2 Cro. 5. 386. 630: 1 Rot. Abr. 97: See titles Agreement; Consideration; Contract; Fraud; Market, &c.

SALET, from Fr. Salut, Salus.] A head piece; a Salet, or scull of iron, &c. See stat. 20 R. 2. c. 1.

SALICETUM, An osier bed. 1 Inst. 4.

SALINA, A salt pit, or place wherein salt is made. And salina is sometimes wrote for salma, i.e. a pound weight. Chart. 17 Ed. 2.

SALIQUE LAW, Lex Salica.] A law by which males only are allowed to inherit. It was an antient law made by Pharamond, king of the Franks, part of which seems to have been borrowed by our Henry I, in compiling his laws; Qui hoc fecerit, secundum tegem salicam mortatur, &c. cap. 89.

SALMON. No person may take Salmons in rivers, between the 1st of August and the 11th of November; and Salmon are not to be taken under eighteen inches long, &c. under penalties. Stats. 13 Ed. 1. c. 47: 1 Eliz. c. 17. See as to Salmon in the Teign, Dart, and Plym Rivers, 43 Geo. 3. c. Ixi. and as to those in the Rivers of Carmarthen-shire, 45 Geo. 3. c. xxxiii. In Scotland by the act 1424, c. 35. the fishing for Salmon is prohibited from 15th August to 30th November. None shall sell any pickled Salmon in vessels before it be viewed, unless the barrel contain forty-two gallons, and the half barrel twenty-one gallons, well packed, and the great Salmon by itself, and small
fish by themselves, &c. on pain to forfeit for every vessel 6s. 8d. Stat. 22 Ed. 4. c. 2. See stat. 11 H. 7. c. 23.—Salmon not to be taken in the Thames between 24th August and 11th November. Stat. 9 Ann. c. 26.—Fishmongers prohibited to buy Salmon under six pounds' weight. St. 1 Geo. 1. c. 18. Salmon may be taken in the Ribble between 1st January and 15th September. St. 23 Geo. 2. c. 26. See further title Fish.

SALTATORIUM, A deer-leap: Quod habeat unum Saltatorium in parco de B. Pat. 1 Ed. 3.

SALT. The price of Salt is to be set by justices of the peace in their sessions; and persons selling it at a higher rate shall forfeit 5l. Also salt shall be sold by weight after the rate of 56lbs. to the bushel, under the like penalty. See stats. 7 & 8 W. 3. c. 31. § 44. 9 & 10 W. 3. c. 6.—A duty is imposed on Salt; pits to be entered, &c. at the Salt-office on pain of 40l. penalty; and proprietors removing Salt from any pit, before weighed, in presence of the proper officer; to forfeit 20l. &c. Stats. 10 & 11 W. 3. c. 22; 1 Ann. st. 1. c. 21.—The duties on Salt made in this kingdom were taken off, and duty on foreign Salt to continue, except for the British fishery, &c. by stat. 3 Geo. 2. c. 20. Since then, the duties on Salt, have been revived and continued, to be managed by commissioners, &c. who may grant licences to erect houses for refining of rock Salt, at certain places in the counties of Essex and Sussex. Stats. 5 Geo. 2. c. 6: 7 Geo. 2. c. 6. The Salt duties continued for a further term, and under the same provisions, &c. with a clause of loan of 500,000l. And proprietors of Salt-works in Scotland are not to pay their work-people in Salt, under the penalty of 20l. Stat. 8 Geo. 2. c. 12. The salt duties further continued, with a loan of 1,200,000l. at 4l. per cent. interest, &c. Rock-Salt may be used in the making of Salt from sea-water in works in Wales, paying the duties on both. 14 Geo. 2. c. 22. The Salt duties were made perpetual by stat. 26 Geo. 2. c. 3. The duties on this article were further regulated, frauds guarded against, and provisions made as to the use of Salt in their fisheries, by a vast variety of statutes; and at length the duties, drawbacks, bounties, and allowances on salt were put under the management of the commissioners of excise by stat. 38 Geo. 3. c. 89. explained and amended by 39 Geo. 3. c. 65; and also by 41 Geo. 3. (U. K.) c. 91; and 45 Geo. 3. c. 14. The exportation and carrying coast-wise of Rock-Salt may be prohibited by the king in council. 36 Geo. 3. c. 53. § 3, 4. And see as to importation from Ireland, stat. 45 Geo. 3. c. 14.

SALT-DUTY in London. There is a custom duty in the city of London called Granage, payable to the lord mayor, &c. for Salt brought to the port of London, being the twentieth part. Cit. Lib. 125.

SALT-PETRE. What quantity to be delivered yearly into the royal stores; stat. 1 Ann. st. 1. c. 12. § 113. The king may prohibit the exportation of it, stat. 29 Geo. 2. c. 16. § 1. See title Gunpowder.

SALT-SILVER. One penny paid at the feast day of St. Martin, by the tenants of some manors, as a commutation for the service of carrying their lord's Salt from market to his larder. Paroch. Antiq. 496.

SALTUS, A high thick wood or forest. See Boscus.

SALVA-GARDA; See Safe-guard.

SALVAGED; within the jurisdiction of the Cinque Ports, &c. is regulated by 12 Ann. c. 18: & 48 Geo. 3. c. 130. See title Insurance II. 6: Wreck.
SANCTUARY.


SALUTE, Salus.] A coin made by king Hen. V. after his conquests in France; whereon the arms of France and England were stamped and quartered. Stowe's Chron. 589.

SANCTA, The relikes of the saints; jurare super sancta was to make oath on those relics. Leg. Canut. c. 57.

SANCTUARY, Sanctuarium.] A place privileged for the safeguard of offenders' lives, being founded upon the law of mercy, and the great reverence and devotion which the prince bears to the place whereunto he grants such privilege. Sanctuaries were first granted by king Lucius to our churches and their precincts; and among all other nations, our ancient kings of England seem to have attributed most to those Sanctuaries, permitting them to shelter such as had committed both felonies and treasons, so as within forty days they acknowledged their fault, and submitted themselves to banishment; during which space, if any layman expelled them he was excommunicated; and if a clerk, he was made irregular. Mat. West. Ann. 187: 1 P. C. lib. 2. cap. 38: Fleta, lib. 1. c. 29.

St. John's of Beverly in Yorkshire had an eminent Sanctuary belonging to it in the time of the Saxons; and St. Buriens in Cornwall had the like granted by king Athelstan, anno 935; so had Westminster granted by King Edward the Confessor; and St. Martin le Grand in London. 21 Hen. 8, &c.

In Scotland the Abbey of Holyrood house, the ancient palace of the Scottish kings still possesses the privilege of giving Sanctuary to a debtor. To retire to the abbey, is by statute one of the circumstances which, joined to Insolvency constitutes legal bankruptcy. The bounds of the abbey are extensive, and the whole is placed under the direction of a baillie appointed by the duke of Hamilton, as heritable keeper of the palace. When a person retires to this Sanctuary, he is secured against arrest from the instant he passes the confines, and this security continues for twenty-four hours: to enjoy it beyond that period he must enter his name in books kept by the baillie of the abbey. This Sanctuary gives no protection to a criminal, nor to a crown debtor, nor fraudulent debtor, nor to a person under an obligation to do an act within his own power; nor does it secure the debtor against such debts as he may contract during his residence in Sanctuary, for the personal execution of which debts there is a prison within the bounds. Where a person claims the Sanctuary who has no title to it, he may be arrested, with the concurrence of the baillie. Bell's Scotch Law Dict.

Sanctuaries, it has been observed, did not gain the name of such till they had the pope's bull, though they had full privilege of exemption from temporal courts by the king's grant only; But no Sanctuary granted by general words, extended to high treason; though it extended to all felonies, except sacrilege, and to all inferior crimes, not committed by a Sanctuary man; and it never was a protection against any action civil, any farther than to save the defendant from execution of his body, &c. 2 Hawk. P. C. c. 32.

While this protection against justice remained in force, if a person accused of any crime (except treason, wherein the crown, and sacrilege, wherein the church, was too nearly concerned) had fled to any church or church-yard and within forty days after went in sack-cloth and confessed himself guilty before the coroner, and declared all the
particular circumstances of the offence; and thereupon took the oath in that case provided, viz. that he abjured the realm, and would depart from thence forthwith, at the port that should be assigned him, and would never return without leave from the king; he by this means saved his life, if he observed the conditions of the oath, by going with a cross in his hand, and with all convenient speed, to the port assigned, and embarking: For if, during this forty days’ privilege of Sanctuary, or in his road to the sea-side, he was apprehended and arraigned in any court, for this felony, he might plead the privilege of Sanctuary, and had a right to be remanded, if taken out against his will. But by this abjuration his blood was attainted, and he forfeited all his goods and chattels. The immunity of these privileged places was very much abridged by the stats. 27 Hen. 8. c. 19: 32 Hen. 8. c. 12. And now, by the stat. 21 Jac. 1. c. 28. all privilege of Sanctuary, and abjuration consequent thereupon, is utterly taken away and abolished.

There were several statutes made relative to Sanctuaries, whilst they existed, viz. Art. Cler. 9 Ed. 2. st. 1. cc. 10. 15: 2 R. 2. st. 2. c. 3: 4 H. 8. c. 2: 21 H. 8. c. 2: 22 H. 8. c. 2. § 14. By 26 H. 8. c. 13. Sanctuary was taken from offenders in high treason. See further, titles Abjuration; Arrest; Privilege I.

SANDAL, A merchandise brought into England; and a kind of red-bearded wheat. See stat. 2 R. 2. c. 1.

SAND-GAVEL, A payment due to the lord of the manor of Rodley in the county of Gloucester, for liberty granted to the tenants to dig sand for their common use. Tayl. Hist. Gavel. 113.

SANE MEMORY, i. e. Perfect and sound mind and Memory, to do any lawful act, &c. See title Idiots and Lunaticks.

SANGUINEM EMERE, Was where villeins were bound to buy or redeem their blood or tenure, and make themselves freemen. Lib. Niger Heref.

SANGUIS, Is taken for that right or power, which the chief lord of the fee had, to judge and determine cases where blood was shed. Mon. Ang. tom. 1. ft. 1021.

SANG and SANC, Old Fr. Blood.

SARABARA, A covering for the head. Mat. Westm. ann. 1295.

SARCLIN-TIME, from Fr. Sarcler, Lat. Sarclare.] The time or season when husbandmen weed their corn. Cowell.

SARCULATURA, Weeding of corn: Una Sarculatura, the tenant’s service of one day’s weeding for the lord. Paroch. Antiq. 403.

SARKE, Isle of; See Jersey.


SARPLER or WOOL, Serpulae lane, otherwise called a pocket.] Half a sack. Fleta, lib. 2. c. 12.

SARSAPARILLA, May be imported from the American plantations, &c. if of the growth of America, stat. 7 Ann. c. 8. See title Navigation Acts.

SART, or Assart, A piece of woodland turned into arable. See Assart.

SARUM, Salisbury. There was a form of church-service called secundum usum Sarum, composed by Osmond the second bishop of Sarum in the time of William the Conqueror. Hollingshed, p. 17. col. B.
SCASSE, A kind of weir with flood gates, most commonly in navigable and cut rivers; for the damming and shutting up and loosing the stream of water, as occasion requires, for the better passing of boats and barges: This in the West of England is called a lock; and in some places a sluice. Cowell.

SASSONS, the corruption of Saxons, a name of contempt formerly given to the English, while they affected to be called Angles; they are still so called by the Welch.

SATISFACTION, Is the giving of recompence for an injury done; or the payment of money due on bond, judgment, &c. In which last case, it must be entered on record. 2 Litt. Abr. 495. See title Payment.

Where money given one by will, shall be held to be in Satisfaction of a debt, and where not; see title Legacy.

That Satisfaction means legal compensation, and not any arbitrary recompence, see 3 Bos. & Pul. 55.

As to pleading Satisfaction in cases of trespass; see titles Sheriff; Officers; Justices; Trespass, &c.

SATURDAY's STOP, A space of time from even-song on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland, and the northern parts of England. MS. Cowell.

SAVER DEFAULT, Is a law term signifying to excuse, as when a man having made Default by not appearing in court, &c. comes afterwards and alleges good cause for it, viz. Imprisonment at the time, or the like. Book Ent. See title Default.

SANKEFIN, Fr. Sang, i. e. Sanguis, Fin, Finis.] The determination or final end of the lineal race and descent of kindred. Britton, c. 119.

SAURUS, A hawk of a year old. Bract. lib. 5. tr. 1. c. 2. part 1.

SAXON-LAGE, Saxon-laga, Lex Saxonom.] The law of the West Saxons by which they were governed. See title Merchentlage. 4 Comm. c. 33.

The reason why so many traces of the Saxon laws, language, and customs are to be found in England, are thus stated; Robertson, in his History of Emperor Ch. V. says, The Saxons carried on the conquest of that country with the same destructive spirit, which distinguished the other barbarous nations. The antient inhabitants of Britain were either exterminated, or forced to take shelter among the mountains of Wales, or reduced into servitude. The Saxon government, laws, manners, and language were, of consequence, introduced into Britain; and were so perfectly established, that all memory of the institutions previous to their conquest was abolished. Roberts, i. 197. Note IV.—As to the laws of the Saxons, for putting an end to private wars. See Id. 285.


SCALAM, Ad scalam, The old way of paying money into the Exchequer. The sheriff, &c. is to make payment ad scalam, i. e. solvere, frater quamlibet numeratum librum, sex denarios. Stat. W. 1. And at that time sixpence superadded to the pound made up the full weight, and nearly the intrinsic value. This was agreed upon as a medium to be the common estimate for the defective weight of money; thereby to avoid the trouble of weighing it when brought to the Exchequer.
SCANDALUM MAGNATUM. 11


SCANDAL, A report or rumour, or an action whereby one is affronted in public. See Libel.

SCANDAL OR IMPERTINENCE IN BILLS IN EQUITY. If a Bill in Equity contain matter either scandalous or impertinent, the defendant may refuse to answer it, till such Scandal or Impertinence is expunged, which is done upon an order to refer it to one of the masters. 3 Comm. 442. See titles Chancery; Libel I.

SCANDALUM MAGNATUM.

Words spoken in derogation of a peer, a judge, or other great officer of the realm: These, though they would not be actionable in the case of a common person, yet when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury, which is redressed by an action on the case, founded on the antient statutes; as well on behalf of the crown to inflict the punishment of imprisonment on the offender, as on behalf of the party to recover damages for the injury sustained. 3 Comm. c. 8. p. 124.

The law on which this action is grounded, is stat. West. 1. 3 E. 1. c. 34. which, after speaking of "devisors of false news, and horrible lies, of prelates, dukes, earls, barons, and other nobles and great men of the realm, and also of the chancellor, treasurer, clerk of the privy seal, steward of the King's house, justices of the one bench or of the other, and other great officers of the realm," enacts, "That none contrive or tell any false news, whereby discord or slander may grow between the King and his people; or contrive to tell any false things of prelates, lords, and of others aforesaid, whereof discord or slander might rise within, or any Scandal to, the realm; and he who doth the same shall be imprisoned till he have brought him forth that did speak the same." This statute is recited by stat. 12 R. 2. c. 11: and thereby it is further provided, that the offender not producing his author shall be punished by the advice of the council. 4 Inst. 51: 4 Co. 12, b. See also stat. 1 & 2 Phil. & M. c. 3; and 1 Eliz. c. 6.

At the time of making the law, on which this action is founded, the constitution of this kingdom was martial, and given to arms; the very tenures were military, and so were the services; as knight-service, castle-guard, and escuage; so that all provocations by vilifying words were revenged by the sword, which often created factions in the commonwealth, and endangered the government itself; for in this kind of quarrels the great men, or peers of the realm, usually engaged their vassals, tenants, and friends; so that laws were then made against wearing of liveries or badges, and against riding armed; therefore it is that the stat. West. 2, appoints that the offender shall suffer imprisonment until he produces the author of a false report. 2 Mod. 156.

This action or public prosecution for scan. mag. is totally different from the action of slander in the case of common persons. The scandatum magnatum is reduced to no rule or certain definition, but it may be whatever the Courts in their discretion shall judge to be derogat
tority to the high character of the person of whom it is spoken: as to say of a peer, "that he was no more to be valued than a dog;" which words would have been perfectly harmless, if uttered of an inferior person. Bull. N. P. 4.

Though this action is now seldom or ever resorted to, it may be matter of some utility, as well as curiosity, to peruse the following determinations on the subject:

I. **Who may bring this Action, and for what Words it lies.**

II. **Of the Proceedings in this Action.**

I. It hath been held, that the King is not included in the words "great men of the realm," as the statute begins with an enumeration of persons of an inferior rank, as prelates, dukes, &c. Cromf. Jurisd. 19. 35.

Scandalizing the marriage of King Hen. VIII. with Anne Bullein was declared treason, by stat. 25 Hen. 8. cap. 22.

Also it is held, that a woman noble by birth is not entitled to this action. Cromf. Jurisd. 34.

It hath been adjudged, that though there was no viscount at the time of making this statute, (the first viscount being John Beaumont, who was created viscount 18 Hen. 6,) yet when created noble, though by a new title, he was entitled to his action on this statute. Cro. Car. 136: Palm. 563: Say and Seal (Visc.) v. Stephens.

Also it hath been adjudged, that since the union, a peer of Scotland may have an action on this statute, and that it is not necessary for him to allege that he hath a seat and voice in Parliament; for by stat. 5 Ann. c. 8. art. 23. All peers of Scotland, after the union, shall be peers of Great Britain, and have rank and precedence &c., be tried, &c. and enjoy all privileges of peers as the peers of England now do, or hereafter may enjoy; except the right and privilege of sitting in the House of Lords, and the privilege depending thereon. Com. 439. Falkand Ld. v. Phipps.

It hath been contended, that no words of slander are punishable by this statute, unless they are actionable at Common Law; and that they are only aggravated by the statute, which, in this respect, is like the King's proclamation. 2 Mod. 161: Freem. 222.

But the contrary hereof seems to have been holden in most of the cases on this head, and not without reason; as it would be to no purpose to make a law, and thereby to give a peer an action for such words as a common person might have before the making of the statute, and for which the peer himself had equally a remedy by the Common Law; and therefore the design of the statute must be, not only to punish such things as import a great Scandal in themselves, or such for which an action lay at the Common Law, but also such things as savoured of any contempt of the persons of the peers or great men; and brought them into disgrace with the commons, whereby they took occasion of provocation and revenge. 2 Mod. 156.

It hath been observed, that no action was brought on this statute till 100 years after the making thereof; the lords still continuing the military way of revenge to which they had been accustomed. 2 Mod. 156.

The first case on this statute, said to be reported, is in Keity, where the Lord Beauchamp brought an action of *scan. mag.* against
Sir Richard Crofts, for that the said Richard had sued out a writ of forgery of false deeds against him; and it was held, that the taking out the writ, being done in a legal way, and in a course of justice, the action did not lie. Kelw. 26, 27: 3 Mod. 164, cited.

Scan. mag. brought for saying of a judge, “You are a corrupt judge,” and held actionable. Crompt. Jurisd. 35: Ld. Ch. J. Dyer’s case.—So for these words, “He imprisoned me till I gave him a release.” 3 Leon. 376; Lord Winchester’s case, cited Freem. 221.—So these words “You have writ a letter to me, which I have to shew, which is against the word of God, against the Queen’s authority, and to the maintenance of superstition, and that I will stand to prove against you;” were held actionable, and 500 marks damages given. Cro. Eliz. 1. Bishop of Norwich v. Prickett.—So of these words, “My Lord Mordant did know that Prude robbed Shotbolt, and bid me compound with Shotbolt for the same, and said he would see me satisfied for the same, though it cost him 100l. which I did for him, being my master, otherwise the evidence I could have given would have hanged Prude.” Cro. Eliz. 67: For these words written in a letter, “I have heard that your Lordship hath sought by uncharitable means to bereft me of my life, lands, and liberty,” an action lies. Moor 142: Ld. Lumley v. Fox, & Co. 16. That the action as well lies for words written as those spoken; see 2 Show. 505.

An action of scan. mag. was brought for these words, “There are more Jesuits come into England since the Earl of Northampton was Lord of the Cinque Ports, than ever there were before,” and held actionable. 12 Co. 132. In scan. mag. for these words spoken by a person in the pulpit, “The Lord of Leicester is a wicked and cruel man, and an enemy to the reformation in England,” adjudged actionable, and 500l. damages given. 2 Sid. 21.

So these words, “The Earl of Pembroke is of so little esteem in the country, that no man of reputation hath any esteem for him, and no man will take his word for 2d. and no man of reputation values him more than I do the dirt under my feet;” were held actionable, though said they would not be so in the case of a common person. Freem. 49.

If one says, “I met J. S. whom I do not know, but my Lord P. sent after me to take my purse;” an action of scandalum magnatum lies, though not positively said my Lord P. sent him, or that it was to take the purse feloniously; which last, in case of an action by a common person, might be a good exception. 1 Lev. 277: 1 Sid. 434: 2 Keb. 537; E. of Peterborough v. Sir John Mordant. Vide 1 Sid. 133: 1 Keb. 813: 1 Lev. 148, Marquis of Dorchester v. Proby. If one says of a peer, “He is an unworthy man, and acts against law and reason;” an action of scan. mag. lies, notwithstanding the words are general, and charge him with nothing certain; and so adjudged by North, Windham, and Scroggs, against the opinion of Atkins; who said the statute extended not to words of so small and trivial a nature, but to such only which were of greater magnitude, by which discord might arise, &c. and therefore the words “horrible lies” were inserted in the statute. Note; The rule laid down by the Court in this case was, that words should not be construed either in a rigid or mild sense, but according to the general and natural meaning, and agreeable to the common understanding of all men. 2 Mod. 151, &c.; 1 Mod. 232: Freem. 220: Lord Townshend v. Doctor Hughes.
II. It is now clearly agreed, that though there be no express words in the statute which give an action, yet the party injured may maintain one, on this principle of Law; that when a statute prohibits the doing of a thing, which if done might be prejudicial to another, in such a case he may have an action on that very statute for his damages. 2 Mod. 152.

Though the action is to be brought tam pro domino rege quam pro seipso, yet the party is to recover all the damages. 1 P. Wms. 690. If the words are actionable at Common Law, the Peer hath his election to proceed on the statute, or at Common Law. Freem. 49. It hath been held, that this being a general law, the plaintiff need not recite it particularly; and that if he sets forth so much thereof as shews his case to be within the statute, it is sufficient. Cro. Car. 139: 2 Sid. 21: Freem. 425. It is now settled that no new trial is to be granted in scan. mag. for excessive damages; which point seems to have been first determined in the case of Lord Townshend v. Dr. Hughes, where the jury gave 4000l. damages. 2 Mod. 151: 1 Mod. 231.

It has been ruled, that in scan. mag. the defendant cannot justify, let the words be ever so true, because the action is brought 

qui tam,

in which the King is concerned; but it hath been held, that the defendant may explain the words by shewing the occasion of speaking of them, and thereby extenuate the meaning of them, as was done in Lord Cromwell's case. 4 Co. 14: 2 Mod. 156: Freem. 220: Poph. 67.

In scan. mag. the Court will never change the venue on the common affidavit that the words were spoken in another county, because a Scandal raised on a peer of the realm reflects on him through the whole kingdom; and he is a person of so great notoriety, that there is no necessity of his being tied down to try his cause among his neighbourhood. Carth. 400: 2 Salk. 668. Vide 1 Lev. 56: 1 Keb. 514: 1 Sid. 185: 2 Mod. 216.

But in the case of Lord Shaftesbury v. Graham, the Court, in scan.

mag. on a special affidavit of the plaintiff's power and interest in the county where the action was laid, made a rule for changing the venue; but note, that the books, which report and cite this case, mention it as a case of the times, and that it was owing to the great influence that lord had in the city of London, that the Court varied from the general rule, and which rule hath ever since, notwithstanding this case, been adhered to. 2 Jo. 198: 1 Vent. 363: Skin. 40: 2 Show. 200.

It hath been held, that the statute 27 Eliz. c. 8. giving the writ of error in the Exchequer-chamber, does not extend to scan. mag. Cro. Car. 286. 385: 1 Sid. 143. That in an action of scan. mag. special bail is not required. 3 Mod. 41: Holt. Rep. 640. That no costs are to be given the plaintiff on his obtaining a verdict. 2 Show. 506.

SCAVAGE, SCEVAGE, or SCHEWAGE, from the Sax. Scheawian, i. e. ostendere.] A kind of toll or custom, exacted by mayors, sheriffs, &c. of merchant-strangers, for wares shewed or exposed to sale within their liberties; prohibited by the statute 19 Hen. 7. c. 7. But the city of London still retains this ancient custom to a good yearly profit. And the lord chancellor, treasurer, president of the council, privy seal, steward, and two justices of the King's Bench and Common Pleas, are to ascertain these duties, and order tables to be made, mentioning the particulars, &c. Stat. 22 H. 8. c. 8. § 4.

SCAVAIDUS, The officer who collected the Scavage-money, which was sometimes done with great extortion. Cowell.
SCAVENGERS, from the Belg. schaven, to scrape or carry away.] Persons chosen into this office in London and its suburbs, who hire rakers and carts to cleanse the streets, and carry the dirt and filth thereof away. In Easter week yearly, two tradesmen in every parish within the weekly bills of mortality, must be elected scavengers by the constables, churchwardens, and other inhabitants, who are to take upon them the office in seven days, under the penalty of 10l. These Scavengers, every day, except Sundays or holidays, are to bring their carts into the streets, and give notice by a bell, or otherwise, of carrying away dirt, and to stay a convenient time, or shall forfeit 40s. and justices of the peace in their petit sessions may give Scavengers liberty to lodge their dirt in vacant places near the streets, satisfying the owner for the damage, &c. All persons, within the weekly bills, are to sweep the streets before their doors, every Wednesday and Saturday, on pain of forfeiting 3s. 4d. Persons laying dirt or ashes before their houses, incur a forfeiture of 5s. Inhabitants and owners of houses are also to pave the streets before their own houses, on the penalty of 20s. for every perch: And constables, churchwardens, &c. may make a Scavenger's tax, being allowed by two justices of the peace, not exceeding 4d. in the pound, &c. Stat. 2 W. & M. st. 2. c. 8: and see stats. 3 W. & M. c. 12: 8 & 9 W. 3. c. 37: 6 Geo. 1. c. 6: 18 G. 2. c. 33. § 2, 3: and this Dict. title Police.

A Scavenger's rate cannot be made for a division in which there is no churchwarden or overseer resident. 1 Stra. 630. See further, title Highways.

SCEAT, Sax.] A small coin among the Saxons equal to four farthings.

SCEITHMAN, Sax.] A pirate or thief. LL. Æthelredi apud Bromfton.

SCEPPA SALIS, An antient measure of salt, the quantity now not known: Sceppa or sceaf was likewise a measure of corn, from the Lat. scavitha; baskets, which were formerly the common standard of measure, being called skips or sketfs in the south parts of England; where a bee-hive is termed a bee-skip. Mon. Ang. p. 284: Paroch. Antig. 604.

SCEURUM, A barn or granary. Ingulphus, p. 862.

SCHAFFA, A Sheaf, as Schaaffa sagittarum, a sheaf of arrows. See Skene de verbor. signif. eod. verbo.

SCHARPENNY, A small duty or compensation: And some customary tenants were obliged to pen up their cattle at night in the pound or yard of the lord, for the benefit of their dung; or if they did not so, they paid a small compensation called Sharpenny or Sharn-penny, i.e. dung penny, or money in lieu of dung; the Saxon scearn signifying muck or dung. In some parts of the north they still call cow dung by the name of cow-s kern; and in Westmoreland, a skarney houghs is a nasty, dirty dunghill-wench. Cowell.

SCHAVALDUS; Vide Scavalus.

SCHEDULE, A little roll, or long piece of paper or parchment, in which are contained particulars of goods in a house let by lease, &c. See Lease.

Schedules are likewise frequently annexed to answers in a Court of Equity, containing an account of estates or effects, monies, debts, &c. received or disposed of, or expended by the person putting in the
answer: And Schedule is a term frequently used, instead of inventory.

SCHETES, An antient term for usury; and the Commons prayed that order might be taken against this horrible vice, practised by the clergy as well as the laity. Rot. Part. 14 R. 2. Cowell.

SCHILLA, A little bell used in monasteries, mentioned in our histories. Eadmer, lib. 1. c. 8.

SCHIREMAN, Sax. Scir-man.] A Sheriff. LL. Ine Regis apud Brompton. The ancient name for an Earl. See titles Peers of the Realm I.; Shireman; Sheriff.


SCHISM, schisma.] A rent or division in the church. See title Heresy.

SCHOOLMASTER. No person shall keep or maintain a Schoolmaster, who does not constantly go to church, or is not allowed by the Ordinary, on pain of 10l. a month; and the Schoolmaster shall be disabled, and suffer a year's imprisonment. Stat. 23 Eliz. c. 1.—Recusants are not to be Schoolmasters in any public grammar-school, nor any other, unless licensed by the bishop; under the penalty of forfeiting 40s. a-day. Stat. 1 Jac. c. 4.—Every Schoolmaster keeping any public or private school, and every tutor in any private family, shall subscribe the declaration, that he will conform to the liturgy of the church of England, as by law established, and be licensed by the Ordinary; or he shall for the first offence suffer three months' imprisonment, &c. Stat. 13 & 14 Car. 2. c. 4.—If any Papist shall be convicted of keeping a school, or taking upon him the education of youth, he shall be adjudged to perpetual imprisonment. Stat. 11 & 12 W. 3. c. 4. See titles Papists; Dissenters; as to the mitigation of these by later statutes, under certain conditions. The stat. 12 Ann. st. 2. c. 7, which imposed the penalty of three months' imprisonment on persons keeping school without a licence from the bishop, was repealed by stat. 5 Geo. 1. c. 3.

By the Canons, no man shall teach in a public school, or private house, but such as is examined and allowed by the bishop, and of sober life: And all Schoolmasters are to teach the catechism of the church in English or Latin; and bring their scholars to church, and afterwards examine them how they have benefited by sermons, &c. Can. 77. 79.—Though the Act of Uniformity obliges Schoolmasters only to assent to and subscribe the declaration, yet it adds, according to the laws and statutes of this realm, which presupposes some necessary qualification. And therefore a bishop may take time to inquire into the character of an elected Schoolmaster, before he licenses him. 2 Strange 1023.

Masters of grammar schools must be licensed by the Ordinary, who may examine the party applying for a licence as to his learning, morality, and religion. 6 Term Rep. K. B. 490. See also this Dict. title Resignation.

As to the power of a schoolmaster in correcting his scholars, see title Homicide II. 1.

For regulating and making better provision for Schoolmasters in Scotland, see Scotch Acts, 1693. c. 22; 1696. c. 26: and the stat. 43 G. 3. c. 54.

SCILICET, An adverb, signifying, that is to say; to wit; Hobart,
in his exposition of this word, says, it is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia*; neither is it a substantive clause of itself; but it is rather to usher in the sentence of another, and to particularise that which was too general before, or distribute that which was too gross, or to explain that which was doubtful and obscure; and it must neither increase nor diminish the premises or *habendum*, for it gives nothing of itself; but it may make a restriction, where the precedent words are not so very express, but that they may be restrained. *Hob.* 171, 172. See also *1 P.* *Wms.* 18; and the case of a bond to two with a *Scilicet*, severing the money between them. *Dy.* 350. The word *Scilicet*, in a declaration, shall not make any alteration of that which went before. *Poph.* 201. 4. And yet, in some cases, the *Scilicet* which introduces a subsequent, shall not be rejected. *2 Cro.* 618. See title *Pleading*.

**SCIRE FACIAS.**

A *Writ* judicial, most commonly to call a man to shew cause to the court whence it issues, why execution of judgment passed should not be made out. This writ is not granted until a year and a day be elapsed after judgment given. *Old Nat. Brev.* fol. 151. *Scire facias* upon a fine lies not, but within the same time after the fine levied; otherwise it is the same with the writ of *habere facias seisinam*. *West. Symbol.* *part 2.* title *Fines*, § 137. See *stats.* 25 *E.* 3. *st.* 5. *cap.* 2: *39 Eliz.* c. 7.

Other diversities of this writ are in the table of the *Register Judicial and Original*. See also *Rastall’s Entries* verb *scire facias*. *Cowell.* And post. titles *scire facias* against *Bail*; *ad audiendum errores; in detinue, &c.*

All writs of execution must be sued out within a year and a day after the judgment is entered; otherwise the court concludes *prima facie*, that the judgment is satisfied and extinct: But it will grant a writ of *scire facias* in pursuance of *stat. Westm.* 2: *13 Ed.* 1. c. 45. for the defendant to shew cause why the judgment should not be revived, and execution had against him; to which the defendant may plead such matter as he has to allege, in order to shew why process of execution should not be issued. *3 Comm.* 421.

I. Of the Nature of the Writ, and in what Cases it is a proper Remedy.

II. Of the Scire facias to revive Judgments, and after what Time necessary.

III. Of the Scire facias on Recognizances and Statutes.

IV. Of the Pleadings and Proceedings on a Scire facias; And herein of Ter-tenants. See ante I.

I. *Scire Facias* is deemed a judicial writ, (or action, 2 *Term Ref.* *K.* *B.* 46; 267.) and founded on some matter of record, as judgments, recognizances, and letters patent, on which it lies to enforce the execution of them, or to vacate or set them aside; and though it be a judicial writ of execution, yet it is so far in nature of an original, that the defendant may plead to it, and is in that respect considered as an action; and therefore it is held, that a release of all actions, or a re-
lease of all executions, is a good bar to a scire facias. Litt. § 505: Co. Litt. 290, 6; 291, a: F. N. B. 267.

But though it be held that a scire facias is in nature of an original, yet it hath been adjudged, that no writ of error lies into the Exchequer-chamber on a judgment given in B. R. on a scire facias; the statute 27 Eliz. c. 8. which gives the writ of error, mentioning only suits or actions of debt, detinue, covenant, account, actions upon the case, ejectione firme, or trespass. Cro. Car. 286. 300. 464: 1 Roll. Refi. 264: 1 Vent. 38: 1 Salk. 263.

If a bill of exceptions be tendered to a Judge and he signs it, and dies, a scire facias lies against his executors or administrators to certify it. 4 Inst. 438. See 2 Inst. 428.

A scire facias lies against a sheriff who levies money on a fi. fa. and retains it in his hands. Holt. 32: Cro. Jac. 514: 1 And. 247: Godd. 276.

So a scire facias will lie for a fine assessed on the party at the justice-seat of a forest. Cro. Car. 409. It lies to have execution of damages recovered in an appeal. Cro. Jac. 549.

Upon an elongavit returned by the sheriff, a scire facias lies against the pledges in replevin, by the plaintiff in the sheriff's court, transmitted to the hustings, and so to B. R. by certiorari. Comb. 1. And a scire facias lies against the sheriff for taking insufficient pledges in replevin. Hutt. 77.

If one hath judgment in a quare impedit, and afterwards, before execution, the party is outlawed, the King may have a scire facias to execute the judgment; the King having privy enough in this case to shew execution, because the thing, as it was in the plaintiff, vested in the King. Moor 241: Cro. Eliz. 44. 325. Where having the thing gives a sufficient privy to maintain a scire facias; see Keilw. 168, 169.

On a motion to discharge an outlawry which was pardoned by the act of oblivion, the Court held that it could not be done on motion, but that the party must bring a scire facias on the act. Stil. 348. See title Outlawry, IV.

Where one obtained judgment, and after had judgment on a scire facias thereupon, and then became a bankrupt, and the original judgment was assigned by the commissioners to S. S. upon motion, it was entered to entitle him to the benefit of the judgment, on the scire facias without bringing a new one. 3 Mod. 88.

A scire facias brought by the successor of a president of the College of Physicians in London, (upon a judgment in debt obtained by him upon the statute 14 & 15 H. 8. c. 5. against practising physic in London without a licence,) who died before execution; it was objected on demurrer, that the scire facias ought to have been brought by the executor or administrator of him who recovered: But without argument the Court held, that the successor might well maintain the action; for the suit is given to the college by a private statute, and the suit is to be brought by the president for the time being; and he having recovered in right of the corporation, the law shall transfer that duty to the successor of him who recovered. Cro. Jac. 159.

A scire facias was brought in the court of C. B. to reverse a fine in ancient demesne; and it was ruled, that no such writ lay, but that the party ought to bring his writ of deceit. Salk. 210: 3 Salk. 35: 3 Lev. 419. 1 Ld. Raym. 177.
Where either party dies, between the verdict and the judgment, it is enacted, by the statute 17 Car. 2. c. 8. “That his death shall not be alleged for error, so as the judgment be entered within two terms after the verdict.” In the construction of this statute, it has been held that the death of either party before the assizes is not remedied: but if the party die after the assizes begin, though before the trial, that is within the remedy of the statute; for the assizes are considered but as one day in law; and this is a remedial act, which shall be construed favourably. The judgment upon this statute is entered by or against the party, as though he were alive; and it should be entered or at least signed, within two terms after the verdict. But there must be a scire facias to revive it, before execution can be taken out: and such scire facias pursuing the form of the judgment, should be general, as on a judgment recovered by or against the party himself. Tidd’s Pract. K. B.; and the authorities there cited.

By stat. 8 & 9 W. 3. c. 11. it is enacted, “That in all actions to be commenced in any court of record, if the plaintiff or defendant happen to die, after interlocutory and before final judgment, the action shall not abate by reason thereof, if such action might have been originally prosecuted or maintained, by or against the executors or administrators of the party dying; but the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, shall and may have a scire facias against the defendant, if living after such interlocutory judgment, or if he died after, then against his executors or administrators, to shew cause, why damages in such action should not be assessed and recovered by him or them. And if such defendant, his executors or administrators, shall appear at the return of such writ, and not shew or allege any matter sufficient to arrest the final judgment, or being returned warned, or, upon two writs of scire facias it being returned that the defendant, his executors or administrators, had nothing whereby to be summoned, or could not be found in the county, shall make default, that thereupon a writ of inquiry of damages shall be awarded; which being executed and returned, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ or writs of scire facias, against such defendant, his executors or administrators, respectively.” This statute has been held not to extend to cases, where the party dies before interlocutory judgment; though it be after the expiration of the rule to plead. 1 Wils. 315.

Where either party dies, after interlocutory judgment, and before the execution of the writ of inquiry, the scire facias upon this statute ought to be, for the defendant, or his executors or administrators, to shew cause why the damages should not be assessed and recovered against them, and to hear the judgment of the court thereupon. Lill. Ent. 647: 6 Mod. 144. But where the death happens after the writ of Inquiry is executed, and before the return, the scire facias must be to shew cause why the damages assessed by the jury should not be adjudged to the plaintiff, or his executors or administrators. 1 Wils. 243. See 1 Term Rpt. 388. And where the plaintiff dies, after interlocutory, and before final judgment, in an action against the executor, the defendant cannot plead to the scire facias a judgment upon bond against his testator, and no assets ultra; for the statute never intended that the executor should be in a better situation as to the assessing of damages upon the inquiry, than his testator, who could have plead-
ed nothing but a release, or other matter in bar, arising \textit{huis darrein continuance}. 1 Salk. 315: 6 Mod. 142.

The judgment upon this statute is not entered by or against the party himself, as upon \textit{stat.} 17 Car. 2. c. 8, but by or against his executors or administrators. 1 Salk. 42. And where the defendant dies, after interlocutory and before final judgment, two writs of \textit{scire facias} must be sued out by the plaintiff before he can have execution: one before the final judgment is signed, in order to make the executors or administrators parties to the record; the other after final judgment is signed, in order to give them an opportunity of pleading no assets, or any other matter in their defence: for it would be unreasonable that the executors or administrators should be in a worse situation, where their testator or intestate died before the final judgment was signed, than they would have been if they had died afterwards. \textit{Say}. 266.

See this Dictionary, title \textit{Abatement} I. 6. c.

II. There have been different opinions whether a \textit{scire facias} lay at Common Law or not; but this doubt, says Coke, arose for want of distinguishing between personal and real actions. At Common Law, if after judgment given, or recognizance acknowledged, the plaintiff did not sue out execution within the year, the plaintiff, or his counsel, was driven to his original upon the judgment; and the \textit{scire facias} in personal actions was given by the statute of \textit{Westm.} 2. c. 45. But in real actions, or upon a fine, though no execution was sued out within a year after the judgment given or fine levied, yet after the year a \textit{scire facias} lay for the land, &c. because no new original lay upon the judgment or fine. 2 Inst. 469, 470.

A \textit{scire facias} lay as well in mixed as real actions, and upon a judgment in assise. So it lay upon a judgment in a writ of annuity. Salk. 258. 600.

It hath been adjudged, that if there be judgment in ejectment, and no execution sued thereon in a year and a day, an \textit{habere facias possessionem} cannot be sued out after, without a \textit{scire facias}; and Holt, Ch. J. said, that as to the possession of the land an ejectment was real, and not the only remedy a termor for years had, and that a recovery therein bound the right of inheritance. Salk. 258. 600. \textit{Comb.} 250: 7 Mod. 64: And see 1 Sid. 307. 351: 2 \textit{Keb.} 307: \textit{Skin.} 161: 3 \textit{Lev.} 100: \textit{Lutw.} 1268.

But though, after a year and a day, there can be no execution of a judgment without a \textit{scire facias}, yet if the plaintiff hath been delayed by a writ of error, he may take out execution within a year and a day after the judgment affirmed. 5 Co. 80: Moor 566. \textit{ptl}. 772: \textit{Cro. Eliz.} 705: \textit{Godb.} 372: \textit{Palm.} 44: See 1 \textit{Roll. Abr.} 899: \textit{Lan.} 20: \textit{Dennis v. Drake}: \textit{Cro. Eliz.} 416.

So, if after the year after the recovery the defendant brings a writ of error, and the judgment is affirmed, though before the writ of error brought the recoveror was to put his \textit{scire facias}, yet this affirmance is a new judgment, and the recoveror may have, within the year after the affirmance, a \textit{fiere facias} or \textit{cahias}, without a \textit{scire facias}. 1 \textit{Roll. Abr.} 899. And see \textit{Palm.} 449: \textit{Latch.} 193.

So, if he be nonsuit in the writ of error, or if the writ of error be discontinued: for though in these cases there is not any new judgment given, yet the bringing of the writ of error revives the first
SCIRE FACIAS, II. 21
If upon a judgment there be a cesset execution for a year after the judgment, the plaintiff within the subsequent year may take out execution without a scire facias. 6 Mod. 288: 7 Mod. 64.
Also it hath been held, that where execution hath been taken out after the year and day, it is not void, but voidable only. 3 Leon. 404: Salk. 273.
If the execution is staid by injunction, though the act of the defendant, yet the Court will not take notice thereof. See title Execution.
In such case there must be a scire facias; the staying the proceedings by injunction, does not appear to the Court; by any record of its own: Nor is the filing a bill in equity any revival of the judgment, as in the case of a writ of error. 6 Mod. 288: Salk. 322. See title Injunction. But where it appeared that the whole delay had arisen, on the part of the defendant, by bills in chancery for injunctions, and by obtaining time for payment, &c. the Court were unanimous that this rule of reviving a judgment above a year old, by scire facias before execution, which was intended to prevent a surprise upon the defendant, ought not to be taken advantage of by one, who was so far from being surprised by the delay, that he himself had been trying all manner of methods, whereby he might delay the plaintiff; and therefore they discharged the rule for setting aside the execution, with costs. 2 Burr. 660.
If judgment be given in debt, and no execution sued out within the year, yet the plaintiff may, after an award of an elegit on the judgment roll, as of the same term with the judgment, continue it from thence by vicecomes non misit breve; so held on a motion to set aside the execution; and though the Court said that an elegit ought to be actually taken out within the year, yet being informed by the clerks of the court, that it had been the practice for many years to make such entry, &c. it was said to be the law of the Court, and they ordered the execution to stand. Cardth. 283: 2 Show. 235. Comb. 232.
If the demandant, or plaintiff, taketh his process of execution within the year, though it be not served within the year, yet if he continue the same, he may have execution at any time after the year. 2 Inst. 471: Co. Litt. 290, b: And see 2 Leon. 77, 78. 87: 3 Leon. 239: 4 Leon. 44: 1 Sid. 59: 1 Keb. 159: 6 Mod. 288.
If the plaintiff delay the executing of a writ of inquiry till a year after the interlocutory judgment, he cannot execute it after without a scire facias.
In the case of the King there need not be any scire facias after the year and day. 2 Salk. 603.
After a judgment, if the plaintiff within the year sues a scire facias, he cannot have a capias, within the year, until he hath a new judgment on the scire facias. 1 Roll. Abr. 900: 3 Danv. 333. Q. ft. 1.
Where there is any change or alteration of parties, a scire facias is in general necessary to warrant an execution, as in case of death, &c. Where there are two or more plaintiffs or defendants in a personal action, and one of them dies before judgment, his death should regularly be suggested on the roll, and judgment entered for or against the survivors. But where one of two plaintiffs died before interlocutory judgment, and the first notwithstanding went on to exe-
cution in the name of both; on a motion to set aside the proceedings for this irregularity, the Court permitted the plaintiff to suggest the death of the other before interlocutory judgment on the roll, and to amend the ca. sa. without paying costs. And where one of several plaintiffs dies after judgment, execution may be had for or against the survivors, without a seire facias: but the execution, in such case should be taken out in the joint names of all the plaintiffs or defendants, otherwise it will not be warranted by the judgment. Tidd's Pract. K. B. c. 41, and the authorities there cited. If proceedings are removed out of the county-court or other courts, not of record, by writ of false judgment, and the plaintiff is nonprossed, the execution shall issue out of the court above, and a seire facias seems to be necessary for this purpose. Tidd's Pract. K. B. c. 41. And see this Dict. title Abatement.

A seire facias seems necessary under the Lords' act, 32 Geo. 2. c. 28. § 20. which gives execution against the future goods of an insolvent debtor taking the benefit of that act. 1 Term Rep. 80.

When a prisoner is charged in execution, the execution is considered as executed, and therefore though the plaintiff afterwards die, his executors are not bound to revive the judgment by seire facias; or even to charge the defendant in execution de novo. Tidd's Pract. K. B. 211, cites King v. Millet, Hil. 22 Geo. 3.

Judgment being entered on a bond to secure the quarterly payment of an annuity, and a fi. fa. having issued for the arrears of the last half year, a second fi. fa. may be taken out for the next quarter without reviving the judgment by seire facias. 1 H. Blackst. 297.

III. Recognizances and statutes are considered as judgments, being obligations solemnly acknowledged, and entered of record, and the seire facias on those is the judicial writ and proper remedy which the conusee hath; but herein we must distinguish between recognizances at Common Law and statutes-merchants, &c. for, upon the former, if the conusee did not take out execution within a year after the day of payment assigned in the recognizance, he was obliged to commence the suit again by original; the Law presuming the debt might have been paid, if execution was not sued within the year after the money became payable; but this law is altered by stat. Westm. 2. c. 45. by which the conusee hath a seire facias given him to revive the judgment, and put in execution; if the conusor cannot stop it by pleading such matter as the Law judges sufficient for that end, such as a release, &c. But the conusee of a statute-merchant, &c. may at any time sue execution on them without the delay or charge of a seire facias. Litt. Rep. 89. That a capias lies not on a recognizance, but only a seire facias; see 1 Brownl. 83; Co. Litt. 291: 2 Inst. 469; F. N. B. 296: Bro. Recog. 17.

Also as to recognizances at Common Law, and statutes and recognizances introduced by Statute Law, we must further distinguish; that if on the first the conusee dies before execution sued, his executor shall not sue it, even within the year, without bringing a seire facias against the conusor; the reason is, because the law presumes the debt might have been paid to the testator, and therefore will not suffer the debtor to be molested, unless it appear that he hath omitted to perform the judgment: and this is to be done by seire facias brought by the executor, for the alteration of the person altereth the process at Common
Law; but this tending to delay, the *scire facias* is taken away in statutes and recognizances by Statute Law, by the several acts of Parliament which introduced them; and therefore upon the death of the cosusee of a statute-merchant, &c. his executors may come into Chancery, and upon their producing the testament and the statute, shall have execution without a *scire facias*, as the testator himself might. 3 Inst. 395. 471: Bro. Stat. Merch. 16. 43. 50.

If a man be bound in a recognizance to the King, upon condition to be of good behaviour, &c. he cannot be indicted for breach of the good behaviour, by which he forfeits his recognizance, without a *scire facias*; for if a *scire facias* had been brought, he might have pleaded some matter in discharge thereof. 4 Inst. 181: 1 Roll. Abr. 900. What shall be said a breach, see Cro. Car. 498; and how to be assigned, sec 3 Bulst. 220: Cro. Jac. 415: Stil. 369: And this Dict. tit. Surety of the Peace.

If a man acknowledges a recognizance, to be paid at a day within the year after the date of the recognizance, in this case he may have execution by *fieri facias* or *elegit* within the year after the day of payment, though the year be past from the date of the recognizance. 21 Ed. 3. 22: b: 1 Roll. Abr. 899, 900: 2 Inst. 471. See 2 Roll. Abr. 468: Co. Lit. 292.

If a man recovers an annuity, he shall have execution for every time that occurs after by *fieri facias* or *elegit* within the year after the time incurred; though the year be past from the judgment; but not after the year without a *scire facias*. 1 Roll. Abr. 900: 2 Inst. 471: Salk. 258. 600.

If two acknowledge a recognizance of 100l. jointly and severally, the cosusee may sue several *scire facias’s* against the cosurees upon this recognizance. 2 Inst. 395.

*Scire facias upon a Recognizance in Chancery*, may be sued out to extend lands, &c. If, upon a *scire facias* upon a recognizance in Chancery, the record be transmitted into B. R. to try the issue, and the plaintiff is nonsuit; he may bring a new *scire facias* in B. R. upon the record there. 2 Saund. 27. Where a statute is acknowledged, and the cognisor afterwards confesseth a judgment, and the land is extended thereon; in this case the cognisor shall have a *scire facias* to avoid the extent of the lands; but if the judgment be on goods, it is otherwise. 1 Brownl. 37: 3 Nels. Abr. 186. *Scire facias* lies on recognizance of the peace, &c. removed into B. R. See title Surety of the Peace.

**IV. A SCIRE FACIAS** on a judgment must pursue the terms of the judgment. 6 Term Ref. K. B. 1.

A *Scire facias* may be pleaded to, before judgment given upon it; afterwards it is too late: Though a writ of error may be brought to reverse the judgment on the *scire facias*, if that be not good on which the judgment was grounded. 2 Inst. 503. Payment was no plea at Common Law to a *scire facias* upon a judgment; because it is a debt upon record. 3 Lev. 120. But this was altered by stat. 4 Ann. c. 16. § 12, which gives the defendant liberty to plead such payment.

Whatever is pleadable to the original action in abatement, shall not be pleaded to disable the plaintiff from having execution on a *scire facias*; because the defendant had admitted him able to have judgment. 1 Salk. 2.—If a judgment be obtained against an execu-
tor, and afterwards a scire facias is brought against him upon that judgment, he cannot plead a judgment recovered against his testator and that he hath not assets ultra, &c. because he might have pleaded it to the first action; for it is a settled rule that if a defendant hath a matter proper for his defence, and he neglects to plead it in bar to the action at the time he may, he shall never take advantage of it after. 2 Strange 752.

Where an executor pleads plene administravit, and the plaintiff does not take issue on it, but takes a judgment of assets quando acciderint, the scire facias on that judgment must only pray execution of such assets as have come to the executor's hands since the former judgment: and if it pray execution of assets generally, without confining it to that time, it cannot be supported. 6 Term Rep. K. B. 1.

In scire facias on a judgment in debt, or other personal action, the defendant cannot plead non-tenure of the land generally, where it is contrary to the return of the sheriff; though he may plead a special non-tenure: But on a scire facias to have execution in a real action, the defendant may plead non-tenure generally, because the freehold is in question, and that is favoured in Law; and the ter-tenants may plead there are other ter-tenants not named, and pray judgment if they ought to answer till the others are summoned, &c. though it would be otherwise if the scire facias had been against particular tenants by name. 2 Salk. 601.

In a scire facias on a judgment against a person, who had been since a bankrupt under stat. 5 Geo. 2. c. 30. § 9. which makes the future estate and effects of a person liable to his creditors, unless the estate shall produce sufficient to pay 15s. in the pound, it is necessary for the plaintiff to aver that the bankrupt's estate has not paid 15s. per pound. 7 Term Rep. K. B. 27.

On a scire facias to have execution upon a judgment in action of debt, every ter-tenant is to be contributory; and therefore one shall not answer, as long as he can shew that another is liable and not warned: Contra on a scire facias upon a judgment in a real action; for every tenant is to answer for that which he hath, and one may be contributory and the other not. 2 Cro. 507.

On a scire facias against the heir and ter-tenants to reverse a common recovery of lands, the scire facias is to issue against all the ter-tenants, for they are to gain or lose by the judgment in the recovery. Raym. 16: 3 Mod. 274.—A scire facias to have execution of a fine, shall not be sued against lessee for years; but against him who hath the freehold, who may have some matter to bar the execution. Cro. Eliz. 471: 2 Brownl. 144. In ejectment, it was adjudged, that a scire facias might be brought by the lessee, though he was but nominal, and that it may be had by the lessor himself; as either of them may have a writ of error on the judgment: And that it might be brought against those who were strangers to the judgment, and against the executors of the defendant, &c. 2 Lutw. 1267.

If a judgment be above ten years' standing, the plaintiff cannot sue a scire facias without a motion in court, on affidavit that the debt is due, the judgment unsatisfied, and the defendant living, in B. R. But in C. B. by motion of course, signed by a serjeant, unless it is of twenty years' standing, when a motion must be made in court, on affidavit: If under ten, but above seven, he cannot have a scire facias without a motion at the side bar; which side bar rule is obtained of
course, without any motion by counsel. Note; after such motion, and
judgment revived by scire facias, if the defendant dies before execu-
tion, the plaintiff must sue a new scire facias, but may have it with-
out motion, for the judgment was revived before. Salk. 598. Sellon’s
Pract.

In the King’s Bench, and in all cases, there must be either one scire
facias, with a scire feci returned, or two scire facias’s with nihils. 2 Inst.
272: 2 Mod. 227.—But in C. B. whenever the scire facias is to re-
vive a judgment against the same defendant, who was party and pri-
y to the judgment, one scire facias is sufficient, though a nihil be re-
turned thereto. Dy. 186: Salk. 599.—But not so where the defendant
is not party to the record. The time however between the teste and
return, in both courts, is in effect the same: For in C. B. the one
scire facias must have fifteen days between the teste and return;
whereas, in K. B. there must be fifteen days between the teste of the
first and the return of the second scire facias. So, in C. B., where two
scire facias’s are necessary.—If only one scire facias and a scire feci
in K. B. such scire facias should have fifteen days between the teste
and return.—So must every scire facias when the proceeding is by
original: But if inclusive both of teste and return, it is good. Sellon’s
Pract.

Although the intent of the scire facias is to give the party, against
whom execution is about to issue, notice or warning thereof, yet by
the general practice it is wholly defeated, for the defendant may be
summoned or not, as the party thinks fit: And, indeed, the usual way
is to revive the judgment without giving the party any notice. Sellon’s
Pract. And it seems that the party may always search the office, and
on finding a scire facias left there for a return, he may appear though
he is not warned or summoned.—A scire facias must lie in the sheri-
ff’s office the last four days before the return. 4 Term Rep. K. B.
583.

No alias scire facias must issue till the first writ of scire facias is re-
turnable. R. T. 8 W. 3.—And in C. B. not until the appearance day
of the return of the first.—The alias shall bear teste the day of the
return of the first. Salk. 599: And in C. B. on the appearance day, as
must the alias scire facias by original. Sellon’s Pract.

A defendant being summoned upon a scire facias, and the sum-
mons returned, if he doth not appear, but lets judgment go by default,
he is forever barred. 1 Lev. 41, 42.—If the sheriff hath returned him
warned, he shall not have audiita querela on a release, &c. for the de-
fendant might have pleaded the same on the return of the scire facias;
but if the sheriff return nihil, on which an execution is awarded, he
shall have audiuta querela. New Nat. Br. 230.—In the first case, he
might have appeared and pleaded; in the other, not being warned, he
was not bound to appear. Where there has been no scire feci, and on-
ly two nihils, the Court will often relieve upon motion, and not put the
party to an audiita querela. Salk. 93. 264: 2 Strange 1075.

Where the plaintiff in the judgment releaseth the defendant of all
judgments and executions, &c. the defendant may, upon his release,
sue out a writ of scire facias against the plaintiff in the judgment ad
cognoscendum scriptum suum relaxationis; and he need not sue out his
audiita querela. Hil. 5 W. & M. B. R.

Damages are not recoverable in a scire facias. 3 Burr. 1791. Also
it was formerly held that the plaintiff could in a scire facias recover
costs; but this is now remedied by stat. 8 & 9 W. 3. c. 11. Dal. 95: 3 Bults, 322.

But the plaintiff is not entitled to costs unless the defendant has appeared and pleaded: And no costs are payable by the plaintiff, on moving to quash his own writ before plea, nor after plea in abatement. Cas. Pract. C. B. 74: 1 Stra. 638.—There is a proviso in the statute, that it shall not extend to executors or administrators; and thence it has been determined that in scire facias they are not liable, when plaintiffs, to the payment of costs. 1 Stra. 188.

For more learning on this subject, see 4 New Abr. 19: Vin. Abr. title scire facias: Wilson's Rep. par. 1. 98. 243: par. 2. 61. 572; the books of practice, particularly Sellon's; and this Dictionary, titles Error; Execution; Judgment, &c.

SCIRE FACIAS; AGAINST BAIL. If a Capias ad satisfaciendum (see that title, and title Execution) is sued out against a defendant, and a non est inventus is returned thereon, the plaintiff may sue out a process against the bail (where bail were given); for they stipulate, in this triple alternative; that the defendant shall, if condemned in the suit, satisfy the plaintiff his debt and costs; or, that he shall surrender himself a prisoner; or, that they will pay it for him.—As therefore the two former branches of the alternative are neither of them complied with, the latter must immediately take place. In order to which a writ of scire facias may be sued out against the bail, commanding the sheriff to make known to them the judgment, and that they shew cause why the plaintiff should not have execution against them for his debt and damages: And in such writ, if they shew no sufficient cause, or the defendant does not surrender himself on the day of the return, or of shewing cause, (for afterwards it is not sufficient,) the plaintiff may have judgment against the bail, and take out a writ of ca. sa. or other process of execution against them. 3 Comm. c. 26. p. 416: See this Dictionary title Bail I.

There is no attempt, in point of fact, to find the principal on this ca. sa. but it is merely as a warning that the plaintiff means to proceed against the bail; or rather, the ca. sa. against the principal, being left in the sheriff's office, is as notice to the bail, that the plaintiff will proceed against the person, and it is incumbent on the bail to search whether any ca. sa. is left in the office. 4 Burr. 1360.

A writ of error is a supersedeas of execution from the time of its allowance, provided bail, when requisite, be put in thereon in due time. But it does not prevent the plaintiff from proceeding by action of debt, or scire facias on the judgment, against the principal, or by scire facias, or action of debt on the recognizance, against the bail. In such cases however, if the writ of error be not evidently brought for the mere purpose of delay, the Court will stay the proceedings upon terms, pending the writ of error. But this is not a matter of course; and if it be apparent to the Court, that the writ of error is brought merely for delay, they will not stay the proceedings. Tidd's Pract. K. B.

In order to stay the proceedings in an action of debt, or scire facias, on a judgment, pending a writ of error, it is necessary that the defendant should be first in Court, by putting in bail. And where an action is brought upon a judgment of the Court of Common Pleas, the Court of K. B. will not stay proceedings, pending a writ of error, without the defendant's giving judgment in the second action, and
undertaking not to bring a writ of error upon that judgment. But if the action be brought upon a judgment of the Court of K. B. these terms make no part of the rule; because, in general, actions on judgments are vexatious, and the plaintiff might have his execution on the first judgment. *Tidd's Pract. K. B.* and the authorities there cited.

On a *scire facias*, or action of debt on recognizance, against bail, when a writ of error is allowed, and the bail apply within their time for surrendering the principal, the Court will stay the proceedings, until the writ of error is determined; the bail undertaking to pay the condemnation money, or surrender the defendant into the custody of the Marshal, within four days next after the determination of the writ of error, in case the same shall be determined in favour of the defendant in error. And in one case, where the writ of error was allowed before the time was expired for surrendering the principal, though notice of such allowance was not given to the plaintiff’s attorney, nor the application consequently made, till after the expiration of that time, the Court gave the bail the same terms, as are usual when they apply within the time granted, by the course of the Court, for surrendering the principal. But, in general, when the bail do not apply to stay the proceedings, pending error, till their time to surrender is out, the Court will not give them any time for that purpose, but only four days to pay the money in, after the judgment is affirmed. *Tidd’s Pract. K. B.* and the authorities there.

Where error was not brought till it was too late for the bail to surrender, the Court, in one case, would not stay the proceedings. But, in a subsequent case, proceedings were stayed; the bail undertaking to pay the condemnation-money, and the costs on the *scire facias*, in four days after affirmation; but in this case, there being no bail on the writ of error, the Court made the bail also undertake to pay the costs, on the writ of error, in case the judgment was affirmed; and said, it was a favour they were asking, and they would make them submit to equitable terms. 1 *Stra.* 443: 2 *Stra.* 887. By the affirmation of the judgment, in these cases, is meant the final affirmation of it; and therefore where the judgment, on a writ of error, was affirmed in the Exchequer-chamber, and afterwards another writ of error was brought, returnable in Parliament, the proceedings against the bail were further staid, till the determination of the second writ of error. 5 *Burr.* 2819.

The plaintiff got judgment on the *scire facias* against bail, pending error by the principal, and took them in execution; and on their moving to be discharged, the Court said, though they might have applied, and had the proceedings staid, yet the Court would not set them aside. 1 *Stra.* 526: *Barnes* 202: But see 4 *Burr.* 2454: 3 Term Rep. 643: *semb. contrá*.

See further, this Dictionary, titles *Error; Bail, &c.*

There must be a particular warrant of attorney to a *scire facias* against the bail; for a warrant in the principal action is no warrant to the *scire facias*, because these are distinct actions; and the particular warrant isto be entered when the suit commences, which is when the writ is returned. 2 *Salk.* 603.—When a *scire facias* is brought against the bail, it must be *in eâ parte*; and where it is brought against the defendant in the principal action, it is to be *in hac parte*. 2 *Salk.* 599.

*Scire Facias ad audiendum errores, To hear the Errors assign-
ed.—When a writ of Error is brought, as soon as the transcript is entered on record, and the plaintiff hath also assigned his Errors, and entered the same on record, if the defendant does not immediately plead or join in Error, the plaintiff may sue out this scire facias: And if the defendant in error does not come in, and plead or join to the assignment of Errors, upon the return of this writ the plaintiff may have an alias scire facias, and upon default thereto the plaintiff must proceed to argument, and will be heard ex parte. But this writ of scire facias is now seldom sued out, as the defendant usually appears gratis; or the plaintiff in Error, after his assignment of Errors, takes out a rule for defendant to appear thereto, and serves a copy on the defendant. Carth. 40: Sellon’s Pract.

Scire Facias in Detinue. In Detinue, after judgment, the plaintiff shall have a distringas, to compel the defendant to deliver the goods, by repeated distresses of his chattels; or else a scire facias against any third person in whose hands they may happen to be, to shew cause why they should not be delivered. 3 Comm. 413. See this Dictionary, title Execution; in the Introduction to that title.

Scire Facias to remove an usurper’s Clerk.—
On a quare impedit, and ne admittas sued out, if the bishop after receipt of the latter writ, admit any person, even though the patron’s right may have been found in a jure patronatus, then the plaintiff, after he has obtained judgment in the quare impedit, may remove the incumbent, if the clerk of a stranger, by writ of scire facias. 3 Comm. 248. See Quare impedit; Quare incumbavit.

Scire Facias to repeal Letters-patent and Grants.—Where the Crown hath unadvisedly granted any thing by Letters-patent, which ought not to be granted, or where the patentee hath done an act that amounts to a forfeiture of the grant, the remedy to repeal the patent, is by writ of scire facias in Chancery. This may be brought either on the part of the King, in order to resume the thing granted; or if the grant be injurious to a subject, the King is bound of right to permit him (upon his petition) to use his royal name for repealing the patent in a scire facias. And so, also, if upon an office untruly found for the King, he grants the land over to another, he who is grievced thereby, and traverses the office itself, is entitled, before issue joined, to a scire facias against the patentee, in order to record the grant. 3 Comm. c. 17. p. 260, 1. See this Dictionary, tit. Grant of the King; Inquest of office.

A scire facias to repeal a patent, must be brought where the record is, which is in Chancery; and there are to be two of these writs sued out of the petty-bag office directed to the sheriff of Middlesex, who, by a letter under the seal of his office, must send notice to the Corporation, or person whose concern the patent is, that there is a scire facias issued out returnable at such a time, and remaining with him, for the revocation of such a patent, and that if they do not appear thereunto, judgment will be had against them by default; and this letter to be delivered to the Corporation, or person interested in such Patent, by some person who can make oath thereof. Dalton’s Sheriff. On a scire facias out of Chancery returnable in B. R. to repeal Letters-patent, it was held, that if the Letters-patent are granted to the prejudice of any person, as if a fair is granted to the damage of the fair of another, &c. he may have a scire facias on the enrolment of such grant in Chancery; as well as the King in other cases;
but it may be a question, whether a *scire facias* upon a record in Chancery is returnable in *B. R.* though after it is made returnable into *B. R.* that Court, and not the Chancery, hath the jurisdiction of it. *Mod. Cas.* 229. In all cases at Common Law, where the King's title accrues by a judicial record, and he grants his estate over; the party grieved could not have a *scire facias* against the patentee, but was forced to his petition to the King; otherwise it is when his title is by conveyance on record, which is not judicial. 4 *Ref. 59.* The King hath a right to repeal a patent by *scire facias,* where he was deceived in his grant, or it is to the injury of the subject. 3 *Lev.* 220. And where a common person is obliged to bring his action, there, upon an inquisition or office found, the King is put to his *scire facias,* &c. 9 *Ref. 96.* A *scire facias* to repeal Letters-patent doth not abate by the demise of the Crown. 1 *Strange 43.*

*Scire Facias*'s have issued to repeal the grants of offices, for conditions-broken, non-attendance, &c. For disability, or in case of forfeiture, the offices may be seized without *scire facias.* 3 *Nels. Abr.* 201, 202. See title *Office IV.*

*Scire Facias* in *appeal* of murder, before a pardon shall be allowed; See title *Appeal II.*

*Scire feci,* Is the return of the sheriff, on a *scire facias,* that he hath caused notice to be given to the party, against whom the *scire facias* issued. See title *Scire facias.*

**Scirewyte,** The annual tax or prestation paid to the sheriff for holding the assizes or county courts. *Paroch. Antig.* p. 573.

**Cite,** *Situs.*] The setting or standing of any place; the seat or situation of a capital messuage, or the ground whereon it stood. *Mon. Ang. tom.* 2. *fol.* 278. The word in this sense is mentioned in the *stats.* 32 *H.* 8. *c.* 20; 22 *Car.* 2. *c.* 11.

**Scorners,** See *Sorners.*

**Scolds,** in a legal sense, are troublesome and angry women, who, by their brawling and wrangling amongst their neighbours, break the public peace, increase discord, and become a public nuisance to the neighbourhood. They are indictable in the sheriff's town, and punished by the cucking-stool, &c. *Kitch.* 13: 6 *Mod.* 213. See title *Castigatory.*

**Scot and Lot,** Sax. *Sceat,* pars, and *Llot.* i. e. *Sors.*] Signifies a customary contribution laid upon all subjects, according to their ability. *Spelm.* Nor are these old words grown obsolete, for whoever in like manner (though not by equal proportion) are assessed to any contribution, are generally said to pay Scot and Lot. *Stat.* 33 *H.* 8. *c.* 9. See also *stat.* 11 *Geo.* 1. *c.* 18. as to elections in *London.*

**Scotal,** or **Scotale,** Is where any officer of a forest keeps an *alehouse* within the forest, by colour of his office, causing people to come to his house, and there spend their money for fear of his displeasure: It is compound of *scot* and *ale,* which by transposition of the words is otherwise called an *aleshot.* This word is often used in the charter of the forest, *c.* 8. *Manwood* 216.

**Scottare.** Those tenants are said *scottare,* whose lands are subject to pay *scot.* *Mon. Ang.* i. 875.
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The Kingdom of Scotland, notwithstanding the union of the Crowns on the accession of their King; James VI. to that of England, continued an entirely separate and distinct kingdom for above a century more, though an Union had been long projected; which was judged to be the more easy to be done, as both kingdoms were antiently under the same government, and still retained a very great resemblance, though far from an identity, in their laws. By an act of parliament 1 Jac. 1. c. 1. it was declared, that these two mighty, famous, and antient kingdoms were formerly one. And Sir Edward Coke observes, how marvellous a conformity there was, not only in the religion and language of the two nations, but also in their antient laws, the descent of the crown, their parliaments, their titles of nobility, their officers of state and of justice, their writs, their customs, and even the language of their laws. Upon which account he supposes the Common Law of each to have been originally the same; especially as their most antient and authentic book, called Regiam Majestatem, and containing the rules of their antient Common Law, is extremely similar to that of Glanvil, which contains the principles of ours, as it stood in the reign of Henry II. 4 Inst. 345. The many diversities, now subsisting between the two laws at present, may be well enough accounted for, from a diversity of practice in two large and uncommunicating jurisdictions; and from the acts of two distinct and independent parliaments, which have in many points altered and abrogated the old Common Law of both kingdoms. See 1 Comm. Introd. § 4. p. 95. and the note there.

In the reigns of king James II. and king Charles II. commissioners were appointed to treat with commissioners of Scotland, concerning an union: But the bringing about this great work was reserved for the reign of Queen Anne. The stat. 1 Ann. st. 1. c. 14. ordained articles to be settled, by commissioners for the union of the two kingdoms, &c. and by stat. 5 Ann. c. 8. the union was effected.

By this statute, 5 Ann. c. 8. the Twenty-Five Articles of Union, agreed to by the parliaments of both nations, were ratified and confirmed; the purport of the most considerable being as follows:

1. That on the first of May 1707, and for ever after, the kingdoms of England and Scotland shall be united into one kingdom, by the name of Great Britain.
2. The succession to the monarchy of Great Britain shall be the same as was before settled with regard to that of England.
3. The united kingdom shall be represented by one Parliament.
4. There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed.

9. When England raises 2,000,000l. (accurately 1,997,763l. 8s. 4½d.) by a land-tax, Scotland shall raise 48,000l.

16, 17. The standards of the coin, of weights, and of measures, shall be reduced to those of England, throughout the united kingdoms.

18. The laws relating to trade, customs, and the excise shall be the same in Scotland as in England. But all the other laws of Scotland shall remain in force; though alterable by the parliament of Great Britain. Yet with this caution, that laws relating to public policy are
alterable at the discretion of the parliament; laws relating to private
right are not to be altered, but for the evident utility of the people of
Scotland.

22. Sixteen peers are to be chosen to represent the peerage of
Scotland in parliament, and forty-five members to sit in the House of
Commons.

23. The sixteen peers of Scotland shall have all privileges of par-
liament: And all peers of Scotland shall be peers of Great Britain,
and rank next after those of the same degree at the time of the union,
and shall have all privileges of peers, except sitting in the House of
Lords, and voting on the trial of a Peer.

It was formerly resolved by the House of Lords, that a peer of
Scotland claiming to sit in the British House of Peers by virtue of a
patent, passed under the Great Seal of Great Britain, had no right to
vote in the election of the sixteen Scotch Peers; and that no patent of
honour granted to any Peer of Great Britain, who was a Peer of
Scotland at the time of the Union, should entitle him to sit in Parlia-
ment. But in 1782, on the claim of the Duke of Hamilton to sit as
Duke of Brandon, the question being referred to the Judges, they
were unanimously of opinion, that the Peers of Scotland were not dis-
abled from receiving, subsequently to the Union, a patent of Peerage
of Great Britain, with all the privileges usually incident thereto; and
the House accordingly admitted the Duke of Hamilton to sit as Duke
of Brandon. No objection was ever made to an English Peer's taking
a Scotch Peerage by descent; and therefore, formerly, when it was
designed to confer an English title on a noble family of Scotland, the
eldest son of the Scotch Peer was created in his father's life-time an
English Peer, and this creation was not affected by the annexation by
inheritance of the Scotch Peerage.—It seems now to be settled, that
a Scotch Peer, made a Peer of Great Britain, has a right to vote in
the election of the sixteen Scotch Peers: and that if any of the sixteen
Scotch Peers are created Peers of Great Britain, they thereby cease
to sit as representatives of the Scotch Peerage; and new Scotch Peers
must be elected in their room. See 1 Comm. 97. n. 7.

25. All laws and statutes in either kingdom, so far as they are con-
trary to these articles, shall cease and become void: And hence it
seems that the royal prerogative of granting a charter to unrepresent-
ed places to send members to Parliament, is virtually abolished; since
the exercise of it would necessarily destroy the proportion of the re-
presentatives of the two kingdoms. 1 Comm. 97, n. See this Dictionary,
title Parliament VI. (B) 1. (b.)

In the said statute, 5 Ann. c. 8. two acts of Parliament were also re-
cited; the one of Scotland, whereby the church of Scotland, and also
the four universities of that kingdom, are established for ever, and all
succeeding Sovereigns are to take an oath inviolably to maintain the
same; the other of England, 5 Ann. c. 6, whereby the Acts of Uniform-
ity of 13 Eliz. and 13 Car. 2. (except as the same had been altered by
Parliament at that time) and all other acts then in force for the pre-
servation of the church of England, are declared perpetual; and it is
stipulated, that every subsequent King and Queen shall take an oath
inviolably to maintain the same within England, Ireland, Wales, and
the town of Berwick upon Tweed. And it is enacted, that these two acts "shall for ever be observed as fundamental and essential condi-
tions of the Union."

Upon these Articles and Act of Union, it is to be observed, 1st, That
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the two kingdoms are now so inseparably united, that nothing can ever disunite them again; except the mutual consent of both, or the successful resistance of either, upon apprehending an infringement of those points which, when they were separate and independent nations, it was mutually stipulated should be fundamental and essential conditions of the Union. 2dly, That whatever else may be deemed fundamental and essential conditions, the preservation of the two churches, of England and Scotland, in the same state that they were in at the time of the Union, and the maintenance of the Acts of Uniformity which establish our common prayer, are expressly declared so to be. 3dly, That therefore any alteration in the constitution of either of those churches, or in the liturgy of the church of England, (unless with the consent of the respective churches, collectively or representatively given) would be an infringement of these fundamental and essential conditions, and greatly endanger the Union. 4thly, That the municipal laws of Scotland are ordained to be still observed in that part of the island, unless altered by Parliament: and, as the Parliament has not yet thought proper, except in a few instances, to alter them, they still (with regard to the particulars unaltered) continue in full force. Wherefore the municipal or common laws of England are, generally speaking, of no force or validity in Scotland. See 1 Comm. 97, 98; and the note there.

At the time of the Union it was agreed, that the mode of the election of the Peers and Commons should be settled by an act passed in the Parliament of Scotland; which was afterwards recited, ratified, and made part of the Act of Union. As to the election of the sixteen Peers, see stat. 6 Ann. c. 23. With respect to the forty-five Commoners, it was, by an act of the Scotch Parliament, (and see stat. 6 Ann. c. 6.) enacted, that of the forty-five, thirty should be elected by the shires, and fifteen by the boroughs: That the city of Edinburgh should elect one; and that the other royal boroughs should be divided into fourteen districts, and that each district should return one: and it was also provided, that no person should elect or be elected one of the forty-five, but who would have been capable of electing, or of being elected, a representative of a shire or borough to the Parliament of Scotland: Hence the eldest son of any Scotch Peer cannot be elected one of the forty-five; such eldest son being incapable, prior to the Union, of sitting in the Scotch Parliament. Neither can such eldest son be entitled to be enrolled, and vote as a freeholder for any commissioner of a shire, though otherwise qualified; as determined by the House of Peers in Lord Daer’s case, 1793. But the eldest sons of Scotch Peers may represent any place in England, as many do. 2 Hats. Prec. 12.

The two stats. 9 Ann. c. 5: 33 Geo. 2. c. 20. requiring knights of shires and members for boroughs to have respectively 600l. and 300l. a-year, are expressly confined to England: But a commissioner of a shire must be a freeholder; and it is a general rule, that none can be elected but those who can elect. And it was formerly supposed, that it was necessary that every representative of a borough should be admitted a burgess of one of the boroughs which he represented; till the contrary was determined by a Committee of the House of Commons in the case of the borough of Wigtown: 2 Doug. Bl. 181. It still holds generally true in shires in Scotland, that the qualifications of the elec-
The election of members of Parliament for Scotland, is further regulated by English statutes: the magistrates are required to summon the councils of boroughs; and an oath is to be taken by every freeholder and voter as to the estates to qualify them, that they are actually their own, and not fictitious: Sheriffs or stewards not to make any false return, &c. under the penalty of $500. recoverable in a summary way: No Judge of the Court of Session, or Baron of the Exchequer, in Scotland, shall be elected a member of Parliament. Stats. 7 Geo. 2. c. 16: 16 Geo. 2. c. 11: and see stat. 14 Geo. 3. c. 81.

Acts of Parliament, in general, passed since the Union, extend to Scotland; but where a statute is not applicable to Scotland, and where Scotland is not intended to be included, the method is to declare by proviso that it does not extend to Scotland. 3 Burr. 853. As to Berwick, see this Dictionary under that title.

Several acts of Parliament have been passed, from time to time, for the internal regulation of various concerns of this part of the kingdom; the following acts are of public and general importance.

By stat. 6 Ann. c. 26. a Court of Exchequer is erected in Scotland, to be a Court of Record, Revenue, and Judicature, for ever; and Barons of the said Court to be appointed, who shall be Judges there.

An act for disarming the Highlands of Scotland; and requiring bail of persons for their loyal and peaceable behaviour, &c. Stat. 1 Geo. 1. st. 2. c. 54.—Persons summoned are to bring in and deliver up their arms, or, refusing to do it, shall be taken as listed soldiers to serve His Majesty beyond the seas; and concealing their arms, are liable to penalties: Also the Lords Lieutenants, or Justices of the Peace, may appoint persons to search houses for arms, &c. Stat. 11 Geo. 1. c. 26.

By the stats. 19 Geo. 2. c. 39: 20 Geo. 2. c. 51: 21 Geo. 2. c. 34: 26 Geo. 2. c. 29, provisions are further made for disarming the Highlands, and restraining the use of the Highland dress; and the masters, and teachers of private schools, chaplains, tutors, and governors of youth and children, are to take the oaths to His Majesty.

When any ordinary place is vacant in the Court of Sessions in Scotland, the King may nominate a person, who is to be examined by the Lords of the Session, and then admitted, &c. Stat. 10 Geo. 1. c. 18.

By stat. 20 Geo. 2. c. 43. the heritable jurisdictions are taken away and restored to the Crown, and more effectual provision is made for the administration of justice by the King's Courts and Judges there: And all persons acting as procurators, writers or agents in the law, are to take the oaths.—By stat. 20 Geo. 2. c. 50. the tenure of ward-holding is taken away, and converted into blench and feu-holding. The casualties of single and life rent escheats, incurred by horning and denunciation for civil causes are taken away. A summary process is given to heirs and successors against superiors. The attendance of vassals at head-courts is discharged. Heirs and possessors of tailizied estates are empowered to sell to the crown.

By stat. 25 Geo. 2. c. 20. certain doubts are obviated, that had arisen with regard to the admission of the vassals of the principality of Scotland, and payment of their rents and duties.

Peers of Scotland, and all officers, civil and military, &c. are to take the oath of abjuration, &c. A Peer committing high treason or felony...
in Scotland may be tried by commission under the great seal, constituting Justices to inquire, &c. in Scotland: And the King may grant commissions of oyer and terminer in Scotland, to determine such treason, &c. Stats. 6 Ann. c. 14: 7 Ann. c. 21.

Persons having lands in Scotland, guilty of high treason by corresponding with, assisting, or remitting money, &c. to the Pretender, on conviction, are to be liable to the pains of treason; and their vassals, continuing in dutiful allegiance, shall hold the said lands of His Majesty in fee and heritage for ever, where the lands were so held of the crown by the offender: And tenants continuing peaceable, and occupying land, are to hold the same two years, rent-free. Stat. 1 Geo. 1. St. 2. c. 20.

By stat. 19 Geo. 2. c. 9. every juror for trial of high treason, or misprision of treason, shall be possessed in his own or his wife’s right of lands, &c. as proprietor or life-renter within the shire, &c. of the yearly value of 40s. sterling at least, or valued at 30s. sterling per ann. in the tax roll.

By stat. 21 Geo. 2. c. 19. offences of high treason, committed in the shire of Dumbarton, Stirling, Perth, Kincardine, Aberdeen, Inverness, Nairn, Cromarrie, Argyll, Forfar, Banf; Sutherland, Caithness, Elgin, and Ross, or the shire or stewartry of Orkney, may be inquired of in any shire in Scotland, as shall be assigned by the King. Jurors may come out of adjoining counties. The practice of taking down evidence in writing, in crimes not affecting life or member, abrogated.

By the stat. 22 Geo. 2. c. 48. the court before whom any indictment for high treason, or misprision of high treason, in Scotland, shall be found, may issue writs of cafias, proclamation, and exigent against the party, if not in custody; whereon the defendant not appearing, shall be deemed outlawed and attainted of high treason, or misprision of high treason; persons out of the kingdom, and returning within a year, may traverse the indictment.

By stat. 25 Geo. 2. c. 41. forfeited estates in Scotland were annexed to the crown inalienably, and satisfaction made to the lawful creditors thereupon; and the rents thereof applied for the better civilizing the Highlands.

By stat. 30 Geo. 3. c. 17. regulations were made for altering the Summer Session in the Court of Session, the Whitsuntide and Lammas Terms in the Court of Exchequer, and the Spring Circuits of the Court of Justiciary.—By this act also, § 4, complaints were allowed to be presented to the Lord Ordinary in time of vacation, in the same manner as to the Court of Session while sitting.

By stat. 35 Geo. 3. c. 123. and afterwards more effectually by stat. 39 & 40 Geo. 3. c. 46. Regulations are made for the more easy and expedient recovery of debts not exceeding 5l. sterling, and determining of causes to that amount, throughout Scotland, by the intervention of two Justices of Peace within their respective jurisdictions.

By stat. 39 Geo. 3. c. 49. the Magistrates and Judges in Scotland are empowered to extend the amount of bail to be given in criminal cases to 1200l. sterling for a nobleman: 600l. for a landed gentleman: 500l. for any other gentleman, burgess, or householder, and 60l. for any inferior person. And on charges of sedition any Judge of the Court of Justiciary, on application in the name of the King’s Advocate, may extend the bail beyond those sums.

By 39 & 40 Geo. 3. c. 55. the salary of the Judges was increased:
and by 48 Geo. 3. c. 145. His Majesty is empowered to grant annuities to the Judges on their resignation.

By 43 Geo. 3. c. 80 and other acts sums have been granted out of the British Exchequer, for the purpose of building and repairing bridges, and making and repairing roads in the Highlands.—Public grants have also been made for the Caledonian and other Canals. See 43 Geo. 3. c. 102.—See also 46 Geo. 3. c. 155 & 156. producing of forfeited estates in making canals, and harbours, and in other public purposes, such as the Fisheries, Lunatic Asylum, &c.

By 43 Geo. 3. c. 54. provision is made for the better support of parochial schoolmasters; and for better governing the parish schools in Scotland.

By 48 Geo. 3. c. 51. some important regulations are made as to the internal regulation of the Court of Session (see title Session, Court of), and concerning appeals to the House of Lords: By this last act His Majesty is empowered to appoint commissioners to inquire into the forms of process in the Court of Session, and to report in what cases Trial by Jury may be usefully established in Scotland.

SCOTS. Assessments by Commissioners of Sewers are so called. SCRIPTURE. All profane scoffing of the Holy Scripture, or exposing any part thereof to contempt and ridicule, is punished by fine and imprisonment. 1 Hawk. P. C. See Reviling, &c.

SCRIVENERS, Are mentioned in the statute against Usury and excessive interest of money, 12 Ann. st. 2. c. 16. Money-Scriveners were understood to be those who received money to place it out at interest; and who supplied those who wanted to raise money on security; thus rendering themselves useful to, and receiving a profit from, both parties. If a Scrivener is entrusted with a bond, he may receive the interest; and if he fails, the obligee shall bear the loss; and so it is if he receive the principal, and deliver up the bond; for being entrusted with the security itself, it shall be presumed he is trusted with power to receive the principal and interest; and the giving up the bond on payment of the money is a discharge thereof: But if a Scrivener be entrusted with a mortgage deed, he hath only authority to receive the interest, not the principal; the giving up the deed in this case not being sufficient to restore the estate, but there must be a reconveyance, &c. 1 Salk. 157.—It is held, where a Scrivener puts out his client’s money on a bad security, which on inquiry might have been easily found so, yet he cannot be charged in equity to answer the money; for no one would venture to put out money of another upon a security, if he were obliged to warrant and make it good, in case a loss should happen, without any fraud in him. Preced Chanc. 146. 149. See 19 Vin. Abr. 289—292: and this Dictionary, titles Bond; Mortgage; Trustee; Attorney, &c.

SCUTAGE, Scutagium, Sax. Scildfenig.] Was a tax or contribution, raised by those that held lands by knights-service, towards furnishing the King’s army, at one, two, or three marks for every knight’s fee. Henry the Third, for his voyage to the Holy Land, had a tenth granted by the clergy, and Scutage, three marks of every knight’s fee, by the laity. Baronag. Anglie, part 1. fol. 211, b. This was also levied by Henry II., Richard I., and King John. See titles Taxes; Tenures II. 8.

SCUTAGIO HABENDO, A writ that antiently lay against tenants by knight’s-service, to serve in the wars, or send sufficient per-
sons, or to pay a certain sum, &c. F. N. B. 83. See titles Taxes; Tenures.

SCUTE, A French gold coin of 3s. 4d. in the reign of King Henry V., Catharine Queen of England had an assurance made her of sundry castles, manors, lands, &c. valued at the sum of forty thousand Scutes, every two whereof were worth a noble. Rot. Parl. 1 Hen. 6.

SCUTELLA, from Scutum, Sax. Scutel.] A scuttle, any thing of a flat and broad shape, like a shield.

SCUTELLA ELEEMOSYNARIA, an alms basket, or scuttle.

Paroch. Antiq.

SCUTUM ARMORUM, A shield or coat of arms. See Seal.

SCYLDWIT, Sax.] A mulct for any fault; from the Saxon Scild, i.e. Delictum & Wite, hana. Leg. Hen. 1.

SCYRA, A fine imposed upon such as neglected to attend the scyregemot court, which all tenants were bound to do. Mon. Ang. i. 52.

SCYRE-GEMOT, Sax. Shiremote; A Court held by the Saxons twice every year by the bishop of the diocese, and the earldorman, in shires that had earldormen; and by the bishop and sheriff where the counties were committed to the sheriff, &c. wherein both the ecclesiastical and temporal laws were given in charge to the county. Selld. Title, Hon. 628. This Court was held three times in the year, in the reign of King Canutus the Dane. Leg. Canut. c. 38. And Edward the Confessor appointed it to be held twelve times in a year. Leg. Edw. Conf. c. 35. See Term.

SEA, Mare.] By statute 18 E. 3. c. 3. the Sea is to be open to all merchants. The main Sea, beneath the low water mark, and round England, is part of England; for the Admiral hath jurisdiction. 1 Inst. 260: 5 Rep. 207. The Seas which environ England are within the jurisdiction of the King of England. 1 Roll. Abr. 528. As to the sovereignty of the Sea, see title Navy.

SEA-BANKS, See Banks. By the statute 6 Geo. 2. c. 37. § 3. made perpetual by stat. 31 Geo. 2. c. 42. § 3. it is made felony without benefit of clergy maliciously to cut down any river or Sea-bank, whereby lands may be overflowed. And by stat. 10 Geo. 2. c. 32. a penalty of 20l. is imposed on any person cutting up or removing any piles, chalk, &c. used in securing Sea walls. And stat. 15 Geo. 2. c. 33. imposes penalties on persons cutting or pulling up Star or Bent on the sand hills on the north-west coast of England.

SEA-GREENS, Grounds overflowed by the Sea in spring tides. These, on the idea that the Sea-shore is that over which the tide flows, have been supposed to be inter Regalia. But by the custom of Scotland the Sea-shore is not held to extend further than to that point which the Sea reaches in common tides, and therefore Sea-Greens are held to be private property. Bell's Scotch Law Dict.—See further title Alluvion.

SEAL, Sigillum.] Is taken either for wax impressed with a device, and attached to deeds, &c. or for the instrument with which the wax is impressed. In Law the former is the most usual sense. The first sealed charter we find extant in England, is that of King Edward the Confessor, upon his foundation of Westminster Abbey. Dugdale's Warwickshire, fol. 138, b. Yet we read of a Seal in the manuscript history of Offa, King of the Mercians. And that Seals were in use in the Saxons' time, see Taylor's History of Gavelkind, fol. 73. It was usual in the time of Henry II. and before, to seal all grants with the
sign of the Cross, made in gold, on the parchment. Monast. iii. fol. 7; Ordericus Vitalis, lib. 4. That most of the charters of the English-Saxon Kings were thus signed, appears by Ingulphus, and in the Monasticon. But it was not so much used after the Conquest. Cowell. The Royal Seal was most frequently in green, to signify (as it has been quaintly expressed) rem in perpetuo vigoro permanuveram. Coats of arms on Seals were introduced about the year 1218. We read of a charter sealed with the royal tooth, called his wang-tooth. Wang is the jaw. Chaucer. See title Deed II. 6: and see further as to the Great and Privy Seal, titles Treason; Grant of the King; Privy Seal; Quarter Seal, &c. As to Seals of Corporations, see that title.

Writs touching the Common Law not to go out under any of the petty seals, 28 Ed. 1. st. 3. c. 6. See Writs.

SEA-LAWS, Laws relating to the sea; as the Laws of Oleron, &c. See Oleron Laws.

SEALER, Sigillator.] An officer in Chancery appointed by the Lord Chancellor, or Lord Keeper of the Great Seal of England, to seal the writs and instruments there made in his presence.

SEA-MARKS; See title Beacos.

SEAMEN; See title Navy, particularly under Division II.

Seamen's Wages, Are one proper object of the Admiralty jurisdiction, even though the contract be made for them upon the land. 11 Venitr. 146. Yet the courts of Common Law have jurisdiction; and an action may be maintained for work and labour. See title Admiral and Admiralty.

SEAN-FISH, seems to be that sort of fish which is taken with a large and long net, called a Sean. Stat. 3 Jac. 1. c. 12.

SEARCHER, An officer of the customs, whose business it is to search and examine ships outward-bound, if they have any prohibited or uncustomed goods on board, &c. This officer is mentioned in the stat. 12 Car. 2. c. 8. And there are Searchers concerned in navigation duties; of leather; and in divers other cases.

SEA-REEVE, In villis maritimis est qui maritimam Domini jurisdictiorum curat, littus lustrat, & ejectum maris (quod wreck appellatur) Domino colligit. Sphelm.

SEA-ROVERS, Pirates and robbers at sea. See title Pirates.

SEASINE, See Seisin.

SECONDARY, Secondarius.] An officer who is second, or next to the chief officer; as the Secondaries to the prothonotaries of the Courts of B. R. and C. B. The Secondary of the Remembrancer in the Exchequer; Secondary of the Compter, &c. 2 Litt. Abr. 506. Secondary of the King's Bench may have clerks. Stat. 2 Geo. 2. c. 23.

Secondary of the Office of Privy Seal, Is taken notice of in the old stat. 1 Edw. 4. c. 1.

Secondary Conveyances, Those which pre-suppose some other conveyance, precedent; and only serve to confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. See titles Conveyance; Deed IV.

Secondary Use, A Use, though executed, may change from one to another by circumstances ex post facto: as if A. makes a feoffment to the Use of his intended wife and her eldest son for their lives, upon the marriage the wife takes the whole Use in severalty; and upon the birth of a son, the Use is executed jointly in them both. This is sometimes called a Secondary, sometimes a Shifting Use. See title Use.

SECOND DELIVERANCE, secunda deliberatione.] Is a judi-
icial writ that lies, after a nonsuit of the plaintiff in replevin, and a
returno habendo of the cattle replevied, adjudged to him that distrain-
ed them; commanding the sheriff to replevy the same cattle again,
upon security given by the plaintiff in the replevin for the re-deliver-
ry of them, if the distress be justified. It is a second writ of replevin.
F. N. B. 68. See title Replevin.
SECOND MARRIAGE; See titles Bigamy; Polygamy.
SECONDS, To duellers. See title Homicide.
SECOND SURCHARGE, Writ of. If after admeasurement of
common, upon a writ of admeasurement of pasture, the same defend-
ant surcharges the common again, the plaintiff may have this writ
of Second Surcharge, de secunda superoneratione, which is given by
the statute Westm. 2. 13 Ed. 1. c. 8. See title Common III.
SECRETARY, Secretarius, à Secretis.] A title given to him that is
ab Epistolis & Scriptis Secretis; as to the Secretaries of State, &c. the
Secretaries of State have an extraordinary trust which renders them
very considerable in the eyes of the King, and of the subject also;
whose requests and petitions are for the most part lodged in their
hands, to be represented to His Majesty, and to make dispatches
thereupon, pursuant to His Majesty's directions. They are Privy
Councillors, and a council is seldom or never held without the pre-
sence of one of them; they wait by turns, and one of these Secreta-
ries always attends the court, and by the King's warrant, prepares all
bills or letters for the King to sign, not being matter of Law. And
depending on them is the office called the Paper Office, which con-
tains all the public writings of state, negotiations, and dispatches, all
matters of state and council, &c. and they have the keeping of the
King's seal, called the signet, because the King's private letters are
signed with it. There was but one Secretary of State in this king-
dom, till about the end of the reign of King Hen. VIII. But then that
great and weighty office was thought proper to be discharged by two
persons, both of equal authority, and styled Principal Secretaries of
State. The correspondence with all parts of Great Britain is man-
eged by either of the Secretaries without distinction; but in respect to
foreign affairs, all nations which have intercourse of business with
Great Britain, are divided into two provinces, the southern and the
northern; of which the southern is under the senior, and the northern
is under the junior, Secretary, &c. There are now in fact several
persons holding the offices of principal Secretaries of State; for the
home department; for foreign affairs; the colonies, &c.
As to the power of Secretaries of State to commit, see this Dic-
tionary, titles Commitment; Justices; Bail, &c. Blackstone states short-
ly, that they are allowed the power of commitment in order to bring
offenders to trial; and cites 1 Leon. 70: 2 Leon. 175: Comb. 143: 5
Mod. 84: Saltk. 347: Carth. 291.
SECTA, or SUIT, a seguendo.] By this word was antiently under-
stood the witnesses or followers of the plaintiff. See title Pleading I. 1.
SECTA AD CURIAM, Is a writ that lies against him who refuses to
perform his suit either to the County-court or Court-baron. F. N. B.
158. See further, title Suit of Court.
SECTA AD JUSTITIAM FACIENDAM. A service which a man is
bound to perform by his see. Bracton, lib. 2. c. 16. num. 6.
SECTA CURIAE; Suit and service done by tenants at the court of
SECTA FACIENDA PER ILLAM QUE HABET ENICIAM PARTEM, Is a
SED

writ to compel the heir, who hath the elder's part of the coheirs, to perform service for all the coparceners. Reg. Orig. fol. 177.

Secta ad Molendinum, A writ lying where a man by usage, time out of mind, &c. hath ground his corn at the mill of a certain person, and afterwards goeth to another mill with his corn, thereby withdrawing his suit to the former. And this writ lies especially for the lord against his tenant, who holds of him to do suit at his mill. Reg. Orig. 153; F. N. B. 122. The count in this writ may be on the tenure of the land; or upon prescription, viz. That the tenant, and all those who held those lands, have used to do their suit at the plaintiff's mill, &c. New Nat. Br. 272. Secta ad molendinum, like assizes of nuisance, and many other old suits are now much turned into actions of the case, to repair the party injured in damages. See 3 Comm. c. 15. p. 235.

Secta Regalis, A suit by which all persons were bound twice in a year to attend the sheriff's tourn. It was called Regalis, because the sheriff's tourn was the King's leet, wherein the people were to be obliged by oath to bear true allegiance to the King, &c.

Secta unica tantum facienda pro pluribus Hæreditatibus, A writ for an heir who is restrained by the lord to do more suits than one, in respect of the land of divers heirs descended to him, Reg. Orig.

Sectis non faciendis, A writ for a woman, who, for her dower, ought not to perform suit of court. Reg. Orig. fol. 174. It lay also for one in wardship to be freed of all suits of court during his wardship. Reg. Orig. fol. 173; but see stat. 12 Car. 2. c. 24.

Secondary; See Secondary.

Secunda Superoneratione Pasturæ; See Second Surcharge, Writ of.

Securitatem Inveniendi quod se non divertat ad partes exterar sine Licentia Regis: An antient writ lying for the King against any of his subjects, to stay them from going out of this kingdom to foreign parts; the ground whereof is, that every man is bound to serve and defend the commonwealth, as the King shall think fit. F. N. B. 85. See Ne execat Regnum.

Securitatis Pacis, Is a writ that lies for one who is threatened with death or bodily harm by another, against him which so threatens; and is issued out of the chancery directed to the sheriff, &c. Reg. Orig. 88. See Supplicavit; Surety of the Peace.

Security for Good Behaviour, the Peace, and of Person, &c. See Surety of the Peace.

Se Defendendo, A plea for him that is charged with the death of another person, by alleging that he was driven unto what he did in his own defence; and the other so assaulting him that if he had not done as he did, he must have been in danger of his own life; which danger ought to be so great, as that it appears to have been otherwise inevitable. Staudnf. P. C. lib. 1. c. 7. See title Homicide II.

Sederunt, Acts of Ordinances of the Court of Session in Scotland under authority of the statute 1540. c. 93; by which authority is given to the Court to make such regulations as may be necessary for the ordering of processes and the expediting of justice. Bell's Scotch Law Dictionary.
SEDICTION, in the Scotch Law is defined to consist in attempts made by meetings, or by speeches or publications to disturb the tranquillity of the state: and it is distinguished from leasing-making, which has in view to diminish or affect the King’s private character; sedition is stated to be punishable in Scotland by an arbitrary punishment. Bell’s Scotch Law Dict. See stat. 39 Geo. 3. c. 49. as to bail in cases of Sedition in Scotland. As to Seditious Papers, see titles Printers; Seditious Meetings and Assemblies, see Riots;—Seditious Conventicle, see Conventicle; Heresy.

SEDITIOUS SOCIETIES. By stat. 39 Geo. 3. c. 79. for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices, certain societies, called Corresponding Societies, were suppressed, and it is enacted that all Societies shall be deemed unlawful, the members whereof shall be required to take any oath declared unlawful by stat. 37 Geo. 3. c. 123. (made expressly to prevent the administering or taking unlawful oaths,) or to take any oath or test not authorized by Law: or which shall have any members, committees, &c. not known to the Society at large; or the names of all the members whereof shall not be entered in regular books; or which shall act in separate or distinct branches: And all members of such Societies, and all persons corresponding with or supporting them, are declared guilty of unlawful combination and confederacy: any persons convicted of such offence shall on conviction before a Justice of Peace forfeit 20l. or suffer three months’ imprisonment: and if convicted on indictment, may be transported for seven years. Regular lodges of Free Masons are excepted from the act under certain regulations, which required them to be registered with the clerk of the peace, subject to the discretion of the Justices in Session. Places for lecturing, debating, &c. are deemed disorderly houses, as under 36 Geo. 3. c. 8. (but which is expired) unless previously licenced. Justices may demand admittance into all such places; and may refuse licences to such as are of an immoral or seditious tendency.

By 47 Geo. 3. stat. 2. c. 13. (a temporary act) more severe penalties are imposed in Ireland on persons administering or taking seditious oaths. See title Oaths; Treason.

Seditious Conventicles, To the disturbance of the peace, &c. See titles Conventicles; Heresy.

Seditious Meetings and Assemblies; See title Riots.

SEDECTIOUS MEETINGS and ASSEMBLIES; See title Riots.

SEDUCTION OF WOMEN CHILDREN; See title Marriage. As to Seduction of Soldiers, Seamen, Manufacturers, &c. See those titles.

SEED-COD, from the Sax. sed, seed, and codde, a purse, or such like continent.] A basket or other vessel of wood, carried on one arm of the husbandman or sower of ground, to bear the seed or grain which he sows, and spreads abroad with the other hand. In Westmorland, a bolster or pillow is called a cod; and in other Northern parts a pincushion is termed a pin-cod.——Pro uno Seed-cod empho 4d. Paroch. Antiq. 549: Kennett’s Gloss.

SEEDER, a seedman, or one who sows the land. Blount.

SEIGNIOR, Fr. Seigneur, i.e. Dominus.] Is in general significatio as much as Lord; but particularly used for the lord of the fee, or of a manor, as Seigneur among the Feudists is he who grants a fee or benefit out of the land to another; and the reason is, because having
granted away the use and profit of the land, the property or dominium he still retains in himself. *Hutom. F. N. B. 23.*

**SEIGNIOR IN GROSS.** Seemeth to be one that is a lord, but of no manor, and therefore can keep no court. *F. N. B. fol. 3.* See Seigniory.

**SEIGNIORAGE.** A royalty or prerogative of the King, whereby he claims an allowance of gold and silver brought in the mass, to be exchanged for coin. As seignorage, out of every pound weight of gold, the king had for his coin 5s. of which he paid to the master of the Mint for his work sometimes 1s. and sometimes 1s. 6d. Upon every pound weight of silver, the Seignorage answered to the king, in the time of *Edw. III.* was eighteen pennyweights, which then amounted to about 1s. out of which he sometimes paid 8d. at others 9d. to the Master: In the reign of king *Henry V.* the king’s Seignorage of every pound of silver was 1sd. &c. *Stat. Antiq. 9 Hen. 5.* c. 1: Hale’s Sher. Acc. p. 3.

**SEIGNORY, Dominium, from the French seigneurie, i. e. dominatus, imperium, principatus.** A manor or lordship, *Seigniory de Sokemens, Kitchin, fol. 80.* Seigniory in gross seems to be the title of him who is not lord by means of any manor, but immediately in his own person: as *tenure in capite,* whereby one holds of the king as of his crown, is Seigniory in gross. *Kitchin, fol. 206.* See Seigniory.

**SEISIN, Fr. seisine, Lat. seismina.** In the Common Law signifies possession. To seize is to take possession of a thing; and *primer Seisin* is the first possession. *Co. Litt. 152.* There is a seisin in deed or in fact, and a Seisin in law; a Seisin in deed is when an actual possession is taken; and Seisin in law is where lands descend, and one hath not actually entered on them, &c. *Inst. 31.* Seisin in Law is a right to lands and tenements, though the owner is by wrong disseised of them: And he who hath an hour’s actual possession quietly taken, hath *seisin de droit et de claire,* whereof no man may disseise him, but must be driven to his action. *Perk. 457, 458.* A Seisin in Law is sufficient to avow upon; but, to the bringing an assise, actual Seisin is required, &c. *4 Reph. 9.* Seisin of a superior service, is Seisin of all inferior services which are incident thereto: And Seisin of homage is a Seisin of all other services, because in the doing thereof the tenant takes upon himself to do all services. *4 Reph. 80:* 1 Danv. *Abr. 647.* The seisin of rent, or other annual services, is a sufficient Seisin of casual services. *4 Reph. 80.* But Seisin of one annual service is not Seisin of another annual service; as if there be lord or tenant by fealty, ten shillings rent, and three days’ work in the year; in this case Seisin of the rent is no Seisin of the work, nor is Seisin of the rent Seisin of the suit of Court, which is annual. *4 Reph. 9:* 1 Danv. *Abr. 647:* 2 Lit. 507. The Seisin of the father is not sufficient for the heir; though if a fine be levied to one for life, the remainder to another in tail, and the tenant for life takes Seisin of the services, this will be a good Seisin for him in remainder; and the Seisin of a lessee for years is sufficient for him in reversion. 2 *Hen. 6. 7:* 45 Ed. 3. 26: 1 Danv. 646. 805. Where a man is seised of a reversion, depending upon an estate for life, the pleading of it is that he was seised of it *ut de feodo,* leaving out the word *dominico;* but if it be a reversion in fee, expectant upon the determination of a lease for years, there he may plead that he was seised of it *in dominico suo ut de feodo.* *Dyer 185. 257:* 1 Reph. 20. 27: 4 Reph. 62.
Seisin is never to be alleged, but where it is traversable: and when a defendant allegeth a Seisin in lee in any one under whom he claims, the plaintiff cannot allege a Seisin in another, without traversing, confessing, or avoiding of the Seisin alleged by the defendant. Cro. El. 30: 1 Brownl. 70. If a Seisin in fee is alleged, it shall be intended a lawful Seisin till the contrary appears. 2 Lutw. 1337. But the party is to shew of what estate he is seised, &c. 3 Nels. Abr. 215. See further titles Livery of Seisin; Disseisin; Estate, &c.

In Scotland actual Seisin, and the evidence thereof by a notarial instrument is still absolutely necessary for the transmission of landed property.

SEISINA HABENDA, quia Rex habuit Annum, Diem et Vastum. A writ for delivery of Seisin to the lord of lands or tenements: after the king, in right of his prerogative, hath had the year, day, and waste, on a felony committed, &c. Reg. Orig. 165.

SEISING of HERIOTS, Is the seising of the best beasts, &c. (where an Heriot is due) on the death of the tenant. It is a species of self-remedy, not much unlike that of taking of cattle or goods in distress; only in the latter case they are seised as a pledge, in the former, as the property of the person for whom seised. 3 Comm. c. 1. VI. See title Heriot.

SEISIN-OX, A perquisite formerly due to the sheriff in Scotland, when he gave infeftment to an heir holding crown lands: It is now converted into a payment in money proportioned to the value of the estate.

SEISURE OF GOODS FOR OFFENCES. No goods of a felon or other offender can be seised to the use of the king, before forfeited: And there are two Seisures, one verbal only, to make an inventory, and charge the town or place, when the owner is indicted for the offence; and the other actual, which is the taking of them away afterwards on conviction, &c. 3 Inst. 103. See title Forfeiture.

SEL, Denotes the bigness of a thing to which it is added; as Selwood is a great wood.

SELD, from the Sax. selde, a seat or stool.] A shop, shed, or stall in a market. Assis. 9 R. 1. It is also made to signify a wood of saws or willows: And Sir Edward Coke takes selda for a salt-pit. Co. Lit. 4.

SELBY, Sax. self-bana.] Self-murder; See title Homicide III. 1.

SEL, Self-Defence; See title Homicide II.

SELF-MURDER; See title Homicide III. 1.

SELF-PRESERVATION; See titles Homicide I. 3; Larceny I. 1.

SELION OF LAND, selio terre; from the French seilison.] A ridge of ground rising between two furrows, containing no certain quantity, sometimes more and sometimes less: Therefore Crompton says, that a Selion of land cannot be in demand, because it is a thing uncertain. Crompt. Jurisd. 221.

SEM, Saxon, scam, i.e. onus.] A horse load or eight bushels of corn. Blount. A Seme of glass is twenty-four stone, each stone five pounds weight.

SEMEOLE, a pipe or half a tone of wine. Merch. Dict.

SEMINARIES, Popish; See Papists; Pramunire.

SENAGE, senagium, from senatus, sometimes used for synod.] Money paid for synodals.

SENATOR, Lat.] A member of Parliament. In the laws of king
Edward the Confessor, we are told, that the Britons called those Senators whom the Saxons afterwards termed aldermen, and boroughmasters; though not for their age, but their wisdom; for some of them were young men, but very well skilled in the laws. Kenulfh king of the Mercians, granted a charter, which ran thus, viz. Consilio & consensu episcoporum & Senatorum gentis sua largitus fuit dicto monasterio, &c. Staundf. P. C. cap. 18. The Judges of the Court of Session in Scotland are entitled Senators of the College of Justice. Act 1540. c. 93.

SENDAL, a kind of thin fine silk, mentioned in the stat. 2 R. 2. c. 1.

SENESCHAL, Seneschallus, from the Germ. Sein, a house or place, and Schale, an officer.] A steward; and signifies one who hath the dispensing of justice, in some particular cases: As the High Seneschal, or Steward of England; Seneschal de la Hotel de Roy, Steward of the King's Household; Seneschal, or Steward of Courts, &c. Co. Litt. 61: Coke's Jurisd. 102: Kitch. 83. See Steward.

SENESCHALLO ET MARESHALLO QUOD NON TENEANT PLACITA DE LIBERO TENEMENTO; A writ directed to the Steward, and Marshal of England, inhibiting them to take cognizance of an action in their Court that concerns freehold. Reg. Orig. 185.191.

SENEUCIA, Widowhood. If a widow, having dower after the death of her husband shall marry, vel filium, vel filiam in senecia peperit, she shall forfeit and lose her dower in what place soever, in Kent. Tenen. in Gavelkind. Plac. Trin. 17 E. 3.


SENNA, is among the drugs liable to a duty on importation. See title Navigation Acts.

SEPARIA separaria.] Several, or severed and divided from other ground. Paroch. Antig. 336.

SEPARATION, separatio.] Is the living asunder of man and wife. See titles Baron and Feme; Divorce.

SEPTENNIAL ELECTIONS; See Parliament VIII.

SEPTUAGESIMA, The third Sunday before Quadragesima Sunday in Lent. It is called Septuagesima, because it is about the seventieth day before Easter; as Sexagesima and Quinquagesima, are thus denominated from their being, the one about sixty, and the other about fifty days before the same feast; which are all of them days appropriated by the church to acts of penance and mortification, preparatory to the devotion of Lent. From Septuagesima Sunday until the Octaves after Easter, the solemnizing of marriage is forbidden by the Canon Law; and the laws of king Canutus ordained a vacancy from jurisdiction, from Septuagesima to Quindena Pascha. See stat. Westm. 1. 3 E. 1. c. 51.

SEPTUAGINT. The seventy interpreters of the Bible; who were in truth seventy-two, viz. six for every one of the twelve tribes. Lat. Dict.

SEPTUM, An inclosure; so called because it is encompassed cum sepe & fossa, with a hedge and a ditch, at least with a hedge; and it signifies any place paled in.

SEPULCHRE, sepulchrum.] The place where any body lies buried; but a monument is set up for the memorial of the deceased, though the corpse lie not there. Cowell,
SEPULTURA. An offering made to the priest for the burial of a dead body. *Domest.* See *Mortuary*.

SEQUATUR SUB SUO PERICULO, A writ that lies where a *summons ad warrantizandum* is awarded, and the sheriff returns that the party hath nothing whereby he may be summoned; then goes forth an *alias* and a *piuries*, and if he come not in on the *piuries*, this writ shall issue. *Old Nat. Br.* 163.

**SEQUELA CAUSA**, The process and depending issue of a cause for trial.

**SEQUELA MOLENDINI; Vide Secta ad Molendinum.**

**SEQUELA CURIE, Suit of Court. Mon. Ang. tom. 2. p. 253.**

**SEQUELA VILLANORUM**, The retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord. In former times, when any lord sold his villein, it was said *dedi B. nativum meum cum tota sequelâ sua*; which included all the villein's offspring. *Paroch. Antig.* 216, 288.

**SEQUELS; small allowances of meal or manufactured victual made to the servants at a mill where corn was ground by tenure, in Scotland, for their work. See Thirlage.**

**SEQUENDUM; ET PROSEQUENDUM, To follow a cause; as where a guardian is admitted *ad prosequend* for an infant, &c. 1 Vent. 74.**

**SEQUESTER, sequestrare.** A term used in the Civil and Ecclesiastical Law for renouncing; as when a widow comes into court, and disclaims having any thing to do, or to meddle with her husband's estate who is deceased, she is said to sequester. Now, more usually to *renounce*. See title *Executor*. 

**SEQUESTRATION.**

*Sequestratio*.] Signifies the separating or setting aside a thing in controversy, from the possession of both the parties that contend for it; and it is two-fold, voluntary and necessary; voluntary is that which is done by consent of each party; necessary, is what the Judge of his authority doth, whether the party will or not. *Fortescue*, c. 50: *Dyer* 233, 256.

There is also a Sequestration, in the nature of a distress infinite, on a person's standing out all the processes of contempt for non-appearance in Chancery, upon a bill exhibited; so, where obedience is not yielded to a decree, the Court will grant a Sequestration of the lands of the party, &c.

A Sequestration is also a kind of execution for debt; especially in the case of a beneficed clerk, of the profits of the benefice, to be paid over to him that hath the judgment, till the debt is satisfied. *2 Inst. 472; 2 Rol. Abr. 474.* See title *Execution; Introductory part, Div. 3.* But the most usual Sequestration of a benefice is upon a vacancy, for the gathering up the fruits of the benefice to the use of the next incumbent: The profits of the church, being in abeyance, are to be received by the churchwardens by appointment of the bishop, to make provision for the cure during the vacancy, &c. *Stat. 28 Hen. 8. c. 11.*

Sequestration is also the act of the ordinary, disposing of the goods of one that is dead, whose estate no man will meddle with. See *Kenner's Glossary in v. Sequestrare.*
Sequestration in the court of Chancery is a commission usually directed to seven persons therein named, and empowering them to seize the defendant's real and personal estate into their hands, (or it may be some particular part or parcel of his lands,) and to receive and sequester the rents and profits thereof, until the defendant shall have answered the plaintiff's bill, or performed some other matter which has been ordered and enjoined him by the Court for not doing whereof he is in contempt. *Curs. Canc.* 89.

If upon a *Commission of Rebellion* (see that title) a *non est inventus* is returned, the court of Chancery sends a serjeant at arms in quest of the defendant; and if he eludes the search of the serjeant, a Sequestration issues. 3 *Comm. c. 27.*

It appears that there were great struggles between the Common Law Courts and Courts of Equity, before this process came to be established; the former holding that a Court of Conscience could only give remedy *in personam*, and not in *rem*; that Sequestrators were trespassers, against whom an action lay, and in the case of *Colston v. Gardiner*, the Chancellor cites a case, where they ruled, that if a man killed a Sequestrator in the execution of such process, it was no murder. *Cro. Eliz.* 651: *Brograve v. Watts*: 1 *Mod. 259.*

But these were such bloody and desperate resolutions, and so much against common justice and honesty, which requires that the decrees of this Court, which preserved men from deceit, should not be rendered illusory, that they could not long stand; but this process got the better of these resolutions on this ground; 1st, That the extraordinary jurisdiction might punish contempts by the loss of estate as well as the imprisonment of the person, because that liberty being a greater benefit than property, if they had a power to commit the person, they might take from him his estate till he had answered his contempts: 2dly, To say that a Court should have power to decree about things, and yet should have no jurisdiction *in rem*, is a perfect solecism in the constitution of the court itself. 2 *P. Wms.* 621: 2 *Ch. Ca.* 44.

And see 2 *Mod. 258.* that the Chancellor having issued such Sequestration, it will be as binding as any other process, according to the rules of the Common Law. 2 *Chan. Ca.* 44.

It has been said, that the first instance of a Sequestration after a decree, was Sir *Thomas Read*'s case in Lord Coventry's time; and that it was afterwards awarded in Chancery, in the case of *Hyde v. Pitt*, 1666, and affirmed in parliament: And by the Court of Exchequer, *Graves v. Fountaine*, 1687, and since, without scruple. The doubt formerly was, that lands were not liable to execution before the statute *Westm 2.* 13 *E. 1.* 1. *c. 18*: 1 *Ch. Ca.* 92: 2 *Ch. Ca.* 44.

Sequestrations were first introduced (according to the Commentaries) by Sir *Nic. Bacon*, lord keeper, in the reign of Queen *Elizabeth*; before which the Court found some difficulty in enforcing its process and decrees. See 1 *Vern.* 421. 423. After an order for a Sequestration issued, the plaintiff's bill is to be taken *pro confesso*, and a decree to be made accordingly; so that this Sequestration does not seem to be in the nature of process to bring in the defendant, but only intended to enforce the performance of the decree. 3 *Comm. 444.*
I. In what Cases a Sequestration is to be awarded by the Court of \underline{Chancery}.

II. The Power and Duty of the Sequestrators; and when a Sequestration is determined.

I. A Sequestration nisi is the first process against a peer or member of the House of Commons, 2 P. Wms. 385. 1 Ch. Ca. 61. 138. A Sequestration is also the first process against the menial servant of a peer, within the words and meaning of the statute 12 & 13 W. 3. c. 3; for that otherwise such servant would have greater privilege than his lord. 1 P. Wms. 355. If there be a Sequestration nisi against a peer for want of an answer, and the peer puts in an answer, that is insufficient; yet the order for a Sequestration shall not be absolute, but a new Sequestration nisi. 2 P. Wms. 385. See this Dict. title Privilege III.

Notwithstanding the superintendent power formerly possessed by the courts in this kingdom over those in Ireland, and what is said in some of our books, it seems to have always been the better opinion, that the Court of Chancery here could not award a Sequestration against lands in Ireland. 1 Vern. 76; 2 Ch. Ca. 189: 2 P. Wms. 261.

It was said, that such process had been awarded to the Governor of North Carolina; but herein it was doubted whether such Sequestration should not be directed by the king’s council, to which alone an appeal lies from the decrees in the plantations. 2 P. Wms. 261.

Copyholds may be sequestered, though not extendible at Common Law, or under the statute of Westm. 2. for courts of equity have potestatem extraordini & absolutam; but it seems a doubt whether such a Sequestration can be revived against the heir of a copyholder; which arises from the difficulty of obliging the lord to admit, and depriving the lord of his fine, &c. upon the death of his tenant. 2 Ch. Ca. 46. Vide 1 Barn. C. 451.

A Sequestration out of Chancery is more effectual than an execution by fieri facias at law, for a Sequestration may lie against the goods, though the party is in custody upon the attachment; whereas in Law, if a captias ad satisfaciendum is executed, there can be no fi. ja. issue. Cases in Lord Talbot’s Time, 222.

Where the Sequestrators seize the real estate of the party, any tenant or other person who claims title to the estate, so sequestered; either by mortgage, judgment, lease, or otherwise; who hath a title paramount to the Sequestration, shall not be obliged to bring a bill to contest such a title; but he shall be let in to contest such a title in a summary way. He may move by his counsel, as of course, to be examined pro interesse suo; and in this case, the plaintiff is to exhibit interrogatories, in order to examine him for a discovery of his title to the estate, and he must be examined upon such interrogatories accordingly; and the Master must state the matter to the Court; and the parties may enter into proof touching the title to the estate in question; and when the Master hath stated the whole matter, the Court proceeds to give judgment therein upon the report; and if it appears that the party who is examined pro interesse suo hath a plain title to the estate, and is not affected with the Sequestration, then it is to be discharged as against him, with or without costs, as the Court shall determine upon the circumstances of the case, and so vice versa. See Com. 712: 1 P. Wms. 308.
The Sequestration binds from the time of awarding the commission, and not only from the time of executing it and its being laid on by the Commissioners; for if that should be admitted, then the inferior officer would have ligandi & non ligandi potestatem. 1 Vern. 58.

II. The Sequestrators are officers of the Court, and as such are amenable to the Court, and are to act from time to time in the execution of their office as the Court shall direct; they are to account for what comes to their hands, and are to bring the money into Court as the Court shall direct, to be put out at interest, or otherwise, as shall be found necessary; but this money is not usually paid to the plaintiff, but is to remain in Court until the defendant hath appeared or answered, and cleared his contempt, and then whatsoever hath been seized shall be accounted for and paid over to him; however, the Court hath the whole under their power, and may do therein as they please, and as shall be most agreeable to the justice and equity of the case. Dict.

The plaintiff's counsel may move and obtain an order for tenants to attorn and pay their rents to the Sequestrators, or for the Sequestrators to sell and dispose of the goods of the party, and to keep the money in their hands, or to bring it into Court, as shall be most advisable and discretionary, and fitting for the Court to do. Dict.

Sequestrators on mesne process are accountable for all the profits, and can retain only so far as to satisfy for contempt. 1 Vern. 248.

If Sequestrators, having power to sell timber, dispose of 7000l. worth, and only bring 2000l. to account, they, as officers and agents of the Court, are responsible, and not the plaintiff. 1 Vern. 161.

A Sequestration is in nature of a levari at common law, and the party sequestering has neither jus in rem, vel in re; the legal estate of the premises remaining in every respect as before. 1 P. Wms. 307.

Sequestrators being in possession of a great house in St. James's Square, which was the defendant's for life, the Court ordered that the Master allow a tenant for the house, and the Sequestrators to make a lease, and the tenant to enjoy. 3 Ch. Rep. 87.

It was moved, that the irregularity of a Sequestration might be referred to the deputy, which was taken out against the defendant for not appearing, by reason of its being taken out sooner than by the course of the Court it could, and yet the Sequestrators had taken the goods off the premises, and threatened to sell them; the Chief Baron said, that as to the carrying the goods off the premises, it was clear the Sequestrators could do that, because a Sequestration upon mesne process answers to a distinguas at law; but, however, as to selling them, the Court agreed in the present case, it could not be lawful, and said it had lately been settled on debate; and observed further, that Courts of Equity could not authorise Sequestrators to sell goods, even upon a decree, until Lord Stamford's case, which makes decrees in this respect equivalent to a judgment; and even now, the Counsel said, Sequestrators cannot sell but by leave of the Court; however, the Court said this was a matter proper for them to consider upon another occasion, and therefore only referred the irregularity of the Sequestration as to the point of time to the deputy. 1 Barn. Rep. in Secce. 212.

A Sequestration that issues as a mesne process of the Court will be discontinued and determined by the death of the party; but
where a Sequestration issues in pursuance of a decree, and to compel the execution of it, there, though the same be for a personal duty, it shall not be determined by the death of the party. 1 Vern. 58.

A Sequestration was against the father, who appeared to be only a tenant for life, and on his death the Sequestration was discharged. 1 Ch. Ca. 241: 2 Ch. Ca. 46.

Sequestration, in London. Is made upon an action of debt; and the course of proceeding in it is thus: The action being entered, the officer goes to the shop or warehouse of the defendant, when there is no body within, and takes a padlock and hangs it upon the door, &c. using these words, viz. "I do sequester this warehouse, and the goods and merchandizes therein of the defendant in the action, to the use of the plaintiff," &c. and so puts on his seal, and makes return thereof at the Compter; then four Court-days being past, the next Court after the plaintiff may have judgment to open the doors of the shop or warehouse, and to appraise the goods therein by a serjeant, who takes a bill of appraisement, having two freemen to appraise them, for which they are to be sworn at the next Court holden for that Compter; and then the officer puts his hand to the bill of appraisement, and the Court gives judgment: Though the defendant in the action may put in bail before satisfaction, and so dissolve the Sequestration; and after satisfaction, may put in bail ad dispromband debitem, &c. Prac. Solic. 429.

Sequestration in the Scotch law, is two-fold; viz. the Sequestration of landed estates, and the Sequestration in a mercantile bankruptcy of the whole estate, both heritable and moveable of a bankrupt: the former is intended to preserve a disputed property for the right owner; the latter to distribute the estate equally among the creditors of the bankrupt. Bell's Scotch Law Dict.

Sequestro Habendo, A writ judicial for the discharging a Sequestration of the profits of a church benefice granted by the bishop at the King's command, thereby to compel the parson to appear at the suit of another; upon his appearance, the parson may have this writ for the release of the Sequestration. Reg. Judic. 36. See titles Sequestration; Execution.

Serement, Fr.] An oath. See Oath.

Serjeant, or SERJEANT; Lat. Serviens.] A word diversely used in our law, and applied to sundry offices and callings. First, a Serjeant at Law, (Serviens ad legem) otherwise called Serjeant Counter, or of the Coif, is the highest degree in the Common Law, as a Doctor is in the Civil Law; but, according to Skelman, a Doctor of Law is superior to a Serjeant, for the very name of a Doctor is magisterial, but that of a Serjeant is only ministerial. To these Serjeants, as men best learned and experienced in the law and practice of the Courts, one Court is severed to plead in, by themselves, which is that of the Common Pleas, where the Common Law of England is most strictly observed; yet they are not so limited as to be restrained from pleading in any other Court, where the Judges call them brothers, and hear them with great respect; and of which one or more are styled the King's Serjeants, being commonly chosen out of the rest, in respect of their great learning, to plead for the King in all his causes, especially upon indictments for treason, &c. In other kingdoms the King's Serjeant is called Advocatus Regis: and here in England, in the time of
King Edward the Sixth, Serjeant Benloe wrote himself solus serviens ad legem, there being for some time none but himself; and in Ireland at this day there is only a King’s Serjeant. Serjeants at Law are made by the King’s writ, directed unto such as are called, commanding them to take upon them that degree by a certain day; and by the writ or patent of creation it appears, that the honour of Serjeant at Law is a state and dignity of great respect: In conferring these degrees, much ceremony was antiently used; and the Serjeants now make presents to the Judges, &c. of gold rings to a considerable value, &c. Fortescue, c. 30: 5 Cro. 1: Dyer 72: 2 Inst. 213, 214. As to their privilege of being impleaded in C. B. &c. see Privilege.

In old times, it was necessary that Serjeants should have been Barristers for sixteen years previously to their being called to be Serjeants, but it seems that no precise time is now necessary to qualify them. Serjeants at Law are bound by a solemn oath to do their duty to their clients. 2 Inst. 214. And by custom, the judges of the Courts of Westminster are always admitted into this venerable order before they are advanced to the bench; the original of which was probably to qualify the puissäé Barons of the Exchequer to become justices of assise according to the exigence of the statute 14 E. 3. c. 16: 3 Comm. 27: and see titles Barrister; Precedence.

SERJEANTS AT ARMS. Their office is to attend the person of the King; to arrest persons of condition offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, &c. There may not be above thirty Serjeants at Arms in the realm, who shall not oppress the people, on pain to loss their offices, and be fined. Stat. 13 R. 2. st. 1. c. 6. Two of these, by the King’s allowance, do attend on the two Houses of Parliament; the office of him in the House of Commons is, the keeping of the doors, and the execution of such commands touching the apprehension and taking into custody of any offender, as that House shall enjoin him. Another of them attends on the Lord Chancellor in the Chancery; and one on the Lord Treasurer of England. Also one upon the Lord Mayor of London on extraordinary solemnities, &c. They are in the old books called Virgatories, because they carried silver rods gilt with gold, as they now do maces, before the King. Cromp. Jur. 9: Flata, lib. 2. c. 38.

SERJEANTS, OF A MORE INFERIOR KIND, Are Serjeants of the Mace, whereof there is a great band in the city of London, and other corporate towns, that attend the Mayor, or other head-officer, chiefly for matters of justice, &c. Kitch. 143. Formerly all the justices in Eyre had certain officers attending them called Serjeants, who were in the nature of tip-staves. See stat. Westm. 1. 3 E. 1. c. 30. And the word Serjeant is used in Britton for an officer belonging to the county; which is the same with what Bracton calls Serjeant of the Hundred, being no more than bailiff of the hundred. Bract. lib. 5. c. 4. And we read of Serjeants of Manors, of the Peace, &c.

SERJEANTS OF THE HOUSEHOLD, Officers who execute several functions within the King’s household, mentioned in the statute 33 Hen. 8. c. 12.

SERJEANTY, serjeantia.] A service that cannot be due from a tenant to any lord but to the King only; and this is either grand Serjeanty, or petit; the first is a tenure whereby one holds his lands of the King by such services as he ought to do in person to the King.
at his coronation; and may also concern matters military, or services of honour in peace, as to be the King’s butler, carver, &c. Petit Serjeanty, is where a man holds lands of the King, to furnish him yearly with some small thing towards his wars; and in effect payable as rent. Though all tenures are turned into socage by stat. 12 Car. 2. c. 24. yet the honorary services of grand Serjeanty still remain, being therein excepted. Lit. § 153. 159: 1 Inst. 105. 108.

Knight-service proper, (see title Tenures III. 2;) consisted in attending the King in his wars. There were also some other species of Knight-service, so called, though improperly, because the service or render was of a free and honourable nature, and equally uncertain as to the time of rendering as that of Knight-service proper; and because they were attended with similar fruits and consequences. Such was the tenure by grand Serjeanty per magnum servitium; whereby the tenant was bound, instead of serving the King generally in his wars, to do some special honorary service to the King in person; as to carry his banner, his sword, or the like; or to be his butler, champion or other officer, at his coronation. Lit. § 153. It was in most other respects like Knight-service, only he was not bound to pay aid or escuage; and when tenant by Knight-service paid 5l. for a relief on every knight’s fee, tenant by grand Serjeanty paid one year’s value of his land, were it much or little. Lit. § 154. 158: 2 Inst. 233. Tenure by cornage, which was to wind a horn, when the Scots or other enemies entered the land, in order to warn the King’s subjects, was like other services of the same nature; a species of grand Serjeanty. Lit. § 156. See 2 Comm. c. 5.

Generally the service of grand Serjeanty was of such a kind as necessarily to be within the realm; but some services which amount to grand Serjeanty might be due out of the realm as well as within; and both Littleton and Coke give instances of such reservations. See 1 Inst. 105, b. to 108, b; and the notes there.

Petit Serjeanty, bears a great resemblance to grand Serjeanty; for as that is a personal service, so this is a rent or render, both tending to some purpose relative to the King’s person. Petit Serjeanty, as defined by Littleton, consists in holding lands of the King, by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. Lit. § 159. This, he says, (§ 160,) is but socage in effect, for it is no personal service but a certain rent; and it may be added, (says Blackstone,) it is clearly no predial service, or service of the plough, but in all respects liberum et commune socagium; only, being held of the King, it is by way of eminence dignified with the title of parvum servitium regis, or Petit Serjeanty. And Magna Carta respected it in this light, when, by c. 27, it enacted, that no wardship of the lands or body should be claimed by the King, in virtue of a tenure by Petit Serjeanty. 2 Comm. c. 6. p. 81, 82.

See further, titles Tenures; Socage.

SERMONIUM, Was an interlude or historical play, acted by the inferior orders of the clergy, assisted by youths, in the body of the church, suitable to the solemnity of some high procession day; and before the improvements of the stage, these ruder sorts of performances were even a part of the unreformed religion. Collect. Matt. Hutton, Ex. Reg. Eccl. Lincoln. MS.

SERPLAITHES: Eighty stone weight of goods. Scotch Dict.
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SERPLES, A mantle or upper coat; from the Lat. superpellicium: Blount.

SERVAGE. Mentioned in stat. 1 Rich. 2. c. 6.] That is, when each tenant, besides payment of a certain rent, finds one or more workmen for his lord's service. See Service. King John brought the crown of England in Servage to the See of Rome. 2 Inst. 174.

SERVANTS.

Persons employed by men of trades and professions, under them, to assist them in their particular callings; or such persons as others retain to perform the work and business of their families, which comprehends both men and women: And Servants are menial, or not so; menial, being domesticks, living within the walls of the house. Wood's Inst. 51.

The first sort of Servants acknowledged by the law of England, (to which Slaves are unknown; see that title;) are menial Servants; so called from their being intrà mania or Domesticks.—The contract between them and their masters arises upon the hiring; if the hiring be general without any particular time limited, the Law construes it to be a hiring for a year; upon a principle of natural equity, that the Servants shall serve, and the master maintain him, throughout all the revolutions of the respective seasons; as well when there is work to be done, as when there is not: But the contract may be made for any longer or shorter period. 1 Comm. 425; See Poor IV. 8.

All single men between twelve years old and sixty, and married ones under thirty years of age, and all single women between twelve and forty, not having any visible livelihood, are compellable, by two justices, to go out to service in husbandry, or certain specific trades, for the promotion of honest industry: And no master can put away his Servant, or Servant leave his master, after being so retained, either before or at the end of his term, without a quarter's warning, unless upon reasonable cause, to be allowed by a justice of the peace: But they may part by consent, or make a special bargain. See the stat. 5 Éliz. c. 4; from which the following are extracts.

Every person under the age of thirty years, that has been brought up in handicraft trades, and hath not lands of inheritance, or for life, of the yearly value of forty shillings, or is not worth ten pounds in goods, and so allowed by two justices of peace; and not being retained with any person in husbandry, or in the said arts, not being lawfully hired as a Servant with any nobleman or gentleman, or having any farm or other holding whereupon he may employ his labour, shall, upon request made by any person using the mystery wherein such person hath been exercised, be obliged to serve him as a Servant therein, on pain of imprisonment.

By the same statute, persons are compellable to serve in husbandry, by the year, with any person that keepeth or useth husbandry, and who will require any proper person to serve; and the justices of peace have authority herein, and to assess the wages of such Servants in husbandry, order payment, &c. Also two justices, and mayors or head officers of any city or town, may appoint any poor woman of the age of twelve years, and under forty, unmarried, to go to service by the year, &c. for such wages and in such manner as they think fit: and if any such woman shall refuse to go abroad as a Ser-
vant, then the said justices, &c. may commit such woman until she is bound to service. If any master shall give more wages than assessed by the justices; or any Servant takes more, or refuses to serve for the statute wages, they are punishable; but a master may reward his Servant as he pleases, so as it be not by way of contract on the retainer: And a master cannot put away a Servant, nor a Servant depart before the end of his term, without some reasonable cause, to be allowed by one justice; nor after the end of the term, without a quarter's warning given before witnesses; if a master discharges a Servant otherwise, he is liable to a penalty of forty shillings: And where Servants quit their service, testimonials are to be given by two constables and two householders, &c. declaring their lawful departure; and a Servant not producing such a testimonial to the constable where he designs to dwell, is to be imprisoned till he gets one; and in default thereof, be whipped as a vagabond; masters retaining them without such a testimonial, shall forfeit five pounds. Stat. 5 Eliz. c. 4: And see title Labourers.

It is not settled whether justices of peace have jurisdiction over any Servants, except those who are employed in husbandry. The title of the statute is "An Act containing divers Orders for Artificers, Labourers, Servants of Husbandry, and Apprentices." But as some of the clauses in the act speak expressly of Servants of husbandry, and others of Servants generally, it is reasonable to conclude, that the legislature meant to extend the jurisdiction to all Servants, where they did not expressly confine it to Servants of husbandry: And as this is supported by the practice of the justices, and by general convenience, it seems certain that the Court of Westminster-Hall would determine in favour of the general jurisdiction, if a case were brought to them. Cald. 14.

Servants of another sort are called Apprentices, as to whom, see this Dictionary under that title.

A third species of Servants are labourers, who are only hired by the day or the week, and do not live intra mania as part of the family; concerning whom the statutes have made many very good regulations. 1. Directing that all persons who have no visible effects may be compelled to work: 2. Defining how long they must continue at work in summer and winter: 3. Punishing such as leave or desert their work: 4. Empowering the justices at sessions, or the sheriff of the county, to settle their wages: and 5. Inflicting penalties on such as either give, or exact, more wages than are so settled. 1 Comm. c. 14. See title Labourers.

There is yet a fourth species of Servants, if they may be so called, being rather in a superior, a ministerial capacity; such as stewards, factors, and bailiffs; whom however the law considers as Servants pro tempore, with regard to such of their acts as affect their master's or employer's property. This leads to the consideration of the manner in which this relation of service affects either the master or Servant. And, first, by hiring and service for a year, or apprenticeship under indentures, a person gains a settlement in that parish wherein he last served forty days. See title Poor IV.—In the next place persons, serving seven years as apprentices to any trade, have, by stat. 5 Eliz. c. 4. § 31. an exclusive right to exercise that trade in any part of England. This Law, with regard to the exclusive part of it, has by turns been looked upon as a hard Law, or as a beneficial one, accord-
ing to the prevailing humour of the times; which has occasioned a
great variety of resolutions in the Courts of Law concerning it; and
attempts have been frequently made for its repeal, though hitherto
without success. At Common Law every man might use what trade
he pleased; but this statute restrains that liberty to such as have
served as apprentices: the adversaries to which provision say, that all
restrictions (which tend to introduce monopolies) are pernicious to
trade; the advocates for it allege, that unskilfulness in trades is
equally detrimental to the public, as monopolies. This reason indeed
only extends to such trades, in the exercise whereof skill is required:
but another of their arguments goes much further; viz. that appren-
ticeships are useful to the commonwealth, by employing of youth,
and learning them to be early industrious; but that no one would be
induced to undergo a seven years’ servitude, if others, though equally
skilful, were allowed the same advantages without having undergone
the same discipline: and in this there seems to be much reason.
However, the resolutions of the Courts have in general rather con-
fined than extended the restriction. No trades are held to be within
the statute, but such as were in being at the making of it: For, trad-
ing in a country village, apprenticeships are not requisite: And fol-
lowing the trade seven years without any effectual prosecution (either
as a Master or a Servant) is sufficient, without an actual appren-
ticeship. 1 Comm. 428. See title Apprentice III.
A master may by law correct his apprentice for negligence or other
misbehaviour, so it be done with moderation: Though if the master
or master’s wife beats any other Servant of full age, it is good cause
of departure; or at least of complaint to a magistrate, in order to be
discharged. But if any Servant, workman, or labourer assaults his
master or dame, he shall suffer one year’s imprisonment, and other
open corporal punishment, not extending to life or limb. Stat. 5 Eliz.
c. 4.
By service, all Servants and labourers, except apprentices, become
entitled to wages: According to their agreement, if menial Servants;
or, according to the appointment of the sheriff or sessions, if labour-
ers or Servants in husbandry: for the statutes for regulation of wa-
ges, in strictness, seem to extend to such Servants only; and the
reason given is, that it is impossible for any magistrate to be a judge
of the employment of menial Servants, or of course to assess their
wages. But it is the practice of justices in disputed cases to assess
the wages of all Servants; a practice which probably may be supported
under stat. 20 Geo. 2. c. 19. See 1 Comm. 428. n. and ante.
It has been held that a master is not liable on an implied assumptio

to pay for medical attendance on a Servant, who has met with an acci-
dent in his service. 3 Bos. & Pul. 247.
Next as to frauds or robberies committed by Servants on their
masters.
Where a Servant damages goods of his master, action lies against
him; and being employed to sell goods in his master’s shop, if the Ser-
vant carries away and converts them to his own use, action of trespass
may be brought by the master against the Servant; for the Servant can-
not meddle with them in any other manner than to sell them. 5 Reph.
14: 1 Leon. 88: Moor 244: But if a Servant be robbed, without his de-
fault, &c. he shall be excused, and allowed it in his account. 1 Inst. 9.
Servants being of the age of 18, and not apprentices, going or making away with, embezzling or purloining any of their master's goods, delivered to them to keep, to the value of 40s. are guilty of felony, by the statute 21 Hen. 8. c. 7.

By the stat. 27 Hen. 8. c. 17. Clergy was taken away in this case, if the indictment were laid specially upon the stat. 21 Hen. 8. c. 7, and pursuant to the same, and by the stat. 28 Hen. 8. c. 2. this stat. of 21 Hen. 8. c. 7. was made perpetual; but by the stat. 1 E. 6. c. 12. these acts were both repealed: But again, by the stat. 5 Eliz. c. 10. this stat. 21 H. 8. c. 7. was re-enacted and revived; but it did not revive the stat. 27 H. 8. c. 7. for taking away clergy. The statute 12 Ann. st. 1. c. 7. however, takes away the benefit of clergy from persons stealing in a dwelling-house or out-house to the value of 40s. unless committed against their masters by apprentices under the age of 15. See title Larceny II. 1. and 1 Hawk. P. C. c. 33. § 16.

The statute 21 H. 8. c. 7. extends only to such as were Servants to the owner of the goods, both at the time they were delivered, and also at the time when they were stolen. 1 Hawk. P. C. c. 33. § 12.

Therefore a receiver, who having received his master's rents, runs away with them, or a Servant, who being entrusted to sell goods, or receive money due on a bond, sells the goods, &c. and departs with the money, is not within the statute. A Servant who receives his master's goods from another Servant to keep for the master, is as much guilty as if he had received them from the master's own hands; because such delivery is looked upon as a delivery by the master. Dyer, 5. p. 2. 3: 3 Inst. 105: 1 Hawk. P. C. c. 33. § 13.

By the Common Law it was not larceny in any Servant to run away with the goods committed to him to keep, but only a breach of civil trust. 4 Comm. c. 17. p. 230. But if the Servant had not the possession, but only the care and oversight of the goods, as the Butler of the Plate, the Shepherd of the Sheep, and the like, the embezzling of them was felony, even at the Common Law. 1 Hal. P. C. 506. And it seems, that now the judges, in every case, determine that the property of the master, delivered by him into the custody of the Servant, still remains in the possession of the master; and if it is embezzled by the Servant, or converted to his use, he is guilty of felony. And when Servants are convicted of robbing their masters, as the security of families so much depends on their honesty, and as the violation of the confidence reposed in them is a high aggravation of the crime, they are always punished with the utmost rigour which the law admits. 4 Comm. c. 17. p. 230, n.

By stat. 33 H. 6. c. 1. the Servants of persons deceased, accused of embezzling their master's goods, may by writ out of Chancery, (issued by the advice of the chief justices and chief baron, or any two of them,) and proclamation made thereupon, be summoned to appear personally in the Court of K. B. to answer their master's executors in any civil suit for such goods, and shall on default of appearance be attainted of felony.

By 39 Geo. 3. c. 85. to protect masters against embezzlements by their clerks or Servants, it is enacted that if any Servant or clerk, or any person employed for the purpose in the capacity of a Servant or clerk to any person or persons, or to any corporation, shall, by virtue of such employment, receive or take into his possession any money, security for money or effects for or in the name or on the account of
his master or employer, and shall fraudulently embezzle, secret, or make away with the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same, and shall be liable to be transported for any term not exceeding 14 years, in the discretion of the Court, before whom the offender shall be tried.

In an indictment on this statute, there must be a positive allegation that the money was the property of the master; as in the case of larceny. 3 Bos. & Pul. 106.

If a Servant receive money in the county of A. and being called upon to account in B. and there deny the receipt, he may be indicted for the embezzlement in the latter county. 3 Bos. & Pul. 596.

Lastly, we come to consider how Strangers may be affected by this relation of Master and Servant: Or, how a master may behave towards others on behalf of his Servant; and what a Servant may do on behalf of his master.

And, first, the master may maintain, that is, abet and assist, his Servant in any action at law against a stranger: whereas, in general, it is an offence against public justice to encourage suits and animosities, by helping to bear the expence of them, and is called in law maintenance. 2 Roll. Abr. 115. A master may also bring an action against any man for beating, confining, or disabling his Servant: but in such case he must assign, as a special reason for so doing, his own damage by the loss of his service; and this loss must be proved upon the trial. 9 Rep. 113.

This is an action on the case, generally called a per quod servitium amissit; and the Servant may also maintain his action of battery or imprisonment against the aggressor. See 1 Comm. 429: 3 Comm. 142.

This action by a master for assault, &c. on his Servant, has been contrived by a species of fiction, to be extended to a parent, to enable him to recover a pecuniary compensation, under some circumstances, for the seduction of his daughter. See 3 Comm. 142, n.

A master likewise may justify an assault in defence of his Servant, and a Servant in defence of his master: the master, because he has an interest in his Servant, not to be deprived of his service; the Servant, because it is part of his duty, for which he receives his wages, to stand by and defend his master. 2 Roll. Abr. 546.

Also if any person do hire or retain my Servant, being in my service, for which the Servant departeth from me and goeth to serve the other, I may have an action for damages against both the new master and the Servant, or either of them: But if the new master did not know that he is my Servant, no action lies; unless he afterwards refuse to restore him upon information and demand. F. N. B. 167, 168: Winch. 51.

In case an action is brought for enticing away, or retaining or employing a Servant, it is advisable to give notice to the intended defendant, that the party is Servant to the plaintiff, and to demand him; and proving such notice and a subsequent employment during the time for which the plaintiff hired, retained, took, and engaged the Servant, will entitle the plaintiff to a verdict. To this proof must be added proof of the contract between the plaintiff and the Servant, and that the time was not expired. But if a man do retain another's Servant, not knowing that he was in the service of the other, he shall not be punished for so doing, if he do not retain him after notice of his first service: And if a person do retain one to serve him forty
days, and another doth afterwards retain him to serve for a year, the
first covenant is avoided, because the retainer was not according to
the statute. New Nat. Br. 374, 375.

An action will lie for continuing to employ the Servant of another
after notice, though the employer did not procure the Servant to
leave his master, or knew when he first employed him that he was
the Servant of another. 6 Term Rep. K. B. 221.

The reason and foundation upon which all this doctrine is built,
seem to be the property that every man has in the service of his do-
mestics; acquired by the contract of hiring, and purchased by giving
them wages. 1 Comm. 429.

As for those things which a servant may do on behalf of his master,
they seem all to proceed upon this principle, that the master is an-
swerable for the act of his Servant, if done by his command, either
expressly given or implied; nam qui facit per alium, facit per se. 4
Inst. 109. Therefore, if the Servant commit a trespass by the com-
mand or encouragement of his master, the master shall be guilty of
it; though the Servant is not thereby excused, for he is only to obey
his master in matters that are honest and lawful.—If an innkeeper's
Servants rob his guests, the master is bound to restitution; for as
there is a confidence reposed in him, that he will take care to provide
honest Servants, his negligence is a kind of implied consent to the
robbery; nam qui non prohibet, cum prohibere posset, jubet. See title
Inns. So likewise, if the drawer at a tavern sells a man bad wine,
whereby his health is injured, he may bring an action against the
master; for although the master did not expressly order the Servant to
sell it to that person in particular, yet his permitting him to draw and
sell it at all, is impliedly a general command. 1 Comm. 430.

In the same manner, whatever a Servant is permitted to do in the
usual course of his business, is equivalent to a general command. If
I pay money to a banker's Servant, the banker is answerable for it: If
I pay it to a clergyman's or a physician's Servant, whose usual busi-
ness it is not to receive money for his master, and he embezzles it, I
must pay it over again. If a steward lets a lease of a farm without
the owner's knowledge, the owner must stand to the bargain; for this
is the steward's business. A wife, a friend, a relation, that use to
transact business for a man, are quaed hoc his Servants, and the prin-
cipal must answer for their conduct; for the law implies that they act
under a general command; and without such a doctrine as this, no
mutual intercourse between man and man could subsist with any to-
lerable convenience. If I usually deal with a tradesman by myself, or
constantly pay him ready money, I am not answerable for what my
Servant takes up upon trust; for here is no implied order to the trades-
man to trust my Servant; But if I usually send him upon trust, or
sometimes on trust and sometimes with ready money, I am answer-
able for all he takes up; for the tradesman cannot possibly distinguish
when he comes by my order, and when upon his own authority. 1
Comm. 430.

If a man has a Servant known to be such, and he send him to fairs
and markets to buy or sell, his master shall be charged, if the thing
come to his use; though if the Servant makes a contract in his mas-
ter's name, the contract will not be binding unless it were by the
master's command or assent; and where a Servant borrows money in
his master's name, without order, that does not bind the master.


Doct. & Stud. dial. 2. c. 42. A Servant buys things in his own name, the master shall not be charged, except the things bought come to his use, and he have notice of it. Kitch. 371.

A master used to give his Servant money every Saturday, to defray the charges of the foregoing week, and the Servant kept the money; per Holt, Ch. J. the master is here chargeable; for the master at his peril ought to take care what Servant he employs; and it is more reasonable that he should suffer for the cheats of his Servants, than strangers and tradesmen who do not employ them. 3 Salk. 234.

Where a Servant usually buys goods for his master upon tick, and takes up things in his master's name, but for his own use, the master is liable; but it is not so where the master usually gives him ready money. If the master gives the Servant money to buy goods for him, and he converts the money to his own use, and buys the goods upon tick, yet the master is answerable, if the goods come to his use; otherwise he is not. Also a note under the hand of an apprentice shall bind his master, where he is allowed to deliver out notes, though the money is never applied to the master's use; but if he be not allowed or accustomed to deliver out notes, his note shall not bind the master, if the money be not applied to the use of the master. 3 Salk. 234, 235.

The act of a Servant shall not bind the master, unless he acts by authority of his master; and therefore if a master sends his Servant to receive money, and the Servant instead of money takes a bill, and the master as soon as told thereof, disagrees, he is not bound by this payment: But acquiescence, or any small matter, will be proof of his master's consent, and that will make the act of the Servant the act of his master. 2 Salk. 442. For what is within the compass of a Servant's business, the master shall be generally chargeable; and also have advantage of the same against others, Noy's Max. An assumption of the Servant, by order and appointment of the master, shall bind his master; and a promise to my Servant is good to me. If my bailiff buy cattle to stock my ground, I shall be chargeable in debt for the money; and if he sell corn for me, I may have action in my own name against the buyer. Bro. 24: Godb. 360. If one owe me money, and I send my Servant for it, and he pay it to him, this is a good payment and discharge though the Servant do not bring the same to me; but if I send him not, it is otherwise. Doct. & Stud. 138.

If a Servant is cozened of his master's money, the master may have action on the case against the person that cozened him. 9 Ref. 113. 10 Ref. 130. 1 Roll. Abr. 98.

If a Servant, lastly, by his negligence, does any damage to a stranger, the master shall answer for his neglect; if a smith's Servant lames a horse while he is shoeing him, an action lies against the master, and not against the Servant. But in these cases the damage must be done while he is actually employed in the master's service, otherwise the Servant shall answer for his own misbehaviour. Upon this principle, by the Common Law, if a Servant kept his master's fire negligently, so that his neighbour's house was burnt down thereby, an action lay against the master, because this negligence happened in his service; otherwise if the Servant, going along the street with a torch, by negligence set fire to a house; for there he is not in his master's immediate service, and must himself answer the damage personally. But now the Common Law is, in the former case, altered.
by *stat.* 6 Ann. c. 31. which ordains that no action shall be maintained against any, in whose house or chamber any fire shall accidentally begin; for their own loss is sufficient punishment for their own or their Servant's carelessness. See title *Waste.* But if such fire happens through negligence of any Servant (whose loss is commonly very little) such Servant shall forfeit 100l. to be distributed among the sufferers; and, in default of payment, shall be committed to some workhouse, and there kept to hard labour for eighteen months. See *stat.* 14 Geo. 3. c. 78. and this Dictionary, title *Fire.* A master is also chargeable, if any of his family layeth or casteth any thing out of his house into the street or common highway, to the damage of any individual, or the common nuisance of his Majesty's liege people; for the master hath the superintendence and charge of all his household. 1 *Comm.* 431. See title *Nuisance.*

A master is answerable for the actions and trespasses of his Servant in many cases; but not for trespass of battery, &c. nor in criminal cases, unless done by his command. *Noy's Max.* 99. And if the master order his Servant to distress another man's cattle, and after he hath distrained he kills or abuses the distress, the master shall not answer it. *Noy* 111.

An action of *Trespass,* and not on the Case, is the proper remedy for an injury done by the wilful act of a Servant in driving his master's carriage against that of another: on the contrary, Case, and not Trespass is the remedy when such act is done negligently: but if it be done *wilfully,* without the assent or knowledge of the master, no action can be supported against the master. 6 *Term Rep.* K. B. 125. 128. *n.*: 2 H. Blackst. 442; 3: 1 *East's Rep.* 106; and see 6 *Term Rep.* 659.

No action lies against a steward or agent for damage done by the negligence of those employed by him in the service of his principal: but the principal is liable. 6 *Term Rep.* K. B. 411.

A having a house by the road-side, contracted with B. to repair it for a stipulated sum; B. contracted with C. to do the work; and C. with D. to furnish the materials: D's Servant brought a quantity of lime to the house, and placed it in the road by which the plaintiff's carriage was overturned: held that A. was answerable for the damage sustained. 1 *Bos. & Pult.* 404.

A master sends his Servant with deceitful wares to market, and orders him to sell them, but says not to whom; if he sells them, no action will lie against the master: Though if he had bid the Servant sell them to such a man in particular, and he had done so, the master would be chargeable in an action on the case. 11 *Ed.* 4: *Kitch.* 185. Where a carrier's Servant loses things delivered to him, the master must answer it, and action lies against him; and if goods be undertaken to be carried safely for hire, but by negligence are spoiled, it has been held, that whosoever employs another is answerable for him, and undertakes for his care to all that make use of him. 2 *Salk.* 440. See title *Carrier.* If a surgeon undertakes the cure of a person, and, by sending medicines by his Servant, the wound is hurt and made worse, the patient shall have action against the master, and not against the Servant. 18 *Hen.* 8.

In all the cases here put, the master may be frequently a loser by the trust reposed in his Servant, but never can be a gainer; he may frequently be answerable for his Servant's misbehaviour, but never
can shelter himself from punishment, by laying the blame on his agent. The reason of this is still uniform and the same; that the wrong done by the Servant is looked upon in law as the wrong of the master himself; and it is a standing maxim, that no man shall be allowed to make any advantage of his own wrong. 1 Comm. 432.

The law which obliges masters to answer for the negligence and misconduct of their Servants, though oftentimes apparently severe on an innocent person, is founded upon principles of public policy; in order to induce masters to be careful in the choice of their Servants, upon whom both their own security and that of others so greatly depends. And to prevent masters from being imposed upon in the characters of their Servants, it is enacted by stat. 32 Geo. 3. c. 56. that if any person shall give a false character of a Servant, or a false account of his former service; or if any Servant shall give such false account, or shall bring a false character, or shall alter a certificate of a character, he shall, upon conviction before a Justice of the Peace, forfeit 20l. with 10s. costs. The informer is a competent witness; but if any Servant will inform against an accomplice, he shall be acquitted.

An action was tried at the Sittings after Trin. T. 1792, at Guildhall, against a person who had knowingly given a false character of a man to the plaintiff, who was thereby induced to take him into his service. But this Servant soon afterwards robbed his master of property to a great amount, for which he was executed. And the plaintiff recovered damages against the defendant, to the extent of his loss. This was an action of great importance to the public, and there can be no doubt but it was founded in strict principles of law and justice. 1 Comm. 432, in n.

See stat. 15 Geo. 2. c. 13. § 12. as to breach of trust by officers and Servants employed by the Bank of England: And stats. 5 Geo. 3. c. 25. § 17: 7 Geo. 3. c. 50: 42 Geo. 3. c. 81. by Officers of the Post-Office; which are made felony without clergy. See also title Manufactures.

SERVI, Bondmen, or servile tenants. Our northern Servi had always a much easier condition than the Roman slaves. Servis non in nostrem morem descriptis per familiaris ministeris utuntur. Suam quisque sedem, suos ienates regit Frumenti modum dominus, aut pecoris, aut vestis, colono, injungit, & servus hactenus paret.—Tacitus de Moribus Germanorum. Which plainly describes the condition of our Saxon and Norman servants, natives, and villains, whose servitude did more respect their tenure, than their persons. No author has fixed the distinction between Servus and Villanus; though undoubtedly their servile state was different, for they are all along in the Domesday-Book distinguished from each other. So in Burcester there were Quinque Servi, & viginti octo Villani, &c. It is supposed the Servi were those, whom our Lawyers have since called pure villains, and villains in gross, who, without any determined tenure of land, were at the arbitrary pleasure of the lord appointed to such servile works, and received their wages or maintenance at discretion of the lord. The other were of a superior degree, and were called villani, because they were villa & gleba adscripti, i. e. held some cottage and lands, for which they were burdened with such stated servile offices, and were conveyed as appurtenant to the manor or estate to which they belonged. See Kennett’s Glossary.
The name and quality of their bondage do often occur in Domesday register: And their condition, no doubt, was worse than that of the bordarii or Cotsetti, who performed likewise some servile offices for their lord, and yet as to their persons and goods were not obnoxious to servitude, as the proper Servi were. These were of four sorts: 1. Such as sold themselves for a livelihood. 2. Debtors that were to be sold, for being incapable to pay their debts. 3. Captives in war, retained and employed as perfect slaves. 4. Nativi, such as were born servants, and by such descent belonged to the sole property of the lord. All these had their persons, their children, and their goods, at the disposal of their lord, incapable of making any wills, or giving away any thing. Cowell. There are also said to be servi testamentales, those which we now call covenant servants. Leg. Athelst. c. 34. See titles Villain; Slaves.

SERVICE, Servitium.] That duty which the tenant, by reason of his fee or estate, owed unto the lord.

Our antient law books make many divisions of it; as into personal and real; free and base; continual or annual; casual and accidental; intrinsic and extrinsic, &c. Bract. lib. 2: Brit. c. 66: 4 Co. Refn. 9.

Personal Service, is where something is to be done by the person of the tenant, as homage and fealty: and real, was subject to wards and marriages, when in use.

Annual and certain Service is Rent, Suit of Court to the lord, &c. Accidental Services, are heriots, reliefs, and the like: And some Services are only for the lord’s benefit; and some pro bono publico. Co. Copyhold 22: Co Litt. 222: 22 E. 4. 3.

Also Services are said to be entire; or chattels valuable, such as an ox; or things pleasurable, as a hawk, &c. And so are those personal, and consisting of manual work, or to exercise some office, &c.

Magna Carta, 9 Hen. 3. c. 32. ordains, that no freeman shall sell so much of his lands, but that of the residue the lord may have his Services. In feoffments to a man and his heirs, the feoffee shall hold the land of the lord by the same Services, as the feoffor, &c. Stat. 18 Ed. 1. And where Services are entire, and cannot be divided; upon the alienation of parcel of the lands by the tenant, the Services shall be multiplied, and every alienee render the whole Service; though by the purchase of parcel by the lord, the whole is extinct, except in case of fealty and heirloom custom. 6 Rep. 1: Wood’s Inst. 133. See further, title Tenures.

SERVIT OF AN HEIR. By the Law of Scotland, before an Heir can regularly acquire a right to the estate of the ancestor, he ought to be served Heir; which is one of the old forms of the law of Scotland proceeding upon a writ, and including in it the decision of a Jury fixing the right and character of the Heir to the estate of the ancestor. Bell’s Scotch Law Dict.

SERVICES AND SACRAMENTS. The blessed Sacrament to be administered in both kinds, stat. 1 Ed. 6. c. 1. For the uniformity of the Service and Administration of Sacraments, stats. 2 & 3 Ed. 6. c. 1: 5 & 6 Ed. 6. c. 1: 1 Eliz. c. 1: 8 Eliz. c. 1: 13 & 14 Car. 2. c. 4.—The penalty of disturbing a preacher or priest saying Divine Service, or pulling down an altar, &c. stat. 1 Mar. st. 2. c. 3.—The penalty of not repairing to church on Sundays and holidays, stat. 1 Eliz. c. 2. See title Sunday.—The Bible and Divine Service shall be translated into the Welsh tongue, stat. 5 Eliz. c. 28.—All ecclesiastical persons shall
read and subscribe to the Book of Common Prayer; &c. stats. 13 & 14
Car. 2. c. 4. 15 Car. 2. c. 6. See title Parson.—All Persons in office to
take the Sacrament, and the declaration against transubstantiation, stat.
25 Car. 2. c. 2. See titles Nonconformists; Oaths; Papists.—Allowance
of impediments for not reading the Service, extended to the certifi-
cate of subscription. Reading the articles to indemnify against ne-
glect in point of time, stat. 23 Geo. 2. c. 28. See further, title Reli-
gion; and the references there.

SERVICE SECULAR, Worldly Service, contrasted to Spiritual and
Ecclesiastical. Stat. 1 Ed. 4. c. 1.

SERVENTIBUS, Certain writs touching Servants and their Mas-
ters, violating the statutes made against their abuses; which see in
Reg. Orig. f. 189, 190, 191.

SERVITIUM FEODALE ET PRÆDIALE, Was not a personal
Service, but only by reason of the lands which were held in fee. Brac-
ton, lib. 2. c. 16. par. 7. See title Tenure.

SERVITIUM FORINSECUM, A Service which did not belong to the
chief lord, but to the King: It was called forinsecum and foraneum,
because it was done foris vel extra servitium quod fit domino capitali:
And we find several grants of liberties with the appurtenances, salvo
forensi servitio, &c. Mon. Ang. ii. 48.

SERVITIUM INTRINSECUM, That service which was due to the chief
lord alone from his tenants within his manor. Bracton, lib. 2: Fleta,
lib. 3.

SERVITIUM LIBERUM, a service to be done by feudatory tenants,
who were called liberi homines, and distinguished from vassals, as was
their service; for they were not bound to any of the base services of
ploughing the lord’s land, &c. but were to find a man and horse, or
go with the lord into the army, or to attend his court, &c, and some-
times it was called servitium liberum armorum; as in an old rental of
the manor of South Malling in Essex, mentioned by Somner in his
treatise of Gavelkind, p. 56.—See title Tenure.

SERVITIUM REGALE, Royal Service, or the prerogatives that within
a royal manor belonged to the lord of it; which were generally reck-
oned to be the following, viz. power of judicature in matters of pro-
erty; and of life and death in felonies and murders; right to waifs
and estrays; minting of money; assize of bread and beer; and weights
and measures: All which privileges, it is said, were annexed to some
manors by grants from the king. Paroch. Antiq. 60. See title Manor.

SERVI TESTAMENTALES, Covenant servants; mentioned in the
laws of king Athelstan, c. 54. See title Servants.

SERVITIIS ACQUIETANDIS, A writ judicial for a man dis-
trained for services to one, when he owes and performs them to an-
other, for the acquittal of such services. Reg. Judic. 27.

SERVITOR, Servulus.] A serving man: particularly applied to
Scholars in the colleges of the Universities, who are upon the found-
dation.

SERVITORS OF BILLS, Such servants or messengers of the marshal
of the King’s bench, as were sent abroad with bills or writs to sum-
mon men to that court. Stat. 2 H. 4. c. 23.

SERVITUDES, Burdens affecting property and rights. Scotch
Dict. See title Tenures.

SESEUR, Seems to signify the assessing or rating of wages.
Stat. 25 Ed. 3. c. 6.
SESSION, Court of, in Scotland: The highest civil court in Scotland. The Judges are styled Lords of Council and Session. The title of the court is derived from those formerly intrusted with the highest civil jurisdiction. By the act 1425. c. 65, the Court of Session was established, and continued till 1459, when its jurisdiction was restored to the king and council: and in 1503, the king's daily council was ordered to sit in Edinburgh: and the jurisdiction of those two courts, as well as their respective titles of Council and Session, were by the acts 1532 and 1537, c. 36, transferred to the present court, which with its members and officers was incorporated under the title of the College of Justice. The judges consisted originally of seven churchmen and seven laymen, and a president; the abbot of Canbushkenneth being the first president. By the articles of Union between Scotland and England, no person can be appointed a judge who has not served as an advocate or principal clerk of Session for five years, or as a writer to the Signet for 10 years. The judge must be at least 25 years of age. Besides the 15 ordinary lords it was antiently the practice for the crown to name extraordinary lords; but this power was renounced by the act 10 Geo. 1. c. 19. by which the trial and admission of the ordinary lords is regulated. Of this court of 15, nine were a quorum.

By stat. 48 Geo. 3. c. 151. it was enacted, that the Judges or Lords of Session shall usually sit in two divisions, the lord president of the whole court; and seven of the ordinary lords forming the first division: and the lord justice clerk and the six other ordinary lords making the second division; four judges in each division to be a quorum; the judges in each division to exercise the same powers as before. Judges of each division may state questions of law to the judges of the other. Regulations for transacting the business to be made by acts of sederunt by the whole Court of Session. Regulations are also introduced with respect to appeals to the House of Lords. His Majesty is impowered to appoint a commission to inquire into the forms of process in the Court of Session, and to report in what cases trial by jury may be usefully established.

SESSION, Session.] Is a sitting of justices in court upon their commission; as the Sessions of Oyer and Terminer, &c.

SESSION of PARLIAMENT, Sessio Parliamenti.] The sitting of the Parliament; and the Session of Parliament continues till it be prorogued or dissolved, and breaks not off by adjournment. 4 Inst. 27. See title Parliament.

SESSION, GREAT, of Wales. By stat. 34 & 35 H. 8. c. 26. a Session is to be held in Wales, twice in every year, in each county, by judges appointed by the king, to be called the Great Sessions of Wales; in which all pleas of real and personal actions shall be held, with the same form of process, and in as ample a manner, as in the court of Common Pleas at Westminster: And writs of error shall lie from judgments therein (it being a Court of Record) to the court of King's bench at Westminster. 4 Comm. 77. See title Wales.

SESSION of GAOL DELIVERY. A Session held for delivering a gaol of the prisoners therein being. See titles Justices; Gaol Delivery.

SESSIONS OF THE PEACE.

THE COURT of General Quarter Sessions of the Peace is a Court that must be held in every county once in every quarter of a year.
See title Quarter Sessions. It is held before two or more justices of the peace, one of which must be of the Quorum. The jurisdiction of this Court, by stat. 34 Ed. 3. c. 1. extends to the trying and determining all felonies and trespasses whatsoever; though they seldom, if ever, try any greater offence than small felonies within the benefit of clergy; their commission providing, that, if any case of difficulty arises, they shall not proceed to judgment, but in the presence of one of the justices of the Courts of King's Bench or Common Pleas, or one of the judges of Assize. And therefore murders, and other capital felonies are usually remitted for a more solemn trial to the assizes.

It is the practice to try all simple larcenies at the Quarter Sessions, whatever may be the value of the article stolen; but it is stated in the indictment to be of some value not exceeding a shilling, in order to reduce the crime to petty larceny. The justices never try any felonies, upon conviction for which the prisoner must pray the benefit of clergy, or now the benefit of the statute. For before the stat. 5 Ann. c. 6. sentence of death in all such cases must have been passed upon those who could not read; and it may still be doubted, whether it must not be passed upon a convict who obstinately refuses to pray the benefit of that statute. 4 Comm. c. 19. fr. 271, n: and see this Dictionary, titles Clergy, Benefit of; Mute.

They cannot try any new-created offence, without express power given to them by the statute which creates it. 4 Mod. 379: Salk. 406: Ld. Raym. 1144. But there are many offences, and particular matters, which by particular statutes belong properly to this jurisdiction, and ought to be prosecuted in this court: as, the smaller misdemeanors against the public or commonwealth, not amounting to felony; and especially offences relating to the game, highways, alehouses, bastard children, the settlement and provision for the poor, vagrants, servants' wages, apprentices, and popish recusants. Some of these are proceeded upon by indictment, and others in a summary way by motion and order thereupon; which order may for the most part, unless guarded against by particular statutes, be removed into the Court of King's bench, by writ of certiorari facias, and be there either quashed or confirmed.

The Sessions have cognisance of all offences which tend to a breach of the peace, except forgery and perjury. 2 East's Ref. 18. They cannot take cognisance of forgery as a cheat: but over other cheats in general their jurisdiction is undoubted. 1 East's Ref. 173. 183. To solicit a servant to steal his master's goods is a misdemeanour indictable at the Sessions, although no theft were actually committed. 2 East's Ref. 5.

The records or rolls of the Sessions are committed to the custody of a special officer, denominated the Custos Rotulorum, who is always a justice of the quorum. The nomination of this Custos Rotulorum (who is the principal civil officer in the county, as the lord lieutenant is the chief in military command) is by the king's sign manual: And to him the nomination of the Clerk of the Peace belongs; which office he is expressly forbidden to sell for money. See titles Custos, &c.; Clerk, &c.

In most corporation towns there are Quarter Sessions kept before justices of their own, within their respective limits; which have exactly the same authority as the General Quarter Sessions of the county, except in a very few instances; one of the most considerable
of which is the matter of appeals from orders of removal of the poor, which, though they be from the orders of corporation justices, must be to the Sessions of the county, by stat. 8 & 9 W. 3, c. 30. In both corporations and counties at large, there is sometimes kept a special or petty Session, for dispatching smaller business in the neighbourhood between the times of the General Sessions; as for licensing alehouses, passing the accounts of parish officers, and the like.

As to the jurisdiction of the Sessions, in points relative to the poor-laws, the following summary of decisions is taken from Court's edition of Bolt's Poor Laws; For its connexion with the subject, see this Dict. title Poor.

The Sessions cannot make an original order of removal; but they may adjudge the pauper to be settled in any of the parishes that are parties to the order, although they cannot appoint a new place of settlement, for they can only affirm or quash the order, in the whole or in part. Nor can they review an order, on which they have determined at a preceding Sessions; but they may make a new order, vacating a former order made the same sessions: and it seems that on quashing an order of removal, they can only direct the pauper to be sent back to the respondent parish, and cannot adjudge his settlement in a third parish. If the magistrates present are equally divided, no order can be made; but whatever a majority decide, is, as to matters of fact, conclusive, and also as to matters of law, unless they consent to a special case; but this they are not compellable to grant, nor will a bill of exceptions lie.

In stating a special case, the Sessions must state their conclusion from the facts, and not refer the evidence to the opinion of the superior court.—But they need not set forth the reason of their judgment, nor even state the evidence upon which their judgment is founded; but if they do state all the evidence, the Court will thereupon examine whether they have drawn a right conclusion; except in the case of fraud, for that is a fact that must be expressly found by the Sessions; and the Court will not infer it from the strongest evidence. But the Court may send the case back, and order the Sessions to inquire into that fact; as well as they may any other defective case, to be amended by stating a particular fact: but the Sessions are not in this case obliged to hear new evidence, although they should proceed in it as if it were a new business. The Court, however, will not send a case to be re-stated because the Sessions have admitted hearsay evidence; or on affidavit that the clerk of the peace has not stated the case truly. Justices of both the contending parishes, who are rated to the poor, are excluded from voting at Sessions, upon any question relating to the removal of a pauper belonging to either parish. 4 Term Rep. 81.

Not only the pauper removed, but the parish, or any of the parishioners, may appeal against an order of removal. The reasonable notice which the stat. 9 Geo. 1, c. 7. requires to be given, before an appeal can be heard, means such notice as is usual in the practice of the particular Session where the appeal is brought; but they cannot quash an order for want of notice, but must adjourn it to the next Session, unless it clearly appears to the Court that there has been sufficient time since the removal for the appellants to give notice, and come prepared, to try the appeal at the Sessions where it is lodged. And it has been determined that this clause does not
relate to the receiving; but to the hearing, of the appeal; and therefore they are bound to receive an appeal though no notice has been given. The appeal must be to the next Sessions after the order of removal is served, or the parties are aggrieved, whether it be an original or an adjourned Session; but as to the time which shall intervene between the order and the appeal, respecting what shall be considered the next Sessions, it must depend upon the special circumstances of the case; for if, from the distance, between the parish to which the pauper has been removed and the place where the Sessions are held, there is not time to lodge an appeal at the Sessions held immediately subsequent to the removal, the first Sessions ensuing are to be considered as the next Sessions, and the justices are bound to receive the appeal at such Sessions. It must however be so short an interval that the reasonable notice required cannot be given. This time of appealing to the next Sessions is not suspended by the matter being referred to arbitration; for the consent of the parties that the Sessions shall delegate their authority, concludes such parties, and gives validity to all acts of the Sessions in consequence of such consent. The Sessions however may, if they think proper, adjourn the appeal; but it cannot be to a time beyond that within which it is required by stat. 2 H. 5. c. 4. that a Sessions should be held; and every order made at such adjourned Session must state when the original Session commenced; and on adjourning a Session, the continuance of it by the adjournment must be regularly entered, for unless the Session be regularly adjourned they cannot hear the appeal. The allowance of costs is in the discretion of the Sessions; and in ordering them they need not state the particular sum expended; but they cannot direct costs to attend the event of a presumed appeal; nor can they order costs on a mere adjournment of an appeal.

The proceedings, as has been already noticed, may be removed from the Sessions into the Court of King's bench by certiorari. But by stat. 13 Geo. 2. c. 18. No certiorari shall be granted to remove any conviction, judgment, order, or other proceedings before any justice of the peace, or Sessions, unless it be applied for in six calendar months after such proceedings had or made; and unless it be duly proved on oath, that the party suing forth the same hath given six days' notice in writing to the justice or justices, or two of them, before whom such proceedings have been; to the end that such justices, or the parties therein concerned, may shew cause, if they think fit, against issuing the certiorari.

By stat. 5 Geo. 2. c. 19. No such certiorari shall be allowed unless the party enter into a recognizance of 50l. with condition to prosecute the same at his own costs and charges, with effect and without delay; and to pay the party, in whose favour the judgment or order was made, within a month after the same shall be confirmed, his full costs: and if he shall not enter into such recognizance, or shall not perform the condition, the justice may proceed, and make such further order for the benefit of the party for whom judgment shall be given, as if no certiorari had been granted. And if the order shall be confirmed by the Court, the person entitled to the costs, for the recovery thereof, within ten days after demand made, upon oath of such demand, and refusal of payment, shall have an attachment granted for the contempt; and the recognizance not to be discharged till the costs are paid, and the order complied with."
This writ of Certiorari cannot be applied for until after the appeal is allowed: but if it be granted before, and the writ be filed, it is too late to object. It may be directed to the Session, and returned by them. If a Session's case, removed by certiorari into the King's Bench, be sent down again to the Sessions to be restated, and the prosecutor abandon it when it is returned, the Court will discharge his recognizance for the costs; but not if he dispute the amended order. See further title Certiorari.

Sess. for ordering Servants, called Statute Sessions, held by constables of hundreds, &c. See title Statutum Sessionum.

Sess. for Weights and Measures. In London, four justices, from among the mayor, recorder, and aldermen, (of which the mayor or recorder to be one) may hold a Session to inquire into offences of selling by false weights and measures, contrary to the statutes; and to receive indictments, punish the offenders, &c. Char. K. Cha. I.

SET-OFF. A mode of defence, whereby the defendant acknowledges the justice of the plaintiff's demand on the one hand, but on the other, sets up a demand of his own to counterbalance it, either in the whole or in part.

At Common Law, if the plaintiff was as much, or even more, indebted to the defendant, than the defendant was to him, yet he had no method of striking a balance: The only way of obtaining relief was by going into a court of equity. To remedy this inconvenience, it was enacted by the stat. 2 Geo. 2. c. 22. § 13. "That where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other; and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require; so as at the time of his pleading the general issue, where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and upon what account it became due; or otherwise such matter shall not be allowed in evidence, upon the general issue." This clause was made perpetual by stat. 8 Geo. 2. c. 24. § 4: and it having been doubted, whether mutual debts of a different nature could be set against each other, it was by the last mentioned statute, (§ 5.) further enacted and declared, "That, by virtue of the said clause, mutual debts may be set against each other, either by being pleaded in bar, or given in evidence on the general issue, in the manner therein mentioned; notwithstanding that such debts are deemed in law to be of a different nature: unless in cases where either of the said debts shall accrue by reason of a penalty, contained in any bond or specialty; and in all cases, where either the debt for which the action hath been or shall be brought, or the debt intended to be set against the same, hath accrued or shall accrue by reason of any such penalty, the debt intended to be set off shall be pleaded in bar; in which plea shall be shewn how much is truly and justly due on either side; and in case the plaintiff shall recover any such action or suit, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff, after one debt being set against the other as aforesaid." And where the debt due to the defendant is less than that due from him,
he must, on pleading such Set-off, pay the remaining balance into court. 3 Comm. c. 20. p. 304.

The actions in which a Set-off is allowable upon these statutes, are debt, covenant, and assumpsit, for the non-payment of money; and the demand intended to be set off must be such, as might have been made the subject of one or other of these actions. A Set-off, therefore, is never allowed in actions upon the case, trespass, or replevin, &c; nor of a penalty, in debt on bond, conditioned for the performance of covenants, &c. nor against an avowry for rent; nor of general damages in covenant or assumpsit: But where a bond is conditioned for the payment of an annuity, or of liquidated damages, a Set-off may be allowed. A debt barred by the statute of limitations cannot be set off; and if it be pleaded in bar to the action, the plaintiff may reply the statute of limitations; or if given in evidence, on a notice of Set-off, it may be objected to at the trial. Tidd's Pract. K. B. and the authorities there cited.

The debts sued for, and intended to be set off, must be mutual, and due in the same right; therefore a joint debt cannot be set off against a separate demand, nor a separate debt against a joint one; but a debt due to a defendant, as surviving partner, may be set off against a demand on him in his own right. In an action of debt against a man on his own bond, he cannot set off a debt due to him in right of his wife. Neither, for the same reason, can a defendant, sued as executor or administrator set off a debt due to himself personally; nor, if sued for his own debt, can he set off what is due to him as executor or administrator. But where an action is brought by or against a trustee, a Set-off may be made, of money due to or from the Cestui que trust. It was formerly held, that the statutes of Set-off did not extend to assignees of a bankrupt; but it has since been determined, that in an action at their suit, the defendant may set off a debt due to him, at the time of the bankruptcy; but a note endorsed to him afterwards cannot be set off. Tidd's Pract. K. B. And in actions by or against the assignees of a bankrupt, the sum really due may be recovered under stat. 5 Geo. 2. c. 30. without either pleading or giving notice of a Set-off. 1 Term Rep. 115: 3 Comm. c. 20, n.

Where either of the debts accrues by reason of a penalty, the debt intended to be set off must, by the stat. 8 Geo. 2. c. 24. be pleaded in bar; and the defendant, in his plea, must aver what is really due; which averment has been held to be traversable: But, in all other cases, the defendant may either plead or give notice of Set-off, at his election. If, at the time of the action brought, a larger sum was due from the plaintiff to the defendant, than from him to the plaintiff, the action being barred, it seems more proper to plead the Set-off; and it is usually pleaded in country causes, to save the trouble and expense of proving the service of a notice. But where the sum intended to be set off is less than that for which the action is brought, a notice of Set-off should be given. Tidd.

The Notice of Set-off should regularly be given with, or at the time of pleading the general issue. Though if it be not then given, the Court, (it is settled) will give the defendant leave to withdraw the general issue, and plead it again, with a notice of Set-off; and such notice may be given with the general issue, after the defendant has been ruled to abide by his plea. In point of form, a notice of Set-off.
should be almost as certain as a declaration. The notice of Set-off is usually written underneath the plea, and delivered therewith to the plaintiff's attorney; and a copy of the notice should be kept by the defendant's attorney, it being necessary to prove the delivery of it at the trial of the cause. Tidd's Pract. E. B.

SETTLEMENT OF POOR. See title Poor IV.

SETTLEMENT, Act of The stat. 12 & 13 W. 3. c. 2. is so called; whereby the crown was limited to his present Majesty's illustrious house. See title King I.

SEVERAL ACTION; See title Action.

SEVERAL COVENANT, A Covenant by two or more severally; i.e. separately. See title Covenant.

SEVERAL FISHERY; See Fishery, Right of.

SEVERAL INHERITANCE, an Inheritance conveyed, so as to descend or come to two persons severally by moieties, &c. See titles Estate; Limitation; Inheritances.

SEVERAL TAIL, is that whereby land is given and intailed severally to two. Co. Lit. See titles Limitation; Tail.

SEVERAL TENANCY, Tenura separalis.] A plea or exception taken to a writ that is laid against two persons as joint tenants, who are several. 2 Cro. 273. See title Joint-tenants.

SEVERALTY, Estates in. He that holds lands or tenements in Severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein. 2 Comm. c. 12. p. 179.

SEVERANCE, The separating or severing of two or more, joined in one writ or action. There is a Severance of the tenants in an assise, when one of two disseisees appear upon the writ, and not the other. Book Intr. 81. A Severance in debet, where two executors, &c. are plaintiffs, and one refuseth to act or prosecute. Ibid. 220. Severance in quare impedit; in attains, &c. 5 Rep. 97. And it lies in real, as well as personal actions; and on writs of error. F. N. B. 78: 10 Rep. 135. In writ of error, if three defendants in the action bring error, and one releases the errors, he may be summoned and severed, and then the other two shall proceed to reverse the judgment. 6 Rep. 26. And if in error where there are several plaintiffs, one only appears and assigns errors; this is not good, without summoning and severing the rest. Cro. Eliz. 893.

It has been held, that summons and Severance lies in partition; yet he who was severed shall have his part: For partition must be made of the whole. Jenk. Cent. 211. And in case of joint-tenants of lands, by Severance the prosecution of the suit is severed, but not the jointure; for where one alone recovers afterwards, the other may enter into the moiety recovered. Ibid. 40. Summons and Severance is usually before appearance; as nonsuit is after appearance. 10 Rep. 134. But, according to Hale, there are two sorts of Severances, one when a plaintiff will not appear; and the other when several plaintiffs appear, but some will not proceed and prosecute. Hard. 317: 3 Nels. Abr. 255. If a plaintiff or defendant on a writ of summons and Severance, sued out against him by another, doth not come in upon it, judgment shall be had ad prosequendum solum; and this hath been done in B. R. by giving a rule to appear and come in. 2 Lill. Abr. 539. See Summons and Severance.
SEWER. 6P

Severance of Corn. The cutting and carrying it from off the ground; and sometimes the setting out the tithes from the rest of the corn, is called Severance. 2 Cro. 325. See title Tithes. Where executors of tenants for life, &c. dying before Severance, shall have corn sown, see Emblements.

Severance of Joint-tenancy; See title Joint-tenants.

SEVERN, A recompense for robberies done on the river Severn in Gloucestershire, may be had by action of debt, according to the statute of Winchester, 8 H. 6. See title Passage.

SEWARD, (rather Sea-ward.) A Saxon word for him who guards the sea-coasts; it signifies Custos Maris.

SEWER, Sewera.] A fresh water trench, or little river encompassed with banks on both sides, to carry the water into the sea, and thereby preserve the lands against inundations, &c. The Kings of England used to grant commissions of Sewers long before any statute was enacted in Parliament for the purpose: and during the reigns of King Hen. VI., Ed. IV., and Hen. VII., several statutes were made for appointing commissions of Sewers in all parts of the realm where needful; some to endure ten years, some fifteen years, and others five years, &c. with certain powers to the commissioners: which commissions, by stat. 23 Hen. 8. c. 5. are to be settled by the Lord Chancellor, Lord Treasurer, and the two Chief Justices, or any three of them, whereof the Lord Chancellor to be one: And by this law, the commissioners’ oath is appointed: they are to be qualified as to estates, by having lands, tenements, or hereditaments, in fee or for life, worth forty marks per annum, besides reprises; (except they are resident in and free of a corporation; and have moveables worth 100l.) and if they execute the commission, not being thus qualified, or before sworn, they incur a forfeiture of 40l. Commissioners that may lawfully act, have an allowance for their pains 4s. per diem, and their clerks 2s. out of the taxes to be laid and levied.

The said stat. 23 H. 8. c. 5. § 17. directs that laws, acts, decrees, and ordinances made by commissioners of Sewers shall stand good and be put in execution so long as the commission endureth and no longer; except the said laws and ordinances be engrossed in parchment, and certified under the seals of the commissioners into chancery, and have the royal assent: and the stat. 13 Eliz. c. 9. directs that all commissions of sewers shall continue in force for ten years, unless sooner determined by supersedeas or new commission: and that all laws, ordinances, and constitutions made by force of such commission, being written in parchment, indented and under seal, shall without such certificate or royal assent continue in force notwithstanding the determination of the commission by supersedeas until repealed or altered by new commissioners; and that all laws so sealed shall, without certificate or royal assent, be in force for one year after the determination of such commission by the expiration of ten years from its teste. See as to the construction of these clauses, 9 East’s Ref. 109.

The business of the commissioners of Sewers is to repair seabanks and walls, survey rivers, public streams, ditches, &c. and make orders for that purpose. They have authority grounded on the statutes to inquire of all nuisances, and offences committed by the stopping of rivers, erecting mills, not repairing of banks and bridges, &c. and to tax and assess all whom it may concern, for the amending of defaults, which tend to the obstruction or hindrance of the free pas-
sage of the water through its antient courses: and they may arrest
carts and horses, and take trees, paying a reasonable price for them,
for reparations; appoint workmen, bailiffs, surveyors, and other offi-
The court of commissioners of Sewers is classed, by Blackstone,
among those whose jurisdiction is private and special: Their juris-
diction being confined to such county or particular district, as the
commission expressy names: The commissioners are a court of re-
cord, and may fine and imprison for contempts. 1 Sids 144. And in
the execution of their duty may proceed by a jury, (who may amerce
for neglects) or upon their own view; and may take order for the re-
moval of any annoyances, or the safeguard and conservation of the
Sewers within their commission, either according to the laws and
customs of Romney Marsh; (see that title;) or otherwise at their own
discretion; but they may not imprison persons for disobedience to
their orders: Nor can they intermeddle where there is not a public
prejudice.—Laws Sew.: 3 Comm. c. 6.
Upon the statute 23 Hen. 8. c. 5. the commissioners decreed, that
a new river should be made out of another large river, through the
main land for seven miles, unto another part of the old river; and for
that purpose they laid a tax of a sum in gross upon several towns:
Adjudged that the commissioners have no power to make a new
river, or any new invention to cast out water, &c. for such things are
to be done in Parliament; but they may order an old bank to be new-
made, or alter a Sewer upon any inevitable necessity. The tax of a
sum in gross is not warranted by their commission, they being to tax
every owner or possessor of the lands, according to the quality of
their lands, rents, and number of acres, and their respective portions
and profits, whether of pasture, fishing, &c. 10 Ref. 141.
The commissioners may assess such rates or scots upon the own-
ers of lands within their district, as they shall judge necessary: and if
any person refuses to pay them, the commissioners may levy the same
by distress of his goods and chattels; or they may, by the stat. 23 H.
8. c. 5. sell his freehold lands; and by stat. 7 Ann. c. 10. his copyhold
also, to pay such rates and assessments.
The commissioners are to tax all equally, who are in danger to re-
ceive any damage by the waters, and not only those whose lands are
next adjoining; because the rage of the waters may be so great, that
the land contiguous may not be of the value to make the banks; and
therefore the statutes will have all that are in danger to be contribu-
tory. 5 Ref. 100.
Under the stat. 23 Hen. 8. c. 5. the Jury by whom a presentment is
made to the commissioners, concerning what lands are within a level,
and subject to a certain rate, ought to be summoned by the sheriff
from the body of the county, in pursuance of a precept directed to him
for such purpose: A presentment made by a standing jury, constitu-
ted according to antient usage, originally returned by the sheriff,
at the commencement of every new commission, from certain par-
ishes or districts composed of land-owners there, interested in dis-
claiming the general charges of the level, which jurymen acted for
life, unless removed for cause, and only the foreman of which was
summoned by the sheriff on the particular occasion, which foreman
thereupon convened the other jurymen, is illegal and void. The pre-
senting jury, after being sworn and charged, must also prosecute their
inquiry upon hearing evidence on oath before the commissioners, and make their presentment thereon, and not on information collected in pais without oath. 7 East's Rpt. 71.

There are several causes and considerations for which persons may be obliged to repair and maintain Sewers; as frontagers were bound to the repairs of the walls and banks, &c. by reason of frontage. 37 Lib. Assis. pl. 10. The being owner of a bank, wall, or other defence, is a sufficient inducement to impose the charge of the repairs thereof upon such owner. 1 Hen. 7.—Prescription and custom are much of the same nature, and the law takes notice of them in this case; but prescription doth not bind a man to the repairs, except it be ratione tenure. 21 Ed. 4. 38: 19 Hen. 7.—By tenure of land, a person may be bound to repair a wall, bank, or defence mentioned in the statute of Sewers. 12 H. 4. A man may bind himself and his heirs by covenant expressly to repair a bank, wall, or sewer, and be good; yet this shall not bind the heir after his death, where assets are not left from the ancestor, who entered into the covenant.—Callis's Reading on Sewers.—That this is a good authority on the subject of Sewers, See 2 Term Rpt. K. B. 365.

The use of defences may tie a man to the reparation thereof; if one and his ancestors have had the use of a river by sailing up and down the same, or have used a ferry on or over it, &c.—If no person or grounds can be known, who ought to make repairs by tenure, prescription, custom, or otherwise, then the commissioners are to tax the level. Laws Sewers 57, 67, 68.

The Sea, creeks, and bays, on the coasts, are all within the statutes of Sewers, in point of extent; but they and the shores, and the relinquished grounds, are out of the commission of Sewers, to be determined thereby: but ports and havens, as well as the walls and banks of waters, are within the commission of Sewers; and the shore and grounds left by the sea, when they are put in gainage and made profitable, are then within the power of the commission of Sewers: And though before, the ground left by the sea is not, as to defence, within the commission of Sewers; yet a wall or bank may be thereon raised, for the succour of the country, although not for any private commodity; the commission of Sewers aiming at the general good. Callis 31, 32.

The commissioners of Sewers have jurisdiction over a Sewer communicating with a navigable stream, or with the sea above the point where the tide ebbs and flows, if it be useful for navigation, and if the place over which the jurisdiction is exercised is, or is likely to be, benefited by it.—2 Term Rpt. K. B. 358.

If a sea-bank or wall which the owners of particular lands are bound to repair, be destroyed by tempest, without any default in such owners, the commissioners of Sewers may order a new one, even in a different form, if necessary, to be erected at the expense of the whole level. 8 Term Rpt. K. B. 312.

The decrees of commissioners of Sewers are to be certified into Chancery: Their conduct is under the control of the Court of King's Bench, which will prevent or punish any illegal or arbitrary proceedings. Cro. Jac. 336. And yet in the reign of King Jac. 1. (8th Nov. 1616,) the Privy Council took upon them to order that no action or complaint should be prosecuted against the commissioners, unless before that board; and committed several to prison who had brought
such actions at common law, till they should release the same; and one of the reasons for discharging Sir Ed. Coke from his office of Lord Chief Justice, was for countenancing those proceedings at law. Moor 825, 826: See 3 Comm. 55. 74. But now it is clearly established that this (like other inferior jurisdictions) is subject to the discretionary coercion of the court of King's Bench. 1 Vent. 66, 67: Salk. 146.

If it is found before commissioners of Sewers, that a certain person ought to repair a bank; and this is removed into B. R. the Court will not quash the inquisition, or grant a new trial, except he repair it; and if afterwards he is acquitted, he shall be reimbursed. Sid. 78.—In cases of Sewers, the Court of King's Bench inquire into the nature of the fact, before they grant a certiorari to remove orders; that no mischief may happen by inundations in the mean time, which is a discretionary execution of their power. 1 Salk. 146.

The Court commonly hears counsel on both sides, where orders of commissioners of Sewers are removed by certiorari, before such orders are filed; for, if good, the Court will grant a procedendo, which cannot be done after they are filed: But they will file them in any case, where there is no danger likely to ensue. 1 Salk. 145.—If commissioners of Sewers proceed after a certiorari delivered out of B. R. attachment will issue against them, and they may be fined. 3. Nels. Abr. 318. An order of Sewers was made for levying of 9d. per acre on thirteen hundred and twelve acres, to be paid to the clerk, to be applied towards defraying of charges in and about the execution of the commission; and held to be good; the act does not require it should be on the occupiers; and there is an express power to allow charges. 2 Str. 1127: 10 Co. 159.

Orders of Sewers being removed by certiorari, the Court would not file the orders till they had heard the objections debated, so as to have it in their power to send the orders back again. 2 Str. 1263.—The Court held, that a certiorari to bring up an order made by the commissioners, for the removal of their own clerk, was of common right, and not discretionary, as in the case of other orders, where great inconveniences may follow by inundations in the mean time. 1 Str. 609.

The stat. 3 Jac. 1. cap. 14. ordains, that all ditches, banks, bridges, streams, and watercourses, within two miles of London, falling into the Thames, shall be subject to a commission of Sewers: And the Lord Mayor, &c. is to appoint persons who have power of commissions of Sewers. Breaking down sea-banks, whereby lands shall be damaged, is felony, by stat. 6 Geo. 2. c. 37. And persons removing piles, &c. used to prevent inundations of rivers, shall forfeit 20l. or be sent to the house of correction for six months. Stat. 10 Geo. 2. c. 32. See title Mischief; Malicious.

SEXAGESIMA Sunday, the sixtieth day before Easter. See Septuagesima.

SEXHINDENI, or SEXHINDMEN, Sax.] The middle Thanes, valued at 600 shillings. See title Hindeni Homines.

SEXTARY, Sextarius.] Was an antient measure, containing about our pint and a half. The town of Leicester paid among other things, to the King yearly, twenty-five measures, called Sextaries, of honey, as we read in Domesday. See Mon. Angl. ii. 849, b: and i. 136, b; in which latter place it seems to have been used for a much greater quantity. A sextary of ale contained sixteen Lagenas. Cowell. See title Tolsester.
SEXTERY LANDS, Lands given to a church or religious house, for maintenance of the Sexton or Sacristan. Cowell.

SEXTONS. Parish Clerks and Sextons are regarded by the common law, as persons who have freeholds in their offices; and therefore, though they may be punished, yet they cannot be deprived by ecclesiastical censures. 2 Rol. Abr. 234: 1 Comm. c. 11. See titles Office; Mandamus.

SHACKE, A custom in Norfolk, to have common for hogs, from the end of harvest till seed-time, in all men's grounds, without contradiction. 7 Revt. 5. And, in that country, To go at shackle, is as much as to go at large. Cowell.


SHARPING-CORN, A customary gift of corn, which, at every Christmas, the farmers in some parts of England give to their smith, for sharpening their plough-irons, harrow-tines, &c. Blount.

SHARNBURN in Norfolk, Pleas held at, temp. Will. I. for the purpose of confiscating the estates of such as opposed that Conqueror. See Stelm. Gloss. in v. Dregens; where it is mentioned as quidam libellus of the family of Sharneburne in Norfolk. See Wright's Tenures 62; who also mentions pleas held at Pinenden, for the same purpose. Hume says, "There is a paper or record of the family of Sharneburne, which pretends that that family, which was Saxon, was restored upon proving their innocence. Though this paper was able to impose on such great antiquaries as Stelman and Dugdale, it is proved by Dr. Brady (Ans. to Petjy, fi. 11, 12,) to have been a forgery." Hume's Hist. Engl. i. 263. note H.

SHAW, A grove of trees, or a wood, mentioned in 1 Inst. 4; now generally applied to Underwood.

SHAWALDRES, Soldiers. Cowell.

SHEDING, A riding, tithing, or division in the Isle of Man; where the whole island is divided into six Shedings, in each of which there is a coroner, or chief constable, appointed by delivery of a rod at the tinewald court, or annual convention. King's Descrip. Isle of Man 17.

SHARMAN'S CRAFT, A Craft or occupation used at Norwich, and elsewhere; the artificers wherof do shear worsteds, fustians, and all woollen cloth. See stats. 19 Hen. 7. c. 17: 22 & 23 Car. 2. c. 8.

SHEEP. By an antient (disregarded!) statute, no person shall keep at one time above two thousand Sheep, on pain of 3s. 4d. per Sheep above that number; but lambs are not to be accounted as Sheep till they are a year old. Stat. 25 H. 8. c. 13. As to the exportation and shearing of Sheep, &c. see title Wool: As to stealing Sheep, &c. see title Cattle.

SHEEP-SILVER, A service turned into money; which was paid in respect that antiently the tenants used to wash the lord's Sheep. W. Jones's Rep. 280.

SHEPWAY, Court of; A court held before the Lord Warden of the Cinque Ports. A writ of error lies from the Mayor and Jurats of each port, to the Lord Warden, in this Court of Shepway, and from thence to the King's Bench. See title Cinque Ports.

SHERIFFEE. The body of the lordship of Caerdiff in South Wales is so called, excluding the members of it.—Powell's Hist. Wal. 123.
SHERIFF;

SHIRE-REEVE, or SHIRIFF:

The Reve, Bailiff, or Officer of the Shire; Lat. Vicecomes; Sax. Scire gerefa, from the Sax. Seyrian, to divide.] The chief officer, under the King, in every shire or county; being so called from the first division of the kingdom into counties. Camd. Brit.

The Scotch Sheriff differs very considerably from the English Sheriff. The Scotch Sheriff is properly a Judge; and by stat. 20 Geo. 2. c. 43. he must be a lawyer of three years' standing, and is declared incapable of acting in any cause for the county of which he is Sheriff. He is called Sheriff Depute: he must reside within the county four months in the year: he holds his office ad vitam aut culpam. He may appoint substitutes, who as well as himself receive stated salaries. The King may appoint a High Sheriff for the term of one year only.

The civil jurisdiction of the Sheriff Depute extends to all personal actions on contract, bond or obligation, to the greatest extent: and generally in all civil matters not especially committed to other courts. His criminal jurisdiction extends to the trial of murder, though the regular circuits of the Court of Justiciary prevent such trials occurring before them. He takes cognizance of theft and other felonies, and all offences against the police. His ministerial duties are similar to those of Sheriffs in England.

What follows relates to Sheriffs in England and Wales.

I. Of Sheriffs generally.

II. Who are qualified for, or exempt from, serving the Office of Sheriff: And see III.

III. Manner of appointing him, and of his Oath.

IV. The Sheriff can execute no other Office; how long to continue in Office; and of his Jurisdiction.

V. The Sheriff cannot dispose of his Bailiwick; and of his Power and Duty in appointing an Under-Sheriff.

I. It seems that antiently the government of the county was by the King lodged in the earl or count, who was the immediate officer to the crown; and this high office was granted by the King at will; sometimes for life, and afterwards in fee; but when it became too burdensome, and could not be commodiously executed by a person of so high rank and quality, it was thought necessary to constitute a person, duly qualified, to officiate in his room and stead; from hence he is called in Latin Vice-comes, as being deputy of the Earl or Comes: and Sheriff, from Shire-reeve, i.e. Governor of the Shire or County. He is likewise considered in our books as bailiff to the Crown; and his county, of which he hath the care, and in which he is to execute the King's writs, is called a Bailiwick. Dav. 60: Savil 43: 1 Rol. Rep. 274: Co. Lit. 168. Vide Pref. to 9 Rep. 33.

It is said by Coke and by Dalton, that ears, by reason of their high employments and attendance upon the King, being not able to follow all the business of the county, were delivered of all that burthen, and only enjoyed the honour as they now do, and that labour was laid upon the Sheriff; so that now the Sheriff doth all the King's business in the
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county; and the Sheriff, though he be still called Vice-comes, yet all he doth, and all his authority, is entirely independent of and not subject to the earl, being immediately from and under the King, and not from or under the earl; so that, at this day, the Sheriff hath all the authority for the administration and execution of justice, which the count or earl had; the King, by his letters-patent now committing to the Sheriff custodiam comitatus. 9 Co. 49: Dalt. Sher. 2.

He is at this day considered as an officer of great antiquity, trust, and authority; having, as Dalton observes, from the King the custody, keeping, command, and government (in some sort) of the whole county committed to his charge and care; and, according to Coke, he is said to have triplicem custodiam, viz. vita justitiae, vita legis & vita republcae, &c. Vita justitiae, to serve process, and to return indifferent juries for the trial of men's lives, liberties, lands, and goods; vita legis, to execute process and make execution, which is the life of the law; and vita republcae, to keep the peace. Co. Litt. 168: Dalt. Sh. 5.

It seems that, antiently, Sheriffs were elected by the freeholders of the county, as the coroners are at this day; and consequently that their offices did not determine by the death of the King. 2 Inst. 558: 2 Brownl. 282. See post. III.

And though at this day the King hath the sole appointment of Sheriffs, except in counties palatine, and where there are jura regalia, yet it hath been adjudged, that the office of Sheriff is an entire thing, and that therefore the King cannot apportion or divide it; that is, he cannot determine it in part, as for one town or one hundred; neither can he abridge the Sheriff of any thing incident to or belonging to his office. Dav. 60: 4 Co. 33; Mitton's case: Dalt. Sh. 6: Hob. 13: Raym. 363.

The lord mayor and citizens of London have the Shrievalty of London and Middlesex in fee, by charter; and two Sheriffs are annually elected by them, for whom they are to be answerable. If one of these Sheriffs dies, the other cannot act till another is made; and there must be two Sheriffs of London, which is a city and county; though they make but one Sheriff of the county of Middlesex: They are several as to plaintiffs in their respective courts. 3 Refi. 72: Show. Refi. 289. See post. III.

II. It is provided by several acts of Parliament, that no man shall be Sheriff in any county, except he have sufficient lands within the same county where he shall be Sheriff; whereof to answer the King and his people, in case that any person shall complain against them; and that none that is steward or bailiff to a great lord shall be made Sheriff. Stats. 9 Ed. 2. st. 2: 2 Ed. 3. c. 4: 4 Ed. 3. c. 9: 5 Ed. 3. c. 4: 13 & 14 C. 2. c. 1. § 7.

This is the only qualification required from a Sheriff: That it was the intention of our ancestors, that the lands of a Sheriff should be considerable, abundantly appears from their having this provision so frequently repeated; and at the same time that they obtained a confirmation of Magna Carta and their most valuable liberties. As the Sheriff, both in criminal and civil cases, may have the custody of men of the greatest property in the county, his own estate ought certainly to be large, that he may be above all temptation to permit them to escape, or to join them in their flight. In antient times, this office was
frequently executed by the nobility, and persons of the highest rank in the kingdom. Sphelm. Gloss. in v. Vicecomes.—Bishops also were not unfrequently Sheriffs: Richard Duke of Gloucester (afterwards Richard III.) was Sheriff of Cumberland five years together.—It does not appear that there is any express law to exclude the nobility from the execution of this office; though it has long been appropriated to Commoners. 1 Comm. c. 9. p. 346, n.

The office of Sheriff doth not determine by the party’s becoming a peer on the death of his father, but that he still remains Sheriff ad voluntatem Regis. Cro. Eliz. 12. Sir Lewis Mordant’s case.

It is holden that the King hath an interest in every subject, and a right to his service; and that no man can be exempt from the office of Sheriff, but by act of Parliament, or letters patent. Sav. 43: 9 Co. 46.

And on this foundation, it was adjudged, in Sir John Read’s case, who was made High Sheriff of Hertfordshire at the time he was excommunicated for non-payment of alimony, that an information properly lay against him for not executing the office; though it was objected, on his behalf, that the oath and sacrament injoined by act of Parliament are necessary qualifications for all Sheriffs, which he was disabled to take by reason of the excommunication: But the Court held, that he was punishable for not removing the disability, it being in his power to get himself absolved from the excommunication; and that therefore it could be no excuse. 2 Mod. 299.

Though, in the above case, it was admitted that the subject was bound to serve the King in such capacity as he is in at the time of the service commanded, yet it was insisted upon, that he was not obliged to qualify himself to serve in every capacity; and that therefore a prisoner for debt is not bound nor compellable to be Sheriff, no more than a person is bound to purchase lands to qualify himself to be either a coroner or justice of the peace: And it was likewise said that, by statute, every recusant is disabled; he may conform, but he is not bound to it; for if he submits to the penalty, it is as much as is required by Law. 2 Mod. 301. And it is now settled that dissenters are not compellable to serve the office of Sheriff. Harrison (Chamberlain of London) v. Evans, in the House of Lords, 1766. See title Dissenters.

If a man is disabled by a judgment in Law to bear an office, he is excused; nam judicium redditur in invitum; for though his fault or neglect was the occasion of such judgment, yet it is a mark set upon him by the government. Salk. 168: 4 Mod. 273.

And as nothing but an invincible necessity can exempt a person from serving the office of Sheriff, &c. on this foundation a bye-law made in London, that no freeman chosen Sheriff, &c. shall be excused unless he voluntarily swears he is not worth 10,000l. &c. [now 15,000l.] and that if he openly refuses to take the office, then to forfeit the sum of 400l. was adjudged good. Salk. 142: Carth. 480: 5 Mod. 438. City of London v. Vanacre.—In the year 1748, the Corporation of London made a bye-law, imposing a fine of 600l. on persons refusing to serve the office of Sheriff.

The vast expence, which custom had introduced in serving the office of High Sheriff, was grown such a burthen to the subject, that it was enacted, by stat. 13 & 14 Car. 2. c. 21, that no Sheriff (except of London, Westmoreland, and towns which are counties of themselves)
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should keep any table at the assizes, except for his own family, or
give any presents to the judges or their servants, or have more than
forty men in livery: Yet, for the sake of safety and decency, he may
not have less than twenty men in England and twelve in Wales; upon
forfeiture, in any of these cases, of 200l.

III. The High Sheriff hath his authority given him by two pa-
tents; by the one the King commits to him the custody of the coun-
ty; by the other the King commands all other his subjects within that
county to be aiding and assisting to him in all things belonging to his
office. Dalt. Sh. 7. where see the form of such patents.

Sheriffs were formerly chosen by the inhabitants of the several
counties. In confirmation of which it was ordained by stat. 28 Edw. 1.
c. 8. that the people should have election of Sheriffs in every shire,
where the Shrievalty is not of inheritance. For antiently in some coun-
ties the Sheriffs were hereditary; as it seems they were in Scotland
till the stat. 20 Geo. 2. c. 43; and still continue in the county of West-
moreland to this day: The city of London have also the inheritance of
the Shrievalty of Middlesex vested in their body, by charter. 3 Refh.
72.

The earl of Thanet is hereditary Sheriff of Westmoreland, which of-
office may descend to and be executed by a female, for Anne countess
of Pembroke had the office, and exercised it in person; and, at the as-
sizes at Appleby, sate with the judges on the bench. 1 Inst. 326, n.—
The election of the Sheriffs of London and Middlesex was granted to
the citizens of London, in consideration of their paying 300l. a year
to the King’s Exchequer. 1 Comm. c. 9. n.

The reason of these popular elections is assigned in stat. 28 E. 1.
c. 13; “ That the commons might choose such as would not be a bur-
then to them.” And herein appears plainly a strong trace of the de-
mocratical part of our constitution; in which form of government it is
an indispensable requisite, that the people should choose their own
magistrates. This election was in all probability not absolutely vest-
ed in the Commons, but required the royal approbation. For, in the
Gothic constitution, the judges of the County Courts (which office is
executed by our Sheriff) were elected by the people, but confirmed
by the King; and the form of their election was thus managed: The
people, or incolae territorii chose twelve electors, and they nominated
three persons ex quibus rex unum confirmabat. But with us in Eng-
land these popular elections, growing tumultuous, were put an end to
by the stat. 9 Edw. 2. st. 2; which enacted, that the Sheriffs should
from thenceforth be assigned by the chancellor, treasurer, and the
judges; as being persons in whom the same trust might with con-
dence be reposed. By stats. 14 Edw. 3. c. 7: 23 Hen. 6. c. 8. the
chancellor, treasurer, president of the King’s Council, chief justices,
and chief baron, are to make this election; and that on the Morrow of
All Souls in the Exchequer. And the King’s letters patent, appoint-
ing the new Sheriffs, used commonly to bear date the sixth day of
November. Stat. 12 Edw. 4. c. 1. The stat. 12 Ric. 2. c. 2. ordains
that the chancellor, treasurer, keeper of the privy seal, steward of the
King’s house, the King’s chamberlain, clerk of the rolls, the justices
of the one bench and the other, barons of the Exchequer, and all
other that shall be called to ordain, name, or make justices of the
peace, Sheriffs and other officers of the King, shall be sworn to act
indifferently, and to appoint no man that sueth either privily or openly to be put in office, but such only as they shall judge to be the best and most sufficient. And the custom now is (and has been at least ever since the time of Fortescue, who was chief justice and chancellor to Henry the Sixth) that all the judges, together with the other great officers and privy councillours meet in the Exchequer on the Morrow of All Souls yearly, (which day is now altered to the Morrow of St. Martin by the last act for abbreviating Michaelmas term,) and then and there the judges propose three persons, to be reported (if approved of) to the King, who afterwards appoints one of them to be Sheriff. See 1 Comm. c. 9. p. 340, 341: Fort. de L. L. c. 24.

The following is the present mode of nominating Sheriffs in the Exchequer, on the Morrow of St. Martin.

The chancellor, chancellor of the Exchequer, the judges and several of the privy council assemble, and an officer of the Court administers an oath to them, in old French, that they will nominate no one from favour, partiality, or any improper motive: This done, the same officer, having the list of the counties in alphabetical order, and of those who were nominated the year preceding, reads over the three names, and the last of the three he pronounces to be the present Sheriff: But where there has been a Pocket-Sheriff (see post,) he reads the three names upon the list, and then declares who is the present Sheriff. If any of the ministry or judges has any objection to a person named, he mentions it, and another gentleman is nominated in his room: If no objection is made, some one rises and says, "To the two gentlemen I know no objection, and I recommend A. B. Esq. in the room of the present Sheriff."

Another officer has a paper, with a number of names, given him by the clerk of assize for each county, which paper generally contains the names of the gentlemen upon the former list, and also of gentlemen who are likely to be nominated; and whilst the three are nominated, he prefixes 1, 2, or 3 to their names according to the order in which they are placed; which, for greater certainty, he afterwards reads over twice. Several objections are made to gentlemen: some perhaps at their own request; such as, that they are abroad, that their estates are small and incumbered, that they have no equipage, that they are practising barristers, or officers in the militia, &c.

The new Sheriff is generally appointed about the end of the following Hilary Term: This extension of the time was probably in consequence of the stat. 17 E. 4. c. 7, which enables the old Sheriff to hold his office over Michaelmas and Hilary Terms. 1 Comm. c. 9. p. 341, n.

This custom, of the twelve judges proposing three persons, seems borrowed from the Gothic constitution before mentioned; with this difference, that, among the Goths, the twelve nominors were first elected by the people themselves. And this usage, it is suggested by Blackstone, was, at its first introduction, founded upon some statute, though not now to be found among our printed laws: First, because it is materially different from the direction of all the statutes before mentioned; which it is hard to conceive that the judges would have countenanced by their concurrence, or that Fortescue would have inserted in his book, unless by the authority of some statute: And also, because a statute is expressly referred to in the record, which Sir Edward Coke says he transcribed from the Council-book of 3d March, 34 Hen. VI. and which is in substance as follows:—The King had of
his own authority appointed a man Sheriff of Lincolnshire, which office he refused to take upon him; whereupon the opinions of the judges were taken, what should be done in this behalf: And the two chief justices, Sir John Fortescue and Sir John Prisot, delivered the unanimous opinion of them all; "that the King did an error, when he made a person Sheriff that was not chosen and presented to him according to the statute; that the person refusing was liable to no fine for disobedience, as if he had been one of the three persons chosen according to the tenor of the statute; that they would advise the King to have recourse to the three persons that were chosen according to the statute, or that some other thrifty man be entreated to occupy the office for this year; and that, the next year, to eschew such inconveniencies, the order of the statute, in this behalf made, be observed." 1 Comm. c. 9.

Mr. Christian expresses his dissent from the foregoing opinion of the learned commentator, that the present practice originated from a statute which cannot now be found; because, if such a statute ever existed, it must have been passed between the date of this record, 34 H. 6. and the stat. 23 H. 6. c. 8. before referred to; for that statute recites and ratifies the stat. 14 E. 3. st. 1. c. 7. which provides only for the nomination of one person to fill the office when vacant; yet the former stat. 9 E. 2. st. 2. leaves the number indefinite; viz. Sheriffs shall be assigned by the chancellor, &c.; and if such a statute had passed in the course of those eleven years, it is probable that it would have been referred to by subsequent statutes. Mr. Christian conceives that the practice originated from the consideration, that as the King was to confirm the nomination by his patent, it was more convenient and respectful to present three to him than only one; and though this proceeding did not exactly correspond with the directions of the statute, yet it was not contrary to its spirit, or, in strictness, to its letter; and therefore the judges might perhaps think themselves warranted in saying, that the three persons were chosen according to the tenor of the statute. 1 Comm. c. 9. p. 342. n.

Notwithstanding the unanimous resolution of all the judges of England, entered, as before mentioned, in the Council-Book, and the stat. 34 & 35 H. 8. c. 26. § 61. which expressly recognizes this to be the Law of the land; some have affirmed that the King, by his prerogative, may name whom he pleases to be Sheriff, whether chosen by the judges or not. Jenk. 229. This is grounded on a very particular case in the fifth year of Queen Elizabeth, when, by reason of the plague, there was no Michaelmas Term kept at Westminster, so that the judges could not meet there in Crastino Animarum, to nominate the Sheriffs; whereupon the Queen named them herself, without such previous assembly, appointing for the most part one of the two remaining in the last year's list. Dyer 223. And this case, thus circumstanced, is the only authority in our books for the making these extraordinary Sheriffs. It is true, the Reporter adds, that it was held that the Queen by her prerogative might make a Sheriff without the election of the judges, non obstante aliqvo statuto in contrarium: But the doctrine of non obstante's which sets the prerogative above the laws, was effectually demolished by the Bill of Rights at the Revolution, and abdicated Westminster-Hall, when King James abdicated the kingdom. However, it must be acknowledged, that the practice of occasionally naming what are called Pocket-Sheriffs, by the sole au-
thority of the crown, hath uniformly continued to the reign of his present Majesty; in which, few (if any) compulsory instances have occurred. 1 Comm. c. 9.

They were called Pocket-Sheriffs, who were appointed by the King, not being one of the three nominated in the Exchequer. The unanimous opinion of the judges above referred to, from 2 Inst. 559, seems to preclude the possibility of a compulsory appointment. 1 Comm. 342, n.

The Sheriffs in every of the shires of Wales, shall be nominated yearly by the lord president, council, and justices of Wales, and shall be certified up by them; and after, appointed and elected by the King, as other Sheriffs be. 34 Hen. 8. cap. 26: Dalt. Sh. 6. See title Wales.

The Sheriff, before he doth exercise any part of his office, and before his patent is made out, is to give security in the King's Remembrancer's Office in the Exchequer, under pain of 100l. for the payment of his provers, and all other profits of the Sheriffwick; but these securities are never sued, unless there is a deficiency in the Sheriff's effects. Dalt. Sh. 7.

The Sheriff, before he takes upon him the exercise of his office, must not only take the oaths of allegiance and abjuration, enjoined to all officers by divers acts of Parliament, but all Sheriffs, except those of Wales and the counties palatine, must take the oath appointed by stat. 3 G. 1. c. 15. § 18. for the due execution of their office.

If a person refused to take upon him the office of Sheriff, it was usual to punish him in the Star-chamber; and he may now be proceeded against by information in the Court of King's Bench. Also, if he refuses to take the oaths enjoined him, or officiates in the office before he hath thus qualified himself, the Court, which hath a general superintendency over all officers, and ministers of justice, will grant an information against him: And it hath been held, that a refusal of oaths enjoined to be taken, amounts to a refusal of the office. Dalt. Sh. 15: Dyer 167: 3 Lev. 116: Carth. 307.

A Sheriff, at the entrance into his shrievalty, is to go to the remembrancer's office in the exchequer, and there enter into a recognizance with sureties, with conditions for payment of his provers or accounts: Then his attorney, &c. will write him a note, signifying that he is chosen Sheriff of such a county, and hath entered a recognizance; which he must deliver to one of the six clerks in Chancery, to make his patent by; with the writ of assistance, and writ of discharge to his predecessor: And, in the next place, the new Sheriff is to go to a Master in Chancery, if he be in London, to take the oaths. Dalt. Sher. 291.

If the Sheriff be not in London, the oath may be taken by dedimus protestatem, directed to any two justices of the peace of the same county, one to be of the quorum, or to any other commissioner or commissioners, or before one of the Judges of assize for that county, or one of the Masters in Chancery, who, it is said, may, as well as the Judge, administer such oath without any Dedimus. Dalt. Sher. 13, 14.

If the commissioners return the commission or writ, and that the oaths are taken, when they are not taken, they are finable. Dyer 168: Dalt. Sher. 14.

When a Sheriff is chosen, the old Sheriff continues Sheriff of the county till the new is sworn, which completes him in his office: But
the office of the old Sheriff ceases and is at an end when the writ of discharge comes to him.

IV. A Sheriff cannot be elected knight of the shire for that county for which he is Sheriff. 4 Inst. 48: Litt. Refr. 326. See title Parliament.

By stat. 14 Ed. 3. c. 7. no Sheriff shall tarry or abide in his office above one year, upon pain to forfeit 200l. a year as long as he occupies the office; and every pardon made for such offence or forfeiture shall be void: And see stat. 42 E. 3. c. 9. post. V. London, Middlesex, &c. are not within these statutes. See stat. 3 G. 1. c. 15. § 21.

Notwithstanding these old statutes, it hath been said, 4 Reft. 32. that a Sheriff may be appointed durante bene placito, or during the King's pleasure; and so is the form of the royal writ. Therefore till a new Sheriff be named, his office cannot be determined, unless by his own death or the demise of the King; in which last case, it was usual for the successor to send a new writ to the old Sheriff; but now by stat. 1 Amst. st. 1. c. 8. all officers appointed by the preceding King may hold their offices for six months after the King's demise, unless sooner displaced by the successor. See Dalt. 7, 8.

By stat. 1 Rich. 2. c. 11. it is enacted, that none that hath been Sheriff of any county a year, shall be within two years next chosen again, or put in the same office, if there be other sufficient.

And by stat. 1 H. 5. c. 4. it is enacted, that they that be bailiffs of Sheriffs one year, shall be in no such office by three years next following, except bailiffs of Sheriffs which inherit in their office.

By stat. 4 H. 4. c. 5. it is enacted, that every Sheriff shall be dwelling in proper person within his bailiwick, for the time he shall be such officer; and that the Sheriff shall be sworn to do the same.

Hence it is clear that a Sheriff hath no jurisdiction in any other county, nor can he do a judicial act, in which his personal presence is required, out of his county; but it is held, that he may do a ministerial act, as make a panel, or return a writ, out of his county, unless he is beyond sea. Dalt. Sher. 22: 9 H. 4. 1.—See farther Plowd. 37: Dalt. Sher. 23.

A Sheriff may make and deliver the return of a writ any where. 1 Wils. 328. A Sheriff gives out a blank warrant upon a writ which is filled up by an attorney, this is ill. 2 Wils. 47. See title Commitment.

Until a different regulation was made by stat. 8 Eliz. c. 16. in a great many instances two counties had one and the same Sheriff: This is still the case in the counties of Cambridge and Huntingdon.

It will appear to be of the utmost importance to have the Sheriff appointed according to law, when we consider his power and duty. These are either as a judge, as the keeper of the King's peace, as a ministerial officer of the superior courts of justice, or as the king's bailiff. 1 Comm. c. 9.

In his judicial capacity, he is to hear and determine all causes of 40s. value, and under, in his County Court, (see that title;) and he has also a judicial power in divers other civil cases. Dalt. c. 4. He is likewise to decide the elections of knights of the shire, subject to the control of the House of Commons, of coroners, and of verderors; to judge of the qualification of voters, and to return such as he shall determine to be duly elected. 1 Comm. c. 9.

As the keeper of the King's peace, both by Common Law and spe-
cial commision, he is the first man in the county, and superior in rank to any nobleman therein, during his office. 1 Roll. Rep. 237. He may apprehend and commit to prison, all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the King's peace. He may, and is bound ex officio to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the King's enemies, when they come into the land; and for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county: And this summons every person above fifteen years old, and under the degree of a Peer, is bound to attend upon warning, under pain of fine and imprisonment: Stat. 2 Hen. 5. stat. 1. c. 8. See title *Riot*. But though the Sheriff is thus the principal conservator of the peace in his county, yet by the express directions of the great charter, (c. 17.) he, together with the constable, coroner, and certain other officers of the King, are forbidden to hold any pleas of the Crown; or, in other words, to try any criminal offence. For it would be highly unbecoming, that the executioners of justice should be also the judges; should impose, as well as levy, fines and amercements; should one day condemn a man to death, and personally execute him the next. Neither may he act as an ordinary justice of the peace during the time of his office: For this would be equally inconsistent; he being in many respects the servant of the justices. Stat. 1 Mar. st. 2. c. 8.

In his ministerial capacity the Sheriff is bound to execute all process issuing from the King's courts of justice. In the commencement of civil causes, he is to serve the writ, to arrest, and to take bail, when the cause comes to trial, he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, he returns the jury, he has the custody of the delinquent, and he executes the sentence of the court, though it extend to death itself. See title *Execution*.

As the King's bailiff, it is his business to preserve the rights of the King within his *Bailiwick*; for so his county is frequently called in the writs: A word introduced by the Princes of the *Norman* line; in imitation of the *French*, whose territory is divided into bailiwicks, as that of England into counties. Fortesc. de L. L. c. 24. He must seize to the King's use all lands, devolved to the Crown by attainder or escheat; must levy all fines and forfeitures; must seize and keep all waifs, wrecks, estrays, and the like, unless they be granted to some subject; and must also collect the King's rents within the bailiwick, if commanded by process from the Exchequer. Dalt. c. 9.

V. By stat. 23 H. 6. c. 9. it is provided, "that no Sheriff shall let to farm, in any manner, his county, nor any of his bailiwicks, hundreds, or wapentakes."

In the construction hereof it hath been holden, that this is a particular law, and must be pleaded, otherwise the Judges cannot take notice of it. 3 Keb. 678.

It hath been held, that a lease thereof, though no rent was ever received, is within the statute: the intent thereof being that Sheriff's
should keep their counties in their own hands. 20 Hen. 7. 13. See Dalt. Sher. 23, 24: Plowd. 87: Moor 781.

To execute his various duties, the Sheriff has under him many inferior officers; an under-sheriff, bailiffs, and gaolers; who must neither buy, sell, nor farm their offices, on forfeiture of 500l.

By stat. 3 Geo. 1. c. 15. it shall not be lawful for any person to buy, sell, let, or take to farm, the office of Under-sheriff or Deputy-sheriff, seal-keeper, county-clerk, shire-clerk, gaoler, bailiff, or any other office pertaining to the office of High-sheriff, or to contract for any of the said offices, on forfeiture of 500l. one moiety to His Majesty, the other to such as shall sue in any court at Westminster, within two years after the offence.” § 10.

“Provided, that nothing in this act shall hinder any High-sheriff, from constituting an Under-sheriff, or Deputy-sheriff, as by law he may; nor to hinder the Under-sheriff in any case of the High-sheriff’s death, when he acts as High-sheriff, from constituting a deputy; nor to hinder the receipt of, or accounting to the Sheriff, &c. for legal fees.” See Dalt. 3. 514: Hob. 13: 2 Brownl. 281.

The High-sheriff may execute the office himself; and the Under-sheriff hath not, nor ought to have, any estate or interest in the office itself; neither may he do any thing in his own name, but only in the name of the High-sheriff, who is answerable for him. Dalt. Sher. 3: Salk. 96.

By § 8. of the above statute, 3 Geo. 1. c. 15. it is enacted, “that if any Sheriff shall die before the expiration of his year, or before he be superseded, the Under-sheriff shall nevertheless continue in his office, and execute the same in the name of the deceased, till another Sheriff be appointed and sworn; and the Under-sheriff shall be answerable for the execution of the office during such interval, as the High-sheriff would have been; and the security given by the Under-sheriff, and his pledges, shall stand a security to the King, and all persons whatsoever, for the performing of his office during such interval.”

The Under-sheriff, before he intermeddle with the office, is to be sworn; this was first enjoined by stat. 27 Eliz. c. 12. and the form of the oath there prescribed. Before this statute the Under-sheriff was never sworn. 1 Roll. Rep. 274, per Coke. And now by stat. 3 Geo. 1. c. 15. § 19. it is enacted, that all Under-sheriffs of any counties in South Britain, except the counties in Wales, and county palatine of Chester, before they enter upon their offices, shall take an oath, appointed by that act, for the execution of their office.

A Sheriff cannot appoint two Deputy-sheriffs extraordinary. 2 Wils. 378.

The Under-sheriff usually performs all the duties of the office; a very few only excepted, where the personal presence of the High-sheriff is necessary. But no Under-sheriff shall abide in his office above one year; stat. 42 Ed. 3. c. 9; and if he does, by stat. 23 Hen. 6. c. 8. he forfeits 200l. a very large penalty in those early days. And no Under-sheriff or Sheriff’s officer shall practise as an attorney, during the time he continues in such office; for this would be a great inlet to partiality and oppression. Stat. 1 H. 5. c. 4. But these salutary regulations are shamefully evaded, by practising in the names of other attorneys, and putting in sham deputies by way of nominal Under-sheriffs; by reason of which, says Dalton, the Under-sheriffs and bailiffs
do grow so cunning in their several places that they are able to deceive, and it may well be feared that many of them do deceive both the King, the High-sheriff, and the county. *Dall. c. 115.*

See further, as connected with this title, this Dictionary, titles County; County Court; Town; Execution; Escape, &c. &c.: As also *Vin. Abr.; Impey’s Sheriff, &c.*

**SHERIFF CLERK.** The Clerk to the Sheriff’s Court in Scotland, who alone can be Notary to the seisins given by the Sheriff, proceeding on precepts for infefting heirs holding of the crown.

**SHERIFF’S COURT in LONDON;** See title London.

**SHERIFF’S TOWN;** See Tourn or Turn.

**SHERIFFALTY, vicecomitatus.**] The Sheriff-ship, or time of a man’s being Sheriff. *Stat. 14 Car. 2. c. 21.*

**SHERIFFWICK,** The extent of a Sheriff’s authority.

**SHERIFFGELD,** A rent formerly paid by the Sheriff; and it is prayed that the Sheriff, in his account, may be discharged thereof. *Rot. Part. 50 Ed. 3.*

**SHERIFF-TOOTH,** Seems to be a tenure by the service of providing entertainment for the Sheriff at his County Courts. *Rot. Plac. in Itin. a quid Cestr. 14 H. 7.* In Derbyshire, the King’s bailiffs antiently took 6d. of every bovate of land in the name of Sheriff-tooth. *Ryl. Plac. Part. 653.* And it is said to be a common tax levied for the Sheriff’s diet.

**SHEWING, monstratio.**] Is specially used to bequit of attachment in a court, in plaints shewed and not avowed. *Shep. Epitom. 1130.* See Monstrans.

**SHEILD, scutum.**] An instrument of defence; (from the Sax. scyl-dan;) to cover, or the Greek σκύλος, a skin; Shields antiently being made with skins. And hence Scutage and Escauge. See title Tenures.

**SHIFTING USE;** See title Use.

**SHILLING,** Sax. scilling, Lat. solidus.] Among the English Saxons passed but for 5d. afterwards it contained 16d. and often 20d. In the reign of King William I. called the Conqueror, a Shilling was of the same denominative value as at this day. *Leg. Hen. 1: Domesday.*


**SHIP-MONEY,** An imposition charged upon the ports, towns, cities, boroughs, and counties of this realm, in the time of King Charles I. by writs commonly called Ship-writs, under the Great Seal of England, in the years 1635 and 1636, for the providing and furnishing certain ships for the King’s service, &c. which was declared to be contrary to the laws and statutes of this realm, the petition of right, and liberty of the subject, by *stat. 17 Car. 1. c. 14.*

**SHIPPER,** Is a Dutch word, signifying the master of a ship, mentioned in some of our statutes. We use it for any common seaman; and generally say Skipper.

**SHIPS AND SHIPPING;** See *Navigation Acts.*

No owner of a ship shall be liable to answer loss, by reason of embezzling any gold, silver, jewels, &c. taken in or put on board, or for any forfeiture incurred, without the privity or knowledge of such owner, further than the value of the ship and freight due: But other remedies, against the master and seamen of such ships, are not taken away. *Stat. 7 Geo. 2. c. 15.—By 43 Geo. 3. c. 113.* the provisions in
former acts 12 Ann. st. 2. c. 18: 4 Geo. 1. c. 12: 11 Geo. 1. c. 29. respecting the wilfully casting away or destroying ships are repealed: and it is enacted, that if any person shall wilfully cast away, burn, or otherwise destroy any ship or vessel, or in anywise counsel, direct or procure the same to be done, and the same be accordingly done, with intent thereby wilfully and maliciously to prejudice any owner of such ship, or the owner of any goods laden on board the same, or any underwriter on the ship, freight, or goods, the offender shall be guilty of felony, without clergy.—Offences, if committed in the body of any county, shall be tried as other felonies, and if committed on the high seas, shall be tried under 28 H. 8. c. 15: Like provisions are made as to such offences in Ireland, by 43 Geo. 3. c. 79.

For regulating the number of passengers in Ships carrying persons to the plantations, &c. see stat. 43 Geo. 3. c. 56.

As a master or owner of a Ship may have an action for the freight; either the one or the other are answerable, where goods are damaged in the Ship. But where there are several owners, and one disagrees to the voyage, he shall not be liable to any action after for a miscarriage, &c. Comberb. 116. Where the owner, and not the freighter, is liable for a loss of gold sent by the Ship, see 2 Stra. 1251. Owners of Ships are liable for the goods on account of the freight, though robbed of them, and for default of the master. Annaly 86. See title Carrier.

An action doth not lie against a man as owner, but as he hath the benefit of the freight; for when there are several owners, and one dissent from the voyage, he shall not be liable afterwards for a miscarriage, &c. Ann. 90: Comb. 117. See 2 Strange 816. where it was held, that prima facia the repairer of a Ship has his election to sue the master who employs him, or the owners; but if he undertakes it on a special promise from either, the other is discharged.—As to further matters, see titles Navigation Acts; Navy; Insurance; Quarantine; Wrecks; and other apposite titles.

SHIRE, comitatus, from the Sax. sceyræ, to part or divide.] Is well known to be a part or portion of this kingdom, called also County: The old Latin word was sceyræ; and sceyræ, provincæ indicabantur. Brompt. 659. King Alfred first divided this land; and his division was in satrapias, now called Shires, in centurias, now called hundreds, and decennas, now called tithings. Leg. Alfred. See Brompton 956, and this Dict. title County.

SHIRE-CLERK, He that keeps the County Court; his office is so incidental to the sheriff, that the King cannot grant it. Mitton’s case. & Ref.

SHIRE-MAN, or SCYRE-MAN, was antiently judge of the county, by whom trials for land, &c. were determined before the conquest. Lamb. Peramb. p. 442.

SHIREMORE, An assembly of the county or Shire at the assizes, &c. See Seyregeomet; Turn.

SHOE-MAKERS, see titles Leather; Manufactures.


SHOP, Shopa.] A place where any thing is openly sold.

SHOP-BOOKS. See title Evidence, col. 2. of the introductory matter.

SHOPLIFTERS, Those whose steal goods privately out of Shops;
which being to the value of 5s. though no person be in the Shop, is felony without benefit of clergy, by stat. 10 & 11 W. 3. c. 25: See title Larceny II. 1.

SHORLING and MORLING, or MORTLING, Words to distinguish fells of sheep; Shorling being the fells after the fleeces are shorn off the sheep’s back; and Morling the fells flayed off after they die or are killed: In some parts of England they understand by Shorling, a sheep whose face is shorn off; and by a Morling, a sheep that dies. stat. 3 Ed. 4. c. 1.

SHORTFORD. The antient custom of the city of Exeter is, when the lord of the fee cannot be answered rent due to him out of his tenement, and no distress can be levied for the same, the lord is to come to the tenement, and there take a stone or some other dead thing of the said tenement, and bring it before the mayor and bailiffs; and thus he must do seven quarter days successively; and if on the seventh quarter-day, the lord is not satisfied his rent and arrears, then the tenement shall be adjudged to the lord to hold the same a year and a day; and forthwith proclamation is to be made in the Court, that if any man claims any title to the said tenement, he must appear within the year and a day next following, and satisfy the lord of the said rent and arrears: But if no appearance be made, and the rent not paid, the lord comes again to the Court, and prays that, according to the custom, the said tenement be adjudged to him in his demesne as of fee, which is done accordingly; so as the lord hath from thenceforth the said tenement, with the appurtenances, to him and his heirs: And this custom is called Shortford; being as much as, in French, to foreclose. Izack’s Antiq. Exet. 48.

This is in London by the antient statute of Gaveler, attributed to 10 Ed. 2. is called Forschot or Forschoke. See Gavelet.

SHRIVED or SHRIVED, from the Sax. scrifan.] A penitent person confessed by a priest. See Confessor.

SHROWD, stealing of. If any one, in taking up a dead body, steals the Shrowd or other apparel, it will be felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. 3 Inst. 110: 12 Rep. 113: 1 Hat. P. C. 535.

SHRUBS, Trees, Roots, Plants, &c. Destroying. See titles Mischieff, Malicious;—Stealing; See Larceny.

SIB AND SOM, Sax. i. e. fax & concordia. Shelm.

SICA, SICHA, A ditch; from the Sax. sic, lacuna. Mon. Angl. ii. 130.

SICH, sichtum and sikettus.] Is a little current of water, which is dry in summer; a water furrow or gutter. Mon. Angl. ii. 426.

SICIUS, A sort of money current among the old English, of the value of 2d. Egbert in Dialogo de Ecclesiastica Institutione, 98.

SICUT ALIAS, Another writ like the former; See titles Alias; Caflas; Process, &c.

SIDELINGS, Meers betwixt or on the sides of ridges of arable land. Mon. Angl. ii. 275.

SIDESMEN; See title Churchwardens.

SIERRA LEONE, Settlement of; See Slave Trade.

SI FECERIT TE SECURUM, A species of original writ, so called, from the words of the writ, which directs the Sheriff to cause the defendant to appear in Court, without any option given
him, provided the plaintiff gives the sheriff security effectually to prosecute his claim. See title Original.

SIGILLUM; See Seal.

SIGLA, from the Sax. segel.] A sail, mentioned in the Laws of King Ethelred, c. 24.

SIGNATURES, Writings presented to the Barons of the Exchequer in Scotland, as the grounds of royal grants, which, after being passed by the barons in some instances, have the Sign Manual of His Majesty; in others being authenticated by the Casket, become the warrants of grants under one or other of the seals, according to the nature of the subject, or the object in view. Bell's Scotch Law Dict.

SIGNET, Fr.] One of the King’s seals in England, used in sealing his private letters, and all such grants as pass His Majesty’s hand by bill signed; which seal is always in the custody of the King’s secretaries, and there are four clerks of the Signet office attending them. 2 Inst. 556. The Law takes notice of the Sign-manual and privy Signet. See titles Grant of the King; Privy Seal.

Signet, in Scotland, is the seal by which the King’s letters or writings, for the purpose of private justice, are now authenticated.

Clerks to the Signet, or writers to the Signet, in Scotland, are nearly the same as attorneys in England. They were antiently clerks in the office of the secretary of state, by whom writings passing the King’s Signet were prepared. When in consequence of the change of the antient forms of judicial procedure, the Signet was applied to writs, summonses, and process in private causes, the new writs, which became requisite, were prepared by the Writers to the Signet; who have also the privilege of acting as agents or attorneys in causes before the Court of Session: The society is now under the Keeper of His Majesty’s Signet, who acts by his deputy. Persons who are qualified to be writers of the Signet, must be articled for five years, and other regulations are adopted for securing the respectability of the members of this society.

SIGNIFICAVIT, A writ issuing out of the Chancery, upon certificate given by the ordinary of a man’s standing excommunicate by the space of forty days, for the laying him up in prison till he submit himself to the authority of the church: And it is so called, because Significavit is an emphatical word in the writ. Reg. Orig. There is also another writ of this name in the register, directed to the justices of the bench, commanding them to stay any suit depending between such and such parties, by reason of an excommunication alleged against the plaintiff. &c. Reg. Orig. 7. And in Fitzherbert we find writs of Significavit in other cases; as Significavit pro corporis deliberatione, &c. F. N. B. 62. 66. The common writ of Significavit is the same with the writ Excommunicato capiendo. See that title.

SIGNING of Deeds and Wills; see those titles.

SIGN-MANUAL. The subscription of the King at the top of grants or letters patent, which first pass by bill, &c. By stat. 1 Mar. st. 2. c. 6. If any person shall falsely forge or counterfeit the Sign-Manual, Privy-signet or Privy-seal, such offences shall be deemed high-treason. See title Grant of the King.

SIGNUM, A cross prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons. See title Seals.

SIGNS. The citizens of London are to hang out Signs at their houses, for the better finding out their respective dwellings, &c. Chart. K. Char. 1. See titles London; Police.
SIMONY, I.

SILENTIARIUS, One of the privy council; and silentium was formerly taken for conventus privatus. Matt. Paris, anno 1171. According to Littleton, it is an usher, who seeth good rule and silence kept in Court. Lit. Dict.

SILK. The regulation of the importation and exportation of this article, forms one of the many complicated provisions of the Navigation Acts, passed from time to time.—The manufacture of it is in some measure subjected to the Excise Laws.—And the workmen therein are restrained from frauds by the provision of several acts, extending also (many of them) to other Manufactures.—See those titles for general ideas on the subject, to develope which, more particularly, would here be uninteresting and unnecessary.

SILK-THROWER, and THROWSTER, The trade or mystery of those who wind, twist, and spin or throw Silk, thereby fitting it for use: They are incorporated by statute, and mention is made of Silk Winders and Doublers, who are members of the same trade. Stat. 13 & 14 Car. 2. c. 15.—None shall exercise the Silk-Throwers' trade, but such as have served seven years' apprenticeship to it, on pain of forfeiting 40s. a month. Stat. ibid.—Silk-winders, &c. embezzling or detaining Silk, delivered by Silk-Throwers, shall pay such damage as a justice shall order, or not doing it shall be whipt and set in the stocks; and the receivers are to be committed to prison by a justice of peace till satisfaction is made the party injured. Stats. 20 Car. 2. c. 6: 8 & 9 W. 3. c. 36.—See titles Weaver; Manufactures.

SILVA-CÆDUA, Wood under twenty years growth, or coppice-wood. Stat. 45 Ed. 3. c. 3. See title Titles.

SIMILITUDE OF HAND-WRITING; See title Evidence.

SIMNEL, or SIMINELL, siminellus, vel simnellus.] Is mentioned in the asisse of bread, and is still in use, especially in Lent: The English Simnel is panis purior, or the purest white bread. Stat. 51 H. 3. st. 1: Ord. pro fator incerti temp. c. 1.

It is said to come from the Lat. similis, which signifies the finest part of the flour; panis simulagineus, Simnell-bread. It is mentioned in stat. assisa panis, bread made into a Simnell shall weigh two shortenings less than Wastell-bread. Cowell.

SIMONY.

SIMONIA: Venditio rei sacræ.] So called from the resemblance it is said to bear to the sin of Simon Magus. Though the purchasing of holy orders seems to approach nearer to this offence. See title Parson II.

I. Of Simony, generally; what shall be deemed Simony; and the Penalty on this Offence.

II. How far Bonds of Resignation are lawful; and the Power exercised over such Bonds by the Court of Chancery; and whether the Ordinary is obliged to accept a Resignation on such Bond. See also this Dict. title Resignation.

I. SIMONY is defined to be Studiosa voluntas emendi vel vendendi aliquid spirituale aut spirituali annexum opere subsecuto.—Also venditio rei sacræ. And some authors mention Simony per munus tripexus; as per munus à manu, i.e. by bribery, where money is paid down for a benefice; per munus a lingua, by favour and flattery; per
munus ab obsequio, i. e. by a sordid subjection to the patron, or doing him services: To which has been added, the making of presents, without taking any notice of expecting a church benefice.

Some authors tell us of a person who took off the cap of Grosulan, an archbishop of Milan, and shaking it, told the people, Iste Grosulanus, quid est sub ista captia (Et non de alio dico) est Simoniacus, &c. fier munus à manu, i. e. by bribery; fier munus à lingua, i. e. by favour and flattery; fier munus ab obsequio, i. e. by a sordid subjecting himself to the patron. Cowell.

Simony is defined by Blackstone to be, the corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward [or benefit]. It was, by the Canon Law, a very grievous crime; and is so much the more odious, because, as Coke observes, it is ever accompanied with perjury, for the presentee is sworn to have committed no Simony, 3 Inst. 156. 176. However, it was not an offence punishable in a criminal way at the Common Law, it being thought sufficient to leave the clerk to ecclesiastical censures. But as these did not affect the Simoniacal patron, nor were efficacious enough to repel the notorious practice of the thing, divers acts of Parliament have been made to restrain it by means of civil forfeitures; which the modern prevailing usage, with regard to spiritual preferments, calls aloud to put in execution. 2 Comm. c. 18.

Simony is generally said to be the buying or selling holy orders, or some ecclesiastical benefice. An ecclesiastical benefice, in the larger sense of it, in which it is here used, comprehends not only parochial benefices, but all ecclesiastical dignities and promotions. As by this offence worthy and learned men are kept out of the church, and a door is, to the great scandal of religion and prejudice of morality, opened to persons by no means qualified to discharge the duties of the sacred function, it is of the utmost consequence to society that it be prevented. With a view to this, canons were antiently made, by which a very strict oath was enjoined; and it was punished with deprivation or disability, as the case required.

Simony is mentioned as a thing so detestable in the eye of the Common Law, that a plaintiff in quare impedit could not, before the statute of West, 2. recover damages for the loss of his presentation, it being considered as a thing of no value; nor could a guardian in socage present to an advowson in the right of his heir, because, as he could take nothing for it, he could not bring it to account. 1 Inst. 17, b; 89, a.

In Cro. Ch. 353, it is said that this has, by the law of God and of the land, been always accounted a great offence. In Hob. 167. it is laid down, that a bond on a Simoniacal contract is against Law, because ex turpi causa, and contra bonos mores; nay, that it is as void as an usurious bond, which, if paid by an executor, is a devastavit. The same is held in Cro. Car. 423. In Carth. 252. such bonds are said to be void as being against law, although they are not so declared by the statute. But as has been already remarked, since neither the consideration of the heinousness of the offence, nor the provision made against it by the Canon or Common Law, was sufficient to put a stop to this mischief, it was at length restrained by the Statute Law.

By stat. 31 Eliz. c. 6. it is, for avoiding of Simony, enacted, that if any patron for any corrupt consideration, by gift or promise, directly
or indirectly, shall present or collate any person to an ecclesiastical benefice or dignity; such presentation shall be void, and the presentee be rendered incapable of ever enjoying the same benefice: and the Crown shall present to it for that turn only. The words of the statute are, “that if any person or persons, bodies politic or corporate, shall for any sum of money, reward, gift, profit, or benefit, or by reason of any promise, agreement, grant, bond, or covenant, of or for any sum of money, reward, gift, profit, or benefit, present or collate any person to any benefice, &c. every such presentation, collation, &c. shall be utterly void, and it shall be lawful for the Queen, her heirs and successors, to present, &c. unto such benefice, &c. and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, &c. or take or make any such promise, &c. shall forfeit the double value of one year’s profit of every such benefice, &c. and the person so corruptly taking, &c. such benefice, &c. shall be adjudged a disabled person in law to enjoy the same.” § 5.

“If any person shall for any sum of money, reward, &c. admit, institute, instal, induct, invest, or place any person in or to any benefice, &c. every such person shall forfeit the double value of one year’s profit of every such benefice, and the same shall be void; and the patron collate thereto, as if the party admitted were dead.” § 6.

But if the presentee dies, without being convicted of such simony in his life-time, it is enacted by stat. 1 W. & M. st. 1. c. 16, that the simoniacal contract shall not prejudice any other innocent patron, on presence of lapse to the Crown or otherwise. Also by the stat. 12 Ann. st. 2. c. 12. if any person for money or profit shall procure, in his own name, or the name of any other, the next presentation to any living ecclesiastical, and shall be presented thereupon, this is declared to be a simoniacal contract; and the party is subjected to all the ecclesiastical penalties of Simony; is disabled from holding the benefice, and the presentation devolves to the Crown.—Before this statute, it was doubted whether it was Simony for a clerk to purchase the next turn in a living for himself.

Upon these statutes many questions have arisen, with regard to what is, and what is not Simony. And, among others, these points seem to be clearly settled: 1. That to purchase a presentation, the living being actually vacant, is open and notorious Simony; this being expressly in the face of the statute. Cro. Eliz. 788: Moor 914. Lord Hardwicke was of opinion, that the sale of an advowson, during a vacancy, is not within the statute of Simony, as the sale of the next presentation is: but it is void by the Common Law. Ambl. 268. See 2 Comm. 22, in n.

2. For a clerk to bargain for the next presentation, the incumbent being sick and about to die, was Simony, even before the statute of Queen Ann. Hob. 165. And now, by that statute, to purchase, either in his own name or another’s, the next presentation, and to be thereupon presented at any future time to the living, is direct and palpable Simony.

An agreement entered into by a clergyman by which he is restrained during his incumbency from asserting a claim to tithes by due course of law, and which as furnishing evidence against his successors, if it is the consideration of his being appointed or presented, is simoniacal. 7 East’s Rep. 600.

3. For a father to purchase such a presentation in order to provide
for his son, is not Simony; for the son is not concerned in the bargain, and the father is by nature bound to make a provision for him. **Cro. Eliz. 686: Moor 916.**—But where a father, the church being void, contracts with the grantee of the void turn to permit the grantor to present his son, and it is done, this is a simoniacal promotion. **Cro. Jac. 533.** So if a father, in consideration of a clerk's marrying his daughter, doth covenant with the father of the clerk, to procure for him a presentation to a certain church when it shall become void, and he is afterwards thereto presented, it is a simoniacal promotion. **Cro. Car. 425.**

By § 8. of the **stat. 31 Eliz. c. 6.** if persons also corruptly resign or exchange their benefices, both the giver and taker shall forfeit double the value of the money, or other corrupt consideration. Under this clause it has been held, that any resignation or exchange for money is corrupt, however apparently fair the transaction; as where a father, wishing that his son in orders should be employed in the duties of his profession, agreed to secure by bond the payment of an annuity exactly equal to the annual produce of a benefice, in consideration of the incumbent's resigning in favour of his son: The annuity being afterwards in arrear, the bond was put in suit, and the defendant pleaded the simoniacal resignation in bar: The Court, though they declared that it was an unconscientious defence, yet as the resignation had been made for money, determined, that it was corrupt and simoniacal, and in consequence that the bond was void. **Young v. Jones, E. T. 1782. cited & Comm. c. 4. p. 62. n.**

4. If a simoniacal contract be made with the patron, the clerk not being privy thereto, the presentation for that turn shall indeed devolve to the Crown as a punishment of the guilty patron; but the clerk, who is innocent, does not incur any disability or forfeiture. **3 Inst. 154: Cro. Jac. 385.**

5. Bonds given to pay money to charitable uses, on receiving a presentation to a living, are not simoniacal provided the patron or his relations be not benefited thereby; for this is no corrupt consideration, moving to the patron. **Noy 142: Stra. 534.**

6. Bonds of resignation, in case of non-residence or taking any other living, are not simoniacal; there being no corrupt consideration herein, but such only as is for the good of the public. **Cro. Car. 180.** So also bonds to resign, when the patron's son comes to canonical age, are legal; upon the reason before given, that the father is bound to provide for his son. **Cro. Jac. 248. 274:** but see post II. ad finem.

7. Lastly, **General Bonds to resign at the Patron's request,** were heretofore, by frequent determinations, allowed to be legal; as they possibly might be given for one of the legal considerations before mentioned; and where there is a possibility that a transaction may be fair, the Law will not in general suppose it iniquitous without proof. **Cro. Car. 180: Stra. 227:** and see post II. But in the case of the Bishop of London v. Efstache, it was adjudged by the House of Lords, that general bonds to resign at the patron's request are simoniacal and illegal. See post II. ad finem.—At all times, however, if the party could prove the contract to have been a corrupt one, such proof was admitted, in order to shew the bond simoniacal, and therefore void. Neither would the patron be suffered to make an ill use of such a general bond of resignation; as by extorting a composition for tithes, procuring an annuity for his relation, or by demanding a resignation
wantonly or without good cause, approved by law; as for the benefit of his own son, or on account of non-residence, plurality of livings, or gross immorality in the incumbent. 1 Vern. 411: 1 Eq. Ab. 86, 87: Stra. 534: 1 Comm. c. 18. See post II.

The following determinations will further elucidate this part of the subject.

It was agreed by all the justices, Trin. 8 Jac. that if the patron present any person to a benefice with cure, for money, that such presentation, &c. is simoniacl, though the presentee were not privy to it. 12 Ref. 74.—Simony may be by compact between strangers, without the privity of the incumbent or patron. 1 Cro. 331: Hob. 165: Noy 22: 3 Inst. 153.

A donative is not within the words of the statute; yet, as a corrupt presentation thereto is within the mischief intended to be thereby remedied, it is within the meaning of it. Cro. Car. 331: For the same reason the corrupt promoting to, or obtaining of a curacy, has been held to be Simony. Cartl. 485.

This offence is more frequently committed when a church is void; but it may be committed when it is full. If a contract be, when a church is full, to give a sum of money for a presentation to it, when it shall become void, this is a simoniacal contract. 1 Brownl. 7. So the buying when a church is full, with intent to present a certain person, and the presenting that person when the living becomes void, is Simony. Lane 102: Noy 25. So the purchase of the next avoidance of a church when the incumbent is sick or near dying, with intent to present a certain person, and the presenting him, is Simony. Winch. 63: Noy 25: Hughes 390. But the purchase of an advowson in fee, when the incumbent was on his death-bed, without any privity of the clerk afterwards presented, has been held not to be simoniacl: and not to vacate the next presentation. 2 Black. Ref. 1052.

From all these authorities it appears, that although it be lawful, except in cases excepted, to purchase the next avoidance, when a church is full, there is great danger of being guilty, at least in foro conscientiae, of this offence. It is fit it should be so, else men would be for ever purchasing for their sons and friends, and the almost necessary consequence of such a traffic in livings, would be the filling the church with very improper persons. 4 New Abr. 469.

It is equally Simony where the presentation is by a person usurping the right to present, as if it had been by the person having a good right. 3 Inst. 153. So if a presentation be by one usurping the right of patronage, and pending a quare immedit for removing his clerk, who is after removed, the living is sold; this is Simony, for the church was never full of that clerk: And by this means the statute might be eluded, for it would only be getting an usurper to present while the living was void, and then selling it. 3 Lev. 115: 2 Vent. 32. A corrupt contract with the wife of the patron is simoniacl, although the patron is not privy to it. 1 Roll. Ref. 255: Cro. Jac. 385. If a clerk contracts to give money for being presented to a church, and is after presented gratis, this is Simony. Lane 103. In this case the clerk is an unfit person, for having at that time been capable of intending to buy a living corruptly. It also implies some defect in him; for the presumption is, that persons well qualified will always be preferred, and have therefore no need to purchase. This offence may be by a corrupt contract between strangers, even when neither the patron nor
incumbent is privy to it; for if there be a corrupt contract, it matters not by whom it is made: But in this case the presentee is not simoniacaus, and only simoniaci promotus. Cro. Car. 331; Sid. 329; 3 Lev. 337: Lane 73. 103.

If a stranger, the church being void, contracts with the patron for a grant of the void turn, and presents a clerk not privy to the contract; yet, although the grant being of a chose in action, is void, as the incumbent comes in by a simoniacial contract, he is not to be considered as an usurper, but as one simoniaci promotus. Cro. Eliz. 788.

By the stat. 31 Eliz. c. 6. corrupt elections and resignations, in colleges, hospitals, and other eleemosynary corporations, are also punished with forfeiture of double the value, vacating the place or office, and a devolution of the right of election for that turn to the Crown. §§ 2, 3.

In an action by the incumbent for the use and occupation of his glebe, the defendant cannot give in evidence the simoniacial presentation of the plaintiff. 5 Term Rep. 4. But it may be given in evidence by a defendant who is sued for the tithes. Hob. 168: See title Residence.

II. Premising that it has finally been determined, that General Bonds of Resignation are simoniacial and illegal, in the case stated at the end of this division; it may be useful to preserve the following series of decisions and reasoning on the whole of this part of the subject.

A Bond of Resignation is a bond given by the person intended to be presented to a benefice, with condition to resign the same; and is special or general. The condition of a special one is to resign the benefice in favour of some certain person, as a son, kinsman, or friend of the patron, when he shall be capable of taking the same. By a general bond, the incumbent is bound to resign on the request of the patron. 4 New Abr. 470.

A bond with condition to resign within three months after being requested, to the intent that the patron might present his son when he should be capable, was held good; and the judgment was affirmed in the Exchequer Chamber; for that a man may, without any colour of Simony, bind himself for good reasons, as if he takes a second benefice, or if he be non-resident, or that the patron may present his son, to resign: But if the condition had been to let the patron have a lease of the glebe or tithes, or to pay a sum of money, it had been simoniacial. Cro. Jac. 248, Jones v. Lawrence.

The doctrine laid down in Jones and Lawrence, which was in the case of a special bond, was, not many years after, extended to that of a general bond, and the judgment in this last was also affirmed in the Exchequer Chamber. Cro. Car. 180, Babington v. Wood.

The authority of those two cases having been repeatedly recognised, at length it was considered as a point settled, that a general bond of resignation was good, and the Court have even refused to let the validity of it be called in question. Str. 227, Peele v. Countess of Carlisle.

If a bond of resignation, which ought only to be made use of to keep the incumbent to residence or good behaviour, be made an improper use of, the Court of Chancery will interpose. Chan. Prec. 513: 2 Chan. Rep. 399.—A perpetual injunction was granted against such
a bond, because, it appeared, on hearing the cause, that the patron
had made use of it to prevent the incumbent from demanding his
tithes. 1 Vern. 411.

An injunction has been granted where an ill use has been made
of the bond, i.e. by taking an annuity from the incumbent for the use
of the nephew, for whom the living was intended. Str. 534.

A bill being brought to be relieved against a judgment obtained
on a bond to resign upon request, it appeared to have been offered to
the incumbent, that if he would give 700l. he should not be sued upon
it. Satisfaction was ordered to be entered upon the judgment, and a
perpetual injunction was granted. A new bond of resignation in a pe-
nalty of 200l. a much less sum, was indeed decreed; but no action was
to be brought on it without leave of the Court: And the Lord Keep-
er said, he did not know that such bonds were used before the sta-
tute; that they had been since allowed only to preserve the bene-
face for the patron himself, or some child or friend of his, or to pre-
vent non-residence or a vicious course of life in an incumbent; and
that though a bond be to resign generally, he would not allow it to
be put in suit, unless some such reason was shewn for requiring a re-
signation, because a door would be thereby opened for Simony. Eq.
Cases Abr. 86.

On a bill to be relieved against a judgment on such a bond, the de-
fendant proved misbehaviour, and it was for that reason dismissed.
Eq. Cases Abr. 228. So a bond to resign on request shall not be made
use of to turn out the incumbent, unless there be non-residence or
gross misbehaviour; and if any other use be made of it, the Court
will grant an injunction. Chanc. Prec. 513.

Even when it seemed to be settled, that such bonds were good both
in Law and Equity, a question arose, whether the ordinary was oblig-
ed to accept a resignation on such a bond? It was said to be in the
power of the ordinary to discourage the use of such bonds, for he
might refuse to accept a resignation made by constraint of one of

The bishop refused to accept a resignation on such a bond, and or-
dered the incumbent to continue to serve the cure, declaring that he
would never countenance such unjust practices. 2 Chan. Rep. 398.
An ordinary is not obliged to accept a resignation on such a bond,
unless there be just cause to turn the incumbent out of the benefice.
Chanc. Prec. 513.

A grant was to a clerk of the two first of three livings which should
fall, provided he was capable when they did fall of holding them. In
order to make himself capable of taking one of these benefices, Grif-
fith the clerk tendered a resignation of another benefice to the ordi-
nary, but he refused to accept it. One of the questions made in this
case was, whether the ordinary was obliged to accept this resigna-
tion? It was insisted on one side, that no case could be adduced to
shew that the ordinary can arbitrarily refuse to accept a resigna-
tion of a benefice. On the other side, this objection was answered, with
saying, that the plainest points, having scarce ever been called in
question, are supported by the fewest authorities. No decree was
made as to this point; but Lord Hardwicke intimated it once or twice
so strongly to be his opinion, that the ordinary ought to have accept-
ed the resignation, that he did afterwards accept it. This was not in-
deed in the case of a resignation bond; but it was perhaps a stronger-
case. Rockingham (Marg.) v. Griffith, Pasch. 27 Geo. 2. And see more fully this Dictionary, title Resignation.

Whatever doubt was entertained as to the ordinary's being obliged to accept a resignation on such a bond, two points were determined; that the patron could not present again till he had accepted it; and that, whether he did or not, the obligor was liable to the penalty of the bond, if he undertook, as is usually done, for the acceptance of the ordinary. 4 New Abr. 473. If a presentation be made before the bishop accepts the resignation of the last incumbent, it is void. Noy 147: Cro. Jac. 198. If the obligor binds himself to resign a benefice, it is upon him to procure the ordinary's acceptance of his resignation. 4 New Abr. 693.

To an action upon a bond, with condition so to resign on request that the patron may present again, it was pleaded, that the ordinary would not accept the defendant's resignation. On a demurrer, this plea was held bad; and per Curiae, it should have been averred that the ordinary accepted the resignation; for his acceptance being (as is laid down, Cro. Jac. 198.) necessary to complete the resignation, it was the duty of the obligor, who undertook to resign, to procure this. So if one undertakes to inflit on another, he undertakes to make livery as incident thereto. The bishop, as to the obligee is a stranger; and if an obligor undertakes for the act of a stranger, he is at his peril (as is held 1 Saund. 215.) to procure it. MS. Reports, Hist. 28 G. 2. Hes-cott v. Gray.

The result of the whole seemed fully settled, that bonds of resignation were good in Law, and that Equity would restrain all improper use of them. The writer from whom the above abridgment is taken remarks, that though it is not always true, yet it is much oftener so than superficial and hasty thinkers imagine, that the Law, and particularly that part of it which is deduced from judicial determinations, is founded in solid reason; and it may perhaps be shewn that it is so in the present case. The attempting this will at least be excusable, because some great and good men have expressed their dislike of these bonds. 4 New Abr. 473.

The principal of the particular objections was that which is reported to have fallen from Holt, Ch. J. (Comb. 394.) that a resignation bond comes as near simony as possible; it being easy to procure a round sum of money thereby. By making the penalty of the bond adequate to the value of the benefice, and agreeing privately that the money shall be paid, it would without doubt be an oblique way of selling it, and more than come near, for it would be downright Simony. If there was no other way, (it was argued,) or not as easy a one, to do the same thing, this objection would be insurmountable; but if there was, it could never be of much importance to stop this up. The same clerk, whose conscience would allow him to do this, might as well advance the money agreed upon at first; or, if that did not suit him, give an absolute bond to pay the money at a future day. As the same crime might still be committed, and with as much secrecy, what good end would it answer to prohibit such bonds, which, as is allowed by all, may be made use of by a patron to punish neglect of duty or immoral conduct in the incumbent, and for other good purposes? 4 New Abr. 473, 474.

Another objection is that when the patron takes a general bond of resignation, it is only a presentation during pleasure. Be it so (it has
been answered); and suppose, which is the utmost that can be supposed, that it is not taken with a design to awe the incumbent into greater care in the discharge of his duty, but to let some friend or relation afterwards into the benefice: It by no means necessarily follows that the church, which is the grand thing to be guarded against, will therefore be filled with an unfit person. If the successor, which may be the case, is better qualified for the office, the interest of religion will be advanced by the exchange. If he be not so well qualified, it is a misfortune; but it is such a one as, in the present circumstances of things, cannot be entirely prevented. While the right of patron-age, or while human nature continues as it is, there will be mistakes in judgment, and patrons will be induced by partiality to judge too well of the abilities of a relation or friend; but it makes no difference whether either of these happens when the benefice is at first void, or at any given time after; or if there be any, it is in favour of the practice, for the mischief, for so long at least as the first incumbent holds the living, is thereby postponed. 4 New Abr. 474.

These arguments are now however finally put at rest. For, in the great case of the Bishop of London v. Ffytche, it was determined by the House of Lords, that a General Bond of Resignation is simoniacal and illegal. The circumstances of that case were briefly these: Mr. F. the patron, presented Mr. Eyre, his clerk, to the Bishop of London for institution. The bishop refused to admit the presentation, because Mr. Eyre had given a general bond of resignation. Upon this Mr. Ffytche brought a Quare impedit against the bishop; to which the bishop pleaded that the presentation was simoniacal and void, by reason of the bond of resignation; and to this plea Mr. Ffytche demurred. From a series of judicial decisions, (many of them noticed above,) the court of Common Pleas thought themselves bound to determine in his favour; and that judgment was affirmed by the court of King's Bench. But these judgments were afterwards reversed by the House of Lords. The principal question was this, viz. whether such a bond was a reward, gift, profit, or benefit to the patron, under stat. 31 Eliz. c. 6? If it were so, the statute had declared the presentation to be simoniacal and void. Such a bond is so manifestly intended by the parties to be a benefit to the patron, that it seems surprising that it should have been ever argued and decided, that it was not a benefit within the meaning of the statute. Yet many learned men have expressed themselves dissatisfied with this determination of the Lords, and are of opinion that their judgment would be different if the question were brought before them a second time. But it is generally understood that the Lords, from a regard to their dignity, and to preserve a consistency in their judgments, will never permit a question, which they have once decided, to be again debated in their house. See 2 Comm. c. 18. ft. 280. n.; and Bro. P. C. 8vo ed. title Clergy, ca. 3. where it appears that Six Judges delivered their opinions in favour of the bond, and only two against it. The decision of the house was made by a division of 19 to 18.

In subsequent cases it has been determined, that a bond given by an incumbent to the patron on presentation, to reside on the living, or to resign if he did not return to it after notice, and also not to commit waste, &c. on the parsonage-house, was good. 4 Term Rep. 78. And where a bond was given to resign a rectory when the patron's son came of age, and before that time to reside and keep the chancel and
rectory-house in repair; it was decided by the court of King's Bench in favour of the bond, without argument. 4 Term Rep. 359.—Though it is suggested that this determination was expected to be carried by appeal to the House of Lords, it is believed the parties acquiesced in it, on the ground that it essentially differed from that of the Bishop of London v. Ffytche. See 2 Comm. c. 18, p. 280, n: Treat. Eg. c. 4: § 5, n.

SIMPLE-CONTRACT; DEBT BY. Debts by Simple-contract are such, where the Contract upon which the obligation arises, is neither ascertained by matter of record, nor yet by deed or special instrument, but by mere oral evidence, the most simple of any; or by notes unsealed, which are capable of a more easy proof, and (therefore only) better than a verbal promise. 2 Comm. c. 30. p. 466. See titles Assumpsit; Fraud, &c.

Simple Destination, The Settlement by the proprietor of an estate in Scotland, by which he substitutes the persons who are to succeed one to another. Scotch Dict.

Simple-Larceny; See title Larceny.

Simple-Warrantide, an obligation to warrant or secure from all subsequent or future deeds of the grantor. Scotch Dict.

Simplex, simple, or single; as Charta simplex is a deed-poll, or single deed.

Simplex Beneficiurn, A minor dignity in a cathedral or collegiate church, or any other ecclesiastical benefice opposed to a cure of souls; and which, therefore, is consistent with any parochial cure, without coming under the name of pluralities.

Simplex Justiciarius; This style was antiently used for any puisne Judge that was not chief in any court: And there is a form of a writ in the Register beginning thus:—1, John Wood, a simple Judge of the court of Common Pleas, &c.

Simul Cum: together with.] Words used in indictments, and declarations of trespass against several persons, where some of them are known, and others not known: As, the plaintiff declares against A. B. the defendant, together with C. D., E. F. and divers others unknown, for that they committed such a trespass, &c. 2 Lit. Abr. 469. If a writ is generally against two or more persons, the plaintiff may declare against one of them, with a simul cum; but if a man bring an original writ against one only, and declares with a simul cum, he abates his own writ. Comber. 260. See title Action; Joinder in Action.

Sine Assensu Capituli, A writ where a bishop, dean, prebendary, or master of an hospital, aliens the lands holden in right of his bishopric, deanery, house, &c. without the assent of the chapter or fraternity; in which case his successor shall have this writ. F. N. B. 195. And if a bishop or prebendary be disseised, and afterwards he releaseth to the disseisor, this is an alienation, upon which may be brought a writ De sine assensu capituli: But the successor may enter upon the disseisor, if he doth not die seised, notwithstanding the release of his predecessor; for, by the release, no more passeth than he may rightfully release. A person may have this writ of lands upon demises of several predecessors, &c. New Nat. Br. 432.

Sine-Cure, Is where a rector of a parish hath a vicar under him, endowed and charged with the cure; so that the rector is not obliged either to duty or residence. And when a church is fallen down,
and the parish becomes destitute of parishioners, it is said to be a

SINE DIE, without day; See title Day.

SINGLE AVAL OF MARRIAGE, The value of the tocher or
Marriage portion of the vassal's wife, which is modified to two years'
rent of the vassal's free estate. Scotch Dict. See title Tenures.

SINGLE-BOND, Simpex Obligatio. A deed whereby the obligor
obliges himself, his heirs, executors, and administrators, to pay a
certain sum of money to another at a day appointed. See title Bond.

SINGLE ESCHEAT, When all a man's moveable fall to the King as
a casualty, because of his being declared rebel. Scotch Dict.

SINGULAR SUCCESSOR; A purchaser is so termed in the
Scotch Law in contradistinction to the heir of a landed proprietor,
who succeeds to the whole heritage by regular title of succession or
universal representation: Whereas the purchaser acquires right
solely by the singular title acquired by the disposition of the former
proprietor.

SI NON OMNES, A writ on association of justices, by which, if
all in commission cannot meet at the day assigned, it is allowed that
two or more of them may finish the business. Reg. Orig. 202: F. N.
B. 185. And after the writ of association, it is usual to make out a
writ of Si non omnes, directed to the first justices, and also to those
who are so associated to them; which, reciting the purport of the two
former commissions, commands the justices, that if all of them can-
not conveniently be present, such a number of them may proceed,
&c. F. N. B. 111. See title Assizes, &c.

SINKING FUND; See title National Debt.

SIPESSOCNA, A franchise, liberty, or hundred. Leg. Hen. 1.
cap. 6: Rot. Parl. 16 H. 2 Sithesoca.

SI RECOGNOSCAT, A writ that, according to the old books, lay
for a creditor against his debtor who had acknowledged before the
sheriff in the county-court, that he owed his creditor such a sum re-
ceived of him. Old Nat. Br. 68.

SITE; See SeiTE.

SITHCUNDMAN, Sax.] Such a man as had the office to lead
the men of a town or parish. Leg. Ina, capi. 56. Dugdale says, that in
Warwickshire the hundreds were formerly called Sithesoca; and that
Sithsoucundman and Sithcundman was the chief officer within such a di-
vision, i.e. the high constable of the hundred. Dugdale Antiq. Warw.

SITHESOCA; See Sipessoca.

SIX CLERKS IN CHANCERY; Officers in chancery of antient
continuance; who were heretofore spiritual persons, as may appear
by stat 14 & 15 Hen. 8, which was made to enable them to marry.
They transact and file all proceedings by bill and answer, and also
issue some patents that pass the Great Seal, as pardons of men for
chance-medley, patents for ambassadors, sheriffs' patents, and some
others. They likewise sign all office copies in order to be read in
court, and also certificates; and attend upon the court in term, by two
at a time at Westminster, and there read the pleadings. See titles
Chancellor; Chancery.

SIXHINDI, Servants of the same nature with rod-knights, viz.
bound to attend their lord wherever he went; but they were account-
ed among the English Saxons as freemen, because they had lands in
fee subject only to such tenure. Leg. Ina. cap. 26. See Hindeni.

SIZEL; Where pieces of money are cut out from the flat bars of


SLAVES.

silver, after being drawn through a mill into the respective sizes or dimensions of the money to be made; the residue is called by this name, and is melted down again. Lowndes's Essay upon Coin, p. 96.

SKARKALLA, Seems to be an engine for catching of fish. 2 Inst. 38.

SKERDA, A scar or wound. Bract. lib. 3.

SKERRIES (Island or Rock). Patent granted to William French, Esq. for a light-house there, confirmed, stat. 3 Geo. 2. c. 36.

SKINNERS. None shall retain any servant, journeyman, &c. to work in the trade of a Skinner, unless he himself hath served seven years as an apprentice in the same trade, on pain to forfeit double the value of his ware wrought. Stat. 3 Jac. 1. c. 9. See title Leather.

SKINS. None shall take the wool from any sheep-skin or lamb-skin, or buy Skins, but to make leather or parchment; &c. Stat. 5 El. c. 22. § 1. None but artizans skinners shall dress or export black coney-skins. 3 Jac. 1. c. 9. See further, titles Leather; Navigation Acts, 39, 40 G. 3. c. 63. 66: 39 G. 3. c. 54.


SLAINS, Letter of; in Scotland; Letter heretofore subscribed by the relations of a person slain, declaring that they had received an assignment or recom pense, and concerning an application to the Crown for a pardon to the murderer. See Act 1474, c. 74: 1528. c. 7.

SLANDER, The maliciously defaming of a man in his reputation, profession or livelihood, by words; as a libel is by writing; which is actionable, &c. See titles Action II. 1; Libel.

SLAVES and SLAVERY. Pure and proper Slavery does not, nay, cannot, subsist in England; such, that is, whereby an absolute and unlimited power is given to the master over the life and fortune of the Slave. And, indeed, it is repugnant to reason, that such a state should subsist any where; and the Law of England abhors, and will not endure, the existence of Slavery within this nation: So that when an attempt was made to introduce it, by stat. 1 Ed. 6. c. 3. which ordained, that all idle vagabonds should be made Slaves and fed on bread and water, or small drink, and refuse meat, should wear a ring of iron round their necks, arms, or legs; and should be compelled by beating, chaining, or otherwise, to perform the work assigned them, were never so vile; the spirit of the nation could not brook this condition, even in the most abandoned rogues; and therefore this statute was repealed in two years afterwards, by stat. 3 & 4 E. 6. c. 16. And now it is laid down, that a Slave, a negro, the instant he lands in England, becomes a freeman; that is, the law will protect him in the enjoyment of his person and his property. Salk. 666. Yet, with regard to any right which the master may have lawfully acquired to the perpetual service of John or Thomas, this, says Blackstone, will remain exactly in the same state as before: [what that right is not, we shall presently see:] Hence too it follows, that the infamous and unchristian practice of with-holding baptism from negro servants, lest they should thereby gain their liberty, is totally without foundation, as well as without excuse. The Law of England acts upon general and extensive principles: it gives liberty, rightly understood, that is, protection to a Jew, a Turk, or a Heathen, as well as to those who profess the true religion of Christ; and it will not dissolve a civil obligation between master and servant, on account of the altera-
tion of faith in either of the parties; but the Slave is entitled to the same protection in England before, as after, baptism; and, whatever service the heathen negro owed of right to his American master, by general, not by local law, the same (whatever it be) is he bound to render when brought to England and made a Christian. See 1 Comm. c. 14.

In the celebrated case of James Somersett, it was decided, that a heathen negro, when brought to England, owes no service to an American, or any other, master. James Somersett had been made a Slave in Africa, and was sold there: from thence he was carried to Virginia, where he was bought, and brought by his master to England: Here he ran away from his master, who seized him and carried him on board a ship, where he was confined, in order to be sent to Jamaica to be sold as a Slave. Whilst he was thus confined, a *habeas corpus* was granted, ordering the captain of the ship "to bring up the body of James Somersett, with the cause of his detainer."—

The above-mentioned circumstances being stated on the return to the writ, after much discussion in the Court of King's Bench, the Court were unanimously of opinion, that the return was insufficient, and that Somersett ought to be discharged. See Mr. Hargrave's excellent argument for the negro. 11 St. Tr. 340; and the case reported in *Lofft's Reports* 1.

In consequence of this decision, if a ship laden with Slaves was obliged to put into an English harbour, all the Slaves on board might (and Mr. Christian says ought to) be set at liberty. Though there are acts of Parliament which recognise and regulate the slavery of negroes, yet it exists not in the contemplation of the Common Law: and the reason they are not declared free before they reach an English harbour, is only because their complaints cannot sooner be heard and redressed by the process of an English court of justice. 1 Comm. c. 14. p. 425, n.

Liberty, by the English Law, depends not on the complexion; and what was said even in the time of Queen Elizabeth is now substantially true, that the air of England is too pure for a Slave to breathe in. 2 Rushw. 468.

By *stat.* 30 Geo. 3. c. 33. (continued and amended by *stats.* 31 Geo. 3. c. 54: 32 Geo. 3. c. 52: 33 Geo. 3. c. 73: 34 Geo. 3. c. 80: 35 Geo. 3. c. 90: 37 Geo. 3. c. 104, & c. 118: 38 Geo. 3. c. 88: & 39 Geo. 3. c. 80, and subsequent acts; and explaining and amending a former statute of 29 Geo. 3. c. 66.) several humane provisions were made to restrain the cruelties practised in the *African Slave-Trade*. Bounties were given to the masters and surgeons of ships delivering their Slaves well at their destined port, &c.

By 46 Geo. 3. c. 52. the importation of Slaves by British subjects into foreign colonies, and the fitting out of foreign Slave ships in British ports was prohibited. By 46 Geo. 3. c. 119. it was enacted that no ship should clear out from any port in Great Britain to the coast of Africa for taking negroes on board, unless such ship had been previously employed in the African trade: and at length by *stat.* 47 Geo. 3. *stat.* 1. c. 36. it was enacted that from May 1, 1807, the Slave trade should be abolished; and a penalty of 100 l. per head was imposed in all cases of trading or purchasing Slaves. All vessels concerned in the traffic become forfeited, and all insurances relating to such trade are declared void. Subjects of Africa, &c. unlawfully
carried away, and imported into any British colony as Slaves become forfeited to His Majesty: as also Slaves taken as prizes of war, whose Slavery is declared to cease; and they may be enlisted to serve the King. It is to be hoped that this disgraceful traffic is now finally put an end to; and that the benefits resulting to the country will far counter-balance any commercial evil which may have been dreaded from so important a change.

An African Company is also established by stat. 31 Geo. 3. c. 55. for carrying on a trade between Great Britain and the coasts and countries of Africa; and a colony is for that purpose established on the peninsula of Sierra Leone. This company is intended to supersede, in time, the necessity of the African Slave-trade, by raising sugars there by native Africans; it being one of the conditions of the act, that the company shall not deal in or employ Slaves. The company is to last for thirty-one years from July 1, 1791.

SLEDGE. A Sledge or hurdle is generally allowed to draw offenders guilty of high treason to the gallows, to preserve them from the extreme torture of being dragged on the ground or pavement. 1 Hal. P. C. 82. See titles Execution of Criminals; Treason.

SLIPPA, A stirrup; and there is a tenure of land by holding the King's stirrup, in Cambridgeshire. Cart. 5 Hen. 7.

SLOUGH-SILVER, A rent paid to the castle of Wigmore, in lieu of certain days' work in harvest, heretofore reserved to the lord from his tenants. Pat. 43 Eliz.

SLUICE, Exclusive.] A frame to keep or let water out of a ground. By stat. 8 Geo. 2. c. 20, to destroy any sluice or lock on any navigable river, is made felony without benefit of clergy. See titles Locks; Rivers.

SMAKA, a smack or small light vessel. Cowell.

SMALL DEBTS, COURTS FOR. See title Courts of Conscience.

SMALT, Ital. Smalto.] That of which painters make their blue colouring; mentioned in stat. 21 Jac. 1. c. 3.

SMOKE-FARTHINGS. The Pentacostals, or customary obligations, offered by the dispersed inhabitants within a diocese, when they made their procession to the mother cathedral church, came by degrees into a standing annual rent, called smoke-farthings. Cowell.

SMOKE-SILVER. Lands were holden in some places by the payment of the sum of 6d. yearly to the sheriff, called smoke-silver. Pat. 4 Ed. 6.—Smoke-silver and smoke-penny are to be paid to the ministers of divers parishes, as a modus in lieu of tithe-wood: and in some manors formerly belonging to religious houses, there is still paid as appendant to the said manors, the ancient Peter-fence, by the name of Smoke-money. Twisd. Hist. Vindicat. 77.

SMUGGLERS, Those persons who conceal prohibited goods, and defraud the King of his customs on the sea-coasts, by importing goods without paying the duties imposed by the laws of Customs and Excise. See these titles, particularly the first.

SNOTTERING-SILVER. There was a custom in the village of Wylegh, that all the servile tenants should pay for their tenements a small duty called Snottering-silver, to the abbot of Colchester. Placit. 18 Edw. 1.

SNUFF, on SNUSH; Mixing and colouring it with ocher, umber, or fustick, yellow ebony, tobacco dust, sand, &c. incurs a penalty of 3l. for every pound weight. Stat. 1 Geo. 1. st. 2. c. 46. The penalties
of adulterating tobacco, extended to snuff, stat. 5 Geo. 1. c. 11. See titles Excise; Navigation Acts; Tobacco.

SOAP; See Sope.

SOC; See Soke.

SOCAGE, or SOCCAGE, Socagium; from Fr. Soc, vomer, a coulter or plough-share.] A tenure of lands by or for certain inferior services of husbandry, to be performed to the lord of the fee. See further, title Tenures III. 3.

Skene de verbor. signif. says, Socage is a tenure of lands, when a man is enfeoffed freely, without any service, ward, relief, or marriage; and pays to his lord such duty as is called petit serjeanty, &c.

This was a tenure of so large an extent, that Littleton tells us, all the lands in England, which were not held in knights-service, were held in Socage. So that it seems the land was divided between these two tenures; and as they were of different natures, so the descent of these lands was in a different manner; for the lands held in knights-service descended to the eldest son; but those held in villano Socagio, equally among all the sons; yet if there was but one messuage, the eldest son was to have it, so as the rest had the value of that messuage to be divided between them. Bracton, l. 2. c. 35, 36. See title Tenures III. 3, &c.

SOCAGERS, SOCMANS, SOCMEN, or SOKEMANS, Socmanni.] Such tenants as hold their lands and tenements by Socage-tenure, Kitchin, fol. 81. Sokemans of base tenures, ibid.; and Sokemans of antient demesne; which last seem most properly to be styled Sockmans. Cowell. See title Tenures.

The husbandmen among our Saxon ancestors were of two sorts; one, that hired the lord’s outland, or tenemetary land, like our farmers; the other, that tilled and manured his inland or demeans; (yielding ofteram, not censum, work, not rent;) and were thereupon called his Sockmen, or ploughmen. Shelfman of Feuds, cap. 7. But after the Conquest, the proper Sockmanni, or Sokemanni, often mentioned in Domestacy, were those tenants who held by no servile tenure, but commonly paid their rent as a Soke or sign of freedom to the lord, though they were sometimes obliged to customary duties for the service and honour of their lord. Cowell. See also Britton, c. 66: Fleta, l. 1. c. 8.

SOCOME; See Soke.

SOCOME. A custom of grinding corn at the lord’s mill: and Bond Socome is where the tenants are bound to it. Blount.

SODOMY; See B.

SODOR AND MAN, BISHOPRIC OF, Was formerly within the province of Canterbury, but annexed to that of York, by stat. 33 H. 8. c. 31. See title MAN, Isle of.

SOJOURNERS. See Sorners. To sojourn horse is to quarter horse, Old Scotch Dict.

SOKE, SOK, SOC, SOCA; Liberty or privilege of tenants excused from customary burdens and impositions. Soka, or Soke, also signifies the power of administering justice, and the territory or precinct in which the chief lord did exercise his Sac, Sake, or Saka, his liberty of keeping court, or holding trials within his own Soke or jurisdiction. Sometimes it signified a payment or rent to the lord for using his land with such liberty and privilege as made the tenant a
SOLDIERS.

Socman or freeholder, upon no other conditions than a quit-rent. Cowell. Vide Bract. lib. 3: Lamb. Leg. H. 1. 244: Fleta, lib. 1. cap. 47. SOKEMANS; See Socagers; Villenage; Tenures. SOKEMANRIES, The tenures of Socagers. SOKE REEVE, The lord’s rent-gatherer in the Soke or Soken. Fleta.

SOLARIUM, A Sollar, upper room, or garret.

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The Military State of the kingdom includes the whole of the Soldiery; or, such persons as are peculiarly appointed among the rest of the people for the safe-guard and defence of the realm.

In a land of liberty it is extremely dangerous to make a distinct order of the profession of arms. In absolute monarchies this is necessary for the safety of the Prince, and arises from the main principle of their constitution, which is that of governing by fear; But in free states the profession of a Soldier, taken singly and merely as a profession, is justly an object of jealousy. In these no man should take up arms, but with a view to defend his country, and its laws; he puts not off the citizen when he enters the camp; but it is because he is a citizen, and would wish to continue so, that he makes himself for a while a Soldier. The laws therefore and constitution of these kingdoms know no such state as that of a perpetual standing Soldier, bred up to no other profession than that of war: And it was not till the reign of Henry VII. that the Kings of England had so much as a guard about their persons.

In the time of our Saxon ancestors, as appears from Edward the Confessor’s laws, the military force of this kingdom was in the hands of the dukes or heretocks, who were constituted through every province and county in the kingdom; being taken out of the principal nobility, and such as were most remarkable for being “sapiéntes, fideles, et animosi.” Their duty was to lead and regulate the English armies, with a very unlimited power; and because of this great power they were elected by the people in their full assembly, or folkmote, in the same manner as sheriffs were elected. But it appears from history, that this large share of power, thus conferred by the people, though intended to preserve the liberty of the subject, was unreasonably detrimental to the prerogative of the crown.

Upon the Norman conquest the feudal law was introduced here in all its rigour; the whole of which is built on a military plan. It is not necessary here to enter into the particulars of that constitution; it is sufficient to observe, that, in consequence thereof, all the lands in the kingdom were divided into what were called knights’ fees, in number above sixty thousand; and, for every knight’s fee, a knight or Soldier, miles, was bound to attend the King in his wars, for forty days in a year; in which space of time, before war was reduced to a science, the campaign was generally finished, and the kingdom either conquered or victorious. By this means the King had, without any expense, an army of sixty thousand men always ready at his command. This personal service, however, as early as the reign of Henry II. degenerated into pecuniary commutations or aids; and at length all military tenures were entirely abolished by stat. 12 C. 2. c. 24.

Other measures were also pursued for the internal defence of the
kingdom; which terminated in the establishment of the *Militia*, as at present regulated by our statute law. See title *Militia*.

When the nation was engaged in war, more veteran troops and more regular discipline were esteemed to be necessary, than could be expected from a mere militia. And therefore at such times more rigorous methods were put in use for the raising of armies, and the due regulation and discipline of the Soldiery, which are to be looked upon only as temporary excrescences bred out of the distemper of the State, and not as any part of the permanent and perpetual laws of the kingdom. Martial law has been said to be, in truth and reality, no law, but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance; and therefore it ought not to be permitted in time of peace, when the King's courts are open for all persons to receive justice according to the laws of the land. Wherefore, Thomas Earl of Lancaster, being condemned at Pontefract, 15 Edw. II. by martial law, his attainder was reversed (1 Ed. 3.) because it was done in time of peace. The petition of right (3 Car. 1.) enacted, that no Soldier shall be quartered on the subject without his own consent; and that no commission should issue to proceed within this land according to martial law. And after the Restoration, King Charles II. kept up about five thousand regular troops, by his own authority, for guards and garrisons; which King James II. having by degrees increased to no less than thirty thousand, all paid from his own civil list; it was made one of the articles of the Bill of Rights, that the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law. *Stat. 1 W. & M. st. 2. c. 2.*

But, as the fashion of keeping standing armies has of late years universally prevailed over Europe, it has also, for many years past, been annually judged necessary by our Legislature, to maintain, even in time of peace, a standing body of troops, under the command of the Crown; who are, however, *ipso facto* disbanded at the expiration of every year, unless continued by Parliament.

To keep this body of troops in order, an annual act of parliament passes, "to punish mutiny and desertion, and for the better payment of the army, and their quarters." This regulates the manner in which they are to be dispersed among the several innkeepers and victualers throughout the kingdom; and establishes a law martial for their government. By this, among other things, it is enacted, that if any Officer or Soldier shall excite, or join in any mutiny, or, knowing of it, shall not give notice to the commanding officer; or shall desert, or list in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or enemy, or strike or use violence to his superior officer, or shall disobey his lawful commands: such offender shall suffer such punishment as a Court Martial shall inflict, though it extend to death itself. See title *Court Martial*.

However expedient the most strict regulations may be in time of actual war, yet, in times of profound peace, a little relaxation of military rigour would not, one should hope, be productive of much inconvenience. And, upon this principle, though by our statute laws (still remaining in force, though not attended to) desertion in time of war is made felony, without benefit of clergy, and the offence is tria-
ble by a jury, and before justices at the common law; yet by our military laws, a much lighter punishment is inflicted for desertion in time of peace. But our mutiny act makes no such distinction: for any of the faults above-mentioned are, equally at all times punishable with death itself, if a Court Martial shall think proper. This discretionary power of the Court Martial is indeed to be guided by the directions of the Crown; which, with regard to military offences, has almost an absolute legislative power. "His Majesty," says the act, "may form articles of war, and constitute Courts Martial, with power to try any crime by such articles, and inflict penalties by sentence or judgment of the same."

But as Soldiers, by this annual act, are in some respects put in a worse condition than any other subjects, so by the humanity of our standing laws, they are in other cases put in a much better. By stat. 43 Eliz. c. 3. a weekly allowance is to be raised in every county, for the relief of Soldiers that are sick, hurt, and maimed; and the royal hospital at Chelsea is established for such as are worn out in their duty. Officers and Soldiers, that have been in the King's service, are, by several statutes enacted at the close, or during the continuance of wars, at liberty to use any trade or occupation they are fit for, in any town in the kingdom, (except the two universities,) notwithstanding any statute, custom, or charter to the contrary. And Soldiers in actual military service may make nuncupative wills and dispose of their goods, wages, and other personal chattels, without those forms, solemnities and expences, which the law requires in other cases. Stats. 29 Car. 2. c. 3: 5 W. 3. c. 21. § 6. See title Wills.

By 46 Geo. 3. c. 69. for making better provision for Soldiers, it is declared that Soldiers shall, in consequence of their service for a certain number of years, be entitled to such pensions as shall be fixed in the regulations ordered by his Majesty, in force at the time of their enlistment. These pensions are under the management of the Commissioners of Chelsea Hospital: and are, under their direction, payable throughout the country by the Receiver General of the Land Tax, &c.

During war, Foreign Soldiers have been occasionally admitted into the British service, and in such cases Commissions have been allowed to be granted by his Majesty to foreign officers.—See the acts, 45 G. 3. c. 75: 46 G. 3. c. 23.

The following statutes seem most of them in force, though in a great measure, if not entirely, superseded by the provisions of the mutiny act, and other acts before alluded to.

The stat. 7 Hen. 7. cap. 1. enacts, that if a captain shall not have the whole number of his Soldiers, or not pay them their due wages within six days after he hath received it, he shall forfeit all his goods and chattels, and suffer imprisonment. The stat. 1 Jac. 1. cap. 4. ordains, that if any person go beyond sea, to serve any foreign prince as a Soldier, and he do not take the oath of allegiance before he goes, it is felony; and if he is a gentleman or officer that is going to serve a foreign Prince, he is to be bound with two sureties not to be reconciled to the see of Rome, &c. or it will be felony.

By stat. 31 Car. 2. c. 1. no Soldier shall be quartered on any persons without their consent: and inhabitants of places may refuse to quarter any Soldier, notwithstanding any order whatsoever.

By stat. 3 Geo. 1. c. 2. no Soldier shall be taken out of the service
by any process, except it be for some criminal matter, or for a real
debt amounting to 10l. of which affidavit is to be made; and if any Sol-
dier be otherwise arrested, a Justice of peace, by warrant under his
hand, shall discharge him: Yet the plaintiff may file an appearance in
an action of debt, upon notice thereof given, and proceed to judgment
and execution, other than against the body of such Soldier. A ser-
jeant in the guards cannot be arrested under 10l. 1 Wils. 216.

If any subject, here or in Ireland, shall list or enter himself, or any
one procure him, to go beyond the seas with an intent to be enlisted
as a Soldier to serve any foreign Prince or State, without leave of his
Majesty, he shall be guilty of felony; but if such person listed, in
fourteen days after, discover, upon oath before any Justice, &c. the
person by whom he was drawn in, so as he may be apprehended and
convicted, the party discovering is to be indemnified.—Stat. 9 Geo. 2.
c. 30.

SOLE CORPORATIONS; See Corporation.

SOLE ET DEBET; Vide Debet et Solet.

SOLE TENANT, solus tenens.] He that holds land by his own
right only, without any other joined; and if a man and his wife hold
lands for their lives, with remainder to their son for life; here the
man dying, the lord shall not have an heriot, because he dies not sole

SOLICITOR, Solicitor.] A person employed to follow and take
care of suits depending in courts of equity. Solicitors are to be sworn
and admitted by the judges, like unto attorneys, before they shall prac-
tise in the common law courts; and attorneys may be admitted Solici-
tors in the courts of equity, &c. Stat. 2 Geo. 2. cap. 23. See title At-
torney.

There is also a Solicitor-general to the king, who is a great officer
next the Attorney-general. See title Precedence.

SOLIDATUM, Used in the neuter gender, is taken for that abso-
late right or property which a man hath in any thing. Malm. lib. 1.

SOLINUS TERRÆ. In domesday book, this word is only used
in Kent, and no other county. Septem solini terræ sunt 17 carucatae,
1 Inst. fol. 15. According to this computation solinus terræ is about
160 acres, and 7 solini are about 1120 acres, which is less than 17 ca-
ru cata, for at the lowest carucata terræ is 100 acres. But lord Coke
was of opinion, that it did not consist of any certain number of acres. This
word solinus was probably from the Sax. sulk a plough, but what quan-
tity of land this solin, sulling, or svoling did contain is not so easily
determined. It seems to have been the same with a plough-land; so
that in domesday, se defendit pro uno solino, is, it is taxed for one ca-
ru cate or plough-land. Cowell.

SOLLER or SOLAR, solarium.] A chamber or upper room. Cow-
ell.

SOLVENDO ESSE, A term of art, signifying that a man hath
wherewith to pay, or is a person solvent.

SOLVERE PENAS, To pay the penalty; or undergo the punish-
ment inflicted for offences. 3 Salk. 32.

SOLVIT AD DIEM, A plea in an action of debt on bond, &c.
that the money was paid at the day limited. See titles Bond; Pay-
ment.

SOLUTIONE, feodi militis parliamenti, and solutione feodi burgens.
parliamenti, writs whereby knights of the shire and burgesses might
recover their wages or allowance, if it were denied. Stat. 35 H. 8. c. 11. See title Parliament.

SON ASSAULT DEMESNE, A justification in an action of assault and battery; because the plaintiff made the first assault, and what the defendant did was in his own defence. 2 Lit. Abr. 523. See titles Assault; Pleading.

SONTAGE, A tax of forty shillings heretofore laid upon every knight’s see. Stow. p. 284.

SOPE, Is one of the many articles liable to the duty of excise. See that title.

SORCERY; See Conjuration.

SORNORS, (Sojourners) such masterfully (forcibly) take meat and drink, from the King’s people without payment. An offence formerly punishable with death. Scotch Law Dict.

SORS, In sums of money lent upon usury, the principal was antiently called Sors, to distinguish it from the interest. Pryn’s Collect. ii. 161.

SORUS ACCIPITER, A sor, or soar hawk; King John granted to Robert de Hose, land in Berton of the honour of Nottingham, to be held by the service of yielding the King yearly one soar-hawk, &c. Cartular. S. Edmund MS.

SOTHAIL, or SOTHALE, Is conceived to be mistaken for Scotia. Bract. tib. 3.

SOTHSAGA, or SOTHSAGE, An old word signifying history: From the Sax. soth, verum, and saga, testimonium; for all histories should be true, or true sayings; from hence we derive our English word soothsayer. Cowell.

SOVERAIGN, or SOVEREIGN, A chief or supreme person, one highest of all; as a King, &c.

SOVEREIGN, a piece of gold coin current at 22s. anno 1 H. 8. when by indenture of the Mint, a pound weight of gold of the old standard was to be coined into twenty-four Sovereigns: Anno 34 H. 8. Sovereigns were coined at 20s. a-piece and half Sovereigns at 10s. But anno 4 Ed. 6. the Sovereign of gold passed for 24s. and anno 6 Ed. 6. at 30s.

SOVEREIGN POWER, or SOVEREIGNTY, By this is truly meant the power of making laws; for, wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases. And all the other powers of the state must obey the legislative power in the execution of their several functions, or else the constitution is at an end. 1 Comm. 49. In our constitution the law ascribes to the King the attribute of sovereignty, but that is to be understood in a qualified sense, i.e. as supreme magistrate, not as sole legislator; as the legislative power is vested in the King, Lords, and Commons, not in any one of the three estates alone. See this Dict. title Parliament.

SOUL-SCOT, A mortuary is so called in the laws of King Canute, c. 13. See title Mortuary.

SOUND, A narrow sea; as Mare Balticum, the Sound; and to sound is to make trial how many fathom a sea is deep. Merch. Dict.

SOUTH-DOOR; See Suthdure.
SOUTH-SEA ANNUITIES; See South-Sea Company.

South-Sea Bonds, Stealing them made felony, stat. 2 Geo. 2. c. 25. sect. 3.

South-Sea Company, A company of merchants trading to the South-Sea. They were incorporated, on lending the government ten millions of money towards paying the debts of the army, &c. They may purchase lands not exceeding 1000l. per annum; and besides an interest for the money advanced the government, 8000l. a-year is to be paid them out of the funds towards the management of this Company: But see stat. 24 Geo. 2. c. 11. The corporation shall have the sole trade from the river Oroonoko (called Aranoko in the act) on the east side of America to the southermost part of Terra del Fuego, and from thence through the South-Sea, &c. And the company to be owners of all islands, ports, &c. they can discover. Stat. 9 Ann. c. 21. By 47 G. 3. stat. 1. c. 23. so much of this act 9 Ann. as vested in the company the exclusive trade, was repealed as to all places which then were, or should at any time thereafter, be belonging to or in the possession, or under the dominion or protection of his Majesty, his heirs and successors. See also stats. 10 Ann. c. 30: 1 Geo. 1. st. 2. c. 21: 3 Geo. 1. c. 9: 5 Geo. 1. c. 19: 6 Geo. 1. c. 4. 7 Geo. 1. c. 5: 8 Geo. 1. c. 22. as to the establishment of the Company and regulation of its stock. And further, stat. 24 Geo. 2. c. 11. for reducing the interest upon the capital stock of the South-Sea Company, from the time, and upon the terms therein mentioned, and for preventing of frauds committed by the officers and servants of the said Company; and stat. 26 Geo. 2. c. 16. for reducing the number of directors of the said Company, and for regulating the election of the governors and directors of the said Company.

Creation of the old South-Sea Annuities—Stats. 9 Geo. 1. c. 6. § 3: 3 Geo. 2. c. 16.—Redemption of South-Sea annuities out of sinking fund, stats. 4 Geo. 2. c. 5: 6 Geo. 2. c. 25: 9 Geo. 2. c. 34: 10 Geo. 2. c. 17. § 35.—New South-Sea annuities created, stat. 6 Geo. 2. c. 28.—Restrained from issuing bonds without a general court, stats. 6 Geo. 2. c. 28. § 26; 7 Geo. 2. c. 17. The Company continued till the annuities shall be redeemed, stat. 24 Geo. 2. c. 2. § 51. The first and second subscribed South-Sea annuities to be consolidated, stat. 25 Geo. 2. c. 27. § 26. See further, title Taxes.

SOUTHWARK, See title London.

SOWLEGROVE, An old name of the month of February, so called by the inhabitants of South Wales.

SOWMING and ROWMING; (or Sooming and Rooming:) The apportioning or placing of cattle on a common, or goods in a house, according to the respective rights of various parties interested. Scotch Law Diet.

SOWNE, From the Fr. Sowvenue, remembered. A word of art used in the Exchequer, where estreats that Bowne not, are those that the sheriff cannot levy, viz. Such estreats and casualties are not to be remembered, and run not in demand; and estreats that Bowne, are such as he may gather, and are leviable. Stat. 4 Hen. 5. c. 2: 4 Inst. 107.

SPADARIUS, for Spatharius, A sword-bearer, Blount.

SPATULARIA, Is numbered among the holy vestments, &c. in Mon. Ang. iii. 331.

SPAWN AND FRY OF FISH; See title Fish.

SPEAKER OF THE PARLIAMENT; See title Parliament VII.

SPECIAL OCCUPANT; See title Occupancy.

SPECIALTY, Specialitas.] A bond, bill, or such like instrument: a writing or deed, under the hand and seal of the parties. Lit. These are looked upon as the next class of debts after those of record; being confirmed by special evidence under seal. 2 Comm. c. 30. p. 463. See titles Bond; Deed; Executor V. 6.

SPECIFIC LEGACIES; See title Legacy 2.

SPECIFICATION; See Patent.

SPECIFIC RELIEF IN EQUITY; See titles Chancery; Equity.

SPELEUM, The cell of a monk. Malmsb. lib. 3.

SPICES, Are among the numerous articles liable to duties of Customs; and subject to regulations, to avoid frauds both in payment of the duty and manufacturing the article; by a variety of statutes.

SPIGURNEL, Spigurnellus.] The sealer of the King's writs, from the Sax. Spiceranus, to shut up or inclose; but the following original has been given of this word, that Galfridus Spigurnet being by King Hen. III. appointed to be sealer of his writs, was the first in that office; and therefore in after-times the persons that enjoyed the office were called Spigurnels. Pat. 11 H. 3; 4 Edw. 1. This office was also known by the name of Spicurnantia or Espicurnantia; and Oliver de Standford held lands in Nettlebed in Com. Oxon. per Serjantiam Spicurnantia in Cancellaria Domini Regis, 27 Ed. 1.

SPINACIUM, A sort of vessel which we now call a Pinnace. Knight, Ann. 1338.


SPIRITUAL COURTS; See title Courts Ecclesiastical.

SPIRITUALITIES OF A BISHOP; See Guardian of the Spiritualties.


SPIRITIOUS LIQUORS; See title Excise.

SPIRITUS, A corruption from Hospital; or it may be taken from the Teuton. Spital; an hospital or alms-house: It is mentioned in stat. 15 Car. 2. c. 9.

SPOLIATION, spoliatio.] A writ or suit for the fruits of a church, or the church itself to be sued in the Spiritual Court; and not in the temporal; that lies for one incumbent against another, where they both claim by one patron, and the right of patronage doth not come in question: As if a parson be created a bishop, and hath dispensation to hold his benefice, and afterwards the patron presents another incumbent, who is instituted and inducted; now the bishop may have a Spo-
liation in the spiritual court against the new incumbent, because they both claim by one patron, and the right of patronage doth not come in debate; and for that the other incumbent came to the possession of the benefice, by the course of the spiritual law, \textit{viz.} by institution and induction; for otherwise if he be not instituted and inducted, a Spoliation lies not against him, but writ of trespass, or assise of novel disseisin. 

- So it is where a parson that hath a plurality, accepts of another benefice, by reason whereof the patron presents another clerk, who is instituted and inducted; in this case one of them may have Spoliation against the other, and then shall come in question, whether he hath a sufficient plurality, or not: And it is the same of deprivation, &c. \textit{Terms de Leg.} And see 3 Comm. c. 7. p. 90.

- SPONTE-OBLATA, A free gift or present to the King.

- SPORTULA, Gifts and gratuities, forbidden to be received by the clergy.

- SPOUSALS; See Espousals.

- SPOUSE-BREACH, Adultery, as opposed to simple fornication: The Lady Katharine was accused to the King of incontinent living before her marriage, and of Spouse-breach after the marriage. \textit{Fox Act. Mon.} ii. 540.

- SPRINGING USES, or Contingent uses; See title Uses.

- SPULLERS OF YARN, Persons that work at the spore or wheel; or triers of yarn to see that it be well spun, and fit for the loom. \textit{Stat. 1 Mar. st. 1. c. 7.}

- SPULZIE, \textit{Spoliatio.} The taking away or meddling with moveables in another's possession without the consent of the owner, or authority of law. \textit{Scotch Law Dict.}


- SQUALLEY, A faultiness in the making of cloth. \textit{Stat. 43 Eliz. c. 10. See Rowey.}

- SQUIBS; See Fire-works.

- STABBING; See title Homicide III. 2.

- STABILIA, A writ called by that name, on a custom in Norman-dy, that where a man in power claimed lands in the possession of an inferior, he petitioned the Prince that it might be put into his hands till the right was decided; whereupon he had this writ, \textit{Breve de Stabilia: To this a charter of King Hen. I. alludes in Pryn's lib. Angl. tom. 1. p. 1204.}

- STABILITIO VENATIONIS, The driving deer to a stand, Stabiliatas, the place where one ought to stand in hunting. \textit{Leg. H. i. c. 17.}

- STABLE-STAND, \textit{Stabilis statio, vel stans in stabulo.} Is where a man is found at his standing in the forest, with a cross or long bow bent, ready to shoot at any deer; or standing close by a tree, with greyhounds in a leash, ready to slip: And it is one of the four evidences or presumptions, whereby a person is convicted of intending to steal the King's deer in the forest: the other three are dog-draw, back-bear and bloody-hand. \textit{Manwood, far. 3. cap. 18.}

- STACK, A quantity of wood three feet long, as many feet broad, and twelve feet high. \textit{Merch. Dict.}

- STADIUM, A furlong of land; the eighth part of a mile. \textit{Domesday.}
STAFF-HERDING, The following of cattle within a forest. And where persons claim common in any forest, it must be inquired by the ministers whether they use Staff-herding, for it is not allowable of common right; because by that means the deer, which would otherwise come and feed with the cattle, are frightened away, and the keeper or follower will drive the cattle into the best grounds, so that the deer shall only have their leavings: therefore if any man who hath right of common, under colour thereof use Staff-herding, it is a cause of seizing his common till he pay a fine for the abuse. 1 Jon. Rep. 282.

STAGE-COACHES; See Coaches.

STAGE-PLAYS; See Playhouse.

STAGIARIUS, A resident; as J. B. Canonicus, & Stagiarius Sancti Pauli, a canon residentiary of St. Paul's church. Hist. Eccl. S. Paul. But this distinction was made between residentiarius, and Stagiarius: Every canon installed to the privileges and profits of residence, was residentiarius; and while he actually kept such stated residence, he was Stagiarius. Statut. Eccles. Paulin. MS. 44. Stagiaria, the residence to which he was obliged; Stagiari, to keep residence.

STAGNES, Stagna. Pools of standing water. Stat. 5 Eliz. c. 21. A pool consists of water and land; and therefore, by the name of Stagnum, the water and land shall pass also. Inst. 5.

STAL-BOAT, A kind of fishing boat, mentioned in stat. 27 Eliz. c. 21.

STALKING, The going gently step by step, under cover of a horse, &c. to take game; none shall stalk with bush or beast to any deer, except in his own forest or park, under the penalty of 10l. Stat. 19 H. 7. c. 11.

STALKERS, Certain fishing-nets. See stat. 13 R. 2. c. 19.

STALLAGE, Stallagium, from the Sax. stal. i. c. stabulum statio. The liberty or right of pitching and erecting Stalls in fairs or markets; or the money paid for the same. Kennet's Gloss.

STALLARIUS, is mentioned in our historians, and signifies pfectus stabulius; it was the same officer which we now call master of the horse. Spelm. Sometimes it hath been used for him who hath a Stall in a market. Fleta, lib. 4. c. 28.

STAMP-DUTIES, A branch of the perpetual revenue of this kingdom. (See title Taxes.) They are a tax imposed upon all parchment and paper whereon any legal proceedings, or private instruments of almost any nature whatever, are written: and also upon licences for retailing wines, letting horses to hire, and numerous other purposes: And upon all almanacs, news-papers, advertisements, cards, dice, and pamphlets containing less than six sheets of paper. These imposts are very various, according to the nature of the thing stamped or taxed, rising gradually from one penny to ten pounds; (and indeed in many cases, as legacies, administrations, conveyances, &c. to an amount proportioned to the property conveyed.) The first institution of the Stamp duties was by stat. 5 & 6 W. & M. c. 21; and they have since been increased to an amount which nothing but the absolute necessity of their being imposed could prevent us from styling enormous. These duties are managed by commissioners appointed for the purpose. They now extend to such an astonishing variety.
of articles, and depend on such a multiplicity of statutes, which are continually varying (by increasing) the amount, that no table or compendium which could be framed would probably be of any service to the reader after one session of Parliament; nor would it be consistent with the general nature of this work, to enter into any further elucidation of the subject.

STAND. A weight from two hundred and a half to three hundred of pitch. *Merc. Dict.*

STANDARD, From the Fr. *Estandart, &c. signum, vexillum.* In the general signification, is an ensign in war. And it is used for the standing measure of the King; to the scantling whereof all the measures in the land are or ought to be framed, by the clerks of markets, alnhagers, or other officers, according to *Magna Carta* and divers statutes. This is not without good reason called a Standard, because it standeth constant and immoveable, having all measures coming towards it for their conformity; even soldiers in the field have their standard or colours, for their direction in their march, &c. to repair to. *Britton, c. 30.* There is a Standard of money, directing what quantity of fine silver and gold, and how much allay, are to be contained in coin of old sterling, &c. And Standard of plate, and silver manufactures. *Stat. & Geo. 1. c. 11.* See titles Gold; Money; Allay; Weights and Measures, &c.

STANDARDUS, True Standard, or legal weight or measure.—*Cartular S. Edmund. MS. 268.*

STANDEL, A young store oak-tree, which in time may make timber; and twelve such young trees are to be left standing in every acre of wood, at the felling thereof by *stat. 55 H. 8. c. 17.*—And see *stat. 13 Eliz. c. 25. § 18; and this Dict. title Wood.*

STANDING-ARMY, Not to be kept in time of peace without consent of Parliament. *Stat. 1 W. & M. sess. 2. c. 2.* See title Soldiers.

STANLAW, A stony hill. *Domcsd.*

STANNARIES, *Stannaria, from the Lat. stannum, tin.* The mines and works where Tin metal is got and purified; as in *Cornwall* and *Devonshire,* &c. *Camden Britt.* 199. The tinners are called Stannary-men.

Stannary Courts in *Devonshire* and *Cornwall,* for the administration of justice among the tinners therein, are *Courts of Record,* but of a private and exclusive nature. They are held before the Lord Warden and his substitutes; in virtue of a privilege granted to the workers in the tin-mines there; to sue and be sued only in their own courts, that they may not be drawn from their business, which is highly profitable to the public, by attending their law suits in other courts, 4 *Inst. 232.* The privileges of the tinners are confirmed by a charter 33 *Ed. 1,* and fully expounded by a private statute, (given at length in 4 *Inst. 232.)* 50 *Ed. 3,* which has since been explained by a public act *stat. 16 Car. 1. c. 15.*

All tinners and labourers in and about the Stannaries shall, during the time of their working therein, bona fide, be privileged from suits of other courts, and be only impleaded in the Stannary Court; in all matters, excepting pleas of land, life, and member. No writ of error lies from hence to any court in *Westminster hall:* But an appeal lies from the steward of the court to the under-warden, and from him
to the lord warden; and thence to the privy council of the Prince of Wales, as Duke of Cornwall, when he hath had livery or investiture of the same; and from thence the appeal lies to the King himself in the last resort. 3 Comm. c. 6. p. 79, 80. cites 4 Inst. 230, 231: 3 Bulst. 183: Dodr. Hist. Cornw. 94.

Transitory actions between tinner and tinner, &c. though not concerning the Stannaries, or arising therein, if the defendant be found within the Stannaries, may be brought into these courts, or at common law; but if one party alone is a tinner, such transitory actions which concern not the Stannaries, nor arise therein, cannot be brought in the Stannary-courts. 4 Inst. 251. Labourers in the Stannaries may recover their wages before Justices of peace. Stat. 27 Geo. 2. c. 6.

By stat. 42 G. 3. c. 72. a body of miners are directed to be raised in Cornwall and Devon and disciplined (during war) in the same manner as militia men; under the command of the Warden of the Stannaries.

STANNARIUS, A pewterer or dealer in tin; or of belonging to tin. Lit. Dict.

STAPLE, Statutum. From the Fr. estafpe, i. e. forum vinarium, a market or staple for wines, which formed the principal commodity of France; or rather from the Germ. stathalen, which signifies to gather, or heap any thing together: in an old French book it is written a Calais Estafpe de la Laine, &c. i. e. the Staple for wool: And with us, it hath been a public mart appointed by law to be kept at the following places, viz. Westminster, York, Lincoln, Newcastle, Norwich, Canterbury, Chichester, Winchester, Exeter, and Bristol, &c. A Staple Court was held at the Wool Staple in Westminster, the bounds whereof began at Temple-Bar and reached to Tuthill; in other cities and towns, the bounds are within the walls; and where there are no walls, they extend through all the towns; and the court of the mayor of the Staple is governed by the law merchant in a summary way, which is the law of the Staple. 4 Inst. 235. See stat. 27 Ed. 3. st. 2. The Staple goods of England are wool, woolfels, (or skins,) leather, lead, tin, cloth, butter, cheese, &c. as appears by the statute 14 R. 2. c. 1. Though some allow only the five first; and yet of late Staple goods are generally understood to be such as are vendible, of any kind, and not subject to perish. See Statute Staple; Customs on Merchandise.

STAR, Starrum, a contraction from the Hebr. shetar, a deed or contract. All the deeds, obligations, &c. of the Jews, were antiently called Stars, and written for the most part in Hebrew alone, or in Hebrew and Latin; one of which yet remains in the treasury of the Exchequer, written in Hebrew, without points, the substance whereof is expressed in Latin just under it, like an English condition under a Latin obligation: This bears date in the reign of King John; and many Stars, as well of grant and release, as obligatory, and by way of mortgage, are pleaded and recited at large in the Plea-rolls. Pasch. 9 Ed. 1. See Star-Chamber.

In one of the statutes of the university of Cambridge, the antiquity of which is not known, the word starrum is twice used for a schedule or inventory. 4 Comm. c. 19. p. 266, n.

STAR AND BENT; See title Sea Banks.

STAR-CHAMBER, Camera stellata, otherwise called Chambre Vol. VI.
A Chamber at Westminster so called, (as Sir Thomas Smith, de Rep. Anglor. lib. 2. c. 4. conjectures,) because at first the ceiling thereof was adorned with images of gilded Stars. And in the stat. 25 Hen. 8. c. 1. it is written the Starred Chamber. It was ordained by stat. 3 Hen. 7. c. 1. and 21 Hen. 8. c. 2. That the Chancellor, assisted by others there named, should have power to punish riots, forgeries, maintenances,embraceries, perjuries, and other such misdemeanors as were not sufficiently provided for by the common law, and for which the inferior Judges were not so proper to give correction.

But by stat. 16 Car. 1. c. 10. this Court, commonly called the Star-chamber, and all jurisdiction, power, and authority thereto belonging, are abolished. Cowell.

Molloy and Blackstone seem to think it was called the Star-chamber, because the recognizances which the Jews formerly entered into, to the Crown, and which were called Stars, were kept in that chamber. See ante, Star.

See 4 Comm. c. 19. in the notes, for some particulars relative to this Court. Hudson's Treatise of the Court of Star-chamber, there referred to, is now published at the beginning of the second volume of Collectanea Juridica.

STARCH AND STARCH POWDER, Are articles subject to the duties and controul of the Excise, and liable to several regulations accordingly, by various statutes. Thus, Starchmakers are to make use of square or oblong boxes only, for boxing and draining green Starch, before it is dried in the stove, under the penalty of 10l. and shall give notice to the officers for the duties, when they box and dry their Starch: and not remove the Starch made, before it is weighed, and an account taken thereof, on pain of forfeiting 50l. Officers may search for Starch concealed, by virtue of a Justice's warrant, and seize the same, &c. A penalty is likewise inflicted on makers of hair-powder, perfumers, peruke-makers, barbers, &c. mixing any powder of alabaster, chalk, lime, &c with Starch-powder, or making hair-powder of any other materials than powder of Starch. And makers of powder for hair, are to make entries of their work-houses at the office of Excise, &c. &c.

STATED DAMAGES; See titles Damages; Bonds; Covenant, &c.

STATICKS, Statice, scientia ponderum.] Knowledge of weights and measures; or the art of balancing or weighing in scales. Merch. Dict.

STATIONARIUS: The same as Stagiarvus.

STATUARIUM, A tomb adorned with statues. Ingulph. 853.

STATUS DE MANERIO, The state of a manor: All the tenants within the manor, met in the court of their lord to do their customary suit, and enjoy their rights and usages, were termed omnis Status de manerio. Paroch. Antiq. 456.

STATUTE.

STATUTUM.] Has divers significations: First, it signifies an act of Parliament; and Secondly, it is a short writing called a Statute-Merchant, or Statute-Staple, (see those titles,) which are in the nature of
bonds, &c. and called Statutes, as they are made according to the form expressly provided in certain statutes.

The Acts of Parliament, Statutes or Edicts, made by the King’s Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, compose the Leges Scriptae, the written laws of the kingdom. The earliest Statute of which any record exists is the statute of Gloster 6 Ed. I. which is entered on a Statute roll at the tower.—There are six of these rolls, the latest containing the Statutes of 12 Ed. IV. the previous Statutes of Merton, 20 Hen. III: Marlberge, 52 Hen. III., and Westminster the first, 3 Ed. I. are found in all printed collections, and in numerous antiquit manuscripts of the Statutes. All printed collections of the Statutes are preceded by Magna Carta, 9 Hen. III. as confirmed and entered on the Statute roll of 25 Ed. I. or the charter roll, 28 Ed. I. and that charter has now the force of a statute, and had such force, if not at the time of its being granted, certainly very soon after.

The mode of making these Statutes is stated under title Parliament, Div. VII.—To what is there said we may here only add, that the royal assent, when given, is indorsed upon the several acts. That till the reign of Rich. III. all the Statutes were either in French or Latin. And that by stat. 33 Geo. 3. c. 13. it is enacted, that when the operation of an act of Parliament is not directed to commence from any time specified within it, the clerk of the parliaments shall indorse upon it the day upon which it receives the royal assent: (and which, since this act, is added, in the printed Statutes immediately after the title;) And that day shall be the date of its commencement. This Statute has obviated much inconvenience (not to say injustice) which arose from the former maxim, that an act of Parliament operated from the first day of the session; the whole session, like the whole term, being considered as one day; and thus many Statutes had the force of ex post facto laws.

The method of citing these acts of Parliament is various. Many of our antient Statutes are called after the name of the place where the Parliament was held that made them; as the statutes of Merton and Marlberge (Marlborough), of Westminster, Gloucester, and Wincheester. Others are denominated entirely from their subject; as the Statutes of Wales and Ireland, the Articuli Cleri, and the Praeogativa Regis. Some are distinguished by their initial words, a method of citing very antient: As the Statute of Quia Emptores, and that of Circumspecte Agatis. But the most usual method of citing them, especially since the time of Edward II. is by naming the year of the King’s reign, in which the statute was made, together with the chapter, or particular act, according to the numeral order, as, 9 Geo. 2. c. 4. For all the acts of one session of Parliament taken together make properly but one statute: And therefore when two sessions have been held in one year, we usually mention stat. 1. or stat. 2. Thus the Bill of Rights is cited, as 1 W. & M. stat. 2. c. 2; signifying that it is the second chapter or act, of the second statute, (or the laws made in the second session of Parliament,) in the first year of King William and Queen Mary.

These Statutes, or Acts of Parliament, were antiently promulgated by means of exemplifications thereof under the Great Seal; which were sent to the sheriffs of the several counties, with writs requiring
them to be published in such places of the county as the sheriffs thought fit. Writs of this nature appear annexed to the statutes on the Statute Rolls in the Tower from 6 Edw. I. down to the reign of Henry V. Not very long after that time printing came into use, and then the Statutes of each session were printed at the end of the session, and thus made known to the public; though proclamations were not entirely superseded in particular instances till a much later date. See the stat. 25 Hen. 8. c. 22. The earliest sessional publication of statutes was that of the acts passed in the first and only Parliament of Richard III. From that time until the year 1796 these sessional publications were the only mode of promulgation adopted; and these were not generally obtainable, except by private purchase, the delivery of them being confined to about 1100 copies (issued at the public cost) to the members of each house of Parliament, the Privy Council and some great officers of state. In consequence of several reports made by committees of the House of Commons specially appointed to consider of the promulgation of the statutes, 5500 copies are now distributed throughout the United Kingdom of Great Britain and Ireland, to the Houses of Parliament, Great Officers and departments of State, Public Libraries, Courts of Justice, Sheriffs, Municipal Magistrates; and Clerks of the Peace.

We are now to consider,

I. The different Kinds of Statutes.

II. Some general Rules with regard to their Construction.

I. Statutes are either general or special, public or private. A general or public act is an universal rule, that regards the whole community: And of this the Courts of Law are bound to take notice judicially and ex officio; without the statute being particularly pleaded, or formally set forth by the party who claims an advantage under it. Special or private acts are rather exceptions than rules, being those which only operate upon particular persons, and private concerns: And of these (which are not promulged with the same notoriety as the former) the Judges are not bound to take notice, unless they be formally shewn and pleaded. Thus, to shew the distinction, the Statute 13 Eliz. c. 10. to prevent spiritual persons from making leases for longer terms than twenty-one years, or three lives, is a public act; it being a rule prescribed to the whole body of spiritual persons in the nation; but an act to enable the bishop of Chester to make a lease to A. B. for sixty years, is an exception to this rule; it concerns only the parties and the bishop’s successors; and is therefore a private act. 1 Comm. Introd. § 3. p. 85, 86.

Some Statutes (says another authority) are general, and some are special: And they are called general from the genus, and special from the species; as for instance: The whole body of the spirituality is the genus, but a bishop, dean, and chapter, &c. are the species: Therefore Statutes which concern all the clergy, are general laws; but those which concern bishops only are special. 4 Rep. 76. The Statute 21 H. 8. c. 13. which makes the acceptance of a second living by clergymen, an avoidance of the first, is a general law, because it concerns all spiritual persons.

All Statutes concerning mysteries and trades in general, are general or public acts; though an act which relates to one particular trade
is a private Statute. Dyer 75. A Statute which concerns the King is a public act; and yet the stat. 23 H. 8. concerning sheriffs, &c. is a private act. Plowd. 38: Dyer 119.—It is a rule in Law, that the Courts at Westminster ought to take notice in a general Statute, without pleading it; but they are not bound to take notice of particular or private Statutes unless they are pleaded. 1 Inst. 98.

All difficulties respecting the distinction of modern Statutes, as public or private, are prevented by regulations of both houses of Parliament, under which the Statutes are at present classed in three series: 1. Public general acts: 2. Local and personal acts to be judicially noticed: 3. Local and personal acts not printed. The first of these are, in the largest sense of the word Public Acts. The nature of those in the second series is defined by the clauses respectively annexed to them. Road acts and others of an extensive nature are made public acts by a clause in each act enacting, “That this act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others without being specially pleaded.” Inclosure Acts, Estate Acts, and such others the persons concerned wherein choose to be at the expense of printing them, have a clause annexed to each act, “That this act shall be printed by the printer to the King’s Most Excellent Majesty, and a copy thereof, so printed, shall be admitted as evidence thereof by all Judges, Justices, and others.” These may be called Quasi-public acts. The acts classed in the 3d series are strictly Private: being either Naturalization acts, Divorce acts, &c. or, though relating to inclosures or estates, not having the clause last quoted annexed to them.

Statutes are also either declaratory of the Common Law, or remedial of some defects therein; or to speak more strictly, they are either declaratory of the old law, or introductory of a new law. Remedial Statutes being generally mentioned in contradistinction to penal Statutes. Declaratory, where the old custom of the kingdom is almost fallen into disuse or become disputable; in which case the Parliament has thought proper, in perpetuum rei testimonium, and for avoiding all doubts and difficulties, to declare what the Common Law is and ever hath been. Thus the Statute of treasons, 25 Edw. 3. st. 5. c. 2. doth not make any new species of treason; but only for the benefit of the subject, declares and enumerates those several kinds of offence, which before were treason at the Common Law. Remedial, or introductory, Statutes, are those which are made to supply defects, and abridge such superfluities in the Common Law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) Judges, or from any other cause whatsoever. And this being done, either by enlarging the Common Law where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, hath occasioned another subordinate division of these remedial introductory acts of Parliament, into Enlarging and Restraining Statutes. To instance again in the case of treason. Clipping the current coin of the kingdom was an offence not sufficiently guarded against by the Common Law; therefore it was thought expedient by stat. 5 Eliz. c. 11. to make it high treason, which it was not at the Common Law: So that this was an enlarging Statute. At Common Law also Spiritual Corporations might lease out their estates for any term of years, till
prevented by the Statute 13 Eliz. c. 10. before mentioned: This was therefore a restraining Statute. 1 Comm. 86, 87.

It is remarked by Mr. Christian, that the stat. 5 Eliz. c. 11. above referred to, hardly corresponds with the general notion either of a remedial, or an enlarging Statute. In ordinary legal language, remedial Statutes are (as has been already noticed) contradistinguished to penal Statutes. An enlarging or an enabling Statute is one which increases, not restrains, the power of action: As stat. 32 H. 8. c. 28. which gave bishops and all other sole ecclesiastical corporations, except parsons and vicars, a power of making leases which they did not possess before, is always called an enabling Statute. The stat. 13 Eliz. c. 10. which afterwards limited that power, is, on the contrary, styled a restraining or disabling Statute. 1 Comm. 87, n. See also 2 Comm. c. 20: and this Dictionary, title Lease II.

Statutes may also be considered as permanent or temporary. Of the former sort are such as are passed for the establishing of general regulations of Law, or for the imposing such taxes as are in their nature intended to be permanent, being applicable to the payment of permanent national burdens. Of the latter are the annual acts for regulating the army, for granting duties on malt and pensions, for funding particular loans, &c. also such acts, the policy of which depends on temporary circumstances, as the duration of war, &c. or the utility of which may be at first uncertain, and which therefore are made for a time only in order that they may come under the frequent review of the Legislature, to be continued, and if necessary amended, until at last they are made permanent or perpetual. To secure a regularity in the continuance of those temporary acts a committee is appointed at the commencement of every session of Parliament who report the state of all Expiring Laws, and on such report these laws are continued and amended, or suffered to expire, as the nature of their purposes requires.

II. The rules to be observed with regard to the construction of Statutes are principally these which follow:

1. There are three points to be considered in the construction of all remedial Statutes; the old law, the mischief, and the remedy: that is how the Common Law stood at the making of the act; what the mischief was for which the Common Law did not provide; and what remedy the Parliament hath provided to cure this mischief. And it is the business of the Judges so to construe the act, as to suppress the mischief and advance the remedy. 3 Rep. 7: Co. Litt. 11. 42. Let us instance again in the same restraining Statute, 13 Eliz. c. 10: By the Common Law, ecclesiastical corporations might let as long leases as they thought proper: the mischief was, that they let long and unreasonable leases, to the impoverishment of their successors: The remedy applied by the Statute was, by making void all leases by ecclesiastical bodies, for longer terms than three lives or 21 years. Now in the construction of this Statute it is held, that leases though for a longer term, if made by a bishop, are not void during the bishop's continuance in his see; or if made by a dean and chapter, they are not void during the continuance of the dean; for the act was made for the benefit and protection of the successor. Co. Litt. 45: 3 Rep. 60: 10 Rep. 58. The mischief is therefore sufficiently suppressed by vacating them after the determination of the
interest of the grantors; but the leases, during the continuance of
that interest, being not within the mischief, are not within the re-
medy. 1 Comm. 87.

The construction of Statutes, though relating to matters of an ec-
clesiastical nature, belongs to the superior courts of common law. 5
East's Rep. 345.

2. A Statute, which treats of things or persons of an inferior rank,
cannot, by any general words, be extended to those of a superior. So
a Statute, treating of "deans, prebendaries, parsons, vicars, and
others having spiritual promotion," is held not to extend to bishops,
though they have spiritual promotion; deans being the highest per-
sons named, and bishops being of a still higher order. 2 Rep. 46.

3. Penal Statutes must be construed strictly. Thus the Statute
1 Edw. 6. c. 12. having enacted that those who are convicted of
stealing horses should not have the benefit of clergy, the judges
conceived that this did not extend to him that should steal but
one horse, and therefore procured a new act for that purpose in
the following year, stat. 2 & 3 Ed. 6. c. 33: Bac. Elem. c. 12. Though
Lord Hale states the true reason of the difficulty to have arisen from
the circumstance of a doubt, as to the benefit of Clergy attaching
where only one horse was stolen, on account of the words in the old
stat. 37 H. 8. c. 8. respecting stealing a horse. 2 H. P. C. 365. To
mention a more modern and more applicable instance; by the Statute
14 Geo. 2. c. 6. stealing sheep, or other cattle, was made felony with-
out benefit of clergy. But these general words, "or other cattle,"
being looked upon as much too loose to create a capital offence, the
act was held to extend to nothing but mere sheep. And therefore, in
the next sessions, it was found necessary to make another Statute
(15 Geo. 2. c. 34.) extending the former to bulls, cows, oxen, steers,
bullocks, heifers, calves, and lambs, by name.

4. Statutes against frauds are to be liberally and beneficially ex-
pounded. These are generally called remedial Statutes. And it is a
fundamental rule of construction, that penal statutes shall be con-
strued strictly, and these remedial statutes liberally. See 1 Comm. 88,
& n. This may seem a contradiction to the last rule, most Statutes
against frauds being in their consequences penal. But this difference
is here to be taken; where the Statute acts upon the offender, and in-
licts a penalty, as the pillory or a fine, it is then to be taken strictly;
but when the Statute acts upon the offence, by setting aside the
fraudulent transaction, here it is to be construed liberally. Upon this
footing, the stat. 13 Eliz. c. 5. which avoids all gifts of goods, &c.
made to defraud creditors and others, was held to extend, by the ge-
neral words, to a gift made to defraud the Queen of a forfeiture. 3
Refi. 82. It has also been held, that the same words of the same Sta-
tute will bear different determinations, according to the nature of the
suit or prosecution instituted upon them. For example: the stat. 9
Ann. c. 14. against gaming, enacts, that if any person shall lose at any
one time or sitting 10l. and shall pay it to the winner, he may recover
it back within three months; and if the loser does not within that
time, any other person may sue for it, and treble the value besides:
In a case where an action was brought to recover back 14 guineas
which had been won and paid after a continuance at play, except an
interruption during dinner; the Court held the Statute was remedial,
as far as it prevented the effects of gaming, without inflicting a pe-
yalty; and therefore, in this action, they considered it one time or sitting: But they said, if an action had been brought by a common in-
former for the penalty, they would have construed it strictly, in faviour of the defendant, and would have held that the money had been lost at two sittings. 2 Black. Refi. 1226: 1 Comm. 88, 89, & n.
5. One part of a Statute must be so construed by another, that the whole may, if possible, stand; ut res magis valeat, quam percât. As if land be vested in the King and his heirs by act of Parliament, saving the right of A.; and A. has at that time a lease of it for three years: Here A. shall hold it for his term of three years, and afterwards it shall go to the King. For this interpretation furnishes matter for every clause of the Statute to work and operate upon. But, 6, A saving, totally repugnant to the body of the act, is void. If, therefore, an act of Parliament vests land in the King and his heirs, saving the right of all persons whatsoever; or vests the land of A. in the King, saving the right of A.: In either of these cases the saving is totally repugnant to the body of the Statute, and (if good) would render the Statute of no effect or operation; and therefore the saving is void, and the land vests absolutely in the King. 1 Refi. 47: 1 Comm. 89.
7. Where the Common Law and a Statute differ, the Common Law gives place to the Statute; and an old Statute gives place to a new one. And this upon a general principle of universal law, Leges posteriores friores contraries abrogant. But this is to be understood only when the latter Statute is couched in negative terms, or where its matter is so clearly repugnant that it necessarily implies a negative. As if a former act says, that a juror upon such a trial shall have 20 pounds a-year; and a new Statute afterwards enacts that he shall have 20 marks; here the latter Statute, though it does not express, yet necessarily implies a negative, and virtually repeals the former. For if 20 marks be made qualification sufficient, the former Statute which requires 20 pounds is at an end. Jenk. Cent. 2. 73. But if both acts be merely affirmative, and the substance such that both may stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy. If, by a former law, an offence be indictable at the quarter sessions, and the latter law makes the of- fense indictable at the assises; here the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction, and the of- fender may be prosecuted at either; unless the new Statute subjoins express negative words, as, that the offence shall be indictable at the Assises, and not elsewhere. 11 Refi. 63: 1 Comm. 89, 90.
8. If a Statute that repeals another, is itself repealed afterwards, the first Statute is hereby revived, without any formal words for that pur- pose. So when the Statutes of 26 H. 8. c. 1: 35 Hen. 8. c. 3, declaring the King to be the supreme head of the church, were repealed by a Statute, 1 & 2 P. & M. and this latter Statute was afterwards repeal- ed by an act of 1 Eliz. there needed not any express words of revival in Queen Elizabeth's Statute, but these acts of King Henry were im- pliedly and virtually revived. 4 Inst. 325: 1 Comm. 90.
When a Statute professes to repeal absolutely a prior law, and substitutes other provisions on the same subject, which are limited to continue only till a certain time, the prior law does not revive after the repealing Statute is spent, unless the intention of the Legislat ure to that effect be expressed. 3 East's Refi. K. B. 205.
A Statute introductive of a new qualification, or additional condi-
tion, respecting any subject, though penned in the affirmative, repeals a former less extensive or contrary Statute concerning the same matter. 9 East's Rep. 44.

A contract declared by Statute to be illegal is not made good by a subsequent repeal of the Statute. 1 H. Blackst. 65.

9. Acts of Parliament derogatory from the power of subsequent Parliaments bind not. So the Statute 11 Hen. 7. c. 1, which directs, that no person for assisting a King de facto shall be attainted of treason by act of Parliament or otherwise, is held to be good only as to common prosecutions for high treason; but will not restrain or clog any parliamentary attainder. 4 Inst. 43. Because the Legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superior upon earth, which the prior Legislature must have been, if its ordinances could bind a subsequent Parliament. 1 Comm. 90.

Statutes against the power of subsequent Parliaments are not binding; notwithstanding the Statute 42 Ed. 3. c. 3. declares that any Statute made against Magna Charta shall be void: and this is evident, seeing many parts of Magna Charta have been repealed and altered by subsequent acts. Read. on Stat. Vol. 4. pt. 340. And the law has been mistaken in this point; for the Statutes which intervene between the 9 Hen. 3. and 42 E. 3. are not repealed, though they vary from, and are contrary to Magna Charta. Jenk. Cent. 2.

10. Lastly, Acts of Parliament that are impossible to be performed are of no validity: and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. Blackstone lays down the rule with these restrictions; though he allows it is generally laid down more largely, that acts of Parliament contrary to reason are void. But if the Parliament will positively enact a thing to be done which is unreasonable, I know of no power (says the Commentator) in the ordinary forms of the constitution, that is vested with authority to control it: and the examples usually alleged in support of this sense of the rule do none of them prove, that, where the main object of a Statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the Legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the Parliament, and therefore they are at liberty to expound the Statute by equity, and only quoad hoc disregard it; [or, to state it perhaps more correctly, it will not be presumed that any construction can be agreeable to the intention of the Legislature, the consequences of which are unreasonable.] Thus, if an act of Parliament gives a man power to try all causes, that arise within his manor of Dales yet if a cause should arise in which he himself is party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel. 8 Rep. 118. But, if we could conceive it possible for the Parliament to enact, that he should try as well his own causes as those of other persons, there is no court that has power to defeat the intent of the Legislature, when couched in such evident and express words, as leave no doubt whether it was the intent of the Legislature or no. 1 Comm. 91, and n.
The following general notes may assist the student in his further researches on this subject.

It is the general rule, that to Statutes enacted in Parliament, there must be the assent of the King, Lords, and Commons, without which there can be no good act of Parliament; but there are many acts in force, though these three assents are not mentioned therein, as Dominus Rex Statuit in Parlimento, and Dominus Rex in Parlimento suo Statuta edit, and de communi concilio statuit, &c. Plowd. 97: 2 Bultst. 186. And Sir Edw. Coke says, that several Statutes are penned like charters in the King’s name only: though they were made by lawful authority. 4 Inst. 25. Before the invention of printing, all Statutes were proclaimed by the sheriff in every county; by virtue of the King’s writ. 2 Inst. 526. 644.

Statutes continue in force although the records of them are destroyed, by the injury of time, &c. 2 Inst. 587.

Statutes consist of two parts, the words, and the sense; and it is the office of an expeditor, to put such a sense upon the words of the Statute, as is agreeable to equity and right reason: Equity must necessarily take place in the exposition of Statutes; but explanatory acts are to be construed according to the words, and not by any manner of intendment; for it is incongruous for an explanation to be explained. Plowd. 363. 465: Cro. Car. 23.

The preamble of a Statute, which is the beginning thereof, going before, is, as it were, a key to the knowledge of it, and to open the intent of the makers of the act; it shall be deemed true, and therefore good arguments may be drawn from the same. 1 Inst. 11. It is the most natural and genuine exposition of a Statute, to construe one part by another part of the same Statute, for that best expresses the meaning of the makers: the words of an act of Parliament are to be taken in a lawful and rightful sense; and though, as has been already said, the construction of Statutes in general must be made in suppression of the mischief, and for the advancement of the remedy, intended by the Statute; but so that no innocent person by a literal construction shall receive any damage. 1 Inst. 24. 381.

The best way to expound a Statute, is to consider what answer the lawgivers would probably have given to the question made, if proposed to them. Plowd. 465: 3 Nel. Abr. 245.

Where a Statute gives a remedy for any thing, it shall be presumed there was no remedy before at common law: And the rules to construe acts of Parliament are different from the strict rules of the common law; though, in the construction of a Statute, the reason of the common law gives great light. Raym. 191. 355: 2 Inst. 301. If an act of Parliament is dubious, long usage may be good to expound it by; and the meaning of things spoken and written must be as hath been constantly received; but where usage is against the obvious meaning of a Statute, by the vulgar and common acceptation of words, then it is rather an oppression than an exposition of the Statute. Vaugh. 169, 170. An election committee refused to admit evidence of usage to explain the words of a stamp act; on the question whether deeds were valid, which conveyed several freeholds to several voters, which had only one stamp. 3 Lud. 177.

A Statute which alters the common law, shall not be strained beyond the words, except in cases of public utility, where the end and design of the act appears to be larger than the words themselves.
Relative words in any Statute, may make a thing pass as well as if particularly expressed; and cases of the same nature shall be within the same remedy. Raym. 54.

Such Statutes as are beneficial to the people, shall be expounded largely, and not with restriction. Style 302. The exposition of Statutes concerning the ecclesiastical courts, belongs to the common law courts: And a Statute made in imitation of the common law, is to be expounded by it. Hob. 83. 97. The affirmative words of Statutes do not change the common law, without negative words added therein. Thus the Statute of wills, being in the affirmative, doth not take away the custom to devise land in places where it existed before the Statute. Jenk. Cent. 212; Dyer 155: 1 Inst. 111. If a Statute be made only in affirmation of the antient common law, and doth not enact any thing new, but what was before provided for, it is nevertheless a Statute, and may be pleaded; but the defendant hath a plea at common law. Style's Reg. 301. An act of Parliament in affirmation of the common law, extends to all times after, though it mentions only to give remedy for the present; and where a thing is granted by Statute, all necessary incidents are granted with it. 1 Inst. 235.

Wherever a Statute gives or provides a thing, the common law supplies all manner of requisites, Hard. 62. Every Statute made against an injury, gives a remedy by action, expressly or implicitly. 2 Inst. 55. 74. And besides an action upon the Statute, as the subject's private remedy, the offender may be punished for contempt at the King's suit, by fine, &c. 2 Co. Inst. 131. 163.

Statutes made for the public good are to be expounded so as to attain their end. 1 Strange 253. 258. Keble's edition of the Statutes, and Rastal's differed, and they who were for adhering to Keble, proved they had examined him with the Parliament-roll. The Chief Justice ruled it was enough, and Keble was read. 1 Str. 446. Where an act of Parliament only gives a remedy to the party grieved, it shall not be considered as a penal Statute. Wilson, par. 1. fol. 412.

Statute of Agreement between the King, Lords, and Commons, in Parliament. 51 Hen. 3.

Statute Merchant, A Bond of record, acknowledged before the Clerk of the Statutes-Merchant, and Lord Mayor of the city of London, or two merchants assigned for that purpose; and before the mayors of other cities and towns, or 'the bailiff of any borough, &c.; sealed with the seal of the debtor and the King; upon condition that, if the obligor pays not the debt at the day, execution may be awarded against his body, lands, and goods; and the obligee shall hold the lands to him, his heirs and assigns, till the debt is levied. Terms de Ley.

Estates by Statute-Merchant and Statute-Staple, are classed by Blackstone among the species of estates defeasible on condition subsequent; and are said to be very nearly related to the vivum vadium, or estate held till the profits thereof shall discharge a debt liquidated or ascertained: For both the Statute-Merchant and Statute-Staple are securities for money; the one entered into before the chief magistrate of some trading town, pursuant to the Statute 13 Edw. 1. stat. 3. de mercatoribus, and thence called a Statute-Merchant; the other pursuant to the Statute 27 Edw. 3. c. 9, before the Mayor of the Staple, that is to say the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns: from whence this security is called a Statute-Sta-
ple. They are both securities for debts acknowledged to be due; and originally permitted only among traders, for the benefit of commerce: whereby not only the body of the debtor may be imprisoned, and his goods seized in satisfaction of the debt, but also his lands may be delivered to the creditor, till out of the rents and profits of them the debt may be satisfied: And, during such time as the creditor so holds the lands, he is tenant by Statute-Merchant or Statute-Staple. There is also a similar security, the recognizance, in the nature of a Statute-Staple, acknowledged before either of the chief Justices, or (out of term) before their substitutes, the mayor of the Staple at Westminster, and the Recorder of London; whereby the benefit of this mercantile transaction is extended to all the King's subjects in general, by virtue of the Statute 23 Hen. 8. c. 6. amended by stat. 8 Geo. 1. c. 25; which direct such recognizances to be enrolled and certified into Chancery. But these, by the Statute of Frauds, 29 Car. 2. c. 3. are only binding upon the lands in the hands of bona fide purchasers, from the day of the enrolment, which is ordered to be marked on the record. 2 Comm. c. 10. p. 160. See further, titles Recognizance; Execution.

These estates, though sometimes referred to in argument, seem now nearly unknown in practice; but as the law relating to them is in force, and as it may serve to elucidate other subjects by analogy, the following information on the subject has been preserved, as useful to the Student, if not to the Practitioner.

The Statute of Acton Burnel, 11 Ed. 1. and Stat. de Mercatoribus, 13 Ed. 1. stat. 3. enact, that the merchant shall cause his debtor to appear before the mayor of the city of London, or other city or town, and there acknowledge the debt, &c. by recognizance, which is to be enrolled; the roll whereof must be double, one part to remain with the mayor, and the other with the clerk appointed by the King; and then one of the clerks is to write the obligation, which shall be sealed with the debtor's seal, and that of the King, &c.

By these Statutes, if the debt be not paid at the day upon the merchant's account, the mayor is to cause the debtor to be imprisoned, if to be found, and in prison to remain until he hath agreed the debt; and if the debtor cannot be found, the mayor shall send the recognizance into the Chancery, from whence a writ shall issue to the sheriff of the county where the debtor is, to arrest his body, and keep him in prison till he agree the debt; and, within a quarter of a year, his lands and goods shall be delivered to him to pay the debt; but if the debtor do not satisfy the debt within that time, all his lands and goods shall be delivered to the merchant by a reasonable extent, to hold until the debt is levied thereby; and in the mean time he shall remain in prison; but when the debt is satisfied, the body of the debtor is to be delivered, together with his lands. If the sheriff return a non est inventus, &c. the merchant may have writs to all the sheriffs where he hath any land; and they shall deliver all the goods and lands of the debtor by extent; and the merchant shall be allowed his damage, and all reasonable costs, &c.

All the lands in the hands of the debtor, at the time of the recognizance acknowledged, are chargeable; (but see stat. 29 C. 2. c. 3. before referred to;) though, after the debt is paid, they shall return to grantees, if they are granted away, as shall the rest to the debtor: The debtor or his sureties dying, the merchant shall not take the
body of the heir, &c. but shall have his lands until the debt is levied. If the debtor have sureties, they shall be proceeded against in like manner, as the debtor; but so long as the debt may be levied of the goods of the debtor, the sureties are to be without damage. Also the merchant shall, besides the payment of his debt, be satisfied for his stay and detainer from his business. In London, out of the commonly two merchants are to be chosen and sworn by this Statute, and the seal shall be opened before them, whereof one piece is to be delivered to the said merchants, and the other remain with the clerk; and before these merchants, &c. recognizances may be taken. A fee of 1d. per pound is allowed to the clerk for fixing the King's seal; and a seal is to be provided that shall serve for fairs, &c.; but the Statute extends not to Jews. Cro. Car. 440. 457.

Statutes-Merchant were contrived for the security of merchants only, to provide a speedy remedy to recover their debts; but at this day they are used by others who follow not merchandize, and are become one of the common assurances of the kingdom. Bridg. 21: Owen 82. And all obligations made to the King are of the nature of these Statutes-Merchant. 12 Rep. 2, 3.

Statute-Staple. A bond of record, acknowledged before the Mayor of the Staple, in the presence of all or one of the constables; to this end, says the Statute, there shall be a seal ordained, which shall be affixed to all obligations made on such recognizance acknowledged in the Staple: This seal of the Staple is the only seal the Statute requires to attest this contract; but it is no more under the power or disposal of the mayor, than that appointed by the Statute-Merchant; for though the Statute appoints him the custody of it, yet it is in such a manner, that he cannot affix it to any obligation without their consent, it being to remain in the mayor's hands, under the security of their own seals. 2 Rot. Abr. 466: Stat. 27 Edw. 3. c. 9. See title Statute-Merchant.

To understand a little of the original and constitution of the Staple, and the advantage the nation had by this establishment, we must observe that the place of residence, whither the merchants resorted with their Staple commodities, was antiently called Estaple, which signifies no more than mart or market: and this was formerly appointed out of the realm, as at Calais, Antwerp, &c. and other ports on the continent, which were nearest to us, and whither the merchants might with safety coast it. 4 Inst. 238.

But besides these Staple ports appointed abroad, there were others appointed at home: whither all the Staple commodities were carried in order to their exportation, such as London, Westminster, Hull, &c. This was found to be of great use and consequence to the Prince in particular, and to the interest and credit of the nation in general; for at these Staple ports were the King's customs easily collected, and were by the officers of the Staple, at two several payments, returned into the Exchequer; besides, at these Staples, all merchants' goods were carefully viewed and marked by the proper officers of the Staple; and this necessarily avoided the exportation of decayed goods, or ill-wrought manufactures, and consequently fixed a stamp of credit on the merchandizes exported, which, upon the view, always answered the expectation of the buyer. Malins's Lex Merc. 337, 338.

The Staple merchandizes, according to Lord Coke, are only wool, woolfells, leather, lead, and tin; others, butter, cheese, and cloths;
but, whatever they were, the mayor and constables had not only con-
usance of all contracts and debts relating to them, but they had like-
wise jurisdiction over the people, and all manner of things touching 
the Staple; this power was given them, lest the merchants should be 
diverted and drawn from their business and trade, by applying to the 
common law, and running through the tedious forms of it, for a de-
termination of their differences; and for the greater encouragement 
of merchants, that they might have all imaginable security in their 
contracts and dealings, and the most expeditious method of recover-
ing their debts, without going out of the bounds of the Staple. 4 Inst. 
238; Maline's Lex Mer. 337.

By this it appears, that this security was only designed for the 
merchants of the Staple and for debts only on the sale of merchan-
dizes brought thither; yet in time others began to apply it to their 
own ends, and the mayor and constable would take recognizances 
from strangers, surmising it was made for the payment of money for 
merchandizes brought to the Staple. To prevent this mischief, the 
Parliament, in 23 H. 8. reduced the Statute-Staple to its former 
channel, and laid a penalty of 40l. on the mayor and constables who 
should extend the benefit of the Statute to any but those of the Sta-
ple. But though the stat. 23 H. 8. c. 6. deprived them of this benefit, 
yet it framed the new sort of security known by the name of a recog-
nizance, in the nature of a Statute Staple; so called because this act 
limits and appoints the same process, execution, and advantage, in 
every particular, as is set down in the Statute-Staple. Co. Lit. 290.

A recognizance, therefore, in nature of a Statute-Staple, as the 
words of the act declare, is the same with the former, only acknow-
ledged under other persons; for, as the Statute runs, the chief jus-
tice of the king's bench and common pleas, or, in their absence, out 
of term, the mayor of the Staple, at Westminster, and the recorder of 
London, jointly together, shall have power to take recognizances for 
payment of debt in the form set down in the Statute. In this, as in 
the former cases, the King appoints a seal to attest the contract. Co. 

Debt lies as well upon a Statute-Staple as upon a bond: And a 
Statute acknowledged on lands is a present duty, and ought to be satis-
fied before an obligation; a debt due on an obligation being but a 
chose in action, and recoverable by law, and not a present duty by 
law, as a debt upon a Statute, judgment, or recognizance is, upon 
which present execution is to be taken without farther suit. Cro. Eliz. 
355. 461. 494: 2 Lit. Abr. 536.

But a judgment in a court of record shall be preferred, in case of 
execution, before a Statute: Though if one acknowledge a Statute, 
and afterwards confess judgment, if the land be extended thereon, 
the cognissee shall have a seire facias to avoid the extent upon the 
judgment. It is otherwise as to goods, for there, he that comes first 
shall be first served. 6 Repl. 45: 1 Brownl. 57. The cognisor of a Sta-
tute grants his estate to the cognissee; by this the execution of the Sta-
tute will be suspended. 2 Cro. 424. But if the cognissee, before exe-
cution of a Statute, release to the cognisor all his right to the land; it 
will not be a discharge of the whole execution; for, notwithstanding, 
he may sue execution of his body and goods. 3 Sheff. Abr. 326. Upon 
a Statute-Staple, a Capias and extent of lands, goods, and chattels, are 
contained in one writ; but it is not so on a Statute-Merchant. Jenk.
Cent. 163. In Chancery, the proceedings on a Statute-Staple are in the petty-bag office; and Statutes-Staple are suable in the king's bench or common pleas, as well as in Chancery. Cro. Eliz. 208. Chancery will give relief against an infant in case of a Statute-Staple, though it is not extendible against him at law. 1 Lev. 198. On a Statute's being satisfied, it is to be vacated by entering satisfaction, &c. Statutes-Staple and Statutes-Merchant are to be entered within six months, or shall not be good against purchasers. Stat. 27 Eliz. c. 4. See stat. 16 & 17 Car. 2. c. 5. for preventing delays and extending Statutes.

He that is in possession of lands on a Statute-Merchant, or Staple, is called Tenant by Statute-Merchant, or Statute-Staple, during the time of his possession: And creditors shall have freehold in the lands of debtors, and recover by novel disseisin, if put out; but if tenant by Statute-Merchant or Statute-Staple hold over his term, he that hath right may sue out a Venire facias ad computand', or enter, as upon an elegit. Stat. 27 Ed. 3. c. 9.

Statutes of a Corporation; See Corporation.

Statuto Mercatorio, The antient writ for imprisoning him that had forfeited a statute-merchant bond, until the debt were satisfied: And of these writs, one was against lay persons, and another against persons ecclesiastical. Reg. Orig. 146. 148.

Statuto Stapule, The antient writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called Statute-staple. Reg. Orig. 151.

Statutum de Laborariis, An antient writ for the apprehending of such labourers as refused to work according to Statute. Reg. Judic. 27.

Statutum Sessionum, The Statute-sessions, a meeting, in every hundred, of constables and householders, by custom, for the ordering of servants, and debating of differences between the masters and servants, rating of servants' wages, &c. See stat. 5 Eliz. cap. 4.


Stealing; See Larceny; Robbery.

Stealing an Heiress; See title Marriage.

Steel; See Iron.

Steel-Bow Goods. Corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm: In consideration of which he becomes bound to return articles, equal in quantity and quality, at the expiration of the lease. Bell's Scotch Law Dict.

Storesman, Sax. A pilot.

Sterling, Sterlingum.] Was the epithet for silver money current within this kingdom, and took its name from this; that there was a pure coin stamped first in England by the Easterlings, or merchants of East Germany, by the command of King John; and Hoveden writes it Easterling. Instead of the pounds Sterling, we now say so many pounds of lawful English money; but the word is not wholly disused, for though we ordinarily say lawful money of England, yet in the mint they call it Sterling money; and when it was found convenient, in the fabrication of monies, to have a certain quantity of baser metal to be mixed with the pure gold and silver, the word Sterling was then introduced; and it has ever since been used to denote the
certain proportion or degree of fineness, which ought to be retained in the respective coins. Lowndes’s Essay on Coins, 14. See title Coin.

STEWARD, The King’s steward within the King’s own proper lands. Scotch Dict.

STEWARD, Seneschallis; compounded of the Sax. Steada, i.e. Room or Stead, and Weard, a ward or keeper; i.e. a man appointed in my place or stead.] The term hath many applications, but always denotes an officer of chief account within his jurisdiction. The greatest of these officers is, the Lord High Steward of England, who antiently had the supervising and regulating, next under the King, the administration of justice, and all other affairs of the realm, whether civil or military; and the office was hereditary, belonging to the Earls of Leicester, till forfeited to King Henry III. But the power of this officer being very great of late, the office of High Steward of England hath not been granted to any one, only pro hac vice, either for the trial of a peer of the realm on an indictment for a capital offence; or for the determination of the pretensions of those who claim to hold by grand seigniety, to do certain honourable services to the King at his coronation, &c. for both which purposes he holds a Court, and proceeds according to the laws and customs of England; and he to whom this office is granted must be of nobility and a lord of Parliament. 4 Inst. 58, 59; Crompt. Jur. 34: 13 Hen. 8. 11: 2 Hawk. P. C. c. 2. See titles Peers of the Realm IV.: Parliament. Of the nine great officers of the crown, the Lord High Steward is the first; but when the special business, for which he is appointed, is once ended, his commission expires. The first Lord High Steward, that was created for the solemnizing of a coronation, was Thomas, second son of Henry IV.; and the first Lord Steward, for the trial of a peer was Edward Earl of Devon, on the arraignment of John Holderness, Earl of Huntingdon, in the same reign. Lex Constitution. 170.

There is a Lord Steward of the household mentioned stat. 24 H. 8. c. 13. whose name was changed to that of Great Master of the Household, anno 32 Hen. 8. But this statute was repealed by 1 Mar. c. 4. and the office of Lord Steward of the household revived. He is the chief officer of the King’s Court, to whom is committed the care of the King’s house: He has authority over all officers and servants of the household, except those belonging to the chapel, chamber, and stable; and the palace royal is exempted from all jurisdiction of any court, but only of the Lord Steward, or, in his absence, of the treasurer and comptroller of the household, with the Steward of the Marshalsea; who, by virtue of their offices, without any commissioner, hear and determine all treasons, murders, felonies, breaches of the peace, &c. committed in the King’s palace: Besides the treasurer and comptroller, the Lord Steward hath under him a cofferer, several clerks of the Green Cloth, &c. He attends the King’s person at the beginning of Parliament; and is a white staff officer, which he breaks over the hearse on the death of the King, and thereby discharges all officers under him. Of this officer’s antient power, read Fleta, lib. 2; and F. N. B. 241. See titles Court of Marshalsea; Court of the Lord Steward.

The Steward of Scotland was an officer of the highest dignity and trust: He administered the crown revenues, superintended the affairs of the household, and possessed the privilege of holding the first place in the army, next to the King, in the day of battle. From this office
the Royal house of Stuart took its name; on their advancement to the throne this office was sunk, and was never after revived.

In the liberty Westminster, an officer is chosen and appointed, called High Steward, and there is a deputy Steward of Westminster. See title Police. The word Steward is of so great diversity, that in most corporations, and all houses of honour, an officer is found of this name and authority. So there are Stewards of Copyhold Courts, Manors, &c. See the several titles.


STICA, a brass Saxon coin of the value of half a farthing, four of them making a helfing.

STICK OF EELS, A quantity or measure of twenty-five. A bind of Eels contains ten Sticks, and each Stick twenty-five Eels. Stat. of Weights and Measures.

STICKLER, An inferior officer who cuts wood within the King’s parks of Clarendon. Rot. Parl. 1 H. 6.

STILE; See Style.

STILYARD, or STEELYARD; Otherwise called the Style-house, in the parish of Allhallows in London, was by authority of Parliament assigned to the merchants of the Hanse; and to Almaine or Easterling merchants, to have their abode in for ever, with other tenements, rendering to the mayor of London a certain yearly rent. Stat. 14 Ed. 4. In some records it is called Gildhalda Teutonicorum; and it was at first denominated Stilyard, of a broad place or court where Steel was sold, upon which that house was founded. See stats. 19 H. 7. c. 32: 22 H. 8. c. 38: 1 Ed. 6. c. 13.

STINT, Common without. See title Common.

STIPEND, This term in Scotland is particularly applied to the provision made for the support of the clergy; it consists of payments in money and grain; and is more or less according to the extent of the parish and the state of the free tithes. See title Tithes.

STIPULA, Stubble left standing in the field after the corn is reaped and carried away. Cart. Antiq.

STIPULATION IN THE ADMIRALTY COURTS. The first process in these courts is frequently by arrest of the defendant’s person; when they take recognizances or Stipulation of certain fidejus-sors in the nature of bail, and, in case of default, may imprison both them and their principal. 3 Comm. 108. See title Admiral.


STIRPES, Distribution per; See title Executor V. 9.

STIRPES, Succession in; See titles Descent; Canon IV.

STOCK AND STOVEL, a forfeiture where any one is taken carrying stipites & pabulum out of the woods; for stoc signifies sticks, and Stovel pabulum. Antiq. Chart.

STOCK, or STOKE, Syllables added to the names of places, from the Sax. Socce, i.e. Stipes, Truncus; as Woodstock, Basingstoke, &c.

STOCK AND FAMILY. If lands were devised generally to a Stock or Family; it shall be understood of the heir principal of the house. — Hob. 33. See Tylwith; and titles Will; Descent.

STOCKJOBBERS, in Exchange Alley. All Stockjobbing not authorized by act of Parliament, or by charter, or used by obsolete charters, shall be void, and the undertakings are declared nuisances. Stat. Vol. VI.
6 Geo. 1. c. 18. All premiums to deliver or receive, accept or refuse any public stock, or share therein, and contracts in nature of wagers, puts and refusals relating to the value of the stock, shall be void; and the premiums shall be returned, or may be recovered by action, with double costs: and the persons entering into or executing any such contract, shall forfeit 500l. No money shall be given to compound any difference, for not delivering or transferring stock, or not performing contracts; but the whole money agreed is to be paid, and the stock transferred, on pain of 100l. Persons buying, on refusal, or neglect of the seller to transfer at the day, may buy the like quantity of stock, of any other person, and recover the damage of the first contractor: And contracts for sale of any stock, where contractors are not actually possessed of, or entitled unto the same, to be void; and the parties agreeing to sell, &c. incur a penalty of 500l. Brokers making agreements, &c. and acting contrary, are also liable to penalties. But this act not to hinder lending money on stocks, or contracts for re-delivering or transferring thereon, so as no premium be paid for the loan more than legal interest. Stat. 7 Geo. 2. c. 8; made perpetual by stat. 10 Geo. 2. c. 8.

Jobbing in omnium is within the statute, 7 Geo. 2. c. 8. 7 Term Rep. K. B. 630.

An agreement to invest or replace Stock at a certain time in consideration of money actually paid or advanced equivalent to the value of the Stock at the time of such payment or advance is valid; and not usurious, nor within the said statute. 7 Geo. 2. 8 East’s Rep. 304.

Stocks, or Public Funds; See titles National Debt; Taxes.

Stocks, ciphus.] A wooden engine to put the legs of offenders in, for the security of disorderly persons, and by way of punishment in divers cases ordained by statute, &c. And it is said that every vill within the precinct of a torn is indictable for not having a pair of stocks, and shall forfeit 5l. Kitch. 15. See title Drunkenness.

STOCKLAND (or STOKELAND) AND BONDLAND. In the manor of Wadhurst in Sussex, there are two sorts of copyhold estates, called Stokeland and Bondland, descendible by custom in several manors: As if a man be first admitted to Stockland, and afterwards to Bondland, and dies seised of both, his eldest son and heir shall inherit both estates; but if he be admitted first to Bondland, and after to the other, and of these dieth seised, his youngest son shall inherit: and Bondland held alone, descends to the youngest son. 2 Leou. 55.

STOLA, A garment or hood formerly worn by priests. Sometimes it was taken for the archiepiscopal pall. Eadmer, c. 188. Also a vestment which matrons wore. Cowell.

STOLEN GOODS; See titles Larceny; Restitution; Rewards.

STONE, A weight of 14 pounds, used for weighing of wool, &c. The stone of wool ought to weigh 14 pounds; but in some places, by custom, it is less, as 12 pounds and a half: A stone of wax is eight pounds; and in London the stone of beef is no more. 11 Hen. 7. c. 4: Rot. Parl. 17 Ed. 3. See tit. Weights and Measures.

STORES OF WAR; See Naval Stores.

STOTARIUS, He who had the care of the stud or breed of young horses. Leg. Alfred, c. 9.

STOW, Sax. A place; it is often joined to other words; as Godstow is a place dedicated to God.
STOWAGE, Money paid for a room where goods are laid. See Housage.

STRAITS, A narrow sea between two lands, or an arm of the sea. Also there is a narrow coarse cloth antiently so called. Stat. Antiq. 18 Hen. 6. c. 16.

STRAND, Sax. Any shore or bank of a sea or great river. Hence the street in the west suburbs of London, which lay next the shore or bank of the Thames, is called the Strand. An impunity from custom, and all impositions upon goods or vessels, by land or water, was usually expressed by Strand and stream. Mon. Angl. tom. 3. p. 4.

STRANDED Goods: See this Dictionary, titles Wreck; Insurance II. 1.

STRANGER, from the Fr. estranger, alienus.] Born out of the realm, or unknown: An Alien. In law it hath also a special signification, for him that is not privy to an act: As a stranger to a judgment, is he whom a judgment doth not affect; and in this sense it is directly contrary to party or privy. Old Nat. Br. 128. Strangers to deeds shall not take advantage of conditions of entry, &c. as parties and privies may; but they are not obliged to make their claims on a fine levied till five years; whereas privies, such as the heirs of the party that passed the fine are barred presently. 1 Inst. 214: 2 Inst. 516: 3 Petf. 79. Strangers have either a present or future right; or an apparent possibility of right, growing afterwards, &c. Wood's Inst. 245. See titles Privies; Fines; Judgments, &c.

STRAW; See Hay.

STRAY; See Estray.

STREAM-WORKS, A kind of works in the Stannaries, mentioned in stat. 27 H. 8. c. 23.

STREEMAN, Sax.] Robustus, vel potens vir. Leland, vol. 2. p. 188.

STREPTUS JUDICIALIS, The circumstances of noise and crowd, and other turbulent formalities at a process or trial in a public court of justice. And therefore our wise ancestors did in many cases provide, that right and justice should be done in a more private and quiet manner. Cowell. Paroch. Antiq. p. 344.


STRIKING in the King's superior courts of Justice, in Westminster Hall, or at the Assizes, whether blood be drawn or not; or even assaulting the Judge sitting in the court, by drawing a weapon, without any blow struck, is punishable with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels, and of the profits of the offender's lands during life. Staundf. P. C. 38: 3 Inst. 140, 141: 4 Comm. 123: And see title Rescue. Maliciously striking in the King's palace, wherein his royal person resides, whereby blood is drawn, is punishable by perpetual imprisonment, and fine at the King's pleasure; and also with loss of the offender's right hand, the solemn execution of which sentence is described at length in the stat. 33 A. 8. c. 12. This offence is triable in the court of the Lord Steward of the household; by a grand and petit jury, as at common law, taken out of the officers and sworn servants of the King's household. 4 Comm. 276. As to striking in Churches, see title Church. See also title Assault.

STRIP; See Estrefement.
STROND, Saxon. [Strand.]
STRUMPET, meretrix.] A whore, harlot, or courtesan: This word was heretofore used for an addition. Plac. apud Cestr. 6 Hen. 5.
STRYKE, The eighth part of a seam or quarter of corn, a Stryke or bushel. Cartular. Reading MS. 116.
STUD of Mares: A company of Mares kept for breeding of colts; from the Sax. stod-mare, i.e. equa ad fistum.
STURGEON. The King shall have sturgeon taken in the sea, or elsewhere within the realm, except in certain places privileged by the King. See title King; and stat. 17 E. 2. st. 1. c. 11.
STYLE appello.] To call, name, or intitle one; as, the style of the King of England is George the Third, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c.
There is an old and new style of the Calendar. See title Year.
SUB-DEACON, An antient officer in the church, made by the delivery of an empty platter and cup by the bishop, and of a pitcher, bason, and towel by the archdeacon: His office was to wait on the deacon with the linen on which the body, &c. was consecrated, and to receive and carry away the plate with the offerings at sacraments, the cup with the wine and water in it, &c. He is often mentioned by the monkish historians, and particularly in the Apostolical Canons, 42, 43.
SUBJECTS, subditi.] The members of the commonwealth under the King their head. Wood’s Inst. 22.
SUBINFEUDATION; See Feoffment; Was where the inferior lords, in imitation of their superiors, began to carve out and grant to others minuter estates than their own, to be held of themselves, and were so proceeding downwards, in infinitum, till stopped by various legislative provisions. See this Dict. title Manors; and also title Tenures.
SUBJUGALIS, Any beast carrying the yoke. Mat. Paris, 1249.
SUBLEGERIUS, from Sax. sybleger, incestus.] One who is guilty of incestuous whoredom.
SUB-MARSHAL, An officer in the Marshalsea, who is deputy to the chief Marshal of the King’s house, commonly called the Knight Marshal, and hath the custody of the prisoners there. He is otherwise termed Under Marshal. Comp. Jurisd. 104.
SUBMISSION to award; See title Award.
SUBNERVARE, To ham-string, by cutting the sinews of the legs and thighs: And it was an old custom in England, meretricae & impudicas mulieres subnervare.
SUBORNATION, subornatio.] A secret underhand preparing, instructing, or bringing in a false witness; and from hence subornation of perjury is the preparing or corrupt alluring to perjury. Subornation of witnesses we read of in stat. 32 H. 8. c. 9. See title Perjury.
SUBPÆNA, A writ whereby common persons are called into Chancery, in such cases where the common law hath provided no ordinary remedy; the name of which proceeds from the words there-in, which charge the party called to appear at the day and place assigned, sub pæna centum librarum &c. (under penalty of 100l.) West. ’Symb. par. 2: Comp. Jurisd. 33. The Subpæna is the leading process in the Courts of Equity. There are several of these writs in Chancery; as the Subpæna ad respondend', Subpæna ad replicand'. &c.
ad rejungend', Subpæna ad testificand' & ad audiend' judicium, &c. which writs are to be made out by the proper clerks of the Subpæna office. Subpænas to answer must be personally served by being left with the defendant, or at his house with one of the family, on affidavit whereof, if the defendant do not answer, attachment shall be had against him, &c. As to the origin of the writ of Subpæna in Chancery, see this Dict. title Equity: And as to stat. 4 & 5 Ann. c. 16: 5 Geo. 2. c. 25, see title Chancery.

"Subpoena ad testificandum" lies for the calling in of witnesses to testify in any cause, not only in Chancery, but in all other courts; and in that court, and in the Exchequer, it is made use of in law and equity. The two chief writs of Subpæna are to appear and to testify; and the latter issues out of the court where the issue is joined, upon which the evidence is to be given. 2 Litt. Abr. 536. As to which, see this Dict. title Evidence, Introd. Col. 2. and II. 2.

Subpæna duces tecum, A writ or process of the same kind with the Subpæna ad testificandum, including a clause of requisition, for the witness to bring with him and produce books and papers, &c. in his hands, belonging to, or wherein the parties are interested; or tending to elucidate the matter in question. 3 Comm. 382.

This writ is of compulsory obligation on a witness to produce papers thereby demanded which he has in his possession, and which he has no lawful or reasonable excuse for withholding; of the validity of which excuse the court and not the witness are to judge: And an action for damages lies against the party disobeying the writ. 9 East's Rep. 473.

Subreption; The obtaining a gift from the King by concealing what is true. Scotch Law Dict.

Subscription of witnesses; See titles Will; Evidence; Deed.

Subsequent condition; See title Condition.

Subsequent evidence; See titles Attaint; Decree; New trial; Review, Bill of.

Subsidy, subsidium. An aid, tax, or tribute granted to the King for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods.

History does not mention that the Saxon Kings had any subsidies after the manner of ours at present; but they had both levies of money and personal services towards the building and repairing of cities, castles, bridges, military expeditions, &c. which they called Burgbote, Brigbote, Herefare, Heregeld, &c. But when the Danes harassed the land, King Ethelred submitted to pay them for redemption of peace several great sums of money yearly. This was called Danegeld, for the levying of which every hide of land was taxed yearly at twelve pence, lands of the church only excepted, and thereupon it was after called, hydagium, and that name remained afterwards upon all taxes and subsidies imposed upon lands; but sometimes it was laid upon cattle, and then was termed hornegeld. The Normans called these sometimes taxes, sometimes tallages, otherwise auxilia & subsidia. The Conqueror had these taxes, and made a law for the manner of their levying; as appears in Emendationibus ejus, pag. 125. sect. Vol. munus & firmiter, &c. Many years after the Conquest they were levied otherwise than now, as every ninth lamb, every ninth fleece, and every ninth sheaf. See Stat. Antig. 14 E. 3. st. 1. c. 20. Of which you may see great variety in Rastall's Abridgment, titles Taxes; Tenths;
Fifteenths; Subsidies, &c. and 4 Inst. 26. 33. Whence we may gather there is no certain rate, but as the Parliament shall think fit. Subsidy is in our statutes sometimes confounded with customs. 11 H. 4. c. 7. Cowell. See this Dict. titles Taxes; Customs on Merchandize.

SUBSTITUTE, Substitutus.] One placed under another person to transact some business, &c. See Attorney; Militia.

Substitution, in the Scotch Law, is the term for the enumeration or designation of the heirs in a settlement of property.

SUBTRACTION OF CONJUGAL RIGHTS; See Marriage.

Subtraction of Legacies; See Legacy.

Subtraction of Rents and Services, &c. This happens, when any person, who owes any suit, duty, custom, rent or service to another, withdraws or neglects to perform or pay it, &c. See 3 Comm. c. 15: and this Dictionary, titles Rent; Distress, &c.

Subtraction of Tithes; See title Tithes.

SUBURBANI, Husbandmen. Monasticon, ii. 461.

Succession to the crown; See title King I.

Succession ab intestato; See Executor V. 8.

Succession to Goods and Chattels; Vide Successor.

Successor, Lat.] He that followeth or cometh in another's place. Sole corporations may take a fee-simple estate to them and their Successors; but not without the word Successors: And such a corporation cannot regularly take in succession goods and chattels; and therefore if a lease for a hundred years be made to a person and his successors, it hath been adjudged only an estate for life. Nor may a sole corporation bind the Successors. 4 Rep. 65: 1 Inst. 8. 46. 94: 4 Inst. 249. An aggregate corporation may have a fee-simple estate in Succession without the word Successors; and take goods and chattels in action or possession; and they shall go to the Successors.—Wood's Inst. 111. See further, titles Corporation; King.

SUCCISIONES ARBORUM, The cuttings and croppings of trees. Chart. 2 Hen. 5.

SUCKEN; The Sucken consists of the whole lands astricted to a mill; (i.e. the tenants of which are bound to grind there;) the possessors of these lands are termed the Suckeners. Scotch Law Dict. See title Thirlage.

SUFFERANCE, Tenant at Sufferance is he who holdeth over his term at first lawfully granted. Terms De Ley. A person is tenant at Sufferance, that continues after his estate is ended, and wrongfully holdeth against another; &c. 1 Inst. 57.

An estate at Sufferance, is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all. As if a man takes a lease for a year, and, after the year is expired, continues to hold the premises without any fresh leave from the owner of the estate. Or, if a man maketh a lease at will, and dies, the estate at will is thereby determined; but if the tenant continueth possession, he is tenant at Sufferance. Co. Litt. 57. But a lease at will being now considered as a lease from year to year, which cannot be vacated without half a year's notice to quit, the tenant cannot be ejected at the death of the lessor without half a year's notice from his heir. 2 Term Rep. 159. And it is also necessary in case of the death of the tenant, to give that notice to his personal representative. 3 Wils. 25.

No man can be tenant at Sufferance against the King, to whom no laches or neglect, in not entering and ousting the tenant, is ever imputed by law; and his tenant, so holding over, is considered as an ab-
solute intruder. 1 Inst. 57. But, in the case of a subject, this estate may be destroyed whenever the true owner shall make an actual entry on the lands and oust the tenant; for, before entry, he cannot maintain an action of trespass against the tenant by Sufferance as he might against a stranger; and the reason is, because the tenant being once in by a lawful title, the law (which presumes no wrong in any man) will suppose him to continue upon a title equally lawful, unless the owner of the land, by some public and avowed act, such as entry is, will declare his continuance to be tortious, or, in common language, wrongful. 1 Inst. 57; 2 Comm. c. 9, p. 150.

Thus stands the law with regard to tenants by Sufferance; and landlords are obliged in those cases, to make formal entries upon the lands, and recover possession by the legal process of ejectment: And at the utmost, by the common law, the tenant was bound to account for the profits of the land so by him detained. But now, by stat. 4 Geo. 2. c. 28. in case any tenant for life or years, or other person claiming under or by collusion with such tenant, shall wilfully hold over after the determination of the term, and demand made and notice in writing given by the landlord, or him to whom the remainder or reversion of the premises shall belong, for delivering the possession thereof; such person, so holding over or keeping the other out of possession, shall pay, for the time he detains the lands, at the rate of double their yearly value. And, by stat. 11 Geo. 2. c. 19. in case any tenant, having power to determine his lease, shall give notice of his intention to quit the premises, and shall not deliver up the possession at the time contained in such notice, he shall thenceforth pay double the former rent for such time as he continues in possession. See also stat. 6 Ann. c. 18. § 1. against holding over by guardians or trustees of infants, and by husbands seised in right of their wives, and by all others having particular estates determinable on any life or lives, by which they are considered as trespassers. These statutes have almost put an end to the practice of tenancy by Sufferance, unless with the tacit consent of the owner of the tenement. 2 Comm. c. 9. ad fin.

Where a tenant has a lease for a term certain, and holds over after the expiration of it, it is not necessary for the landlord to give him any notice to quit, in order to recover possession by ejectment. 1 Term Rep. 53. 162. But if the landlord afterwards receives rent, or does any act by which he proves his assent to the continuance of the tenant, this turns the estate at sufferance into a tenancy from year to year. The notice under stat. 4 Geo. 2. c. 28. may be given previous to the end of the term. Black. Rep. 1075. And it seems that it may also be given afterwards; though the double value can only be recovered from the delivery of the notice and demand of the possession. This notice by the landlord must be in writing; but that by the tenant, under stat. 11 Geo. 2. c. 19. may be parol. 3 Burr. 1603. The double value can only be recovered by action of debt; but the double rent may be recovered by distress or otherwise, like single rent. 1 Black. Rep. 535. No length of time is necessary to the validity of these notices, under the statutes, to entitle the landlord to double value or double rent. 2 Comm. c. 9. ad fin. in n.

SUFFERENTIA PACIS, A grant or sufferance of peace or truce. Claus. 16 Ed. 3.

SUFFRAGAN, Suffraganus, Chorepiscopus, Episcopi vicarius.] A titular bishop, ordained to aid and assist the bishop of the diocese
in his spiritual function; or one who supplieth the place instead of
the bishop. Some writers call these Suffragans by the name of sub-
sidiary bishops, whose number is limited by the stat. 26 H. 8. c. 14:
by which statute it was enacted, That it should be lawful for every
bishop, at his pleasure, to elect two honest and discreet spiritual per-
sons within his diocese, and to present them to the King, that he
might give to one of them such title, style, and dignity of such of the
fees in the said statute mentioned, as he should think fit: And that
every such person should be called Bishop Suffragan of the same
see, &c. This act sets forth at large for what places such Suffragans
were to be nominated by the King; and if any one exercise the juris-
diction of a Suffragan, without the appointment of the bishop of the
diocese, &c. he shall be guilty of a prevarication. See Kennet’s Paroch.
Antig. 639: and this Dictionary, title Bishops.

SUGAR, Is liable to certain duties of customs on its importation.
See Customs.

SUGGESTION, suggestio.] A surmise or representing of a thing:
by Magna Charta no person shall be put to his law on the Suggestion
of another, but by lawful witnesses. 9 H. 3. c. 28.—Suggestions upon
record are grounds to move for prohibitions to suits in the spiritual
courts, &c. See title Prohibition III. Though matters of record ought
not to be staid upon the bare suggestion of the party; there ought
to be an affidavit made of the matter suggested, to induce the court
to grant a rule for staying the proceedings upon the record, 2 Litt.
537. There are suggestions in replevin, for a returno habendo; which,
it is said, are not traversable; as they are for prohibitions to the spi-
ritual or admiralty courts. 1 Plowd. 76. Breaches of covenants and
deaths of persons must be suggested upon record, &c. Stat. 8 & 9 W.
3. c. 10. See titles Abatement; Amendment. Blackstone terms the pro-
ceeding by information, a prosecution by Suggestion. See title infor-
mation.

SUICIDE; See title Homicide III. 1.

SUIT, secta, Fr. suite, i. e. consequitio, sequela.] Signifies a follow-
ing another; but in divers senses. The first is a Suit in law, and is
divided into Suit real and personal; which is all one with action real
and personal. See titles Action; Chancery.—2. Suit of Court, an atten-
dance which the tenant owes to the court of his lord. 3. Suit covenant,
when a man hath covenanted, to do Suit in the lord’s court. 4. Suit
custom, where I and my ancestors owe Suit time out of mind. 5. Suit
is the following one in chase, as fresh suit: See title Hue and Cry.—
And this word is used for a petition made to the King, or any great
personage.

SUIT AND SERVICE. When the tenant had professed himself to
be the man of his superior or lord, the next consideration was con-
cerning the Service which, as such, he was bound to render for the
land he held. This, in pure, proper, and original feuds, was only two-
fold: To follow, or do Suit to, the lord in his courts in time of peace;
and in his armies or warlike retinue, when necessity called him to the
field. 2 Comm. 54. See title Tenures.

SUIT OF COURT, That is, Suit to the lord’s court, is that service
which the feudary tenant was bound to do at the lord’s court. At first
it was expressly mentioned in the grant how often these courts should
be held. This appears by Fleta, I. 2. c. 71. p. 14. Sometimes one or
more, but never exceeding three, in a year. Thorn mentions two,
viz. Michaelmas and Easter. But all the lord's tenants were not bound to attend his courts. But only those to whom their estates were granted upon that condition: Every man was, however, bound to attend the sheriff's turn twice in every year. See Tourn. And if the inheritance, by reason whereof the tenant was bound to attend only at one court, did descend to coheirs, he who had capitalem partem, was bound to attend the lord's court both for himself and all his coheirs. Cowell.

None to be distrained for Suit of Court, but they who are bound to it by charter or prescription. Joint-tenants and parceners shall make but one Suit. The remedy against the lord distraining for it, where it is not due, and against the tenant with-holding it where it is due. Stat. Marleb. 52 H. 3. c. 9. This is not taken away by stat. 12 Car. 2. c. 24. See this Dictionary, title Tenures.


SUIT-SILVER, A small rent or sum of money paid, in some manors, to excuse the appearance of freeholders at the courts of their lords. SULCUS-AQUIE, A little brook or stream of water; otherwise called sike; and in Essex, a doke. Paroch. Antiq. 531.

SULLEKIV, From the Sax. Sulth, Aratrum.] A plough-land. 1 Inst. 5.

SULLINGA, See Swolling.

SUMAGE; Toll for carriage on horseback, Chart. de Foresta, c. 14: Comp. Juris. 191

SUMMARY, summarium.] An abridgment. Law Lat. Dict.

SUMMARY CONVICTIONS. See title Conviction.

SUMMER-HUS-SILVER. A payment to the lords of the wood in the Wealds of Kent, who used to visit those places in Summer-time, when their under-tenants were bound to prepare little Summer-houses for their reception, or else pay a composition in money. Cust. de Sitingburn, MS.

SUMMONNEAS, A writ judicial of great diversity, according to the divers cases wherein it is used. Tabl. Reg. Juder. See title Process.

SUMMONERS, summuniores.] Petty officers that cite and warn men to appear in any court; and these ought to be boni homines, &c. Fleta, lib. 4. The summuniores were properly the apparitors, who warned in delinquents at a certain time and place, to answer any charge or complaint exhibited against them; and in citations from a superior court, they were to be equals of the party cited; at least the barons were to be summoned by none under the degree of knights. Paroch. Antiq. 177. See title Process.

SUMMONITORES SCACCARII, Officers who assisted in collecting the King's revenues, by citing the defaulters therein, into the court of exchequer.

SUMMONS, summonitio.] In the English law is as much as vocatio in jus, or citatio among the civilians. Fleta, lib. 6. c. 6. In general, it is a writ to the sheriff, to warn one to appear at a day; and must be by certain Summoners on the tenant's land, not his goods, &c. And, if against an heir, shall be on the lands that did descend; or making default, at the grand cape he may wage his law of Non-summons. 6 Rep. 54. As to the Summons in real actions, see title Process I.

SUMMONS AND SEVERANCE. This title is distinguished in
the books by the name of Summons and Severance; but the proper name is Severance; for the Summons is only a process, which must, in certain cases, issue before judgment of Severance can be given. 4 New Abridgment. 660. Severance is a judgment, by which, where two or more are joined in an action, one or more of these is enabled to proceed in such action without the other or others. 4 New Abridgment. 660. See Severance.

It is a principle of law, where two or more have a joint right to a thing, they must join in an action for the recovery thereof. 4 New Abridgment. 660. Joint-tenants must implead jointly; for they claim under one and the same title. 1 Inst. 180. So Parceners, who make but one heir, must, in order to recover the possession of their ancestor be joined in praecipe. 1 Inst. 163, 164. So executors, because the right of their testator devolves on all of them, must likewise all join in an action for the recovery thereof. Salk. 3: Carth. 61.

And wherever the right of action is in two or more persons, and they have not all joined in any action that is brought, the defendant may plead an abatement: for, if one could recover in such case singly, every other might do the same; and by this means a defendant would be liable to answer in divers actions for the same thing. Cro. Eliz. 554: 9 Reph. 37: Salk. 3. 32: 2 Lev. 113: 3 Lev. 354: 1 Mod. 102. See title Abatement.

It is indeed in the power of any one or more, where two or more have a joint right of action, to commence a suit in the name of all whose such right is; but, notwithstanding that a plea in abatement would be thereby prevented, it would still be in the power of any one of them, by neglecting to appear, or refusing to proceed afterwards in such suit, to render it fruitless. 1 Inst. 139.—Bro. Summ. & Sev. pl. 17. For if two or more join in bringing an action, and one makes default, the nonsuit of him is the nonsuit of them all. Bro. Summ. & Sev. pl. 5. 7. So, if divers join in a writ of error, the assignment of errors cannot be by one without the others. Cro. Eliz. 192.

To prevent the great inconvenience, and the failure of justice, which would be, if persons, in whom there is a joint right of action, should be precluded, by the negligence or collusion of any one of them, from having the effect of a suit for the recovery of such right; the law has provided, that if any one of those persons, in whose name a joint action is commenced, does not appear, or after appearance makes default, the other or others may have judgment ad sequendum solum, or, in other words, a judgment of Severance. Hard. 48. Bro. Summ. & Sev. pl. 4. 16. And see ib. pl. 18: F. N. B. 128: 1 Inst. 139.

The consequence of this judgment is, that, notwithstanding the Severance of one or more who did not appear, or who made default, the other plaintiff or plaintiffs in the action may proceed in the suit. 4 New Abridgment. 661.

Where two or more are plaintiffs in an action, and one of these has not appeared, he must be summoned before judgment of Severance can be given against him: For it is a general rule, that a nonsuit is in no case peremptory before appearance, because a writ may have been purchased in the plaintiff's name without his privity. 1 Inst. 139: Bro. Summ. & Sev. pl. 10: 2 Roll. Abridgment. 488.

But if two joint plaintiffs have both appeared, and afterwards one makes default, the Court may, without issuing any Summons, immediately give judgment of Severance. Bro. Summ. & Sev. pl. 10: 10
Ref. 135: Hard. 317. No judgment of Severance can be given in a writ of error, unless it is prayed before the defendant has pleaded in nullo est erratum. Cro. Jac. 117. But such judgment may be after joiner in the assignment of error. 2 Litt. Pr. Reg. 663.

For more learning on this subject, see Vin. Abr. and 4 New Abr. title Summons and Severance; and this Dict. titles Abatement; Error, &c.

SUMMONS TO PARLIAMENT; See title Parliament.

SUMMONS AD WARRANTIZANDUM, Summoneas ad warrantizand' The process whereby the voucher in a common recovery is called. Co. Lit. 101: See title Recovery.

SUMPTUARY LAWS, Sumptuaria Lex, from Sumptuarius, of or belonging to expences.] Are laws made to restrain excess in apparel, and prohibit costly clothes, of which heretofore we had many in England; but they are all repealed by stat. 1 Jac. 1. c. 25: 3 Inst. 199. See title Luxury.

SUNDAY, Dies Dominicus.] The Lord's Day; set apart for the service of God, to be kept religiously, and not be profaned.

Profanation of the Lord's Day, vulgarly (but improperly) called Sabbath-breaking is classed by Blackstone amongst offences against God and religion, punished by the laws of England. For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing christianity, and the corruption of morals which usually follows its profanation, the keeping one day in seven holy, as a time of relaxation and refreshment, as well as for public worship, is of admirable service to a state, considered merely as a civil institution. The laws of king Athelstan forbade all merchandizing on the Lord's Day; under very severe penalties. And by the stat. 27 Hen. 6. c. 5. no fair or market shall be held on the principal festivals, Good Friday, or any Sunday, (except the four Sundays in harvest,) on pain of forfeiting the goods exposed to sale. And by the Stat. 1 Car. 1. c. 1. no person shall assemble, out of their own parishes, for any sport whatsoever, upon this day; nor, in their parishes shall use any bull or bear-baiting, interludes, plays, or other unlawful exercises, or pastimes; on pain that every offender shall pay 3s. 4d. to the poor. This statute does not prohibit, but rather implicitly allows, any innocent recreation or amusement, within their respective parishes, even on the Lord's Day, after divine service is over. But by stat. 29 Car. 2. c. 7. no person is allowed to do any worldly labour on the Lord's Day, (except works of necessity and charity,) or to use any boat or barge, or expose any goods to sale; except meat in the public houses, and milk before nine in the morning, and after four in the afternoon, on forfeiture of 5s. Nor shall any drover, carrier, or the like, travel upon that day, under pain of 20s. Stat. 3 Car. 1. c. 2.

The goods exposed to sale on a Sunday, to be forfeited to the poor, &c. on conviction before a justice of the peace, who may order the penalties and forfeitures to be levied by distress; and may allow one third to the informer: But this is not to extend to dressing meat in families, inns, cook-shops, or victualling-houses.

Mackarel may be sold on Sundays, before and after divine service; stat. 10 & 11 W. 3. c. 24. Forty watermen are permitted to ply on the Thames, between Vauxhall and Limehouse, on Sundays; stat. 11 & 12 W. 3. c. 21. Fish carriages are allowed to travel on Sundays,
either laden or returning empty; stat. 2 Geo. 3. c. 15.—Bakers were permitted to dress dinners on a Sunday, as a work of necessity. 5 Term Rep. 449. But, by stat. 34 Geo. 3. c. 61. Every baker shall be subject to a penalty of 10s. to the use of the poor, for exercising his business in any manner as a baker on the Lord's Day: except that he may sell bread between nine in the morning, and one in the afternoon; and may also, within that time, bake meat, puddings, and pies for any person who shall carry or send the same to be baked; and see the local act 48 G. 3. c. lxx.

By stat. 21 Geo. 3. c. 49. passed to restrain an indecent practice which had become very prevalent, it is enacted, That any house or place opened for public entertainment, or for publicly debating on any subject, upon the Lord's day, and to which persons shall be admitted by money or tickets sold, shall be deemed a disorderly house. And the keeper (or person acting as such) shall forfeit 200l. and be punished as in the case of keeping a disorderly house. And the person managing such entertainment, or acting as president, &c. of any public debate, shall forfeit 100l. And every servant receiving money or tickets from the persons coming, or delivering out tickets of admission, shall forfeit 50l. §§ 1, 2. And every person advertising, or printing an advertisement of such meeting, shall also forfeit 50l. Actions to be brought within six months. § 5.

An indictment for exercising the trade of a butcher must be laid to be contra formam statuti; for it was no offence at common law. 1 Strange 702.

Persons exercising their calling on a Sunday are only subject to one penalty; for the whole is but one offence, or one act of exercising, though continued the whole day. Cowp. 640.

Law processes are not to be served on Sunday, unless it be in cases of treason or felony; or on an escape, by virtue of stat. 5 Ann. c. 9. See title Escape. Sunday is not a day in law for proceedings, contracts, &c. And hence it is, that a sale of goods on this day in a market overt is not good: And if any part of the proceedings of a suit, in any court of justice, be entered and recorded to be done on a Sunday, it makes it all void. 2 Inst. 264: 3 Shep. Abr. 181. The service of a citation on a Sunday is good, and not restrained by the stat. 29 Car. 2. c. 7. And, by two judges, the delivery of a declaration upon a Sunday may be well enough, it not being a process; but Holt, Ch. J. thought it ill, because the act intended to restrain all sorts of legal proceedings. 1 Ld. Raym. 706. Service, on a Sunday, of notice of plea filed is void. 8 East’s Rep. 547. A writ of inquiry cannot be executed on a Sunday. 1 Strange 387. See titles Arrest; Process, &c.

SUPERCARGO, A person employed by merchants to go a voyage, and oversee their cargo, and dispose of it to the best advantage. Merch. Dict.

SUPERIOR, The grantor of a feudal right to be held of himself: Scotch Law Dict. See title Tenures.

SUPER-INSTITUTION, super-institutio.] One institution upon another; as where A. B. is admitted and instituted to a benefice upon one title, and C. D. is admitted and instituted on the title or presentment of another. 2 Cro. 463. See title Institution.

SUPER- JURARE, A term used in our antient law, when a criminal endeavoured to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious, that he was convicted by the oaths of many more wit-
nasses. This was called super jurare. Leg. Hen. 1. c. 74. Leg. Athen.
stan. c. 15.

SUPERONERATIONE PASTURÆ, A judicial writ that lies against him who is impleaded in the county-court for the surcharging or overburdening a common with his cattle, in a case where he was formerly impleaded for it in the same court; and the cause is removed into one of the courts at Westminster. Reg. Judic. See title Common III.

SUPER PRÆROGATIVA REGIS, A writ which formerly lay against the King's tenant's widow for marrying without the King's licence. F. N. B. 174.

SUPERSEDEAS, A writ that lies in a great many cases; and signifies in general a command to stay some ordinary proceedings at law, on good cause shewn, which ought otherwise to proceed. F. N. B. 236. A supersedeas is used for the staying of an action, after a writ of error is allowed, and bail put in: But no supersedeas can be made out on bringing writ of error, till bail is given, where there is judgment upon verdict, or by default, in debt. Stat. 3 Jac. 1. c. 8. Nor in actions for tithes, promises for payment of money, trover, covenant, detinue, and trespass. Stat. 13 Car. 2. st. 2. c. 2. And execution shall not be stayed in any judgment after verdict (except in the case of executors) by writ of error or supersedeas thereon, unless bail be put in. Stat. 16 & 17 Car. 2. c. 8. § 3. See title Error. Introduct. & II. 2.

A writ of error is said to be in judgment of law a supersedeas, until the errors are examined &c. that is to the execution; not to action of debt on the judgment at law. From the time of the allowance, a writ of error is a supersedeas: And if the party had notice of it before the allowance, it is a supersedeas from the time of such notice; but this must be where execution is not executed, or begun to be executed. Cro. Jac. 534: Raym. 100: Mod. Ca. 130: 1 Salk. 321.

Where a first writ of error abates, or is put an end to by the act of the plaintiff in error, a second writ of error brought in the same court is not a supersedeas of execution as the first is: and execution may then be sued out without leave of the court. But in error of matter of fact coram vobis, which is not within the statutes requiring bail in error, the writ of error is or is not a supersedeas according to circumstances; and the Court must be moved for leave to sue out execution pending it. 8 East's Ref. 412.

If, before execution, the defendant bring a writ of error, and the sheriff will execute a fieri facias and levy the money, the Court will award a supersedeas, quia erronice emanavit, and have restitution of the money. Stile 414. After an execution, there was a supersedeas, quia executio imprudeme emanavit, &c. issued; and there being no clause of restitution in the supersedeas, it was insisted that the execution was executed before the supersedeas awarded, and that a faulty supersedeas is no supersedeas; but the Court ordered another supersedeas, with a clause of restitution. Moor 466.

The supersedeas, quia erronice emanavit, lies to restore a possession, after an habere facias seisinam, when sued out erroneously; so of a supersedeas after execution upon a cañias ad satisfaciend. if it be immediately delivered to the sheriff. Jenk. Cent. 58. 92. It appearing, upon affidavit, that there were two writs of execution executed upon one judgment; the party moved for a supersedeas, because there cannot be two such executions, but where the plaintiff is hindered either by the death of the defendant, or by some act in law, that he can have
no benefit of the first; and so it was adjudged. Stile 225. A superset
deas is grantable to a sheriff to stay the return of an habeds corpora;
and if he return it afterwards, and the parties proceed to trial, it is
error; and so are all the proceedings in an inferior court, after an ha-
beas corpora delivered, unless a procedendo is awarded, in which case
a supersedeads is not to be granted. Cro. Car. 43. 350.

When a certiorari is delivered, it is a supersedeads to inferior courts
below; and being allowed, all their proceedings afterwards are erro-
nous; and they may be punished. If a sheriff holds a plea of 40s. debt
in his county-court, the defendant may sue forth a supersedeads, that
he do not proceed, &c. Or, after judgment, he may have a supersede-
deas directed to the sheriff, requiring him not to award execution
upon such judgment; and upon that an alias, a pluries and an attach-

Supersedeads may be granted by the court for setting aside an erro-
nous judicial process, &c. Also a prisoner may be discharged by su-
peredeads; as a person is imprisoned by the King’s writ, so he is to be
set at liberty: and a supersedeads is as good a cause to discharge a per-
son, as the first process is to arrest him. Finch 453: Cro. Jac. 379. If
a privileged person is sued in any jurisdiction foreign to his privi-
lege, he may bring his supersedeads. Vaugh. 155. It is false impris-
onment to detain a man in custody after a supersedeads delivered, for
the supersedeads is to be obeyed; and in such case it is a new caption
without any cause. 2 Cro. 379. There is a supersedeads where an au-
dita querela is sued; and out of the Chancery, to set a person at liberty,
taken upon an exigent, on giving security to appear, &c. And in cases
of sorety of the peace and good behaviour, where a person is already
bound to the peace in the Chancery, &c. New Nat. Br. 524, 529, 532.
So where a warrant issues against a man, on an indictment found
against him, for a misdemeanor, or other bailable offence, and he, hav-
ing notice of it, does, before capture, duly put in bail, to appear and
traverse the indictment, &c. he is entitled to a supersedeads, to prevent
a caption. See further 4 New Abr. and 20 Vin. Abr. title Superse-
deas: this Dictionary titles Error; Execution, &c. and the books of
Practice.

Superseding a Commission of Bankrupt. See title Bankrupt.
Super Statuto, 1 Ed. 3, cap. 12, 13. A writ that lay against
the King’s tenants holding in chief, who aliened the King’s land
without his licence. F. N. B. fol. 175. See title Tenures.
Super Statuto de Articulis Cleri, Cap. 6. A writ against the
Sheriff or other officer, that distrains in the King’s highway, or in the
lands antiently belonging to the church. F. N. B. 175.
Super Statuto Facto pour Seneschal et Marshal de Roy,
&c. A writ against the steward, or Marshal, for holding plea in his
court, of freehold, or for trespass or contracts not made and arising
within the King’s household. F. N. B. 241.
Super Statuto versus Servientes et Laboratores, A writ
against him who keeps servants departed out of their services con-
trary to law. F. N. B. 167.
Super Statuto de York, que null serra viteller, &c. A
writ against a person that uses victualling, either in gross, or by retail,
in a city or borough town, during the time he is mayor, &c. F. N.
B. 172.

Superstitious Uses; See title Mortmain.
Supervisor, Lat. A Surveyor or Overseer: It was formerly
and still is a custom, in cases of great concern, to make a Supervisor of a will to supervise and oversee the executors that they punctually perform the will of the testator; but this office is of late very carelessly executed, so as to be to little purpose or use.—Supervisor (now surveyor) of the highways is mentioned in the stat. 5 Eliz. c. 13. See title Highways.

SUPPLEMENTAL BILL IN EQUITY. A suit in Equity, imperfect in its frame, (or become so by accident, before its end has been obtained,) may in certain cases be rendered perfect by a new Bill which is not considered as an original Bill, but merely as an addition to, or continuance of, the former Bill, or both. A Bill of this kind may be, 1st, A Supplemental Bill, which is merely an addition to the original Bill—2d, A Bill of Revivor, which is a continuance of the original Bill: See title Revivor—3d, A Bill both of Revivor and Supplement, which continues a suit upon abatement, and supplies defects arisen from some event subsequent to the institution of the suit. Mitford’s Treatise on Chanc. Plead. 33. And see further p. 59—67; and this Dict. title Revivor.

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; as in the case of an ecclesiastical person succeeding to a benefice, or a remainder-man in a settlement becoming entitled upon the death of a prior tenant under the same settlement: The suit cannot be continued by bill of Revivor (see that title); nor can its defects be supplied by a Supplemental Bill: For though the successor in the first case, and the remainder-man in the second, have the same property which the predecessor or prior tenant enjoyed; yet they are not, in many cases, bound by his acts, nor have they, in some cases, precisely the same rights: But in general, by an original Bill, in the nature of a Supplemental Bill, the benefit of the former proceedings may be obtained. If the party, whose interest is thus determined, was not the sole plaintiff or defendant, or if the property, which occasions a Bill of this nature, affects only part of a suit, the bill as to the other parties, and as to the rest of the suit, is supplemental merely.—There seems to be this difference between an original Bill in the nature of a Bill of revivor, and an original Bill in the nature of a Supplemental Bill: Upon the first, the benefit of the former proceedings is absolutely obtained; so that the pleadings in the first cause, and the depositions of witnesses, if any have been taken, may be used in the same manner as if filed or taken in the second cause; and if any decree has been made in the first cause, the same decree shall be made in the second: But in the other case, a new defence may be made; the pleadings and depositions cannot be used in the same manner as if filed or taken in the same cause; and the decree, if any has been obtained, is no otherwise of advantage, than as it may be an inducement to the court to make a similar decree. Mitford’s Treatise 67, 68. and the authorities there cited; and see this Dictionary, title Revivor.

A Supplemental Bill must state the original Bill and the proceedings thereon; and if it is occasioned by an event subsequent to the original Bill, it must state that event, and the consequent alteration with respect to the parties; and, in general, the Supplemental Bill must pray, that all the defendants may appear and answer to the charges it contains. For if the Supplemental Bill is not for a discovery merely,
the cause must be heard upon it at the same time that it is heard on the original bill, if it has not been before heard: And if the cause has been before heard, it must be further heard upon the supplemental matter. — If, indeed, the alteration or acquisition of interest happens to a defendant, or a person necessary to be made a defendant, the Supplemental bill may be exhibited by the plaintiff in the original suit against such person alone, and may pray a decree upon the particular supplemental matter alleged against that person only; unless, which is frequently the case, the interests of other defendants may be affected by that decree. Where a Supplemental Bill is merely for the purpose of bringing formal parties before the court as defendants, the parties defendants to the original bill, need not, in any case be made parties to the Supplemental Bill. *Mitford’s Treatise* 69, 70.

A Bill in the nature of a Supplemental Bill, in the cases above mentioned, must state the original bill, the proceedings upon it, the event which has determined the interest of the party by or against whom the former bill was exhibited, and the manner in which the property has vested in the person become entitled. It must then shew the ground upon which the court ought to grant the benefits of the former suit to or against the person so become entitled; and pray the decree of the court adapted to the case of the plaintiff in the new bill. This bill, though partaking of the nature of a Supplemental Bill, is not an addition to the original Bill, but another original bill, which, in its consequences, may draw to itself the advantage of the proceedings on the former bill. *Mitford’s Treatise* 90.

SUPPLETORY OATH. See 3 Comm. 270; and this Dictionary, title Evidence.

SUPPLICAVIT, A writ issuing out of Chancery, for taking surety of the peace, when one is in danger of being hurt in his body by another; it is directed to the justices of the peace and sheriff of the county, and is grounded upon the stat. 1 Ed. 3. stat. 2. c. 16. which ordains, that certain persons shall be assigned by the Chancellor to take care of the peace, &c. E. N. B. 80, 81. When a man hath purchased a writ of *supplicavit*, directed to the justices of the peace, against any person, then he, against whom the writ is sued, may come into the Chancery, and there find sureties that he will not do hurt or damage unto him that sueth the writ; and upon that he shall have a writ of *supersedeas*, directed to the justices, &c. reciting his having found sureties in Chancery, according to the writ of *supplicavit*; and also reciting that writ, and the manner of the security that he hath found, &c. commanding the justices that they cease to arrest him, or to compel him to find sureties, &c. And if the party who ought to find sureties cannot come into the Chancery to find sureties, his friend may sue a *supersedeas* in Chancery for him; reciting the writ of *supplicavit*, and that such a one and such a one are bound for him in the Chancery in such a sum, that he shall keep the peace according to it; and the writ shall be directed to the justices, that they take surety of the party himself according to the *supplicavit*, to keep the peace, &c. and that they do not arrest him; or if they have arrested him for that cause, that they deliver him. *New Nat. Br.* 180.

Sometimes the writ of *supplicavit* is made returnable into the Chancery at a certain day; and if so, and the justices do not certify the writ, nor the recognizance, and the security taken, the party who sued the *supplicavit* shall have a writ of certiorari directed unto
the justices of peace to certify the writ of supplicavit, and what they have done thereupon, and the security found, &c. New N. B. 180. If a recognizance of the peace be taken in pursuance of a writ of supplicavit, it must be wholly governed by the directions of such writ; but if it be taken before a justice of peace below, the recognizance may be at the discretion of such justice. Lamb. 100: Dalit. c. 70.

At the Common Law it was sufficient, in order to obtain this process for surety of the peace from the Court of Chancery, if the party who demanded it made oath, that he was in fear of some corporal hurt, and that he did not crave the same out of malice, but for the safety of his body. F. N. B. 79, 80.

But by stat. 21 Jac. 1. c. 8. all process of the peace shall be void, unless granted on motion in open court on affidavit in writing. When articles of the peace are exhibited in the Court of Chancery, and oath is made that the surety of the peace is not craved by the party through malice, but for the safety of his life, a writ of supplicavit issues, directed to the justices of the peace generally, or to some one justice of the peace, or to the sheriff, commanding them or him to take security in the sum thereon indorsed; and if the party refuses to find such security, to commit him to the next gaol until he does find such security. F. N. B. 80. Vide Bro. Off. pl. 39: F. N. B. 81: Bro. Peace, pl. 9: Lamb. 101, 107.

If there be no proceedings on a supplicavit within a year, the recognizance is of course discharged; and if the party be committed after the expiration of that time, he shall be discharged upon very slight security. Fitz. 268. If taken below, and the party appear pursuant to the condition, no indictment being lodged, he must be discharged. Hardw. Ca. But the Court in discretion may refuse to discharge a recognizance, even though the exibitant appear and consent; for a breach against any other person is equally a forfeiture. 11 Mod. 109. See title Surety of the Peace.

SUPPLIES, Extraordinary grants to government, by Parliament, to supply the exigencies of the state. See title Taxes.

SUPPLY, Commissioners of, in Scotland. Persons appointed to levy the land-tax within the county for which they are named. See Land Tax.

SUPREMACY, Sovereign dominion, authority, and preeminence; the highest estate. King Henry VIII. was the first Prince that shook off the yoke of Rome here in England, and settled the Supremacy in himself, after it had been long held by the Pope. See stats. 25 H. 8. ce. 19, 20: 26 H. 8. c. 1: 1 Eliz. c. 1. By these laws the great power of Rome was suppressed; and the act of 1 Eliz. Sir Edward Coke says, was an act of restitution of the antient jurisdiction ecclesiastical, which always belonged of right to the crown of England; and that it was not introductory of a new law, but declaratory of the old; and that which was, or of right ought to be, by the fundamental laws of this realm, parcel of the King's jurisdiction; by which laws, the King, as supreme head, had full and entire power in all causes ecclesiastical as well as temporal: And as, in temporal causes, the King doth judge by his judges in the courts of justice, by the temporal laws of England; so, in causes ecclesiastical, they are to be determined by the judges thereof, according to the King's ecclesiastical laws. 5 Rey. 9: Cowdrey's case. And in this case it was resolved by all the judges, that, by our antient laws, this kingdom is an abso-
Surety of the Peace, I.

SURETY OF THE PEACE, I.

I. What this Security is.

II. Who may take or demand it.

1. As relates both to the Peace and good Behaviour.
2. As to the Peace only.
3. As to good Behaviour, or good Abearance, only; which includes Security for the Peace, and somewhat more.

III. How it may be forfeited; or discharged.

1. As to both Peace and good Behaviour.
2. As to the Peace.
3. As to the good Behaviour.

I. This is considered by Blackstone as a species of preventive justice; by obliging persons, whom there is a probable ground to suspect of future misbehaviour, to stipulate with, and to give full assurance to the public, that such offence as is apprehended from them shall not happen; through the means of pledges or Sureties for keeping the Peace, or for their good behaviour. 4 Comm. c. 18.

By the Saxon constitution these Sureties were always at hand, by means of King Alfred’s wise institution of decennaries or frank-
pledges; wherein the whole neighbourhood of tithing or freemen were mutually pledges for each other's good behaviour. But this great and general security being now fallen into disuse, and neglected, there hath succeeded to it the method of making suspected persons find particular and special Securities for their future conduct: of which we find mention in the Laws of King Edward the Confessor; "tradat fide jussores de pace et legalitate tuenda." cap. 18.

This security therefore at present consists in being bound with one or more Sureties, in a recognizance or obligation to the king, entered on record, and taken in some court, or by some judicial officer; whereby the parties acknowledge themselves to be indebted to the crown in the sum required, (for instance 100l.) with condition to be void and of none effect, if the party shall appear in the court on such a day, and in the mean time shall keep the peace; either generally towards the King, and all his liege people; or particularly, also, with regard to the person who craves the security. Or, if it be for the good behaviour, then on condition that he shall demean and behave himself well, (or be of good behaviour;) either generally or specially for the time therein limited, as for one or more years, or for life. This recognizance, if taken by a justice of the peace, must be certified to the next sessions, in pursuance of the stat. 3 Hen. 7. c. 1. and if the condition of such recognizance be broken, by any breach of the peace in the one case, or any misbehaviour in the other, the recognizance becomes forfeited or absolute; and being estreated or extracted (taken out from among the other records,) and sent up to the Exchequer, the party and his sureties, having now become the King's absolute debtors, are sued for the several sums in which they are respectively bound. 4 Comm. c. 8.

II. 1. Any Justices of the Peace, by virtue of their commission, or those who are ex officio conservators of the peace, may demand such security according to their own discretion: But a Secretary of State or Privy Councillor are not, ex officio, such conservators, and therefore they cannot bind to the peace or good behaviour. 11 St. Tr. 317. Or it may be granted at the request of any subject, upon due cause shewn, provided such demandant be under the King's protection; for which reason it has been formerly doubted, whether Jews, Pagans, or persons convicted of a si remunire, were entitled thereto. 1 Hawk. P. C. c. 60. § 3. Or, if the Justice is averse to act, it may be granted by a mandatory writ, called a supplicavit, issuing out of the court of king's bench or chancery: which will compel the Justice to act, as a ministerial and not as a judicial officer; and he must make a return to such writ, specifying his compliance, under his hand and seal. F. N. B. 80. 2 P. Wms. 202. See title Supplicavit. But this writ is seldom used; for, when application is made to the superior courts, they usually take recognizances there, under the directions of the stat. 21 Jac. 1. c. 8. And indeed a Peer or Peeress cannot be bound over in any other place, than the courts of king's bench or chancery; though a Justice of the Peace has a power to require Sureties of any other person, being compositus mensis, and under the degree of nobility, whether he be a fellow Justice or other magistrate, or whether he be merely a private man. 1 Hawk. P. C. c. 60. § 5. Wives may demand it against their husbands; (so Peeresses against their Lords;) or husbands, if necessary, against their wives. But feme coverts, and infants
under age, ought to find security by their friends only, and not to be
bound themselves: for they are incapable of engaging themselves to
answer any debt; which, is the nature of these recognizances or ac-
knowledgments. See title Recognizances; &c 4 Comm. 253, 4.

If the person against whom it is demanded, be present, the Justice
of the Peace may commit him immediately, unless he offers sure-
ties; and à fortiori he may be commanded to find sureties, and be
committed for not doing it. Bro. Mainth. fil. 29: 1 Hawk. P. C. c. 60.
But if he is absent, a warrant for committing him cannot be granted,
till a warrant is issued commanding him to find sureties; and this war-
rant, which must be under seal, ought to shew the cause for which it
is granted, and at whose suit. Lamb. 85: 1 Hawk. P. C. c. 60.

The Justice of the Peace who grants this last mentioned warrant, may
in this case make it special for bringing the party before him-
self only; for, as he has most knowledge of the matter, he is best
qualified to do justice in it. 5 Co. 59; Foster's case: 1 Hawk. P. C. c.
60. But if the warrant be in general terms to carry the party before
any Justice of the Peace, the officer who executes it has his election
to carry him before what Justice he pleases; and may carry him to
gail by virtue of the same warrant, if he refuses to find Sureties be-
fore such Justice; for the warrant has these words in it, if he shall
60: 5 Co. 59.

If one, however, who apprehends that the Surety of the Peace will
be demanded against him, finds Sureties before any Justice of the
Peace of the same county; either before or after a warrant is issued
against him, he may have a supersedeas from such Justice; and this
shall prevent or discharge him from an arrest, under the warrant of
any other Justice, at the suit of the same party for whose security he
has found such Sureties. Lamb. 95, 96: 1 Hawk. P. C. c. 60.

The recognizance for keeping the peace, which a Justice of the
Peace takes upon complaint below, is to be regulated, as to the num-
ber and sufficiency of the Sureties, the largeness of the sum, and the
time it is to continue in force, by the discretion of such Justice.
Lamb. 100: 1 Hawk. P. C. c. 60. It has been said that a recognizance
taken by a Justice of Peace, to keep the peace as to A. B. for a year,
or for life, or without expressing any certain time, which shall be in-
tended to be for life, although no time or place is fixed for the party's
appearance, or he is not bound to keep the peace as to all the King's
liege people, is good. 1 Hawk. P. C. c. 60: Lamb. 100. But it seems
to be the safest way to bind the party to appear at the next Sessions
of the Peace, and in the mean time to keep the peace as to the King
and all his liege people, and especially as to the party who has de-
manded the Surety of the peace. Lamb. 103: 1 Hawk. P. C. c. 60.

If one of the Sureties of a man who is bound to keep the peace
dies, he shall not be obliged to find a new Surety: for the executors
or administrators of him who is dead are bound by the recognizance.
Lamb. 113: Bro. Peace, pl. 17: 1 Hawk. P. C. c. 60.

2. Any Justice of the Peace may, ex officio, bind all those to keep the
peace, who, in his presence, make any affray; or threaten to kill or beat
another; or contend together with hot and angry words; or go about
with unusual weapons or attendance, to the terror of the people; and
all such as he knows to be common barretors; and such as are brought
before him by the constable for a breach of the peace in his presence;
and all such persons as, having been before bound to the peace, have broken it and forfeited their recognizances. Also wherever any private man hath just cause to fear that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him; or that he will procure others so to do; he may demand surety of the peace against such person: And every Justice of the peace is bound to grant it; if he who demands it will make oath that he is actually under fear of death or bodily harm; and will shew that he has just cause to be so, by reason of the other's menaces, attempts, or having lain in wait for him; and will also farther swear, that he does not require such surety out of malice or for mere vexation. This is called Swearing the Peace against another: And if the party does not find such Sureties as the justice in his discretion shall require, he may immediately be committed till he does. 1 Hawk. P. C. c. 60.

Surety of the Peace may be demanded by a wife, if her husband gives her unreasonable correction. Moor 374. Godb. 215: F. N. B. 80. Surety of the Peace ought not to be granted to a man for fear of danger to his servant or cattle. Lamb. 83. It hath however been said that a man may have the Surety of the Peace against one who threatens to hurt his wife or child. Dalt. 266. The Surety of the Peace ought not to be granted for any past battery, unless there is a fear of some present or future danger: But the offender must, in such case, be punished by action or indictment. Dalt. 266. The demand of the Surety of the Peace ought to be soon after the cause of fear; for the suffering much time to pass before it is demanded, shews that the party has been under no great terror. 6 Mod. 132.

It is said, the fear of one cannot be the fear of another; and therefore every recognizance must be separate. But in Mich. 23 Geo. 2. B. R. the court allowed three women to file joint articles of the peace against three men: R. v. Nettle, cited 1 Ilawk. P. C. c. 60, § 5. Leach's note. Although the fact from which the fear arises be pardoned, the court of K. B. will receive it as a ground to grant the security upon. Stra. 473.

At the common law, the oath of the party was a sufficient ground for the court of king's bench to grant the Surety of the Peace; but this cannot be done since the stat. 21 Jac. 1. c. 8. unless articles of the peace are exhibited in court, upon motion in open court. F. N. B. 79, 80.

Where articles of peace are exhibited in the court of king's bench, and oath is made that the party does not crave the Security of the Peace out of hatred or malice, but merely for the preservation of his life and person from danger, an attachment of the peace issues to the sheriff, commanding him to take bond for the appearance of the party at the return of the writ, to put in bail to the articles in this court: and, if such bond is not given, to commit the party to the next gaol. Comb. 427; Russel's case: F. N. B. 79. Where the party, against whom articles of the peace are exhibited, comes into court to put in bail, the articles must be read to him. 6 Mod. 132. An affirmation is not sufficient on which to grant Surety of the Peace. Stra. 527: 12 Mod. 243.

The court will not permit the truth of the allegations to be controverted by the defendant, but will order Security to be taken immediately, if no objections arise upon the face of the articles themselves. Stra. 1202. But if on application for the assistance of the court to
enforce the subsequent process, the articles should manifestly appear, from the corroborated affidavit of the defendant, to have been a malicious, voluntary, and gross perjury, the court will resist the application, and commit the offender. 2 Burr. 806; 3 Burr. 1922.

If a defendant, through infirmity of age or sickness, be unable to attend the court, a mandamus will be granted to the justices in the country, to take such security. See Stra. 835: Comb. 427.

The court will not receive articles of the peace, if the parties live at a distance in the country, unless they have previously made application to a justice in the neighbourhood, 2 Burr. 780. And if the court do receive them, the secondary may indorse the attachment in the form required, and order a justice of the county to take the security. 2 Burr. 1039: 1 Bl. 233.

When Surety of the Peace is granted by the court of king's bench, if a supersedeas comes from the court of chancery, to the justices of that court, their power is at an end; and the party as to them discharged. Bro. Peace, pl. 17.

3. Justices of peace are empowered by the stat. 34 Edw. 3. c. 1. to bind over to the good behaviour towards the King and his people, all them that be not of good fame, wherever they be found; to the intent that the people be not troubled nor endangered, nor the peace diminished, nor merchants and others, passing by the high-ways of the realm, be disturbed nor put in the peril, which may happen by such offenders. Under the general words of this expression, that be not of good fame, it is holden that a man may be bound to his good behaviour for causes of scandal, contra bonos mores, as well as contra fæcem; as for keeping such women in his own house; or for words tending to scandalize the Government, or in abuse of the officers of justice, especially in the execution of their office. Thus also a justice may bind over all night-walkers; eaves-droppers; such as keep suspicious company, or are reported to be pilferers or robbers; such as sleep in the day and wake in the night; common drunkards; whore-masters; the putative fathers of bastards; cheats; idle vagabonds; and other persons whose misbehaviour may reasonably bring them within the general words of the statute, as persons not of good fame; an expression, it must be owned, of so great a latitude, as leaves much to be determined by the discretion of the magistrate himself. But, if he commits a man for want of Sureties, he must express the cause thereof with convenient certainty; and take care that such cause be a good one. 1 Hawk. P. C. c. 61: 4 Comm. 256.

III. 1. A Recognizance may be discharged, either by the demise of the King, to whom the recognizance is made; or by the death of the principal party bound thereby, if not before forfeited; or by order of the court to which such recognizance is certified by the justices, (as the Quarter sessions, Assizes, or King's Bench) if they see sufficient cause: Or, in case he at whose request it was granted, if granted upon a private account, will release it, or does not make his appearance to pray that it may be continued. 1 Hawk. P. C. c. 60.

2. Such recognizance for keeping the peace, when given, may be forfeited by any actual violence, or even an assault, or menace, to the person of him who demanded it, if it be a special recognizance; or, if the recognizance be general, by any unlawful action whatsoever,
SURETY OF THE PEACE, III. 2.

that either is or tends to a breach of the peace; or, more particularly, by any one of the many species of offences against the public peace; or by any private violence committed against any of His Majesty's subjects. But a bare trespass upon the lands or goods of another, which is a ground for a civil action, unless accompanied with a wilful breach of the Peace, is no forfeiture of the recognizance. Neither are mere reproachful words, as calling a man knave or liar, any breach of the Peace, so as to forfeit one's recognizance, (being looked upon to be merely the effect of unmeaning heat and passion,) unless they amount to a challenge to fight. 1 Hawk. P. C. c. 60: 4 Comm. 255, 6.

By the stat. 3 H. 7. c. 1. before-mentioned, it is enacted, "That if the party who is called at a sessions of the Peace, upon a recognizance of keeping the Peace, makes default, his default shall be then and there recorded, and the same recognizance, with the record of the default, be sent and certified into the Chancery, or before the King in his Bench, or into the King's Exchequer."

He who is bound to keep the Peace, and to appear at the sessions, must appear there, and record his appearance, otherwise his recognizance is forfeited. And although the party who craved the Surety of the Peace, comes not to pray that it may be continued, the justices may in their discretion order it to be continued till another sessions. Bro. Peace, pl. 17: Lamb. 109.

But if an excuse, which is judged by the court to be a reasonable one, is given for the non-appearance of a party, it seems that the court is not bound peremptorily to record his default, but may discharge the recognizance, or respite it till the next sessions. 1 Hawk. P. C. c. 60. A recognizance for keeping the Peace may be forfeited by any actual violence to the person of another, whether it be done by the party bound, or others by his procurement. Lamb. 115. 127: Bro. Peace, pl. 2: 1 Hawk. P. C. c. 60. In support of a rule to stay proceedings in a scire facias, upon a recognizance for keeping the Peace, it was said, that the assault, which had been made, was not upon him at whose request the Surety of the Peace is granted, but upon another person. It was held that this makes no difference; and the rule was discharged. MS. Refi. Rex v. Stanley and his baili, Trin. 27 Geo. 2. But a recognizance for keeping the Peace is not forfeited, where an officer, having a warrant against one who will not suffer himself to be arrested, beats or wounds him in the attempt to take him. Lamb. 128: 1 Hawk. P. C. c. 60.

So it is not forfeited, if a parent in a reasonable manner chastises his child; a master his servant, being actually in his service at the time; a schoolmaster his scholar; a gaoler his prisoner; a husband his wife. 1 Sid. 176, 177: Lamb. 127, 128: Hett. 149, 150: 1 Hawk. P. C. c. 60: F. N. B. 80.

And, without enumerating all the actual assaults, which a man may make upon the person of another, and not forfeit his recognizance for keeping the Peace, it may be laid down as a principle, that such a recognizance is not forfeited by any assault which could have been justified in an action, or upon an indictment, for the assault. 4 New Abr. 694.

It has been held, that a recognizance for the Peace may be forfeited by any treason against the person of the King, or by an unlawful assembly in terrorem hostilis. Lamb. 115: 1 Hawk. P. C. c. 60. Words which tend directly to a breach of the Peace as challenging a man to
fight, or threatening to beat one who is present, amount to a forfeiture of such recognizance. Lamb. 115: 1 Hawk. P. C. c. 60. Cro. Eliz. 86. A recognizance is likewise forfeited by threatening to beat a person who is absent, if the party who has so threatened, does afterwards lie in wait to beat him. Lamb. 115.

A man shall not forfeit a recognizance for keeping the Peace, who does a hurt to another in playing at cudgels, or such like sport, by consent; for these sports, which tend to promote activity and courage, are lawful. Dalt. 284: 1 Hawk. P. C. c. 60. But he who wounds another in fighting with naked swords, forfeits his recognizance; because no consent, nor even the command of the King, can make so dangerous a diversion lawful. Cro. Car. 229: 1 Hawk. P. C. c. 60. If a soldier hurts another soldier, by discharging his gun in exercising without sufficient caution, it is no forfeiture of a recognizance for keeping the Peace: For though he would be liable in an action for the damage occasioned by his negligence, this, it not being a willful breach of the Peace, is not within the purport of the recognizance. 1 Hawk. P. C. c. 60: Hob. 134: 2 Rol. Abr. 548.

A Court of Quarter-sessions cannot in any case proceed against the parties, for a forfeiture of a recognizance for keeping the Peace; but the recognizance must be sent into some of the King’s courts in Westminster-hall. 1 Hawk. P. C. c. 60. All proceedings upon a forfeited recognizance must be by scire facias, and not by indictment; because, where a scire facias is brought, the parties have an opportunity of pleading any matter in their discharge. 1 Roll. Abr. 900. Perrow’s case: Cro. Jac. 598: 1 H. P. C. c. 60.

The demise of the King is a discharge of a recognizance for keeping the Peace: For the condition being servare pacem nostram, his successor cannot take advantage of a breach thereof. Bro. Peace, pl. 15: 1 Hawk. P. C. c. 60.

After such a recognizance is forfeited, the King may pardon the forfeiture: But he cannot release the condition before it is broken; because the party, at whose complaint it was taken, has an interest therein. Bro. Recog. pl. 22. Bro. Chart. de Pard. 24.

If no time for the continuance of a recognizance for keeping the peace is therein mentioned, it is perhaps in the power of the court, in which it was taken, or to whom it has been certified, to discharge it at their discretion. 4 New Abr. 695.

The usual practice of a Court of Quarter-sessions is to continue a recognizance for keeping the Peace from sessions to sessions until the Court thinks proper to discharge it. It is the constant course of the Court of King’s Bench, to take a recognizance for twelve months, and if no indictment is within that time preferred against the party bound to keep the Peace, it may, at the expiration thereof, be discharged. 12 Mod. 251: Str. 835. This seems also to be the practice of the Court of Chancery; for upon a motion to discharge a writ of supplicavit, it was refused: And by my Lord Macclesfield Chancellor,—This application is too early; let the party stay till the year is out, and behave himself quietly all that time. 2 P. Wms. 202: Claverings’ case: See title Supplicavit; and further on this subject, Sav. 53: 1 Lev. 235: 1 Hawk. P. C. c. 6: Bro. Peace, pl. 17: Lamb. 111: 11 Mod. 109: Cro. Jac. 282: Yetw. 207.

3. A recognizance for the Good Behaviour may be forfeited by all the same means as one for the Security of the Peace may be; and also
by some others; as by going armed with unusual attendance, to the
terror of the people; by speaking words tending to sedition; or by
committing any of those acts of misbehaviour which the recogni-
zance was intended to prevent. But not by barely giving fresh cause
of suspicion of that which perhaps may never actually happen; for
though it is just to compel suspected persons to give security to the
public against misbehaviour that is apprehended, yet it would be hard
upon such suspicion, without the proof of any actual crime, to pun-
ish them by a forfeiture of their recognizance. 1 Hawk. P. C. c. 61.
4 Comm. 257.

SURRENDER, Chirurgus, from the Fr. Chirurgeon.] Signifying him
that dealeth in the mechanical part of physic, and the outward cures
performed with the hand; originally compounded of the two Greek
words Χειρ, manus, "Εγγος οπος; and for this cause Surgeons are not
allowed to administer any inward medicine. By the stat. 32 H. 8. c.
42. the barbers and Surgeons of London were incorporated, and made
one company.

By the stat. 18 Geo. 2. c. 15. the Surgeons of London, and the bar-
ers of London, are made two separate and distinct corporations; re-
serving the privileges each were entitled to under stat. 32 Hen. 8. to
each company separately.—By the latter act, examiners are appointed
to admit Surgeons, &c.

An action on the case lies against a Surgeon for gross ignorance
and want of skill in his profession; as well as for negligence and care-
lessness to the detriment of his patient. 8 East's Rep. 348.

SURLUI JUR, i. c. Upon his oath. Leg. W. 1. c. 16.

SURMISE, Something offered to a court to move it to grant a pro-
hibition, Audita Querela, or other writ grantable thereon. See title
Suggestion.

SURPLUSAGE, Fr. Surplus, Lat. Surplusagium, Corollarium.] A
superfluity or addition more than needful, which sometimes is the
cause that a writ abates; but, in pleading, many times it is absolutely
void, and the residue of the plea shall stand good. Broke: Plow. 63.
See titles Amendment; Pleading.

If a Jury find the substance of the issue before them to be tried,
other superfluous matter is but Surplusage. 6 Rep. 46.

Surplusage of Accounts, signifies a greater disbursement than
the charge of the accountant amounts unto. In another sense, Surplu-
sage is the remainder or overplus of money left. Litt. Dict.

Surplusage of Intestates' Effects. See title Executor. V. 8.

SUREBUTTER, The replication or answer of the plaintiff to
the defendant's Rebutter. See this Dict. titles Pleading; Rebutter.

SUREJOINDER, A second defence (as the replication is the first)
of the plaintiff's declaration in a cause, and is an answer to the
Rejoinder of the defendant. West. Symb. par. 2. As a Rejoinder is
the defendant's answer to the replication of the plaintiff; so a Surr-
joinder is the plaintiff's answer to the defendant's Rejoinder. Wood's
Inst. 586. Where a plaintiff in his Surejoinder is to conclude to the
country, and not with an averment; see Raym. 94. After Rejoinder
and Surejoinder and rebutter, &c. there may be a demurrer. See
Pleading.

SURRENDER, Sursum-Redditio. A deed or instrument testify-
ing that the particular tenant for life or years, of lands and tenements,
doth yield up his estate to him that hath the immediate estate in re-
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mainder or reversion, that he may have the present possession there-
of; and wherein the estate for life or years may merge or drown by
the mutual agreement of the parties. Co. Litt. 337.

A surrender is of a nature directly opposite to a release; for as that
operates by the greater estate's descending upon the less, a Surren-
der is the falling of a less estate into a greater. It is made by these
words, Hath surrendered, granted, and yielded up. 2 Comm. c. 20. p. 326.

Of Surrenders there are three kinds: A Surrender, properly taken
at Common Law; a Surrender of copyhold or customary estates, as
to which see title Copyhold: And a Surrender, improperly taken, as
of a deed, a patent, rent newly created, &c.

The Surrender at Common Law is the usual Surrender, and is of
two sorts, viz. A Surrender in deed, or by express words in writing;
where the words of the lessee to the lessor prove a sufficient assent
to give him his estate back again; and a Surrender in Law, being that
which is wrought by operation of Law, and not actual; as if a lessee
for life or years take a new lease of the same land, during the term,
this will be a Surrender in Law of the first lease. 1 Inst. 338: 5 Rep. 11: Perk. 601. And, in some cases, a Surrender in Law is of greater
force than a Surrender in deed; for if a man makes a lease for years,
to begin at a day to come, this future interest cannot be surrendered
by deed, because there is no reversion wherein it may drown; but if
the lessee, before the day, take a new lease of the same land, it is a
good Surrender in Law, of the former lease: And this Surrender in
Law, by taking a new lease, holds good, though the second lease is
for a less term than the first; and, it is said, though the second lease

If lessee for life do accept of a lease for years, this is a Surrender in
Law of his lease for life; if it should be otherwise, the lease for years
would be made to no purpose, and both the leases cannot stand toge-
ther in one person. 2 Litt. Abr. 544. Lessee for twenty-one years takes
a lease of the same lands for forty years, to commence after the death
of A. B., it is not any present Surrender of the first term; but if A. B.
dies within the first term, it is. 4 Leon. 83. A lessee for years took a
second lease, to commence at Michaelmas ensuing: Adjudged this was
an immediate Surrender in Law of the first; and that the lessor might
enter and take the profits, from the time of the acceptance of the se-
cond lease, until Michaelmas following. Cro. Eliz. 605. If the lessor
make, and lessee accept, a new lease, and it is upon condition; this
shall be a Surrender in Law: And if an assignee of tenant for years
take a new lease, &c. the first lease will be by law surrendered. 1 Inst.
218. 338. If a woman lessee for years marries, and afterwards she
takes a new lease for life without her husband, this is a Surrender and
extinguishment of the term; but if the husband disagree, then it is re-
vived: Though if the new lease had been made to the husband and
wife, then, by acceptance thereof, the first lease had been gone. Hut. 7.
A lessee takes the lessee to wife, then the term is not drowned or
surrendered; but he is possessed of the term in her right, during the

A surrender may be of any thing grantable, either absolute or con-
ditional; and may be made to an use, being a conveyance tied and
charged with the limitation of an use: But it may not be of an estate in
SURRENDER.

fee; nor of rights and titles only to other estates for life or years; or for part of such an estate; nor may one termor regularly surrender to another termor; nor can a tenant at will surrender any more than he can grant. Perk. 615: Noy’s Max. 73: Cro. Eliz. 688: 1 Leon. 303. Where things will not pass by Surrender; the deed may enure to other purposes, and take effect by way of grant, having sufficient words. Perk. 588. 624.

To the making of a good Surrender in deed of lands, the following things are requisite: The Surrenderor is to be a person able to grant and make a surrender, and the Surrenderee a person able to receive and take it; the Surrenderor must have an estate in possession of the thing surrendered, and not a future right; and the Surrender is to be made to him that hath the next estate in remainder or reversion, without any estate coming between; the Surrenderee must have a higher or greater estate in his own right, and not in the right of his wife, &c. in the thing surrendered, than the Surrenderor hath, so that the estate of the Surrenderor may be drowned therein; (so that lessee for life cannot surrender to him in remainder for years;) there is to be a privity of estate between the Surrenderor and Surrenderee; and the Surrenderee must be sole seised of his estate in remainder or reversion, and not in joint-tenancy; and the Surrenderee agree to the Surrender, &c. 1 Inst. 338: Perk. 584. 588: 2 Roll. Abr. 494: Noy’s Max. 73.

A man who hath a fee simple estate cannot surrender it, because it cannot be drowned in another estate. 12 H. 4. 21. And if a lease be made for life or years to A., the remainder for life to B., remainder in fee-tail to C., and the first tenant surrenders to C.; this will not take effect as a Surrender, by reason of the intervening estate. Dyer 112. The lessee for life or years may surrender to him that is next in remainder in fee-simple or fee-tail. And if lessee for life surrenders his estate to one in remainder, that is tenant for his own life, it is a good Surrender; for a man’s estate for his own life, in judgment of Law, is greater than that for another’s. And where an estate is surrendered for life, there needs no livery and seizin, as in a grant, 1 Inst. 338: Dyer 251. 280.

Yet, in some cases, an estate, &c. may have continuance, though it be surrendered; as where lessee for life makes a lease for years, and after doth surrender, the term for years doth continue; and so of a rent charge granted by such lessee, &c. Bro. 47: 1 Inst. 338. If the lessee for years, rendering rent, surrenders his estate to the lessor, hereby the rent is extinct: But if the rent were granted away before the Surrender, it would be otherwise. 8 Rep. 145: Bro. Surrond. 42. Tenant for life is disseised, or for years ousted; and before entry, or possession gained, he surrenders to him in reversion; this Surrender is void: And yet if lessee for years, after his term is begun, before he enters, and when nobody doth keep from him the profits, surrenders, it will be good. Perk. § 600.

If there be lessee for years, the remainder for life, remainder in fee; the lessee for years may surrender to the lessee during life, and so may he to him in the remainder in fee. Perk. § 605.

In case of tenant for life, the remainder for life, reversion in fee; it was a question formerly, whether the remainder-man for life, by and with the consent of the tenant for life, could surrender to him in reversion without deed, only by coming on the land and saying, that he
SURRENDER.

Did surrender to him in reversion: The Court were divided; but two judges held, that if tenant for life, and he in remainder for life, surrender to the reversioner, it should pass as several Surrenders; viz. first of him in remainder to the tenant for life, and then by the tenant for life to him in reversion. Poph. 137.

If tenant for life grant his estate to him in reversion, this is a Surrender; and it must be pleaded according to the operation it hath in Law, or it will not be good. 4 Mod. 151. Though if lessees for life or years grant their estates to him in remainder or reversion, and a stranger, it shall ensue as a Surrender of the one half to him in reversion, and as a grant of the other moiety to the stranger. 1 Inst. 335.

In a surrender there is no occasion for Livery of Seisin; for there is a privity of estate between the Surrenderor and Surrenderee: The particular estate of the one, and the remainder of the other, are one and the same estate. (See titles Remainder; Reversion.) And livery having been once made at the creation of it, there is no necessity for having it afterwards. 1 Inst. 50. And for the same reason it is that no livery is required on a release, or confirmation in fee, to tenant for years or at will, though a freehold thereby passes; since the reversion of the Relessor or Confirmor, and the particular estate of the Relessee or Confirmee, are one and the same estate. And where there is already a possession derived from such a privity of estate, any further delivery of possession would be vain and nugatory. 2 Comm. 326. See this Dict. titles Release; Livery of Seisin.

By stat. 29 C. 2. c. 2. no estates of freehold, or of terms for years, shall be granted or surrendered, but by deed in writing, signed by the parties, or unless by operation in Law, &c. And by stat. 4 Geo. 2. c. 28. § 6. leases may be renewed without Surrender of under-leases. By stat. 29 Geo. 2. c. 31. infants, lunatics, and femes covert, may surrender leases in order to renew them, under the direction of a Court of Equity. See further, 20 Vin. Abr. 119—146. and this Dictionary, title Leases.

A Surrender of a Prebendary's lease, upon condition that if the then Prebendary did not, within a week after, grant a new lease for three lives, the Surrender shall be void. Held to be a good Surrender within the statute. 2 Strange 1201.

Surrender of a Bankrupt; See tit. Bankrupt.

Surrender of Copyholds, Is the yielding up of the estate by the tenant into the hands of the lord, for such purposes as in the Surrender are expressed. This method of conveyance is so essential to the nature of a Copyhold Estate, that it cannot properly be transferred by any other assurance. But Courts of Equity, will, in some particular cases, supply the want of a Surrender. See 2 Comm. c. 22; and this Dictionary, title Copyhold.

Surrender of Letters Patent, and Offices. A Surrender may be made of Letters Patent to the King, to the end he may grant the estate to whom he pleases, &c.; and a second Patent for years to the same person, for the same thing, is a Surrender in Law of the first Patent. 10 Rep. 66. Letters patent for years were delivered into Chancery to be cancelled, and new Letters Patent made for years; but the first were not cancelled. It was held that the second were good, because they were a Surrender in Law of the first, and the not cancelling was the fault of the Chancery, which ought to have done it. 10 Rep. 66, 67; 2 Lit. Abr. 545. If an officer for life accepts of
another grant of the same office, it is in Law a Surrender of the first
grant; but if such an Officer takes another grant of the same Office to
himself and another, it may be otherwise. 1 Ventr. 297; 3 Cro. 198.
See Dyer 167. 198. Godb. 415; and this Dict. titles Grant of the King's
Office.

SURROGATE, Supersisa.] Is one that is substituted or appoint-
ed in the room of another: as the Bishop or Chancellor's Surrogate,
&c.

SURSISE, Supersisa. ] A word especially used in the Castle of Do-
er, for penalties and forfeitures laid upon those that pay not the duties
or rent of Castle-ward, at their days limited. It probably comes from
the Fr. Sursist, i. e. forborn or neglected. Brit. 52. And Bracton hath
it so in a general signification. Bract. lib. 5.

SURVEY, To measure, lay out, or particularly describe a manor,
or estate in lands; and to ascertain not only the bounds and royalties
thereof, but the tenure of the respective tenants, the rent and value
of the same, &c. On the falling of an estate to a new lord, consisting
of manors, where there are tenants by lease, and copyholders, a Court
of Survey is generally held; and at certain other times, to apprise the
lord of the present terms and interests of the tenants, and as a direc-
tion on making further grants, as well as in order to improvements,
&c. In this Court, a Survey, or Particular in the nature of a Rent-roll,
is made out, specifying the tenants, and terms of their tenure, &c. See
Comp. Court Keep.

SURVEYOR, From Fr. Sur, i. e. Sufter, and Voir, Cernere.] One
that has the overseeing or care of some person's lands or works. A
Court of Surveyors was erected by stat. 53 H. 8. c. 39. for the benefit
of the Crown.

SURVEYOR OF THE KING'S EXCHANGE, An antient officer belong-
ing to the Mint and Coinage, mentioned in the stat. 9 H. 5. c. 4.

SURVEYOR-GENERAL OF THE KING'S MANORS AND LANDS, Is
mentioned in Cromp. Jurisd. 106.

SURVEYORS OF THE HIGHWAYS; See title High-ways.

SURVEYOR OF THE NAVY, An officer appointed over all stores; and
to survey hulls and masts of ships, &c. Chamberl.

SURVEYOR OF THE KING'S ORDINANCE. This officer surveys the
Ordinance and provisions of war, allows bills of debt, and keeps the
checks on labourers' works, &c.

SURVEYORS OF THE WARDS AND LIVERIES. This office was
abolished, with the Court of Wards and Liveries, by stat. 12 Car. 2.
c. 24.

SURVIVOR, from Fr. Survivre, Lat. Supervivo.] The longer
liver of two joint-tenants, or of any two persons joined in the right of
a thing. He that remaineth alive, after others be dead, &c. Broke 33.
See title Joint-tenant.

SUSANA TERRA, Land worn out with ploughing. Thorn.

SUSPENSE, Suspensio.] A temporal stop, or hanging up, as it
were, of a man's right, for a time; and, in legal understanding, is ta-
taken to be where a rent, or other profit out of lands, by reason of the
unity of possession of the rent, &c. and the land out of which it issues,
is not in esse for a certain time, et tune dormiunt, but may be revived
or awaked: And it differs from extinguishment, which is when it dies
or is gone for ever. Co. Litt. 213. A suspension of rent is, when
either the rent or land is so conveyed, not absolutely and finally, but
for a time, after which the rent will be revived again. Vaugh. 109. A rent may be suspended by unity for a time; and if a lessor does any thing which amounts to an entry on the land, though he presently depart, yet the possession is in him sufficient to suspend the rent, until the lessee do some act which amounts to a re-entry. Vaugh. 39: 1 Leon. 110. As rent is not issuing out of a common, the lessor’s inclosing the common cannot suspend his rent. Cro. Jac. 679. If part of a condition is suspended, the whole condition, as well for payment of the rent, as doing a collateral act, is suspended. 4 Refl. 52. And a thing or action personal once suspended, is for ever suspended, &c. Cro. Car. 373. See title Extinguishment.

SUSPENSION, Is also used for a censure, whereby ecclesiastical persons are forbidden to exercise their office, or take the profits of their benefices; or where they are prohibited for a certain time, in both of them, in the whole or in part; Hence is suspensio ab officio, or suspensio à beneficio, and ab officio & beneficio. Wood’s Inst. 510. There is likewise a Suspension which relates to the Laiy, i.e. suspensio ad ingressu ecclesie, or from the hearing of divine service, &c. In which case it is used, as in the Canon Law, pro minore excommunications. Stat. 24 Hen. 8. c. 12. See title Excommunication.

Suspension of the Habeas Corpus Act; See titles Habeas Corpus; Government.

Suspension from Offices; See titles Mandamus; Office.

Sus. per Coll. On the trial of criminals, the usage (at the Assizes) is for the judge to sign the calendar, or list of all the prisoners’ names, with their separate judgments in the margin, which is left with the sheriff. As for a capital felony, it is written opposite to the prisoner’s name, “Hanged by the neck;” formerly, in the days of Latin and abbreviation, Sus. per coll. for Suspensatur per collum. 4 Comm. c. 32. See title Execution of Criminals.

Suspicion, A person may be taken up on suspicion where a felony is done, &c. but those who are imprisoned for a light suspicion of larceny, or robbery, are bailable by stat. Westm. 1. c. 15: 2 Hawk. P. C. c. 15. § 49. And the party being a private person that takes up one on Suspicion of felony, must do it of his own Suspicion, not upon that of another; and he must have reasonable cause of it, &c. Hale’s Hist. P. C. 78. See titles Arrest; Vagrancy; Bail; Commitment, &c.

Suspipal, from Lat. Suspirare, i.e. duceere Suspiria.] Is used for a spring of water, passing under ground towards a conduit or cistern. See stat. 35 H. 8. c. 10.

Suthdure, Sax.] The south door of a church; it was the place where canonical purgation was performed; that is, if the fact charged upon a person could not be proved by sufficient evidence, the party accused came to the south door of the church, and there, in the presence of the people, made oath, that he was innocent: And pliants, &c. were heard and determined at the Suthdure; for which reason large porches were antiently built at the south doors of churches.—Gervais. Dorob. de Reparation. Ecclesie Cantuar.ª

Swan, Cygnus.] A noble bird of game; and a person may prescribe to have game of Swans within his manor, as well as a warren or park. 7 Refl. 17, 18. A Swan is a bird royal; and all white Swans not marked, which have gained their natural liberty, and are swimming in an open and common river, may be seized to the use of the King, by his prerogative: But a Subject may have a property in white
Swans not marked; as any man may have such Swans in his private waters, and the property of them belongs to him, and not to the King; and if they escape out of his private waters, into an open and common river, he may retake them; though it is otherwise if they have gained their natural liberty, and swim in open rivers, without such pursuit. Game Law, par. 2. p. 152. Stealing Swans marked and pinned, or unmarked, if kept in a mote, pond, or private river, and reduced to tameness, is said to be felony. H. P. C. 68. See title Larceny I. 1. And he that steals the eggs of Swans out of their nests, shall be imprisoned a year and a day, and be fined at the King's pleasure, stat. 11 Hen. 7. c. 17. No person may have a Swanmark, except he have lands of the yearly value of five marks, and unless it be by grant of the King, or his officers lawfully authorised, or by prescription. Stat. 22 E. 4. c. 6. No fowl can be a stray, but a Swan. 4 Inst. 280.

SWANHERD. The King's Swanherd, magister deductus cygnorum. Pat. 16 R. 2.

SWANIMOTE, or SWAINMOTE; See titles Sweinmote; Forest.

SWARF-MONEY, Is mentioned among customs and services: And this Swarf-money is one penny half-penny, paid before the rising of the sun; the party must go three times about the cross, and say the Swarf-money; and then take witness and lay it in the hole; and he is to look well that his witness do not deceive him; for if it be not so paid, he shall pay a great forfeiture, viz. xxxxs. and a white bull. This account was found in an old MS, containing the rents due to the Catesbys in Lodbrooke, and other places in Warwickshire. It seems to be a corruption from Warth-money, and that again from Guard-money; money paid in lieu of the service of Castle-guard.

SWATH, Sax. swatha.] A Swathe; or, as in Kent, a Sweath and in some parts a Sworth; a straight row of cut grass or corn, as it lies after the scythe at the first mowing of it. Paroch. Antig. 399.

SWEARING, Imprecatio.] Is an offence against God and religion, and a sin, of all others, the most extravagant and unaccountable, as having no benefit or advantage attending it. Several good laws and statutes have been made for punishing this crime: By stat. 21 Jac. 1. c. 20. it was enacted, that if any person shall profanely swear or curse in the presence of a Justice of Peace, or the same shall be proved before a Justice, he shall forfeit I$. for every offence, to the use of the poor, to be levied by distress; and for want of a distress, the offender to be set in the stocks, &c. By the stat. 19 Geo. 2. c. 21. which repeals all former statutes, if any person shall profanely curse or swear, and be convicted by the oath of any one witness before any Justice of Peace, &c. he shall forfeit as follows, viz. Every day labourer, common soldier, common sailor, and common seaman, l$. (Sailors are also punishable for this offence by a Court-Martial.) Every other person under the degree of a gentleman, 2s. Every person of or above the degree of a gentleman, 5s. a second offence double, and every other offence treble. If the offence be committed in the hearing of a magistrate, he may convict without further proof. If the offence be committed in the hearing of a constable, if the offender be unknown to him, he shall secure him, and carry him before a Justice of Peace; but if the offender be known to the constable, he shall make information against him before a justice of Peace.

On information, a Justice is to order the offender to appear, and if
on conviction he do not pay or give security for the penalty, he shall
be sent to the house of correction for ten days; or being a common
soldier or sailor, be set in the stocks. On default of duty, Justices
to forfeit 5l. and constables 40s. All convictions are to be written on
parchment, and returned to the next sessions. The penalties to go to
the poor of the parish, and the offender to pay all charges of convic-
tion, or be committed to the house of correction for six days extra-
dinary. All prosecutions to be within eight days. This act to be read
in all churches four times a year, under the penalty of 5l. The Ju-
tice's clerk may take for the information, summons, and conviction,
1s. and no more. Each oath or curse being a distinct or complete of-
fence, a person may incur any number of penalties in one day, 4
Comm. 60. n. Though the conviction cannot be removed by certio-
rari, yet an information will lie against a magistrate corruptly con-
victing under it without hearing the defendant's witnesses. Burn. J.
title Swearing.—Conviction for swearing 100 oaths, viz. "by G—," and
100 curses, viz. "G— d—— you," is good, without repeating
them 100 times in the conviction. 2 Ld. Raym, 1376: Str. 608.

Swearin the Peace; See title Surety of the Peace.

SWEEPAGE, The crop of hay got in a meadow, called also the

SWEETS, or Sweet Wines; made in Great Britain for sale, are
liable to a duty of excise, &c. See Excise.

SWEINMOTE, Court of the Swains or Countrymen. One of
the Forest Courts, which is to be holden before the Verderors as
Judges, by the steward of the Sweinmote, thrice in every year, the
swains and freeholders within the forest composing the Jury. The
principal jurisdiction of this Court is, first, to inquire into the oppres-
sions and grievances committed by the officers of the forest; and se-
condly, to receive and try presentments, certified from the Court of
Attachments, against offenders in vert and venison. Stat. 34 Ed. 1.
st. 5. c. 1. And this Court may not only inquire, but convict also;
which conviction shall be certified to the Court of Justice-seat, under
the seals of the Jury; for this Court cannot proceed to judgment. 4
Inst. 289. See title Forest.

SWINDLER, A cheat, one who lives by cheating. It is a modern
term. To print of one that he is a Swindler has been held libellous
and actionable: 1 Term Rep. K B. 748: but merely to say to another
"you are a Swindler," has been denied to be actionable. 2 H. Black.
(C. P.) 531.

SWINE, shall not go unringed in woods, stat. 35 H. 8. c. 17. § 17.
See titles Hogs; London; Police.

SWOLING OF LAND, Solinga vel Swolinda Terra; Sax. Sultun,
from Sul, atratum, as to this day, in the west country, a plough is
called a Sul.] So much land as one plough can till in a year: A hide
of land; though some writers say it is an uncertain quantity.

SWORN BROTHERS, Fratres Jurati.] Persons who, by mutual
oath, covenanted to share each other's fortune: Formerly, in any nota-
ble expedition, to invade and conquer an enemy's country, it was the
custom for the more eminent soldiers to engage themselves, by re-
ciprocal oaths, to share the reward of their service: So, in the expedi-
tion of William Duke of Normandy into England, Robert de Oily,
and Roger de Ivery, were sworn brothers and Copartners in the es-
state which the Conqueror allotted them. Paroch. Antiq. 57. This
practice gave occasion to our proverb of Sworn Brothers, or Brethren in Iniquity; because of their dividing plunder and spoil. See Ward on the Law of Nations.

SYLVA CÆDUA, Wood under twenty years growth: coppice-wood. Stat. 45 E. 3. c. 3. It is otherwise called in Law-french sub-bois. 2 Inst. fol. 642. See titles Tithes; Wood.

SYMBOLUM, A Symbol, or sign in the Sacrament; the Creed of the Apostles; or Brethren in Iniquity; because of their dividing plunder and spoil. See that title. Paroch. Antiq. 649, Vol. VI, x. SYNOD, universal Synod, A national Synod, of the Clergy of one nation only. 3dly, A provincial Synod, where ecclesiastical persons of a province only assemble. 4thly, A diocesan Synod, of those of one diocese, &c. Our Saxon Kings usually called a Synod or mixed Council, consisting of ecclesiastics and the nobility, three times a year; which is said to have been the same with our Parliament. See titles King V. 3; Convocation. A Synod in Scotland is composed of three or more Presbyteries.

SYNODICAL, synodale. A tribute or payment in money, paid to the Bishop or Archdeacon, by the inferior Clergy at Easter visitation; it is called synodale or synodicum, quia in Synodo frequentius dabatur. Right. Clerg. 59. They are likewise termed Synodies, in the stat. 34 H. 8. c. 16. And sometimes Synodale is used for the Synod itself; and Synodals provincial, the canons, or constitutions of a provincial Synod. Stat. 25 Hen. 8. c. 19.

SYNODALES TESTES, Synods-men; thence corrupted to Sidesmen. Where the Urban and Rural Deans, whose office at first was to inform and attest the disorders of the Clergy and People, in the Episcopal Synod; and for which a solemn oath was given them to make their presentments. But when they sunk in this authority, the synodical witnesses were a sort of impanelled Grand Jury, composed of a priest and two or three laymen of every parish for the informing of or presenting offenders: and at length two principal persons for each diocese were annually chosen; till, by degrees, this office of inquest and information was devolved upon the Church-Wardens. (See that title). Paroch. Antiq. 649.