THE
LAW - DICTIONARY.
VOL. II.
A LAW DICTIONARY

THE RESOURCES OF WHOLE LAW

ENGLISH LAW

LEWIS KIN

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THE LAW-DICTIONARY:
EXPLAINING THE RISE, PROGRESS, AND PRESENT STATE, OF THE ENGLISH LAW, IN THEORY AND PRACTICE; DEFINING AND INTERPRETING THE TERMS OR WORDS OF ART; AND COMPRISING COPIOUS INFORMATION, HISTORICAL, POLITICAL, AND COMMERCIAL, ON THE SUBJECTS OF OUR LAW, TRADE, AND GOVERNMENT.

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NOW GREATLY ENLARGED AND IMPROVED, BY MANY MATERIAL CORRECTIONS AND ADDITIONS, FROM the latest Statutes, Reports, and other Accurate Publications;

By T. E. TOMLINS, OF THE INNER TEMPLE, BARRISTER AT LAW.

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THE LAW DICTIONARY EXPLAINING THE PRINCIPLES AND TRUE PRACTICE OF THE
ENGLISH LAW IN MODELS AND EXAMPLES
WITH THE FORMS OF ACTIONS OR ARTS
EXECUTED AND COMMISSIONED
FOR TRADING AND GOVERNMENT

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1852
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.

JAC

JACK, A kind of defensive coat-armour formerly worn by horsemen in war, not made of solid iron, but of many plates fastened together; which some persons by tenure were bound to find upon any invasion. Walshingham. It was called dierca, because at first it was made with leather. Cawell.

JACTATION or MARRIAGE, is one of the first and principal matrimonial causes in the Ecclesiastical Courts; as, when one of the parties boasts or gives out that he or she is married to the other, whereby a common defendant undertakes and makes out a proof of the matrimonial cause in the Ecclesiastical Courts; as, when one of the parties boasts or gives out that he or she is married to the other, whereby a common defendant undertakes and makes out a proof of the matrimonial cause.

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JAMAICA, An American island taken from the Spaniards, in the year 1655. See this Dict. in Navigation. Cawell.

JAMBEAUX, Leg-armour; from jambe, tibia. Blount. JAMPNUM, Furze or gore, and gorey ground; a word used in fawt of land, &c., when law proceedings were in Latin, and which seems to be taken from the Fr. jaune, i.e. yellow; because the blossoms of furze or gore are of that colour. Cawell. JANNUM, or JAUN, Heath, whins, or furze. Placita, 23 H. 3. No man can cut down furze, or whins in the forest without licence. Mavwood, cap. 25, ran. 3.

JACQUES, Small money. Sonedfu ds; P. C. c. 30. JAR, Span. jarro, i.e. an earthen pot. An earthen pot or vessel of oil, containing twenty gallons.

JARROCK, A kind of cork, or other ingredient, prohibited to be used in dying cloth. Stat. 1 R. 3. c. 8.

JAUN, Fr. jaune, i.e. yellow colour. Furze or gore, in law-latin called jampnum, and anciently jaunnum. Pl. Afr. 22 H. 3. Cawell.

IBERNAGIUM, ibernagium, ibernagium. Season for sowint winter-corn. Cart. Antiq. MSS. Vol. II.
shall be imprisoned to try this collateral issue, viz. the identity of the perpetrator. See 4 Comm. 399: and this Dictionary, title Execution and Reprieve.

IDIOTS. See Idiot.

IDES, Ides.] With the ancient Romans, were eight days in every month, so called; being the eight days immediately after the Nones. In the months of March, May, July, and October, these eight days begin at the eighth day of the month, and continue to the sixteenth day: in other months they begin at the first day, that is, the eighth, seventh, or sixth day before the Calends. For firmities of idiocy and lunacy, being in many cases inscrutable, which reason the custody of him and his lands were for some time before law, the lord shall have the ordering of idiot and lunatick, given to the king as the redress or remedy of the manifold abuses of this power by the king himself, which law, then, is with a great many representatives. And therefore it is declared by Stat. 17 Ed. 2. c. 10, that the king shall provide for the custody and suffocation of Lunaticks, and preserve their lands and the profits of them for their own use when they come to their right mind: and the king shall take nothing to his own use; and if the parties die in that state, the residue shall be distributed for their souls by the advice of the Ordinary; and of course, by the subsequent amendments of the law of administration, shall now go to their executors or administrators. 1 Comm. 304.

The definition, established by this statute, between the king's interest in the lands of an idiot and those of his lunatick, is laid down and admitted in all the books which speak of this matter; and on this foundation it hath been resolved, that the king may grant the custody of an Idiot and his lands to a person, his heirs and executors, and that he had the same interest in such a one as he had in his ward by the common law. Br. Idiot, 4. 5: Dyrr., 25: Moor, 4. pl. 12: 1 And. 23: 4 Co. 127: Co. Litt. 247.

The more general description of a person, who, from his want of reason and understanding, comes within the protection of the law, is that of Non compos mentis. Co. Lit. 246: 4 Co. 124: Skitt, 177.

There are, says Coke, four kinds of men who may be said to be non compos. 1. An idiot who is non compos: from his naturallity. 2. One made such by sickness. 3. A lunatick, qui lupi sanguis gaudet lacte intermedium; who is non compos only for the time that he wants understanding. 4. One that is drunk; which last is far from coming within the protection of the law, that is, his drunkenness is an aggravation of whatever he does amiss. Co. Lit. 247: 4 Co. 124: See 1 Hale Hist. P. C. 30—37: 3 P. Wms, 130: and this Dictionary, title Drunkenness.

An idiot is a fool or madman from his nature, and one who never has any lucid intervals; therefore the king has the protection of him and his estate, during his life, without rendering any account; because it cannot be presumed that he will be ever capable of taking care of himself.

IDIOTS AND LUNATICKS.
The Law relating to persons labouring under the infirmities of idiocy and lunacy, being in many respects the same, and in all cases depending on similar reasoning, is here reduced to one head; under which we may consider:

I. The Distinction between Idiots and Lunaticks; and the Effects of that Distinction.

II. How they are to be found such.

III. Of the Care of Lunaticks; of appointing Committees of Curates; and of their Power and Duty.

IV. Of their Effect of Idiocy or Lunacy, on the civil Acts of Persons under those infirmities.

V. Of their effects in Criminal Causes.

I. An Idiot, [derived originally from the Greek idros, a private individual,] or Natural Fool, is one that hath had no understanding from his nativity, and therefore is by law presumed never to attain any. For which reason the custody of him and his lands were formerly vested in the lord of the fee. Floc. 1. 1. c. 11. § 10. And therefore full, by special custom in some manors, the lord shall have the ordering of idiot and lunatick copyholders. Dr. 302: Hunt. 17: NoS, 87. But by reason of the manifold abuses of this power by subjects, it was at last provided by common consent, that it should be given to the king as the general conservator of his people; in order to prevent the Idiot from wasting his estate, and reducing himself and his heirs to poverty and distress. F. N. B. 233. This fiscal prerogative of the king is declared in parliament by Stat. 17 Ed. 2. c. 9; which directs, in appearance of the common law, that the king shall have ward of the lands of Natural Fools, taking the profits without waste or destruction, and shall find them necessary; and after the death of such Idiots, he shall render the estate to the heirs; in order to prevent such Idiots from alienating their lands, and their heirs from being dispossessed. 4 Rep. 126.

Lord Coke, in 4 Co. Beverley's case, says, that this prerogative was by the common law; and that the statute de praerogatvo Regis, 17 Ed. 2. c. 9, above mentioned is only declarative thereof. 2 Inst. 14: 4 Co. 116.

A man is not an Idiot if he hath any glimmering of reason, so that he can tell his parents, his age, or the like common matters. F. N. B. 233. But a man who is born deaf, dumb, and blind, is looked upon by the law as in the same state with an Idiot; he being supposed incapable of any understanding, as wanting all those senses which furnish the human mind with ideas. Co. Litt. 42: Flosa, l. 6. c. 40.

A Lunatick, or Non Compos Mentis, is one who hath had understanding, but by diseafe, grief, or other accident hath lost the use of his reason. A Lunatick is, indeed, properly one that hath lucid intervals, sometimes enjoying his senses, and sometimes not; and that frequently depending upon the change of the moon. But under the general name of non compos mentis, and which is the most legal term, are comprised not only Lunaticks, but persons under phreneses, or who lose their intellects by disease; those that grow deaf, dumb, and blind, not being born so, or such in short as are judged by the Court of Chancery incapable of conducting their affairs. See Plut. II. To these also, as well as Lunaticks, the king is guardian, but in very different particulars. For the law gives the custody of Lunaticks, that these accidental misfortunes may be removed; and therefore only constitutes the Crown a trustee for the unfortunate persons, to protect their property, and to account to them for all profits received if they recover, or after their decease to their representatives. And therefore it is declared by Stat. 17 Ed. 2. c. 10, that the king shall provide for the custody and suffocation of Lunaticks, and preserve their lands and the profits of them for their own use when they come to their right mind; and the king shall take nothing to his own use; and if the parties die in that state, the residue shall be distributed for their souls by the advice of the Ordinary; and of course, by the subsequent amendments of the law of administration, shall now go to their executors or administrators. 1 Comm. 304.

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IDIOTS AND LUNATICKS II.

himself or his affairs: and such a one is describ'd a person that cannot number twenty, tell the days of the week, does not know his father or mother, his own age, &c. But

are mentioned as instances only; for idiot, or not, being a question of fact, must be tried by jury, or

But though an idiot must be so a naturitate, yet, if by inquisition it is found, that A is an idiot not having any lucid intervals per passionem et animam, this is a sufficient finding; for the inquisition having found the party an idiot, the adding passionem et animam is surplusage, and shall be rejected. 3 Med. 43. 44. 2 S. 171.

The method of proving a person non compos is very similar to that of proving him an idiot. The Lord Chancellor, to whom, by special authority from the king, the custody of Idiots and Lunatics is entrusted, upon petition or information grants a commission in nature of the writ de idiotia inquirendo, to enquire into the party's state of mind; and if he be found non compos, the chancellor usually commits the care of his person, with a suitable allowance for his maintenance, to some friend, who is then called his Committee; 3 S. 113. The Stat. 2 E. 6. c. 8. § 6. also provides, that "if any be or shall be untruly found lunatic, &c. that every person or persons grieved or to be grieved by such office or inquisition, shall and may have his or their traverse to the same immediately, or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices founden." It has been doubted, however, whether the party aggrieved by the inquisition must not apply to Chancery, notwithstanding this provision of the statute. Leiz. 26. 27. Certain it is, that he must apply in order to expel the grant of the custody of the person, which regularly is immediate upon the return of the inquest; though according to Stat. 18 H. 6. c. 6, the custody of the land ought not to be granted till a month after; in order that the parties affected by it may have time to traverse it: ex parte Roberts, 3 Red. 5. The doctrine of traversing an inquisition, see the cases referred to in ex parte Roberts, 3 Red. 7. 311. The Stat. 2 E. 6. gives the right of traverse to all persons aggrieved by the inquisition; yet the heir may not traverse it, but is bound upon the traverse by the Lunatick, or his alience, who may traverse it: ex parte Roberts, 3 Red. 308: 1 G. Ca. 115.

If by inquisition a person be found a Lunatick, and the custody granted to 7. S., and the party thus found bring a certificatio to set aside the inquisition, the Committee of the Lunatick cannot plead nor join issue in such certificatio: for he can have no interest in the estate of the Lunatick, being only in the nature of a bailiff to the king, and therefore his duty is to inform the king's attorney-general of the nature of the affair, who is the proper person to contest the matter in behalf of the king. 2 Sid. 134.

The rules of judging upon the point of infantity, being the same in law and in equity, the Court of Chancery cannot assume any kind of discretion upon the subject; and therefore the return of an inquest, stating that W. B. was, at the time of taking the inquisition, from the weakness of his mind, incapable of governing himself and his lands and tenements, was held illegal and void; and many adjudged cases being cited to the same effect, Lord Hardwicke congratulated himself, that, upon search of precedents, the Court had not gone further, in departing from
from the legal definition of a Lunatick, that in allowing returns of non corpus mentis, or insane minds, or that the proceedings had been in English, of ungodly men, which amounts to the same thing.

And in Lord Denegel’s case upon the same principle, a commissary of lunacy was refused, though it was admitted that the weakness of Lord Denegel’s understanding was extreme. See 3 P. Wm. 130: 2 Adk. 327: 3 Adk. 68: 2 Ves. 407.

But though a court of equity, in judging upon the point of insanity, is governed by the rules of law, yet, if a man, by age or disablement, is reduced to a state of debility of mind, which, though short of lunacy, renders him unequal to the management of his affairs, the court will, in respect of his infirmities, if the demand in question be small, appoint a guardian to answer for him, or to do such other acts as his interest, or the rights of others, may require. 3 P. Wm. 111. a. B. As to the general rules of determining what shall be considered a lucid interval, where previous lunacy has been proved or admitted; See Attorney-General v. Parriner, 3 Bro. C. R.

If a man be found by a jury an Idiot, or a lunatic, he may come in person into the Chancery, and return in Chancery; and after the Court of Wards and removed by the Crown to grant the custody of childish lunatics, he shall be kept for the reception of Lunatics, without an annual licence from commissioners appointed by the College of Physicians, or the justices in sessions, under a penalty of 500l., and if the keeper of a licensed house receive any person as lunatick without a certificate from a physician, surgeon, or apothecary, that he is not in his right person to be received as a Lunatick, he shall forfeit 500l. No person to keep two houses; commissioners to visit houses once a year, or when required by the Chancellor, or either chief justice, or when they think fit, and examine persons confined.

But when the disorder is grown permanent, and the circumstances of the party will bear such additional expense, it is proper to apply to the royal authority, as delegated to the Chancellor, to warrant a lasting confinement. 1 Comm. 395.

In the case of absolute madmen, as they are not answerable for their actions, they should not be permitted the liberty of acting, unless under proper control; and in particular they ought not to be suffered to go loose, to the terror of the King’s subjects. It was the doctrine of our ancient law, that persons deprived of their reason might be confined till they recovered their senses, without waiting for the forms of a commission, or other special authority from the Crown: and now by the vagrant acts a method is directed to be pursued for imprisoning, chaining, and sending them to their proper houses. 4 Comm. 25: see Stat. 17 Geo. 2. c. 5. § 20, 21; and this Dictionary, titles Poor; Vagrants.

Although the statutes respecting Idiots and Lunatics, Stat. 17 E. 3. c. 9, 10, refer only to the lands of the Idiot or Lunatick, yet it seems that the prerogative extends to the custody of his person, goods, and chattels. Beverley’s case, 4 Ga. 126: T. N. B. 237. As to the manner in which this branch of the prerogative is vested in the Chancellor; before the Court of Wards was erected, the jurisdiction, both as to Idiots and Lunaticks, was in Chancery, and therefore all such commissions were taken out and returned in Chancery; and after the Court of Wards was abolished by act of parliament, it reverted back to the Court of Chancery, and the sign manual is a standing warrant to the Lord Chancellor to grant the custody of Lunatics, and is a beneficial one in case of idiocy, because the King could not only grant the custody of Idiots, but also the rents and profits of their lands. 2 Adk. 553. And the power of the Chancellor extends to making grants from time to time of the Idiot’s and Lunatick’s estates. 3 Adk. 635. And as this power is derived under the sign manual, in virtue of the prerogative of the crown, the Chancellor, who is usually involved with, is responsible to the crown alone for the right exercise of it; and therefore an appeal will not lie to the House of Lords, from an order made in lunacy, but must be made to the King in Council. 3 P. Wm. 107: Rees v. Elph. (E) Bro. P. C. Though the King may, by force of law, or by information, avoid all acts done during the incapacity, yet his right to the mean profits shall have relation only to the time of the office. 8 Rep. 170. a.

The doubt, whether the King could grant the custody of an Idiot to one and his executors, proceeded on the possibility of the executorship devolving on an infant, who, being held incapable of managing his own estate, could scarcely be thought a proper person to be intrusted with the charge.
IDIOTS AND LUNATICKS IV.

charge of the person and lands of another. The Court of King's Bench, however, did, upon an issue directed, adjudge the grant to be good, holding it to be a trust coupled with an interest, of which an infant is capable. 3 Mod. 43: 8 Kin. 177. See 1 Vern. 9.

Though in actions the guardianship of the King may be liable to be determined by the death of the Lunatick, yet it has been held, that the Chancellor may make an order in a Lunatick's affairs, after the death of the Lunatick. 2 Amb. 706; see also 3 Bos. C. R. 258.

The custody of Lunaticks being a branch of the prerogative, the appointment of the Committee must necessarily be in the discretion of the person to whom that branch of the prerogative is intrusted; but in the exercise of this discretion, certain rules have been regarded, as best calculated to protect the person and interests of the unfortunate Lunaticks.

To prevent further practices, the next heir is seldom permitted to be the Committee of the person of a Lunatick, because it is his interest that the party should die; but it has been said there lies not the same objection against his next of kin, provided he be not his heir; for it is his interest to preserve the Lunatick's life, in order to increase the personal estate, by savings (out of the rents and profits of the real) which he or his family may hereafter be entitled to enjoy. 2 P. Wm. 638. The heir is generally made the manager or Committee of the estate, it being clearly his interest, by good management, to keep it in condition; accountable however to the Court of Chancery, and to the next of kin himself if he recovers, or otherwise to his administrators. 1 Cow. 305.

This division was, however, very severely reproved by Lord Chancellor Machesfield, in Justice Dormer's case, 2 P. Wm. 164, as founded in barbarous times, before the nation was civilized; but it may be observed in defence of it, that it gives the custody of the person to those who, in point of nearest of blood, have equal pretensions to the charge, without the same temptation, in point of interest, to abuse it. Lord Chancellor Finch, in Lady Mary Cope's case, 2 Cb. Ca. 250, appears indeed to have strained the rule beyond its original extent, in deciding that a half-brother should not be Committee of the person of a Lunatick, because concerned to oublieve her. A reason which, in fact, does not apply; for the personal estate may increase, and probably will, by good management, during the life of the Lunatick; thus, the longer the Lunatick lives, it will be the better for the next of kin. 2 P. Wm. 638, 544.

Though no Committee should get any thing by his appointment, yet the allowance for the support of a Lunatick should be liberal and honourable; and, if necessary, the court will allow the yearly value of the Lunatick's estate. See 2 C. C. 259: 2 Amb. 78: 2 P. Wm. 265: 3 P. Wm. 110.

So briefly does the court consider the committee ship a mere authority without any interest, that where the custody of the Lunatick's estate was granted to husband and wife, the wife being next of kin to the Lunatick, Lord Talbot held, that the husband's right was determined by the death of the wife, the grant being void. Forsee 143. It must not, however, be inferred from this case, that the husband was necessarily joined in the grant. Lord Parker having held (ex parte Kingmiller, Mich. T. 1720,) that the custody of a Lunatick may be granted to a feme covert, though not fuit juris, and, indeed, the court will seldom grant the custody to two, and in its choice is influenced by the sex of the parties applying, as well as by other circumstances. Therefore, where two persons equally a kin to a feme Lunatick, the one a man, the other a woman, applied for the custody, the woman was preferred as being of the same sex, and better knowing how to take care of her. 2 P. Wm. 655.

With respect to the powers with which the Committee of a Lunatick is intrusted, they are necessarily restrained by the object of the trust, and as a discretionary power might, in some instances, endanger that object, the Committee cannot make leases, nor incumber the Lunatick's estate, without special order of the court, though the profits be not sufficient to maintain the Lunatick; therefore, where the Lunatick when sane had mortgaged his estate for 50l., and the Committee had afterwards taken up more upon it, the court refused to allow the mortgage to stand, as a security for more than the 50l., or to charge the heir of the Lunatick with the improvements made by the Committee. 1 Vern. 265.

The court, however, will allow the Committee of a real estate of a Lunatick to exercise the same power over it, in regard to cutting timber for repairs, as any discreet person who was the absolute owner of it might do. 2 Act. 457. Though it has been stated as a rule never departed from, not to vary or change the property of a Lunatick, to as to effect any alteration as to the succession to it; it has been decreed, that incumbrances paid off in the life-time of the Lunatick, out of savings of the estate, should be assigned to attend the inheritance, and not in trust for the next of kin; the ruling principle in the management of a Lunatick's estate, being considered to be the doing of that which is most beneficial to the Lunatick. And it is upon this principle, that the court will order part of the Lunatick's personal estate to be laid out in repairs, or even upon improvements of his real estate, if the interest of the Lunatick requires it, and the next of kin cannot shew good cause against it. See Amb. 81. 760: 2 Act. 414.

IV. An idiot, or person non comus, may inherit; because the law, in compassion to their natural infirmities, presumes them capable of property. Co. Lit. 2, 8.

It was formerly adjudged, that the issue of an Idiot was legitimate, and consequently that his marriage was valid. A strange determination! since confent is absolutely requisite to matrimony, and neither Idiots nor Lunatics are capable of consenting to any thing; and therefore the civil law judged more safely when it made such deprivations of reason a previous impediment; though not a cause of divorce if they happened after marriage. And modern resolutions have adhered to the reason of the civil law, by determining that the marriage of a Lunatick, not being in a lucid interval, was absolutely void. But as it might be difficult to prove the exact state of the party's mind at the actual celebration of the nuptials, the Stat. 15 Geo. 2. c. 50, has therefore provided that the marriage of Lunatics and persons under phreneses, (if found Lunatics under a commiision, or committed to the care of trustees by any act of parliament,) before they are declared of sound mind by the Lord Chancellor, or majority of such trustees, shall be totally void. 1 Comm. 428.
If an Idiot or Lunatick marry, and die, his wife shall be endowed, for this work no forfeiture at all, and the King has only the custody of the inheritance in one case, and the power of providing for him and his family in the other; but in both cases the freehold and inheritance is in the Idiot or Lunatick; and therefore if lands descend to an Idiot or Lunatick after marriage, and the King, on office found, takes those lands into his custody, or grants them over to another, as Committee, in the usual manner; yet this seems no reason why the husband should not be tenant by the curtesy, or the wife endowed; since their title does not begin to any purpose till the death of the husband or wife, when the King's title is at an end. Co. Lit. 31. a. 4 Co. 124, 125. Yet see Plemo, 263. b. 1 Vern. 10.

A Lunatick shall be tenant by the curtesy, and shall have dower; though a woman, being a Lunatick, kill her husband, or any other, yet she be endowed, because this cannot be felony in her, who was deprived of her understanding by the will of God. Perk. 262.

If a person non compos be diluted, and a decent cause, this, it is said, takes away his entry, but not the entry of the heirs; for regularly the non compos in this case cannot make the husband in himself, because he cannot be supposed conscious of it, nor is he allowed ever, at any time, to make it; for when he is once non compos, there is no certain time when he can be adjudged to recover that disability, unless where he is legally committed, and then the acts during his lunacy will be set aside and discharged, and afterwards the commission superseded; for in no other way can the non compos be legally restored to his right, and to his capacity of acting. Lit. § 405 : Co. Lit. 247.

A person non compos, being lord of a copyhold manor, may make grants of copyhold estates, for such estates do not take their perfection from any power or interest in the lord, but from the custom of the manor, by which they have been demised and demised time out of mind. 4 Co. 23. b. Co. Copyholder, 79, 107.

Idiots and Lunatics are, both, by the civil law and likewise by the common law, incapable of being executors or administrators; for these disabilities render them not only incapable of executing the trust reposed in them, but also by their insanity, and want of understanding, they are incapable of determining whether they will take upon them the execution of thetrust or not. Gedolph. Orph. Leg. 86.

Therefore it hath been agreed, that if an executor become non compos, that the spiritual court may (on account of this natural disability) commit administration to another. 1 Sale. 36.

An Idiot can have no executor; for being non compos à mortuis, he could at no time make a will; but a Lunatick may have an executor, for lunacy is not a revocation of a will made when compos. 4 Co. 61. b. But equity will not entertain a suit to perpetuate the testimony of witnesses to such a will in the life-time of the Lunatick. 1 Vern. 105. In supporting the validity of the will, notwithstanding the subsequent lunacy, the rule of the common law is conformable to the civil law, which provides that: "neque testatum, neque alium aliud negatum, testatum, non est nullius saevius judicium, nisi fuerit eminentius permittas." Insf. l. 2. s. 12. § 1.

Distinction must be made between acts done by Idiots and Lunatics in pais, and in a court of record. As to those formerly acknowledged in a court of record, as Fines and Recoveries, and then declared on them, they are good, and can neither be avoided by themselves nor their representatives; for it is to be presumed, that had they been under these disabilities, the judges would not have admitted them to make their acknowledgments. 4 Co. 124. a. 21 Vern. 433. Brs. tit. Fines, 75. Co. Lit. 247. 2 1d. 107.

Therefore, if a person non compos acknowledges a fine, it shall stand against him and his heirs, for though the judges ought not to admit of a fine from a madman under that disability, yet when it is once received, it shall never be reversed, because the record and judgment of the court being the highest evidence that can be, the law presumes the composure at that time capable of contracting; and therefore the credit of it is not to be controlled, nor the record avoided by any averment against the truth of it, though an office and him an Idiot a suitor. 4 Co. 124. a. 2 Inf. 433. Brs. tit. Fins, 75. Co. Lit. 247. 2 1d. 107.

The rule of law in these cases is, futi non debet, sed factum vult; and Mansfield's case, 12 Co. 123, furnishes a striking instance of the extreme anxiety of courts of law to protect the authority of their records; for though in that case a fine was levied by a man obviously an Idiot, and by a most gross contrivance, and though Lord Dyer observed, that the judge who had taken it, ought not to take another, yet he allowed it to prevail. As by the common law a fine might be avoided on account of fraud, or even on account of infancy, by inspection during the infancy; (Bratton 456. b. 457. a. Co. Litt. 385. b.) it seems remarkable, that idiocy or lunacy should not have been held entitled to the same effect; but Mansfield's case abundantly proves that the grossest imbecility of mind was not at law, a ground of annulment the record. But, in equity, a remainder-man has been relieved against a fine levied by an Idiot, even against a pur­chaser. Tab. 42. see also 2 Vern. 678. The Court of Chancery, however, in the case of fraud, does not absolutely set aside or vacate the fine; but, considering those who have taken it under such circumstances as trustees, decrees a reconveyance of the estate to the persons prejudiced by the fraud; and though this does not distinctly appear to be the practice, in the case of fines levied by Idiots or Lunatics, yet, from the argument in Day v. Hanger, 1 Rolle's Rep. 113, such may be inferred to be the rule of proceeding. See this Dist. tit. Fines of Land.

If an Idiot or Lunatick enter into a recognizance, or acknowledge a placte, neither they themselves, nor their heirs nor executors can avoid them; for these are securities of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being matters of record, and equivalent to judgments of the superior courts, neither they themselves, their heirs nor executors, can avoid them. 4 Co. 124. a. 10 Co. 42. b. 2 Inf. 483. Brs. Fairs. Loroal. 14.

As to acts in pais; Idiots and persons of noncompos memory, are not totally disabled either to convey or purchase, but sub modo only; for their conveyances and purchases are voidable, but not actually void. The King, indeed, on behalf of an Idiot, may avoid his grants, or other acts. 1 Inf. 247. But it hath been said, that a
CHAPTER V.

IDIOTS AND LUNATICKS.

When a lunatic has done by himself, though he be afterwards brought to a right mind, shall not be permitted to allege his own insanity, in order to avoid such grant; for that no man shall be allowed to glutify himself, or plead his own disability. The maxim, however, that a man shall not glutify himself has been handed down as law from very remote authorities, which Fitzhurber does not scruple to reject as contrary to reason; and later opinions, feeling the inconvenience of the rule, have in many points endeavoured to restrain. F. N. B. 202: Litt. 405: Cro. Eliz. 398: 2 Rep. 173: Term. 760: 3 Mod. 310, 311: 1 Eq. Ab. 279: See Pembroke's Treat. Eq. c. 2, § 1, and dnna. 1104: 2 Vent. 168, there cited.

Though the principles upon which Courts of Equity in general relieve, appear to entitle a Lunatick to a remedy in such cases, there does not appear a single case in which the plea of non compos by the Lunatick himself before inquiry has been allowed; on the contrary, in Tindal 130, it is said, that Chancery will not retain a bill to examine the point of lunacy. But after the Lunatick is so found by inquiry, his Committee may avoid his acts from the time he is found to have been non compos. See 2 Term. 414, 578: 1 Eq. Ab. 279. Courts of Equity were formerly so anxious to adhere to the rule of law, that the Lunatick was not allowed to be a party to a suit, to be relieved against an act done during his lunacy; 1 C. 112: though he might be party to a suit, to enforce performance of an agreement entered into prior to his lunacy. 1 C. 153.

And clearly the next heir or other person interested may, after the death of the Idiot or non compos, take advantage of his incapacity, and avoid his grant. Per. § 21.

See 2 Term. 414, 578. So too, if he purchases under this disability, and does not afterwards, upon his recovering his senses, agree to the purchase, his heir may either waive or accept the estate at his option. 1 Infr. 2.

The Guardians or Committees of a Lunatick also are empowered by Stat. 11 Geo. 2. c. 20, to renew in his right, under the directions of the Court of Chancery, any lease for lives or years, and apply the profits of such renewals for the benefit of such Lunatick, his heirs or executors. See 2 Comm. 201.

By statute Geo. 2. c. 10, Lunaticks being trustees or mortgagees, are empowered by themselves, or by their Committees, to convey the estates of which they are feised in trust or mortgage: but it is doubtful whether the words of the act include all Lunaticks, as well such as are at large, as those of whom custody has been granted under the great seal. Amb. 30.

If Parceurs of non compos memory make partition, unless it be equal, it shall only bind the parties themselves, but not their issue: and the reason it binds the parties themselves, is that the same all other contracts bind them, viz. because no man is admitted to glutify himself; and the reason their issue may avoid such partition is the fame likewise, for which they may avoid all other contracts made by such ancestors during their minority, viz. because they may be admitted to shew the incapacity of their ancestors, and so avoid all acts done by them during that time. Co. Lit. 165. a.

Courts of Equity will not allow such contracts completed by the Lunatick while sane; but, under certain circumstances, will enforce performance of such as were entered into before, but were not complete at the time of the lunacy: for the change of the condition of a person entering into an agreement, by becoming lunatick, will not alter the rights of the parties, which will be the same as before; provided they can come at the remedy: as, if the legal estate be vested in trustees, a court of equity ought to decree a performance; but, if the legal estate be vested in the Lunatick himself, that may prevent the remedy in equity, and leave it at law. 1 Vern. 82.

As to the effect of a defendant becoming insane after an arrest at law, it seems to be now settled, that such circumstance is not a reason for discharging him out of custody, on filing common ball. 2 Term Rep. 390. Nor will a court of law interfere, though the party be insane at the time of arrest. 4 Term Rep. 121.

It seems that, even at law, the contracts of Idiots and Lunaticks, after office found, and the party legally committed, are void, and it may all be at the peril of him who deals with such an one; and that if afterwards the commission of lunacy be superceded or discharged, the non compos shall be restored to his legal right: but this, it seems, must be at the suit and application of his Committee. 4 Co. 125.

When an Idiot doth sue or defend he shall not appear by guardian, procuring am, or attorney; but he must be ever in proper person. Co. Lit. 135: b. F. N. B. 27. The statute of W. 35. cap. 15, extends not to an Idiot. 2 Infr. 390.

But otherwise of him who becomes non compos mentis; for he shall appear by guardian, if within age, or by attorney if of full age. 4 Co. 124: b. Pal. 320. &中期. Saund. 335.

If a trespass be committed in the lands of a Lunatick who is legally committed, the Committee cannot bring an action of trespass; but this must be brought in the name of the Lunatick. 2 Sid. 125.

If a Lunatick be sued, he must have a Committee assigned to him to defend the suit. 1 Vern. 106.

V. One case of a deficiency in will, which excuses from the guilt of crimes, arises from a defective, or vitiated understanding; viz. in an Idiot or Lunatick. For the rule of law as to the latter, which may be easily adapted also to the former, is, juris prima sentia solvere. In criminal cases, therefore, Idiots and Lunaticks are not chargeable for their own acts, if committed under these incapacities; no, not even for treason itself. 3 Infr. 6.

Also if a man in his found memory commits a capital offence, and before arrangement for it he becomes mad, he ought not to be arraigned; if after pleading, he shall not be tried; if after trial, he shall not receive judgment; if after judgment, execution shall be stayed. See this Dictionary, title Execution and Reprieve.

It seems to have been anciently held, (in respect of that high regard which the law has for the safety of the King's person,) that a madman might be punished as a traitor for killing, or offering to kill, the King; but this is now contradicted by better and later opinions. Fiz. Coras. 751: Reg. 587: 4 Co. 124. b. 1 Roll. Rep. 324. In the reign of Henry VIII a statute was made, 13 H. 8. c. 20, that if one committed treason should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death as if he were of perfect memory; but this was repealed by Stat. 1 & 2 P. & M. c. 10: 13 Infr. 6. But if there be any doubt whether
whether the party be comus or not, this shall be tried by a jury; and if he be so found, a total idiocy or absolute insanity excuses from the guilt, and of course from the punishment, of any criminal action committed under such deprivation of the senses; but if a Lunatic hath lucid intervals of understanding, he shall answer for what he did in those intervals, as if he had no deficiency. 1 Hal. P. C. 51.

It is laid down as a general rule, that Idiots and Lunatics being, by reason of their natural disabilities, incapable of judging between good and evil, are punishable by no criminal prosecution whatsoever. 1 Hawk. P. C. 2.

And therefore a person who loses his memory by sickness, inutility, or accident, and kills himself, is not felo de fe. 3 H. R. 54.

So if a man give himself a mortal stroke while he is non comus, and recovers his understanding, and then dies, he is not felo de fe; for though the death complete the homicide, the act must be that which makes the offence. But it is not every melancholy or hypochondriacal distemper that denominates a man non comus, for there are few who commit this offence, but are under such infirmities; but it must be such an alienation of mind that renders them to be madmen, or frantic, or delirious of the use of reason. 1 Hal. P. C. 412.

And as a person who loses his memory by sickness, inutility, or accident, and kills himself, is not felo de fe by killing himself, so neither can he be guilty of homicide in killing another, nor of petit treason. 1 Hawk. P. C. 2.

The great difficulty in these cases is, to determine where a person shall be said to be in a state of total or partial insanity; and though it be difficult to define the indivisible line that divides perfect and partial insanity, yet, says he, it must rest upon circumstances, duly to be weighed and considered both by the judge and jury; left on the one side there be a kind of inhumanity towards the defects of human nature, or, on the other side, too great an indulgence given to great crimes; and the last measure he can think of is this: such a person, as labouring under melancholy distempers, hath yet ordinarily as great understanding as a child of fourteen years commonly hath, is such a person as may be guilty of treason or felony. 1 Hal. H. J. P. C. 30.

He who invites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. Rake. 53: Dalb. cap. 95: 1 Hark. P. C.: see titles Accestry; Murder.

And here we must observe a difference the law makes between civil suits that are terminated in consideration duellum illicitum, and criminal suits or prosecutions, that are ad param & in vindicatam criminim commissum; and therefore it is clearly agreed, that if one who wants discretion commits a trespass against the person or possession of another, he shall be compelled in a civil action to give satisfaction for the damage. 2 Roll. Abr. 547: Hob. 134: Co. Lit. 247: 1 Hawk. P. C. 2: 1 Hal. H. J. 15, 16, 38.

As to Idiocy, Lunacy, or Madness, (the latter of which is defined by Hale to be a total alienation of the mind,) which excuses in capital cases, it is not necessary that it was found by inquisition that the party was a Madman, Idiot, or Lunatic, previous to the commitment of the fact; for if he was actually mad at the time of the fact committed, this shall excuse; and this regularly is to be tried by an inquest of office to be returned by the sheriff of the county, wherein the court sits for the trial of the offence; and if it be found that he was actually mad, he shall be discharged without any other trial; but if they find that the party only feigns himself mad, and he refuses to answer or plead, he shall be dealt with as one who flands mute. 26 Aff. pl. 27: 4 Br. Co. 101: 1 And. 107, 154: 5 Sm. 50, 57: 1 Hark. P. C. 2: 1 Hal. H. J. P. C. 35.

These defects whether permanent or temporary must be unequivocal and plain; not an idle frantic humour or unaccountable mode of action, but an absolute disposition of the free and natural agency of the human mind. 8 S. T. 522: 1 Hal. P. C. 2: 1 Hawk. P. C. c. 1. § 1. in n.

If a man in a frenzy happens by some oversight, or by means of the garter, to plead to his indictment, and is put upon his trial, and it appears to the court upon his trial that he is mad, the judge, in his discretion may discharge the jury of him, and remit him to gaol to be tried after the recovery of his understanding, especially in cases any doubt appear upon the evidence touching the guilt of the fact, and this is favorabul amittit: and if there be no colour of evidence to prove him guilty, or if there be a pregnant evidence to prove his insanity at the time of the fact committed, then, upon the same favour of life and liberty, it is fit it should be proceeded in the trial, in order to his acquittal and enlargement. 1 Hal. H. J. P. C. 33, 36.

So if a person during his infancy commits a capital offence, and recovers his understanding, and being indicted and arraigned for the same, pleads Not guilty, he ought to be acquitted; but for reason of his incapacity, he cannot not felo de fe. 1 Hal. H. J. P. C. 56.

IDIOTA INQUIRENDO. See the preceding title Idiots and Lunatics.

IDILENESS. See titles Poor; Vagabonds.

IDONIUM SE FACERE; IDONEARE SE, To purge himself by oath of a crime of which he is accused. Leg. H. 1. cap. 15: where the word idoneum is taken for nomine. But he is said in our law to be idoneus, who hath these three things, bonitas, knowledge, and ability; and if an officer, &c. be not idoneus he may be discharged. 8 Rep. 41: See titles Confabulation, Protestation.

IDUMANUS FLUVIUS, Black-Water in Essex.

JEJUNIUM, Purging per jejum, is mentioned in Leg. Comti, cap. 7: upon Brmpn. See title Ordeal.

JEMAN, Sometimes used for german. Consol.

JEOPARDS, I am fail and eje lapsum; I have failed. An oversight in pleadings, or other law proceedings, See this dictionary, title, Amendment.

JERSEY, GUERNSEY, SARK, AND ALDERNEY. These islands and their appendages were parcel of the dukedom of Normandy, and were united to the crown of England by the first princes of the Norman line. They are governed by their own laws, which are, for the most part, the ducal customs of Normandy, being collected in an ancient book of very great authority, enacted
JERSEY

entitled Le Grand Geometrier. The king's writ or process from the court at Westminster is there of no force, but his commission is. They are not bound by common acts of our parliament, unless particularly named. A Stat. 28.

All causes are originally determined by their own officers, the bailiffs and jurats of the islands; but an appeal lies from them to the king and council in the last resort. 1 Comm. 106. See further this Dictionary, titles Navigation Acts, Plantations.

JESSE, A large brae candleslick, with many fountains, hanging down in the middle of a church or choir; which invention was first called Jeffre, from the similitude of the branches to those of the Arbor Jofe. This useful ornament of churches was first brought over into this kingdom by Hugh de Flury, abbot of St. Austin's in Canterbury, about the year 1100. Chron. Will. Floras.

JETSON, JETSON, and JOTSON, from the French jetiers, ejecres. Any thing thrown out of a ship, being in the danger of wreck, and by the waves driven to the shore. See this Dictionary, titles Flotsam; Wreck.

The society of Jetains was instituted by Ignatius Loyola, a Biscop congratulated man. It has been termed most political and well regulated of all the monastic orders, and from which mankind have derived more advantages, and received greater hurt, than from any other of the many religious fraternities. Roberts, HfSt. Emp. Char. V. 2 P. 134, 135, &c.

By the statutes against papists, persons born in the king's dominions and ordained by the pretended Jurisdiction of Rome, remaining in England, or coming from beyond sea into this kingdom, and not submitting to some bishop or justice of peace within three days, and taking the oaths, are guilty of high treason; and receivers, aiders, and abettors of them are guilty of felony. Perons knowing priests, Jesuits, &c. and not discovering them to a justice of peace, shall be fined and imprisoned. See title Papists.

JEWES. See Juedaiz; and also titles Carrier; Navigation Acts; Baron and Feud.

JEWES, Judeaz. In former times the Jews and all their goods were at the disposal of the chief lord where they lived; who had an absolute property in them; and they might not remove to another lord without his leave: and we read that king Henry III, sold the Jews for a certain term of years to earl Richard his brother. They were distinguished from the Christians in their lives, and at their deaths; for they wore a badge on their outward garments, in the shape of a table, and were fined if they went abroad without such badges; and they were never buried within the walls of any city, but without the same, and anciently not permitted to burial in the country. Matt. Paris, 521, 666, &c.

There were particular judges and laws by which their causes and contracts were decided here, and there was a court of justice assigned for the Jews. 4 Inst. 254. A Jew may be witness by our laws, being sworn on the Old Testament. According to our ancient books, Jews, Harreticks, &c. are adjudged out of the statutes allowing benefit of clergy. But this doctrine is now exploded. See title Clergy, Benefit of.

The statute 53 Hen. 3, was called proviso sum de judaiz; and by the statute 18 Ed. i, the king had a fifteenth granted him pro expulsione judaeorum. In the 16th year of Edward I, all the Jews in England were Vol. II.

imprisoned; but they redeemed themselves for a vast sum of money: notwithstanding which, even 19 of that king, he banished them all. Stat. 5 Edw. b. 3. p. 54. And they remained in banishment 364 years; till at the time of the grand rebellion they were again allowed in the kingdom.

A plaintiff had leave given him by the court to alter the venue from London to Middlesex, because all the fittings in London were on a Saturday, and his witness was a Jew, and would not appear that day. 2 Mod. 271.

A Jew brought an action, and the defendant pleaded that the plaintiff was a Jew, and that all Jews are perpetual enemies of the king and our religion. But, by the court, a Jew may recover as well as a villain, and the plea is but in disability so long as the king shall prohibit them to trade; and judgment for the plaintiff. L. P. R. 4. cites Mich. 50 Car. 2. B. R.

A Jew was ordered to swear his answer upon the foul oath, and that the plaintiff's clerk should be present to see him sworn. 1 Vite. 263.

The Jews, it has been said, are here by an implied license, but on a proclamation of banishment, they are in the same situation as alien enemies on a determination of letters of safe conduct. Arg. 2 Douet. 371. See further, as to the privileges and incapacities of Jews, this Dictionary, title Alien.

In the beginning of this century an infallence occurred, where a Jew of immense riches, turned out of doors his only daughter who had embraced Christiannity; and on her application for relief, it was held he could not be compelled to afford her any. Lord Raym. 569. But, to prevent such inhumanity in future, the statute 1 Anne, c. 50, ordains, that if Jewish parents refuse to allow their protestant children a fitting maintenance to the fortune of the parent, the Lord Chancellor on complaint may make such order therein as he shall see proper. See 1 P. Cas. 24. 2 Esq. 153. 62.

IFUNGLA, The fine leaf bread, formerly called cockle bread. Blount.

IGNIS JUDICIIUM, Purgation by fire, or the old judicial fire trial. Blount. See Ordal.

IGNIORMUS, We are ignorant.] The words formerly written on a bill of indictment by the Grand Jury impaneled on the inquisition of criminal causes, when they rejected the evidence as too weak or defective to make good the presentment against a person so as to put him on the trial; the effect whereof was, that all further inquiry and proceedings against that party on that bill, (for the words now used are, not a true bill, or not found,) for the fault whereof he is charged, is thereby stopped, and he is delivered without further answer. 3 Inst. 20. See this Dictionary, title Indictment.

IGNORANCE, Ignoramus.] Want of knowledge of the law, shall not excuse any man from the penalty of it. Every person is bound at his peril to take notice what the law of the realm is; and ignorance of it though it be excusable, where a man affirms that he has done all that in him lies to know the law, will not excuse him. Dob. & Stud. 1. 46; Plowd. 343.

And an infant of the age of discretion shall be punished for crimes, though he be ignorant of the law; but infants of tender age, have Ignorance by nature to excuse them; so persons non compos have Ignorance by the hand of God. Stud. Comp. 83, 84.

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IGN

Though Ignorance of the law excuses not, Ignorance of the fact does: as if a peron buy a horse or other thing in open market, of one that had no property therein, and not knowing but he had right; in that case he had no good title, and the Ignorance shall excuse him. 1 Trin. 359. But if the party bought the horse out of the market, or knew the seller had no right, the buying in open market, would not have excused. Ibid. 5 Rep. 82. Also where a man is to enter into land or house, &c., he must see that what he does be rightly done, or his Ignorance shall be no excuse. Wood's Inst. 608.

Ignorance of fact is a defect of will, when a man intending to do a lawful act, does that which is unlawful. For here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act; as if a man intending to kill a thief, or houndbreaker in his own house, by mistake, kills one of his own family. This is no criminal action. Cro. Car. 538. But if a man thinks he has a right to kill a person excommunicated or outlawed wherever he meets him, and does so, this is murder, as it proceeds from a criminal ignorance of the law. 4 Comm. 357.

IRENILD-STREET: One of the four famous ways that the Romans made in England, called Stretton loudrum, because it took its beginning among the Jews, which were the people that inhabited Norfolk, Suffolk, and Cambridge. 5 Man. Brit. 1 Leg. Urb. Conf. c. 12. See title Walking-Street.

ILBT, By contraction rightly, righteously; a little island. Blount.

ILEVAILABLE, A debt or duty that cannot or ought not to be levied; as avid not upon a debt is a mark for illegivable.

ILLITERATE. If an illiterate man be to sell a deed, he is not bound to do it, if none be present to read it, if required; and reading a deed false, will make it void. 2 Rep. 3. 11. See jest. A man may plead non est factum to a deed read false; as where a release of an annuity was made to an illiterate person, as a release of the inart of the land, &c., agreed to be released. Moz. 148. If there is a time limited for a person to make a writing, such a case illiteracy shall be no excuse, because he might provide a skilful man to instruct him; but when he is obliged to sell it upon request, &c., there he shall have convenient time to be instructed. 2 Nelf. Abr. 224.

If a man for great age cannot see to read, and sale an obligation upon false reading, he shall avoid it. 1 Rep. 28. Resolved, though he was lettered; for now he has all his intelligence by hearing. Also vide 9 H. 6. 59. 6. 10 H. 6. 6. 10; 2 Rep. 9; Slin. 159. 47 E. 3. 11. 14 Ed. 3. 23; 44 Eliz. 35; 3 Ed. 3. 31. 22 a. 12; Rep. 27, 1 Pigg. &c. See title Debt.

ILLUMINARE, To illuminate, to draw in gold and colours the initial letters and the occasional pictures in manuscript books. See Brompton, face anno 1766. Those persons who particularly professed this art, were called illuminators, whence our illuminators.

IMAGES. How to be defaced, Stat. 3 & 4 Ed. 6. c. 49. See title Pithg. 25 Ed. 3. c. 2. A Queen regnant is within the words of the 38, 1 Hal. P. C. 101. The terms portraffing and imagining are synonymous. And there

must be sufficient proof of an overt act to convict. See this Dictionary, title Treason.

IMBARGO, Span. Navium detentio.] A stop, stay, or arrest upon ships or merchandise, by public authority. See Statute 6 Car 2. 15. 5. This arrest of shipping is commonly of the ships of foreigners in time of war, and difference with States to whom they are belonging: but, by an ancient statute, foreign merchants in this kingdom are to have forty days' notice to sell their effects and depart, on any difference with a foreign nation. 27 Ed. 3. c. 17. See title Merchant. This term has also a more extensive signification, for ships are frequently detained to serve a prince in an expedition; and for this end have their lading taken out without any regard to the colours they bear, or the government to whose subjects they belong. The legality of such a measure has been doubted by some, but it is certainly controllable to the laws of nations, for a prince in distress to make use of whatever vessels he finds in his ports that may contribute to the success of his enterprise. Parks on Insurance, c. 4. p. 78. The king may grant Imbargoes on ships, or employ the ships of his subjects, in time of danger, for the service and defence of the nation; but a warrant to ship a foreigner's goods, on a private account, is no legal Imbar. Moz. 552: Carth. 297. Prohibiting commerce in the time of war, or of plague, pestilence, &c. is a kind of Imbar on shipping.

Imbargoes laid on shipping in the ports of Great Britain, by royal proclamation, in time of war, are strictly legal, and are equally binding as an act of parliament; because such proclamation is founded on a prior law, namely, that the king may prohibit any of his subjects from leaving the realm. But in times of peace the power of the king to lay such restraints is doubtful; and therefore where a proclamation is issued in the year 1766, to prevent the exportation of corn against the words of a statute, (22 C. 2. c. 13) then in force, although the measure was absolutely necessary to prevent a dearth, it was thought prudent to procure an act of the legislature, (Stat. 7 Geo. 3. c. 7) to indemnify all who advised or acted under that proclamation. See Parks on Stat. 701; and Comm. 270. 4 Med. 177. 9.

And further this Dictionary, title Insurance.

IMBASING of Money. Mixing the species with an alloy below the standard of sterling; which the king by his prerogative may do, and yet keep it up to the same value as before: Inbmasing of it, is when it is raised to a higher rate, by proclamation. 1 Hale's Hist. P. C. 192. See title Coin.

IMBEzzle, To steal, pilfer, or purloin; or where a person enthralls with goods, waktes and diminishes them. The word imbazzile is mentioned in several statutes, particularly relating to workers of wool, &c. Stat. 7 Jac. 1. c. 7: 1 Ann. Stat. 2. c. 18. See title Manufacturer.

If any servant imbazzle, purloin, or makes away his master's goods, to 40 a. value, it is made felony without benefit of clergy, by Stat. 12 Ann. c. 7. See titles Felony; Robbery; Servent; Appreход.

Indecency of the king's armour or forms is felony without clergy, by 25 Ed. 4. 14. As to moral defeces, the benefit of clergy is taken away by 22 Car. 2. c. 5. Other inferior imbezlements and mideas, that fall under this denomination, are punished, by Stat. 1 Geo. 1. Stat. 2. c. 25, with fine and imprisonment.
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Imbrogling the public money. If committed by high officers, is usually punished by impeachment in parliament. At common law the offender is subject to a discretionary fine and imprisonment. 4 Comm. 121. 2.

Imbrogling or wasting records, is a felonious offence against public justice, by statute 8 Hen. 6. c. 12. See titles: Records; Felony; Fine; Bonds.

IMBRAGERY. See Embrazery.

IMBROCUS, A brook, a gut, a water-passage. See titles: Paris and Posts, p. 43.

IMBROIDERY. See Embroidery.

IMMUNITIES. King Henry III. by charter granted to the citizens of London, a general immunity from all tolls, &c. except tolls and privilege of wine. Cit. ib. 94. See titles: Kings; Prerogative; London.

IMPARLARE. To put in a pound. Ll. Hon. 1. c. 9. IMPE
dale, Imparllare vel imparllare Juratis signifies the writing and entering into a parchment schedule, by the sheriff, the names of a jury.

IMPARLANCE. Interlocutio, vel licentia interloquendi, from the Fr. parler, to speak. In common law, is taken for a petition, in court, of a day to consider or advise what answer the defendant shall make to the action of the plaintiff; being a continuance of the cause till another day, or a longer time given by the court.

Imparlance is said to be when the court gives the party leave to answer at another time, without the affent of the other party. Com. Dig. title Pleader, D. 1. But the more common signification of Imparlance is, time to plead, 2 Show. 310; 2 Mod. 62. And it is either general without fixing the time or day, or in a special case, as when the plaintiff's action is not pleaded after the time allowed for it, or the defendant has not pleaded it after the time allowed. The general Imparlance is of course where the defendant is not bound to plead the same term; but a special Imparlance is not allowed, without the leave of the court. R. E. 5 Ann. A special Imparlance is with a saving of all exceptions to the writ or return, which may be granted by the prothonotary; or they may be still more special with a saving of all exceptions whatsoever, which are granted at the discretion of the court, and are called general special Imparlances. 12 Mod. 529.

A general Imparlance is let down and entered in general terms, without any special clause, thus: And now at the day and day next after the Oath of St. Hilary, in the same term, until which day the aforesaid C. D. the defendant had licence to imparl to the bill aforesaid, and then to answer, &c.

Special Imparlance, is where the party defers a further day to answer, adding also these words: Saving all advantages, as well as the jurisdiction of the court, to the writ and declaration, &c. King's bench. This Imparlance is had on the declaration of the plaintiff; and special Imparlance is of use when the defendant is to plead some matters which cannot be pleaded after a general Imparlance. 5 Rep. 75.

Imparlance is generally to the next term; and if the plaintiff amend his declaration after delivered or filed, the defendant does not plead to the next term, if the plaintiff do not pay costs; but if he pay costs, which are accepted, the defendant cannot imparl. Also if the plaintiff declares against the defendant, but does not proceed in three terms after, the defendant may imparl to the next term. 2 Litt. Abr. 35.

IMPARLANCE.

If the writ be returnable on the last day of term, the defendant is of course entitled to an Imparlance, but must plead in four days of the next term, provided a rule be given either in a town or country cause.

On a declaration delivered of Hilary, there may be an Imparlance to Trinity term, if the defendant has not pleaded before; for it is the course of the court to give Imparlance or declaration till the day of pleading. If a writ be returnable in one term, and the declaration is not delivered before the last day of the present term, the defendant is not obliged to plead in the same term, but is entitled to an Imparlance. Imparl. K. B. 22.

As to causes of Imparlance. The not delivering a declaration in time is sometimes the cause of Imparlance of course; and where the defendant's case requires a special plea, and the matter which is to be pleaded is difficult, the court will, upon motion, grant the defendant an Imparlance, and longer time to put in his plea, than otherwise by the rules of the court he ought to have: if the plaintiff keeps any deed or other thing from the defendant, whereby he is to make his defence, Imparlance may be granted till the plaintiff delivers it to him, or brings it into court, and a convenient time after to plead. Hid. 22 Car. 1. B. R.

The Imparlance being prayed on a defendant's appearing to answer an information, it was said, Imparlance was formerly from day to day, but now from one term to another, in criminal proceedings; and it was ruled that the defendant should have the same time to imparl that the process would have taken up, if he had paid out till the attachment or capias; for when he comes in upon that, he must plead in bar. 1 Salk. 367; 2 Mod. Cajes, 243. And if process had been continued, he might have been brought in the same term upon an attachment; and then there could be no Imparlance, but he ought to plead in bar. 2 Nifs. Abr. 947.

There are many cases wherein Imparlances are not allowed; no Imparlance is granted in an homine replegiando, or in an affiavit, unless a good cause shown: nor shall there be an Imparlance in an action of special claim, &c. though it is allowed in general actions of trespass. Hid. 9 W. 3; 3 Salk. 186. Where an attorney, or other privileged person of the court, files another, the defendant cannot imparl; but must plead presently: if the plaintiff files out a special original, wherein the cause of action is expressed, and the defendant is taken on a special capias, he shall not have an Imparlance, but shall plead as soon as the rules are out, 2 Litt. 35, 36. See title Practice.

Of Pleadings afterwards. A plea to the jurisdiction may not be pleaded after general Imparlance. R. 44. Dilatory pleas also cannot be pleaded after a general Imparlance, which is an acknowledgment of the propriety of the action. 3 Comm. 301. Title's Prat. After Imparlance, the defendant cannot plead in abatement; if he doth, and the plaintiff tenders an issue, whereas the defendant demurs, and the plaintiff joins in demurrer, such plea is not peremptory; because the plaintiff ought not to have joined in demurrer, but to have moved the court, that the defendant might be compelled to plead in chief. Allen 65. Though a defendant may not plead in abatement after a general Imparlance; yet, if it appear by the record that the plaintiff hath brought his action before he had any cause, the court in equity will
abate the writ, 2 Leav. 197. See this Dictionary, titles Abatement ; Practice.

The defendant cannot have order of a deed in a common case, after Imparlaunce: and a tender after Imparlaunce is negatated, 2 Leav. 190: Late 238. If it appears upon the record, that an Imparlaunce was due, and denied, it is error; but then such error must appear on the record. 3 St. 168. It has been held, that if the defendant doth not appear on a die datum, the plaintiff shall not have judgment by default, as he may on Imparlaunce, because the die datum is not so strong against him as an Imparlaunce; and therefore the plaintiff must take process against the defendant for not appearing at the time. 

Nor. 79: 2 Nf. 947.

After a general special Imparlaunce, the defendant may not only plead in abatement of the writ, bill, or count, but also privilege. 1 Leav. 54: 12 Mod. 329: 5 Mod. 315. But it seems that such plea must be intited of the term the declaration is filed. Impar, K.B.

It is ordered that a special Imparlaunce shall not be allowed the defendant, without the leave of the court first obtained. R. E. 5 Ann.

If the writ be returnable before the last return of any term, and the declaration not filed, and notice given four days exclusive before the end of such term, the defendant is entitled to an Imparlaunce. R. Trin. 22 Geo. 3.

Where a defendant is arrested by process out of B.R., in which the cause of action is specially expressed, or a copy of process is delivered, and the plaintiff hath declared, the defendant shall not have liberty of Imparlaunce, without leave first granted, but shall plead within the time allowed a defendant prosecuted by original writ. R. Hil. 2 Geo. 3. And upon all process, returnable the first or second return of any term, the declaration shall be delivered with notice to plead in eight days after delivery, where the defendant lives above twenty miles from London, &c. without any Imparlaunce; and, on default of pleading, the plaintiff may have judgment. R. Trin. 5 & 6 Geo. 3. See further on this subject, and as to obtaining time to plead, this Dictionary, titles Pleadings; Practice.

IMPERSONES, A parson Impersones, Persona impersonata, is he that is seduced, and in possession of a benefice. Dyson, fol. 40. num. 724, says a Dean and Chapter are persons Impersones of a benefice appropriate unto them. Cowell.

IMPEACHMENT, from Lat. impetere.] The accusation and prosecution of a person for treason, or other crimes and misdemeanors. Any member of the House of Commons may not only impeach any one of their own body, but also any Lord of parliament, &c. And hereupon articles are exhibited on behalf of the Commons, and managers appointed to make good their charge and accusation; which being done in the proper judicature, sentence is passed, &c. And it is observed, that the same evidence is required in an Impeachment in parliament, as in the ordinary courts of justice; but not in bills of attainder. See index to State Trials, vol. 6. tit. Evidence.

An Impeachment before the Lords by the Commons of Great Britain, in parliament, is a prosecution of known and establisht law, and hath been frequently put in practice; being a preference to the most high and supreme court of criminal jurisdiction, by the most fe-
IMPI

court of Rome, which belonged to the gift and disposition of the king, and other lay-patrons of this realm; the penalty whereof was the same with that inflicted on transgressors. See statutes 25 E. 3. f. 65; 38 E. 3. f. 2. c. 1.

IMPERIUMENT, Impairing or prejudicing, "to the Impendent and diminution of their good names." Stat. 23 Hen. 8. c. 9.

IMPLEAD, from Fr. Plaidier.] To sue or prosecute by course of law.

IMPLEMENTS, from Lat. implere, to fill up.] Things necessary in any trade or mystery, without which the work cannot be performed; also the furniture of an house, as all household goods, Implements, etc. And Implements of household are tables, presses, cup-boards, bed-heads, wainscot, and the like. In this sense, we find this word often in gifts and conveyances of moveables. Terms de Ley.

IMPLICATION, A necessary inference of something not directly declared; between partie in deeds, agreements, &c. arising from what is admitted or expressed. Where the law gives any thing to a man, it giveth implicitly (or rather indirectly) whatsoever is necessary for the enjoying the same.

It is a general rule, that where an estate is to be raised by Implantion, it may be a necessary and incapable Implantion, and such as the words can have no other construction whatsoever. Taib. 3.

An Implantion cannot be intended by deed, unless there are apt words; but otherwise in a will. Brown. 153.

An implied intent must not, without clear expression, alter the equitable general law. 1 Chann. Cas. 297.

An estate by Implantion was never thought of in a deed, nor in a will but in case of necessity. 4 Mod. 156.

No Implantion shall be allowed against an express estate limited by express words. 1 Saull. 226.

An express estate for life cannot be enlarged by Implantion, but by express words it may. 2 Pern. 449.

The want of words in some cases may be helped by Implantion; and so one word or thing, or one estate given, shall be implied by another. There is an Implantion in wills and devises of lands, whereby estates are gained; as if a husband devises the goods in his house to his wife, and that after her decease his son shall have them, and his house; though the house be not devised to the wife by express words, yet it has been held, that she hath an estate for life in it by Implantion, because no other person could then have it, the son and heir being excluded, who was to have nothing till after her decease. 1 Perti. 223.

Estates for life, and estates tail, may be raised by Implantion in wills: a relator had three sons, the eldest son dying, leaving his wife with child, to whom the father devised an annuity, "in cojantin in me," and if his middle son died before he had any issue of his body, remainder over, &c. And it was resolved, that such son had an estate tail by Implantion, Nec. 137. It is said a fee simple estate shall not arise by Implantion in a will; though there is a perpetual charge imposed by the devizor on the devisee, etc. Bridg. 103. Also it hath been adjudged, that where a particular estate is devised by will expressly, a contrary intent shall not be implied by any subsequent clause. See title Will.

Implantion is either necessary or possible, and wherever an estate is raised by that means in a will, it must be by a necessary Implantion; for the devisee must necessarily have the thing devised, and no other person can have it. 1 Stat. 256; 2 Nalf. Abr. 594.

No Implantion shall be allowed against an express estate, limited by express words, to drown the same. Salk. 266. There are conditions and covenants, implied by law, in deeds and grants: and Implantion will sometimes help law proceedings, and supply defects. See titles Intendment; Use; Deeds; Covenants; Easats; Limitation, &c.

IMPORTATION, Important.] The bringing goods and merchandise into this kingdom from other nations. See this Dictionary, title Navigation Acts.

IMPOSSIBILITY. A thing which is impossible in law, is all one with a thing impossible in nature: and if any thing in a bond or deed is impossible to be done, such deed, etc. is void. Yet where the condition of a bond becomes impossible by the act of God, in such case, it is held the obligor ought to do all in his power towards a performance: as when a man is bound to enfeoff the obligee and his heirs, and the obligee dies, the obligor must enfeoff his heir. 2 Co. Rep. 74. See titles Bond; Condition; Deed.

IMPOST, from Lat. impone.] The tax received by the prince, for such merchandizes as are brought into any haven within his dominions, from foreign nations. It may in some cases be distinguished from customs, because customs are rather that profit the prince maketh of wares shipped out; yet they are frequently confused. Coxe. See this Dictionary, title Customs or Merchandine.

IMPOSTORS, Religious. Those who falsely pretend an extraordinary commission from heaven; or verify and abuse the people with false denunciations of judgments. They are punishable by the Temporal Courts with fine, imprisonment, and infamous corporal punishment. 1 Heron. F. C. c. 5.

IMPOTECY, Is a canonical disability to avoid marriage in the Spiritual Court. The marriage is not void ab initio, but voidable only by sentence of separation, but to be actually made during the life of the parties. See title Marriage.

IMPOTECY, Property by reason of. A qualified property may subfit with relation to animals from nature, ratione impotentiis, on account of their own inability. As when hawks, herons, or other birds build in my trees, or conies or other creatures make their nests or burrows in my land, and have young ones there; I have a qualified property in those young ones, till such time as they can fly or run away, and then my property expires. Carta de forja; (9 Hen. 3. c. 13;) but till then it is in some cases trespass, and in others felony, for a stranger to take them away. 7 Rep. 17; Lamb. 274. 2 Comm. 594. See title Game.

IMPRESSING SEAMEN. The power of impressing men for the sea service by the king's command, has been a matter of some dispute, and submitted to with great reluctance; though it hath very clearly and loudly been shewn by Sir Michael Foster, that the practice of impressing, and granting powers to the Admiralty for that purpose, is of very ancient date, and hath been uniformly continued, by a regular series of precedents, to the present time: whence lie concludes it to be part of the common law. The difficulty arises from hence, that no statute has expressly declared this power to be in the crown, though many of them very strongly imply it. The statute 2 Ric. 2. c. 4, speaks of mariners being arrested.
arrested and retained for the king's service, as of a thing well known, and practised without dispute; and provides a remedy against their running away. By statute 2 & 3 Ph. & M. c. 16, if any waterman, who uses the river Thames, shall hide himself during the execution of any commission of prefixed for the king's service, he is liable to heavy penalties. By statute 5 Eliz. c. 5, no other man shall be taken by the queen's commission to serve as a mariner; but the commission shall be first brought to two justices of the peace, inhabiting near the sea coast where the mariners are to be taken, to the intent, that the justices may choose out, and return such a number of able-bodied men as in the commission are contained, to serve her majesty. And, by others, (2 & 8 W. 3. c. 21; 2 An. 8. c. 4 & 5 An. 19; 11 Geo. 2. c. 17, & c.) especial protections are allowed to seamen in particular circumstances, to prevent them from being imprisoned. All which do most evidently imply a power of imprisoning to reside somewhere; and, if anywhere, that it might be from the spirit of our constitution, as well as from the frequent mention of the king's commission, reside in the crown alone. 1 Comm. 419; Comb. 245; Hyl. 154.

The legality of preying is fully established, that it will not now admit of a doubt in any court of justice. In the case of The King v. Tabb, Lord Mansfield said, "The power of preying is founded upon immemorial usage allowed for ages. If not, it can have no ground to stand upon; nor can it be vindicated or justified by any reason but the safety of the State. The practice is derived from that trite maxim of the constitutional law of England, That private mischief had better be submitted to, than public detriment and inconvenience should ensue. Though it be a legal power, it may, like many others, be abused in the exercise of it." Comyn, 517. In that case the defendant was brought up by habeas corpus, upon the ground that he was entitled to an exemption; but the court held, that the exemption was not made out, and he was remanded to the ship from whence he had been brought. 1 Comm. 430. See also 3 Term Rep. 276; and further this Dictionary, titles Mariner; Seamen; Mariner.

IMPRISONMENT MONEY, from Fr. and Fr. prof. paradox. Money paid on imbling soldiers.

IMPRIMITIABILIS, Invaluable; in which sense it is often mentioned in Mat. Parv.

IMPRIMERY, Fr. A print, or impression; the art of printing, and a printing-house, are called Imprimery, in some statutes.

IMPRISON, One who hides with, or take the part of another, either in his defence, or otherwise. Mat. Par. 127.

IMPRISONMENT, imprisonment, ] The restraint of a man's liberty under the custody of another, and extends not only to a goad, but to a house, stocks, or where a man is held in the street, &c. for in all these cases the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go about his business, as at other times. Co. Lit. 251.

None shall be imprisoned but by the lawful judgment of his peers, or by the law of the land. Magna Charta, c. 2; Stat. 25 Ed. 5. Stat. 6. c. 4. All Imprisonment must be according to law, or the custom of England; or by process and course of law. 2 Inf. 46, 50, 282. And no person is to be imprisoned, but as the law directs, either by command and order of a court of record, or by lawful warrant, or the king's writ; by which one may be lawfully detained to answer the law. 2 Inf. 46: 5 Inf. 209.

At common law, a man could not be imprisoned in any case, unless he were guilty of some force or violence; for which his body was subject to Imprisonment, as one of the highest executions of the law; but Imprisonment is inflicted by statute in many cases. 3 Rep. 11. Whenever the common law, or any statute, gives power to imprison, there it is lawful and justifiable; but he who doth it in pursuance of a statute, must be sure exactly to follow the statute in the order and manner of doing thereof. Dyer 204. 13 El. 1. See further on this subject, and connected therewith, this Dictionary, titles Arrest; Bail; Captian; Commitment; Confiscable; False Imprisonment; Habeeb Corpus.

IMPROPRIATION. See title Appropriation.

IMPROVEMENT. See Approvement.

IMPRUIARE, To improve land.

IMPRUIAMENTUM, The improving of lands.

INBLAURA, Profit or product of ground. Covel.

IMBORH AND OUTBORH, Sax. See Camden'sBritannia, in Oxfordiana, where he says, speaking of Edinburgh, the barony of Patrick earl of Dunbar, which also was Inblau and Outblau between England and Scotland, as we read in the books of Inquisitions, that is, (as he believes) he was to allow, and to observe in this part the ingrops and egress of those who travelled to and fro between both realms; for Englishmen in ancient time called in their language an entry and forecourt or gatehouse, inbornor. Covel.

INCASSELLARE, To reduce a thing to serve instead of a callage; and it is often applied to churches.—Zo puo mortem patris ecclesiam incasellatam reinherat. Gurney: Durex, anno 1114.

IN CASU CONSULMES. See Causa consulmi.

IN CASU PROVIDUS. See Causa provida.

INCAUSTUM, or ENCAUSTUM, Inc. Flores, lib. 2. c. 27. par. 5.

INCENDIARIES. Burning of houses maliciously, to extort sums of money from those whom the malefactors should spare, was made treason in the first year of king H. VI. 1 Hale's Hist. P. C. 270. The like offences of firing houses and sending letters demanding money of persons, &c. is made felony, by Stat. 9 Geo. 1. c. 22. See titles Arson; Black Act; Burning.

INCEPTION. The same person is patron and incumbent, and he devises the next avoidance; it was objected, that by his death the church is void, and then the presentation is a cloth on a body, and not grantable, and the devise takes not effect till after the death of deviser, and therefore void; but held a good devise, because it has Inception in his life. Rol. Rep. 214. 5 B. C. 42.

Leafe to A. for life, remainder to the right heir of A.; this is a good remainder to vest upon the death of A. for the Inception in his life. Rol. Rep. 215. 7 H. 34.

Institution gives Inception to a lay-fee, so that if a caveat be entered after to prevent indiction, a prohibition
HIBITION shall be granted. 2 Roll. 294. Prohibition (M), pl. 14.

INCERTAINTY. See title Certainty.

INCERTA. In the year 1620, when the ruling powers found it for their interest to put on the semblance of a very extraordinary strictness and purity of morals, Incest and wilful adultery were made capital crimes. But at the Restoration, when men, from an abhorrence of the hypocrisy of the late times, fell into a contrary extreme, of licentiousness, it was not thought proper to renew a law of such unfashionable rigour. And these offences have been ever since left to the feeble coercion of the Spiritual Court, according to the rules of the Canon law.

4 Comm. 64. See title Lewdness.

INCHANTMENT. See title Conjuration.

INCHANTER, incantator.] He who by charms convulses the devil; and they were antiently called carminas, by reason in those days their charms were in verse.

3 Inst. 44.

INCHANTRESS, incantatrix.] A woman who uses charms and incantations. See Conjuration.

INCHARTARE. To give, or grant and assure any thing by an instrument in writing. Matt. Pari.

INCH OF CANDLE, is the manner of selling goods by merchants; which is done thus: First, Notice is to be given upon the Exchange, or other public place, of the time of sale; and, in the mean time, the goods to be sold or divided into lots, printed papers of which, and the conditions of sale, are also forthwith published; and when the goods are exposed to sale, a small piece of wax-candle, about an inch long, is burning, and the bidder, when the candles goes out, is entitled to the lot or parcel so exposed. If any difference happens in adjudging to whom a lot belongs, where several bid together, the lot is to be put up again; and the last bidder is bound to stand to the bargain, and take the lot, whether good or bad. In these cases, the goods are set up at such a price; and none shall bid less than a certain sum, more than another hath before, &c. Merch. Dict. See title Auction.

INCIDENT, incident.] A thing necessarily depending upon, appertaining to, or following another that is more worthy or principal. A court-baron is inseparably incident to a manor; and a court of piepowder to a fair; these are so inherent to their principals, that by the grant of one, the other is granted; and they cannot be extinct by release, or lapsed by exception, but in special cases.

Kitch. 36: Co. Lit. 151.

Rent is incident to a reversion; timber trees are incident to the freehold, and also deeds and charters, and a way to lands; fealty is incident to tenures; ditches to rent and amercements, &c. Co. Lit. 151. Tenant for life or years hath, incident to his estate, cutters of wood. Co. Lit. 41. And there are certain incidents to estates; viz. to be dispossessed of waste, to suffer a recovery, &c. Co. Lit. 224, 10 Rep. 18, 39. Incidents are needful to the well-being of that to which they are incident; and the law is tender of them. Hob. 30, 40.

If a man, either by grant or prescription, has a right to a wreck thrown on another's land, of consequence he has a right to a way over the same land to take it; and the very possession of the wreck is in him before seizure. 6 Med. 149. See 14 Vin. Abr. title Incidents.

INCLUDARE. To fixter a horse. Monasticon, 2 tom. p. 598.

INCLUDASI, A home close, or inclosure near the house. Paroch. Antiq. pag. 31.

INCLUSIONS, That down inclosures is an offence punishable by our ancient laws and statutes. Stat. 13 Ed. 1. Stat. 1. c. 46. But if the lord of a manor inclose part of the waste or common, and doth not leave sufficient for the commoners, they may break down such inclosure, or have writ of尺ize. Stat. 3 & 4 Ed. 6. c. 3. Large wastes or commons in the West Riding of the county of York, with the consent of the lords of manors, &c. may be inclosed, a fifth part whereof shall be for the benefit of poor clergymen, whose livings are under col. a year, to be settled in trusts, who may grant leaves for twenty-one years, &c. Stat. 12 Ann. c. 4.

Destroying them in the night, to be made good by the neighbouring towns. Stat. 13 Ed. 1. Stat. 1. c. 46; 3 & 4 Ed. 6. c. 3. Throwing down inclosures in the night, to be punished with treble damages, Stat. 3 & 4 Ed. 6. c. 3. 17 & 18 Car. 1. c. 7. Taking away gates, pales, posts, tiles or hedge-wood, or destroying them, how punished, &c. See Stat. 44 Eliz. c. 7; 15 Car. 2. c. 2: 9 Geo. 3. c. 29. See titles Commons: Wastes.

INCOMPATIBILITY, incompatible benefactors.] Is when benefices cannot stand one with another, if they be with care; and of such a value in the King's books. Whitlock's Read. p. 4. See title Adsumon.

INCONTENENCY. See titles Adultery; Fornication; Lewdness; Rape, &c.


INCOPEREALE HEREDITAMENTS. See title Hereditaments.

INCREMENTUM, increase or improvement; to which was opposed decrementum or abatement. Paroch. Antiq. 164. It is used in charters for a parcel of ground inclosed out of a common, or improved.

INCOINCROACHMENT, Fr. accroûchement, a grafting.] An unlawful gaining upon the right or possession of another. As where a man fets his hedge or wall too far into the ground of his neighbour, that lies next to him, he is said to have made his encroachment upon him; and a rent is said to be incroached, when the lord by ditches or otherwise compels his tenant to pay more than he owes; and so of services, &c. 9 Rep. 33. And sometimes this word is applied to powers; for the Spencer, father and son, it is said, incroached upon them royal power and authority, comm. 1 Ed. 3. And the admirals and their deputies are said in statute 15 R. 2. c. 3, to have encroached upon themselves divers jurisdictions, &c.

INCUMBENT, from Lat. insumere, to mind diligently.] A clerk residant on his benefice with care; and is so called, because he does or ought to bend all his study to the discharge of the cure of the church to which he belongs. Co. Lit. 119. Where an Incumbent is put out without due process, he shall be at large to sue for his remedy at what time he pleareth, &c. Statute 4 Hen. 4. c. 22. See titles Absolution; Church.

INCRUMBANCE. See titles Mortgage; Purchase; and 14 Vin. Abr. tit Incumbance.

INCRURAMENTUM, The incurring or being subject to a penalty, fine or amercement: so incurreri ale is to be liable to another's legal censure or punishment. Wefen. c. 37.
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INDEBITATUS ASSUMPIT. See title Assumpsit.
INDECIMABLE, Indecimabilis.] That is not irribable, or by law ought not to pay tithes. 4 Wood, 490.

INDEFEASIBLE, or INDEFEASIBLE, That cannot be defeated or made void: as a good and indefeasible estate, &c.

INDEFEASIBLE RIGHT TO THE THRONE.

See title King.

INDEPENSUS. One that is impelled, and refuseth to make answer. Mich. 50 H. 3, Rot. 4.

INDEMNITY. On the approbation of a church to any college, &c. when the archdeacon forfe it for ever his induction-money, he receives yearly out of the church to appropriate, as 12 d. or 21. more or less, as a pension agreed at the time of the approbation, is called Indemnity. MS. in Bibli. Cotton, p. 34. Acts of Indemnity are pulled every session of parliament for the relief of those who have neglected to take the necessary oaths, &c. required to qualify them for their respective offices.

INDENTURE, indentures.] Is a writing containing some contract, agreement, or conveyance between two or more persons, being indented on the top answerable to another part, which hath the same contents. Co. Lit. 229.

A deed of bargain and sale of freehold lands, &c. must be by Indenture, enrolled, &c. Stat. 27 Hen. 8, c. 16.

Words in Indentures, though of one party only, are binding to both parties. C. 1662, 357. See this Dict. titles Conveyance; Deed.

INDIA COMPANY. See East India Company.
INDIA GOODS. See this Dict. titles East India Company; Navigation Acts.

INDICAVIT. A writ of prohibition that lies for a non-committal. For a writ of prohibition, and of the same form of law, exhibited for fame contract, agreement, &c. given in the Spiritual Court; for after judgment there, the judgment and preferred to a grand jury, is called Indicavit. See courts, &c. in Eajl India Company.

The writ may be also purchased by the parson sued; and is directed as well unto the judge of the court, as unto the party plaintiff, that they do not proceed, &c. But it is not to be had before the defendant is libelled against in the Spiritual Court, the copy of which libel ought to be produced in Chancery, before the Indicavit is granted: and this writ must be brought before judgment given in the Spiritual Court; for after judgment there, the Indicavit is void. New Nat. Br. 66, 101; see Stat. 34 E. 1, b. 1. The writ of Indicavit doth not lie of a less part of the tithe, &c. than a fourth part of the church; if they are not made, the church being furnished by the other party, a conclusion shall be had. Ibid. The patron of the clerk, who is prohibited by the Indicavit, may have his writ of right of the advowson of diocese, &c. The Ecclesiastical Court may hold plea of tithes not amounting to the fourth of the church. Stat. Circum. Agapit., 13 Ed. 1, b. 4. See further titles Prohibition; Tithe.

INDICO, or INDICIO. See title Navigation Acts.

INDICTED, Indictatus.] When any one is accused by bill preferred to jurors at the king's suit, for some offence, either criminal or penal, he is said to be indicted thereof. Civil.


INDICTMENT, Indictio; ab indicando.] The space of fifteen years, by which computation charters and public writings were dated at Rome; likewise antiently in England, which we find not only in the charters of King Edgar, but of King Hen. III. And by this account of time, which began at the dissolution of the Nicene Council, every year full increased one till it came to fifteen; and then returned again, making first, second Indictment, &c. d. apud Chippenden, 18 die Aprilis, inditionem nona, anno Dom. 1626.

INDICTMENT.

INDICTAMENTUM, from the Fr. enditer, i.e. indicaer, to show.] A bill or declaration of complaint drawn up in form of law, exhibited for some offence criminal or penal, and preferred to a grand jury; upon whose oath it is found to be true, before a judge, or others, having power to punish or certify the offence. Termi de Ley.

I. Of the Nature of an Indictment; how found, pronounced, and prosecuted.

II. Of the Locality of an Indictment.

III. Of Certainty, and the other Requisit in an Indictment; and of Errors, and Amendments thereof.

IV. For what Offences Indictment will lie.

I. LAMBARD says, An Indictment is an accusation, at the suit of the King, by the oaths of twelve men of the same county wherein the offence was committed, returned to inquire of all offences in general in the county, determinable by the court into which they are returned, and their finding a bill brought before them to be true; but when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed Indictment, it is called A Prejudgment; and when it is found by jurors returned to inquire of that particular offence only, which is indicted, it is properly called an Inquisition. Lamb. lib. A cap. 5.

By Poultin, an Indictment is an inquisition taken and made by twelve men, at the least, thereunto sworn, whereby they find and present, that such a person, of such a place, in such a county, and of such a degree, hath committed such a theft, felony, trespass, or other offence, against the peace of the King, his crown and dignity. Pult. 160. An Indictment, according to Lord Chief Justice Hale, is only a plain, brief, and certain narrative of an offence, committed by any person, and of those necessary circumstances, that concur to ascertain the fact and its nature. 2 Hale's Hist. P. C. 168, 169.

An Indictment seems to be thus shortly well defined: 'A written accusation, of one or more persons, of a crime or a misdemeanor, preferred to, and presented on oath by, a grand jury.' 4 Comm. 302.

A bill of Indictment is said to be an accusation, for this reason; because the jury that inquire of the offence doth not receive it, until the party that offers the bill, appearing, subscribes his name, and offers his oath for the truth of it. Standf. P. C. lib. 2, cap. 23.

To this end the sheriff of every county is bound to return to every seccion of the peace, and every commiss of over and under, and of general good delivery, twenty-four good and lawful men of the county, some oat of every hundred, to inquire, present, do, and execute
execute all those things which on the part of our lord the king shall then and there be commanded them." As many as appear upon this panel are sworn of the Grand Jury to the amount of twelve at least, and not more than twenty-three; that twelve may be a majority. See title Jury. This grand jury are previously instructed in the articles of their inquiry, by a charge from the judge on the bench. They then withdraw from court to sit and receive Indictments, which are preferred to them in the name of the king, but at the suit of any private prosecutor; and they are only to hear evidence on behalf of the prosecution: for the finding an Indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire upon their oaths whether there be sufficient cause to call upon the party to answer it.

When the grand jury have heard the evidence, if they think it a ground of accusation, they use formerly to indorse on the back of the bill, *ignoramus*, i.e. "we know nothing of it," intimating that though the facts might possibly be true, the truth did not appear to them: but now, they attest in English, more absolutely, not a true bill; or (which is the better way) not found; and then the party is discharged without further answer. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation, they then indorse upon it, a true bill; anciently, *billa vera.* The Indictment is then laid to be found, and the party stands indicted. But to find a bill, there must at least twelve of the jury agree: for fo tender is the law of England of the lives of the Subject, that no man can be convicted at the suit of the king for any capital offence, unless by the unanimous voice of twenty-four of his equals and neighbours; that is, by twelve at least of the grand jury, in the first place, attesting to the accusation; and afterwards by the whole petit jury, of twelve more, finding him guilty upon his trial. But if twelve of the grand jury dissent, it is a good prefentment, though some of the rest disagree. 2 Hal. P. C. 161. And the Indictment when so found, is publicly delivered into court.

Although a bill of Indictment may be preferred to a grand jury upon oath, they are not bound to find the bill, if they find caufe to the contrary; and though a bill of Indictment be brought unto them without oath made, they may find the bill if they write caufe: but it is not usual to prefer a bill unto them before oath be first made in court, that the evidence they are to give unto the grand inquest to prove the bill is true. 2 Litt. Atr. 44. The grand jury are to find the noble in a bill, or reject it, and not find specially for part, etc. 2 Hawk. P. C. c. 25. § 2. This rule relates only to cases where the grand jury take upon themselves to find part of the *junge Indictment* to be true, and part false; and do not either affirm or deny the facts submitted to their inquiry. But where there are two distinct counts, *viz.* one for a riot, and the other for an assault, and the grand jury find a true bill as to the assault, and indorse *ignoramus* as to the riot, this finding leaves the Indictment as to the count found, just as if there had been originally only that one count. *Coop.* 252. Any one under prosecution for a crime, before he is indicted, may except against or challenge any of the persons returned on the grand jury; as being outlawed, returned at the instance of the prosecutor, or not returned by the proper officer, etc. 2 Hawk. c. 25. § 16. No Indictment shall be made but by inquest of lawful men returned by sheriffs, &c. And if a person not returned by the sheriff on a grand jury, procures his name to be read among those of others who were actually returned, whereupon he is sworn of the grand jury, he may be indicted for it and fined, and the Indictment found by such a jury shall be void. *Sta.* 1 Hen. 4. c. 9; 12 Rep. 98; 3 Ioff. 33.

Sheriffs had formerly power to take Indictments, which they did byroll indicnted, one part whereof remained with the indictors. 15 Ed. 1; 1 Ed. 3. Justices of peace have no power relating to Indictments for crimes, but what is given them by act of parliament: And it is said justices of peace in justices cannot, on an Indictment, try and determine the offence in one and the same sessions in which the offenders are indicted. *Hill.* 11 Corr. 430, 438. And Indictments before justices of peace, &c. may be removed into the court of B. R. by certiorari. But an Indictment removed by certiorari into B. R. may be sent back again into the county or place whence removed, if there be cause to do it. See title Certiorari.

An Indictment is the king's suit; for which reason the party who prosecutes, is a good witness to prove it: And no damages can be given to the party grieved upon an Indictment, or other criminal prosecution, unless particularly grounded on some false; but the court of B. R. by the king's privy seal may give to the prosecutor a third part of the fine assessed for any offence; and the fine to the king may be mitigated, in regard to the defendant's making satisfaction to a prosecutor for costs of prosecution, and damages sustained by the injury received. 2 Hawk. c. 25. § 3.

No man may be put upon his trial for a capital offence, except on an appeal or Indictment, or something equivalent thereto. *H. P. C.* 210. All Indictments ought to be brought for offences committed against the common law, or against some statute; and not for every slight misdemeanor. 2 Litt. 44. Where a statute appoints a penalty to be recovered by bill, plaint, or information, it cannot be by Indictment, but as directed to be recovered: An Indictment will not lie where only another remedy is provided by statute. *Cro. Jac.* 643; 3 Salk. 187.

Husband and wife may commit a trespass, felony, &c. and be indicted together; so for keeping a bawdy-house, though the house be the husband's. *Hob.* 65; 1 Salk. 322. See title Baron and Feme.

If an offence wholly arises from any joint act that is criminal of several defendants, they may be all charged in one Indictment, jointly and severally, or jointly only; and some of the defendants may be convicted, and others acquitted; for the law looks on the charge as severable against each, though the words of it purport a joint charge against all: In other cases, the offences of several persons must be laid severally, because the offence of one cannot be the offence of another; and every man ought to answer severally for his own crime. And three offences may be joined in an Indictment, and the party convicted of one offence, though he is found not guilty of the others. On penal statutes, several things shall not be joined in the Indictment, &c. except it be in respect of some one thing, to which all of them have relation. 2 Hawk. P. C. c. 25. § 89; 1 Hal. P. C. 561, 610.

Several defendants cannot be joined in one Indictment for perjury; for perjury is a separate act in each; and one may be desirous to have a certiorari, and the other...
not; and the jury, on the trial of all, may apply evidence to all, that is but evidence against one. Sirra. 321. So also in the King v. Clendon & al. where two were joined in the same indictment for an assault, the court held they were guilty of both. Sirra. 1572.

But in another case, on an information against two for the same libel, it was held good; and the case of the King v. Clendon held not to be law. Barr. 980.

A person indicted of felony, &c., may plead generally millomn, or wrongful addition; a former acquittal or conviction; a pardon, or other special plea; or the general issue; or may plead any plea in abatement of the indictment, &c. 2 Hawk. P. C. c. 25, § 190. One indicted for felony may have counsel assigned him to speak for him in matters of law only. See titles Trial; Treason; Abatement, &c.

After a person is indicted for felony, the sheriff is commanded to attach his body by a capias; and on return of a non est inventus, a second capias shall be granted, and the sheriff is to seize the offender's chattels, &c. And if on that writ a non est inventus is returned, an exsequatur shall be awarded, and the chattels be forfeited, St. Ant. 23 Geo. 3, c. 35, § 2.

If an innocent person be indicted of felony, and will not suffer himself to be arrested by the officer who has a warrant for it, he may be killed by the officer, if he cannot otherwise be taken; for there is a charge against him upon record, to which at his peril he is bound to answer. Fitz. C. 179, 201. See title Arrest.

A person may be indicted twice at the same time, where he hath committed two felonies; and if he hath his clergy for one, he may be hanged for the other. And if there be an indictment and information against one for the same offence, one found by the coroner's inquest, and another by the grand jury, he may be tried on both at the same time: But if he be tried and acquitted upon the one, it may be pleaded in bar on trial for the other. 2d. 20, 301. 3d. 382.

When a person is convicted upon an Indictment for trespass or misdemeanor, he is to appear in court, on judgment pronounced; and the court having a fine upon him, will commit him in execution, &c. 2d. 23. 41.

II. The Grand Jury are sworn to inquire only for the body of the country; and therefore they cannot regularly inquire of a fact done out of the county for which they are sworn, unless particularly embodied by statute. At common law, therefore, where a man was wounded in one county and died in another, the offender was indiscernible in either, because no complete act of felony was done in either county; but by Stat. 2 & 3 El. 2, c. 24, the offender is now indiscernible in the county where the party died; and by Stat. 2 Geo. 2, c. 21, if the stroke or poisoning be in England, and the death upon the sea or out of England, or vice versâ, the offender and their accessories may be indicted in the county where either the death, poisoning, or stroke shall happen. So in some other cases: as particularly, where treason is committed out of the realm, it may be inquired of in any county within the realm, as the king shall direct; in pursuance of Stat. 26 Hen. 8, c. 13; 35 Hen. 8, c. 23; 35 Hen. 8, c. 22; 7 & 8 El. 6, c. 11. Counterfeits, walters, or miners of the current coin, together with all manner of falsers and their accessories, may by Stat. 26 Hen. 8, c. 6, (confirmed and explained by Stat. 34 & 35 H. 8, c. 26, § 75, 76,) be indicted and tried for those offences, if committed in any part of Wales, before the justices of gaol delivery, and by the peace, in the next adjoining county of England, or where the king's writ, speedy, that is, at present, in the county of Hereford or Salop; and not, as it should seem, in the county of Chester or Monmouth; the one being a county palatine where the king's writ did not run, and the other a part of Wales in the time of Henry VIII. Str. 331: 8 Med. 1:44. See Hawk. 66. Murderers also, whether committed in England or in foreign parts, may be inquired of and tried by the king's special commission in any place in the kingdom. By Stat. 10 & 11 W. 3, c. 25; all robberies and other capital crimes, committed in Newfoundland, may be tried of and tried in any county of England. Offences against the black act, 9 Geo. 1, c. 22, may be inquired of and tried in any county of England, at the option of the prosecutor. So felonies in destroying turnpikes, or works upon navigable rivers, erected by authority of parliament, may, by Stat. 4 Geo. 2, c. 20; 13 Geo. 3, c. 54, be inquired of and tried in any adjacent county. By Stat. 26 Geo. 2, c. 195, plundering or dealing from any vessel in distress or wrecked, or breaking any ship contrary to 12 Ann. 7, c. 184, may be prosecuted either in the county where the fact is committed, or in any county next adjoining; and, if committed in Wales, then in the next adjoining English county: as which is understood to be meant such English county as, by Stat. 26 Hen. 8, c. 6, above-mentioned, had before a concurrent jurisdiction with the great seions on felonies committed in Wales. Felonies committed out of the realm, in burning or destroying the king's ships, magazines or stores, may, by Stat. 12 Geo. 3, c. 24, be inquired of and tried in any county of England, or in the place where the offence is committed. By Stat. 13 Geo. 3, c. 63, misdemeanors committed in India may be tried upon information or Indictment in the court of King's Bench in England; and a mode is marked out for examining witnesses by commission, and transmitting their depositions to the court.

But, in general, all offences must be inquired into as well tried in the county where the fact is committed. Yet, if larceny be committed in one county, and the goods carried into another, the offender may be indicted in either; for the offence is complete in both. 1 Hal. P. C. 507. Or, he may be indicted in England, for larceny in Scotland, and carrying the goods with him into England, or vice versâ, or for receiving in one part of the United Kingdom goods that have been stolen in another, Stat. 16 Geo. 3, c. 31. But, for robbery, burglary, and the like, an offender can only be indicted where the fact was actually committed; for though the carrying away and keeping of the goods is a continuation of the original taking, and is therefore larceny in the second county, yet it is not a robbery or burglary in that jurisdiction. And if a person be indicted in one county for larceny of goods originally taken in another, and be thereof convicted or binds himself, he shall not be admitted to his clergy; providing the original taking be attended with such circumstances as would have cast off his clergy, by virtue of any statute made previous to the year 1691. Stat. 25 Hen. 8, c. 3; 3 W. & M. c. 9.

If no town or place be named where the fact was done, the Indictment shall be void, though a mistake of the place.
INDICTMENT III.

place in laying the offence is of no significance on the evidence, if the fact is proved at some other place in the same county. H. P. C. 264. See stat. 1 H. 5. c. 7.

If, upon not guilty pleaded, to an Indictment, it shall appear that the offence was done in a county different from that in which the Indictment was found, the defendant shall be acquitted. H. P. C. 203: Kel. 15.

If there be an accessory in one county, to a felony committed in another, the accessory may be indicted and tried in the same county wherein he was accessory. St. 2 & 3 Ed. 6. c. 24.

An Indictment being found in the proper county, may (in some cases) be heard and determined in any other county, by special commission. 3 H. 27.

In the two last rebellions, statutes passed empowering the crown to try the traitors in any county.

III. Indictments must have a precise and sufficient certainty. By stat. 1 H. 5. c. 5, all indictments must set forth the christian name, surname, and addition of the estate and degree, name, town, or place, and county of the offender; and all this to identify his person. The time and place are also to be ascertained, by naming the day and township in which the fact was committed; though a mistake in these points is in general not held to be material, provided the time be laid previous to the finding of the Indictment, and the place to be within the jurisdiction of the court; unless where the place is laid, not merely as a venue, but as part of the description of the fact. 2 Hawk. P. C. c. 25. But sometimes the time may be material, where there is any limitation in point of time affixed for the prosecution of offenders, as by stat. 7 W. 3. c. 3; which enables, that no prosecution shall be had for any of the treasons or misprisions therein mentioned, (except an affimation designed or attempted on the person of the king,) unless the bill of Indictment be found within three years after the offence committed. 3 H. 249. And, in case of murder, the time of the death must be laid within a year and a day after the mortal stroke was given.

The offence itself must also be set forth with clearness and certainty; and, in some crimes, particular words are must be used, which are so appropriated by the law to express the precise idea which it contains of the offence, that no other words, however synonymous they may seem, are capable of doing it. Thus, in treason, the facts must be laid to be done, treasonably, and against his allegiance; antiently, proriter et contra legeactionem fui debitecie; else the Indictment is void. In Indictments for murder, it is necessary to say, that the party indicted, murdered, not killed or slew, the other, which was expressed in Latin by the word mortuus. In all Indictments for felonies, the adverb tamen
tamen [tamen] must be used; and for burglaries also, burglariter, or in English, burglariously, and all these to ascertain the intent. In rapes, the word vestris or resoritis is necessary, and must not be expressed by any paraphrasis, in order to render the crime certain. So in larcencies also, the words sebanci petit et aperta us [sebanci petit and avowed or known] are necessary to every Indictment; for these only can express the very offence.

Also in Indictments for murder, the length and breadth of the wound should in general be expressed, in order that it may appear to the court to have been of a mortal nature; but if it goes through the body, these dimensions are immaterial, for that is apparently sufficient to have been the cause of the death. Also, where a limb, or the like, is absolutely cut off, there such description is impossible. 5 Rep. 122.

Lastly, in Indictments the value of the thing, which is the subject or instrument of the offence, must sometimes be expressed. In Indictments for larcenies this is necessary, that it may appear whether it be grand or petit larceny, and whether entitled or not to the benefit of clergy. In homicide of all sorts, it is necessary, as the weapon with which it is committed is referred to the king as a deodand. See 4 Com. c. 23.

Indictments ought to be more certain than common pleadings in law, because they are more penal, and to be answered with more precision. Hil. 23 Cor. B. R. They must be precise and certain in every point, and charge some offence in particular, and not a person as an offender in general, or let down goods, &c. stolen, without expressing what goods; and it ought to be laid positively, not by way of recital, &c. or be supplied by implication. Cre. Tres. 19; 2 Hawk. P. C. c. 25.

If an Indictment be generally of offences at several times, without laying any one of them on a certain day, as if it be laid between such a day and such a day, it hath been adjudged, that the Indictment is void: but a mistake in not laying an offence on the very same day, on which it is afterwards proved upon the trial, is not material upon evidence. 2 Hawk. c. 25. § 82. And it is said, the crown is not bound to set forth the very day, when treason, &c. was committed; evidence may be given of a treasonable conspiracy, &c. at any time before or after the time alleged in the Indictment, where it is laid on such a day, and divers other days, as well before as after; because the time is only a circumstance, and of some form must be alleged, but it is not material.

1 Salk. 183.

When an Indictment is drawn upon a statute, it ought to purport the words of it, if a private act; but it is otherwise on a general statute: it is best not to recite a public statute; the recital is not necessary, for the judges are bound ex-officio to notice all public statutes. And mis-recitals are fatal: so that it is the furtile way only to conclude generally "against the form of the statute." 4 Rep. 48. Though there be no necessity to recite a public statute in an Indictment, yet if the prosecutor take upon him to do it, and materially vary from the material part of the purview of the statute, and conclude contra formam statutum praetitum he violates the Indictment, Plead. 79, 83: Cre. Eiz. 256. But many mis-recitals may be saved by a general conclusion contra formam statutum, without adding praetitum, &c. And mistakes may be helped by the consent of the parties, upon such statutes. 2 Hawk. c. 25. § 101. An Indictment is to bring the fact making an offence, within all the material words of the statute, or the words, contra formam statutum, will not make it good. 2 Hawk. c. 25. § 115. If a word of substance be omitted in the Indictment, the whole Indictment is bad; but it is otherwise where a word of form is omitted, or there is an omission of a synonymous word, where the sense is the same, &c. Judgment shall not be given by statute, upon an Indictment which does not conclude contra formam statutum: and judgment by statute.
INDICTMENT IV.

tute shall never be given out an Indictment at common law, as every Indictment which doth not thus conclude shall be taken to be. But where persons are indicted on the statute of fraud, and the evidence is not sufficient to bring them within the statute, they may be found guilty of general manslaughter at common law, and the words contra formam faeit be rejected as useless: in other cases the same has been also adjudged; though formerly it was held, that an Indictment grounded on an action which would not maintain it, could not in any case be maintained as an Indictment at common law.

2 Hawk. P. C. c. 25. § 4.

The omission of all &c. arms & contra pacem, is helped by Stat. 4 & 5 Ann. c. 16. false Latin, anciently, did not hurt an Indictment, if by any intendment it could be made good; but if any word was not Latin, or allowed by law as a word of art; or if it had been insensible in a material point, the Indictment was insufficient. 5 Rep. 121; 2 Cro. 108; 3 Cro. 465. An Indictment should not be set aside for a false concord between the substantive and the adjective, &c. the expressions being significant to make the sense appear.

5 Cr. Rep. 121.

But an Indictment against two or more, laying the fact in the singular number, as if against one, hath been held insufficient for the certainty. 2 Hawk. c. 25. A misdemeanor of the defendant's surname, will not abate the Indictment, as it will in case of the name of baptism; and if there be a mistake in spelling, if it sounds like the true name, it is good. 1 Hen. 5. A person may be indicted for felony against an unknown person; and when the name of one killed is unknown, or goods are stolen from a person that cannot be known, it is sufficient to say in the Indictment that one unknown was killed by the person indicted, or that he stole the goods of one unknown. Wood's Inq. 624. But though an Indictment may be good for stealing the goods of cyjistan ignoti, of a person unknown, yet a property must be proved in somebody at the trial; otherwise it shall be presumed to be in the prisoner by his pleading not guilty. Mod. Cai. in L. & R. 249. Where a person injured is known, his name ought to be put into the Indictment.

2 Hawk. c. 25.

Indictments may be amended the same term wherein brought into court, and not after. But criminal prosecutions are not within the benefit of the statuts of amendment; so that no amendment can be made to an indictment, &c. but such only as is allowed by the common law. 2 Litt. 45. The body of a bill of indictment removed into B. R. may not be amended, except from London, where the server only of a record is removed, though the caption of an Indictment from any place may, on motion, be amended by the clerk of the serjeants, &c. to as to make it agree with the original record. Captions of Indictments ought to set forth the court in which, and the jurors by whom, and also the time and place at which, the Indictment was found; and that the jurors were of the county, city, &c. Also they must show that the Indictment was taken before such a court as had jurisdiction over the offence indicted. 2 Hawk. P. C. c. 25. While the jury who found a bill of indictment is before the court, it may be amended by their consent in matter of form, the name, or addition of the party, &c. Est. 379. Clerks of the serjeants, &c. drawing defective bills of Indictment, shall draw new bills without fee, and take but 2s. for drawing any Indictment against a felon, &c. on pain of forfeiting 51. Stat. 10 & 11 W. 3, cap. 23.

If one material part of an Indictment is repugnant to or inconsistent with another, the whole is void; but where the sense is plain, the court will dispose with a small impropriety in the expression. 2 Hawk. P. C. c. 25.

Many objections to Indictments are overruled. 5 Rep. 457. Where an Indictment is void for insufficiency, or if the trial is in a wrong county, another Indictment may be drawn for the same offence, whereby the insufficiency may be cured: and the Indictment may be laid in another county, (it is said,) though judgment be given. See 4 Rep. 45. a. Sed Quid. If the judgment should not be reversed for error, before the party be arraigned, upon a second Indictment? By the common law, the court may quash any Indictment for such insufficiency as will make the judgment thereon erroneous: but the court may refuse to quash an Indictment preferred for the public good, though it be not a good Indictment, and put the party to traverse, or plead to it. Mich. 22 Car. B. R. Also the court will grant time for the king's counsel to maintain an Indictment, if they desire it.

Judges are not bound ex debito justitiae to quash an Indictment; but may oblige the defendant either to plead or demur to it; and where Indictments are not good, the parties indicted may avoid them by pleading. 2 Litt. 427; 2 Hawk. 258. The court doth not usually quash Indictments for forgery, perjury, and nuisances, notwithstanding the Indictments are faulty; and it is against the court of the court to quash an Indictment for extortion. 2 Litt. 411; 5 Mod. 31.

If an Indictment be good in part, though the other part of it is bad, the court will not quash it; for if an offence sufficient to maintain the Indictment be well laid, it is good enough, although other facts are ill laid. Lutec. 173; Poph. 208; 1 Saik. 384. One that is convicted upon an erroneous Indictment, cannot after the conviction move to have the Indictment quashed; but must bring his writ of error to reverse the judgment given against him upon the Indictment. 2 Litt. 43.

If the party indicted is outlawed upon the Indictments, the court will not quash the Indictment, though erroneous; but will force the party outlawed to bring his writ of error to reverse the outlawry, Mich. 24 Car. B. R.

The Stat. 7 W. 3, cap. 3, ordains, That no Indictment for treason, &c. or any process thereon, shall be quashed, on motion of the prisoner, or his counsel, for mis-writing, false Latin, &c. unless exception be made before evidence given in court; nor shall any such defects, &c. after conviction, be cause to arrest judgment; though any judgment given upon such Indictment may be reversed on a writ of error, &c.

Counts in an Indictment cannot be struck out as they may in an information; for the court cannot strike out that which the grand jury have found. Hardw. 203.

IV. All capital crimes whatsoever, and all kinds of inferior crimes of a public nature, as misprisions and all other contempts, all disturbances of the peace, all oppressions, and all other misdemeanors whatsoever, of a public evil example against the common laws, may be indicted; but no injuries of a private nature, unless they
they some way concern the king. And where an of­

fence is made punishable by statute, the true rule seems to be, that if the offence was punishable before the na­
ture prescribed a particular method of punishing it, then such particular remedy is cumulative, and does not take away the former remedy; but where the statute only enacts, That the doing an act not punishable before shall for the future be punishable in a certain particular manner, there is necessary to point out such particular method, and not the common law method of Indictment. 2 B&K. 709, 805, 834. Comp. 524, 650. And it hath been adjudged, that if a statute gave a recovery, by action of debt, bill, plaint, or information, or otherwise, it authorises a proceeding by way of Indictment. 2 Huth. P. C. c. 25. § 4, and note. See ante III.

Indictments are for the benefit of the Commonwealth and the public good; and to be preferred for criminal not civil matters; they may be of high treason, petit treason, felony, trespass, and in all sorts of pleas of the crown; but not of injuries of a private nature, which do not concern the king, and the public Co. Lit. 126, 303. 4 Rep. 44. An Indictment lies against one for assaulting and slapping another on the highway, being a breach of the peace. Hill. 22 Car. It lies for cheating a person at play, with false dice, or any other cheating; but it is not indictable for one man to make a fool of another, in the case of cheats getting money. &c. though action may be brought. 2 C. Litt. 44; 1 Sle. 479. Except in the cases specified in the act of 30 Geo. 2. c. 24, commonly called the statute of False Presence. See title Cheat. Indictment will not lie for a private nuisance, wherein action on the case only lies; and where a person is indicted for trespass, which is not indictable at law, but for which action should be had; or if a man be indicted for scandalous words, as calling another rogue, &c. such Indictments are not good; for private injuries are to be redressed by private actions. 2 C. Litt. 47. But where a person is beaten, he may proceed for this trespass by Indictment, or information, as well as action. 2 Pa. &c. 24 Car. B. R.

Where, in an action on the case, a defendant justifies for words, as calling the plaintiff thief, &c. if on the trial it be found for the defendant, Indictment may be brought forthwith to try the plaintiff for the felony. 2 C. Litt. 44. If a civil action of trover be brought for goods taken, after recovery the party may be indicted for trespass or felony, for the same taking; but if the first prosecution had been criminal, as an Indictment for trespass, &c. and the crime appears to be felony; then you cannot have verdict or judgment on the Indictment for trespass till the felony is tried, it being the inferior offence. Mod. Cauf. 77.

It is said that trover lies not for goods stolen, until the offender is convicted, &c. on Indictment of felony. 1 Hale's Hist. P. C. 546. A parson may be indicted for preaching against the government of the church, the civil and ecclesiastical government being so incorporated together, that one cannot subsist without the other; and both center in the king; wherefore to speak against the church, is within the statute 13 Car. 2. St. 59. 2 Nolf. Abr. 359. And a parson was indicted for pronouncing abjuration to persons condemned for treason, at the place of execution, without inflaming any repen­

nance. 5 Med. 363. Also a parson hath been indicted, and fined, &c. for drinking healths to the memory of traitors. 3 Med. Rep. 52.

It is not an indictable offence to impede the public intercourse by delivering hand-bills in the streets. 1 B&K. 516. Nor to throw down slabs into a public way, which accidentally occasions a personal injury. St. 199. Nor to kill a hare. St. 1679. Nor can one be indicted for an offence made penal by statutes, without it directly to whom the penalty is payable. St. 828. Nor for acting unqualifiedly as a justice of peace. Cro. Jac. 643. Nor for entering a yard, erecting a shed, unthatching a house, or by numbers keeping another out of passageways, if unattended with violence or riot, &c. 3 B&KB. 1695, 1705, 1727, 1731. Nor for selling short meat. 1 Wil. 301. 3 B&K. 1697. Nor for excluding commoners by enclosing. 3 K. Eliz. 90. Nor for a theft against a fellow citizen. 2 Ld. Raym. 1689. Nor for bringing a baird child into a parith. 2 C. Litt. 44; 3 B&K. 1045; 2 Fox. 458; but see this Dictionary, titles Churchwarden; Baird.

See further on the subject of Indictments at length. 2 Huth. P. C. c. 25.

INDICTOR, He that indicted another man for any offence; as indictor is the party that is indicted. INDICTANTER, Without delay. Mat. Wms. Aum. 1244.

INDIVISUM, What two persons hold in common without partition; as where it is said he holds pro indiviso, &c. Kitch. 241.

INDOLIS, A dandous young man, or a youth. Mos. Angl. 3 tom. p. 126.


INDORSÉMENT, Indorsement. Any thing written in the back side of a deed; thus, receipts for consideration-money, and the sealing and delivery, &c. on the back of deeds, are called Indorsements. Wiff. Symb. par. 21. c. 157. On sealing of a bond any thing may be indorsed or subscribed upon the back thereof, as part of the condition, and the Indorsement and that shall stand together. Mos. 679. See titles Bond; Condition. There is also an Indorsement of bills or notes, of what part thereof is paid, and when, &c. And in another sense it is a writing a man's name only on the back of bills of exchange, &c. See title Bills of Exchange.

INDOWMENT, See Endowment.

INDUCEMENT, What is alleged as a motive or incitement to a thing; the term is used specially in several cases, viz. Inducement to actions, to a traverse in pleadings, a fact or offence committed, &c. Inducements to actions need not have so much certainty as in other cases; a general inducement is not sufficient, where it is the ground of the action; but where it is but the Inducement to the action, as in consideration of forbearing a debt till such a day, (for that the parties are agreed upon the debt,) this being a collateral promise, is good without showing how due. Cro. Jac. 518; 2 Mod. 70.

A man ought to induce his traverse when he denies the title of another, because he should not deny it till he shew some colourable title in himself; for if the title traversed be found naught, and no colour of right ap­
pears for him who traversed, there can be no judgment given: but an Inducement cannot be traversed, because that would be a traverse after a traverse, and quitting a man's own present of title, and falling upon another. Cro. 265. 266; 3 Saik, 557. An Inducement to a traverse must be such matter as is good and justifiable in law. Cro. Ern. 329. There is an Inducement to a justification, when what is alleged against it is not the substance of the plea, &c. Cro. Jac. 138; Mor. 847: 2 Nisi. Abr. 986. See title Pleading.

INDUCTION, Induction, i.e. a leading into.] The giving a Parson possession of his church: after the bishop hath granted investiture, he issues out his mandate to the archdeacon to induce the clerk, who thereupon either does it personally, or usually commissions some neighbouring clergyman for that purpose; which is compared to lively and fresh, as it is a putting the minister in actual possession of the church, and of the glebe lands, which are the temporalities of it. This Induction is done in the following manner: one of the clergymen commissioned takes the parson to be induced by the hand, lays it on the key of the church, and pronounces these words: By virtue of this commission, I induce you into the real and actual possession of the rectory of, &c. with all its appurtenances. Then he opens the church door, and puts the parson into possession thereof, who commonly tolls a bell, &c. and thereby shews and gives notice to the people that he hath taken corporal possession of the said church: if the key of the church door cannot be had, the clerk to be induced may lay his hand on the ring of the door, the latch of the church-gate, on the church-wall, &c. and of either of these are insufficient: also Induction may be made by delivery of a clock, or tarf of the glebe, &c. Ordinarily the bishop is to direct his mandate to the archdeacon, as being the person who ought to induce or give possession unto the clerks instituted to any churches within his archdeaconry: but it is said, the bishop may direct his mandate to any other clergyman to make Induction. See stat. 38 Ed. 3. § 2. cap. 3. And by prescription, others as well as archdeacons may make Inductions. Parj. Counsil. 8. See 1 Comm. 391.

An Induction made by the patron of the church, is void; but bishops and archdeacons may induce a clerk to the benefices of which they are patrons, by prescription, &c. 11 H. 4. 7. The dean and chapter of cathedral churches are to induce prebends; though it hath been held, if the bishop doth induce a prebend, it may be good at the common law. 11 Hen. 4. 7: 11 Hen. 6. In some places a prebend shall be in possession, without any Induction: as at Westminster, where the king makes collation by his letters patent. If the king grants one of his free chapels, the grantee shall be put in possession by the sheriff of the county, and not by the bishop.

But no Induction is necessary to a donative, where the patron by donation in writing puts the clerk into possession, without pretence, &c. 11 Hen. 4. 7. If the authority of the person who made the mandate for Induction, determines by death or removal, before the clerk is induced, the Induction afterwards will be void: as where, before it is executed, a new bishop is consecrated, &c. But if the archbishop, during the vacancy of a see, as guardian of the spiritualities, issue a mandate to induce a clerk to a church, it is good though not executed before there is a new bishop. 2 Lev. 299: 1 Venr. 399.

Induction is a temporal act; and if the archdeacon refuse to induce a parson, or to grant a commendation to others to do it, action on the case lies against him, on which damages shall be recovered: he may likewise be compelled, by sentence in the Ecclesiastical Court, to induce the clerk, and shall answer the contempt. 12 Rep. 128.

It is Induction which makes the parson complete incumbent, and fixes the freehold in him: and a church is full by Induction, which cannot be avoided but by quare impedit at common law. 4 Rep. 75; Plowd. 325: Hob. 15. A bishop sued in the court of exchequer, to repeal an Induction, after Induction had, and a prohibition was granted; because an Induction is not exequable in the Spiritual Court after Induction, but then a quare impedit lies. Mor. 860. It is not the submission and Induction, but the Induction to a feudal benefice, which makes the first void, in case of pluralities, &c. Mor. 12. See this Dictionary, title Advowson 11; Pecunia.

INDULGENCES. According to the doctrine of the Roman church, all the good works of the Saints, over and above those which were necessary towards their own justification, together with the infinite merits of Jesus Christ, are deposited in one inexhaustible treasury. The keys of this were committed to St. Peter, and to his successors the Popes, who may open it at pleasure, and by transferring a portion of this superabundant merit to any particular person, for a sum of money, may convey to him either the pardon of his own sins, or a release for any one in whom he is interested, from the pains of purgatory. Such Indulgences were first invented in the eleventh century by Urban II. Robertson's Char. V. ii. 79. See the flat. 25 Hen. 8. c. 21. sec. 27.; and this Dictionary, titles Rome; Poppis.

IN ESSE, In being.] The learned make this distinction between things in esse and in po-; as a thing that is not, but may be, they say is in po-; or in potentia; but what is apparent and visible, they allege is in esse, viz. that it has a real being, whereas the other is causal, and but a possibility. A child, before he is born, is a thing in po-; after he is born, and for many legal purposes after he is conceived, he is said to be in esse, or actual being. See titles Poulsham; Children; LI-; induction; Estates; Will, &c.

INEWARDUS, Inward.] A guard, a watchman, one set to keep watch and ward. Lib. Domesday, Chants. There.

INFAILITATUS. This word occurs only in Ralph de Hugby's, Summa parva, cap. 3, recapitulating the several punishments for felony. Mr. Selden, in his notes on that author, says, "It appears that several customs of places made in those days capital punishments several. But what is Infaillatus? In regard of its being a custom used in a port-town, I suppose it was made out of the Fr. word faillons, which is fixed by the water side, or a bank of the sea. In this kind or bank it forms their execution at Dover was." The elaborate Du Fresne condemns this derivation and the sense of the word, but yet gives no better. Therefore (till we have more authority) we may conclude that Infaillatus did imply some capital punishment inflicted.
INFANT, Infants.] A person under twenty-one years of age; who, acts in many cases either void, or voidable. Co. Lit. lib. 1. cap. 21: lib. 2. cap. 28.

I. The several Age distinguished by Law for various Purposes.

II. Who are Subject to, or free from, the Incapacities of Minors; and how far the Law regards Infants in ventre in mere.

III. Of the Trial of Infancy.

IV. Of what Offices, Trusts, and Functions an Infant is capable.

V. What an Infant may do for his own Advantage; how far his Acts are good, void, or voidable, &c.


I. Though a person is filed in law an Infant, till attaining the age of twenty-one years, which is termed his full age, yet there are many actions which he may do before that age, and for which various times or ages are appointed. Thus, a Male at eleven years old may take the oath of allegiance; at fourteen he is at years of discretion, and therefore may disafford or confess to marriage; may choose his guardian; and if his discretion be actually proved, may make his testament of his personal estate; at fourteen may be an executor; and at twenty-one is at his own disposal, and may alien his lands, goods, and chattels. A Female also, at seven years of age may be betrothed or given in marriage; at nine is entitled to dower; at twelve is at years of maturity, and therefore may consent or disafford to marriage, and if proved to have sufficient discretion, may bequeath her personal estate; at fourteen is at years of legal discretion, and may choose a guardian; at seventeen may be executrix; and at twenty-one may dispose of herself and her lands: so that full age, in male or female, is twenty-one years; which age is completed on the day preceding the anniversary of a person's birth. 

Salk. 44; 625; Lud. Rym. 480; 1096: 1 Br. P. C. 468; (8vo. ed.) Tew v. Sarum. If therefore, one is born on the 10th of January, he is of age to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by near forty-eight hours; the reason is, that in law there is no fraction of a day, and if the birth were on the first second of one day, and the action the last second of the other, then twenty-one years would be complete; and in law it is the same, whether a thing is done upon one moment of the day or another: and hence probably originated the distinction of a year and a day, &e., by which is meant a year complete in common acceptances.

From the observations made on the daily actions of Infants, as to their arriving at discretion, the laws and customs of every country have fixed upon particular periods, on which they are presumed capable of acting with reason and discretion; in our law the full age of man or woman is twenty-one years. 

New Abr. 118.

Therefore, if one under the age of twenty-one years makes his will, and thereby devises his lands, and after attains the age of twenty-one years, and dies, without making a new publication thereof, this devise is void. 

Dyer 143: Rym. 84: 1 Sid. 162.

Though a person under the age of twenty-one cannot directly dispose of his lands, yet as one under that age may (purport to the statute of 12 Car. 2. cap. 24.) dispose of the custody of his infant child, it is said, such disposition does not affect it the land, &e., as incident to the custody. 

Paugh. 178.

The reason why an Infant male at thirteen, and female at fifteen, may dispose of their personal estate at those ages is, that the common law has appointed no time, being a matter cognizable in the Spiritual Court, which herein proceeds according to the civil law; by which law, Infants at those ages are presumed to have sufficient discretion to make such disposition; therefore their testamentary acts in these cases are not to be set aside, or contrived in the spiritual courts. See 2 Med. 315: 2 Jones 210: Comb. 50: 1 Vern. 469: Pecord. 310.

The age of consent to a marriage in an Infant male is thirteen, and in a female fourteen; yet they may marry before, and if they agree thereto when they attain those ages, the marriage is good; but they cannot disafford before then; and if one of them be above the age of consent, and the other under such age, the party so above the age may as well disafford as the other; for both must be bound, or neither. Co. Lit. 35, 78, 79.


But though the party above age may as well disafford as the other, yet it is said that the party cannot do so before the other arrives at the proper age; also it is said to have been adjudged, that if a man marries a woman that is within the age of twelve years, and after the woman at eleven years of age disaffords to the marriage, and after the husban takes another wife, and
INFANT I.

... hath issue by her, that this is a bastard; for the first marriage continues notwithstanding the disaffirgment of the second; for the same disaffirgment within the age of twelve years, and to her disaffirgment invalid. Co. Lit. 79:

1 Rol. Abr. 34.

If a man marries a woman who is within the age of twelve years, and after the feme covert within the age of content disaffirgments to the marriage, and after the age of twelve years marries another, the first marriage is absolutely disaffirmed, so that he may take another wife; for though the disaffirgment within the age of content was not sufficient, yet her taking another husband, after the age of content, affirms the disaffirmation, and so the marriage abolished ab initio. 1 Rol. Abr. 341.


At common law an infant at fourteen was not out of court of guardian in loco, to advise a guardian, and at fifteen to have had and pur fair Fire Coward. Co. Lit. 98 b: Hob. 215.

The authority of a guardian in loco, ceases at the age of fourteen, at which age the infant may call his guardian to an account, and may choose a new guardian. Lit. 70. 13: Co. Lit. 75: 2 Inf. 135.

One in the age of twenty-one years may do homage, but not fealty: because, in doing of fealty he ought to be sworn, which an Infant cannot be. Co. Lit. 65 b: 2 Inf. 11.

An Infant at the age of seventeen, may be a procurator as well as executor; and in this both the civil and common law agree. 5 Co. 29 b: Off. Ex. 307: 1 Hal. Hig. P. C. 17.

Infancy is a good cause of refusal of a clerk; also by the statutes 13 Eliz. cap. 12, and 13 & 14 Car. 2. c. 4. none is admitted to be a deacon, unless he be twenty-three at least, nor a priest, unless he be twenty-four. Gib. Cod. 168. 3 Mod. 67.

By the custom of groveling, an Infant at the age of fifteen is reckoned at full age to sell his lands; and this seems to have been taken from the civil law, which reckoned fourteen the etas puberty; for they reckoned that though the Infant had ended his years of guardianship at fourteen, yet he might not have completed his account with his guardian till the age of fifteen, and that was esteemed to be the age when he was completely out of guardianship; therefore at this age he was allowed to sell the lands defended to him: but in this the customs of England differ from the civil law; for the civil law does not allow of this disposition till the age of twenty-five; therefore this must have been allowed by the old Saxon law, because they thought that much time was lost, if the Infant could only use his own estate without being able to dispose of it in a way of traffic, or in marriage, till twenty-five; therefore they allowed the Infant to sell (but under great limitations and restrictions, that he might not be ill-used) and by this means they thought there was sufficient provision made for the necessity of commerce. Lamb. 624. 625. See title Groveling.

Also by custom in some places, an Infant seised of lands in loco may, at the age of fifteen years, make a lease for years, which shall bind him after he comes of age; for the custom makes fifteen his full age to that purpose. Co. Lit. 45 b.

Alby the custom of London, an Infant unmarried, and above the age of fourteen, if under twenty-one, may bind himself apprentice to a Freeman of London, by indenture with proper covenants; which covenants, by the custom of London, shall be as binding as if he were of full age. Mose 134: 2 Balf. 192: 5 Rol. Rep. 305: Palm. 301: 1 Mod. 271. See also, 5 Eliz. c. 4: 45 Eliz. c. 2: and this Dictionary, title Apprentice.

In Criminal Cases, the law of England does in some cases privilege an Infant under the age of twenty-one, as to common misdemeanors, so as to escape fine, imprisonment, and the like; and particularly in cases of omission, as not repairing a bridge, or a highway, and other similar offenses; for, not having the command of his fortune till twenty-one, he wants the capacity to do those things which the law requires. But where there is any notorious breach of the peace, a riot, battery, or any like crime, (which Infants when full-grown, are as liable as others to commit,) for these an Infant above the age of fourteen is equally liable to suffer, as a peron of the full age of twenty-one. 1 Hal. P. C. 201. 212.

With regard to capital crimes, the law is still more minute and circumstantial, distinguishing with greater nicety the several degrees of age and discretion. By the ancient Saxon law the age of twelve years was established for the age of possible discretion, when first the understanding might open. L. L. Abibison, Wil. 65.

From thence till the offender was fourteen, it was etas puberty prosima, in which he might or might not be guilty of a crime, according to his natural capacity or incapacity. This was the obvious stage of discretion: but, under twelve, it was held that he could not be guilty in will, neither after fourteen could he be supposed innocent of any capital crime which he in fact committed. But by the law as it now stands, and has been at least ever since the time of Edward III, the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one hundred and eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is, that "nullius sapientia audacia." Under seven years of age indeed an infant cannot be guilty of felony; Mir. c. 4. § 16: 1 Hal. P. C. 27: Flood. 19: for then, by preemption in law, he cannot have discretion; and, in fact, a felonious discretion is almost an impossibility in nature, and no averment shall be received against that preemption; but at eight years old he may be guilty of felony. Balf. Inf. c. 147. Also, under fourteen, though an Infant shall be primâ facie adjudged to be dolii incapax; yet if it appear to the court and jury that he was dolii capax, and could discern between good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burnt for killing her midwifes; and one boy often, and another of nine years old, who had killed their companions, have been sentenced to death, and he of ten years actually hanged, because it appeared upon their trials, that the one had himself, and the other the body he had killed, which hiding manifested a consciousness of guilt, and a disposition to
So if the King contest to an act of parliament during his minority, yet he cannot after avoid this act; because the king, as king, cannot be a minor; for as king he is a body politic. Co. Lit. 43: 1 Rol. Abr. 728.

Also the acts of a mayor, and commonalty, shall not be avoided, by reason of the nonage of the mayor. Cre. Cor. 557: 5 Co. 27.

Although a duke, earl, or the like, he be a minor, or not above ten years of age, in the custody and in the family of another nobleman, who may and doth retain chaplains, yet he may qualify chaplains to hold two benefices with cure, as if he was of full age. 4 Co. 119.

An Infant in gavelkind shall have his age, and all other privileges of the Infant at common law; because though he hath the privilege of alienation at fifteen, yet that doth not take from him any privilege he had before at common law. 1 Rol. Abr. 144.

A bastard being implicated shall have his age: for the dilatory plea must be determined before the pleas in chief can come to; so that the plea of infancy will stay the suit till it can be inquired, whether he is or is not a bastard. Co. Lit. 244: b.

An Infant in utero sa mere, or in the mother’s womb, is supposed in law, to be born for many purposes. It is capable of having a legacy, or, a surrender of a copyhold estate made to it. (See Poth. division.)

It may have a guardian assigned to it; and it is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born. Stat. 10 & 11 W. 3. c. 15: 1 Comm. 130. See this Diction., title Poth. Children.

A child in utero sa mere may be appointed executor; also if there are two or more at a birth, they shall be joint executors, or joint legatees of the thing bequeathed. Godolph. Orph. Leg. 102.

If there be baillard eigne and mulcher paishne, and the baillard enters, and dies feithed, his issue shall inherit the lands, and exclude the mulcher for ever; but in this case if the baillard had died leaving issue in utero sa mere, and the mulcher had entered, and then a son is born, yet he cannot enter upon the mulcher: herein our law differs from the civil law: for our law requires an immediate descent, which cannot be before the person is in esse; also by our law the freehold cannot be in abeyance. Co. Lit. 244:

A devise of land to an Infant in utero sa mere is good, and the freehold shall not be in abeyance, but shall descend to the heir at law in the mean time. Though formerly it was doubted. Vido 11 Hen. 6. 13: 5 Mod. 273: 7 Co. 7. 119: 1 Lev. 153: 1 Sid. 153: Raym. 163: 1 Kib. 85: 1 Lees. 251: 2 Mod. 9.

However all the books agree, that a devise to an Infant shall be good, or when God shall give his birth, is good, as an executory devise, and that the freehold shall descend to the heir at law in the mean time. 1 Sid. 153: 1 Lev. 153: Raym. 163: 1 Kib. 85: 1 Lees. 251: 2 Mod. 9.

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It may be decided to truftees. So it is clear, that if land be devisd for life, the remainder to a posthumous child, that this is a good contingent remainder; because there is a person in being to take the particular estate; and if the contingent remainder vests during the continuance of the particular
INFANT III. IV.

An Infant in ventre sa mere may have a distributive share of interstitiate property even with the half blood. 1 Viz. 81. It is capable of taking a devise of land. See ante and 2 Afb. 117: 1 Ptejus. 244, 293. It takes, under a marriage settlement, a provision made for children living at the death of the father. 1 Ptejus. 85. And it has been decided, that marriage, and the birth of a pessihamous child, amount to a revocation of a will executed ante his marriage. 4 Ptejus. Rep. 40. It takes land by descent, though, in that case, the preambulative heir may enter and receive the profits for his own use till the birth of the child, which seems to be the only interest it loses by its situation. 3 Wilf. 526. See this Dictionary, titles Defectum; Pessihamous Children.

III. Infancy is to be tried by inspection of the court, or by jury: and herein it is laid down as a rule in some books, that wherefoever it is alleged upon the pleading, that the party was and yet is under age, there it shall be tried by inspection; but where the infant is of full age at the time of the plea, there it shall be tried per pais. 1 Lev. 142: 1 Sid. 321: 1 Aeb. 756: Cro. Jud. 59, 581.

But as to judicial acts, or acts done by an Infant in a court of record, and which he is allowed to avoid, the trial thereof must be by inspection; therefore if an Infant levies a fine, he must rehearse it by writ of error: and this must be brought during his minority, that the court may by inspection determine the age of the Infant. 4 Ptejus. Rep. 350: 1 Lev. 76: 2 Roll. Abr. 15: 1 Afb. 452: 2 Afb. 432: 1 Aeb. 122.

If an Infant brings a writ of error to rehearse a fine for his nonage, and, after inspection and proof of infancy by witnesses, dies before the fine is rehearsed, his heir may rehearse it, because the court having recorded the nonage of the cognizor, ought to vacate his contract when he appeared to be under a disability at the time he entered into it. 1 Cor. Lit. 350: Mor. 884.

An Infant acknowledged a fine, and the cognizor omitting to have the fine ingrossed till he came of age, in order to prevent the infant from bringing a writ of error; yet the court upon view of the collusion produced by the Infant, and upon his prayer to be inspected and his age examined, recorded his nonage, to give him the benefit of his writ of error, which he must otherwise lose, his nonage determining before the next term. Mor. 159; & with 3 Cor. Rep. 353, 1.

So if an Infant suffer a common recovery by appearing in person, this must be rehearsed during his minority by inspection of the Judges. But it is said, that if an Infant suffers a recovery, in which he appears by attorney, he may rehearse it after his full age, as it may be discovered whether he was within age when the recovery was suffered: because it may be tried per pais whether the warrant of attorney was made by him when he was an Infant. 1 Sid. 321: 1 Lev. 142.

It is said, that in all cases where the party pleads that he was within age at B. and alleges a place, that there the trial may be well enough where it is alleged; where no place is alleged there, in personal actions, where the writ is brought; and in real actions where the right of the land depends upon infancy, there the trial is to be where the land lies, and if not, where the action is brought. Skir. 19, 1: Cro. Eliz. 518. S. P.

In case of a suit to rehearse a fine for nonage of the cognizor, or to set aside a statute or recognizance entered into by an Infant; and, in other cases of the like sort, a writ shall issue to the Sheriff, commanding him that he constrain the said party to appear, that it may be ascertained by the view of his body by the judge's justices, whether he be of full age or not; or per actum corporis fiat custodia patriae judicatialis nisi prosectori A fin plena attatis necat. 9 Rep. 51. This question of infancy was formerly, according to Gower, (l. 15, c. 15.) tried by a jury of eight men; though now it is tried by inspection. If however the court has, upon inspection, any doubt of the age of the party, (as may frequently be the case,) it may proceed to take proofs of the fact, by witnesses, church-books, &c.; and particularly, may examine the Infant himself upon an oath of voire dire (or solidum divissum), that is, to make true answer to such questions as the court shall demand of him, or the court may examine his mother, his godfather, or the like. 2 Roll. Abr. 573.

IV. An Infant is, it seems, is capable of such offices as do not concern the administration of justice, but only require skill and diligence; and there he may either exercise them himself when of the age of discretion, or they may be exercised by deputy, such as the offices of park-keeper, forester, gaoler, &c. P. 379, 381: 9 Cor. 48, 97: See title Officers.

But it is laid, that an Infant is not capable of the stewardship of a minor, or of the stewardship of the courts of a bishop; because by intention of law he hath not sufficient knowledge, experience, and judgment to judge the office, and also because he cannot make a deputy. 3 Cor. Lit. 3, b. 1 Roll. Abr. 734: 2 Roll. Abr. 153: March. 41, 43: Cro. Eliz. 636: Cro. Car. 556.


An Infant cannot be a common informer; for stat. 18 Eliz. c. 5, directs that such shall sue in proper person, or by attorney, which an Infant cannot do. Bull. N. P. 156.

As to Infants being witnesses, there seems to be no fixed time in which children are excluded from giving evidence; but it will depend in a great measure on the sense and understanding of the child, as it shall appear on examination in court. See Bull. N. P. 293. And, where they are admitted, concurrent testimony seems peculiarly desirable. 4, Canes. 214.
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If an Infant, being master of a ship at St. Christopher's beyond sea, by contract with another, undertakes to carry certain goods from St. Christopher's to England, and there to deliver them; but does not afterwards deliver them according to agreement, but waives and consumes them, he may be sued for the goods in the court of Admiralty, though he be an Infant; for this suit is but in nature of a detinue, or trover and conversion at the common law. 1 Rol. Abr. s. 350.

If an Infant keeps a common inn, an action on the case upon the custom of inns will not lie against him. 1 Rol. Abr. 2, cited Cart. 161.

If an Infant draws a bill of exchange, yet he shall not be liable on the custom of merchants, but he may plead infancy in the same manner that he may to any other contract of his. Cart. 160. Or he may in this, as in all cases, give it in evidence on the general issue, but the safest way is to plead it. Bull. N. P. 152. An Infant cannot be a juror. Hob. 325.

An Infant, under the age of twenty-one years, cannot be elected a member of the House of Commons, nor can any lord of parliament sit there until he be of the full age of twenty-one years. 2 Inst. 47. See title Parliament. As to Infant trustees, see Per V.

If an Infant be lord of a manor, he may grant copyholds, notwithstanding his nonage; for these estates do not take their perfection from the interlocutory ability of the lord to grant, but from the custom of the manor by which they have been demifed, and are demisaliable time out of mind. 4 Co. 23, b. Co. Copyholder 79, 107: Noy. 43: 8 Co. 65.

An Infant may present to a church; and here it is said, that this must be done by himself, of whatever age he be, and cannot be done by his guardian, for the guardian can make no advantage thereof; consequently has nothing therein whereby he can give an account, therefore the Infant himself shall present. Co. Litt. 17, b. 89, a: 29 Ed. 3, 5: 3 Inst. 156.

V. INFANTS have various privileges, and various disabili ties; but their very disabilities are privileges, in order to secure them from hurting themselves, by their own improvident acts. An Infant cannot be sued but under the protection, and joining the name of his guardian; for he is to defend him against all attacks as well by law as otherwise; but he may sue either by his guardian, or procheinany, his next friend who is not his guardian. Co. Litt. 135. This procheinany may be any person who will undertake the Infant's cause, and it frequently happens, that an infant, by his procheinany, institutes a suit against a fraudulent guardian.

With regard to estates and civil property, an Infant hath many privileges, which will be better understood on further investigation: but this may be said in general, that an Infant shall lose nothing by non-claim or neglect of demanding his right; nor shall any other luck or negligence be imputed to an Infant, except in some very particular cases; even in case of a fine where the time begins in the life of the ancestor; or of an appeal of death of his ancestor, where he brings not his appeal within a year and a day, &c. 1 Inst. 246, 380: Wood's Inst. 14. Laches shall prejudice an Infant, if he presumes not to a church in six months. Lit. 402. It is generally true, that an Infant can neither alien his lands, nor do any legal act, nor make a deed, nor indeed any manner of contract that will bind him. But still to all these rules there are some exceptions; part have been mentioned (see ante I.) in reckoning up the different capacities which they assume at different ages; and there are others, a few of which when mentioned will serve as a general specimen of the whole. And, first, it is true, that Infants cannot alien their estates; but Infant trustees, or mortgagees, are enabled to convey, under the direction of the Court of Chancery or Exchequer, or other courts of equity, the estates they hold in trust or mortgage, to such person as the court shall appoint. Stat. 7 Ann. c. 19: 4 Geo. 3, c. 16. An Infant also may purchase lands, but his purchase is incomplete, for, when he comes to age, he may either agree or disavow it, as he thinks prudent and proper, without alleging any reason; and so may his heirs after him, if he die without having completed his agreement. Co. Litt. 2.

It is farther generally true, that an Infant under twenty-one can make no deed but what is afterwards voidable; yet in some cases he may bind himself apprentice by deed indented, or indentures for seven years; and he may by deed or will appoint a guardian to his children, if he has any. See Tit. 5 Eliz. c. 4: 4 Eliz. c. 2: Cre. Car. 179: stat. 12 Car. 2, c. 24: and this Dictionary, titles Apprentices, Guardian. See also, stat. 4 Geo. 1, c. 11: § 53 as to Infants contracting to serve in the plantations.

To enter more particularly into the subject.—An Infant is capable of inheriting, for the law presumes him capable of property; also an Infant may purchase, because it is intended for his benefit, and the freehold is in him till he disavows the same; because an agreement is presumed, it being for his benefit, and because the freehold cannot be in the grantor contrary to his own act, nor can be in abeyance, for then a stranger would not know against whom to demand his right; and if at his full age the Infant agrees to the purchase, he cannot afterwards avoid it; but if he dies during his minority, his heirs may avoid it; for they shall not be bound by the contracts of a person who wanted capacity to contract. Co. Litt. 2, 8: 2 Inst. 203.

If an Infant takes a lease for years rendering rent; if he enter upon the land he shall be charged with an action during his minority, because the purchase is intended for his benefit; but he may waive the term, and not enter, and if more rent be referred upon the lease than the land is worth, he may avoid it. 2 Buls. 69. If an Infant make a lease for years with remainder over, rendering rent, and, at full age, accepts the rent of the tenant for years, this shall be an affent to him in remainder, so that he shall not eject him after. Pld. 540.

As to Contracts, for necessaries, made by Infants, it is to be observed that, (strictly speaking,) all contracts made by Infants, are either void or voidable; because a contract is the act of the understanding, which during their state of infancy they are presumed to want; yet civil societies have to fall supplied that defect, and taken care of them, as to allow them to contract for their benefit and advantage, with power, in most cases, to rescind or annul it, when it may prove prejudicial to them; but in this contract for necessaries they are absolutely bound, and this likewise is in benignity to Infants, for if they were
were not allowed to bind themselves for necessaries nobody would trust them, in which case they would be in worse circumstances than persons of full age. 10 H. 6. 14: 18 Ed. 4. 2: 1 Rel. Abr. 729.

Therefore it is clearly agreed, that an Infant may bind himself to pay for his necessary meat, drink, apparel, phisick, and such other necessaries, and likewise for his good teaching and instruction, whereby he may profit himself afterwards. Co. Lit. 172. a. & c. This binding means by parol: in fact, for necessaries, if there is not an actual promise the law implies a promise, but the Infant will not be bound by any bond, note, or bill, which he gives, though for necessaries, therefore a tradesman's bill security will be the actual or implied promise. With respect to schooling, &c. it must be in cafes where the credit was given, bona fide, to the Infant. But where an Infant is, &c. &c. parents, and living in the house with his parents, he shall not then be liable even for necessaries. 2 Black. Rep. 1325.

It must appear that the things were actually necessary, and of reasonable prices, and suitable to the Infant's degree and estate, which regularly must be left to the jury; but if the jury find that the things were necessaries, and of reasonable prices, it shall be presumed they had evidence for what they thus find; and they need not find particularly what the necessaries were, nor of what price each thing was: also if the plaintiff declares for other things, as well as necessaries, or alleges too high a price for those things that are necessary, the jury may consider of those things that were really necessaries, and of their intrinsic value, and proportion their damages accordingly. Cro. Jac. 380: 2 Rel. Rep. 144: Petb. 315: Palm. 561: Gauf. 168: Gauf. 215: 1 Leon. 114.

If an Infant promises another, that if he will find him meat, drink and washing, and pay for his schooling, that he will pay 7 l. yearly, an action upon the cafe he upon this promise, for learning is as necessary as other things, and though it is not mentioned what learning this was, yet it shall be intended what was fit for him, till it be shown to the contrary on the other party; and though he to whom the promise was made does not instruct him, but pays another for it, the promise of re-payment thereon is good; if it appears that the learning, meat, drink, and washing could not be afforded for a less sum than 7 l. 1 Rel. Abr. 729: Palm. 528: 1 Jen. 182.

As examples, for labour and medicines in curing the defendant of a distemper, &c. who pleaded infancy; the plaintiff replied, it was for necessaries generally; and upon a demurrer to this replication it was objected, that the plaintiff had not assigned in certain how, or in what manner, the medicines were necessary; but it was adjudged, that the replication in this general form was good. Careb. 110.

If an Infant be a mercer, and hath a shop in a town, and there buys and sells, and contracts to pay a certain sum to J. S. for wares sold to him by J. S. to refell, yet he is not chargeable upon this contract, for this trading is not immediately necessary ad virtum & utilitatem, and if this were allowed, Infants might be infinitely prejudiced, and day and fell, and live by the los. 1 Rel. Abr. 729: Cro. Jac. 491: 2 Rel. Rep. 45.

And as the contract of an Infant for wares, for the necessary carrying on his trade, whereby he subsists, shall not bind him; nor either shall be liable for money which he borrows to lay out for necessaries, therefore the lender must, at his peril, lay it out for him, or see that it is laid out in necessaries. 5 Mod. 368: 1 Salk. 386-7.

In debt upon a single bill, the defendant pleaded that he was within age; the plaintiff replied, that it was for necessaries, viz. 10 l. for clothes, and 15 l. money lent for and towards his necessary support at the university; the defendant rejoined, that the money was lent him to spend at pleasure; ubique hie, that it was lent him for necessaries; and issue hereupon was found for the plaintiff, who had judgment in C. B., but was reversed in B. R. on a writ of error; for the issue only being, whether this money was lent the Infant for necessaries, not whether it was laid out in necessaries, it cannot be bind the Infant whichever way it is found, for it might have been borrowed for necessaries, and laid out in a tavern; and the law will not intrall the Infant with the application and laying of it out. 1 Salk. 386. See Cenius as to a single bill given for necessaries; 1 Lew. 86: 1 Keb. 382, 416, 423.


So if one lends money to an Infant, who actually lays it out in necessaries, yet this will not bind the Infant, nor subject him to an action; for it is upon the lodging that the contract must arise, and after that time there could be no contract raised to bind the Infant, because after that he might waste the money, and the Infant's applying it afterwards for necessaries will not, by matter ex post facto, entitle the plaintiff to an action. 1 Salk. 279.

Although an Infant shall be liable for his necessaries, yet if he enters into an obligation with a penalty for payment thereof, this shall not bind him; for the entering into a penalty can be of no advantage to the Infant. Cro. Eliz. 290: Mow. 679. pl. 729; Co. Lit. 172: 1 Rel. Abr. 729. But a bond or single bill for the exact amount of necessaries furnished will be valid. E. P. N. P. 164.

It is also said, that an Infant cannot either by parol-contract, or a deed, bind himself, even for necessaries, in a sum certain, and that should an Infant promise to give an unreasonable price for necessaries, that would not bind him; and that therefore it may be said that the contract of an Infant for necessaries, as a contract, does not bind him any more than his bond would; but only since an Infant must live as well as a man, the law gives a reasonable price to those who furnish him with necessaries. Caus. in Law and Equity 85. And in a cafe where a warrant of attorney was given by an Infant and another, and judgment entered up thereon, the court on motion ordered the name of the Infant to be struck out, and set aside the judgment as against him. 2 Black. Rep. 1133.

If an Infant becomes indebted, for necessaries, and the party takes a bond from the Infant, this shall not draw the simple contract, because the bond has no force. Cro. Eliz. 910.

But it is agreed, that an action on an account stated will not lie against an Infant, though it be for necessaries; for be not having dexterous, it is not to be liable to false accounts. Co. Lit. 172: Lamb. 169: Nay 87: 1 Term Rep. 40.

If an Infant comes to a stranger, who infracles him in learning, and boards him, there is an implied contract in love, that the party should be paid as much as his board and schooling are worth; but if the Infant at the time of his going thither was under the age of discretion, or if
he were placed there upon a special agreement with some of the child's friends, the party that boards him no remedy against the Infant, but must resort to them with whom he agreed for the Infant's board, &c. Allen 94.

Necessaries for an Infant's wife are necessaries for him; but if provided only in order for the marriage, he is not chargeable, though the use them after. Stra. 168. An Infant shall be liable for the nursing his child. Ep. N. P. 161.

Debts contracted during infancy, form however a good consideration to support a promise made to pay them when a person is of full age. 2 Lew. 144. : 2 Lew. 215. And where the defendant pleads infancy, and the plaintiff replies that the defendant confirmed the promise or contract when he was of age, the plaintiff need only prove the promise, and the defendant must discharge himself by proof of the infancy. 1 Term Rep. 648.

Though a promise by an Infant will not bind him unless for necessaries, yet he shall take advantage of any promise made to him, though the consideration were his promise when an Infant. And an Infant plaintiff has been allowed to recover on mutual promises of marriage. Stra. 937.

As to Judicial acts, and acts done by an Infant in a court of record, they regularly bind the Infant and his representatives, with the following savings and exceptions: as if an Infant levies a Fine, though the Judges ought not to admit the acknowledgment of one under that disability, yet having once recorded his agreement as the judgment of the court, it shall for ever bind him and his representatives, unless he reverses it by writ of error, which must be brought by him during his minority, that the court by inspection may determine his age. Ca. Lit. 1950. Mo. 76: 2 Rol. Abr. 15: 2 Inf. 483: 2 Bull. 320: 12 Co. 122: T. Tu. 115: 3 Mod. 229.

So if an Infant levies a Fine, he is enabled by law to declare the uses thereof, and if he reverse it not the Fine during his minority, the declaration of uses will stand good for ever; and though that be a matter of law, and should be void, he is estopped from it by the use of the court. And in all such acts an Infant may avoid at any time after his full age, if he do not confess, yet being made in pursuance of the fine levied, which Fine must stand good for ever, (unless reversed in the manner as has been mentioned,) so will the declaration of uses too. 2 Co. 48: a: 10 Co. 42: Mo. 22: Dal. 47: 2 Lew. 159: G. 13: 1 Jones 350: Wimb. 103.

If there be tenant for life, the remainder to an Infant in fee, and they two join in a fine, the Infant may bring a writ of error, and reverse the fine as to himself; but it shall stand good as to the tenant for life; for the disability of the Infant shall not render the contract of the tenant for life, which was, of full age, ineffectual. 1 Lew. 115. 317: 2 Sid. 551: 2 Jones 182.

If an Infant brings a writ of error to reverse a Fine for his nonage, and his non-age, after inspection, is recorded by the court, but before the Fine reversed he levies another Fine to another, the second Fine shall hinder him from reverting the first; because the second having entirely barred him of any right to the land, must also deprive him of all remedies which would restore him to the land. 1 Rol. Abr. 768. See Moir 74; and further this Dictionary, title Fine of Land.

As to Recoveries suffered by Infants, when these were improved into a common way of conveyance, it was thought reasonable that those whom the law had judged incapable to act for their own interest, should not be bound by the judgment given in recoveries, though it was the solemn act of the court; for where the defendant gives way to the judgment, it is as much his voluntary act and conveyance, as if he had transferred the land by livery, or any other act in pais; therefore if an Infant suffers a recovery, he may reverse it, as he may a Fine, by writ of error, during his minority: and this was formerly taken to be law, as well where the Infant appeared by guardian, as by his attorney, or in person; but now the distinction turns upon this point, that if an Infant suffers a recovery in person, it is erroneous, and he may reverse it by writ of error; but even in this case the writ of error must be brought during his minority, that his infancy may be tried by the inspection of the court; for at his full age it becomes obligatory and unavoidable: but in cases of necessity the court has admitted the Infant to appear by guardian, and to suffer a recovery, or come in as a voucher; but this, too, is seldom allowed by the court, unless upon emergencies, when it tends to the improvement of the Infant's affairs, or when lands of equal value have been settled on him, and when he has had the king's privy seal for that purpose; and these recoveries have been allowed and supported by the Judges, and the Infant could not let them aside; besides, if such recoveries be to the prejudice of the Infant, he has his remedy for it against the guardian, and may reimburse himself out of his pocket to whom the law had committed the care of him. 1 Rol. Abr. 751: 742: Co. Lit. 381: 3 Rol. Abr. 395: 10 Co. 43: a: 9 Cro. El. 471: H. 196: 7: 10 Cro. Car. 397: 2 Bull. 255: 1 Sid. 321: 1 Lew. 142: 2 Sav. 94: 2 Term. 461: 2 Salk. 567. See further this Dictionary, title Recovery.

Partition, by a writ of partitio facienda, binds infants, because by judgment in a court of justice, to which no partiality can be imputed. Co. Lit. 171: b.

If an Infant acknowledge a recognizance or statute, it is only voidable; and the Infant at his peril must avoid them by audit, and recover by writ of error, during his minority; for such conveyances or other acts of record become obligatory and unavoidable, if they be not set aside before the Infant comes of age; the reason is, because these contracts being entered into under the inspection of the Judge, (who is supposed to do right) the Infant cannot against them aver his disability, but must reverse them by a judgment of a superior court, who, by inspection has the same means to determine whether the inferior jurisdiction has done right, that first received the contract. Moir. 260: 2 Inf. 493: 973: Co. Lit. 390: Kelw. 10: 149: 10 Co. 43: a.

If an Infant bargain and sell his land by deed indented and enrolled, yet he may plead non-age, for not withholding the statute 27 Hen. 8. c. 16, makes the enrolment in a court of record necessary to complete the conveyance; yet the bargainer claims by the deed as at common law, which was, and therefore is, still defeasible by non-age. 2 Inf. 675.

An Infant conferred judgment in an action of debt brought against him; and it was held, audita querela did not
act lie upon this judgment, though it would on a statute or recognition; but the party ought to bring a writ of error in the Exchequer Chamber, by virtue of the statute 27 Eliz. c. 1. See 5 & 6 Eliz. c. 27. 5 & 6 Eliz. c. 28. Mor. 189. Where an infant may levy a fine, he may declare the uses of it or by deed: and the infant's declaration of uses shall be good and binding to the infant and his heirs, so long as the fine continues unrecovered. 26 Eliz. c. 2. 21 & 22 Car. 2. c. 23. 22 & 23 Car. 2. c. 24.

Hab. 2:3. If a habitant appears by attorney, it is error. 5 Med. 209. When the defendant in an action is an infant, the plaintiff shall have six years to bring his action in, after the defendant comes of age: and if the plaintiff be an infant, he hath six years likewise after his age, to sue by the statute of limitations. 24 Edw. 3. See title Limitation of Actions.

As to acts in pais, infants are regularly allowed to rescind and break through all contracts in pais made during minority, except only for showing and necessity, because they do not much to their advantage; and the reason hereof is the indulgence the law has thought fit to give infants, who are supposed to want judgment and discretion in their contracts and transactions with others, and the care it takes of them in preventing their being imposed upon, or over-reached by persons of more years and experience. 39 Edw. 3. 20. 3: 1 Rol. Abr. 729: C. L. 172, 581.

And for the better security and protection of infants herein, the law has made some of their contracts absolutely void; i.e. all such in which there is no apparent benefit, or semblance of benefit, to the infant; but as to those from which the infant may receive benefit, and which were entered into with more solemnity, they are only voidable; that is, the law allows them, when they come of age, and are capable of considering over again what they have done, either to ratify and affirm such contracts, or to break through and avoid them. 2 Cor. 402: 1 Johns 405: 3 Med. 310.

Hence an infant may purchase, because it is intended for his benefit, and at his full age he may either agree or disagree to the same. 2 Cor. 338: 3: 1 Varm. 205.

Also the feoffment of an infant is not void, but only voidable, not only because he is allowed to contract for his benefit, but because there ought to be some act of notority to refore the possession to him, equal to that which was transferred to him from another. 2 Cor. 125 a.

Therefore if an infant make a feoffment and livery in pais, he shall have no assise, and must avoid it by entry: for it is to be presumed in favour of such solemnity, that the assembly of his county then present would have prevented it, if they had perceived his non-age, and therefore the feoffment shall continue till defeated by entry, which is an act of equal notority. 3 Cor. 42.

But if the infant had made a letter of attorney to deliver seisin, he might have an assise, because the letter of attorney, (like all other acts or agreements made by an infant to his prejudice,) must be void; therefore whoever claims under it, or by virtue of its authority, must be a wrong-doer. 2 Rol. Abr. 2: 1 Reg. 130: Psal. 237.

Also as to the acts of infants being void, or voidable, there is a diversity between an actual delivery of the thing contracted for, and a bare agreement to deliver it: only that the first is voidable, but the last absolutely void; as if an infant deliver a horse, or a sum of money, with his own hands, this is only voidable, and to be recovered back in an action of account. Perk. § 12, 19: 1 Rol. Abr. 730: 2 Rol. Rep. 408: Landb. 10: Rol. 736: 3 Rep. 13: 21 & 22 Car. 2. c. 24.
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But if an Infant agrees to give a horse, and does not deliver the horse with his hand, and the donee take the horse by force of the gift, the Infant shall have an action of trespass; for the grant was merely void. 

Perk. § 12, 19; 1 Mod. 137.

In trespass, wherefore with force and arms the defendant made an assault, and cut off all the hair of the plaintiff, the defendant as to all the trespass, except cutting the hair, pleads not guilty, and as to that pleads that the plaintiff was of the age fifteen years, and for a certain sum of money gave licence to the defendant to cut off two ounces of hair; upon demurrer to this plea the court

conf equently the tonfure unlawful, and accordingly for the plaintiff. 3

contraEt,

not be chargeable in trover and conversion, or any other action

lies against him; also it is said, that if he under pretence that he is of

infancy, that a court of equity will decree it good fraud; but in

cases in particular a court

shall

nullif

every act of error may reverfe the judg­

ment in dower. 104: 105.

An Infant is much favoured by law; therefore it gives him many privileges above others: if an Infant make default in a real action, he shall not lose his land as another man shall do; one who is an Infant shall not be amerced, nor fined and pledges like one of full age; and if he be bail, he may be discharged by auditor querela, 3 172: 8 Rep. 61. On his default at the grand case, the Infant by writ of error may reverse the judgment given against him; unless it be in case of a judgment in dower. 1717.

An Infant may be disinherited by his estates, and a warranty that descends from an Infant, may bar him of his entry; so a remitter upon him; contra of a tenant: if an Infant hath franchises or liberties, and do abuse, or dilute them, he shall forfeit them as a man of full age may. 1717. 1719.

A person gave a note, a few days after he was of age, for things had during his infancy; on extraordinary circumstances, equity let it aside: though it is true, if an Infant takes up goods, or borrows money, and, after he comes to age, give his note or promise for the money, that is good at law: but to prevent the ruin of Infants, it may be convenient to give relief. Barm. C. 4. 6. 

If an Infant delivers money with his own hands, it is voidable, and to be recovered by action of account. The Infant forfeits goods to another; he may make the fale void, or have debt, 3 1717. 1720.

If a trespass be done to an Infant, and he submits to an award, it is said, the award shall not be binding on him.
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An Infant is not bound by his consent not to bring a writ of error; for though the judgment binds him, yet it binds but as a judgment reversible. Rep. Hardw. 104. Agreements &c. made by an Infant, although he be within a day of his full age, shall not bind him. Plowd. 364. Where an Infant enters into bond, pretending to be of full age, though he may avoid it by pleading his infancy, yet he may be indicted for a cheat. Wood's Inl. 385.

See further as connected with this subject of Infant, titles Annuity; Age; Heir; Chancey; Rape; Trial; Will, &c.

INFANTRY or CORPORATIONS. See title Infantry.

INFECTIONS. By casting garbage and dung into ditches, &c. how punished. See Stat. Wills. c. 1; and this Dictionary, title Nuisances.

INFEOATION of TITHES. The granting of tithes to men. See 2 Comm. 27, and this Dictionary, title Tithe.

INFERIOR COURTS. The Courts of Judicature of this kingdom are claffed in a general division of superior and inferior. The courts at Westminster are the superior, and in general have (especially the court of King's Bench and Common Pleas) superintendance over the inferior.

Doors or their baillis not to arrest on foreign pleas, on pain of double damages. Stat. Wills. 1. 3 Ed. 1. c. 35. See title Arrest.

By Stat. 19 Geo. 3. c. 70. (see this Dictionary, title Arrest,) where final judgment is obtained in any inferior courts of record, and the defendant cannot be found in their jurisdiction, the Superior Courts at Westminster may remove the record, and issue execution as in judgments in such superior court; and similar provisions are made by Stat. 37 Geo. 3. c. 68, as to the courts of great sessions in Wales, and the courts for the counties-palatine of Chester, Lancaster, and Durham. See further this Dictionary, title County Court; Courts Abatement, &c.

INFIDELS. (infidels.) Heathens; who may not be witnesses by the laws of this kingdom, because they believe neither the Old or New Testament to be the word of God, on one of which oaths must be taken. 1 Int. 6.

The evidence of a Gentil has however been admitted, qualified according to the ceremonies of his own religion. See further this Dictionary, titles Evidence; Witnesses.

INFINITY or ACTIONS. The lord of the soil may have a special action against him who shall dig a well in the king's highway: but one subject may not have his action against another for common nuisance; for if he might, then every man would have it, and so the actions would be infinite. 4 Co. Litt. 59; 9 Rep. 143. See title Actions.

INFIRMARY, (infirmary.) In monasteries there was an apartment allowed for infirm or sick persons: and he who had the care of the infirmary was called infirmary. Mat. Paris. anns 1252.

There are now, to the honour of the nation, many hospitals, for the relief of diseased persons, in various parts of the kingdoms, called Infirmaries.

IN FORMA PAUPERIS. Suing actions in, see title Cotis.

INFORMATION FOR THE KING.

Informations pro Rege.] An accusation or complaint exhibited against a person for some criminal offence, either immediately against the King, or against a private person; which, from its enormity or dangerous tendency, the public good requires should be restrained and punished. It differs from an indictment principally in this, that an indictment is an accusation found by the oath of twelve men, whereas an information is only the allegation of the officer who exhibits it. 3 New Am. 164.

I. Of the various kinds of Information generally; and the Antiquity of the Practice.

II. In what case Information will lie.

III. Of filing and compounded Information.

IV. How to be laid; the Proceeding and Provisions by Statute Law.

I. Information are of two sorts: first, those which are partly at the suit of the King, and partly at that of a Subject; and secondly, such as are only in the name of the King. The former are usually brought upon penal statutes, which inflict a penalty upon conviction of the offender, one part to the use of the King, and another to the use of the informer, and are a sort of qui tam actions, only carried on by a criminal instead of a civil process; upon which therefore it is sufficient in this place to observe, that by Stat. 31 Eliz. c. 5, no prosecution upon any penal statute, the suit and benefit whereof is limited in part to the King and part to the prosecutor, can be brought by any common informer after one year is expired since the commission of the offence; nor on behalf of the Crown after the lapses of two years; nor, where the forfeiture is originally given only to the King, can such prosecution be had after the expiration of two years from the commission of the offence. Cro. Jac. 366.

The Informations that are exhibited, in the name of the King alone, are also of two kinds: first, those which are truly and properly his own suits, and filed ex officio by his own immediate officer, the Attorney General; secondly, those in which, though the king is the nominal prosecutor, yet it is at the relation of some private person, or common informer, and they are filed by the king's coroner and attorney in the court of king's bench, usually called the Master of the crown-office, who is for this purpose the acting officer of the public. The object of the King's own prosecutions, filed ex officio by his own Attorney General, are properly such enormous misdemeanors, as peculiarly tend to disturb or endanger his government, or to molest or afford him in the regular discharge of his royal functions. For offences so high and dangerous, in the punishment or prevention of which a moment's delay would be fatal, the law has given to the Crown the power of an immediate prosecution, without waiting for any previous application to any other tribunal; which power thus necessary, not only to the ease and safety, but even to the very existence of the executive magistrate, was originally referred in the great plan of the English constitution; wherein provision is wisely made for the due prefervation of all its parts. The objects of the other species of Informations, filed by the Master of the crown-office upon the
complaint or relation of a private subject, are any gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly tending to disturb the government, (for those are left to the care of the Attorney-General) but which, on account of their magnitude or pernicious example, deserve the most public animadversion. 2 Hawk. P. C. c. 26. And when an Information is filed, either thus, or by the Attorney-General ex officio it must be tried by a petit jury of the county where the offence ariseth: after which, if the defendant be found guilty, the court must be referred to act. See Poth. III. III.

This mode of prosecution, by Information (or suggestion) filed on record by the King's Attorney-General, by or by his Coroner, or Master of the Crown-office in the court of King's Bench, seems to be as ancient as the common law itself. 1 Show. i. 118. For as the king was bound to prosecute, or at least to lend the function of his name to a prosecutor, whenever a grand jury informed him upon their oaths, that there was a sufficient ground for instituting a criminal suit; so, when these his immediate officers were otherwise sufficiently assured that a man had committed a gross misdemeanor, either personally against the king or his government, or against the public peace and good order, they were at liberty, without waiting for any further intelligence, to convey that Information to the Court of King's Bench by a suggestion on record, and to carry on the prosecution in his majesty's name. But these Informations (of every kind) are confined by the constitutional law to mere misdemeanors only: for, wherever any capital offence is charged, the same law requires that the accusation be warranted by the oath of twelve men, before the party shall be put to answer it. And as to those offences in which Informations were allowed as well as indictments, so long as they were confined to this high and respectable jurisdiction, and were carried on in a legal and regular court, in his majesty's court of King's Bench, the Subject had no reason to complain. The same notice was given, the same process was served, the same pleas were allowed, the same trial by jury was had, the same judgment was given by the same judges, as if the prosecution had originally been by indictment. But when the flat. 3 Hen. 7. c. 1, had extended the jurisdiction of the court of Star-chamber, the members of which were the sole judges of the law, the fact, and the penalty, and when the flat. 11 Hen. 7. c. 3, had permitted Informations to be brought by any informer upon any penal statute, not extending to life or member, at the assizes, or before the justices of the peace, who were to hear and determine the same according to their own discretion; then it was, that the legal and orderly jurisdiction of the court of King's Bench fell into disuse and oblivion; and Empson and Dudley, the wicked instruments of king Hen. VII. by hunting out obdurate penalties, and this tyrannical mode of prosecution, with other oppressive devices, continually harassed the subject, and shamefully enriched the crown. 1 And. 157. The latter of these acts was soon indeed repealed by flat. 1 Hen. 8. c. 6: but the court of Star-chamber continued in high vigour, and daily increasing its authority, till finally abolished by flat. 16 Car. 1. c. 10.

Upon this dissolution the old common-law authority of the court of King's Bench, as the Cystos nonus of the

nation, being found necessary to redress somewhat for the peace and good government of the kingdom, was again revived in practice. 5 Mod. 465; Styl. Rep. 217, 545; Styl. Pradt. Reg. title Information, p. 187 (edit. 1567); 2 Sid. 71; 1 Sid. 172. And it is observable that, in the same act of parliament which abolished the court of Star-chamber, a conviction by Information is expressly reckoned up, as one of the legal modes of conviction of such persons as should offend a third time against the provisions of that statute. 16 Car. I. c. 10. § 6. Sir Matthew Hale, who prefixed in this court soon after the time of such revival, is said to have been no friend to this mode of prosecution; most probably because the power of filing Informations without any control then reigned in the breast of the Master; and, being filed in the name of the king, they subjected the prosecutor to no costs, though on trial they proved to be groundless. 5 Mod. 360; 1 Vent. 301; 1 Sid. 175. This oppressive use of them, in the times preceding the revolution, occasioned a struggle, soon after the accession of King William, to procure a declaration of their illegality by the judgment of the court of King's Bench; and Sir John Holt, who then prefixed there, and all the Judges, were clearly of opinion that this proceeding was grounded on the common law, and could not then be impeached. 5 Mod. 459; Comb. 141: 7 Mod. 361; 1 Selw. 106. In a few years afterwards a more temperate remedy was applied in parliament, by flats. 4 & 5 W. & M. c. 18, which enacted, that the clerk of the crown shall not file any Information without express direction from the court of King's Bench; and that every prosecutor, permitted to promote such Information, shall give security by a recognizance of twenty pounds (which now seems to be too small a sum) to prosecute the same with effect, and to pay costs to the defendant, in case he be acquitted thereof, unless the Judge, who tries the Information, shall certify therein that the same was reasonable cause for filing it; and, at all events, to pay costs, unless the Information shall be tried within a year after issue joined. But there is a proviso in this act, that it shall not extend to any other Informations than those which are exhibited by the Master of the Crown Office; and, consequently, Informations at the king's own suit, filed by his Attorney-General, are no way restrained thereby.

There is one species of Informations, still further regulated by flats. 9 Ann. c. 20; and those in the nature of a writ of Quo Warranto, which are a remedy given to the Crown against such as may have usurped or intruded into any office or franchise. The modern Information tends to the same purpose as the ancient writ, being generally made use of to try the civil rights of such franchises; though it is commenced in the same manner as other Informations are, by leave of the court, or at the will of the Attorney-General; being properly a criminal prosecution, in order to fine the defendant for his usurpation, as well as to oust him from his office; yet usually considered as mere civill proceeding. See this Dictionary, title Quo Warranto; and 4 Com. 328, 312.

An Information on behalf of the Crown filed in the Exchequer by the King's Attorney-General, is a method of suit for recovering money or other chattels, or for obtaining satisfaction in damages for any personal wrong committed in the lands or other possessions of the Crown. Mor. 375. It differs from an Information filed in the
court of King's Bench, in that this is instituted to redress a private wrong, by which the property of the crown is affected; that is calculated to punish some public wrong of a infamous misdemeanor in the defendant. It is grounded on no writ under seal, but merely on the intimation of the King's officer the Attorney-General, who "gives the court to understand and be informed of" the matter in question: upon which the party is put to answer, and trial is had, as in suits Subject and Subject. The most usual Informations are those of interjection and debt. Interjection for any trespass committed on the lands of the crown, as by entering thereon without title; holding over after a lease is determined; taking the profits; cutting down timber; or the like. Cru. Jus. 212; 1 Leon. 48: Salk. 49. Debt upon any contract for monies due to the King, or for any forfeiture due to the Crown upon the breach of a penal statute. This latter is most commonly used to recover forfeitures occasioned by transgressing these laws, which are enacted for the establishment and support of the Revenue; others, which regard mere matters of police and public convenience, being usually left to be inferred by common informers, in quia tamen Informations or actions. But, after the Attorney-General has informed upon the breach of a penal law, no other Information can be received. Hard. 104.

There is also an Information in rem, when any goods are supposed to become the property of the Crown, and no man appears to claim them, or to dispute the title of the King. As antiently in the case of treasure-trove, wrights, waifs, and estrays seized by the King's officer for his use. Upon such seizure an Information was usually filed in the King's Exchequer, and thereupon a proclamation was made for the owner (if any) to come in and claim the effects; and at the same time there issued a commission of appraiser to value the goods in the officer's hands: after the return of which, and a second proclamation had, if no claimant appeared, the goods were supposed derelict, and condemned to the use of the Crown. And when in later times, forfeitures of the goods themselves, as well as personal penalties on the parties, were inflicted by act of parliament for transgressions against the laws of the customs and excise, the same process was adopted in order to secure such forfeited goods for the public use; though the offender himself had escaped the reach of justice. 3 Com. 261, 7.

An Information is, in many respects, the same as what, for a common person, is called a declaration. It ought to be certain, that the party may perfectly know what he is to answer to, and the court what they are to give judgment on. Plov. 329.

Informations quo. temp. will not lie in any statute, which prohibits a thing, as being an immediate offence against the public good; in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who will sue for it, because otherwise it goes to the king, and nothing can be demanded by the party. 2 Hawk. P. C. c. 26.

It has been said, that the King shall put no one to answer for a wrong done principally to another, without indictment or information; but this does not seem a principle adhered to; and of common right, Informations, or actions in the nature thereof, may be brought for offences against statutes, whether mentioned or not in such statutes, where other methods of proceeding are not particularly appointed. 2 Hawk. P. C. c. 26. § 1, 2.

And wherever a matter concerns the public government, and no particular person is entitled to an action, a crown Information will lie. 1 Sid. 37, 4.

II. It is every day's practice, agreeable to numberless precedents, either in the name of the King's Attorney-General, or of the Master of the Crown-office, to exhibit Informations for batteries, cheating, a young man or woman from their parents, in order to marry them against their consent, or for any other wicked purpose, spirited away a child to the plantation, robbing persons from legal arrears, perjuries, and subornations thereof, forgery, conspiracies; whether to accuse an innocent person, or to impoverish a certain set of lawful traders, &c. or to procure a verdict to be unlawfully given, by causing persons bribed for that purpose to be sworn on a tale; and other such like crimes, done principally to a private person; as also for offences done principally to the King; as for libels, seditionary words, riots, false news, extortions, nuisances; (as in not repairing highways, or obstructing them, or flooding a common river, &c.) contempts, as in departing from the parliament without the King's licence, disobeying his writs, uttering money without his authority, escaping from legal imprisonment on a proceeding for contempt, neglecting to keep watch and ward, abusing the King's commission to the oppression of the Subject, making a return to a mandamus of matters known to be false; and in general any other offences against the public good, or against the first and obvious principles of justice, and common honesty. 2 Hawk. P. C. c. 26. § 1, and the several authorities there cited, and see Finl. L. 120; Sid. 109.

The Court will grant an Information for reproaching the office of magistracy, or defaming the character of magistrates. Corb. 14, 15; 1 Will. 22. See 12 Mad. 514. For taking away a young woman from her guardian, although Chancery has committed the offender for a contempt. 11 Will. 1077. 5 And. 340. Or, from her putative father. 1 And. 163. For not examining evidence upon oath under a reference and rule of court. 1 Will. 7. Or for demanding, a bailiff by a justice to debar his ward, and committing the party for not paying it. 1 Will. 1078. 5 And. 7. For confining a person unheeded, and sending him to the house of correction. Hard. 124; 8 Mod. 345.

For enforcing a man to marry a pauper, in order to enervate the. patrimony. 1 Will. 47. For inducing a woman, habituated to drinking, to make her will. 2 Barn. 1090. For voluntary abjuring by a justice, from secessions. 1 Will. 21. For refusing to put a statute in execution. 1 Will. 413. For bribing persons to vote at corporation elections. 1 Will. 237. For publishing an obscene book. 1 Will. 788. For blasphemy. 5 St. 14.

For unduly discharging a debtor by judges of an inferior court. Hard. 255. For refusing, by the captain, to let the coroner come on board a man of war lying within the body of the county. 2 Barn. 121; 1 St. 245. For keeping great quantities of gunpowder. 11 Will. 1167. For a justice making order of removal, and not summoning the party. 2 Barn. 258; 273. For impropriating a captain as a commonFranc go to another, without indictment or information; but this does not seem a principle adhered to; and of common right, Informations, or actions in the nature thereof, may be brought for offences against statutes, whether mentioned or not in such statutes, where other methods of proceeding are not particularly appointed. 2 Hawk. P. C. c. 26. § 1, 2. And wherever a matter concerns the public government, and no particular person is entitled to an action, a crown Information will lie. 1 Sid. 37, 4.

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escape of French prisoners. 1 Black. 286. For giving a

illicit account of a marriage between an actress and a

married man. 1 Black. 294. For contriving pretended

conversations with a ghost, with intention to accuse an­

other of having murdered the body of the disentited spir­

its. 1 Black. 398, 401. For procuring a female appren­

teeship to be attested, though with her own consent, to an­

other, for the purposes of prostitution. 1 Black. 439.

Information was granted against an attorney for examin­

ing persons on oath, upon an arbitration, without putting

the name in writing. Against one for practising as an at­

orney, while he was under-sheriff. 1 Wils. 93. — Against a

garder for suffering one taken upon an excess of grain to

go at large. 12 Mod. 434. — Against certain persons for

that they, as enemies, &c. to the government, hired a

boat during a war with France, in order to go thither,
tending to aid and affill the King's enemies, though

they did not actually go thither, but only intended it.
Skin. 637: Pech. 3 W. 3. B. R. The King v. Cooper

and all. — Against one for building of locks in the river

Thames to the obstruction of navigation. 12 Mod. 615.

An Information was exhibited by the Attorney Gen­

eral for conspiring to destroy the King's revenue of the

excise; that the defendants and others ignori, &c.

sillicit, factitio, & sedition, confabulatorum & confineau­

rant ad disordem & depauperandum, &c., and many other facts

were laid in the Information tending to destroy the excisemen,
depauperating them, destroying the King's revenue of excise,
pulling down the excise-office, raising a tumult amongst

the poor people, &c. But the jury that were to try the issue

were unwilling to find this matter, though expressly

proved, fearing it might be construed no less than treason;
and so would only find that such and such of the defendants

illicit, factitio, & sedition & offendabulatorum, &c., and the

whole state of the matters in informations contain them not

guilty, and find j. S. not guilty of the whole. It was

moved in arrest of judgment, that there is no offence

found. The Court unanimously concurred, that judg­

ment ought to be given for the King, though as to the

offence found there was some variety of opinion: Tansy

den held, that vi et armis was not necessary, and that

they were found guilty of an unlawful assembly, and in

that the Ld. Ch. Jult. Hyde concurred; as also that the

intention of defrauding and depriving the King of his

said rent is implicitly found within the modo et forma

prors, &c. fo shall the vacanteia be applied. Tansy

den and Keeling concurred, that for a conspiracy alone,

without any prosecution, Information lay; and they all

agreed, that the King's revenue being concerned did

highly aggravate the offence; 26 Aff. 449, was cited to

prove, that whatever concerns the King's revenue is

public; and for this reason (2 H. 4. 7. pl. 20.) it is
determined, that a monk by being farmer is made

capable to fee. The Lord Ch. Jult. cited old Magua

Charta, where there is an article, to inquire of such as

seek to diminish the King's revenue of wards and mar­

riages, which fhe ws it a public treasure. Judgment

was therefore given for the King. 1 Lev. 125: 1 Sid.

174: 1 Keb. 650, 665, 675, 682.

A Coroner having sworn the jury to inquire of the

death of one supposed a fello de fte, and finding the evi­
dence very strong, took off some of the inquest; and

though it was said, that this coroner was a weak fellow,
yet Holt said there was no reason why an Informa­
tion should not be against him. 12 Mod. 495.

An Information was granted against one for counter­

feiting and pretending himself to be besmeared by a poor

woman, who was thereupon indicted for whistcraft, and

acquitted, and the whole discovered to be a cheat.

12 Mod. 556.

Information for a scandalous narrative recited by the

defendant, speaker of the Houfe of Commons, being Dar­

ye field's narrative, reflecting on a nobleman, (the E. of

Peterborough;) the defendant pleaded, that he did it by

order of the Houfe of Commons, and demanded judg­

ment if this court will take cognizance of it. The Attor­

ney General demurred, and afterwards the defendant

pleaded the common plea, good nor void contender con

Domino Regis, and was fined 10,000. Comb. 18.

Leave was given to file an Information against the

defendant, by whom the plaintiff's wife was inveigled

away, and who procured merchants and tradesmen to

sell goods to her, in order to saddle the husband with

the debt, he agreeing with the sellers to deliver the

goods back again. 12 Mod. 454. For words spoken of

a deceased King, which advance pernicious doctrines and

evil tenets, and have an influence on the present govern­

ment, &c. An Information lies, on which the offender

may be fined, and also corporally punished. 2 Ed. 5. 827.

If the marshal of B. R. misdemeanours himself in his

office, he who is prejudiced by it may prefer an Informa­
tion against him in that court, where he shali be fined

and ordered to make satisfaction. Hill. 23 Car. B. R. If

a person exhibits his Information only for vexation, the

defendant may bring Information against the informer,

upon the just. 19 Eliz. 5. 2 Biffs. 18.

The Court will not grant an Information against a

private person for reading a pretended proclamation.

Black. 2. Nor against a husband for endeavouring to

take his wife contrary to articles of separation. Black.

18. Nor against persons who assemble with a lawful

design, notwithstanding some unlawful and irregular acts

enite. Black. 48. Nor against Jurics acting improperly

in their publick capacity, unless flagrant proof of corrup­
tion appears. Str. 1181: Bar. 735, 1162: Black. 453:

Doug. 59. Nor against ministers for converting brief­

money. Str. 1150: Black. 443. Nor for bribery elec­
tors. Black. 541. Nor for a perjured intrusion to a liv­

ing, upon an affidavit that it was monastic. 702:

Barnard. K. B. 11. Nor for a libel, if it appears to be

true. Str. 498: Doug. 284, 357. Nor for offences com­

mitted upon the high seas. 918: 2 Keb. 190. Nor

against a deferrer for refusing the office of sheriff.

Str. 1193: 1 Wils. 18. Nor against an offender, al­

though the penalty for the offence is vested in the

Crown. Str. 1234. Nor for words spoken of a judge in

his public character. Str. 1157. Nor for attempting sab­

oration of perjury, Hardw. 24. Nor for finding a

challenge, if the informant had previously imparted a

challenge. Bar. 346, 352. Nor in favour of one cheat

against another cheat. Bern. 543. Nor on a general

court of extortion. Str. 399. Nor for likening a magis­

trate in the execution of his office, if the magistrate

strike first. Hardw. 250. Nor for an offence against a

private statute. Bern. 335. Nor if a civil suit is depend­

ing, upon the same subject. Hardw. 341. And in general the
INFORMATION III. IV.

It seems to be an established practice, not to admit the filing of an Information, (except those exhibited in the name of His Majesty's Attorney-General,) without first making a rule on the persons complained of, to show cause to the contrary; which rule is never granted but upon motion made in open court, and grounded upon affidavit of some misdemeanor, which, if true, doth either for its enormity or dangerous tendency, or other such like circumstances seem proper for the public prosecution; and if the person, on whom such rule is made, having been personally served with it, do not, at the day given him for that purpose, give the same good satisfaction by affidavit, that there is no reasonable cause for the prosecution, the court generally grants the Information; and sometimes, upon special circumstances, will grant it against those who cannot be personally served with such rule; as if they purposely absent themselves, &c. 2 Hask. P. C. c. 26. But it seems that in such case the prosecutor should on affidavit of the fact of absence, move the court for a rule that leaving the same at the full place of abode should be deemed good service. J. M.

If a defendant show good cause to the contrary, as that he has been indicted for the same cause, and acquitted, or that the intent is to try a civil right, which has not been yet determined, or that the complaint is frivolous, or vexatious, &c.; or where the motion is for an Information in the nature of a quo warranto, if he can shew that his right hath been already determined on a mandamus, or that it hath been acquiesced in many years, or that it depends upon the right of his vores which hath not been tried, or that it doth not concern the public; but is wholly of a private nature, the court will not grant the Information without some particular circumstances, the judgment whereof lies in discretion. 2 Hask. P. C. c. 26.

The concurring of Informations upon penal statutes is an offence, in criminal cases, equivalent to maintenance or barratry in civil cases; and it, besides, an additional misdemeanor against public justice, by contributing to make the law odious to the people. At once, therefore, to discourage malicious informers, and to provide that offences, when once discovered, shall be duly prosecuted, it is enacted by Stat. 18 Eliz. c. 5, that if any person informing under pretence of any penal law, make any composition without leave of the court, or take any money or promise from the defendant to extenuate him, (which demonstrates his intent in commencing the prosecution to be merely to serve his own ends, and not for the public good,) he shall forfeit 10l., shall stand two hours on the pillory, and shall be for ever disabled to sue on any popular or penal statute. 4 Com. Dig. title Information.

In an Information against Roberts the ferryman over the river Meafy, which parts Anglesey from Carnarvonshire in Wales, it was moved in arrest of judgment, that the information was too general and uncertain, because it did not allege that any particular person, or any certain number of cattle, were ferried over within the time laid in the Information; neither did it mention any particular person from whom the extorted rates were taken, which it ought to do, that the single offence might certainly appear to the court; after great deliberation, the whole court was of that opinion; and per hub. Chief Justice, in every such Information a single offence ought to be said and averted, because every extortion from every particular person is a separate and distinct offence; therefore they ought not to be accumulated under a general charge, as in this case, because each offence requires a separate and distinct punishment according to the quantity of the offence; and it is not possible for the court to proportion the fine or other punishment, unless it is singly and certainly laid. Cart. 226.

An Information upon a penal statute must be filed in one of the superior courts, and cannot be brought in any inferior court, because the King's Attorney cannot be there to acknowledge or deny, as he can in a superior court. 5 Cro. Jac. 538. All Informations on penal statutes, brought by an informer, where a sufficient is given to the prosecutor, must be brought in the proper county where the offence was committed; and within a year after the fame: but a party grieved, who is not a common informer, is not obliged to bring his Information in the proper county, but may inform in any county he pleases. Stat. 31 Eliz. c. 5. 4 Cro. Eliz. 645.

Where an Information is given by statute, to be prosecuted at the assizes, &c., the informer, on filing his Information, must make oath before a judge, that the offence laid in the Information was not committed in any other county than that mentioned in the Information; and that he believes that the offence was committed within a year next before the filing of the Information. Stat. 21 Jac. 1. c. 4. And when an Information is ordered to be filed, upon an affidavit made, the court will not suffer the prosecutor to put any more or other matter into the Information than what only is in his affidavit. 9 W. 3. B. R.

It has been resolved, that the Stat. 21 Jac. 1. c. 4, restrains the jurisdiction of B. R. in actions of debt by common informers, and that they cannot bring debt upon the statute in that court, unless the cause of action arise in the county where the King's Bench sits; but must in other cases prosecute by Information before justices of assize, &c., as the statute directs. 1 Stark. 373. Sed qu. as to this doctrine, as the jurisdiction of the King's Bench extends over the greatest part of the kingdom in all cases where an action may be brought? J. M.

IV. Regularly, the same certainty that is required in an Indictment, is required in an Information; but it has been held, not to be necessary to repeat the words "in the beginning of every distinct clause, if the want of them may be supplied by a natural, and easy construction. See tit. Indictment. 1 Stark. 373; Reym. 34; 2 Hask. P. C. c. 26.

Offences created since the statute 21 Jac. 1. cap. 4, are not within that statute, to be prosecuted in the county where the fact was done, so that Informations on subsequent penal statutes are not restrained thereby. 1 Stark. 373.
INFORMATION IV.

The statutes 18 Eliz. c. 3; 21 Jac. 1. c. 4, do not extend to Informations of officers, nor on the statutes of maintenance, champert, concerniing concealments of customs, &c. nor to parties grieved, and those to whom any forfeiture is given in certain. 1 Salk. 373.

An Informer upon a popular statute shall never have costs, if not given by statute, but the party grieved in action on the statute shall, where a certain penalty is given. 2 Hawk. P. C. c. 26.

In an action qui tam on stat. 5 Eliz. c. 4, the plaintiff shall pay costs. I. D. Raym. 1333. But it seems unsettled whether an informer shall or shall not be obliged to give security for the payment of costs on account of his poverty. Coop. 24. It has been refused, for the statute having given him a power to sue, it is a debt due to him; Bull. N. P. 197; but an informer who is gone abroad must give security, Str. 697; and it seems that a foreign informer must do the same. Str. 1206. Vide 1 Will. 166. Also if a prosecution is brought in a feigned name, the court will oblige the real prosecutor to give security. Sinder v. Roberts, Engir 12 G. 2. C. B. The defendant, on motion, may pay the costs and penalty into court. Rev. v. Walker, Trin. 51 G. 2. N. P. Vide Coop. 367.

If a Prosecutor does not go on to trial he shall pay costs. Hard. 159. But if he gives notice of trial, and neither goes to trial or countermands in time, unless the defendant draws him in to give notice, defendant shall pay costs. 3 Bur. 1904. So where a qui tam, in debt on stat. 21 Hen. 8. c. 15 is nonnull, the defendant is entitled to costs. Coop. 365, where 3 Bur. 1725, is denied to be law. But the court will not stay proceedings in a qui tam action, till costs in a new plea in a former action, by a different plaintiff against the same defendant, is paid. Coop. 322. If prosecutor qui tam, for killing game, &c. does not reply, defendant shall have costs, for stat. 18 Eliz. c. 5, extends to informers on all penal statutes. 1 Will. 177.

If an Informer dies, the Attorney-General may proceed in the Information for the King: nonuit of an informer, is no bar against the King; and if the King's Attorney enter a nulla prosequi, it is not any bar quoad the informer. Cro. El. 583; 1 Lion. 119. If two informations are had on the same day, they mutually abate one another: because there is no priority to attach the right of the suit in one informer, more than in the other. Hob. 136.

If an Information contain several offences against a statute, and be well laid as to some of them, but defective as to the rest, the informer may have judgment for such as are well laid. Hob. 296. After a plea pleaded to an Information for any crime, the defendant, by favour of the court, may appear by attorney; also the court may dispense with the personal appearance before plea pleaded, except in such cases where a personal appearance is required by some statute: and it is the same of Indictments for crimes under the degree of capital. Hob. 273.

If a defendant plead sii debet to an Information qui tam, &c. it is safest to say he owes nothing to the informer, nor the King, which is an answer to the whole. On breach of a statute alleged from a matter in pais, the defendant may plead that he owes nothing, or not guilty, &c. And if there be more than one defendant, they ought to plead severally, and not jointly, not guilty: but if it be alleged from a matter of record, the record not being triable by the country, but by itself, such plea is not good. 2 Hawk. P. C. c. 26. § 66, &c. Bro. f. j. 23.

A replication to an Information on a special plea in the courts at Westminster, is to be made by the Attorney General, and before Justices of Assize, by the Clerk of the Assize; though the replication to a special issue in an Information qui tam in the courts at Westminster, may be made in the name of the Attorney-General only; and in actions qui tam, most of the precedents are, that the replication is to be made by the plaintiff. A demurrer may be to an Information qui tam, without the Attorney General. 2 Hawk. P. C. c. 26. § 72.

Informations are not qualified for insufficiency, like indictments; but the defendant must demur to them. 2 Litt. 59. Fines assessed in court by judgment on an Information, cannot afterwards be qualified or mitigated. Cro. Gurn. 251.

In the contravention of stat. 4 & 5 W. 2. M. c. 18, it hath been held, 1. That if process is issued on an Information before such recognizance is given as the statute directs, the same may be set aside and discharged on motion. 2 Hawk. P. C. c. 26.

2. That this statute extends to all Informations, except those exhibited in the name of his Majesty's Attorney-General: so that an Information in nature of a quo warranto, though a proper remedy to try a right, in respect of which it may not in strictness come within the words trespass, &c. yet being also intended to punish a misdemeanor, and also as the proceedings therein may be vexatious as in any other, the same is within the purview of the statute, which, being a remedial law, shall receive as large a construction as the words will bear. Garib. 503: 1 Salk. 376. S. C.

3. That no costs can be had on this statute on an acquittal by a trial at bar; not only because the clause that gives costs, unless the judge certify a reasonable cause, feems only to have a view to trials at nisi prius, but also because a cause, which is of such consequence as to be thought proper for a trial at bar, cannot well be thought within the purview of the statute; which was chiefly designed against trifling and vexatious proceedings. 2 Hawk. P. C. c. 26.

4. That if there be several defendants, and some of them acquitted, and others convicted, none of them can have costs. 1 Salk. 194.

5. That wherever a defendant's cause is such as authorizes the court to award him costs, he has a right to them ex debito justitiae: for it seems a general rule, that where Judges are empowered by statute to do a matter of justice, they ought to do it of course. 2 Chit. Grec. 191: 2 Hawk. P. C. c. 26.

INFORMATUM NON SUM, or more properly, non sum informatus. A formal answer made of course by an attorney who is authorized by his client to let judgment pass in that form against him. It is commonly used in warrants of attorney, given for the express purpose of confessing judgment.

INFORMER.
INF

INFORMER, informer.] The person who informs again; or prosecutes in any of the King's courts, those who offend against any law, or penal statute; no man may be an informer who is disabled by any misdemeanor. Stat. 31 Eliz. c. 5.

INFORIATUM, One part of the digest of the civil law; according to Benedict, abbot of the monastery of Peterborough, in the reign of K. Hen. III.

INFUGARE, To put to flight. Leg. Comm. c. 32.

INFULA, Was antiently the garment of a priest, like that which we now call a cassock; sometimes it is taken for a cowl.

INGE. This syllable, in the names of places, denotes meadow or p Tesla; and in the north, meadows are called the inges; from the Saxon ing, i.e. pratum.

INGENIUM. Any instrument used in war, arië & ingenio confectum; from whence it is said we derive the word engine.

INGENUITAS. Liberty given to a servant by manumission Leg. Hen. t. c. 89.

INGENIUS REGNI, Inguni, liberi & legales honores; freeholders, and the commonalty of the kingdom. Erastus, in his title was given to the barons and lords of the King's council. Encycl. Hist. i. New. fol. 70.

INGRESS, EGRESS, AND REGRESS, Words in leaves of lands, to signify a free entry into, going forth of, and returning from some part of, the lands let; as to get in a crop of corn, &c., after the term expired.

INGRESSUS, A writ of entry, whereby a man seeks entry into lands or tenements; and lies in many cases, having many different forms; this writ is also called princiæ quod reddit, because these are formal words inserted in all writs of entry. See title Entry.

INGRESSUS, The relief which the heir at full age paid to the head lord, forenttering upon the fee, or lands taken by the death or forfeiture of the tenant. &c., Blunt.

INGROSSATOR MAGNI ROTULI. See Clerk of the Pipe.

IN GROSS. Advowson in gros, villain in gros, &c.; see Advowson; Gros; Villain.

INGROSSER. See Parsfailer.

INGROSSING. A PINE. The making of the indenture in the Chirographer, for delivery of them to the party to whom the fine is levied. F. N. B. 147. See title Fine of Lands.

INHABITANT. A dweller or householder in any place, as inhabitants in a vill, are the householders in the vill. 2 Inst. 702.

The word Inhabitants includes tenant in fee-simple, tenant for life, years, rent, &c., tenant at will, and he who has no interest but only his habitation and dwelling. 6 Rep. 60. a. He who hath a house in his hands in a town, may be said to be an inhabitant. Camb. 119. Inhabitants have not capacity to take an inheritance, as in 15 Ed. 4, to have common. 12 Rep. 120. See title Four.

INHERITANCE, Bertellatus.] An estate in lands or tenements to a man and his heirs; and the word inheritance is not only intended where a man hath lands or tenements by descent of heritage; but also every fee-simple, or fee-tail, which a person hath by purchase, may be said to be an inheritance, because his heirs may inherit it. Lit. 4. p. And one may have inheritance by creation; as in case of the King's grant of peerage, by letters patent, &c.

INJ

INHERITANCES; ARE CORPOREAL OR IN-CORPORAL. Corporeal inheritances relate to houses, lands, &c., which may be touched, handled; and incorporeal inheritances are rights flowing out of, annexed to, or exercised with, corporeal inheritances; as advowsons, tithes, annuities, offices, commons, franchises, privileges, services, &c. 1 Inst. 95, 497. See title Inheritances.

There is also several inheritances, which is where two or more hold lands severally; if two men have lands given to them and the heirs of their two bodies, these have a joint estate during their lives; but their heirs have several inheritances. Kentb. 155. Without blood more can inherit; therefore he who hath the whole and entire blood, that have an inheritance, before him who hath but part of the blood of his ancestor. 3 Rep. 41.

The law of Inheritance prefers the first child before all others; the male before the female; and of males the first born, &c. And as to inheritances, if a man purchases land in fee, and dies without issue, those of the blood of the father's side shall inherit, if there be any; and for want of such, the lands shall go to the heirs of the mother's side; but if it come to the son by defiance the father's side, then the mother shall not inherit it. Plovst. 113; 4 Ed. 4, 12. Goods and chattels cannot be turned into an inheritance. 3 Inst. 19, 126. See more fully this Dictionary, titles Desert; Easement.

INHIBITION, inhibito.] A writ to forbid a judge from further proceeding in a cause depending before him, being in nature of a prohibition. See inhibito 9 Ed. 2. c. 1: 25. Hen. 8. c. 12: F. N. B. 39. An inhibition is most commonly issued out of a higher court, to an inferior, upon an appeal; Inhibitions are likewise on the division of archbishops and bishops, &c. This inhibition is either hontius or juris; it is N'sigrationem facta, ut aliqum jurisdictionem ecclesiasticam vel contentionem voluntarium habeat; thus when the archbishop visits, he inhibits the bishop; and when a bishop visits, he inhibits the archdeacon; this is to prevent confusion, and continet till the last parish is visited. Now after such Inhibition by an archbishop, if a lapsus happens, the bishop cannot institute, because his power is suspended; but the archbishop is to do it, &c. 2 Inst. 601; 3 Salt. 3. See title Prohibito.

INHOC, or INHOKE, From in, within, and take a corner or nook.] Any corner or part of a common field ploughed up and sowed with oats, &c., and sometimes fenced in with a dry hedge, in that year wherein the corner or nook. Any corner or part of a common field lies fallow and common. It is called in the north of England an intack, and in Oxfordshire a kitchen; and no such intack is now made without the joint consent of all the commoners, who in most places have their share by lot in the benefit it, except in some manors, where the lord has a special privilege of so doing. Kesten's Park. Antq. 297, &c., and his Glossary.

INJUNCTION, injunctio.] A kind of prohibition granted by Courts of Equity in divers cases; it is generally grounded upon an interlocutory order or decree out of the court of Chancery, or Exchequer on the equity side, to stay proceedings in courts at law; and sometimes it is issued to the Spiritual Courts, H. & J. Synth. sect. 25. It is likewise sometimes used to give possession to a plaintiff, for want of the defendant's appearance; and may be granted by the Chancery, or Exchequer, to quiet possession of lands.
INJUNCTION

An Injunction is usually granted for the purpose of preferring property in dispute pending a suit, as to restrain the defendant from proceeding at the common law against the plaintiff, or from committing waste, or doing any injurious act. Mifler's Treatise on Chancery Pleadings.

A Court of Equity will prevent the assertion of a doubtful right in a manner productive of irreparable injury. Therefore, where the tenants of a manor, claiming a right of cemies, cut down a great quantity of growing timber of great value, their title being doubtful, the court entertained a bill at the suit of the lord of the manor to restrain the assertion of it; and, indeed, the commission of waste of every kind, as the cutting of timber, pulling down of houset, plaguing of ancient parks, working of mines, and the like, is a very frequent ground for the exercise of the jurisdiction of courts of equity, by restraining the waste till the rights of the parties are determined. The courts of equity seem to have proceeded upon a similar principle in the very common cases of persons claiming copy right of printed books, and of patentees of alleged inventions; in restraining the publication of the books at the suit of the owner of the copy, and the use of the supposed invention at the suit of the patentees. But in both these cases the bill usually seeks an account, in one of the books printed, and the other of the profits arising from the use of the invention; and in all the cases alluded to, it is frequently, if not constantly, made a part of the prayer of the bill, that the right if disputed, and capable of trial in a court of common law, may be there tried and determined under the direction of the court of equity; the final object of the bill being a perpetual injunction to restrain the infringement of the right claimed by the plaintiff. Mifler's Treatise.

A bill of interpleader generally prays an injunction to restrain the proceeding of the claimants in some other courts: and as this may be used to delay the payment of money by the plaintiff, if any is due from him, he ought by his bill to offer to pay the money into court. Mifler's Treatise.

In many cases, the courts of ordinary jurisdiction admit, at least, for a certain time, of repeated attempts to litigate the same question. To put an end to the opprobrious occasioned by the abuse of this privilege, the courts of equity have assumed a jurisdiction. Thus actions of ejectment having become the usual mode of trying titles at the common law, and judgments in these actions not being in any degree conclusive, the courts of equity have interfered; and after repeated trials, and satisfactory determinations of questions, have granted perpetual injunctions to restrain further litigation; and have thus, in some degree, imposed that restraint in personal, which is the policy of the common law in real actions. Bish. (3) v. Sherwood; Leighton v. Leighton; Bros. P. C. 1 P. Wms. 671. See this Dictionary, title Ejectment.

When a bill in Chancery is filed in the office of the Six Clerks, if an Injunction be prayed therein, it may be had at various stages of the cause, according to the circumstances of the same. If the bill be to stay execution upon an oppressive judgment, and the defendant does not put in his answer within the stated time allowed by the rules of the court, an injunction will issue of course; and when the answer comes in, the injunction can only be continued upon a sufficient ground appearing from the answer itself. But if an Injunction be granted to stay waste, or other injuries of an equally urgent nature, then, upon the filing of the bill, and a proper case supported by affidavits, the court will grant an Injunction immediately, to continue till the defendant has put in his answer, and till the court shall make some further order concerning it: and when the answer comes in, whether it shall then be dissolved, or continued till the hearing of the cause, is determined by the court upon argument, drawn from considering the answer and affidavits together. 3 Com. 443.

If an attorney proceeds at law, after he is served with an Injunction to stay proceedings, on affidavit made thereof, interrogatories are to be exhibited against him, to which he must answer on oath; and if it appears that he was duly served with the Injunction, and that proceeded afterwards contrary thereto, the court of Chancery will commit the attorney to the Fleet for the contempt. 2 Litt. Abr. 64. But if an Injunction be granted by the Court of Chancery in a criminal matter, the court of B. R. may break it, and proceed any that proceed in contempt of Jus. Mod. Cap. 16. But a court of law will take such notice of an Injunction, that the defendant shall have no advantage against the plaintiff; for not proceeding within the time allowed by the rules of the court, if the delay was occasioned by the defendants obtaining an Injunction. 2 Burr. 660.

If a cause at law be at issue, the Injunction may give leave to go to trial, and stay execution, &c. The writ of Injunction is directed to the party proceeding, and to all and singular their counsellors, attorneys, and solicitors, whatsoever; and concludes, Injunctia. We command you, and each of you, deponent from all further prosecution whatever at common law, for or concerning any matters in the complaint contained, under pain, &c. Read more on this subject. 3 New Abr. 14 Ven. Abr. title Injunction: Com. Dig. title Chancery D. (3).

INJURY, Injuria.] A wrong or damage to a man's person or goods. The law punishes Injuries; and forbids them, that, in certain cases, it grants writs of anticipation for their prevention. But the law will suffer a private Injury rather than a public evil; and the act of God, or of the law does Injury to none. 4 Rep. 124: 10 Rep. 448.

INLAGARE, To admit or refuse to the benefit of the law. Annu. Warr. Sub ann. 1074.

INLAGATION, Inlagatae, from the Saxon In lagian, i. e. Inlagare. A restitution of one outlawed, to the protection of the law, and benefit of a Subject. Brot. lib. 3. tract. 2. c. 14: Leg. Comit. par. 1. c. 2.

INLAGH, Inlagatus, and bonus subj. He who was of some frank-pledge, and not outlawed. It seems to be the contrary to Ulaga. Bract. tract. 2. lib. 3. c. 11.

INLAND, is said to be terra dominicis, part majoris dominus, terra interior vel inclusa; for that which was let to tenants was called Outland. In an antient will there are these words: 'To Walsey I give the Inlands or demesnes, and to Effy the undevons or tenancy. Efletone, Britonico. This word was in great use among the Saxons, and often occurs in Doomsday-book. See Inheritance.

INLAND BILLS. See Bills of Exchanges.

INLAND
INNS,

---OF COURT.

By the custom of the realm, if a man lies in an Inn on one night, the Innkeeper may detain his horse until he is paid for the expenses, but if he gives the party credit for that time, and lets him depart without payment, he hath waived the benefit of the custom, and must rely on his other agreement, having given credit to the person. 8 Mod. 172.

By the custom of London and Exeter, if a man commit a horfe to an Innkeeper, and he eat out his price, the owner, for the others, but every horfe is to be sold to satisfy what is due for his own meat. 1

A person brings his horse to an Inn, and leaves it in the stable there; the Innkeeper may keep him till the owner pay for the keeping; and, it is said, if he eat out as much as he is worth, the master of the Inn, after a reasonable appraisement, may sell the horse and pay himself. Tho. 66. But if one brings several horses to an Inn, and afterwards takes them all away, but one; the Innkeeper may not sell this horse for payment of the debt for the others, but every horse is to be sold to satisfy what is due for his own meat. 1 Bull. 207, 217.

If an Innkeeper receives a false coach, and from time to time suffers the coach and horses to depart without payment, he gives credit to the owners, and cannot afterwards detain the coach and horses for what was formerly due. Stra. 356.

A guest in a common Inn arising in the night time, and carrying goods out of his chamber into another room, and from thence to the stable, intending to ride away with them, is guilty of felony, although there was no trespass in the taking of them; which is yet generally required in cases of felony. Dalts. c. 40; Burn. J. 1 Hawk. P. C. c. 33. § 6. A guest who hath a piece of plate set before him in an Inn, may be guilty of felony in fraudulently taking away the same. 1 Hawk. P. C. c. 33. § 6.

Inns were allowed for the benefit of travellers, who have certain privileges whilst they are in their journeys, and are in a more peculiar manner protected by the law: it is for this reason that the Innkeeper shall answer for these things which are stolen within the Inn; though not delivered to him to keep, and though he was not acquainted that the goods brought the goods to the Inn; for it shall be intended to be by his negligence, or occasioned by the fault of him or his servants. 8 Rep. Caley's cases. Soldiers billeted are guests. Clay. 97.

If an attorney hires a chamber in an Inn for a whole term, the host is not chargeable with any robbery in it, because the party is, as it were, a lessee. Mo. 877.

If one comes to an Inn, and makes a previous contract for lodging for a set time, and doth not eat or drink there, he is no guest, but a lodger, and so not under the Innkeeper's protection; but if he eats and drinks, or pays for his diet, it is otherwise. 12 Mod. 255.

If any theft be committed on a guest that lodgeth in an Inn, by the servant of the Inn, or by any other persons (not the guest's servant or companion), the Innkeeper is answerable in action on the case: but if the guest be not a traveller, but one of the same town, the matter of the Inn is not chargeable for his servant's theft; and if a man is robbed in a privy tavern, the matter is not chargeable. 8 Rep. 35, 35.

One came to an Innkeeper and required him to take charge of goods till a future day, which the Innkeeper refused, because his horse was full of parcel; the person bringing the goods then set down in the Inn, had some liquor, and put the goods on the floor immediately behind him, when he got up the goods were missing. Held, that the Innkeeper was liable, the goods being lost during the time the plaintiff laid as a guat. 5 Term. Rep. 273.

In this action the Innkeeper shall not answer for any thing that is out of his Inn, but only for such things as are infra hospitium; the words of the writ being tamen bona & catalla infra hospitium illa exstinta, &c. If but the Innkeeper put the guest's horse to graze, without orders, and the horse is stolen, he shall make it good. 8 Rep. 34. The Innkeeper shall not be charged, unless there shall be some default in him or his servant; for, if he fails to bring them with the guest, or who desires to lodge with him, heals his goods, the host is not chargeable; though if an Innkeeper appoint one to lie with another, he shall answer for him. Although the guest deliver not his goods to the Innkeeper to keep, &c. if they be stolen, he shall be charged: but not where the halter requires his guest to put them in such a chamber under lock and key, if he suffers them to be in an outward court. 5c. 2 Sep. Abr. 334. See title Servitude. See further as to Inns this Dictionaty, titles Alienage; Drunkenness; Abandon; Gaming; and 1 Hawk. P. C. c. 78, at length.

INNS OF COURT, Hojijitas Curiae.] Are so called, because the students therein, do not only study the law to enable them to practise in the Courts in Westminster, but also pursue such other studies, as may render them better qualified to serve the King in his Court. Forestry, c. 49. Of these (says Sir Edward Gate) there are four well known, viz. the Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn; which, with the two Serjeants' Inns, and eight Inns of Chancery, viz. Clifford's Inn, Gray's Inn, Lincoln's Inn, Inner Inn, Lyon's Inn, Farnival's Inn, Staple's Inn, Bernard's Inn, and Thaviers' Inn, (which is added New Inn,) make the most famous university for profession of the Law, or of any one human science in the world.

Our Inns of Court, or Societies of the Law, which are famed for their production of learned men, are governed by Masters, Principals, Benchers, Stewards, and other proper officers; and the chief of them have chapels for divine service, and all of them public halls for exercises, readings and arguments, which the students are [solemnly obliged to perform and attend for a competent number of years, before admitted to speak at the bar, &c. The admission and forms for this purpose must be in one of the Inns of Court, not in the Inns of Chancery. These societies or colleges, nevertheless, are not corporations, nor have any judicial power over their members, but have certain orders among themselves, which, by consent, have the force of laws; for light offences, persons are only excommunicated, or put out of commons; for greater, they lose their chambers, and are expelled; and when expelled out of one Society, shall never be received by any of the others. All the Inns of Chancery are mostly inhabited by attorneys, solicitors, and clerks, and belong to some or other of the principal Inns of court, which...
who have been used to send yearly some of their barristers to read to them. Fortesc. Clifford's Inn, Clement's Inn, and Lyon's Inn belong to The Inner Temple; Now Inn to The Middle Temple; Furnival's Inn and Thavies's Inn to Lincoln's Inn; and Staple Inn and Barnard's Inn to Gray's Inn. Dugd. Orig. 320.

INNUENDO, From some, to nod or beckon with the head. A word used in declarations, indictions, and other pleadings, to ascertain a person or thing which was named before; as to say, he (innuendo, i. e. meaning, the plaintiff) did so and so, when there was mention before of another person, 4 Rep. 17. An Innuendo is in effect no more than a prædictä, and cannot make that certain, which was uncertain before; and the law will not allow words to be enlarged by an Innuendo, so as to support an action on the case for speaking of them. Hub. 2, 6, 45: 5 Mod. 345. An Innuendo may not enlarge the sense of words, nor make supply, or alter the case where the words are defective. Hut. Rep. 44. In Flanders, both the perfon and scandalous words ought to be certain, and not want an Innuendo to make them out: if a plaintiff declares that the defendant said these words, Thou art a thief, and pilfers a mare, &c. (Innuendo the plaintiff) without an averment that the words were spoken to the said plaintiff, this is not good; because it doth not certainly appear of whom they were spoken, and the Innuendo doth not help it. 1 Dave. Abr. 158. The usual method of declaring is, if the words were spoken to the plaintiff, the defendant said the words to, &c. and concerning the plaintiff. If said to a third person, the word is omitted. A man shall not be punished for perjury, by the help of an Innuendo. 5 Mod. 344. And an Innuendo will not make an action for a libel good; if the matter precedent imports not scandal, &c. to the damage of the party. Mich. 5 Ann. Where action lies without an Innuendo, an Innuendo shall be repugnant and void; see 1 Danw. 158. See titles Indictment; Libel; Action; Perjury.

INOPERATIO. Of the legal excuses to exempt a man from appearing in court, one is, insaniae causä, viz. on the days in which all pleadings are to cease, or in dubia non jurisdict. Leg. H. 1. c. 51.

INORDINATUS. One who died intestate. Mat. Wifom. 1246.

INFELONI AND CUTPENY. Money paid by the custom of some manors, on the alienations of tenants, &c. Regist. Prior. de Caistor, p. 25.


INQUEST, Inquisitor. An inquisition of jurors, in causes civil and criminal, on proof made of the fact on either side, when it is referred to their trial, being impaneled by the sheriff for that purpose; and as they bring in their verdict, judgment paffeth. Statut. P. C. lib. 3. c. 12.

An INQUEST of Office, or Inquisition, is an inquiry made by the King's officers, his sheriff, coroner, or escheator,avitute officis, or by writ to them sent for that purpoae; or by commissioners specially appointed, concerning any matter that entitles the King to the possession of lands or tenements, goods, or chattels. Finch. L. 323, 4, 5. This is done by a jury of no determinate number, being either twelve, or less, or more. As, to inquire, whether the King's tenant for life died seised, whereby the reversion accrues to the King; whether A., who held immediately of the Crown, died without heirs, in which case the lands belong to the King by escheat; whether B. be attainted of treason, whereby his estate is forfeited to the Crown; whether C. has purchased lands be alien, which is another cause of forfeitures; whether D. be an idiot, inutile, and therefore, together with his lands, appertains to the custody of the King; and other questions of like import, concerning both the circumstances of the tenant, and the value or identity of the lands. These Inquests of Office were more frequently in practice than at present, during the continuance of the military tenures amongst us; when, upon the death of every one of the King's tenants, an Inquest of Office was held, called an inquisitio post mortem, to inquire of what lands he died seised, who was his heir; and of what age, in order to entitle the King to his marriage, wardship, relief, primogeniture, or other advantages, as the circumstances of the case might turn out. To perempt and regulate these inquiries the Court of wards and livery was instituted by Stat. 32 Hen. 8. c. 46. which was abolished at the Restoration, together with the tenures upon which it was found.

With regard to other matters, the Inquests of Office still remain in force, and are taken upon proper occasions, being extended not only to lands, but also to goods and chattels personal, as in the case of wreck, treasure-trove, and the like, and especially as to forfeitures for offences.

For every jury which tries a man for treason or felony, every Coroner's Inquest that sits upon a felo de fe, or one killed by chance-medley, is, not only with regard to chattels, but also to real interests, in all respects an Inquest of Office; and if they find the treason or felony, or even the flight of the party accused, (though innocent,) the King is thereupon, by virtue of this Office found, entitled to have his forfeitures; and also, in the case of chance-medley, he or his grantees are entitled to such things by way of deodand, as have moved to the death of the party. See titles Deodand; Future.
INQUEST.

an Inquisition finds some parts well, and nothing as to others, it may be helped by melius inquirendum. 2 Salk. 469.

There is also a judicial writ ad inquirendum, to inquire by a jury into any thing touching a cause depending in court. Inquisition may also be had on extents of land, writs of eloyg, where judgment is had by default, and damages and costs are recovered, &c. Finch 484. 2 Litt. Abr. 65.

These Inquests of Office were devised by law, as an authentic means to give the King his right by solemn matter of record; without which he in general can neither take, nor part with any thing. Finch, L. 82. For it is a part of the liberties of England, and greatly for the safety of the subject, that the King may not enter upon or seize any man's possessions upon bare jurimities without the intervention of a jury. Gilb. Hft. Exch. 152: Hob. 347. It is however particularly enacted by Stat. 33 Hen. 8. c. 20, that, in case of attainer for high treason, the King shall have the forfeiture instantly without any Inquisition of Office. And, as the King hath (in general) no title at all to any property of this fort before office found; therefore, by Stat. 18 Hen. 6. c. 6, it was en- acted, that all letters patent or grants of lands and tenures before office found, or returned into the Exchequer, shall be void. And by the Bill of Rights at the Revolution, 1 W. & M. Stat. 2. c. 2, it is declared, that all grants and promises of fues and forfeitures of particular persons before the Court of Exchequer, are illegal and void; which indeed was the law of the King in the reign of Edward the third. 2 Inst. 48. See title Forfeiture.

With regard to real property, if an office be found for the King, it puts him in immediate possession, without the trouble of a formal entry, provided a Subject in the like case would have had a right to enter: and the King shall receive all the mesne or intermediate profits from the time that his title accrued. Finch, L. 345. 5. As, on the other hand, by the artifices super cerarum, 28 Ed. 1. Stat. 3. c. 19, if the King's escheator or sheriff seize lands into the King's hand without cause, upon taking them out of the King's hand again, the party shall have the mesne profits restored to him.

There is not such nicety required in an Inquisition as in pleading; because an Inquisition is only to inform the court how process shall issue for the King, whose title accrues by the attainer, and not by the Inquisition; yet, in the cases of the King and a common person, Inquisitions have been held void for uncertainty. Lane 39: 2 Nels. Abr. 1008.

In order to avoid the possession of the Crown acquired by the finding of such office, the Subject may not only have his petition of right, which disposes new facts not found by the office, and his monitram de droit, which relies on the facts as found; but also he may (for the most part) traverse or deny the matter of fact itself, and put it in a course of trial by the common-law process of the Court of Chancery; yet full, in some special cases, he hath no remedy left but a mere petition of right. Finch, L. 324. These traverses, as well as the monitram de droit, were greatly enlarged and regulated for the benefit of the Subject, by the statutes before-mentioned, and others Stat. 34 Ed. 3. c. 13: 36 Ed. 3. c. 13: 2 Eliz. Ed. 6. c. 8. And in the traverses thus given by statute, which came in the place of the old petition of right, the party traversing is considered as the plaintiff. Laws of Nisi Prius 201, 2: and must therefore make out his own title, as well as impeach that of the crown, and then shall have judgment quad mens Dominim Regis amovit. &c. 1 Comm. 256, 260.

Some of these Inquisitions are in themselves convictions, and cannot afterwards be traversed or denied; and therefore the Inquest or Jury, ought to hear all that can be alleged on both sides. Of this nature are all Inquisitions of fide de je; of flight in persons accused of felony; of deodands, and the like; and presentments of petty offences in the sheriff's tourn or court leet, whereupon the preceding officer may set a fine. Other Inquisitions may be afterwards traversed and examined; as particularly the Coroner's Inquisition of the death of a man, when it finds any one guilty of homicide; for in such cases the offender so preferred must be arraigned upon this Inquisition, and may dispute the truth of it, which brings it to a kind of indictment, the most usual and effectual means of prosecution. 4 Comm. 50.

INQUIRENDO. An authority given in general to some person, or persons, to inquire into something for the King's advantage. Reg. 72.

INQUIRY, WRITE OF. See Write.

INQUISITION. See title Inquisition.

INQUISTORS, [inquisition.] Sheriffs, Coroners, super visors corporis, or the like, who have power to inquire in certain cases; and by the statute of 36 Geo. 1, Inquirors or Inquestors are included under the name of Inquestors. 2 Inst. 211.

INROLLMENT, [inrollment.] The registering or entering in the rolls of the Chancery, King's Bench, Common Pleas, or Exchequer, or by the Clerk of the Peace in the records of the Quarter Sessions, of any lawful act; as a statute or recognition acknowledged, a deed of bargain and sale of lands, &c.

An Inrollment of a deed, may be either by the common law, or according to the statute: and Inrollment of deeds ought to be made in parchent, and recorded in court, for perpetuity's sake. Trin. 25; Car. 1 R. 24; Car. 1 B. R. But the inrolling a deed doth not make it a record, though it thereby becomes a deed recorded; for there is a difference between matter of record, and a thing recorded to be kept in memory; a record being the entry in parchent of judicial matters controverted in a court of record, and whereas the court takes notice; whereas an Inrollment of a deed is a private act of the parties concerned, of which the court takes no cognizance at the time of doing it, although the court permits it. 2 Litt. Abr. 69.

Every deed, before it is inrolled, is to be acknowledged to be the deed of the party before a Master of the Court of Chancery, or a Judge of the court, wherein inrolled; which is the officer's warrant for inrolling of the same; and the Inrollment of a deed, if it be acknowledged by the grantor, will be good proof of the deed itself upon a trial. A deed may be inrolled without the examination of the party himself; for it is sufficient before is made of the execution. If two are parties, and the deed is acknowledged by one, the other is bound by it; and if a man lives in New York, &c. and would put land in England, a nominal person may be joined with him in
INROLLMENT.

the deed, who may acknowledge it here, and it will be binding. 1 Salk. 189.

If the party dies before it is enrolled, it may be enrolled afterwards; and enrolments of deeds operate by virtue of the statute of Inrollments; but if livery and feint, &c. be had before the inrolling, it prevents the operation of the Inrollment, and the party shall be in pari by that, as the more worthy ceremony to pass citizens. 1 Lev. 5; 2 Nofi. Abr. 1010. Although Inrollment, or matter of record, shall not be tried by jury, but the officer is in the operation of the thing: uncertain, that as the more worthy bargains and the party shall be a true copy, be a true copy, shall be of the same force as the deed itself.


INSCRIPTIONES. Written instruments by which any thing was granted. Broun.

INSECTATOR. A professor or adversary at law. Fashb. Aquit. 383.

INSECTAE. To reduce persons to servitude. Du Conge.


INSIDIA. The same with Vigiliae or Excubia. Flatta. liv. 2. cap. 4. par. 3.

INSIDIAE VIARUM. Way-layers; which words are not to be put in indictments, appeals, &c. by Stat. 4 & 4 c. 2. And before this statute, clergy might be denied felon charged generally as Instructers: Viarum, &c. Stat. 23 Car. 2. c. 1, and title Clergy, Benefit of.

INSIGNIA, Ensigns or arms. See Arms and Gentry.

INSILITUM. Evil advice or counsel. Hence, Inlabitus, an evil counsellor. Sim. Dunelm.

INSIMUL COMPUTASSET. Is a writ or action of account, which lies not for things certain, but only for things uncertain. Bro. Acco. 81. Also, in affirmat, a count is often added to the declaration, called an Insimul computasset, i.e. setting forth an account barred, wherein the defendant was found indebted to the plaintiff in so much, as a declaration for the defendant's promise to pay the sum found in arrear. See this Dictionary, title Actions; Pleading; Affirmat.

INSIMUL TENUIT. One species of the writ of forming on brought against a stranger by a coparcener on the possession of the ancestor, &c. See Formulan.

INSINUATION, infinitatis. A creeping into a man's mind or favour covertly; mentioned in the Stat. 21 H. 8. c. 2. Information of a will is, among the civilians, the first production of it, or leaving it in the hands of the Registrar, in order to its probate.

INSOLVENT. Till of late the Chancery would not put out an insolvent trustee; for that he was intromitted by the donor; an insolvent person made executor cannot be put out by the Ordinary; for he is intromitted by the factor. Comb. 189; Carolb. 457. But Chancery granted an injunction against him, not to intervene with the affets, any further than to satisfy the legacy given to himself; for in equity he is but a trustee for the other legateses; (who in this case were infants) and where a trustee is insolvent, the Court of Chancery will compel him to give security before he shall enter upon the trust. Carib. 458. See titles Chancery; Trustee; Bankrupt; Executor.

INSOLENT DEBTORS. See titles Debtors; Execution. — Many acts have been from time to time made for the relief of these; the last before these leaves went through the press was Stat. 34 Geo. 5 c. 69, by which persons actually in custody on the 12th of February 1794, and whole whole debts did not exceed the sum of 1000/. were released, on making affidavit of the surrender of all their estate and effects, and signing a schedule thereof, delivered to the Clerk of the Peace at the sessions next following their respective notices, of their name, trade, and two last places of abode (if so many); which were to be given in the London Gazette, and in the county newspaper nearest to the gaol where confined, (if out of London or the bills of mortality.) three times; the first notice to be at least twenty one days before the sessions. The estate and effects of the insolvent Debtors, are seized in the clerk of the peace, who is directed by the statute to assign the same to such creditors as the court shall direct; when the assignees are to use their best endeavours to receive and collect the estate and effects of every such Debtor, and with all convenient speed make sale thereof; and if the Debtor be interested in, or entitled to any real estate, either estates-tall, or in possession, reversion, or expectancy, the same to be sold by public auction within two months after the assignment, being first advertised in the Gazette, some daily paper, or country paper, if out of the bills of mortality, thirty days previous to such sale; and, at the end of three months after such assignment, an equal dividend of the Debtor's effects was ordered to be made, and, if a surplus, the same to be paid to the Debtor. Mortgages to take place of claims of an inferior nature. Prisoners not to be discharged of debts subsequent to February 12, 1794. — Attorneys, or servants, imprisoned for embezzling money, or any personizing who have obtained money, or bills of exchange, under false pretences, or removed goods to defraud landlords, or fraudulently assigned their effects, are excluded from the benefit of the statute. Prisoners in custody for fees, on contempt for not obeying awards; not paying costs, or on exec. cap., to be discharged; but the statute does not extend to Debtors to the Crown or Revenue; 20l. per cent. to be allowed as a reward for discovering any part of a Debtor's estate not comprised in the schedule; and the discharge of fraudulent Debtors to be void. Perjury of prisoners to be punishable as in other cases of perjury.

INSPECTION. See Aga; Infancy; Trial.

Trial by Inquisition, or examination, is, when for the greater expedition of a cause, in some point or issue, being either the principal question, or arising collaterally out of it, but being evidently the object of the cause, the Judges of the court, upon the testimony of their own senses, decide the point in dispute. See 3 Camp. 331.

INSPEXIMUS. A word used in letters patent giving name to them, being the same with exemplification, and called inspection, because it begins, Rex omnium, &c. Inspecimus circumventum guarantem, literam, patent., &c.
INSTALLMENT. A settlement, establishing, or sure placing in; as installment into dignities. *Ct.

See Stat. 26 Car. 2. c. 2.

In ecclesiastical promotions, where the freehold passes to the persons promoted, corporal possession is required, to vest the property completely in the new proprietor; who, according to the distinction of the Canons, acquires the jux ad rem, or incomplete and imperfect right, by nomination and institution; but not the jux in rei, or complete and full right, unless by corporate possession. Therefore in dignities possession is given by installations in tutories and vicarages by induction, without which no temporal rights accrue to the minister, though every ecclesiastical power is vested in him by institution.

2 Comm. 512.

INSTALLMENT signifies also either the payment, or the time appointed for payment, of different portions of a sum of money; which, by agreement of the parties, instead of being payable in the gross, at one time, is to be paid in parts, at certain stated times, such as are frequently specified in conditions to bonds, &c. or defences, or warrants of attorney to contest judgments.

INSTANT, Lat. instans, instanter.] An indivisible moment of time; which, though it cannot be actually divided, yet in intendment of law, it may, and be applied to several purposes: he who lays violent hands upon himself, commits no felony till he is dead, and when dead he is not in being so as to be termed a felon; but he is so adjudged in law as instans, at the very instant of this fact done. See title Forfeiture. And there are many other like cases where the instant of time that is not divisible in nature, in the consideration of the mind is divided. Plowd. 258 b.; and vide Co. Lit. 185 b.; Vin. Abr. title Instanct. A. p. 2.

An Instant is not to be considered in law, as in logick, as a point of time, and no parcel of time; but in our law, things which are to be done in an Instans, have in consideration of law a priority of time in them. Vide Co. Lit. and Plowd. as cited before. And in several cases, a difference is allowed in our law in an Instant, as per mortem & post mortem, &c. See Shaw. 415

INSTANTER, Lat.] Instantly or presently. Law Lat. Dict.

Trial shall be had instanter where a prisoner between attainer and execution, pleads that he is not the name that was attainted. In such a case a jury is to be impaneled to try this collateral issue, viz.: the identity of his person, and in such collateral issues, the trial shall be instanter. See Stann. P.C. 163; Co. Lit. 157; 3 Burr. 1809 1810, where an issue on the identity of the person was joined, and the several points following were determined. First, It is to be tried instanter, unless the court (upon circumstances) give time. 3dly. The award of the execution is to be by the second judge, if the sentence before pronounced was for felony. 3dly. The defendant is not entitled to a copy of the record. 4thly, The court will not name the day of execution, but leave it to the sheriff. See also this Dictionary, title, Execution of Criminals; Inquisition.

INSTANTURUM, Is used in ancient deeds for a flock of cattle; Sistorum and instanturum, signify young beasts, flocks to breed. Mon. Angl. tom. 1. p. 548. In instanturum was commonly taken for the whole flock upon a farm, as cattle, wagons, ploughs, and all other improvements of husbandry. Elt: lib. 2. cap. 72. Instanturum ecclesie is applied to the books, vestments, and all other utensils belonging to a church. Synod. Ext, ann. 1527.

INSIPIDUM, To plant or establish. Brout. 915.

INSTITUTUM, Instante.] Is when the bishop pays to a clerk, who is presented to a church living, Instans te recemere falsi ecclesie, suas curas animarum, & accepere curationem, &c. or it is a Faculty made by the Ordinary, whereby a Parson is approved to be indited to a rectory or patronage. If the bishop upon examination finds the clerk presented capable of the benefice, he admits and institutes him; and Institution may be granted either by the bishop under his episcopal seal, or it may be done by the bishop's vicar-general, chancellor or commissary, and if granted by the vicar-general, or any other substitute, their acts are taken to be the acts of the bishop: also the instrument or letters testimonial of Institution may be granted by the bishop, though he is not in his diocese; to which some ministers should subscribe their names. 1 Inst. 144. The bishop by Institution transfers the care of souls to the clerk; and if he refuse to grant Institution, the party may have his remedy in the court of audience of the archbishop, by duplex querela, &c. for Institution is properly cognizable in the Ecclesiastical Courts; where Institution is granted, and supposed to be void for want of title in the patron, &c. a super instituted has been sometimes granted to another, to try the title of the present incumbent by ejection. 2 Red. Abr. 220; 4 Rep. 79.

Taking a reward for Institution incurs a forfeiture of double value of one year's profit of the benefice, and makes the living void. Stat. 31 Eliz. c. 6. On Installation the clerk hath a right to enter on the parsonage house and glebe, and take the titles; but he cannot grant, let, or do any act to charge them, till he is instituted into the living: he is complete parson as to the spirituality, by Institution; but not as to the temporal, &c. By the Institution he is only admitted ad suffredin, to pray and preach; and is not entered ad beneficium, until formal induction. Plowd. 528. See Instalment. The Church is full by Institution against all common persons, so that if another person be afterwards induced, it is void, and he hath but a mere possession; but a church is not full against the King till induction. 2 Inst. 358; 1 Red. Rep. 151. When a bishop hath given Institution to a clerk, he issues his mandate for induction, and if the archbishop should inhibit the archdeacon to induce the clerk thus instituted, he may do it notwithstanding. The first beginning of Institutions to benefices was in a national synod held at Westminster, anno 1144. For patrons did originally fill all churches by collation and liverty; till this power was taken from them by canon. Selbourne's Hist. of Titles, cap. 6 & 9. p. 175. See further, titles Parson; Advowson; Simony, &c.

INSUPER, Is used by editors in their accounts in the Exchequer; as when so much is charged upon a person as due on his account, they say so much remains insuper to such an account. See titles Accounts-Publick.

INSURANCE or ASSURANCE.

A Security given, in consideration of a sum of money paid in hand, or so much per cent to an Assurer or Insurer, to indemnify the Insured from such losses as shall be specified.
INSURANCE

efined in the policy, or instrument of Assurance, sub-
scribed by the Insurer or Insurers for that purpose. Dtt. 
Tr. and Com. 135; Savary's Dist. title Assurance & Po-
lice of Assurance.

It has been conceived, from a passage in Suatonins,
that Claudius Caesar was the first who invented this cu-
tom of Assurance; but, with greater probability, Savary,
in his Dictionnaire de Commerce, title Assurance, thinks this
custom was first introduced by the Jews in the year
1182; but whoever was the first contriver, or original
inventor of this useful branch of business, it has been
many ages practised in this kingdom, and is supposed
to have been introduced here by some Italians from Lon-
bardy, who at the same time came to settle at Aulnoy,
and among us; and this being prior to the building of
the Royal Exchange, they used to meet in a place where
Lombard-street now is, at a house they had called the
Paw House, or Lombard, for transacting business; and
as they were then the sole negotiators in Assurance, the
policies made by others in after-times had a Claude in-
vented, that those latter ones should have as much force
and effect as those formerly made in Lombard-street.

This latter opinion is adopted by Mr. Parke, in his
"System of the Law of Marine Insurances," &c., a
book long waited for the profession, and containing infor-
mation the most necessary to the commercial part of
the community. It is founded almost solely on the de-
cisions of the late venerable Chief Justice Mansfield, a name
that will ever be fitly remembered by all lovers of Equity,
and to none more than to the Merchants of London.

From Mr. Parke's excellent Digest of the Law on
this subject, (2d. edition, 1790) the following abridgment
has been compiled.

Varying a little from the order in which Mr. Parke
has disposed his matter, the subject may, for our present
purpose, be aptly divided as follows:

I. OF MARINE INSURANCES. First, considering,

1. The Policy, its Nature.
2. The Construction to be put on it.
5. Of Re-assurances, and Double Insurances.

II. OF LOSSES under such Policies.
1. Of total Losses, by Peril of the Sea.
2. By Capture.
3. Detention.
4. Barratry, &c.
5. Of general or gross Average; Average or partial
Loss; and Adjustment.
6. Of Salvage.
7. Of Abandonment.

III. OF FRAUD, ILLEGALITY, or IRREGULARITY;
which either vitiate the Policy, or prevent a Recov-
eery, though a Loss happen.
1. Of direct Fraud in Policies.
2. Of changing the Ship.
3. Deviation in the Voyage.
4. Sea-worthiness.
5. Of Wager Policies.
6. Of illegal Voyages, and Enemies' Ships, &c.

7. Of prohibited Goods.
8. Of the Return of Premii; in Cases of void or
fraudulent Policies.

IV. OF BOTTOMRY and RESPONDENTIA.

V. OF INSURANCES on LIVES.

VI. OF INSURANCES against FIRE.

Previous to entering into this detail it may be proper
to say a few words as to who may be Insurers or Under-
writers; and what property may in general be insured.

At common law, and by the usage of merchants, any
person whatever might be an Insurer: but this having
led to dangerous confidence on the one hand, and un-
principled fraud on the other, the Stat. 6 Geo. 1. c. 18,
was passed, authorizing his Majesty to grant charters to
the Royal Exchange Assurance Company, and the London
Assurance Company; and which statute prohibited any
other Society or Partnership from underwriting policies of
Insurance. Policies therefore are now usually under-
written by those Companies, or individual underwriters;
a policy subscribed by any Society, or Partnership, being
absolutely void. Parke 5, 6.

The most frequent subjects of Insurance are, ships,
boats, and merchandizes; the freight or hire of ships.
2d, houses, warehouses, and the goods in them from
danger by fire. And 3d, Lives. (Of the latter, see
Pett V. Vet. Bottomry and Respondentia are also par-
cular species of property which may be insured; but
which must be particularly expressed in the policy.
3 Burr. 1394: 1 Black. Rep. 495: unless by the usage
of the trade it is understood. Parke 11. See pet IV.
And the lien of a factor upon goods is included in the
term goods. 1 Burr. 489. Insurance on seamen's wages
is prohibited. Parke 12. A governor of a fort may in-
sure it against the attacks of an enemy. 3 Burr. 1025.
Insurance on enemies' property is now prohibited by
Stat. 33 Geo. 3. c. 27, § 4. See pet III. 5, 7.

1. Policy is the same given to the instrument by
which the contract of indemnity is effected between
the Insurer and the Insured; and it is not, like most con-
tracts, signed by both parties, but only by the Insurer,
the party who takes on him the risk; who, on that ac-
count, it seems, is called The Underwriter. Of Policies
there are two kinds, Valid and Open; the difference is,
that, in the former, property insured is valued at prime
cost at the time of effecting the policy; in the latter, the
value is not mentioned. In the case of an open policy
the real value must be proved; in the other it is agreed,
and it is just as if the parties had admitted it at the
trial. 2 Burr. 1117.

They are only simple contracts, but of great credit,
and ought not to be altered when once they are signed;
unless there be some written document to show that the
meaning of the parties was misconstrued, or unless they be
altered by consent. 1 Ves. 317: 1 Atk. 345: Scott. 444.

A Policy is a species of property for which irreverue will
lie at the instance of the Insured, if it be wrongfully
withheld from him. Parke 4.

The form of the policy now used, is two hundred years
old, and is very irregular and confused, and often ambi-
guous. It is partly printed, to serve for general pur-
poses common to all policies, and partly written, for the
purpose of inserting the names of the parties, and to
express
INSURANCE I. 2.

express their meaning; and the written clauses shall accordingly control the printed words. See 3 Burr.
1555; Park 5, 15.

There are nine requisites of a policy. First, The name of the person insured. It was formerly much the practice to effect policies of insurance in blank without naming the persons on whose account they were made; this was found both troublesome and inconvenient: to remedy which, the Stat. 25 Geo. 3. c. 44, directed the name of all persons interested, or if they resided abroad, the name of their agents in this kingdom to be inserted in the policy. The provisions of this act however, not being without their attendant evils, (see 1 Term Rep. 313, 464,) it was repealed by Stat. 28 Geo. 3. c. 56; which enacted, that it shall not be lawful for any person to make assurance on ships or goods, without informing the name or firm of one or more of the parties interested; or the name or firm of the consignor or consignee; or, of the person receiving the order for, or effecting, the policy; or, of the person giving directions to effect the same. All policies without one or other of these requisites to be null and void.

Secondly, The names of the ship and master; unless the insurance be general, on any ship or ships. Park 19.

Thirdly, Whether the insurance be made on ships, goods, or merchandise. We may here observe, that a policy on goods generally does not include goods laden on deck, the captain's clothes, or the ship's provisons. Park 21. But a policy on the ship and furniture includes provisions left out in a policy for the use of the crew. 4 Term Rep. 205. See post II. 1, 5.

Fourthly, The name of the place at which the goods are laden, and to which they are bound. A policy, therefore, from London to — is void. Mod. b. 2. c. 7. §. 14. It is also usual to state at what ports or places the ship may touch or stay; to avoid questions on deviation. Park 22.

Fifthly, The time when the risk commences, and when it ends. On the goods it usually begins from the lading on board the ship, and continues till they are safely landed on the ship, from her beginning to lade at A, and continues till the arrive at the port of destination, and be there moored in safety twenty-four hours. See post II.

Sixthly, The various perils against which the underwriter insures. The words now used in policies are so comprehensive that there is scarcely any event unprovided for. The underwriter undertakes to bear "all perils of the seas, men of war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrears, restraints, and detainments of Kings, Princes, and People of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, lollies, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandizes, and ship, or any part thereof."

The policy is frequently made with the words "lost or not lost in it," which are peculiar to English policies, and add greatly to the risk: as though the ship be lost at the time of the insurance made, the underwriter is liable, if there be no fraud. Park 24. See 5 Burr. 2083.

Seventhly, The premium or consideration for the risk, which is always expressed in the policy to be received at the time of underwriting; but policies in general are effected by the intervention of a broker, between whom and the insurers open accounts are kept by the usage of trade; and who are therefore, it seems, liable, in an action, to the insurers, notwithstanding such admission by the words of the policy. Park 26.

Eighthly, The day, month, and year on which the policy was executed.

Ninthly, The policy must be duly stamped, viz. on a policy for 1000l. and under, with a 6s. stamp; and above that sum with a stamp of 11s.

By Stat. 11 Geo. 1. c. 50. When an insurance is made, a policy must be made out within three days under a penalty of 100l.; and by the same statute, promissory notes for insurances are void.

It is stated above, that policies are generally effected by the intervention of a broker, and that the name of the agent of an insurer residing abroad must be mentioned in the policy. It seems therefore the proper place here to mention, that such agent or correspondent is liable to an action for not injuring, which is to be tried on the same principles as an action on a policy; and the defendant is entitled to every benefit of which the underwriter might take advantage. The whole law on this subject is laid down in Smith. v. Laselles, where Buller, J., mentioned three instances in which such order to insure must be obeyed. 1. Where a merchant abroad has effects in the hands of his correspondent here. 2. Where, though the merchant has no effects in the hands of his correspondent, yet the cause of dealing has been such, that the one has been used to send orders for insurance, and the other to comply with them. 3. If the merchant abroad send bills of lading to his correspondents here; and infringes on them an order to insure, as the implied condition on which the bills of lading shall be accepted. 2 Term Rep. 187. and note.

2. A Policy being considered as a simple contract of indemnity, must always be construed, as nearly as possible, according to the intention of the contracting parties, and not according to the strict meaning of the words. And, in questions on such construction, no rule has been more frequently followed, than the usage of trade, with respect to the voyage insured. 1 Burr. 347, 8: See also 2 Salt. 443, 5: 2 Str. 1265; and 3d. III. 3.

A Policy on a ship generally from A. to B. was construed to mean till the ship was unladen. Skin. 243. But if it contain the usual words till moved twenty-four hours in safety, the insurers shall be answerable for no loss, that does not actually happen before the expiration of the time. Even though the loss was occasioned by an act (of barratry by the master) committed during the voyage insured. 1 Term Rep. 252.

Under a policy containing these words, the underwriters were held liable for a subsequent loss; because the captain, the very day on which the ship arrived at her moorings, was served with an order from Government to return in order to perform quarantine; and therefore the ship could not be said to have moved twenty-four hours in safety, although the did not go back for some days. 2 Sir. 1243.

In a policy upon freight, if an accident prevent the ship from falling, the insured cannot recover the freight, which he would have earned if the had completed her voyage.
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voyage. 2 Srra. 1251. But if the policy be a valued policy, and part of the cargo be on board, when such accident happens, the Insured may recover to the whole amount. 3 Term Rep. 362.

When an Insurance is at and from any place the ship is protected, from her first arrival during her preparation for the voyage: but if all thoughts of the voyage be laid aside, the Insurer is discharged. 1 Atk. 348: 2 S61 350: and see 1 Black. Rep. 417, 8.

The great and leading cases on questions of construction are two, Tenny v. Eborlington, and Polly v. Royal Exchange Company. 1 Ins. 141, 8. In these cases, the principles to be observed in the construction of policies, are fully considered, and in the latter of them, Lord Mansfield observed, that the Insurer, at the time of underwriting, has under his consideration the nature of the voyage, and the usual manner of doing it; and what is usually done by such a ship, if such a cargo, in such a voyage, is understood to be referred to by every policy. 9 The same principles were adhered to in a subsequent case, where the same learned Judge remarked that every Underwriter is presumed to be acquainted with the practice of the trade he insures; and if he does not know it, he ought to inform himself. Dougl. 510-515. So in the construction of a policy upon time, the same liberality prevails as in other cases; and an attention to the meaning of the contracting parties has always been paid. Dougl. 517-531.

The usage of trade in respect to East India voyage: has been more notorious than in any other, the question having more frequently occurred. The charter-parties of the India Company give leave to prolong the ship's stay in India for a year, and it is common by a new agreement to detain her a year longer. The words of the policy too are very general, without limitation of time or place. These charter-parties are so notorious, and the course of the trade is so well known, that the Underwriter is always liable for any intermediate voyage, upon which the ship might be sent while in India, though not expressly mentioned in the policy. These principles were fully laid down and settled in the well-known case of the ship 'Windsor': East Indiaman; the nine months in which she was ultimately uniform, for the plaintiffs the Insured, against the Underwriters. 3 Burr. 1707: & 1709. They have been since recognized and allowed in subsequent cases. See Parke 49, 51.

However, the parties may, by their own agreement, prevent such latitude of construction; not need this be done by express words of exclusion; but if, from the terms used, it can be collected, that the parties meant so, that construction shall prevail. Dougl. 27. And the equitable principles of construction shall never be carried so far as that when a man has injured one species of property, he shall recover a damage which he has suffered by the loss of a different species. Thus, one who has injured a cargo of goods cannot, under that Insurance, recover the freight paid for the carriage; nor can an owner who injures the ship merely demand satisfaction for the loss of merchandise laden therein, or extraordinary wages paid to steamer, or the value of provisions by reason of detention of the ship at any port. Parke 52-61. See also 1 Term Rep. 127, 130 and 192 11.

3. A Warranty, in a policy of Insurance, is a condition, or a contingency, that a certain thing shall be done or happen, and unless that is performed, there is no valid contract. 1 Term Rep. 345. It is immaterial for what end, if any, the warranty is inserted in the contract; but, being inserted, it becomes a binding condition upon the Insured, and he must thereby a literal compliance with it. Parke 318. So on the contrary warranties shall be strictly construed in favour of the Insured. As where a ship is warranted well on any day certain, though the be left by eight in the morning of the day when the policy was effected at noon, the Underwriter shall liable. 3 Term Rep. 360. It is no matter whether the loss happened in consequence of the breach of warranty or not, for the meaning of inserting a warranty is to preclude all inquiry about its materiality. 1 Term Rep. 360. It is also immaterial to what cause the non-compliance is to be attributed; for although it might be owing to the mere accident, or to the most wise and prudent reasons, the policy is voided. Cow. 607.

In this strict and liberal construction with the terms of a Warranty confines the difference between a Warranty and a Representation; the latter of which need only be performed in substance, while a Warranty must always be complied with strictly. In a Warranty the person making it takes the risk of its truth or falsehood on himself; in a Representation, if the Insured affirms that to be true which he either knows to be false, or about which he knows nothing, the policy is void on account of fraud; but a Representation made without fraud, if not false in a material point, does not vitiate the policy. Cow. 727: Parke, c. 18: See p66 III. 1.

In order to make written instructions binding as a Warranty, they must appear on the face of, and make a part of, the policy. Cow. 759. For though a written paper be warranted in the policy, and sworn to by the Underwriters at the time of subscribing, or even if it be inserted in the policy, it is not a Warranty, but a Representation. Doug. p. 12. A Warranty written in the margin (transversely, or otherwise) of the policy is considered to be equally binding, and liable to the same strict construction as if written in the body of the policy. Doug. 11, 12. n. 4, 15, s. If the Underwriter pay the loss of a policy, and after finding that such Warranty was not strictly complied with, he may recover back the money again by action: see 1 Term Rep. 343; which was also a case arising on a Warranty in the margin of a policy.

The various kinds of Warranties are too numerous to be mentioned; depending generally upon the particular circumstances of each case. The three cases of Warranty, on which most questions have arisen, are, as to the time of failing, conveyance, and neutrality of property.

As to the first of these: if a man warrant to fail on a particular day, and be guilty of a breach of that Warranty, the Underwriter is no longer answerable. Parke 325. c. 18. And a detention by Government, previous to the prescribed day of failing, is no excuse for not complying with the Warranty, nor a wrant to void in the terms of the policy. Cow. 784. So if the Warranty be to fail after a specific day, and the ship fail before, the policy is equally avoided as in the former case. Parke 326. c. 18.
But when a ship leaves her port of lading, having a full and complete cargo on board, and having not only such view but the safest mode of failing to her port of delivery, for which purpose she touches at any particular place of rendezvous for convoy, &c. her voyage must be said to commence from her departure from that port, and though she be detained at such place of rendezvous by an embargo, she has complied with the Warranty. Cott. v. Fugri, 601—8: & see Thellom v. Ferguson, Dougl. 361, acc. What shall be a departure from the port of London, or rather what is the port of London, remains yet undecided. It seems, however, that Greathead is the limit of that port, where vessels receive the Custom-house cocketts, their final clearance, on board, and from whence they must depart on the day mentioned in the Warranty.

Farr, &c. 18.

As to Warranty of failing with convoy. If the Insured warrant that the vessel shall depart with convoy, and it do not fail, and the Underwriter is not responsible. A convoy means a naval force under the command of that person whom Government, or any authorized by them, may happen to appoint. Parke, &c. 18.

A failing with convoy from the usual place of rendezvous, as Greathead for the port of London, is a departure with convoy within the meaning of such a Warranty. 2 Salk. 443: 2 Str. 1263, 5. And although the words used are generally to destitute with convoy, or to fail with convoy, yet they extend to failing with convoy throughout the voyage. 3 Lev. 319. And this point was unanimously confirmed by the whole Court in more modern times. Doug. 72. Lilly v. Everse.

But an unseasonable separation from convoy is a peril to which the Underwriter is liable. 3 Lev. 320: 2 Salk. 443: Carth. 216: 1 Show. 320: 4 Mod. 58: S. C. And even where the ship has without any neglect, by tempestuous weather, been prevented from joining the convoy at all, or at least, so as to receive the orders of the commander of the ships of war; if she do every thing in her power to effect it, it shall be deemed a satisfaction of the Warranty to fail with convoy. 2 Str. 1250. The duty of officers appointed for convoy to merchant ships is prescribed by flat. 13 Car. 2. 1. e. 9. art. 17. confirmed by flat. 22 Geo. 2. c. 33. § 2. art. 17. Park 359, n. See p. 11. 4.

The last species of Warranty above mentioned is that of neutrality; or that the ship and goods insured are neutral property. This is different from the two former; for, in this Warranty the broker is not complied with, the contract is not merely voided as for a breach, but it is absolutely voided, by giving, on account of fraud, being a fact at the time of injuring within the knowledge of the Insurer; as an error in which must therefore arise from a deliberate falsehood on his part. 4 Barr. 1419: 1 Black. Rep. 427. And see p. 11. III. But if the ship, &c. is neutral at the time the risk commences, the Insurer takes upon himself the chance of war and peace during the continuance of the policy. Doug. 732. Eden v. Parkhouse.

4. The oldest case in the books on a marine policy of Insurance is in 7 Rep. 47, 6, which only serves however to show that this contract was at that time very little understood. In the reign of Queen Elizabeth, a statute was passed, (43 Eliz. c. 12,) to erect a particular court for the trial of Insurance causes in a summary way, by a commissioin to the Judge of the Admiralty, the Recorder of London, two Doctors of the civil law, two common Lawyers, and eight Merchants, with an appeal by bill to the Court of Chancery. This statute was explained by flat. 15 & 16 Car. 2. c. 235: but the court erected by them is now entirely dissolved; for this among many other reasons, that its jurisdiction was not sufficiently extensive. See Str. 166: 1 Show. 365: 3 Sid. 121. Insurance causes are now therefore decided, like all other questions of property, by a trial by jury in a court of common law; and which, on due consideration, will appear the most safe, eligible, and (as now regulated) expeditious, mode that could be adopted. Parke Intro. 4.

Courts of Equity have no jurisdiction over such questions, because the demand is plainly a demand at law, and the damages as much the object of proof by witnesses, as any other species of damage whatever. De Gis toff v. London Affiance Comp., Bro. P. C. If, indeed, the trustee in a policy of Insurance actually refuse his name to the Cogls que trois, in an action, or a commission is necessary to examine witnesses residing abroad; or where fraud is suspected, and a disaffair of circumstances is to be procured upon the oath of the Insured; in these cases, application may be to a Court of Equity. But, in all other cases, a court of common law is the proper forum. See 1 Ath. 547: 2 Ath. 339: Parke, c. 20. And even if the parties, by a clause in the policy, should agree to refer any dispute to arbitration, that will not be a sufficient bar to an action at law, unless a reference is in fact made, or is depending. 1 Wif. 129.

In order to recover upon a policy against either of the Insurance Companies, (the Royal Exchange, or London Assurance,) the action must be Debt, or Covenant, as their policies are under seal; from hence arose an inconvenience, as under the plea of a general issue in those actions the true merits of the case could seldom come in question; to remedy this, the statute 11 Geo. 1. c. 30. § 45, enables the jury to give such part only of the sum demanded in debt, or so much damages in covenant, as on the evidence it appears the plaintiff in justice ought to have.

In order to recover against a private Underwriter upon the policy, who merely subscribes his name without any seal, the form of action is a special Indebitatus assumpsit, founded upon the express contract, which action may be brought in the name of the broker, effecting the policy; and by flat. 19 Geo. 2. c. 37. § 6, within fifteen days after action brought, the plaintiff, on requent in writing, must declare the amount of all Insurances on the same ship. Parke, c. 20.

It was formerly usual for the Insured to bring separate actions against each of the Underwriters (how many however) on a policy, and proceed to trial on all. This was found to be expensive, and, in fact, unjust; and the Court of King's Bench intimated, that in such a case they would grant impurities in all the actions but one, till that could be tried. 2 Barm. B. P. 105. At length Lord Mansfield introduced the present Confolidation-Rule, which is now admitted in general practice, by which the proceedings in all the actions but one are stayed; and in consequence of this convenience the defendant under-
takes not to file any bill in equity, or bring a writ of error for delay, and to produce all books and papers material to the point in issue. Parke Intro'd.

The stat. 19 Geo. 2. c. 37. § 7, also enables defendants to pay money into court in all such actions; after which, if the plaintiff proceeds, and has not a verdict for more than the money paid in, he shall pay costs to the defendant.

When money has been paid by mistake to the insured, or where the insured wishes to recover back the premium, the proper remedy is by action for money had and received to the plaintiff's use. 1 Salk. 222; Skinn. 412; 1 Show. 156.

The declaration on a policy of insurance must set out the policy, and aver that it was signed by the defendant, and, that in consideration of the premium, he undertook to indemnify the insured; it must then state the interest of the insured, and the loss to have happened by one of the perils mentioned in the policy, which must always be stated according to the truth of the fact. Parke, c. 20.

More particularly as to the manner of alleging the loss to have happened within the perils of the policy,—To aver that the loss happened by the fraud and negligence of the party, has been held a sufficient averment of barratry, 2 Ld. Raym. 1349; 1 Str. 581; though it is now usual to aver, in general, that the loss happened by the barratry of the master or mariners. Parke, c. 20. Though the declaration allege a total loss, the insured may recover for a partial one; for in actions for damages merely, the plaintiff may always recover part, but not more, than the sum laid in the declaration. 2 Burr. 504; 1 Black. Rep. 198. So though the plaintiff appear in proof to have a larger interest than is averred in the declaration, yet he is entitled to recover to the amount alleged. Parke 402; c. 20.

In order to entitle the insured to recover expenses of salvage, it is not necessary to state them in the declaration, as a special breach of the policy. They may be given in evidence, because an insurance is against all accidents, and salvage is an immediate and necessary consequence of some of those stated in a policy. Hardw. 354.

The general issue, non assumpsit, is the usual plea to a declaration upon a policy against a private person; and under this plea and the general issue, plenitude by corporations, the defendant has a right to take advantage of all those circumstances which either render the policy void, or make it of no effect; such as fraud, want of interest, not being sea-worthy, deviation, non-performance of Warranties, &c. Parke 404; c. 20.

The evidence to be given, and the proof necessary in actions on policies of insurance, may be collected from the statement of the allegations requisite in the plaintiff's declaration. It may, in addition, be shortly observed on this part of the subject, that the first piece of evidence is proof of the defendant's hand-writing to the policy, which, however, is most generally admitted. Though the general usage of trade is allowed to be given in evidence to control, or extend the words, yet no parole evidence shall be given which directly tends to contradict the terms of a policy. Skinn. 54. In an action against the underwriter, the policy is evidence that the premium was paid: the insured however must prove his interest by a production of all the usual documents, bills of sale, bills of parcels, of lading. &c. See 2 Str. 1127; 2 Term Rep. 187. And, in the last place, the plaintiff must prove that the loss happened by the very means stated in the declaration. 1 Term Rep. 304. See Harwd. 354.

Sentences of foreign Courts of Admiralty are frequently brought forward in Insurance causes. It may be requisite therefore, to remark, that wherever the ground of such sentence is manifest, and it appears to have proceeded expressly upon the point in issue between the parties, or wherever the sentence is general, and no special ground is stated, there it shall be conclusive and binding; and the Courts here will not take upon themselves, in a collateral way, to review the proceedings of a forum, having competent jurisdiction of the subject-matter. But if the sentence be so ambiguous and doubtful, that it is difficult to say on what ground the decision turned, or if there be colour to suppose, that the Court abroad proceeded upon matter not relevant to the matter in issue, there evidence will be allowed in order to explain; and if the sentence upon the face of it be manifestly against law and justice or be contradictory, the insured shall not be deprived of his indemnity; because any detention, by condemnation under particular ordinances or decrees, which contravene or do not form part of the law of nations, is a risk within a policy of Insurance. Parke, c. 18. ad fin. And see Doug. § 541 (574). Bernard v. Mattux. See per II. 3.

5. Re-affurance is a contract, which the first Underwriter enters into, in order to relieve himself from those risks which he has previously undertaken; by throwing them upon other Underwriters, who are called Re-affurers. It is a species of contract still countenanced in most parts of Europe, and which was admitted in England till it was found productive of glaring and enormous frauds, which rendered it destructive of the benefits it was originally intended to promote. The Legislature, therefore, found it necessary to interpose, by an act which permitted only such contracts of Re-affurance as tended to the advancement of commerce, or the real benefit of an individual. For this purpose the stat. 19 Geo. 2. c. 37. § 4, declares it to be unlawful to make Re-affurance, "unless the Assurer or Underwriter should be insolvent, become bankrupt, or die; in either of which cases such Assurer, or his executors, administrators, or assignees, may make Re-affurance to the amount before him assured, explaining in the policy that it is a Re-affurance;" which statute extends to Re-affurances on foreign ships previously insured by foreign Underwriters. 2 Term Rep. 161.

In France, as in other countries, it was formerly allowed to the insured to infure the solvency of the Underwriter; but this practice is not allowed in England; and, though no express notice is taken of it in the above statute, it seems that such a policy would be looked on as a wager policy, and treated accordingly. See per III. 5.

Double Insurance is totally different from Re-affurance. It is where the same man is to receive two sums instead of one, or, the same sum twice over, for the same loss, by reason of his having made two Insurances upon the same property. 1 Burr. 496. It makes no difference whether such Insurances are both or either made in the name of the insurer, or of another person, if actually made on his account. Parke 285.

These double Insurances are not void. The person insuring, however, shall receive only one satisfaction to
the real amount of his loss, and no more, which he may recover against which set of Underwriters he pleases. And when one set of Underwriters pay the loss, they may call upon the other Underwriters to contribute in proportion to the sums they have insured. 1 Black. Rep. 416; 1 Burr. 492. But though a double Insurance cannot be wholly supported, so as to enable a man to recover a two-fold satisfaction; yet various persons may insure various interests on the same thing, and each to the whole value, as the master for wages, the owner for freight, one person for goods, and another for bottomry. Etc. See Godin v. London Amer. Comp. 1 Burr. 485; 1 Black. Rep. 103. In which case the defendants were expressly applied that there might probably be another Insurance than that which they under wrote.

II. 1. The Loss must always be a direct and immediate consequence of the peril insured, and not a remote one, in order to entitle the Insured to recover. 1 Term Rep. 155, n. 2.

A total loss in Insurances does not always mean that the property insured is irrecoverably lost or gone; but that, by some of the perils mentioned in the policy, it is in such a condition as to be of little value or value to the Insured, and to justify him in abandoning his right to the Insurer, and calling upon him to pay the whole of his Insur. Park. 98, 143.

The Insured may call upon the Underwriter for a total loss, if the voyage be absolutely lost, or not worth pursuing; if the salvage be high, as half the value; or if further expense be necessary, and the Underwriter will not engage at all events to bear that expense. See Hamilton v. Montes, 2 Burr. 1198; 1 Black. Rep. 276; and p. 7.

In a total loss, properly so called, the prime cost of the property insured, or the value in the policy, must be paid by the Underwriter, according to his proportion of the Insur. Where the policy is a valid one, it is only necessary to prove that the goods were on board at the time of the loss; unless the defendant can shew that the plaintiff had only a colourable interest, or has greatly overvalued the goods; but, where it is an open policy, the value must also be proved. Park. 103, 111.

Questions as to losses by Perils of the Sea have very seldom arisen; the general rule is, that every accident happening by the force of wind or waves, by thunder and lightning, by driving against rocks, or by the stranding of the ship, or any other violence that human prudence could not foresee, or human strength resist, is to be considered as a peril of the sea; and for such losses the Underwriter is answerable. Park. 61; 1 Salk. 375; 2 Rell. Abr. 248. p. 10: Comb. 56.

An action was brought to recover the value of certain slaves insured by the policy; the facts were, that the captain of the ship shipped the island, for which he was bound, (Jamaica,) and their water running short, some of the slaves were thrown overboard to preserve the raft, and the declaration stated the loss to have happened by perils of the sea. But it was held, the mulatto of the captain cannot be called a peril of the sea. Gregson v. Gilbert, Pech. 123 Geo. 2; Park. 13. A ship which is never heard of after her departure, shall be presumed to have perished at sea. See 2 Str. 1199; Park. 63. In England no time is fixed within which payment of a loss may be demanded from the Underwriter, in case the ship is not heard of. But a practice prevails among merchants, that a ship shall be deemed lost, if not heard of within six months after her departure for any port of Europe, or within twelve, if for a greater distance. This latter term, however, seems to short with respect to India voyages, and is extended in Spain to a year and a half, and formerly in France to two years; and in case of an adjustment on such supposed losses, if the ship arrives, the Underwriter may recover back the money paid by him. Park. 5—5.

2. Capture, as applied to the subject of Marine Insurances, is a taking of the ships or goods belonging to the Subjects of one country, by those of another, when in a state of public war. Park. 4. As, between the Underwriter and the Insured, a ship is to be considered as lost by the Capture, though the ship never condemned at all, nor carried into any port or fleet of the enemy; and the Underwriter must pay the loss actually sustained. If, therefore, either before or after condemnation the ship be taken, and the owner have paid salvage, the Insurer must pay the loss sustained in consequence. 2 Burr. 694, 6.

No Capture by the enemy can be so total a loss as to leave no possibility of recovery. If the owner himself should retake at any time he will be entitled; and by Stat. 29 Geo. 2. c. 34. § 24. If an English ship retake the vessel, or the cargo, captured, either before or after condemnation, the owner is entitled to retaliation on stated salvage. See p. 6. In all such cases, if the loss be paid by the Underwriter before the recovery, he stands in the place of the Insured, and will be entitled to the benefits of the restitution. Park. 562; 2 Burr. 685.

Before the Stat. 19 Geo. 2. c. 37, which abolished wager-policies, the re-capture had a considerable effect upon the contract of Insurance, and several cases were determined on that question. See 10 Mod. 77; 2 Burr. 695; Com. 560; 1 Will. 191; 2 Str. 1250; Park. 73—77; but now the contract is not at all altered between the Underwriter and the Insured by such event. 2 Burr. 695, 1198.

By the marine law of England, as proclaimed in the Court of Admiralty, it was formerly held, that the property was not changed so as to bar the original owner in favour of a vendee or re-captor, till there had been a sentence of condemnation. 2 Burr. 694. And now by Stat. 29 Geo. 2. c. 34, already mentioned, this right of the original owner, in case of a re-capture, is preserved to him for ever, upon payment of certain salvage, from one-eighth to half the value, to the re-captors. See p. 6.

A Capture having been illegal, but the charges and delay being great, the Insured made a compromise bond for the liberation of the ship; the Underwriters were held to be answerable for the charges of such compromise made, but the salvage, whether the capture was legal or not. And in the case of
Yates v. Hall, the circumstances of which took place before the passing of the act, the Court of B. R. determined, that a promise by a captain of a ship on behalf of his owners to pay monthly wages to a sailor, in order to induce him to become a hostage, was binding on the owners, although they abandoned the ship and cargo. 1 Term Rep. 73, 80.

By a law, 2 Geo. 3. c. 25. it is made unlawful for any Subject to ransom, or to enter into any contract for ransoming any ship belonging to any Subject, or any goods on board the same, which shall be made by the Subjects of any State at war with his Majesty, or by any persons committing hostilities against his Subjects. 1 Term Rep. 73.

All contracts which shall be entered into, and all bills, notes, and other securities which shall be given by any person for ransom of any ship, or of any goods on board the same, shall be absolutely void. 2 Term Rep. 127.

If any person shall ransom or enter into any contract for ransoming any such ship, or for any goods on board the same, such person shall forfeit 500l., which may be seized for by any one. 3 Term Rep. 252.

3. On questions of Detention not much difficulty has arisen: the Underwriter, by express words, undertakes to indemnify against all damages arising from the arrests, restraints, and detentions of Kings, Princes, or People. Parke 73.

Under these terms, in a policy, Detention is said to be an arrest or embargo in time of war, or peace, laid on by the public authority of a State. And, therefore, in case of an arrest, or embargo by a prince, though not an enemy, the Insured is entitled to recover against the Underwriters. 2 Term Rep. 696. See this Dictionary, title Embargo.

In case of Detention by a foreign power, which in time of war may have seized a neutral ship, in order to be searched for enemy's property, the costs and charges consequent thereon must be borne by the Underwriter. Saluzzo v. Johnson, B. R. Hill. 25 Geo. 3; Parke 73.

But a detention for non-payment of customs, or for navigating against the laws of those countries where the ship happens to be, shall not fall upon the Underwriter. 2 Term Rep. 175.

A detention by particular ordinances which do not form a part of the general law of nations, is a risk within a policy of Insurance. Per Fullen, J. Parke 365.

It is an undecided question, whether a detention by the governing power of the country to which the ship belongs, is a peril within the policy; though it seems that it is. See 2 Ld. Raym. 840; 3 Salt. 444; Parke 82.

But if an armed force board a ship, and take part of the cargo, the Underwriters are not liable, on a count stating the loss to be by people to the plaintiffs unknown; for people in the policy means the governing power of the country. 4 Term Rep. 83.

In all cases of losses by detention before the Insured can recover, he must abandon to the Underwriter whatever claims he may have to the property Insured. Parke 82. See 1 Term Rep. 7.

4. The derivation of the word Barratry is very doubtful; it comes most probably from the Italian Barratrito, to cheat. Coup. 154. It may be thus defined: any act of the master or mariners, of a criminal nature, or which is greatly negligent, tending to their own benefit, to the prejudice of the owners of the ship, and without their consent or privy. See 1 Stra. 581; 2 Stra. 1172; Coup. 145; 1 Term Rep. 323.

It is Barratry in the master to smuggle on his own account. Coup. 145; 1 Term Rep. 252; 3 Term Rep. 277. And in Robertson v. Duer, 1 Term Rep. 127. Butler J. seemed to think the breach of an embargo was an act of Barratry in the master. But if the act of the captain be done for the benefit of his owners, and not with a view to his own interest, it is not Barratry. Some question has been made in certain cases, whether a vessel, which shall have been seized by the king, or by any other person, shall forfeit the loss to the king, or to the original owner, if it is Barratry. Coup. 145, 154.

An act of the captain, with the knowledge of the owners of the ship, though without the privilege of the owner of the goods, who happened to be the person injured, is not Barratry, as that crime can only be committed against the owner of the ship, and without his consent. 1 Term Rep. 323; And if the master of the ship be also the owner, he cannot be guilty of Barratry. Parke 94.

In an action by the Affarer of goods, against the Underwriters for a loss by the Barratry of the master, proof that the person defcribed in the policy as master, and was treated, and acted as such, carried the ship out of her course, for fraudulent purposes of his own, is prima facie sufficient to entitle the plaintiff to recover, without shewing negatively that he was not the owner, or affirmatively, that any other person was. 4 Term Rep. 33.

It is not necessary, in order to make the Underwriters liable, that the loss should happen in the very act of Barratry; for, in case of a deceitful deviation, the moment the ship is carried from its proper track with an evil intent, Barratry is committed; but the loss, in consequence of the act of Barratry, must happen during the voyage insured, and within the time limited for the expiration of the policy. 1 Term Rep. 252; 4 Term Rep. 33; Coup. 143; Parke 84—90.

The Underwriters, by express words, undertake generally for the Barratry of the master and mariners, even though the master is appointed by the Insured himself; a circumstance peculiar to the Insurance Law of England. Parke 85.

If a ship take a prize, and, instead of proceeding on her voyage, the captain is forced by the mariners to return to port with the prize, against the orders of his owners, the captain is justified by necessity, and it is not Barratry, because not done to defraud the owners. 2 Stra. 1254.

Barratry in the master is severely punished by the laws of foreign nations; and several statutes have been passed to prevent these crimes in our own country. The Act 1 Ann. 8. & 2o Geo. 1. c. 15, provided the penalty of felony, without benefit of clergy, on any captain, master, mariner, or officer belonging to any ship, who should wilfully burn or destroy her, to the prejudice of the owner or any merchant having goods therein. This was extended by Act 4 Geo. 1. c. 16, to owners and others guilty of those acts, to the prejudice of Underwriters, as well as merchants; and the Act 11 Geo. 1. c. 29, still further enlarges it to all such persons guilty with intent to prejudice Underwriters, merchants, or owners. The Act...
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if goods be put on board a lighter to enable the ship to fall into harbour, and the lighter perils, the owners of the ship and remaining cargo are to contribute; but if the ship be lost, and the lighter saved, the owners of the goods preferred are not to contribute, the lightening of the ship being an act of deliberation for the general benefit, but the saving the lighter being accidental, and no way proceeding from a regard for the whole. Park 124.

Diamonds and jewels, when a part of the cargo, must contribute according to their value; but ship provisions, the persons of the passengers, wearing apparel, and such jewels as merely belong to the person, bottomry, or respondentia bonds, and the wages of the sailors, shall not any of them contribute. Park 120, 7, 9, 422: See also this Dictionary, title Carrier.

In order to fix a right sum on which the average or contribution may be computed, and which in general is not made till the ship's arrival at her port of discharge, it is to be considered, what the whole ship, freight, and cargo would have produced net, if no jettison had been made; and then the ship, freight, and cargo are to bear an equal and proportionable part of the loss. According to the custom of merchants in England, the goods thrown overboard are to be estimated at the price for which the goods saved were sold, freight and all other charges being thus deducted. Park 127, 8.

The general rules as to a partial loss, and its consequences, were settled in the case of Lewis v. Rucker, 2 Barr. 1167, 1168, from whence much of the subsequent information is drawn; but the whole of the law on this part of the subject is more intricate and perplexed than on any other question of Insurance.

Partial Loss then, when applied to the ship, means a damage, which the ship may have sustained in the course of her voyage, from some of the perils mentioned in the policy; when to the cargo, it means the damage which the goods have suffered from storm, &c., though the whole or greater part thereof may arrive in port. By express stipulation in the terms of the London policies, these losses do not fall upon the Underwriters, unless they amount to 3l. per cent.; but if a loss arises from a general average, (i.e. a contribution to a general loss,) it should be under 3l. per cent.; there the Underwriter is liable. And in all cases of a partial loss, the value in the policy can be no guide to ascertain the damage; but it becomes the subject of proof as in case of an open policy. Park 101-3.

When goods are partially damaged, the Underwriter must pay the owner such proportion of the principal or value, in the policy, (or if no value is stated in the policy, then of the invoice price, with all charges and premium of Insurance,) as corresponds to the proportion of diminution in value occasioned by the damage. Where an entire thing, as one hoghead of sugar, happens to be spoiled, if you can fix whether it be a third or fourth worse, then the damage is ascertained; but this can only be done at the port of delivery, where the whole damage is known, and the voyage is completed; and, whether the price of the commodity be high or low, it equally ascertains the proportion of damage; though no regard is to be paid to the rise or fall of the market, as to the sum to be paid by the Insurer, which is, in either case, to be regul-
regarded only by the prime cost or invoice price. Pa. 103, E. 2, Burr. 1165.

These rules can only apply to cases where there is a specific description of goods, but where the property is of various kinds, an account must be taken of the value of the whole, and a proportion of that as the amount of the goods lost. Park. 114.

Some goods are of a perishable nature; and, against the losses arising from the principle of corruption inherent in such, the Underwriters of London have exempted themselves, by declaring in a memorandum contained in all their policies, that they will not be answerable for any partial loss happening to corn, fish, fruit, flour, or seed, unless it arise by way of general average, or in consequence of the ship being stranded, against a loss by which latter event, however, in cases of these perishable commodities, the two Insurance Companies already mentioned do not undertake to be answerable. See Burr. 1553.

On this clause it has in several cases been uniformly held, that no loss shall be deemed total so as to charge the Insurers in case of such perishable commodities, as long as the commodity specifically remains, though perhaps wholly unfit for use. 3 Burr. 1550. The case in 2 Stra. 1069, to the contrary, has been since overruled by that of Major v. Storrey, Park. 115; in which it was also held, that the term Corn included peas and beans, and other particulars. See Park. 112-117.

Where, after seizure by an armed mob, the vessel was stranded, and part of the cargo (consisting of corn) taken by the mob at their own price, the loss cannot be recovered as a general average; but for such part as, in consequence of the stranding, was damaged and thrown overboard, the Insurer may recover, on a count, flitting the loss by branding. 4 Term Rep. 783.

When the quantity of damage, sustained in the course of the voyage, is known, and the amount, which each Insurer is to pay, is settled, it is usual for the Underwriter to indorse on the policy, "Adjusted this loss at such per cent." This is called an adjustment; after which, if the Underwriter refuse to pay, the owner has no occasion to go into the proof of his loss, or any of the circumstances, the adjustment being considered as a note of hand. Park. 117, 8. So after judgment by default upon a valued policy, the plaintiff's title to recover is confessed, and the amount of the damage is fixed by the policy. Doug. 325: Thissleton v. Fletcher.

And if a loss be total at the time of the adjustment, and the Insurer pay for a total loss, the Insured is not obliged to refund, if it should afterwards turn out to be partial, but the Insurer will stand in the place of the Insured. 4 Burr. 1866.

6. Salvage is an allowance made for saving a ship or goods, or both, from the danger of the foes, fire, pirates, or enemies; in which sense it is here used, though it is also sometimes incorrectly applied to signify the thing itself which is saved. Park. 151. And the Saver has such a property in the goods, saved by his own exertion and danger, that, in an action of trover, it has been held the defendants might retain the goods till payment of the salvage. 1 Ed. Remy. 393: 2 Eath. 64.

When a ship has been wrecked, the law of England, by various statutes, declares, that reasonable salvage only shall be allowed to those who save the ship or any of the goods; and what shall be a reasonable allowance must be ascertained by three Justices of the Peace. See Add. 12 An. 8. 21; (made perpetual by Stat. 4 Geo. 1. c. 12.) Stat. 26. Geo. 2. c. 19: and the Dictionary, title Wreck.

The right of Owners on Re-capture has been already noticed, (ante 2.) The salvage in this case is regulated by Stat. 17 Geo. 2. c. 4. § 17: 29 Geo. 2. c. 34. § 4; which enacted, that, if any prize, taken from the enemy, shall appear to have belonged to any of his Majesty's subjects, it shall be restored to the former owner, upon his paying, in lieu of salvage, one-eighth of the value; if retaken at any time by one of his Majesty's ships, if retaken by a privateer, before it has been twenty-four hours in the possession of the enemy, the salvage paid to be one-eighth of the value; if above twenty and under forty-eight hours one-fifth; if above forty-eight and under ninety-six hours one-third part thereof; and if above ninety-six hours, a moiety or one-half part thereof; or, if the ship so retaken have been fitted out by the enemy as a ship of war, the salvage is in all cases settled at a moiety.

Wearing apparel of the Master and crewmen is always excepted from the allowance of salvage. The valuation of a ship and cargo, in order to ascertain the rate of salvage, may be determined by the policies of Insurance made on them respectively; if there be no reason to suspect they are undervalued. If there be no policy, the real value must be proved by invoices, &c. Park. 140: Litt. Merc.

Underwriters, by their policy, expressly undertake to bear all expenses of salvage. It is therefore not necessary to state them in a declaration as a special breach of the policy. Harwood, 194. See ante 1. 4. But if the Insurer pay to the Insured such expenses, and from particular circumstances the losses are repaired by unexpected means, the Insurer shall fund in the place of the Insured, and receive the sum thus paid to atone for the loss.

Where the Salvage is high, and the other expenses are great, and the object of the voyage is defeated, the Insured is allowed to abandon to the Insurer, and call upon him to contribute for a total loss: which brings us to the subject of.

7. Abandonment.—Before a person injured can demand from the Underwriter a recompense for a total loss, he must abandon to him whatever claims he may have to the property injured; and when the Underwriter has discharged his Insurance, and the abandonment is made, he stands in the place of the Insured, and is entitled to all the advantages resulting from that situation, in case the ship or property, &c. is not totally lost, or is afterwards restored by re-capture, &c. See Park. 9. 9: 1 Vez. 98.

Abandonment is as ancient as the Contract of Insurance itself: the time, within which it must be made, was not however fixed in England till lately. It is now held, that as soon as the Insured receive accounts of such a loss as entitles them to abandon, they must, in the first instance, make their election whether they will abandon or not; and if they abandon, they must give the Underwriters notice in a reasonable time, otherwise they waive their right to abandon, and can never after recover for a total loss. 1 Term Rep. 608. But if the Insured, hearing that the ship is disabled and has put into port to repair, express his desire to the Underwriters to abandon, and be diffused from it by them, and they order the repairs
INSURANCE III. 1.

repairs to be made, they are liable to the Owner for all the subsequent damage occasioned by that refusal, though it should amount to the whole sum insured. 2 Term. Rep. 407.

When an abandonment is made, it must be total and not partial. And though the Insured may in all cases choose not to abandon, yet he cannot at his pleasure abandon, and thereby turn a partial into a total loss. 2 Burr. 697.

We have already seen (ante II. 1.) that the Insured may abandon the Underwriter, and call upon him for a total loss, if the damage exceed half the value; if the voyage be absolutely lost or not worth pursuing; if further expense be necessary, and the Insurer will not engage, at all events, to bear that expense, though it should exceed the value, or fail of success. But he cannot abandon unless at some period or other of the voyage there has been a total loss. 1 Term. Rep. 187: Parke, c. 9, p. 166. Also, if neither the thing insured, nor the voyage be lost, and the damage does not amount to a moiety of the value, he shall not be allowed to abandon. See 2 Burr. 1211: 3 Adk. 195: and Goft v. Withers, 2 Burr. 689: Which latter was the first case in which the doctrine of Abandonment was gone into at large, and the above principles fully settled; which have ever since been strictly adhered to, and were particularly recognized in Miller v. Fletcher, Doug. (219.) 251.—And, in Hamilton v. Mundes, it was solemnly determined that the right to abandon must depend on the nature of the cafe at the time of the action brought, or at the time of the offer to abandon; in that case, therefore, where there was a capture and re-capture, and it was stated, that at the time of the offer to abandon, the peril was over, as the ship was safe in port, and had suffered no damage, the Court held that the Insured had no right to abandon. 2 Burr. 1198: 1 Black. Rep. 276: See also, Parke, c. 9.

III. 1. Policies are annulled by the least shadow of Fraud, or undue concealment of facts; both parties are therefore equally bound to disclose circumstances within their knowledge. And if the Underwriter, at the time he underwrote, knew that the ship was safe arrived, the contract will be equally void, as if the Insured had concealed any accident that had befallen the ship. Parke, c. 10: 2 Comm. 460: 1 Black. Rep. 594: 3 Burr. 1909.

Cafes of fraud upon this subject are liable to a threefold division: 1st, The allegation false; 2d, The supposition true; 3d, Misrepresentation. The latter is made a separate head: as though, if wilful, it is a direct fraud, yet if it happen by mistake, if in a material point, it will equally vitiate the policy. Parke, c. 10. See Doug. (247.) 260.

As to the first point, several cases have determined that the policy shall be void, where goods, &c. are insured as the property of an ally, or as neutral property, when in fact they are the goods of an enemy: and such false allegations in a Policy will vitiate the contract, though the loss happen in a mode not affected by that falsity. Parke, c. 10: Skin. 327: 3 Burr. 1419: 1 Black. Rep. 427.

The second species of fraud, concealment of circumstances, vitiates all contracts of Insurance. The facts upon which the risk is to be computed live, for the most part, within the knowledge of the Insured only. The Underwriter relies upon him for all necessary information; and must trust to him that he will conceal nothing, so as to make him form a wrong estimate; on this ground, where one having an account that a ship, described like his, was taken, insured his own ship, without giving any notice to the Insurers of what he had heard, the Policy was deemed in equity to be delivered up. 2 F. Win. 170: See 1 Black. Rep. 464: 191: 2 Str. 1183: Parke, c. 10. But there are many matters as to which the Insured may be innocently silent; 2d, As to what he ought to know; 3d, As to what he must know, and what he might be supposed to know, and what he did know; 4th, As to what the law makes the risk. And it may here be remarked, that an Underwriter is bound to know political perils, as to the state of war or peace: He also ought to be acquainted with the nature and danger of every voyage, which may be called natural perils; if he infure a privateer, it is understood that he is not to be informed of political facts, and that the Underwriter, without notice of any material circumstance, cannot annul the Policy, and that he is not to be chargeable, if the ship be lost, with respect to any matter of State or war, that may have been concealed from him. 236: And see Parke, c. 10.

A Representation is a state of the case, not forming a part of the written instrument or Policy, as a Warranty does. Therefore if there be a misrepresentation it will avoid the Policy, as a fraud, but not as a part of the agreement, as in the case of Warranty. And if a Representation be false, it must not be material, to make it void, because the Underwriter has computed the risk upon circumstances which did not exist. Parke, c. 10. In the case of Passen v. Winson, Lord Mansfield stated, that "there cannot be a clearer distinction than that which exists between a Warranty, which makes part of the written Policy, and a Collateral Representation which, if false in a point of materiality, makes the Policy void; but if not material it can hardly ever be fraudulent." Corr. 785. And in Macnow v. Frater, the same learned Judge laid down, that "a Representation must be fair and true. It should be true as to all the Insured knows; and if he represents facts to the Underwriter, without knowing the truth, he takes the risk upon himself." But the difference between these two cases is, that as it turns out, and as represented, must be material. Doug. (247.) 260: See also Bux v. Fletcher, or Laubere v. Wilks, Doug. (271.) 284, and ante 3. 3.

The Policy is void if the Broker conceal any material circumstances, though the only ground for not mentioning them should be that the facts concealed appeared immaterial to him. Shirley v. Whistler, Doug. (293.) 366. But the thing concealed must be some fact, not
In all these cases of fraud, wherever there has been an allegation of falsehood, a concealment of circumstances, or a misrepresentation, it is immaterial whether it be the act of the person himself who is interested, or of his agent; for in either case the contract is founded in deception, and the policy is consequently void. And this rule prevails, even though the act cannot be at all traced to the owner of the property insured. Stewart v. Dunlop, in Dom. Proc. 1785; Friedrich v. Muller, 1 Term Rep. 12; Parkes, c. 10.

A Policy will not however be set aside on the ground of fraud, unless it be fully and satisfactorily proved; and the burden of proof lies on the person willing to take advantage of the fraud. At the same time, positive and direct proof of fraud is not to be expected, and from the nature of the thing circumstantial evidence is all that can be given. Parkes 214. As to the return of premium in cases of fraud, see p. 8.

2. It being necessary, except in some special cases, to infer the name of the ship, on which the risk is to be run, in the Policy; it follows as an implied condition, that the Insured shall neither substitute another ship for that mentioned in the Policy before the voyage commences, in which case there would be no contract at all; nor, during the voyage, remove the property insured from one ship to another, without consent of the Insurer, or without an unavoidable necessity, under which every thing possible must be done for the benefit of all concerned; if he do, the implied condition is broken, and he cannot, in case of loss, recover against the Underwriter. Parkes, c. 16: See 2 Stra. 1243: 1 Barr. 351: 1 Term Rep. 611, note.

3. Deviation is understood to mean a voluntary departure, without necessity or any reasonable cause, from the regular and usual course of the specific voyage insured. Whenever this happens, the voyage is determined; and the Insurers are discharged from any responsibility: because the ship goes upon a different voyage from that against which the Insurer undertook to indemnify. And it is not material in this case whether the loss be or be not an actual consequence of the deviation: for the Insurers are in no case answerable for a subsequent loss, in whatever place it happen; or to whatever cause it may be attributed. Neither does it make any difference whether the Insured was or was not consenting to the deviation. Parkes, c. 17. p. 294: and see Elliot v. Wilton, Bro. P. C.—If therefore the Master of a vessel put into port not usual, or stay an unusual time, it is a deviation. And if the deviation be but for a single night, or for an hour, it is fatal. But if a merchant ship carry letters of Marque the may choose an enemy, though he may not crucize without being deemed guilty of a deviation. Parkes 295—9.

Whenever the deviation is occasioned by absolute necessity; as where the crew force the Captain to deviate, the Underwriters continue liable. 2 Stra. 1264. And the general justifications for a deviation seem to be these: to repair the vessel, to avoid an impending storm, to escape from an enemy, or to seek for convoy.

If therefore a ship is decayed, or hurt by a storm, and goes to the nearest port to refit, it is no deviation, because it is for the general interest of all concerned.

1 Ark. 545: Parkes, c. 17. So, whenever a ship, in order to escape a storm, goes out of the direct course, or, when in the due course of the voyage, is driven out of it by storms of weather, this is no deviation. And if a storm drive a ship out of the course of her voyage, and the do the best she can to get to her port of destination, she is not obliged to return to the point from which she was driven. 1 Term Rep. 22. Parkes, c. 17.

A deviation may also be justified, if done to avoid an enemy, or seek for convoy; because it is in truth no deviation to go out of the course of a voyage, in order to avoid a danger, or to obtain a protection against it: if in all cases the master of a ship act fairly and bona fide according to the best of his judgment. 2 Salk. 445: 2 Stra. 1265: Parkes, c. 17.

In all cases of deviation, it may be laid down as a general rule, that wherever a ship does that which is for the general benefit of all parties concerned, the act is as much within the spirit of the policy as if it had been expressed: and, in order to say whether a deviation be justifiable or not, it will be proper to attend to the motives, end, and consequence, of the act as the true ground of judgment. Coop. 601. But, to avoid as much as possible any additional risk; in cases of deviation from necessity, the ship must pursue such voyage of necessity, in the direct course, and in the shortest time possible; as nothing more must be done than the necessity requires, otherwise the Underwriters will be discharged. Lardner v. Walter, Doug/. (271.) 284.

A Deviation merely intended, but never carried into effect, does not discharge the Insurers, and whatever loss happens before actual deviation, or the dividing-point of the voyage, falls upon the Underwriters. 2 Stra. 1249: Thollinson v. Ferguson, Doug,. (346.) 361. See also 2 Ld. Raym. 809: 2 Salk. 444. But if it can be shown that the parties never intended to sail upon the voyage insured, if all the ship's papers be made out from a different place from that described in the policy, the Insurer is discharged, though the loss should happen before the dividing-point of the voyage. Woodrige v. Boydl. Doug. 16. And, in all cases, Deviation or not is a question of fact to be decided, subject to the above rules, according to the circumstances of the case. Doug. 781.

4. Every ship insured must, by a tacit and implied Warranty at the time of the Insrance, be able to perform the voyage, unless some external accident should happen; and if the have a latent defect, wholly unknown to the parties, that will vacate the contract, and the Insurers are discharged. But though the Insured ought to know whether she was Sea-worthy or not at the time the act came upon her voyage, yet he cannot tell how long she will remain so; and if it can be shown that the decay, to which the loss is attributable, did not commence till a period subsequent to the Insurance, the Underwriter will be liable though she should be lost a few days after her departure. Parkes, c. 11: 5 Barr. 2804: Doug. (798.) 735.

The whole doctrine of Sea-worthiness was settled in the case of The M/lts Frigate, where the Insurance was upon a ship which had a latent defect totally unknown to the parties; and it was held, that the Insurers were not liable, because the ship was not Sea-worthy; and that however innocent or unfortunate the Insured
furred might be, yet if the ship be not sea-worthy at the

time of insuring, there is no contract at all between the

parties; because the very foundation of the contract, the

ship, was in the same condition as if it did not exist: and

the doctrine is the same in Insurance upon goods, as

when it is upon the ship itself. See Parkes, c. 11.

5. In Wager-Policies, or Policies upon Interest or no

Interest, the performance of the voyage in a reasonable
time and manner, and not the bare existence of the ship

or cargo, is the object of Insurance. But such Poi-

cies being contradictory to the real nature of an Insur-

ance, which is a contract of indemnity, seem to have

been originally bad, because Insurances were invented

for the benefit of trade, and not that persons unconcer-

ned or uninterested should profit by them. Indeed these

Wager-Policies were not introduced into England, till

after the Revolution, and the Courts of Law looked

upon them with a jealous eye; while the Courts of


The great distinction between Interest, and Wager,

Policies was, that in the former the Insured recovered

for the loss actually sustained, whether it was a total

or partial loss; in the latter he never could recover but for

a total loss. 2 Burr. 683. At length it was found that

the indulgence given to these fictitious, or to speak more

plainly, gambling Policies, had increased to such an

alarming degree as to threaten the very annihilation of

that security, which it was the original intent of In-

surance to introduce. It was, therefore, enacted by flat.

19 Geo. 2. c. 37, that Insurances made on ships or

goods, Interest or no Interest, or without further proof

of interest than the Policy, or by way of gaming or wager-

ing, or without benefit of salvage to the Insurer, should

be null and void. The statute, however, contains an

exception for Insurances on private ships of war fitted

out sedly to cruise against his Majesty's enemies: and

also provides, that any merchandizes or effects from any

ports or places in Europe or America, in the posseffion of

the crowns of Spain or Portugal, may be insured in

such way or manner, as if the statute had not been made.

And it has been decided, that the statute does not extend

to Insurances of foreign property, on foreign ships.

Dallason v. Fletcher; Doug. (501) 315.

The above provision of the statute relative to In-

surance from any ports or places in Europe or America, in

the possession of Spain or Portugal, is founded on the

regulations of those States to prohibit illicit trade; it is

loosely worded, and adminis of some latitude of inter-

pretation, perhaps more than the Legislature meant to allow.

See Parkes, c. 14. ad fin.

A Valued Policy is not a Wager-Policy; it originates

from the circumstances of its being sometimes trouble-

some to the trader to prove the value of his interest, or

to ascertain the quantity of his loss: he therefore gives

the insurer a higher premium to agree to estimate his

interest at a certain sum. In this case the plaintiff must

prove the interest, although he need not prove the

value of his interest. But if a Valued Policy were used

merely as a cover to a wager in order to evade the

statute, it would be void. 2 Burr. 1167: 4 Burr. 1566:

Parkes, c. 14.

Upon a joint capture by the army and navy, the offi-

cers and crew of the ships, before condemnation, have

an insurable interest, by virtue of the prize-act, which

usually passes at the commencement of a war. Parkes,
c. 14, cites Le Cras v. Hughes.

All contracts of Insurance made by persons having no

interest in the event about which they insure, or without

reference to any property on board, are merely wagers,

and as such void. Coop. 383. And wherever the court

can see upon the face of the Policy that it is merely a

contract of gaming, where indemnity is not the object

in view, they are bound to declare such Policy void.

Lowry v. Boardman, Doug. (451) 408.

6. Whenever an Insurance is made on a voyage ex-
plicitly prohibited by the common, statute, or maritime

law of this country, the Policy is void. And in such a

case it is immaterial whether the Underwriter did or did

not know that the voyage was illegal; for the Court

cannot substantiate a contract in direct contradiction to


manner, if a ship, though neutral, be insured on a voyage

prohibited by an embargo, such an Insurance is void.

Parkes, c. 12. An Insurance upon a smuggling voyage,

prohibited by the revenue laws of this country, is void;

but the rule has never been extended to cases against

the revenue laws of a foreign State, as no country pays

attention to the revenue laws of another. Parkes, c. 12:

Doug. 251.

The questions how far trading with an enemy in time

of actual war, and how far Insurances upon the goods of

an enemy are legal, expedient, or political, have been

frequently considered. As to the first it was expressly

prohibited, by the laws of ancient France, to the subjects

of that country; and it appears scarcely to admit of a

doubt in England, though the cases on the subject are

very few. See 2 Red. Acts 173: 1 Vesc. 317. In a very

modern case Lord Mansfield said, that by the maritime

law, trading with an enemy is cause of confiscation, pro-

vided you take him in the fact. But this does not ex-

tend to neutral vessels. The common law, however,
does not seem directly to forbid such trading; and one

argument to show that it does not, is, that several statu-

tes have been specially passed, in order to make such trading

illegal. 1 Term Rep. 84. As to the second question, the

Insurance of enemies' property; under the common law

it has been sanctioned; and Lord Hardwicke, in a case

before him, observed, that there had been no determina-

tion that Insurances on enemies' ships during the war is

unlawful, and that there had been several Insurances of

this sort during the (then) war, which a determination

on the legality of trading with an enemy might hurt.

1 Vesc. 319. The Legislature have, however, repeatedly

thought it necessary to interfere to prevent these Insur-

ances; and in the war which commenced in 1793, to

prevent all kind of trading with the enemy, (France,) whose

proceedings, indeed, were then such as to threaten the

destruction of all civil society. See flat. 21 Geo. 2. c. 4,

which expired about a twelvemonth after the (then)

war; and flat. 2 Geo. 3. c. 27, which not only renders

Insurances on French property void, during the war; but

also subjects the offender to three months' imprisonment,

and imposes the penalties of treason on all persons trad-

ing with the enemy, for perfidious a fact. Many strong and in-

genuous arguments have, however, been urged against

what is termed the impolicy of preventing such Insur-

ances. The most forcible arise from the assertions that

the
the balance of that trade has always been found in favour
of England, and that it has been the means of detecting
many of the enemy's plans. But as even the advocates
for this measure allow that no Insurance can be made
upon a voyage to a beleaguered port or garrison, with a view
of carrying assistance to them; or upon ammunition,
warlike stores, or provisions; falsely the admitting of any
fort of Insurance, is affording a tempting opening to
this which is acknowledged to be dangerous; and it
may be worthy the consideration of the Legislature to
settle both these points in a permanent manner. See at
length on this subject, Parkes, c. 12.

7. All Insurances upon commodities, the importation or
exportation of which is prohibited by law, are void; and
the rule prevails in this instance also, whether the Under-
writer did or did not know that the subject of the
Insurance was a prohibited commodity, Parkes, c. 15. And to
prevent all such Insurances, the Stat. 4 & 5 W. & M.
c. 15, inflicts a penalty of 500L. on any person who, by
way of Insurance, shall procure the importation of any
uncertained or prohibited goods, with a like penalty on the
Insured. Also by the Stat. 8 & 9 W. c. 36, for the
protection of the Royal Insurance Company, the importa-
tion of any foreign alumines or ultimines, by way of
Insurance, or otherwise, without paying the duties, &c.
is expressly prohibited. Wool being the staple manufacture
of this kingdom, it was always deemed a heinous
offence to transport it out of the realm; (see this Dic-
tionary, title Wool;) and as the practice of insuring it
tended only to encourage such illicit commerce, it has
been restrained by divers statutes; one of which enacted,
that whoever, by way of Insurance, undertakes to export
Wool from England to parts beyond the seas, shall be
able to pay 500L. the like penalty is also inflicted on the
Insured; and all Insurances on wool, wool-fells, &c.
are declared void. St. 12 Geo. c. 21, § 29, 33. And a
subsequent statute declares, that both the Insurer and
Insured shall be considered as exporters of Wool, &c.
and liable to the penalties inflicted by that statute, viz.
st. per sheaf, and three months solitary imprisonment,
and 3s. per lb. of wool, or 50L. in the whole at the elec-
tion of the offender, and the like imprisonment, and the
wool, &c. to be forfeited. Stat. 28 Geo. c. 3. § 8, 9, 10, 11, &c.

Upon the same principle that voyages prohibited by the
common, statute, or maritime law, may not be the
subject of Insurance; (see ante.) it is, that Insurances are
also void, on prohibited or uncertained goods; or if made
in any way to protect smuggling, or to defraud the Bri-
tish revenue laws; to obstruct the effect of the Navi-
gation Acts; or to import or export goods prohibited by
Royal Proclamation in time of war; and goods, which,
from their nature, are contraband, as arms and ammu-
nition to an enemy, or money, provisions, or ships, ac-
cording to peculiar circumstances. But Insurances on
goods, the exportation or importation of which are for
bidden by the laws of other countries, are valid. On the
whole of the last part of the subject, see Parkes, c. 13;
and this Dictionary, title Navigation Acts; Customs;

8. It is a question not decided, whether in cases of
fraudulent Insurance, where the Underwriter has run
away, he shall be liable to return the premium? In
some equitable cases, where the Underwriters have been
relieved on account of fraud, it has been decreed, that
the premium should be returned. 2 Vern. 206: 2 P. Wms.
170: and see Burr. 1561. And it has been laid down as
clear law, that if the Underwriter has been guilty of fraud,
an action lies against him, to recover the premium.
3 Burr. 1909. On the other hand, if the fraud be on
the part of the Insured, and is notoriouslypalpable and
gross in its nature, the Court of B. R. will order the
Underwriter to retain the premium. Parkes, c. 10, cites
Tyler v. Horn. By the Stat. 28 Geo. c. 38, § 47, to
prevent Insurance on exported wool, if the Underwriter
informs against the party insuring, he may retain the
premium; but if the Insurer inform he shall be entitled
to recover it back. When a Policy is void as a Wage-
Policy under Stat. 19 Geo. c. 37, though the ship ar-
rive safe, the Underwriter may retain the premium;
Luxury v. Bourdieu, Doug. 468. And to he may in the
case of a Re-affurance void, by the same statute. 3 Term
Rip. 266.

In general, when property has been insurbed to a larger
amount than the real value, the overplus premium, or if
goods are insured to come in certain ships from abroad,
but are not in fact shipped, the whole premium, shall be
returned. If the ship be arrived before the Policy is
made, the Insurer being apprized of it, and the Insured
being ignorant of it, it is entitled to have his premium
refored on the ground of fraud: but if both parties are
ignorant of the arrival, and the Policy be left or not left,
it seems the Underwriter ought to retain it, as if the
ship had been lost at the time of underwriting, he would
have been liable to pay the amount of his subscription.
Clauses are frequently imposed by the parties, that upon
the happening of a certain event there shall be a return
of premium. These clauses have a binding operation
on the parties, and the construction of them is a matter
for the Court and not for the Jury to determine. In
short, if the ship or property insured was never brought
within the terms of the contract, so that the Insurer never
ran any risk, the premium must be returned. Parkes,
c. 191: see 3 Burr. 1340: Clev. 668: 1 Shaw. 156:

Two rules are solemnly established, 1st. That whether
the cause of the risk not being run is attributable to the
fault, will, or pleasure of the Insured, the premium is
to be returned. Clev. 668. And, 2dly, Where the
contract is entire, whether for a specified time, or for a
voyage, and the risk is once commenced, and there is no
contingency on which the risk is to end at any immediate
period, there shall be no apportionment or return of pre-
mium afterwards. Hence, in cases of deviation, though
the Underwriter is discharged he shall retain the
premium. So in cases of Insurance for twelve months
where the loss happens in two; even though the pre-
mium is calculated at so much per month: likewise
where different ports are mentioned in the course of an
outward and homeward bound voyage, and the ship is
lost before setting out on her return; in all these cases
also the premium shall be retained. See Clev. 668:
Lutwane v. Thoslinson, Doug. (564) 584: Beres v.
Woodbridge, Doug. (751) 780. But it is otherwise if the
Jury find an express clause upon the subject of return
of premium; and, indeed, it seems that there never has
been an apportionment, unless there be something like

an usage found to direct the judgment of the Court.
But if there are two distinct points of time, or in effe,
two voyages, either in the contemplation of the parties, or by the usage of trade, and only one of the two voyages was made, the premium shall be returned on the other, though both are contained in one Policy. 3 Burr. 1257; 1 Black Rep. 318. See Parkes, c. 19, for a fuller discussion of the subject.

IV. BOTTOMRY is a contract by which the owner of a ship borrows money to enable him to carry on the voyage, and pledges the keel or bottom of the ship, as a security for the repayment. In which case it is understood, that if the ship be lost the lender loses also his whole money; but if it return in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest; who, nevertheless, as a trading nation for the benefit of commerce, and by reason of the extraordinary hazard run by the lender: and in this case the ship and tackle, if brought home, are answerable (as well as the personal of the borrower) for the money lent. But if the loan is not upon the vessel, but upon the goods and merchandise, which must necessarily be sold or exchanged in the course of the voyage, then only the borrower, personally, is bound to answer the contract; who, therefore, in this case, is said to take up money at Respondentia. It may be added, that in Bottomry, the lender runs the risk though the goods should be lost; and upon Respondentia, the lender must be paid his principal and interest, though the ship perished, provided the goods are safe. In this consists the chief difference between Bottomry and Respondentia; in most other respects they are the same. 2 Comm. 457, 8: Parke, c. 21.—The term is also spelt thus, Bottomee.

There is a third kind of contract, included in these terms, for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself; as when a man lends a merchant 1000l. to be employed in a beneficial trade, with condition to be repaid with extraordinary interest, in case a certain voyage be safely performed: which kind of agreement is sometimes called productum, and sometimes after maritime. But as this gave an opening for usurious and gaming contracts, especially upon long voyages, it was enacted by statute 1 Geo. 2. c. 37, that all monies lent on Bottomry, or at Respondentia, on vessels bound to or from the East Indies, shall be expressly lent only upon the ship, or upon the merchandise; that the lender shall have the benefit of salvage; and that if the borrower has not on board effects to the value of the sum borrowed, he shall be responsible to the lender, for so much of the principal as hath not been laid out, with legal interest, and all other charges, though the ship and merchandise be totally lost. See Parke, c. 21.

This statute has entirely put an end to that species of contract which arose from a loan upon the mere voyage itself, as far only as relates to India voyages; but these loans may still be made in all other cases, as at the common law, except in the following instance, which is another statute prohibition. The 2 Stat. 7 Geo. 1. c. 21, § 2, declares, that all contracts made or entered into by any of his Majesty's subjects, or any person in trust for them, for or upon the loan of any monies by way of Bottomry, on any ship or ships in the service of foreigners, and bound or designed to trade in the East Indies, or places beyond the Cape of Good Hope, (mentioned in the statutes relating to the English East-India Company,) shall be null and void.—This act, it should seem, does not mean to prevent the lending money on Bottomry, on foreign ships trading, from their own country, to their settlements in the East Indies. The purpose of the statute was only to prevent the people of this country from trading to the British settlements in India under foreign commissions; and to encourage the lawful trade thereto. It seems to be allowed that an American ship, since the declaration of American independency, is a foreign ship within the meaning of this statute. See Sunner v. Green, Parke, c. 21.

Bottomry is a contract of more antiquity than that of Insurance, and arose from the power given to the master of a ship, to hypothecate the ship and goods for necessaries in a foreign country. But the ship must be abroad, and in a state of necessity, to justify such an act of the master. See Moors 518; Hob. 111; South. 344; Parke, c. 21.

The principle upon which Bottomry is allowed, is, that the lender runs the risk of losing his principal and interest; and therefore it is not usury to take more than the legal rate. See 2 Ves. 148, 154: Cre. 208, 568: Hardr. 371; 1 Sir. 27; 1 Lev. 56; 1 Eq. Ab. 372. But if a contract were made by colour of Bottomry, in order to evade the statute against usury, it would then be usurious. 2 Ves. 238. And as the hazard to be run is the very basis and foundation of this contract, it follows, that if the risk be not run, the lender is not entitled to the extraordinary premium. 1 Vern. 263.

The risks to which the lender exposes himself are generally mentioned in the condition of the bond, and are nearly the same as those against which the Underwriter, in a Policy of Insurance, undertakes to indemnify. It has been determined, that piracy is one of these risks. Comb. 56. And if a loss by capture happen, the lender cannot recover against the borrower: but this does not mean a temporary taking, but such as occasions a total loss. Therefore, where a ship was taken and detained for a short time, and yet arrived at the port of destination within the time limited, it was held, that the bond was not forfeited, and the obligee may recover. Yates v. Wiliamson, Parke, c. 21. In the same case it was also settled, that a lender on Bottomry, or at Respondentia, is neither entitled to the benefit of salvage, nor liable to contribute in case of a general average; for which reason the statute 19 Geo. 2. c. 37, above mentioned, contains a positive provision to allow the benefit of salvage in the case there mentioned. If, however, a man fence Respondentia-interest on a foreign ship, and be obliged to contribute to an average loss, by the laws of her country, English Underwriters are bound to indemnify, Walpole v. Exr; Parke, c. 21.

If the ship be lost by a wilful deviation from the track of the voyage, the event has not happened, upon which the borrower was to be discharged from his obligation; as he was not lost by a peril to which the lender agreed to make himself liable. Skin. 152, 145: Holt. 126; 1 Eq. Ab. 372; 2 Ch. Ca. 140. And, indeed, it is generally expressly provided against in the bond. If the borrower becomes bankrupt after the loan of the money, and before the event happens which entitles the lender to repayment, the lender may prove his debt under the commission, after the contingency shall have happened,
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happened; as if the event had actually happened before the Commission of Bankruptcy ised. Stat. 19 Geo. 2. c. 32. § 2. See this Dictionary, title Bankrupt.

Bottomry and Respondentia may be inferred, provided it be specified in the Policy to be such Interests. And by act 19 Geo. 2. c. 57, the Lender alone can make such Insurance; and the Borrower can only infer the surplus value of the goods over and above the money borrowed. But money expended by the Captain for the use of the ship, and for which Respondentia-interest is charged, may be recovered under an Insurance on goods, specie, and effects, provided it is founded by the usage of trade. See Glover v. Black, 3 Barr. 394; 1 Black, Rep. 405; and Gregory v. Christie, Parkes, c. 1. p. 11.—Finally, where a person infuses a Bottomry Interest, and recovers upon the Bond, he cannot also recover upon the Policy. Parkes, c. 21. p. 428.

Form of a Respondentia-Bond.

Know all Men by these presents, That I A. B. of, &c. am bound and firmly bound to C. D. of, &c. in the sum, or penalty of 1000L. of good and lawful money of Great Britain, to be paid to the said C. D. or to his certain Attorneys, Executors, Administrators, or Assigns, for default in the payment, well and truly to be made, I bind myself, my Heirs, Executors, and Administrators, firmly by these presents, sealed with my seal. Dated the day of the year of the reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland King, Defender of the Faith, and so forth, and in the year of our Lord one thousand seven hundred and ninety-four.

The condition of the above-written obligation is such, that whereas the above-named C. D. hath, on the day of the date above-written, lent unto the above-bounded A. B. the sum of 500L. upon merchandizes and effects, to that value, laden or to be laden on board the good ship or vessel, called the , of the burden of tons, or thereabouts, now in the river Thames, whereas P. is commander: If the said ship or vessel do and shall, without convenient forces, submit and fail from, and out of the said river of Thames, on any voyage to any ports or places in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, and from thence do and shall fail and return unto the said river of Thames, at or before the end and expiration of thirty-six Calendar months, to be accounted from the day of the date above-written, and that without deviation (the dangers and casualties of the seas excepted): And if the above-bounded A. B. his heirs, executors, or administrators, do and shall, within—days next after the said ship or vessel shall be arrived in the said river of Thames, from the said voyage, or at the end and expiration of the said thirty-six Calendar months, to be accounted as aforesaid (which of the said times shall first and next happens), well and truly pay, or cause to be paid, unto the above-bounded C. D. his executors, administrators, or assigns, the sum of 500L. of lawful money of Great Britain, together with pounds of like money, by the Calendar month, and so proportionally for a greater or lesser time than a Calendar month, for all such time, and so many Calendar months, as shall be elapsed and run out of the said thirty-six Calendar months, over and above twenty Calendar months, to be accounted from the day of the date above-written; or, if in the said voyage, and within the said thirty-six Calendar months, to be accounted as aforesaid, on an utter loss of the said ship or vessel, by fire, enemies, rain of war, or any other casualties, shall unavoidably happen; and the above-bounded A. B. his heirs, executors, or administrators, do and shall, within six months next after the loss, pay and satisfy to the said C. D. bis executors, administrators, or assigns, a just and proportionate average on all goods and effects which the said A. B. carried from England on board the said ship or vessel, and on all other the goods and effects of the said A. B. which he shall acquire during the said voyage, and which shall not be unavoidably lost: Then the above-written obligation to be void, and of no effect, or effect to stand in full force and virtue.

Sealed and delivered (being first duly stamped) in the presence of A. B.

V. INSURANCE UPON LIFE, is a contract by which the Underwriter, for a certain sum, proportioned to the age, health, and profession of the person whole life insurance, engages that that person shall not die within the time limited in the policy; or if he do, that he (the Underwriter) will pay a sum of money to the person in whose favour the policy is granted. Parkes, c. 22.

These contracts have been found to be attended with so many advantages, for persons whose incomes might otherwise determine with their own lives, or those of others, that a Society obtained a Charter from Queen Anne, for the purpose of granting such annuities, and still subulls, under the name of The Amicable Society for a Perpetual Assurance Office. A similar Society is established, by deed inrolled in the Court of King's Bench, at Westminster, called, A Society for Equitable Assurance on Lives and Survivorships. The two Companies of The Royal Exchange and London Assurance also obtained a charter for the same purpose: and by act 33 Geo. 3. c. 14, the two Companies of The Royal Exchange Assurance for infuring of ships, and for insuring houses, &c. against fire, are authorized to grant annuities for lives or on survivorship; and are incorporated, for that purpose, by the name of The Royal Exchange Assurance Company. Private Underwriters may also enter into policies of this nature, if an Insured chooses to trust to their single security.

To avoid the insidious gambling which had begun to take place upon this, as well as on other Insurances, the act 14 Geo. 3. c. 48, provides, that "No Insurance shall be made on the life or lives of any person or persons, wherein the person for whose use the policy is made, shall have no interest, or by way of gaming, or wagering, but such Insurance shall be null and void." And, in order more effectually to guard against any imposition or fraud, and to be the better able to ascertain what the interest of the person entitled to the benefit of the Insurance really is, it is further enacted, by the same statute, "That it shall not be lawful to make any policy or policies, on the lives of any person or persons, or other event or events, without inferring in such policy or policies,
policies, the person's name interested therein, or for whole
life or benefit, or on whose account such policy is so made
or underwritten. And that in all cases where the Insurer
has an interest in such life or lives, event or events,
no greater sum shall be recovered or received from the
Insurer, than the amount or value of the interest of the
Insured in such life or other event."

On this statute it has been determined, that the holder
of a note for money, won at play, has not an insurable
interest in the life of the maker of the note: Dought v.
Edye, Parke 432.

The general rules and maxims which govern Insur-
ances in general, and on which so much has already
been said, apply also to this species of them. The fol-
lowing are such as relate more directly to the contract
now immediately in question:

As to the Risk.—In a Life-Insurance the Insurer
undertakes to answer for all those accidents to which the
life of man is exposed, except suicide, or the hands of justice.
The death must happen within the time limited by the
policy, otherwise the Insurers are discharged; and
though a man receives a mental wound during the ex-
istence of the policy, if he does not in fact die till after
the expiration of it, the Insurers are not liable. See
Wilks Jr. on opinion in Locy v. Office, 1 Term Rep. 252:
but if a man whole life is insured goes to sea, and the
ship in which he failed is never heard of afterwards, the
question whether he did or did not die within the time
infured, is a fact for the Jury to ascertain from the

With respect to the Loss.—This sort of policy being
on the life or death of a man, does not admit of the
distinction between total and partial losses. Parke 434.

If the Insurer become bankrupt before the loss happens,
the person interested may prove the debt, under the
commission, as if the loss had happened before it issued,
by virtue of the 5th 19 Geo. 2. 7 321: (See ante IV):
Cox v. Linard, Dought. 106 106. n.—A policy was
made for one year from the day of the date thereof:
the policy was dated September 3, 1697: The peron
died on September 3, 1698, about one o'clock in the morn-
ing, and the Insurer was held liable. 2 Salk. 625: 1 Lit.
Ross. 480. To prevent disputes, it is now usual to in-
sert in the policy the words, the first and last days in-
cluded. Parke 435.

Fraud equally vitiates policies on lives, as it does these
where there is a warranty that the person is in good
health, it is sufficient that he be in a reasonable good
state of health; for it can never mean that he is free
from the seeds of disorder. And even if the person,
whole life was insured, laboured under a particular in-
nfirmity; if it be proved by medical men, that, in their
judgment, it did not at all contribute to his death,
the warranty of health has been fully complied with,
and the Insurer is liable. 1 Black. Rep. 312: Parke
438. 9.

We have already seen (ante III. 8) that when the
risk is entire, and is once begun, there shall be no
apportionment of premium: if, therefore, the person
whole life was insured, should commit suicide, or be put
to death by the hands of justice; the next day after the
risk commenced, there would be no return of premium.
See Frye v. Fletcher, Comp. 669.

VI. INSURANCE AGAINST FIRE is a contract
by which the Insurer undertakes, in consideration of the
premium, to indemnify the Insured against all losses,
which he may sustain in his house, or goods, by means
of fire, within the time limited in the policy. Various
offices have been instituted for these kind of Insurances:
some establislhed by Royal Charter, others by deed inrolled;
and others which give security on land for the payment
of losses. The rules by which these Societies are govern-
eds, are established by their own managers, and a copy
given to every person at the time he insures so that
by his acquiescence, he is bound to his propofals, and
is fully apprised of these rules, upon the compliance or
non-compliance with which, he will or will not be en-
titled to an indemnity. There are not, therefore, many
cases on the subject in our law-books. The following
are the most requisite to be noticed:

The London Assurance Company insert a clause in their
proposals, by which they declare, that they will not hold
themselves liable for any damage by fire occasioned by
any invasion, foreign enemy, or any military or injured
power whatever. Under this proviso it has been held,
that the Insurers were not exempted from, but liable to
make good, a loss by fire occasioned by a mob, which
arose under pretence of the high price of provisions, and
burned down the plaintiff's dwelling house. 2 Win. 463.

The Sun Fire-Office, in addition to the above words,
adds, civil commotion. It was held, that under these
latter words the Company were exempted from, and not
liable to satisfy, losses occasioned by rioters, who rove
in the year 1780, to compel the repeal of a statute which
had pafl'd in favour of the Roman Catholics. Langdale
v. Majors, Parke, c. 23.

When a loss happens, the Insured is bound by the pro-
posals of most of the Societies, and ought, in all cases,
to give immediate notice of the loss, and as particular
an account of the value, &c. as the nature of the case
will admit. He must also produce a certificate of the
Minister and Church-wardens as to his character, and
their belief of the loss sustained, and the truth of what
he advances. Parke 438.

In these Insurances against fire, the loss may be either
partial or total, and some of the Offices, if not all, ex-
presly undertake to allow all reasonable charges, attend-
ing the removal of goods in cases of fire, and to pay the
sufferer's loss, whether the goods are destroyed, lost, or
damaged, by such removal. Parke 449.

These policies are not, in their nature, assignable, nor
can any interest in them be transferred without the con-
sent of the Office; contrary to what has been expressly
determined in cases of Marine Insurances. 1 Term Rep.
26: It is provided, however, that when any person
dies, the interest shall remain to his heir, executor, or
administrator, respectively, to whom the property insur-
ed belongs; provided they procure their right to be in-
dorsed on the policy, or the premium be paid in their
name. Parke 449.

It is necessary that the party injured should have an
interest or property in the house insured, at the time
the policy is made out, and at the time the fire happens:
and therefore, after the lease of the house is expired, the
Insured's assigning the policy does not oblige the Insurers
to make good the loss to the assignee. Lynch v. Dacre,
Bro. P. C: and see 2 Ark. 554.
The Premium upon common Insurances is £1 per cent. for any sum not exceeding 1000l. and 2½ d. per cent. from 1000l. upwards. Besides where there is a duty to Government under flat. 22 Geo. 3. c. 48, of 1½ d. per cent. but which latter does not extend to Insurances upon public hospitals.

By flat. 17 Geo. 3. c. 50, § 24, if any person sign a policy of Insurance against fire, not being duly flamed, he shall forfeit 10/. and must pay 5½. over and above the usual fum duties, (see ante l. 1.) before it can be received in evidence.

The same principles as to stand, and the return of premium, apply to cases in Insurance against fire as to all other contracts of Insurance.

INTAKERS, a kind of thieves in the northern parts of England, so called, because they did take in and receive such booties as their confederates, the outpartners, brought to them from the borders of Scotland; they are mentioned in flat. 2 Hil. 4 c. 7.

INTASSARÉ. See Tassarum.

INTENDMENT OR LAW, intellectus legis. The understanding, intention, and true meaning of law. Lord Coke says, the judge ought to judge according to the common Intendment of law. 1 Esp. 73.

Intendment shall sometimes supply that which is not fully expressed or apparent, and when a thing is doubtful, in some cases, Intendment may make it out; also many things shall be intended after verdict, in a cause, to make a good judgment, but Intendment cannot supply the want of certainty in a charge in an indictment for any crime, &c. 5 Rep. 121.

Sometimes a thing is necessarily intended by what precedes or follows it; and where an indifferent construction may have two Intendments, the rule is to take it most strongly against the plaintiff. Spoon. 162. Though if a plaintiff declares, that the defendant is bound to him by obligation, it shall be intended that the obligation was sealed and delivered; if one is bound in a bond, and in the foresaid of the bond it is not expressed upon to whom the money shall be paid, or if paid to the obligor; the law will intend it to be paid to the obligee; and where no time is limited for payment of the money, it shall be intended to be presently paid. 2 Litt. Abr. 71.

The intent of parties in deeds, contracts, &c, is much regarded by the law; though it shall not take place against the direct rules of law: the law doth not in conclusions of estates admit them regularly to pass by Intendment and implication, in devises of lands they are allowed, with due restrictions. Pangb. 261, 262. Where seisin of an inheritance is once alleged, it shall be intended to continue till the contrary is shewn. Jones 61. A court pleaded generally to be held, secundum conditionem shall be intended held according to the common law. Goldb. 111.

By Intendment of law every parson, or rector of a church, is supposed to be reddit in his benefice, unless the contrary be proved. Co. Lit. 78 b.

One part of a manner by common Intendment shall not be of another nature than the rest. Co. Lit. 73 b.

Of common Intendment a will shall not be supposed to be made by collusion. Co. Lit. 78 b. The law presumes that every one will act for his best advantage; therefore credits the party in whatever is to his own prejudice. Fin. Law 10: Mar. 53. Usury shall not be intended, unless expressly found by the jury. Bridg. 112: 10 Rep. 59. Covin shall not be intended or presumed in law, unless expressly avouched. Bridg. 112.

When one word may have a double Intendment, one according to the law, and another against the law, that Intendment shall be taken which is according to law; and this by a reasonable Intendment. 3 Dub. 506: Titus. 50. See further titles Implication; Intendment; Deed; and such other titles as are applicable to this subject.

Intendment of crimes. In ancient times felonious attempts, intending the death of another, were adjudged felony; for the will was taken for the fact. Bract. 1 E. 3. But at this day the law does not generally punish Intendments to do ill, if the intent be not executed; except in case of treason, where intention proved by circumstances shall be punished as if put in execution. 3 Esp. 188. And if a person enter a house in the night, with intent to commit burglary, it is felony: and by statute 2 & 3 Geo. the party maliciously cutting off or disabling any limb or member, with an intent to discourage, &c, is felony. See also Plowd. 474. Assault, with intent to commit robbery on the highway, is made felony punishable by transportation; flat. 7 Geo. 2. c. 21.

—Intention of force and violence makes rots criminal. 3 Esp. 9. Where men do evil, and say they intend none; or if the intention be only to beat, and they kill a person, they are to be punished for the crime done. Plowd. 345. If a man entering a tavern, &c, commit a trespass, the law will judge that he originally intended it. 8 Rep. 147. See this Dictionary, titles Homicides; Treason; &c.

Intent, or Intention. The words of deeds shall be construed according to the Intent of the parties, and not otherwise. The intent shall be destroyed where it does not agree with the law. Pl. C. 160. b: 162. b.

In every agreement the Intent is the chief thing that is to be considered; and if by the act of God, or other means not arising from the party maliciously cutting off or disabling any limb or member, with an intent to discourage, &c, is felony. See also Plowd. 474. Assault, with intent to commit robbery on the highway, is made felony punishable by transportation; flat. 7 Geo. 2. c. 21.

—Intention of force and violence makes rots criminal. 3 Esp. 9. Where men do evil, and say they intend none; or if the intention be only to beat, and they kill a person, they are to be punished for the crime done. Plowd. 345. If a man entering a tavern, &c, commit a trespass, the law will judge that he originally intended it. 8 Rep. 147. See this Dictionary, titles Homicides; Treason; &c.

Common usage and reputation frequently govern the matter, and direct the Intention of the parties; as upon sale of a barrel of beer the barrel is not sold, but upon sale of a hogshead of wine it is otherwise. Saw. 124. Har. 3. The Intention of a man is not always to be pursued in equity; as if a man settles a term in trust for one and his heirs, yet it shall go to the executor. 1 Fern. 164.

All deeds are but in nature of contracts, and the Intention of the parties reduced into writing, and the Intention is to be chiefly regarded. In an act of parliament the Intention appearing in the preamble shall control the letter of the law; and from the regard which the law itself gives to the Intention of the party, it is, that where there is none by render, there shall be no dower; and all rent or recognizance shall not be extinguished by leasing a fine to the party. Fern. 59. See 14 Fin. Abr. 5. Inten. 1, and this Dictionary, titles Deed; Limitation; Agreement; Statute; &c.

Intentionone, a writ that lies against him who enters into lands after the death of tenant in dower or for life, &c, and holds out him in reversion or remainder. F. N. B. 203.
INTER CANEM & LUPUM, Words formerly used in appeals to signify the crime being done in the twilight. Inter Placita de Trin. 7 Ed. 1. Rot. 12. Glou. Plac. Cor. apud Novum Casrum. 24 Ed. 6. Rot. 6. This in Herefordshire, they call the mock-shadows, corruptly the mock-floods, and in the north, daylight-gate; others, bewitch baunok and buzzard. Cowell.

INTERCOMING, is where the commons of two manors lie together, and the inhabitants of both have time out of mind depaupered their cattle promiscuously in each. Cowell. See title Common.

INTERDICTION, [interdictio; interdictum.] An ecclesiastical censure, prohibiting the administration of divine ceremonies. See Wolf, Hist. an. 1357. It is a general excommunication of a whole country or province; it is mentioned in some of our historians, e. g. Kinghtou tells us, anno 1208, that the Pope excommunicated King John, and all his adherents, Et toto terram Anglicam populos interdicto, which began the first Sunday after Easter, and continued six years and one month; during all which time nothing was done in the churches besides baptism and confessions of dying people.

AN INTERDICTION, IN the name of Christ, We the Bishop, in behalf of the Father, Son, and Holy Ghost, and of St. Peter, the chief of the apostles, and in our own behalf, do excommunicate and interdict this church, and all the chapels therein belonging, that no man from thenceforth may have leave to sing mass, or to hear a mass, or in any way to administer any divine office, nor to receive God's tithes without our leaves; and unforfever shall present to sing or hear mass, or perform any divine office, or to receive any tithe, contrary to this interdict, on the part of God the Father Almighty, and of the Son, and of the Holy Ghost, and on the behalf of St. Peter, and all the saints, let him be accursed and separated from all Christian society, and from entering into Holy Mother Church, where there is forgiveness of sins; and let him be Anathema, Maranatha, for ever, with the devils in hell. Fiat, fiat. fiat. Amen.—Du Cange.

This severe church-censure has been long disdained. See further titles Papist; Rome.

INTERDICTIONUM, IN the civil law, was a prohibition nearly equivalent to the injunction of our Court of Chancery. See title Injunction.

INTERDICTED OF WATER AND FIRE. Were anciently those persons who suffered banishment for some crime; by which judgment, order was given that no man should receive them into his house, but deny them fire and water, and the two necessary elements of life, which amounted as it were to a civil death; and this was called legimus maxsimum, says Livo.

INTEREST, [interest,] Is commonly taken for a chattel real, as a lease for years, &c. and more particularly for a future term; in which case it is said in pleading, that one is possessed of de interesse termini. Therefore an estate in lands is better than a right or interest in them: though, in legal understanding, an interest extends to estates, rights, and titles, that a man hath in, or out of lands, &c. so as by grant of his whole interest in such land, a reversion therein, as well as possession in fee-simple, shall pass. Co. Lit. 314. Because no livery of seisin is necessary to a lease for years, such lease is not said to be sealed, or to have true legal seisin of the land. Nor indeed does the bare lease vest any estate in the lessee, but only gives him a right of entry on the cestment, which right is called his interest in the term, or interest termini; but when he has actually so entered, and thereby accepted the grant, the estate is then and not before vested in him, and he is possessed not properly of the land but of the term of years; the possession or seisin of the land remaining still in him who hath the freethold. 1 Inst. 46: See 2 Comm. 144. 2 c. 9. 1: and this Dictionary, titles Legate; Term; Estate.

A mortgage is an interest in land, and on non-payment, the estate is absolute in law, and his interest is good in equity to entitle him to receive and enjoy the profits till redemption or satisfaction; and on a foreclosure, he hath the absolute estate both in law and equity. 9 Mod. 196. See title Mortgage.

INTEREST OR MONEY, The legal profit or recompense allowed, on loans of money, to be taken from the borrower by the lender. The rate of legal Interest has varied and decreased, according as the quantity of specie in this kingdom has increased by accretions of trade, the introduction of paper credit, and other circumstances. The flat, 37 H. 8, confined Interest to 10 per cent.; and 10 did the flat, 13 Eliz. c. 8. The flat, 21 Jac. 1. c. 17, reduced it to 8 per cent.; and the flat, 12 Car. 2. c. 13, to 7: and, lastly, by flat, 12 Ann. p. 2. c. 16, it was brought down to 5 per cent. per annum; which is now the extremity of legal Interest that can be taken on a loan of money. But yet if a contract which carries Interest be made in a foreign country, our courts will direct the payment of Interest, according to the law of the country in which the contract was made. 1 Eq. Ab. 293: 1 P. Wms. 395: Sections 2 Bro. C. R. c. 2. Thus Irish, American, Turkish, and Indian, Interest have been allowed in our courts to the amount of even 10 or 12 per cent.; for Interest depends on local circumstances, and the refusal to enforce such contracts would put a stop to all foreign trade. And by flat, 14 Geo. 3. c. 79, all bond side mortgages and securities on estates or property in Ireland, or the plantations, bearing Interest not exceeding 6 per cent. shall be legal, though executed in Great Britain. 2 Comm. 457. c. 30. IX. 4. See further this Dictionary, title U. of.

Where an estate is devised for payment of debts, Chancery will not allow Interest for book debts. 3 Ch. 94. Where lands are charged with payment of a sum in gross, they are also chargeable in equity with payment of Interest for such sum. Fins. R. 286. Interest is recovered by way of damages, where damages are recovered ratione donatione debitis, but not where damages only are recovered, for Interest is not recovered actione damnum. per pecun. J. 2 Salk. 625. No Interest to be allowed for cohs. 14 Vin. Abr. title Interest. In a long unsettled partnership account, rendered intricate by the neglect of a partner, he shall have no Interest on the balance when settled. 1 Bro. C. R. 230. See further titles Bankrupt; Account; Damages; Mortgage, &c.

INTEREST ON LEGACIES. In case of a vested Legacy, due immediately, and charged on land, or money in the funds, which yield an immediate profit, Interest shall be payable thereon from the testator's death; but if charged only on the personal estate, which cannot be immediately got in, it shall carry Interest only from the end of the year after the death of the testator. 2 P. Wms. 26. 25. See title Legacy; Executor.
INTERREGNUM.

INTERREGNUM. See title Injunction; Injunction, Interpleader.

INTERPLEADER. Fr. enterpleader; Lat. interplecere. To divers, or to a point incidentally happening at it were between, before the principal cause can be determined. Interpleader is allowed if the defendant may not be charged to two severally, where no default is in him: as if one brings detinue against the defendant upon a bailment of goods, and another against him upon a trover, there shall be Interpleader, to ascertain who hath right to his action. 2 Danw. Abr. 779.

If two bring several detinues against A. B. for the same thing, and the defendant acknowledges the action of one of them, without a prayer of Interpleader, they shall not interplead on the request of the other; for the Interpleader is given for the security of the defendant, that he may not be twice charged, and he hath waived that benefit. 18 Ed. 3, 22.

If one brings detinue against B. and counts upon a delivery of goods, &c., to re-deliver to him, and another brings detinue against him also, and counts for likewise; if there be not any privity of bailment between them, yet they shall interplead, to avoid the double charge of the defendant, and also because the court cannot know to whom to deliver the thing detained, if both should recover. Br. Enterplead. 3. And upon such several detinues, if the defendant says that he found it, and travels over the bailment, they shall interplead; for then he is chargeable as well to the one as to the other; so if he says that they delivered jointly, abfique bar, that they delivered it as they have counted; but it is otherwise, if the defendant doth not travel the bailment, because if there was a bailment, he is chargeable only to the bailor, and may plead in bar against the others. 2 Danw. 782.

Where two bring several detinues for one thing, and the defendant prays that he may interplead, and delivers the thing to the court, and before the award of the Interpleader, one discontinues the suit, the other shall not have judgment; but if he discontinues his suit after the Interpleader, the other may have judgment. 1 H. 6, 19.

If a recovery be had upon an Interpleader, judgment shall be given to recover the thing demanded against the defendant; and not against the garnisher; in case of garnishment, &c. 2 Danw. 783. When two have interpleaded in detinue, he that recovers shall recover damage against the other. Br. Damage 68.

There was formerly Interpleader relating to delivery of lands by the King to the right heir, where two persons out of wardship were found heirs. 7 Rep. 45: Stann. Proc. cap. 17: Br. title Enterpleader. And anciently this head (spelt Enterpleader) made a great title in the law.

There are also Bills of Interpleader in a Court of Equity. Thus, where two or more persons claim the same thing by different or separate interests, and another person not knowing in which of the claimants he ought of right to render a debt or duty, or to deliver property in his custody, fears he may be hurt by some of them, he may exhibit a bill of Interpleader against them. In this bill he must state his own rights, and their several claims; and pray that they may interplead, so that the court may adjudge to whom the thing belongs, and he may be indemnified. Mistrod's Treat. 47. See Bank. 368; 1 Eq. Ab. 80; 2 Eq. Ab. 173; 1 Burr. 37; Pratt. Reg. 58.

The principles upon which courts of equity proceed in these cases, are similar to those by which the courts of law are guided in the case of bailment: the courts of law compelling interpleader between persons claiming property, for the indemnity of a third person in whose hands the property is, in those cases only where, by agreement of both claimants, the property has been bailed to a third person; and the courts of equity extending the remedy to all other cases (leaving those of bailment to the common law) in which the court in conscience ought to extend. Mistrod's Treat. 125.

If a bill of Interpleader does not show that each of the defendants, whom it seeks to compel to interplead, claims a right, both the defendants may demur; one because the bill shows no claim of right in him; the other, because (for that very reason) the bill shows no cause of Interpleader. 1 Vern. 248. Or if the bill shows no right to compel the defendants to interplead, whatever right they may claim, each defendant may demur. As the court will not permit such a bill to be brought in collision with either claimant, the plaintiff must annex to his bill an affidavit that it is not exhibited in collusion with any of the parties; the want of which affidavit is a cause of demurrer. 1 Vern. 248. A bill of this nature generally prays an injunction to restrain the proceedings of the claimants in some other court; and as this may be used to delay the payment of money by the plaintiff, if any is due from him, he ought by his bill to offer to pay the money due into court. Mistrod's Treat. 126.

After a decree on a bill of Interpleader, there is generally an end of the suit as to the plaintiff; and if he dies, the cause may proceed without revivor. 1 Vern. 351. See further titles Chancery; Injunction, &c.
INTERREGNUM. There cannot be any Interregnum in this country, by the policy of the Constitution; for the right of sovereignty is fully vested in the successor to the throne by the very defence of the crown. Hence the statutes passed in the first year after the restoration of Car. II. are always called the acts of the 12th year of his reign; and all the other legal proceedings of that reign are reckoned from the year 1648, and not from 1660.

INTERROGATORIES. Are particular questions in writing, demanded of witnesses brought in to be examined in a cause, especially in the Court of Chancery. These Interrogatories must be exhibited by the parties in the suit on each side; which are either direct for the party that produces them, or counter on behalf of the adverse party: and generally both Plaintiff and Defendant may exhibit direct, and counter, or cross Interrogatories.

They are to be pertinent and only to the points necessary, and either drawn or prepared by counsel, and must be signed by them: if they are leading, viz.: such as these, Did not you do or see such a thing, &c. the depositions on them will be suppressed; for they should be drawn, Did you see, or did you not see, &c. without leaning to either side; and not only where they point more to one side of the question than the other; but if they are too particular, they will likewise be suppressed. The Commissioners, &c. who examine witnesses on Interrogatories, must examine to one Interrogatory only at a time; they are to hold the witnesses to every point interrogated; and take what comes from them on their examination, without asking any idle questions, or putting down any pertinent answers not relating to the Interrogatories, &c. See titles Depositions; Equity.

If a contempt be committed in the face of the Court, the offender may be instantly apprehended and imprisoned at the discretion of the Judges, without any further proof or examination. S. T. N. C. P. C. 73. 6. In matters arising at a distance, the Court generally grant a rule to show cause why an attachment should not issue, or in very flagrant instances of contempt, an attachment issue in the first instance. Salk. 84. Sirra. 181. 564. This process is intended to bring the party into Court, and when there he must either stand committed or put in bail, in order to answer such Interrogatories as shall be administered to him for the information of the Court. These Interrogatories are in the nature of a charge or accusation; and if any of them are improper, the defendant may refuse to answer it, and move the Court to have it struck out. Sira. 444. If the party can clear himself upon oath, he is discharged; but if perjured, may be prosecuted for the perjury. 6 Mol. 73. If the contempt be of such a nature, that, when the fact is once acknowledged, the Court can receive no further information by Interrogatories than it is already possessed of (as in case of a recital): the defendant may be admitted to make such simple acknowledgment, and receive his judgment without answering to any Interrogatories; but refusing to answer or answering evasively is punishable as a high and repeated contempt. 4 Comm. 237. c. 20.

With regard to thisingular mode of trial, thus admitted in this one particular instance, and to contrary to the genius of the common law in any other, it may be Vol. II.
Blackstone ranks Intrusion as a species of injury by ousted, or animation of possession from the freehold, and states it to be, 'The entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion. It happens, says he, where a tenant for term of life died seised of lands and tenements, and a stranger enters thereto, after such death of the tenant, and before any entry of him in remainder or reversion. The difference between Intrusion and Abatement, he states to be, that an Abatement is always to the prejudice of the heir, or immediate devisee; an Intrusion is always to the prejudice of him in remainder or reversion. So that an Intrusion is always immediately consequent upon the determination of a particular estate: an Abatement is always consequent upon the defect or devise of an estate in fee-simple. 3 Comm. 169. c. 10. (2.)

There is a writ of Intrusion, which lies where the tenant for life, &c. dies; but if a man deth intrude after the death of such a tenant, he in reversion in ten shall not have this writ, but is put to his remedy: for it is but for him who hath the reversion in fee-simple, &c. after the death of tenant for life, or in dower, &c. New Nat. Br. 509. Also one having such a fee-estate in remainder, shall have writ of Intrusion; and the assignee of the remainder may bring it, as well as an heir, &c. New N. Br. 509.

As he who enters and keeps the right heir from the possession of his ancestor is an Intruder punishable by common law; so he who enters on the King's land and takes the profits, is an Intruder against the King. Co Litt. 277. For this Intrusion information may be brought; but before office found, he who occupies the land shall not be said to be an Intruder, for Intrusion cannot be but where the King is actually poisoned, which is not before office; though the King is intitled to the profits, is an Intruder against the heir, &c. New Nat. Br. 169.

The right to the priviledge or licence to be in the King's land, is a writ by which the right heir is set right, and is put to his remedy. 4 Bl. 475. But notwithstanding the law requires that the Inventory be exhibited within three months after the death of the person, if it is done afterwards, it is good, for the Ordinary may dispense with the time, and issue in some cases, whether it shall be exhibited, or not; as where creditors are paid, and the will performed, &c. Raym. 470. These Inventories proceed from the civil law; and as, by the old Roman law, the heir was obliged to answer all the tenant's debts, so, by our law, Inventories should be made of the substance of the deceased, and should be no further charged. 3 Bl. 375. But as to the valuation, it is not conclusive, but the real value must be found by a jury; if they are undervalued, the creditors may take them as appraised; and if over-valued, it shall not be prejudicial to the executor.

In common parlance, &c. the term Inventory is applied on other and more frequent occasions, as on the sale of goods, by agreement between parties, accounts of the goods sold (supposing them passing with the possession of an house, &c.) are called Inventories. So the accounts taken by sheriffs, or goods levied and sold under executions, under difficulties of the goods detained for rent, are called Inventories, &c. See this Dictionary, title Executor, V. 4; Distresses.

IN VENTORY, Inventorium.] A list or schedule containing a true description of all the goods and chattels of a person deceased at the time of his death, with their value appraised by indifferent persons, which every executor or administrator ought to exhibit to the Bishop or Ordinary at such time as he shall appoint. W. A. T. S. 2. p. 696. By Stat. 11. Hen. 8. c. 5. executors and administrators are required to make and deliver in upon oath to the Ordinary, inventories indented, of which one part shall remain with the Ordinary, and the other part with the executor or administrator. The intention of this statute was for the benefit of the creditors and legateses, that the executor or administrator might not conceal any part of the personal estate from them: though as to the valuation it is not conclusive, but the real value must be found by a jury; if they are undervalued, the creditors may take them as appraised; and if over-valued, it shall not be prejudicial to the executor.

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INVITATORY & VENITARIUM, Thofe hymns and psalms which were sung in the church to invite the people to prayer: they are mentioned in the Statutes of St. Paul's Church. MS.

INVOICE, A particular account of merchandise, with its value, custom, and charges, &c. sent by a merchant to his factor or correspondent in another country. See Stat. 12 Car. 2. 2. 34.

IN VOLUNTARY MANSLAUGHTER, Differs from homicide excusable by {misdventure in this; that {misdventure always happens in consequence of some lawful act, but this species of Manslaughter in consequence of an unlawful act. Yet, in general, when an Involuntary killing happens in consequence of an unlawful act, it will be either murder or Manslaughter, according to the nature of the act which occasioned it.

4 Comm. 192. 3. See title Homicide.

JOI

TO INURE, To take effect; as the pardon inureth.

JOKE, One who buys or sells cattle for others. There are also flock-jobbers, who buy and sell flocks for other persons, and gamble in the funds for themselves. See titles National Debt; Stock-jobbers.

JOCALIA, Fr. joca, jest. Jocals; derived from the Lat. jocum, jocis, and jocanum, which comprehended every thing that delighted; but, in a special and more restrained sense, it signifies those things which are entertainments to women, and which in France they call their own; as diamonds, ear-rings, bracelets, &c. But in this kingdom a wife shall not be entitled to jewels, diamonds, &c. on the death of her husband, unless they are suitable to her quality, and the husband leaves a sufficent estate to pay debts.

1 Rol. Abr. 811. See titles Baron and Fees, IV. of ten.


JOCARIUS, A jester. In an ancient deed of Richard, abbot of Berrow, to Henry Lestert, among the witnesses to it was William Jocarius Dominus Abbatissae. In Dom. the latter is called Jocardius Joculator Regis, the King's jester.

JOCAS, Sax. Jocas, oen cielani porten. Just a little farm or manor; in some parts of Kent a yoklet, as requiring but a small yoke of oxen to till it.

JOCATOR, See Jocatur.

JOCUS PARTITVS. It is so called when two proposals are made, and a man hath liberty to choose which he will. Bracton, lib. 4. tract. 1. c. 32. 2. Hist. Magn. c. 4.

JOINER, In ACTION, The coupling or joining of two in a suit or action. F. N. B. fol. 118, 201, 221. In all personal things, where two or more parties are chargeable to the one, the one may satisfy it, and accept of satisfaction, and bind his companion; and yet one cannot have an action without his companion, nor both only against one. 2 Lev. 77. In joint personal actions against two defendants, if they plead severally, and the plaintiff is nonsuit by one before he hath judgment against the other, he is barred (in that suit) against both. 203: 307. A person, in consideration of a sum of money paid to him by A. and B. promises to procure their cattle delivered to be delivered; if they be not delivered, one joint action lies by the parties; for the consideration cannot be divided. 307, 203: 1 Dowm. Abr. 5.

And where two joint owners of a sum of money are robbed upon the highway, they are to join in one action against the hundred. It is otherwise if they have several properties. Latch. 127: Dy. 357.

Upon a joint grievance all parties may join; as the inhabitants of a hundred, &c. And an action brought against owners of a ship, in case of goods damaged, &c. quasi ex contractu, must be brought against all of them.

3 Lev. 221: 3 Mod. 321: 2 Sulk. 440. Though one partner acts in trade, where there are many partners, actions are to be brought against all the partners jointly for his acts. 1 Sulk. 252. If two men are partners, and one of them sells goods in partnership, action for the money must be brought in both their names. 244.

But where there are two partners in merchandise, and
one of them appoints a factor, they may have several writs of account against him, or they may join. Mor 188. And if one of the merchants dies, the survivor is to bring the action. 2 Salk. 444.

If one man calls two other men thieves, they shall not join in an action against him; and one joint action will not lie for, or against several persons for speaking the same words; for the wrong done to one is no wrong to the other; and the words of the one are not the words of the other. 1 Danw. 5: Palm. 371.

So, in assault and battery, on a joint trespass, the plaintiff may declare severally; but it remains joint till severed by the declaration. 2 Salk. 454. A man cannot declare in an action against one defendant for an assault and battery, and against another for taking away his goods; because the trespasses are of several natures. But where they are done by two persons jointly at one time, they may be both guilty of the whole. Style 145: 10 Rep. 66.

If two men procure another to be indicted falsely of battery, he may have action against them both jointly; and it is the same if two conspire to maintain a suit, though one only give money, &c. Latch. 226.

Tenants in common cannot join in an action of waste against their lessee; but it is otherwise in the case of Coparceners or joint-tenants. Mor 34. See those titles; and further on this subject, this Dictionary, title Action.

JOINER or COUNTIES. There can be no joiner of Counties for the finding of an indictment; though in appeal of death, where a wound was given in one county, and the party died in another, the jury were to be returned jointly from each county, before the statute 2 & 3 Ed. 6. c. 243; but by that statute the law is altered; for now the whole may be tried either on indictment or appeal, in the county wherein the death is. See titles Indictment; Homicide; Trial.—Where several persons are assigned upon the same indictment or appeal, and severally plead not guilty, the prosecutor may either take out a joint venire or several. But after a joint være, several ones cannot be taken out. H. P. C. 256.

JOINER in DEMURRER. See title Answerer.

JOINDURE in BATTLE. See title Battel.

JOINDURE or ISSUE. When one party denies the fact pleaded by his answerant who has tendered the issue thus, "And this he prays may be inquired of by the country," or "And of this he puts himself upon the country," the party denying the fact may immediately subjoin, "And the said A. B. doth the like." Which done, the issue is said to be joined. See title Issue.

JOINT ACTIONS. See titles Action; Joiner in Action.

JOINT and SEVERAL. An interest cannot be granted jointly and severally; as if a man grants the next admission, or makes a lease for years, to two jointly and severally, these words (severally) are void, and they are joint-tenants. A power or authority may be joint and several. 5 Rep. 19. Joint words of parties shall, by construction of law, be taken respectively and severally. 5 Rep. 7. 6b.

When it appears by the count, that several covenants have, or are to have, several interests or estates, there where the covenant is made with the covenants, and each of them, these words make the covenant several, in respect of their several interests. 5 Rep. 19.

And see Jenk. 265, 266. pl. 63. Grant of the next avoidance to two, and each of them, to present A. to the said church, is good; for the contention is avoided by retaining both to present A. Jenk. 263. pl. 63. See 14 Vin. Abr. 48, 489, and this Dictionary, titles Covenant; Esuare.

JOINT EXECUTORS. See title Executor, II. V. 35.

JOINT FINES. If a whole will is to be fixed, a Joint Fine may be laid, and it will be good for the necessity of it; but in other cases, fines for offences are to be severally imposed on each particular offender, and not jointly upon all of them. 1 Roll. Rep. 35: 11 Rep. 42: Dyer 211. See title Fines for Offences.

JOINT INDICTMENTS. See title Indictment.

JOINT LIVES. A bond was made to a woman dem sola, to pay her so much yearly as long as she and the obligor should live together, &c. Afterwards the woman married, and debt being brought on this bond by husband and wife, the defendant pleading, that he and the plaintiff's wife did not live together; but it was adjudged, that the money should be paid during their Joint Lives, so long as they were living at the same time, &c. 1 Luse. 555. Were a person in consideration of receiving profits of the wife's lands on marriage, during their Joint Lives, was to pay a sum of money yearly, in truth for the wife, though it was not paid every year during, &c. it was held, that the payment shall be intended to continue every year also during their Joint Lives. 1 Luse. 559. Leave for years to husband and wife, if they, or any issue of their bodies should so long live, has been adjudged so long as either the husband, wife, or any of their issue should live; and not only so long as the husband and wife, &c. should jointly live. Mor 339. See titles Agreement; Covenant, &c.

JOINT TENANTS, As it is frequently written, or rather, as seems most certain,

JOINT TENANTS, final tenants, or qui conjunctis tenent. They who hold lands or tenements by joint-tenancy.

An ESTATE in JOINT TENANCY is where lands or tenements are granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. In conformance of such grants an estate is called an estate in Joint-tenancy: Litt. § 277: and sometimes an estate in journet, which word, as well as the other, signifies an union or conjunction of interest; though in common speech the term Jointure is now usually confined to that joint estate, which, by virtue of the statute 27 Hen. 8. c. 10, is frequently vested in the husband and wife before marriage, as a full satisfaction and bar of the woman's dower. See title Jointure.

I. Of the Nature of an Estate in Joint-tenancy, and how created.

II. The Consequences and Incidents of such Estates; and of the Acts of Joint-tenants to aliquote or incumber the joint.

III. How it may be featured or destroyed.

I. The Creation of an estate in Joint-tenancy depends on the wording of the deed or devise, by which the tenant claims title; for this estate can only arise by purchase or grant, that is, by the act of the parties; and
never by the mere act of law. Now if an estate be given to a plurality of persons, without adding any restrictive, exclusive, or explanatory words, as if an estate be granted to A. and B. and their heirs, this makes them immediately joint tenants in fee of the land; for the law interprets the grant so as to make all parts of it take effect, which can only be done by creating an equal estate in them both. As therefore the grantor has thus united their names, the law gives them a thorough union in all other respects. 2 Comm. 180. c. 12.

The essential difference between joint tenants and tenants in common is, that joint tenants have the lands by one joint title, and in one right, and tenants in common by several titles, or by one title and by several rights; this is the reason, says Lord Coke, that joint tenants have one joint freehold, and tenants in common have several freeholds, though this property is common to them both, even that their occupation is undivided, and neither of them knows his part in several. Co. Lit. 189. a.

The properties of a joint estate are derived from its unity, which is fourfold; the unity of interest, of title, of time, and of possession; or in other words, joint tenants have one and the same interest accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession.

First. They must have one and the same interest. One joint tenant cannot be entitled to one period of duration or quantity of interest in lands, and the other to a different. One cannot be tenant for life, and the other for years; one cannot be tenant in fee, and the other in tail. 1 Lev. 188. But if land be limited to A. and B. for their lives, this makes them joint tenants of the freehold; it to A. and B. and their heirs, it makes them joint tenants of the inheritance. Lit. § 277. If land be granted to A. and B. for their lives, and to the heirs of A., here A. and B. are joint tenants of the freehold during their respective lives, and A. has the remainder of the fee in severitv; or if land be given to A. and B. and the heirs of the body of A., here both have a joint estate for life, and A. hath a general remainder in tail. Lit. § 285.

In the creation of a joint-tenancy in fee, particular care must be taken not to insert the words, and the survivor of them. For the grant of an estate to two and the survivor of them, and the heirs of the survivor, does not make them joint tenants in fee, but gives them an estate of freehold during their joint lives, with a contingent remainder in fee to the survivor. Whether during their joint lives the fee continues in the grantor or remains in abeyance, and whether they can convey their estate, and what is the proper mode of conveyance to be used, are points which have been much agitated, and which perhaps are not yet quite settled: They were all mentioned in the case of Pick v. Edwards, 5 P. Wms. 372. In that case lands were devised to B. and C. and the survivor of them, and the heirs of such survivor, in trust to sell. Ed. Talbot held, that the fee was in abeyance, that the trustees joining in a fate of the premises might make a title to a purchaser by way of gavel, and that the heirs joining might be of use, as it would supply the want of proving the will, but that in every other respect it would be void. In this case the word gavel must not be understood in its strict technical sense; all that is meant by it is, that the fine operates by way of conclusion upon, or bar to the vendor, till the contingency happens upon which the fee is to arise, and then it passes to the purchaser. This doctrine is open to objection: (see 1 P. Wms. 505; 2 Sound. 580) but it seems to be generally acquiesced in, and perhaps the liberality of succeeding times may think a common conveyance, by lease and re-lease, or bargain and sale, sufficient in these cases to pass the fee, without either fine or a common recovery. 1 Lev. 191. a. in n.

Secondly, Joint-tenants must also have a default in title; their estate must be created by one and the same act, whether legal or ilJegal; as by one and the same grant, or by one and the same will. Lit. § 278. Joint-tenancy cannot arise by devise or act of law; but, as has been already said, merely by purchase or acquisition, by act of the party; and that if act be one and the same, the two tenants would have different titles; and if they had different titles, one might prove good, and the other bad, which would absolutely destroy the joint-tenancy. 2 Comm.

Thirdly, There must also be an unity of time; their estates must be vested at one and the same period, as well as by one and the same title. As in case of a present estate made to A. and B. or a remainder in fee to A. and B. after a particular estate; in either case A. and B. are joint tenants of this present estate, or this vested remainder. But if after a lease for life, the remainder be limited to the heirs of A. and B. and during the continuance of the particular estate, A. dies, which vests the remainder of one moiety in his heir; and then B. dies, whereby the other moiety becomes vested in the heir of B.; now A.'s heir and B.'s heir are not joint-tenants of this remainder, but Tenants in common; for one moiety vested at one time, and the other at another. 1 Lev. 188. Yet where a feu was made to the use of a man and such woman as he should afterwards marry, for term of their lives, and he afterwards married; in this case it seems to have been held, that the husband and wife had a joint estate, though vested at different times; because the use of the wife's estate was in abeyance, and direct to the inheritance, and on that event had relation back, and took effect from the time of creation. Dy. 340; 1 Rep. 101.

Lastly, In joint-tenancy there must be an unity of possession. Joint tenants are said to be vested per moi et per ten. by the half or moiety, and by all; that is, they each of them have the entire possession, as well as every parcel as of the whole. They have not one of them a half of one half or moiety, and the other of the other moiety, neither can one be exclusively vested of one acre, and his companion of another; but each has an indivisible moiety of the whole, and not the whole of an indivisible moiety. Lit. § 488; 5 Rep. 101; End. 2. l. 5. r. 5. c. 26. And, therefore, if an estate in fee be given to a man and his wife, they are neither properly Joint-tenants, nor Tenants in common, for husband and wife being considered as one person in law, they cannot take the estate by moieties, but both are entitled to the entire estate per moi et per ten.; the consequence of which is, that neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor. Lit. § 465; 1 Lev. 187; 4 Bent. Ab. 1. Cat in ejecto, 3; 2 Park. 120; 2 Lev. 59.
If a father makes a deed of bargain and sale of lands to his son, to hold to him and his heirs, &c. to the use of the father and son, and their heirs and assigns for ever, they are Joint tenants. 2 Co. 83. And if the father devises lands to his eldest and other sons, they are Joint tenants, and not tenants in common. Gell. 28; Popes. 52.

A man devised lands to his wife for life, and after her death to his three daughters, and the heirs males of their bodies, &c. The wife and the two eldest daughters died; and it was held that the surviving daughter should have the whole for life; the three others being Joint tenants for life, and several tenants in tail of the inheritance. Lid. 47.

Two or more purchase land, and advance the money to equal parts, and take a conveyance to them and their heirs; this makes a Joint tenancy with the chance of survivorship: But where the proportions of money are not equal, they are in nature of partners; and though the legal estate survives, the survivor shall be as a trustee for the others, in respect of the sums paid by each. So, if where two having purchased jointly, afterwards one lays out a considerable sum on improvements, &c. and dies, in equity it shall be a lien on the lands, and a trust for the representative of him who advanced it.

1 F.; Ab. 251.

A rent of 10l. a year is granted to A. and B. to hold to one until he marry, and to the other till he is prevented to such a church; it was held they were Joint tenants, and that if either of them die before marriage or, referendum, the rent shall survive. Co. Lit. 180. If lands are given to two men, and the heirs of their bodies, the remainder to them and their heirs; they shall be Joint tenants for life, tenants in common of the estate-tail, and Joint tenants of the fee-simple. Ibid. 181. But where a remainder is limited to the right heirs of two persons, in this case they shall take severally, for the words be joint. 5 Rep. 8. Land is granted to a man, and such woman as shall be his wife; here is no Joint tenancy, but the man will have the whole: Though if one make a covenant in fee to the use of himself, and of such wife as he shall after marry, for their lives; when he takes a wife, they are Joint tenants. Co. Lit. 188: 1 Rep. 101.

One person is in by the common law, and another by limitation of use, yet they may be Joint tenants by virtue of a deed of grant, &c. Tent. Cont. 330. Lands given in the premises of a deed to three, to hold to one for life, remainder to another for life, remainder to the third for life, they are not Joint tenants, but shall take successively. Dyre 106.

In a case in the King's Bench during Lord Holt's time, the question was, how the surrender of a copyhold to the use of three sons and two daughters, equally to be divided, and their respective heirs, ought to be construed; and the following passage in 1 Isth. 190. b. was much relied upon, by two of the judges, as an authority to show, that the words equally to be divided, imply a tenancy in common. "If a verdict find that a man hath due parts manners, &c. in tres partes divisures, this shall not be intended to be in common; but if verdict be in tres partes dividendarum, then it seemeth they are tenants in common by the intendment of the verdict." But Lord Holt, who was for a Joint Tenancy, observed, that no such matter appears in the case of 21 E. 4, there cited by Lord Coke in the margin as his authority, and that he was not positive therein, but only wrote it as his conjecture. Tiber v. Wigg, 1 P. Wms. 14. &c. and Mr. Coke's notes there; Todd. 391: Com. Rep. 88, 92: 12 Mod. 296: 1 Ed. Raym. 622. In the latter books, and in P. Wms. the case is reported very much at large; and as the arguments on each side are very elaborate, it is an authority fit to be referred to whenever the doubt; whether there shall be a tenancy in common or Joint tenancy; and tenants acknowledged authority in cases of surrender of copyholds. 1 Will 241. See also Angl. Ej. (E.) v. Rans, Dem. Prec. September 1727: Banister v. Gyles, 2 P. Wms. 380: Bro. v. P. C.; Hall v. Bigly & al. Bro. P. C.; Havers v. Haves, 1 Will 165; Coftin v. Gofin, or Dem. v. Gofin, Cont. 660. In this last case the word equally was deemed sufficient to create a tenancy in common in a will; and Lord Mansfield declared the opinion of the two Judges, who differed from Holt, to be the better and more liberal one; and After J. noticed, that equally to be divided, had been adjudged a tenancy in common, even in a deed. See 1 Ith. 190. b. n.; and further title Tenants in Common.

II. Upon the principles of a thorough and intimate union of interest and polli-fiction, depend many other consequences and incidents to the Joint tenant's estate, besides those already casually noticed. If two Joint-tenants let a verbal lease of their land, referring rent to be paid to one of them, it shall ensue to both, in respect of the joint-reversion. Co. Lit. 275. If their lease old, and the lease to one of them, it shall also ensue to both, because of the primacy or relation of their estate. Ibid. 192. On the same reason, livery of seisin, made to one Joint-tenant, shall ensue to both of them. Ibid. 499: and the entry, or re-entry, of one Joint-tenant is as effectual in law as if it were the act of both. Ibid. 319. 354. In all actions also relating to their joint-estate, one Joint-tenant cannot sue or be sued without joining the other. Ibid. 195. But if two or more Joint-tenants be seized of an advowson, and they present different clerks, the bishop may refuse either, because neither Joint-tenant hath a several right of patronage, but each is seized of the whole: and, if they do not both agree within six months, the right of presentation shall lapse. But the Ordinary may, if he pleases, admit a clerk preferred by either, for the good of the church, that divine service may be regularly performed; which is no more than he otherwise would be entitled to do, in case their disagreement continued, so as to incur a lapse: and, if the clerk of one Joint-tenant be so admitted, he shall keep up the title of both of them, in respect of the primacy and union of their estate. Co. Lit. 185. Upon the same ground it is held, that one Joint-tenant cannot have an action against another for trespass in respect of his land, for each has an equal right to enter on any part of it. 3 Leam. 322. But one Joint-tenant is not capable by himself to do any act, which may tend to defeat or injure the estate of the other; as to let leases, or to grant copyholds. 1 Leam. 234: And, if any waste be done, which tends to the destruction of the inheritance, one Joint-tenant may have an action of waste against the other, by contravention of the statute. W. F. 21. 22: 2 Isth. 403. So too, though at common law no action of account
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Account lay for one Joint-tenant against another, unless he had constituted him his bailiff or receiver, 1 Inj. 280; yet now by the statute 4 Ann. c. 16, Joint-tenants may have actions of account against each other, for receiving more than their due share of profits of the tenements held in Joint-tenancy. This action is however seldom brought; but the practice is, to apply to a court of equity to compel an account. 2 Comm. c. 12. See pug. 111, 2.

From the same principle also arises the remaining grand incident of joint-estates, viz. the doctrine of survivorship; by which, when two or more persons are settled of a joint-estate of inheritance, for their own lives, or for a certain term, or are jointly poossed of any chattel-interest, the intire tenancy, upon the decease of any of them, remains to the survivor, and as long as the last survivor shall be entitled to the whole estate, whatever it be, whether an inheritance or a common freehold only, or even a lease, all the intrest of either, the intrest becomes separate and distinct, the Joint-tenancy instantly ceases. But, while it continues, each of the two Joint-tenants has a concurrent intrest in the whole; and therefore, on the death of his companion, the sole intrest in the whole remains to the survivor. For the intrest which the survivor originally had, is clearly not diverted by the death of his companion; and no other person can now claim to have a joint-estate with him, on no one can now have an intrest in the whole, accruing by the same title, and taking effect at the same time with his own: neither can any one claim a separate interest in any part of the tenements; for that would be to deprive the survivor of the right which he has in all, and every part. As therefore the survivor's original intrest in the whole still remains; and as no one can now be admitted, either jointly or severally, to any share with him therein; it follows, that his own intrest must now be entire and severable; and that he shall alone be entitled to the whole estate (whatever it be) that was created by the original grant. 3 Comm. c. 12.

This right of survivorship is called by our ancient authors the jus accretendi, because the right, upon the death of one Joint-tenant, accumulates and exchanges to the survivors. Brac. I. 4. tr. 3. c. 9. § 3. Fleta. I. 3. c. 4. And this jus accretendi ought to be mutual; which seems to be one reason why neither the King, nor any corporation, can be a Joint-tenant with a private person. For here is no mutuality; the private person has not even the remotest chance of being entitled to the estate by benefit of survivorship; for the King and Corporation can never die. 4 Comm. c. 12. cites 5 Inj. 190: Fleta L. 83: 2 Lec. 12.

But Lord Coke expressly says, "there may be Joint-tenants though there be not as equal benefit of survivorship: as if a man let lands to A. and B. during the life of A: if B. die, A. shall have all by survivorship: but if A. die, B. shall have nothing." 1 Inj. 181. The mutuality of survivorship does not therefore appear to be the reason, why a Corporation cannot be a Joint-tenant with a private person: for two Corporations cannot be joint-tenants together: but whenever a joint estate is granted to them, they take as tenants in common. 6 Lit. 190.—The above is Mr. Christian's observation on the preceding passage in the Commentaries.—It may however be remarked, that Blackstone merely states this as one reason, against the King or a Corporation being a Joint-tenant with a private person. In the passage cited from 1 Inj. 181, the assertion that Joint-tenancy may be without equal benefit of survivorship, and the case put by Lord Coke, do not extend to instances where no benefit of survivorship can possibly arise to either party; as must be the case between two Corporations.

If there are two Joint-tenants for life, it is laid each of them hath an estate for life, and for the life of his companion; and for that reason, if one of them make a lease, it shall continue not only during the life of the lessee, but after his death during the life of his companion, as long as the original estate out of which it was derived: Thought it hath been resolved, that such a Joint-tenant hath only an estate for his own life, and a possibility of survivorship to his companion to be entitled to his part; therefore if he grants over his estate, that possibility is gone; and if he dies, the estate of the grantee shall revert to him in reversion. 6 Rolls 441: Jones 55: 3 Salk. 264, 265.

If one Joint-tenant grants a rent charge, &c. out of his part, and dies, the survivor shall have the whole land discharged: for he hath the land by survivorship, and not by descent from his companion. 6 Lit. 289: 1 Co. Inj. 184. And if one Joint-tenant in fee makes a lease for years, reserving a rent, and death; the survivorshall have the reversion, but not the rent, because he claims by title paramount. 6 Co. Lit. 18.

Joint-tenants, as to the possession of lands in jointure, are held by entitlers of the whole, and of every part equally; (and the possession of any Joint-tenant is the possession of both;) but as to the right of the land, they are held only of moieties; therefore if one grant the whole, a moiety only passes. 1 Bost. 3: Co. Eliz. 95. If there be two Joint-tenants, and each make a several lease of the whole, their several moieties only shall pass, by each lease. 1 Will. 1. Joint-tenants cannot stylishly dispose of more than the part that belongs to them; where they join in a feoffment, in judgment of law each of them gives but his respective part; so it is of a gift in tail, lease for life, &c. And for a condition broken they shall only enter on a moiety of the lands, 1 Inj. 180. Every Joint-tenant hath a right, as to his own share, to several purposes, as to give, lease, forfeit, &c. 1 Inj. 186: Lit. 237. One Joint-tenant may lease to his companion; but one Joint-tenant cannot make a feoffment, or grant to another Joint-tenant, though he may release. 1 Fos. 78: Raym. 157. By whatever means a Joint-tenant comes to the estate of his companion, by conveyance, &c. from him, it may endure by way of release. 2 Cro. 649.

A gift of trespas or trover may not be brought by one Joint-tenant against his companion, because the possession of one is the possession of the other. 1 Salk. 290. One Joint-tenant may dilinat for rent alone; and he may avow in his own right, and as bailiff to the others, but he cannot avow solely; and he may not bring debt alone. 5 Mon. 73, 159.

If a Joint-tenant in fee-simpler is indebted to the King, and dies; the lands cannot be extended in the hands of the survivor, who claimeth not from his companion, but
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but from the text of the

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Where there are two Joint-tenants, and one is indebted to the King, and dies, the other shall hold the land discharged of the debt: But if husband and wife have a term jointly, and the husband is indebted to the King, and dies, in such case the term shall be subject to the debt, because the husband might have disposed of the whole estate.

P. 321.

Judgment in action of debt, is had against one joint-tenant for life, who, before execution, releases to his coparcener; adjudged that the money is still liable to the judgment during the life of the releasor; but, if he had died before execution, the survivor should have had the land discharged of the debts and judgment. 6 Eliz. 78. Husband and wife were Joint-tenants, and action was brought against the husband alone, who made default, thereupon the wife prayed to be received; but it was not allowed, because she was not a party to the writ; but he in reversion may be received, and plead joint-tenancy in abatement of the writ. Miss. Tit. 242.

If a female sole and A. B purchase a term for years jointly, and afterwards intermarry, the joint-tenancy continues. Dyer 318; 2 Nels. Adr. 1535. But where there are two women Joint-tenants of a lease for years, and one takes husband, and dies, the term shall survive; if the husband hath not aliened her part, and severed the jointure: But it is elsewhere in case of goods, vested in the husband by marriage. 1 Eliz. 185.

If there be two Joint-tenants, and one releaseth to the other, this paeth a fee without the word heirs, because it refers to the whole fee, which they jointly took, and are possessed of, by force of the first conveyance; but tenants in common cannot release to each other; for a release supposeth the party to have the thing in demand; but tenants in common have several distinct freeholds, which they cannot transfer, otherwise than as persons who are solefeeld. Co. Lit. 5. 200. 6.

III. An Estate in joint-tenancy may be severed and destroyed, by destroying any of its constituent units.

1. That of time, which respects only the original commencement of the joint-estate, cannot indeed (being now past) be affected by any subsequent transactions. But, 2. The Joint-tenants’ estate may be destroyed, without any alienation, by merely dissolving their possession. For Joint-tenants being feild per nos et per tot, every thing that tends to narrow that interest, so that they shall not be feild throughout the whole, and throughout every part, is a severance or destruction of the jointure. And therefore, if two Joint-tenants agree to part their lands, and hold them in severalty, they are no longer Joint-tenants; for they have no joint interest in the whole, but only a several interest respectively in the several parts. And for that reason also, the right of survivorship is by such separation destroyed. Co. Lit. 188, 193. By common law all the Joint-tenants might agree to make partition of the lands, but one of them could not compel the other to do. Lit. 4. 250; for this being an estate originally created by the act and agreement of the parties, the law would not permit any one or more of them to destroy the united possession without a similar universal consent. But now by the statutes 31 Hen. 8. c. 1. 32 Hen. 8. c. 32, Joint tenants either of inheritances or other less estates, are compellable by writ of partition to divide their lands.

And the statutes 8 and 9 W. 3. c. 11., made perpetual by statutes 3 and 4 Anne. c. 18., directs the manner of proceeding upon such writs.

In this case of Partition of estates, as also in settling accounts between the parties, resort is most frequently had to a Court of Equity. For though accounts may be taken before auditor; in an action of account, in the courts of common law, (see this Dictionary, title Account,) yet a court of equity, by its modes of proceeding, is enabled to investigate, more effectually, long and intricate accounts in an adverse way, and to compel payment of the balance. In the case of partition, if the titles of the parties are in any degree complicated, it is extremely difficult to proceed in the courts of common law; and where the tenants in possession are feoffed of particular estates only, the persons entitled in remainder cannot be bound by the judgment in a writ of partition. The courts of equity having thus assumed the jurisdiction in complicated cases, seem by degrees to have been considered, as having on these subjects a concurrening jurisdiction with the courts of common law, in cases where no difficulty could have attended the proceeding in those courts. Miss. Tit. 159.—111.

3. The Joint-tenancy may be severed by destroying the unity of title. As if one Joint-tenant aliens and conveys his estate to a third person, here the Joint-tenancy is severed, and turned into a tenancy in common; for the grantees and remaining Joint-tenant hold by different titles; (one derived from the original, the other from the subsequent, grantor;) though till partition made the unity of possession continues. Lit. 8. 252; 39. 321. But a devise of one’s share by will is no severance of the jointure: for no testament takes effect till after the death of the testator; and by such death the right of the survivor, which accrued at the original creation of the estate, and has therefore a priority of the other, is already vested. 1 Eliz. 184; Lit. 4. 287, and see 6 Burr. 1488, and this Dictionary, title Will. And it has been determined that articles of marriage entered into by a female infant Joint-tenant, who died before attaining her age of twenty-one years, were not in equity a severance of the Joint-tenancy. May v. Hook; in Cont. 1. 146. 6. in n.

4. It may be also destroyed by destroying the unity of interest. If there therefore be two Joint-tenants for life, and the inheritance is purchased by, or descends upon either, it is a severance of the jointure. Cro. Eliz. 270. Though if an estate is originally limited to two for life, and after to the heirs of one of them, the freehold shall remain in jointure, without merging in the inheritance: because, being created by one and the same conveyance, they are not separate estates, (which is requisite in order to a merger,) but branches of one entire estate. 2 B. R. 60: 1 Eliz. 152. If a Joint-tenant in fee makes a lease for life of his share, this defeats the jointure, for it destroys the unity both of title and interest. Lit. 8. 525. 3. And wherever, or by whatever means, the jointure ceases or is severed, the right of survivorship is, or just interfurbs, the same infant, ceases with it. 1 Eliz. 153. Yet if one of three Joint-tenants alien his share, the two remaining tenants still hold their parts by Joint-tenancy and survivorship. Lit. 8. 294. And if one of three Joint-tenants releases his share to one of his companions, though the joint-tenancy is destroyed with regard to that part, yet the
the two remaining parts are still held in jointure; for they still preserve their original constituent unities. Lit. § 304.

Whenever, therefore, by any act or event, different interests are created in the several parts of the estate, or they are held by different titles, or if merely the possession is separated, so that the tenants have no longer these four indispensable properties, a sameness of interest and undivided possession, a title vesting at one and the same time, and by one and the same act or grant; the joint-tenancy is instantly dissolved. 2 Comm. 186, c. 12. Of this proposition the following cases may afford some further illustration:

When a fee-simple estate is limited by a new conveyance, there may be the fee, and another an estate for life; but when two persons are tenants for life first, and one of them gets the fee-simple, these jointure is severed. 2 Rep. 6. If a reversion descends upon one joint-tenant, the jointure is severed, and by operation of law they are then tenants in common, 1 Bulst. 113. And a diversity has been taken, that where the reversion comes to the freehold, the jointure is destroyed; but when the freehold comes to him in reversion, and to another, it is otherwise. Cro. Eliz. 470; 743.

Two infants are joint-tenants, and one of them makes a feoffment of his moiety; this will be a severance of the joint-tenancy. Bro. Jointen. 13. A joint-tenant in fee grants a lease for life, and then dies; it severs the jointure; though if the tenant for life die before either of the joint-tenants, then it is in le des quo prors. Co. Lit. 193. If there be two joint-tenants in fee, and one makes a lease for life to a stranger, the freehold and reversion is severed from the jointure: but in case one of such joint-tenant leaves his part for years, the jointure of the inheritance is not severed; and another joint-tenant shall have the reversion by survivorship. Lat. 729, 1173. Two joint-tenants are of a lease for twenty-one years, and one lets his part but for three years; the jointure is severed, so that survivorship shall not take place. 1 Infr. 183, 192. In case three persons are jointly interested in a term, and one of them mortgages his third part; by this it has been held, the joint-tenancy was severed. 1 Infr. 158. But where one joint-tenant of lands, in order to secure the jointure, and provide for his wife, makes a deed of gift of his moiety to her; this being made to the wife, and void in law, cannot be made good. Prev. Canc. 124.

If two joint-tenants be of a term, and one commits felony, or is outlawed, &c., the jointure will be severed; for the king shall have the moiety by the forfeiture; and if the joint-tenancy is of personal things, all will be forfeited. Plowd. 410.

Where there are several joint-tenants in fee-tail, and some of them suffer a common recovery of the whole, the estate of the others is turned to a right; and contingent remainders may be destroyed, and a new estate gained thereby. Edw. 241. And if one joint-tenant leaves a wife, he severs the jointure; but it does not amount to an actual turning out of his companion. 1 Salk. 286. A joint-tenant in fee makes a lease for years, of the land, to begin prenently, or in future, and dies, it is a severance of the joint-tenancy, and cannot be avoided by the survivor; because immediately, by force of the lease, the lessor hath a right in the same land, of all that to the lessee belongs. Lit. 286.

In general, it is advantageous for the joint-tenants to dissolve the jointure, since thereby the right of survivorship is taken away, and each may transmit his own part to his own heirs. Sometimes, however, it is disadvantageous to dissolve the joint-estate: as if there be joint-tenants for life, and they make partition, this dissolves the jointure; and though before they each of them had an estate in the whole for their own lives and the life of their companion, now they have an estate in the moiety only for their own lives merely; and, on the death of either, the reversioner shall enter on his moiety. 1 Jef. 55. And therefore if there be two joint-tenants for life, and one grants away his part for the life of his companion, it is a forfeiture; for, in the first place, by the severance of the jointure, he has given himself in his own moiety only an estate for his own life; and then he grants the same land for the life of another; which grant, by a tenant for his own life merely, is a forfeiture of his estate; for it is creating an estate which may, by possibility, last longer than that which he is legally entitled to. 4 Lev. 237: 1 Infr. 252: 2 Comm. 187, c. 12.

In ancient times joint-tenancy was favoured by the courts of law, because it was more convenient to the Lord, and more consistent with feudal principles: but those reasons have long ceased, and a joint-tenancy is now everywhere regarded, as Lord Cowper says it is in equity, as an odious thing: 1 Salk. 158. See further this Dictionary, title Tenants in Common.

JOINT-TENANCY in Things Personal.—Goods and chattels may belong to their owners in joint-tenancy, and in common, as well as real estates. They cannot indeed be vested in coparcenerly, because they do not descend from the ancestor to the heir, which is necessary to constitute coparceners, but if a horse, or other personal chattel, be given to two or more absolutely, they are joint-tenants thereof, and unless the jointure be severed, the same doctrine of survivorship shall take place as in estates of lands and tenements. Lit. § 282: 1 Vern. 482. And in like manner if the jointure be severed, as by either of them selling his share, the vendor and the remaining part-owner shall be tenants in common without any jus accrescendi or survivorship. Lit. § 321. So also if 100l. be given by will to two or more, equally to be divided between them, this makes them tenants in common, as the same words would have been done in regard to real estates. 1 Eq. Ab. 292. Redundary legacies and executors are also joint-tenants, unless the testator uses some expression which converts their interest into a tenancy in common: and if one dies before a division or severance of the surplus, the whole that is undivided will pass to the survivor or survivors. 2 P. Wms. 347: 529; and see 3 Bro. C. R. 255: 1 Bro. C. R. 118: 3 Bro. C. R. 455. But for the encouragement of husbandry it is held, that a flock on a farm, though occupied jointly, shall always be considered as common, and not as joint property, and there shall be no survivorship therein. 1 Vern. 217. So, for the encouragement of trade, there is no survivorship of a capital or flock in trade among merchients and traders: for this would be ruinous to the family of the deceased partner; and it is a legal maxim, jus accrescendi inter mercatores, pro beneficio commercii, locum non habet. 1 Jef. 182.
JOINTURE OF LANDS. A Jointure is a Settlement of lands and tenements made to a woman in consideration of marriage; or it is a Covenant, whereby the husband, or some friend of his, affureth to the wife, lands or tenements, for term of her life: it is so called, either because it is granted at the natural satisfaction of marriage, or for that land in frank-marriage was given jointly to husband and wife, and after to the heirs of their bodies, whereby the husband and wife were made as it were joint-tenants during the coverture. 3 Rep. 27. By some, a Jointure is defined to be A Bargain and contract of livelihood, adjoined to the contract of marriage; being a competent provision of freehold lands or tenements, &c. for the wife, to take effect after the death of the husband, if the herself is not the cause of the determination or forfeiture of it. 1 Inst. 35: 4 Rep. 2, 3. See this Dict. title Dower, IV.

It hath been often ruled in Chancery, that if lands, money, goods, &c. are devise'd to a woman, without laying in lieu or satisfaction of dower, &c. the wife shall have both; because a devise is to be considered as a bounty, and implies a consideration in itself; but if it be laid in lieu or recompence of dower, where the wife cannot have both, but may waive which the pleafes. 2 Binn. Cafer. 24: 2 Vern. 45: 5 Preced. Chas. 113. Also vide Bro. Dowl. 692: 4 Rep. 4: 2 Vern. 365: 1 Eq. Abr. 218: 1 Vern. 463.

A devise by will cannot be averred to be in satisfaction of dower, unless it be so expressed in the will. 1 Inst. 36, b: 3 Rep. 1.

But though a devise cannot at law be averred to be in satisfaction of dower, if the will is silent, yet sometimes the Courts of Equity have been induced, by special circumstances, to consider such devises as a satisfaction; and it has therefore been decreed, that the wife should make her election to waive her dower and accept under the will, or to waive the will and take her dower. In Laurence v. Lawrence, 1 Vern. 463, Senesi C. made such a decree; because he inferred an intention to give in bar of the wife's right of dower, or to give her dower, and the husband's right to the heir of the devisees. 2 Vern. 462. All this was reversed by Lord Keeper Wright; and the reversal was afterwards affirmed in the Hufle of Lords, 2 Bro. P. C. 483. And this is said to have settled the doctrine.


However, notwithstanding the doctrine on which the case of Laurence v. Lawrence was finally decided, and the frequent recognition of that case, devises have been since frequently deemed a satisfaction of dower, on account of very strong and special circumstances; as where allowing the wife to take a double provision would have been quite inconsistent with the dispositions of the will. On this latter principle Northington C. is said to have decided for a satisfaction of dower in Arnold v. Kempstede, July 1704: and Camden C. in Pillarum v. Galley, Sue. 1 Inst. 36, b, in n. If a Jointure be made to a woman, during coverture, in satisfaction of dower, she may waive it after her husband's death; but if she enters and agrees thereto, the is concluded: for though a woman is not bound by any act when she is not at her own disposal, yet if she agrees to it when she is at liberty, it is her own act, and the cannot avoid it. 4 Co. 3: Also vide Co. Lit. 29, b; 36, b;
JOINTURE.

A husband, tenant in tail, remainder to his wife for life, makes a feoffment in fee tail, remainder to his wife for life, for her Jointure; it is no bar to the wife's dower, because it may be avoided by a remitter to her first estate for life. Moor 872. If lands are conveyed to a woman before marriage, in part of her Jointure only, and after marriage, other lands are granted to her, first in fee, and after marriage, other lands are granted to her, first in tail, remainder to the heir for life, makes a feoffment in fee tail. The title only, and after marriage, other lands are granted to her, first in tail, remainder to the heir for life, makes a feoffment in fee tail. The title only, and after marriage, other lands are granted to her, first in tail, remainder to the heir for life, makes a feoffment in fee tail.

Where a Jointure is made of lands, (according to the direction of the statute of 27 H. 8. 10.) before coverture, and after the husband and wife alien them by fine, she shall not have dower in any other lands of her husband; but it is otherwise where the Jointure is made after marriage, when the wife's estate is waivable, and her election of choosing comes not till the death of the husband.

The important question whether a Jointure on an Infant, before marriage, may be waived, was not quite settled till the case of Drury v. Drury, which was heard before Ed. Northw'ng. C. Hil. T. 1 Geo. 3. The points determined by Ed. Northw'ng. in that case were, first, That the Stat. of 27 H. 8. which introduced Jointures, extends to adult women only, Infants not being particularly named; and therefore That, notwithstanding a Jointure on an Infant, she may waive the Jointure, and elect to take dower; secondly, That a covenant by the husband, that his heirs, executors, or administrators shall pay the wife an annuity for her life, in full for her Jointure, and in bar of dower, without expressing that it shall be charged on any particular lands, or be secured out of lands generally, is not a good equitable Jointure within the statute; thirdly, That a woman, being an Infant, cannot, by any contract previous to her marriage, bar herself of a distributive share of her husband's personalty, in case of his dying intestate.

But from this decree there was an appeal to the House of Lords; and, after hearing the judges, it was decided that a Jointure on an Infant could not be waived, on which they were divided in opinion, the decree was reversed as to all the above points. See 3 Bro. P. C. 492, Buckingham (Earl) v. Drury; where it appears that, by the decree of the Lords, it was declared, "That the respondent (the widow), is bound by the agreement entered into in consideration of, and previous to her marriage, and that the same ought to be performed and carried into execution; and that the respondent is thereby barred of her dower, and of any share of her husband's personal estate, under the statute of Distributions."

Before the above decision, the only judicial opinions, as to the effect of a Jointure on an Infant, were Sir J. Jekyll's, in Cre. v. Willis, against its barring; and Ed. Hardwicke's, in d'ry v. Price, and in Harvey v. Athey, to the contrary. See Vin. tit. Dower, Q. 4 pl. 18: Barn. C. 117: 3 Ark. 607.

A man levies a fine of his land, and it is granted back again to him and his wife, for her Jointure, and to the heirs of the husband; then he and his wife levy a fine to another use; the wife, if she survive her husband, will have dower notwithstanding the fine. 1 And. 350. If the husband make a lease of lands to his friends for any number of years, in trust for his wife and children, that the shall have 100 l. a-year out of it, or in any such manner; by this the she may have the provision, which is no Jointure, and likewise her dower. By Bridgeman, Ch. J. an estate is made to husband in tail, with remainder to the wife for life, and remainder to others; this is not such a Jointure, as, with her acceptance, within the statute will hinder her from dower; and though the husband die without issue, it will not help it, but the wife shall be endowed in his other land: but if the estate were made to the husband and wife for their lives, it would be otherwise. 13 Jac. 1. B. R. 2 Shol. Abr. 74.

After the death of the husband, the wife may enter into her Jointure, and is not driven to a real action, as she is to recover dower by the common law; and upon a lawful eviction of her Jointure, she shall be endowed according to the rate of her husband's land, whereof she was dowerable at common law. Co. Lit. 371: Stat. 27 H. 8. c. 10. If the be ejected of part of her Jointure, she shall have dower pro tanto. A wife's Jointure shall not be forfeited by the treason of the husband: but fame-covertors, committing treason or felony, may forfeit their Jointures; and being convict of recidivancy, they shall forfeit two thirds in three of their Jointures and dower, by Stat. 3 Jac. 1. c. 4. If a woman conceals her Jointure, and brings dower and recovers it, and then sets up her Jointure, she is barred of her Jointure; and by bringing writ of dower for her thirds, the wife waives the benefit of entry into lands, so as to hold them in Jointure. Cro. Eliz. 128. 137: 3 Rep. 5: Stat. 3 Jac. 1. c. 5. Jd. 13.

JOINTRESS, or JOINTURESS. She who hath an estate settled on her by the husband, to hold during her life, if she survive him. Stat. 17 H. 8. c. 10: 1 Inf. 46. When estates settled on a wife are a jointure, if the Jointress makes any alienation of them by fine, feoffment, &c., with another husband, it is a forfeiture of the same; but if they are not a jointure by law, it is otherwise. 2 Nis. 1040. A Jointress within the statute may make a lease for forty years, &c., if the son live; and also for life, and be no forfeiture, though she levies a fine for cognizance de droit, &c. Cro. Jac. 688: 3 Rep. 50: 1 Litt. 81. In other cases, if the wife levies a fine, it is a forfeiture, and if a Jointress, within the statute 11 H. 7. c. 20, suffer a recovery uniovunately to bar the heir, the heir may enter presently. Sc. 2 L. 196: 1 Pardew. 42.

With respect to the acts of a Jointress, or those of her husband defecting her of her jointure, and how far equity will relieve her, wise. Co. Lit. 36: Dryer. 31. 2 Inf. 673: Hkt. 225: 1 Chan. Cas. 119, 120: 2 Chan. Cas. 162: 2 Vent. 343: 1 Vern. 427, 475: 1 Eq. Abr. 18, 221, 122: 2 Vern. 701: and 14 Vern. Abr. tit. Jointress and Jointures, and this Dist. titles Baron and Feme; Dovers.

JOUR. Fr.] A day, used in heads of our old law; toujours, for ever. Law Fr. Dist.

JOURNAL, Is a day-book or diary of transactions used in many cases: as by merchants and other traders in their accounts; by mariners in observations at sea, &c.
JOURNALS OF PARLIAMENT. Are not records, but memorandums, and have been of no long continuance. Eliz. Rep. 109. See title Evidence.

JOURNEYS, Regents of yarn, which formerly perhaps was called journe. They are mentioned in the Stat. 8 Eliz. 5. c. 5.

JOURNEYMAN, from the Fr. Jeune homme, i.e. A day, day or day's work.] Was properly one who wrought with another by the day; though it is extended by statute to those also who covenant to work with others in their trades or occupation by the year. Stat. 5 Eliz. c. 4. See tit. Labours; Servants.

JOURNEYS ACCOUNTS. (dicta computata, journiia accepta.) Was a term in our old law thus understood: If a writ abated by the death of the plaintiff or defendant, or for false cause, want of form, &c., the plaintiff might have a new writ by Journeys Accounts, t. 6, within as little time as he possibly could after the abatement of the first writ; and this second writ was a continuance of the cause, as if the first writ had not abated. Terms of the Law. See 6 Eliz. 1o: 1 Lat. 297: Cro. Jac. 590.

This learning is now of little use, it is becoming customary to enter a judgment that the writ be quashed, and then to sue forth another.

And by Stat. 8 & 9 W. 3. c. 11. § 7, the death of one plaintiff or defendant where there is another surviving, shall not abate the suit. The death to be suggested on the roll. And by § 6, death of the party after interlocutory judgment shall not abate the suit. See title Abatement.

IPSIO FACTO. Where the same person obtains two or more preferments in the church with cure, not qualified by dispensation, &c., the first living is void Ips6 Fa&to, viz. without any declaratory sentence, and the patron may present to it. Dyer. 275. For crimes in striking persons in a church or church-yard, the offenders are to be excommunicated Ips6 Facto. Stat. 5 & 6 Ed. 6. c. 4. An exil & clause may be Ips6 Facto void by condition, &c. 1 Inst. 45. 215.

IRE &c. LARGUM. To go at large, to escape, or be set at liberty. Blunt.

IRELAND.

Is a distinct kingdom from England, but subordinate to it in government.

It was only entitled the Dominions or Lordship of Ireland, Stat. 49. H. 3, and the King's style was no other than Dominus Hiberniae till the 33 H. 8, when the title of King was expressly conferred on him by an Irish statute, and which title is recognized by Stat. 35 H. 3. c. 3.

As Scotland and England are now one and the same kingdom, and yet differ in their municipal laws, so England and Ireland are on the other hand distinct kingdoms, and yet in general agree in their laws. The inhabitants of Ireland are for the most part descended from the English, who planted it as a kind of colony, after the conquest of it by Hen. II., and the laws of England were then received and sworn to by the Irish nation assembled at the Council of Limerick. Prym. on 4 Inst. 239.

At the time of this conquest, the Irish were governed by what they called the Brehon law, so filled from the Irish name of judges, who were denominated Brehoni, 4 Inst. 358. But King John, in the 12th year of his reign, went into Ireland, and carried over with him many able Sages of the law; and there, by his letters patent, in right of the dominion of conquest, is said to have ordained and established, that Ireland should be governed by the laws of England; (Vaug. 24: 2 Prim. Rec. 85: 7 Rep. 231,) which letters patent, Sir Ed. Coke apprehends had been there confirmed in Parliament. 1 Inst. 144.

But to this ordinance many of the Irish were averse to conform, and will decline to their Brehon law; so that both H. III. and Ed. I., to renew the injunction; and at length, at a Parliament held at Kilkenny, 40 E. III., under Lewin, Duke of Clarence, the then Lieutenant of Ireland, the Brehon law was formally abolished, it being unanimously declared to be indeed no law, but a levv custom creat in of latter times. 1 Com. 100.

But as Ireland was a distinct dominion, and had Parliaments of its own, though the immemorial customs or common law of England were made the rule of justice in Ireland also, yet no Acts of the English Parliament after the 12 John, extended into that kingdom, unless they were specially named, or included under general words, as within any of the King's dominions. See 1 Com. 100.

The original method of passing statutes in Ireland was nearly the same as in England; the chief governor holding Parliaments at his pleasure, which enacted such laws as he thought proper. But an ill use having been made of this liberty, a great number of statutes were enacted in the 19th H. VII. (Sir Ed. Poynting being then Lord Deputy, from whence they were called Poynting's Acts,) which restrained the power as well of the Deputy as the Irish Parliament; and, in time, there was nothing left to the Parliament in Ireland but a bare negative or power of rejecting, not of proposing or altering any law. With regard to Poynting's law in particular, it could not be repealed or suspended, unless the bill for that purpose, before it should be certified to England, were approved by both Houses.

But the Irish nation, being excluded from the benefit of the English statutes, were deprived of many good and profitable laws, made for the improvement of the common law; and the measure of justice in both kingdoms becoming thence no longer uniform, it was therefore enacted, by another of Poynting's laws, that all acts of Parliament before that time made in England, should be of force within the realm of Ireland. 4 Inst. 351. After this, Ireland continued to be bound by all English Acts of Parliament, in which it was specially named, or included under general words. See 1 Com. 101.

This state of dependence being disputed by the Irish nation, it was, by Stat. 6 Geo. I. c. 5, expressly declared, that the Kingdom of Ireland ought to be subordinate to and dependent on the Imperial Crown of Great Britain, as being inseparably united thereto; and that the King's Majesty, with the consent of the Lords and Commons of Great Britain in Parliament, had power to make laws to bind the people of Ireland. The same statute also expressly declared that the Peers of Ireland had no jurisdiction to affirm or reverse any judgments or decrees whatsoever. And a writ of error, in the nature of an appeal, lay from K. B. in Ireland to K. B. in England, as the appeal from Chancery in Ireland lay immediately to the House of Lords in England.

Thus fled the matter, till the 22d year of King Geo. III., when, on some further struggles by the Irish, the
At present, it is not necessary for the council to certify a bill under the great seal of Ireland, as a reason for summoning a parliament, but it is ordered to be conveyed by proclamation from the crown, as it is summoned in England.

Touching bills, they now originate in either House, and go from one to the other, as they do in England; after which, they are deposited in the Lords' office, when the clerk of the crown takes a copy of them, and this parchment is attested to be a true copy, by the great seal of Ireland on the left side of the instrument. Thus they are sent to England by the Irish council; and if they are approved of by the King, this transcript or copy comes back with the great seal of England on the right side, with a commission to the Lord-lieutenant to give the royal assent. All bills, except money-bills, remain in the Lords' office; but bills of supply are sent back to the House of Commons, to be presented by the speaker at the bar of the Lords for the royal assent. Hence it is manifest, that no alteration can now be made in bills, except in Parliament, as the record, or original roll, remains in the Lords' office till it obtains the royal assent.

As to the rejection of bills, or not returning them from England, it is said there are very few instances of such a refusal by the Crown since 1782; though, doubtless, the royal negative, in both kingdoms, is as clear a privilege as any other prerogative.

Treason committed in Ireland, by an Irish Peer, is not triable in England, because he is entitled to a trial by his Peers, which cannot be in England, but Ireland. Dyer, 560.

By statute 17 Ed. 1 c. 1, no pardon for the death of a person, or for felony, shall be granted by the Justices of Ireland, but at the King's command, and under his seals. The stat. 1 W. & M. c. 9, enacted and declared, "That the pretended Parliament assembled at Dublin, was an unlawful assembly; and that all acts done by them are void." All cities, boroughs, &c. were relieved by this statute to their privileges, and the proceedings against them were voided; and all Protestants were relieved to their possessions, &c. By stat. 3 W. & M. c. 2, members of Parliament, officers in the government, ecclesiastical persons, lawyers, &c. in Ireland, are to take the oaths, or be liable to forfeitures. See title Papists.

A man may be sent over to Ireland to be tried for a crime there committed, notwithstanding the clause in the Habeas Corpus act. Fitzgib. 111. See titles False Imprisonment; Habeas Corpus. And Justices of peace in England may commit a person offending against the Irish laws, in order to his being sent thither. Stra. 843.

Papists are disqualified from purchasing the forfeited estates in Ireland. Stat. 3 Ann. J. 1 c. 32. Perpetual imprisonments in Ireland, applied to the building of churches. Stat. 5 Ann. c. 25. The stat. 1 Ann. c. 32, ordains, that persons educated in the Popish religion in Ireland shall take the oaths, or be disabled to take lands by descent, devise, &c.—Protestant families, being Papists settled in Ireland, are declared naturalized on their taking the oaths to the Government. Stat. 1 Geo. 1 c. 29. See title Papists. See further, as to Ireland, title Navigation Acts.

Ireland: Coming to live in England, by an obsolete statute, 2 H. 6 c. 8, were to give security for their good behaviour.
IRON. Made in this kingdom, or brought into England and sold, shall not be exported, on pain of forfeiting the value; and justices assigned by the King have power to inquire of such as fell iron at too dear a price, and penall them. 28 Ed. 3. c. 5. None shall convert to coal or other fuel, for the making of iron metal, any trees of such a size; or within a certain compass of London, under penalties by statute: nor shall any new iron mills be let up in Suffolk, Surrey, or Kent. St. 1 Eliz. c. 15: 23 Eliz. c. 5: 27 Eliz. c. 15. See title Woods.

By Stat. 4 Gor. 2. c. 32, to deal, or to shall with intent to steal, any lead or iron, fixed to a house, or in any court or garden therein-to belonging, is made felony, liable to imprisonment for seven years. See titles Felony; Larceny; Robbery. As to the importing and exporting of Bar Iron, see title Navigation Acts.

IRON, To secure prisoners. See titles Coal and Caster; Trial; Indictment; False Imprisonment; Arraignment; &c.; and 4 Comm. c. 22. ad fin. c. 25.

IRON WIRE. See Wire.

IRONY. See title Iron, &c.

ISLE OF ELY. See Ely.

ISLE OF MAN. See Man.

ISLE OF WIGHT. See Wight.

ISLET, A small island. See Islet.

ISSUABLE TERMS. Hilary and Trinity Terms are usually called issuable terms, from the making up of the issues therein. Though for causes tried in Middlesex and London, many issues are made up in Easter and Michaelmas terms. See title Terms; Judges.

ISSUE, Extents, from the Fr. Iffue, i.e. Emanare.] Hath divers significations in law; sometimes it is taken for the children begotten between a man and his wife; sometimes for profits growing from amercements and fines; sometimes for the profits of lands and tenements: but it generally signifies the point of matter, putting out of the allegations and pleas of the plaintiff and defendant in a cause. 1 Iff. 126: 11 Rep. 10.

Issue is the term applied to the profits on land, which the sheriff is directed to take by a writ of distress in order to compel the appearance of a party in court, and which, by the common law, he forfeits to the King, if he does not appear. Finch. L. 352. But now, by Stat. 10 Gor. 3. c. 50, the issues may be sold, if the Court shall so direct, in order to defray the reasonable costs of the plaintiff. See titles Proceeds; Attachment; Distraint; Appearance; &c.

As to Issue, in the sense of children or heirs, see titles Estate; Limitation; Executory Devise; Remainder; Will; &c.

When, in the course of pleading, the parties in a cause come to a point, which is affirmed on one side and denied on the other, they are then said to be at issue; all their debates being at last contracted into a single point, which must be determined either in favour of the plaintiff or the defendant. 3 Comm. 313.

The Issues concerning causes are of two kinds: Upon matter of fact, and matter of law.

An Issue in fact is where the plaintiff and defendant have agreed upon a point to be tried by a jury: An Issue in law is where there is a demurrer to a declaration, plea, &c. and a joinder in demurrer, which is to be determined by the judge. 1 Iff. 71, 72. See this Dictionary, title Demurrer.

As to Issues of fact, viz., whether the fact is true or false, which are triable by the jury, they are either general or special.

General, when it is left to the jury to try whether the defendant hath done any such thing as the plaintiff lays to his charge; as when he pleads not guilty to a trespass, &c. Non assumpsit, or that he made no promise, in an action of assumpsit. Not guilty is the General Issue in all criminal cases.

Special, is when some special matter, or material point alleged by the defendant in his defence, is to be tried; as in assault and battery, where the defendant pleads that the plaintiff struck first, &c. Non statutum est. 1 Iff. 126.

There is also a General Issue, wherein the defendant may give the special matter in evidence, for or against or justification, by virtue of several statutes, made for avoiding proximities of pleading; and upon the General Issue in such cases, the defendant may give any thing in evidence, which proves the plaintiff hath no cause of action. 1 Iff. 283. Matter amounting to the General Issue, and special matter of justification, have been joined in one, called plea, and held good. 3 Lev. 41. And where there is an Issue upon not guilty, and there are other Issues upon justifications, the trial of the General Issue of not guilty, is but matter of form, and the substance is upon the special matter. Cro. Jac. 599. But the General Issue is pleaded, to put the plaintiff on proof of the fact.

In real actions, causes grown to issue are tried by a jury of twelve men of the county where the cause of action arises; and in criminal causes, issues ought to be tried in the county where the offence was committed; but this hath admitted of some alteration by statute. 3 Iff. 80. 135: 2 Rep. 93. See titles Indictment; Trial.

The place ought not to be made part of the Issue, in a transitory action: it is not material, as it is in real and mixed actions. Trin. 24 Car. 2. B. R. If the place is
material, and make a part of the Issue, there the jury cannot find the fact in another place, because, by the special pleading, the point in Issue is restrained to a certain place; but upon the General Issue pleaded, the jury may find all local things in another county, and where the substance of the Issue is found, it is good, and the finding more may be surplufage. 6 Rep. 46. If an Issue is of two matters in two counties, trial may be in one county, by flat. 21 Jac. 1. c. 4; for that statute extends to cases where the matter in Issue arises in two counties, and the trial is by one only, as well as where the matter in Issue arises in two places in one county, and the trial is by one. 2 Lev. 121. Every Issue is to be joined in such a court that hath power to try it, otherwise the Issue is not well joined; for if the cause cannot be tried, the Issue is fruitless, and if it be tried, the trial is ceram non judicet. 2 Lil. Abr. 84.

Where an Issue is not joined, there cannot be a good trial, nor ought judgment to be given. 2 Nelf. Abr. 1042. All Issues are to be certain and single, and joined upon the most material thing in the cause; that all the matter in question between the parties may be tried. 2 Lil. 85. An immaterial Issue joined, which will not bring the matter in question to be tried, is not helped after verdict by the statute of jeofails; but there must be a repleader: but an informal Issue is helped. 18 Car. 2. B. R.

A repleader may be awarded after verdict, for the badness or uncertainty of the Issue; and a judgment may be reversed in error, being on an immaterial Issue. 2 Lutw. 1608; 2 Lev. 194. On a joint trespass by many persons, there must be only one Issue in each plea joined; and if several offences are alleged against the defendant, he ought to take all but one by proclamation, and offer an Issue upon that one, and no more. Moore 80. But in action for damages, according to the laws which the plaintiff hath fulfilled, every part ought to be put in Issue. 1 Sandl. 269. In action upon the cause for service done for a time certain, the defendant ought to put in Issue all the time alleged in the declaration. Lutw. 1268. And upon a General Issue in waifh, the plaintiff must shew his title. Ibid. 1547. Though when any special point is in Issue, the plaintiff is not obliged to set forth any other matter. Cro. Eliz. 520. If there are several things in a declaration, upon which an Issue may be joined, and it is joined on any of them, it is good; and an affirmative and an implied negative will make a good Issue. Style. 151. 210.

There must be in every Issue an affirmation on the one part, as that the defendant owes such a debt, &c.; and a denial on the other part, as that he owes not the debts, &c. And though the matter contradicts, yet there must be a negative and affirmative of it, to make a right Issue.

1 Vain. 213.

An Issue may be of two affirmatives. 1 Whif. 6. A negative should be as full as the affirmative, or it is no negative to make an Issue; as if a defendant pleads a grant of four acres, and two acres only are denied, &c. 1 Rol. Rep. 36. It has been held, that Issue ought not to be joined on a traverse only, without answering in the affirmative, &c. 2 And. 9. 102. But where the matter, which is the gist or cause of the action, is found, it has been adjudged good after verdict, though there was no negative and affirmative to make the Issue; as where in debt upon bond the defendant pleads payment, and concludes to the country, without giving the plaintiff opportunity to deny the payment, if the jury in such case find the money paid, it is good after verdict. Sid. 341.

Where there are two Issues joined, one good and the other bad, if entire damages are given upon the trial on both Issues, it will be error; but if several damages are found, the plaintiff may release the damages on the bad Issue, and have judgment for the rest. 2 Lil. Abr. 373. 88. See title Damages. And it is said, judgment may be entered as to one part of the Issue; and a nolle prosequi to another part of the same Issue, where it may be divided. Penns. 25 Car. B. R. Where two Issues are joined, and a verdict only on one of them, it is a mis-trial, and the judgment may be arrested, and a causa factas de novo awarded; if error brought, the judgment must be arrested. Annu. 245.

There may be a plea to Issue to part, and a demurrer to part, which have no dependence on each other. 1 Sandl. 338. Where the declaration of the plaintiff is good, and the plea of the defendant is ill; if the plaintiff in his replication tender an Issue upon such ill plea, and a trial is had, and it is found for the plaintiff, he shall have judgment. Cro. Car. 18. And generally, when a plea is bad, that the plaintiff might have demurred upon it, and he doth not, but takes Issue, and it is found for the defendant; this is aided by the statute of jeofails, and the defendant shall have judgment: so likewise where the replication is bad, and Issue is taken upon it, and found for the plaintiff, he shall have judgment. Cro. Eliz. 455; Cro. Jac. 512. But there are many cases where, if the plea or replication is bad in substance, it is not aided by the statute of jeofails. See title Amendment.

If Issue be taken on a dilatory plea, &c. and found against the defendant, final and peremptory judgment shall be given; but it is otherwise on a demurrer. Rym. 118. In such case there must be a respondent suffer. A good Issue is offered to the defendant, he ought not to plead over; and if he plead over, the plaintiff shall have judgment. 1 Sandl. 318, 338. If he does not join Issue, but demurs, it is the same.

When Issue is joined between the parties, it cannot be afterwards waived, if it be a good Issue, without consent of both parties: but where defendant pleads the General Issue, and it is not entered, he may, within four days of the term, waive that Issue, and plead specially; and when the defendant pleads in abatement, he may at any time after waive his plea of special matter, and plead the General Issue, unless there be a rule made for him to plead as he will stand by it. 3 Saft. 211.

If the plaintiff will not try the Issue after joined, in such time as he ought by the course of the court, the defendant may give him a rule to enter it: which if he does not, he shall be nonsuit, &c. 2 Lil. 84. If the tender of the Issue comes on the part of the plaintiff, the form of it is; and this he prays may be inquired by the record, or by the country; and when on the part of the defendant, And of this he puts himself upon the country; and The plaintiff dob the like, &c. What is here stated on the subject of Issues and pleading, is but in methodical. For more complete and useful information, see this Dictionary, titles Pleading; Practice; and the various titles of subjects on which points of pleading arise.
ISSUE.

There are many acts of parliament, that enable the defendant to plead the General Issues, and give the special matters in evidence.

ISSUE, FEIGNED. See Feigned Issues.

ISSUES ON SHERIFFS, Are for negligence and defaults, by amercement and fine to the King, levied out of the Issues and profits of their lands; and double or treble Issues may be laid on a Sheriff for non-returning writs, &c.

But there may be taken to beforeChrished into the Exchequer, by rule of court, on good reason found. 2 Litt. 8th. 39.

Issues shall be levied on jurors, for non-appearance; though on reasonable excuse, proved by two witnisses, the justices may discharge the Issues. Stat. 35. Hen. 8. c. 6. See 1 Keb. 475., and this Dictionary, rule Jury.

ITINERANT, Itinerarium. Travelling or taking a journey; and those were anciently called Justices Itinerant, who were sent with commission into divers counties to hear causes.

The King's courts were formerly Itinerant, being kept in the King's palace, and removing with his household. The Common Pleas is now fixed by Magna Charta, but though the court of King's Bench is constantly held in Westminster-Hall, yet there is nothing but custom to fix it there, as it is supposed to be before the King, and if actually so, must be Itinerant. See titles Judges; Justices; Common Pleas; King's Bench; &c.


JUBILEE, Annum Jubileum. The most solemn time of festival at Rome, when the Pope gives his blessing and remission of sins. It was first instituted by Boniface the 8th, in the year 1500, who granted a plenary indulgence and remission of sins to all who should visit the churches of St. Peter and St. Paul at Rome in that year, and stay there fifteen days; and this he ordered to be observed once in every hundred years; which Pope Clement the 6th reduced to fifty years, anno 1550, and to be held upon the day of the circumscription of our Saviour: and Urban IV. in the year 1389, ordained it to be kept every thirty-three years, that being the age of our Saviour; after which, Pope Sixtus the 6th, reduced it to twenty-five years. In imitation of the grand Jubilee of Rome, the Monks of Christ-Church in Canterbury, every fifty years invited a great concourse of people to come thither, and visit the tomb of Thomas Becket. And King Edward III. in the fifth year of his age, which was 1352, caused his fifth-day to be observed at court, in the name of a Jubilee; giving pardons, privileges, and other civil indulgences. Justus, signifies afterwards a man one hundred years old, and likewise a pofsession or prescription for fifty years. Du Frère.

JUDAISM, Judaismus. The customs, religion, or rites of the Jews; also the income heretofore accruing from the Jews to the King; and the word Judaisms was formerly used for a mortgage; and sometimes taken for usury, Ex Magna Reg. Pipa, de anno 8 Ed. 2.

Judaismus is also taken for the manor or dwelling-place of the Jews in any town. And it sometimes signifies usury. Htn. 1 tom. p. 814.

JUDGES, Jurisdict. Chief magistrate in the law, to try civil and criminal causes, and punish offences. Of these in England, it is commonly said that there are three; viz. the Lord Chief Justices of the Courts of

King's Bench and Common Pleas; the Lord Chief Baron of the Exchequer; the three Puisne (i.e. younger, or rather inferior) Judges of the two former courts; and the three Puisne Barons of the latter. To whom may be added, the Lord Chancellor, and the Master of the Rolls.

The Chief Justice of the King's Bench is called Capituls Justiciarius Baron REG, and he hath the title of Lord, whilst he enjoys his office, and is styled Capituls Justiciarius, because he is chief of the rolls; and for this reason he hath usually the title of Lord Chief Justice of England. This Judge was antiently created by letters patent under the great seal, but is now made by writ, in a very short form.

The antient dignity of this supreme Magistrate was very great; he had the prerogative to be Vicegerent of the kingdom, when any of our Kings went beyond sea, being chosen to this office out of the greatest of the nobility; and had the power alone, which was afterwards distributed to three other great Magistrates; that is, he had the power of the Chief Justice of the Common Pleas, of the Chief Baron of the Exchequer, and the Master of the Court of Wards; and he was commonly just in the King's Pleas, and there executed that authority which was formerly performed per continent palatii, in determining differences which happened between the barons and other great persons of the kingdom, as well as causes criminal and civil between other men; but King Richard I. first diminished his power, by appointing two other Justices, to each whereof he assigned a distinct jurisdiction; viz. to one the North parts of England, to the other the South; and in the reign of King Edward I. they were reduced to one court, with a further abridgement of their authority, both as to the dignity of their persons and extent of their jurisdiction; for no more were chosen out of the nobility, as antiently, but out of the common, who were men of integrity, and skilful in the laws of the land; whence, it is said, the study of the law dates its beginning. Orig. Jud.

In the time of King John, and other of our ancient Kings, it often occurs in Charters of Privilege, Quia non ponatur resurrectus, nisi cornon obitis, vel Capituls Justiciarius regis; and this high officer hath, at this time, a very extensive power and jurisdiction in pleas of the crown, and is principally intrusted, not only with the prerogative of the King, but the liberty of the Subject.

The Chief Justice of the Common Pleas hath also the title of Lord, whilst he is in office, and is called Dominus Justiciarius Communis Pleitorum; vel Dominus Justiciarius de Banco; who, with his affiants, did originally, and doth yet, hear and determine Common Pleas in civil causes, as distinguished from the King's Pleas, or Pleas of the Crown. Bradt. lib. 3. The Chief Justices are installed or placed on the bench by the Lord Chancellor; and the other Judges by the Lord Chancellor and the Lords Chief Justices.

Besides the Lords Chief Justices, and the other Judges of the courts at Westminster, there are many other Justices commissioned by the King to execute the laws: as Justices of Oyer and Terminer, and Gaol Delivery, and of eyre, or conservators of the peace, and sovereign coroners of the land. 4 Inst. 73: 5 St. 118. 4.
The salaries of the Judges in the Court of K. B. are, The Chief 5500l.; the three puisne Judges 2400l.; and in nearly the same proportion in the other Courts. See flats. 32 Geo. 2. c. 35: 19 Geo. 2. c. 65: 1 Geo. 3. c. 23. § 4.

In Great Britain the King is considered as the fountain of justice and general conservator of the peace of the kingdom. The original power of Judicature, by the fundamental principles of society, is lodged in the society at large, but as it would be impracticable to render complete justice to every individual by the people in their collective capacity, therefore, every nation has committed that power to certain select magistrates, who, with more care and expedition, can hear and determine complaints; and in this kingdom, this authority has immemorially been exercised by the King or his successors. He, therefore, has alone the right of erecting Courts of Judicature; for though the Courts should be erected, to affil him in executing this power; and equally necessary, that, if erected, they should be erected by his authority. And hence it is, that all jurisdictions of Courts are either mediately or immediately derived from the Crown, their proceedings run generally in the King's name, they pass under his seal, and are executed by his officers.

It is probable, and almost certain, that in very early times, before our constitution arrived at its full perfection, our Kings, in person, often heard and determined causes between party and party. But, at present, by the long and uniform usage of many ages, our Kings have delegated their whole judicial power to the Judges of their several Courts; which are the grand depositories of the fundamental laws of the kingdom, and have gained a known and stated jurisdiction, regulated by certain and established rules, which the Crown itself cannot now alter, but by act of parliament. 2 H. 6, c. 1. § 3.

In order to maintain both the dignity and independence of the Judges in the Superior Courts, it is enacted by the flats. 13 W. 3. c. 2, that their commissions shall be made (not, as formerly, durante bene placito, but) quodcumque bene placitum, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both houses of parliament. And now by the noble improvements of that law in the statute of 1 Geo. 3. c. 23, enacted at the earnest recommendation of the present King (George III.), himself, from the throne, the Judges are continued in their offices during their good behaviour, notwithstanding any demise of the Crown, (which was formerly held immediately to vacate their seats); and their full salaries are absolutely secured to them during the continuance of their commissions, by which means the Judges are rendered completely independent of the King, his Ministers, and his Successors; his Majesty having been pleased to declare, that "he looked upon the independence and uprightness of the Judges, as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of his Subjects, and as most conducive to the honour of the Crown." Con. Journ. 3 March, 1761. See Ed. Reys. 737; and flat. 1 Ann. st. 1. c. 8, which continued the commissions of the Judges for six months after the demise of the Crown.

In criminal proceedings, or prosecutions for offences, it would be full a higher absurdity, if the King, personally, sat in judgment; because, in regard to these, he appears in another capacity, that of protector. All offences are either against the King's peace, or his crown and dignity; and are to be judged every individual. For though in their consequences they generally seem (except in the case of treason and a very few others) to be rather offences against the kingdom than against the King, yet as the Public, which is an invisible body, has delegated all its power and rights, with regard to the execution of the laws, to one visible Magistrate, all affronts to that power, and breaches of those rights, are immediately offences against him, to whom they are to be delegated by the public. He is, therefore, the proper person to prosecute for all public offences and breaches of the peace, being the person injured in the eye of the law. And hence also arises the most mild and equitable branch of the prerogative, One of the most distinguishing features in a Monarchy, that of pardoning offences; for it is reasonable that he only who is injured should have the power of forgiving.

In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure by the Crown, consists one main preservative of the public liberty, which cannot subsist long in any State, unless the administration of common justice be, in some degree, separated both from the Legislative, and also from the Executive Power. Were it joined with the Legislative, the life, liberty, and property of the Subject would be in the hands of arbitrary Judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law; which, though Legislators may depart from, yet Judges are bound to observe. Were it joined with the Executive, this union might soon be an over-balance for the Legislative. For which reason, by flat. 16 Car. 1. c. 10, which abolished the Court of Star-chamber, effectual care is taken to remove all judicial power out of the hands of the King's privy council. See 1 Com. 260—9. c. 7.

The personal safety of the Judges, and the respect due to them, being also of essential consequence towards the preservation of their independence and integrity, which is no less in danger from the order cives prava praeconia jumenta, than from the molus infinitus tyranni; many provisions have been made by law to restrain and punish affronts and injuries, to them personally, and to the Courts of Justice, over which they preside.

One species of treason under flat. 25 Ed. 3. c. 2, (See title Treason,) is, "If a man slay the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear and determine, being in their places doing their offices." But this statute extends only to the actually killing of them, and not to wounding or attempting to kill them. It extends also only to the officers therein specified; and therefore the Barons of the Exchequer as such, are not within the protection of this act. 1 Hal. P. C. 231. But the Lord Keeper, or Commissioners of the Great Seal, now seem to
to be within it, by virtue of the 5 Eliz. c. 18: 1 W. & M. c. 31.—4 Comm. 84.

Standing in the King's superior Courts of Justice in Westminster-Hall, or at the assizes, is more penal than even in the King's palace. The reason seems to be, that those Courts being anciently held in the King's palace and before the King himself, striking there included the contempt against the King's palace, and something more, or the disturbance of public justice. For this reason, by the ancient common law before the Conquest, striking in the King's Courts of Justice, or drawing a sword thereon, was a capital felony. L. Incest. c. 6: L. Can. c. 55: L. Alured. c. 7. Our modern law retains so much of the ancient severity as only to exchange the loss of life for the loss of the offending limb. Therefore a blow or blow in such a Court of Justice, whether blood be drawn or not, or assaulting a Judge sitting in the Court, 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 land during life. Steadm. P. C. 52: 5 Inst. 142. 1.

A rescue also of a prisoner from any of the said Courts, without striking a blow, is punished with perpetual imprisonment and forfeiture of goods, and of the profits of land during life; being looked on as an offence of the same nature with the last, but only as no blow is actually given, the amputation of the hand is excused. 1 Hawk. P. C. c. 21. For the like reason, an affray or riot near the said Courts, but out of their actual view, is punished only with fine and imprisonment. Cro. Car. 373.

Not only such as are guilty of an actual violence, but of threatening, or reproachful words to any Judge sitting in the Courts, are guilty of a high misdemeanour, and have been punished with large fines, imprisonment, and corporal punishment. Cro. Car. 503. And even in the inferior Courts of the King, an affray, or contemptuous behaviour, is punishable with a fine by the Judges there sitting, as by the Reward in a Court Leet, or the like. 1 Hawk. P. C. c. 1.

It may not be amiss to mention that King Henry IV. when his eldest son the Prince, afterwards Henry V. was by the Lord Chief Justice committed to prison, for a great misdemeanor, thanked God that he had a son of that obedience, and a Judge of that courage and impartiality. Steevens.

As the Judges are thus guarded against influence or injury, to enable them to do justice to the people, so are they protected in the upright discharge of their duty, by being indemnified from answering for the consequence of the judgments given by them.

The Judges of Courts of Record are freed from all prosecutions whatsoever, except in parliament, where they may be punished, for any thing done by them in such Courts as Judges; this is to support their dignity and authority, and draw veneration to their persons, and submission to their judgments: but if a Judge will so far forget the dignity and honour of his post, as to turn sollicitor in a cause which he is to judge, and privately and extra-judicially tamper with witneses, or labour jurors, he may be dealt with according to the same capacity to which he so falsely degrades himself. 12 Rep. 54: Vaughan 158: S. P. C. 173.

The Judges are not in any way punishable for a mere error of judgment: and no action will lie against a Judge for an erroneous judgment; or for an wrongful imprisonment, 2 Hawke. P. C. c. 1. § 17: 1 Mod. 184.

But it is said, that where Judges are limited to the subject matter of their jurisdiction, and they exceed the limits of their jurisdiction, action lies against them; see Powell J. 3 Lassw. 1565, cites Hard. 480.

A Judge is not answerable to the King, or the party, for mistakes or errors of his judgment, in a matter of which he has jurisdiction. 1 Ball. 397.

If an action be brought against a Judge of Record, for an act done in his judicial capacity, he may plead that he did it as Judge of Record, and that will be a sufficient justification. And so may a Judge of a Court in a foreign country, under the dominion of the Crown. 2 Hawk. P. C. 454.

With respect to the general conduct of the Judges, the following observations are worthy attention:

A Judge at his creation takes an oath, That he will serve the King, and indifferently administer justice to all men, without respect of persons, take no bribes, give no counsel where he is a party, nor deny right to any, though the King, or any other, by letters, or by express words, command the contrary, &c. and in default of duty, to be answerable to the King in body, lands, and goods. Stat. 3 Ed. 3. § 4.

See also Stat. 20 Eliz. c. 1. § 2.

Judges off law, and ought to judge by law, and not by examples: by Glanvill a Judge is called iustitia in absrae, because he should be, as it were, justice itself. Co. Litt. 71: 7 Rep. 4. And all the commissions of Judges are bounded with this limitation, Facta quid ad iustitiam pertinent faciendum legem & consuetudinem Angliae.

The Judges are to give Judgment according to law, and what is alleged and proved: and they have their private knowledge, and their ad divitium, but they cannot judge of their own private knowledge, but may use their discretion; but where a Judge has a judicial knowledge, he may and ought to give judgment according to it. King Henry IV. demanded of Judge Gaucagis, If he saw one in his presence kill A. B. and another person, who was not culpable, should be indicted of this, and found guilty before him, what he would do in this case; to which he answered, That he ought to repulse the judgment against him, and relate the matter to the King, in order to procure him a pardon; for there he cannot acquit him, and give judgment according to his private knowledge, People 82.

The King in all cases doth judge by his Judges; who ought to be of counsel with prisoners: and if they are doubtful or mistaken in matter of law, aandler by may be allowed to inform the Court, as amicus curiae. 2 Inst. 178. Our Judges are to execute their offices in proper person, and cannot act by deputy, or transfer their power to others; and the Judges of Ecclesiastical Courts may, 1 Rol. Abr. 382: 21st Judg. 41. Yet where there are divers Judges of a Court of Record, the act of any one of them is effectual: especially if their commissions do not expressly require more. 2 Hawk. P. C. c. 1. Though what a majority rules when present, is the act of the court. If on a demurrer or special verdict,
dict, the Judges are divided in opinion, two against two, the cause shall be adjourned into the Exchequer Chamber, 3 Mod. 156. And a rule is to be made for this purpose, and the record certified, &c. 5 Mod. 335. In fines levied, all the Judges of C. B. ought to be particularly named: but if writs of certiorari to remove records out of that Court, &c. are directed to the Chief Justice, without naming his companions. 1 H. 7. 27; 39. Cent. 167.

When a record is before the Judges, they ought ex officio to try it; and they are to take notice of statutes, and of the terms, &c. 39. Cent. 215, 293. No Judge is compellable to deliver his opinion before-hand, in relation to any question which may after come judicially before him. 3 Inf. 29. Judges of the common law, have no ordinary jurisdiction to examine witnesses at their chambers; though by consent of parties, and rule of court, they may on interrogatories; and some things done by Judges at their chambers, in order to proceedings in court, are accounted as done by the court.

A Judge shall not be generally excepted against, or challenged; or have any action brought against him, for what he does as Judge. 1 Inf. 294; 2 Inf. 422.

A Judge ought not to judge in his own cause, or in pleas where he is party. 8 Rep. 118. If a fine be levied to a Justice of Bank, he cannot take the conveyance; for he cannot be his own Judge. 8 H. 6. 21; Br. Patents, pl. 15. cites S. C. per Martin. If a fine be levied by, or to a Judge in Bank, his name shall not be in the fine. 11 H. 6. 49 b. So if a Judge of Bank be sued in Bank, he cannot record it; it shall be recorded by the other Judges. So if a Judge of Bank sues there, he cannot record it, but it shall be recorded by the other Judges. Ibid. If the Chief Justice of Bank be to sue a writ there, the writ shall not be in his name, but in the name of the secondary. 8 H. 6. 19 b.

None may judge in his own cause, for it is a manifest contradiction that a man can be agent and patient in the same thing, and what Lord Coke says in Dr. Bonham's case is far from any extravagancy; for it is a very reasonable and true saying, that if an act of parliament should ordain, that the same person should be party and Judge, or, which is the same thing, Judge in his own cause, it would be a void act of parliament; per Holt, Ch. J. 12 Med. 687; Bridgem. 11, 12.

Judgment given by a Judge, who is party in the suit with another, and so entered of record, is error, although several other Judges fit there, and give Judgment for the Judge who is party. 39. Cent. 90. pl. 74.

Where a Judge has an interest, neither he nor his deputy can determine a cause, or sit in Court; and if he does, a prohibition lies. Hard. 505.

Judges are punishable, however, for wilful offences against the duty of their situation; influences of which happily live only in remembrance; and as to which, the following short extracts and references may be sufficient:

Among the laws of King Edgar is this, viz. Judex, qui impugnat judicium judicabit aliquem, det Regi CXXs. nisi jurare auditet, quot rectius judicare inquit. De cons. Scriptores Angliae 872. l. 3. The same among the laws of Canute, Ibid. 924. l. 2. adds, that Et dignitatem suae legalis appetatiam semper amatit, si unam eam reddat erga Regem, siun et tempore. In Danilagla Labhithea reus

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JUDGMENT.

There are ancient precedents of Judges, who were fined when they transgressed the laws, though commanded by warrants from the King; and it is said, that Earl Tisfort, who was a Chancellor, was beheaded, for acting upon the King's warrant against law. Burnet's Rich. 2. p. 38.

Bribery in Judges is punishable by loss of office, fine, and imprisonment; and by the common law, bribery of Judges in relation to a cause depending before them, has been punished as treason. 1 Leon. 295; Cre. Fec. 63. 1 Haw. P.C. See title Bribery.—A Judge igno-\n
mantly condemns a man to death for felony, when it is not felony; for this offence, the Judge shall be fined and imprisoned, and lose his office. 39. Cent. 162. If a Judge who hath no jurisdiction of the cause, give judgment of death and award execution, which is executed, such Judge is guilty of felony; and also the officer who executes the sentence. 1 H. P. C. 35; 10 Hil. 76. And if Judges of Peace, on indictment of trespass, arraign a man of felony, and judge him to death, and he is executed, it is felony in them. 1 H. P. C. 35; Dai. c. 98.

A Justice cannot make a record, nor embezzle it, nor file an indictment which is not found, nor give judgment of death where the law does not give it; if he does, it is misprision, he shall lose his office, and make fine for misprision; but it is not felony. Br. Judges, pl. 34. cites 2 R. 3. 9.

See further 14 Vin. Abr. title Judges; and this Dictionary, title Judges.

JUDGER. In Cheshire, to be Judge of a town, is to serve on the Jury there. Leicester's Hist. Antig. 302.

JUDGMENT. Judicium, quad. juris dictum.

The Sentence of the Law, pronounced by the Court, upon the matter contained in the record. 3 Comm. 395. c. 24.

I. Of the various Kinds of Judgment: in Civil Cases. II. Points of Practice relating thereto. III. Of Arrest of Judgment.

I. JUDGMENTS are of four sorts. 1. Where the facts are confessed by the parties, and the law determined by the court; as in cause of Judgment under 

Demurrer. 2. Where the law is admitted by the parties, and the facts disputed; as in cause of Judgment upon a

Verdict. 3. Where both the fact and the law arising thereon are admitted by the defendant; which is the cause of Judgments by Confession or Default. Or 4. Where the plaintiff is convinced, that fact, or law, or both, are insufficient to support his action, and therefore abandons or withdraws his prosecution; which is the cause of Judgment upon a Nonuit or retractio. 3 Comm. 396. c. 24.

The Judgment though pronounced or awarded by the Judges, is not their determination or sentence, but the determination and sentence of the law. It is the conclusion that naturally and regularly follows from the premises of law and fact, which stand thus: Against him, who hath rode over my corn, I may recover damages by law; now A. hath rode over my corn; therefore I shall recover damages against A. If the major proposition be denied, this is a demurrer in law: if the
JUDGMENT I.

minor, it is then an issue of fact; but if both be confessed (or determined) to be right, the conclusion or judgment of the court cannot but follow. Which judgment or conclusion depends not therefore on the arbitrary caprice of the judge, but on the settled and invariable principles of justice. The judgment, in short, is the remedy preferred by law for the redress of injuries; and the suit or action is the vehicle or means of administering it. What that remedy may be, is, indeed, the result of deliberation and study to point out; and, therefore, the title of the judgment is, not that it is decreed or resolved by the court, for then the judgment might appear to be their own; but, “It is considered,” consideration for curiam, that the plaintiff do recover his damages, his debt, his possession, and the like; which implies, that the judgment is none of their own, but the act of law, pronounced and declared by the Court after due deliberation and enquiry. 1 Inst. 39.

All the species of judgments are either interlocutory or final. Interlocutory Judgments are such as are given in the midst of a cause, upon some plea, proceeding, or default; which is only intermediate, and does not finally determine or complete the suit. Of this nature are all judgments for the plaintiff upon pleas in abatement of the suit or action; in which it is considered by the court, that the defendant do answer over; respondent suffer; that is, put in a more substantial plea. 2 Term. 39. It is easy to observe, that the judgment here given is not final, but merely interlocutory; for there are afterwards farther proceedings to be had, when the defendant hath put in a better answer.

But the interlocutory judgments, most usually spoken of, are those incomplete judgments, whereby the right of the plaintiff is, indeed, established, but the quantum of damages sustained by him is not ascertained; which is a matter that cannot be done without the intervention of a jury. This can only happen where the judgment recovers; for when judgment is given for the defendant, it is always complete as well as final. This sort of interlocutory judgment happens in the first place, where the defendant sues the judgment to go against him by default, or nihil dicis; as if he puts in no plea at all to the plaintiff's declaration: by confession, or conquest auctorem, where he acknowledges the plaintiff's demand to be just; or by novum suum inquitum, when the defendant's attorney declares he has no instructions to say any thing in answer to the plaintiff, or in defence of his client; which is a species of judgment by default.

If these, or any of them, happen in actions where the specific thing sued for is recovered, as in action of debt for a sum certain, the Judgment is absolutely complete. And therefore it is very usual, in order to strengthen a creditor's security, for the debtor to execute a warrant of attorney to some attorney named by the creditor, empowering him to confess a judgment by either of the ways just now mentioned. (by nihil dicis, or conquest auctorem, or non suum inquitum.) in an action of debt to be brought by the creditor against the debtor for the specific sum due; which judgment, when confessed, is absolutely complete and binding; provided the same (as is also required in all other judgments) be regularly docketed; that is, abstracted and entered in a book, according to the directions of statute. 4 & 5 W. 3 & 4 M. c. 29, by which it is provided, that no judgment shall affect purchasers of lands, and mortgagees, till docketed, nor have any preference against heirs, executors, &c. in the administration of estates. See 95. Judgments acknowledged for Debts.

But, where damages are to be recovered, a jury must be called in to assess them; unless the defendant, to save charges, will confess the whole damages laid in the declaration; otherwise the remedy of the judgments, “that the plaintiff ought to recover his damages (indefinitely);” but because the court know not what damages the plaintiff hath sustained, therefore the sheriff is commanded, that by the oaths of twelve honest and lawful men, he enquire into the said damages, and return such inquisition into court.” This process is called a Writ of Inquisition; in the execution of which the sheriff sits as Judge, and tries by a Jury, subject to nearly the same law and conditions as the trial by Jury at nisi prius, what damages the plaintiff hath really sustained; and when verdict is given, which must affect some damages, the sheriff returns the inquisition, which is entered upon the roll in manner of a poteet, and therefore it is considered, that the plaintiff do recover the exact sum of the damages so affected. In like manner, when a demurrer is determined for the plaintiff upon an action wherein damages are recovered, the judgment is also incomplete, without the aid of a writ of inquiry. But it was said by Willes, C. J. that a writ of inquiry is an inquiry of office, and not of the confines of the court; who, if they please, may themselves affect the damages. 3 Wils. 62. Hence, a practice is now established in the courts of K. B. and C. P. in actions where Judgment is recovered by default, upon a bill of exchange, or promissory note, to refer it to the Master or Prothonotary, to ascertain what is due for principal, interest, and costs, which report supercedes the necessity of a writ of inquiry. 4 T. R. 275; 5 H. Black. Rep. 541. In cases of difficulty and importance, the court will give leave to have the writ of inquiry executed before a Judge, at Sittings or Nisi prius; and then the Judge acts only as an affiant to the sheriff. The number of the jurors sworn upon this inquest need not be confined to twelve; for when a writ of inquiry was executed at the bar of the court of K. B. in an action of fraud, brought by the Duke of York (afterwards James II.) against Peter Oates, who had called him a forger; fifteen were sworn upon the Jury, and gave all the damages laid in the declaration; vide 50 Ld. Rep. 100,000L. In that case, the sheriffs of Middlesex sat in court covered, at the table below the Judges. 3 St. Tr. 987.

Final judgments are such as at once put an end to the action, by declaring, that the plaintiff has either entitled himself, or has not, to recover the remedy he sued for. In which case, if the Judgment be for the plaintiff, it is also considered, that the defendant be either amerced, for his willful delay of justice, in not immediately obeying the King's writ, by rendering the plaintiff his due; 8 Rep. 40. 61: or be taken, caputurat, till he pays a fine to the King for the public misdemeanor, which is coupled with the private injury, in all cases of force; (8 Rep. 59: 11 Rep. 43: 5 Mod. 228;) of fallhood, in denying his own deed; (F. N. B. 121: 1 Inst. 131: 8 Rep. 62: 1 Rob. Ab. 219: Litt. Ent. 279: C. B. Hel. 4 An. Rep. 430;) or unjustly claiming property in replevin; or of contempt by disobeying the command of the King's writ, or the express prohibition of any nature.
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by a rebus sic stantibus in part. 2 Litt. 27, If in case, trepfal, &c., a verdict is given for more damages than laid in the plaintiff’s declaration, and he does not remit the surplus damages, but takes Judgment for the whole, it is an incurable error, and cannot be amended. See title Debt or Damages.

If issue is found against one party in a suit, and not against the other, judgment may be for the plaintiff to recover against him where the matter is found; and a nil inpectore petitionibus be entered against the plaintiff as to the other. 1 Sound. 216. And when several damages are recovered against several defendants, the plaintiff may enter a nulla prosequi as to one of the defendants, &c., and have judgment against one only for the damages against him. 3 Mod. 104. If one entire judgment is given against two several persons, and one of them is an infant, appearing by attorney, the whole judgment is void; which being entire cannot be divided, except the infant be joint executor with the other party.

When a judgment is entire, it cannot be divided; to make one part of it good, and another part thereof erroneous; but if it be not an entire judgment, it may. 2 Litt. 100. See p. 111. On action where damages are to be recovered, if the declaration be good in part, and insufficient in part, and the defendant demurs upon the entire declaration, the plaintiff shall have judgment for that which is well laid, and be barred for the rest. 2 Sound. 379. And if in action of debt upon three bonds, it appears that one of them is not forfeited, &c, the plaintiff shall have judgment for the other two.

There were four counts in the declaration; one assault pleaded to three, and a demurrer to the fourth. After judgment on the demurrer, the plaintiff takes out a writ of inquiry, and executes it; the demurrer being determined, the court held the judgment regular, and that there was no occasion for a nulla prosequi, to be entered on the roll as to the three counts, until he enter final judgment. 3 T. 532.

Where a judgment is partly by the common law, and partly by statute, the judgment at common law may remain, and be complete, without the other. 1 Salk. 24.

Where there are two distinct judgments, one at common law, and the other by statute, one may be affirmed, and the other reversed, on a writ of error. Annual 50.

Every judgment ought to be complete and formal; one judgment cannot determine another judgment, and the judges will not give a judgment against law, although the plaintiff and defendant do agree to it. 1 Salk. 215; 3 C. L. 187. In actions personal, judgment given against the plaintiff upon any plea to bar him, is peremptory. 1 T. 52. If the defendant do not deny the debt, or other matter in suit, but endeavours to elude the action by insufficient pleading, in this case, if it be found for the plaintiff, he shall have judgment; but not vice versa. if for the defendant, because the matter of the suit is not fully and sufficiently denied, but in some measure confessed by the insufficient plea. Ibid. 70.

Judgment may not be given for the plaintiff upon an insufficient bar, if the replication be so, and then no title but judgment shall not be set aside for mistake of pleading a point collateral to the issue. 1 Ew. 2. 188. See p. 111. In debt upon an obligation, the defendant pleaded that he delivered it on a condition to be performed by the plaintiff, which he had not done, and therefore it was not his deed; the jury found for the defendant, that the condition was not performed, yet the plaintiff had judgment; for the defendant’s plea confesse it to be his deed, and the verdict does not disprove it, and the issue is, deed or no deed, &c. Here, therefore, the plaintiff hath his judgment upon the defendant’s confession, not upon the verdict. 1 T. 102, A judgment contrary to the verdict found in the cause is generally void; for it is to be warranted by the verdict. 2 Mich. 122. The party may be either for the plaintiff, where judgment may be given for one of the parties contrary to the verdict; as where the defendant pleads such a plea as in effect acknowledges the demand, there, though there should be a verdict for the defendant, judgment shall be for the plaintiff, or the judge of nisi prius may refuse to try it. Annual 250. If a verdict is imperfect, judgment cannot be given upon it; and for the uncertainty of the verdict, judgment may be void. 2 Litt. 111: 8 Rep. 220. Action of debt lies upon a good judgment, as well after writ of error brought as before. 1 T. 127. But if error is brought, and depending, the court will, on motion, stay proceedings in the new action, or rather prevent plaintiff from taking out execution, defendant confessing judgment in the old suit. See title Debts. In actions of debt on bonds, a rule may be made to stay proceedings on payment of principal, interest, and costs. 3 T. 90. See 8 T. 161, 171, and this Dictionary, title Bonds.

If a judgment is recovered jointly against three defendants, the plaintiff cannot bring action of debt upon that judgment against one alone. 2 T. 220. A plaintiff shall not have a new action of debt on the same bond, &c. after judgment had on it, as long as the judgment is in force. 6 Rep. 2: 2 Nels. Ab. 195. An erroneous judgment in Chancery is revocable in B. R. 1 Dyer 315. And if the House of Lords reverse a judgment of B. R. the Lords are to enter the new judgment, and not the Court of B. R. who by the first judgment had executed their authority. 1 Salk. 403. See this Dictionary, titles Appeal; Error.

A regular Judgment in a crown cause cannot be set aside on payment of costs. 1 Wiff. 105.

Where there is a judgment and no surprize, it shall not be set aside on an affidavit to a matter relative to the merits which might have been pleaded. Annual 157.

Where the condition of a bond was, that the money was not to be paid till a future day, and the condescend by virtue of a warrant of attorney entered Judgment, and took out execution before the day, the Court would not set the judgment aside, but the execution. Annual 270.

A regular interlocutory Judgment may be set aside, so as to let in the defendant to try the merits of his case; but it must be on payment of costs, and such merits likewise must appear upon affidavit. 3 T. 824; 1 Barr. 563. A writ of inquiry was set aside, and defendant set in to plead a fair plea on payment of costs. 3 Salk. 186; 6 Mod. 191.

The 8 W. 3, c. 11, orders Judgment for costs, upon demurrers, and on false writs of error, where the former judgment is affirmed, &c. See this Dictionary, title Costs. The fixtures of yeasts extend to judgments upon
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III. ARRESTS OF JUDGMENT arise from intrinsic causes appearing upon the face of the record. Of this kind are: First, Where the declaration varies totally from the original writ; as where the writ is in debt or venue, and the plaintiff declares in an action on the face of an assumpsit; for, the original writ out of Chancery being the foundation and warrant of the whole proceedings in the Common Pleas, if the declaration does not purify the nature of the writ, the Court's authority totally fails. Also, secondly, Where the verdict materially differs from the pleadings and issue thereon; as, if, in an action for words, it is laid in the declaration that the defendant said, "the plaintiff is a bankrupt," and the verdict finds specially that he said "the plaintiff will be a bankrupt." Or, thirdly, If the cause laid in the declaration is not sufficient in point of law to found an action upon.

It is an invariable rule with regard to Arrests of Judgment upon matter of law, "that whatever is alleged in ArreJit of Judgment must be such matter, as would have been, upon demurrer, sufficient to overturn the action or plea." As if, on an action for slander, in calling the plaintiff a Jew, the defendant denies the words, and issue is joined thereon; now, if a verdict be found for the plaintiff, that the words were actually spoken, whereby the fact is established, till the defendant may move in ArreJ of Judgment, that to call a man a Jew, is not actionable; and, if the Court be of that opinion, the Judgment shall be arrested, and never entered for the plaintiff. But the rule will not hold to concerns, "that every thing that may be alleged as cause of demurrer, will be good in ArreJ of Judgment;" for if a declaration or plea omits to state some particular circumstance, without proving which, at the trial, it is impossible to judge upon the action or defence, this omission shall be supplied by a verdict. As if, in an action of trespass, the declaration does not allege, that the trespass was committed on any certain day, Ga. 389; or, if the defendant justifies, by prescribing for a right of common for his cattle, and does not plead that his cattle were levant and couchant on the land, Cro. Jac. 441; though either of these defects might be good cause to demur to the declaration or plea, yet if the adverse party omits to take advantage of such omission in due time, but takes issue, and has a verdict against him, these exceptions cannot, after verdict, be moved in ArreJ of Judgment.

For the verdict affirms these facts, which before, from the inaccuracy of the pleadings, might be dubious; since the law will not suppose, that a Jury, under the inspection of a Judge, would find a verdict for the plaintiff or defendant, unless he had proved those circumstances, without which, his general allegation is defective. 1 Mod. 292.

Exceptions, therefore, that are moved in ArreJ of Judgment, must be much more material and glaring, than such as will maintain a demurrer; or, in other words, many inaccuracies and omissions, which would be fatal, if early observed, are cured by a subsequent verdict; and not suffered, in the last stage of a cause, to unravel the whole proceedings. But if the thing omitted be essential to the action or defence, as if the plain-

(ACKNOWLEDGED.)

tiff does not merely file his title in a defective manner, but sets forth a title that is totally defective in itself, or if to an action of debt the defendant pleads not guilty instead of nil debet, these cannot be cured by a verdict, for the plaintiff in the first case, or for the defendant in the second. 3 Comm. 393-5.

Although it appear to the Court that the defendant's title is not good, if the plaintiff, in his declaration, hath not set forth a good title for himself, the Court shall never give him Judgment. 2 Litt. 98. Though the plaintiff destroys the defendant's title, if he gives him another title by pleading, &c. the defendant shall have Judgment; for the court are to judge upon the whole record. 8 Rep. 90. But if action of trespass is brought for trespass done in lands belonging to such a house, and it appears at the trial that the plaintiff had no title to the house, the Court cannot give Judgment to turn him out of possession, because that was not judicially before them. 3 Wall. 213.

Judgments are to continue, till they shall be attest by error: Stat. 4 H. 4 c. 2. And after verdict given in any Court of record, there shall be no way of judgment for want of form in a writ, count, &c. or misnaming the name of either party, sum of money, day, month, year, &c. rightly named in any writ or record preceding, E. 7 Eliz. c. 14. 16 & 17 Car. 2 c. 2. See titles Abatement; Amendment; Error.

JUDGMENTS ACKNOWLEDGED FOR DEBTS. The course for one to acknowledge a Judgment for debt, is for him that doth acknowledge it to give a warrant of attorney to some attorney of that court where the Judgment is to be acknowledged, to appear for him, to file common bail, and receive a declaration, and then plead non facit nominis, &c. or to let it pass by nulli dict: whereupon Judgment is entered for want of a plea. 2 Litt. 105. The person to whom this warrant of attorney is given, has all the benefit of a Judgment and execution, against the debtor's person and property, without being delayed by any intermediate process, as in the case of a regular suit. It is frequently given by a person arrested, upon condition of his discharge, and that longer time shall be allowed him for the payment of the debt, or that any other indulgence shall be shown him. But to prevent persons in this situation from being imposed upon, no warrant of attorney to confess a Judgment, given by a person arrested upon mens prode, shall be of any force, unless some attorney be present on behalf of the person in custody, who shall explain the nature of the warrant, and subscribe his name as a witness to it. Com. Prat. See to Salts, 462.

If one be seemingly discharged, with design that he should give a warrant of attorney to confess a Judgment, it is ill: but if one arrested by process of an inferior court, gives a warrant for confessing Judgment in that court, B. R. will not let it abide, though an attorney be not present. Mod. Cas. 89. By rule of B. R. Baff. 15 Car. 2. No bailiff is to take from any prisoner in his custody, a warrant to acknowledge Judgment unless in the presence of an attorney. But where one has been in prison some time, and he confesses Judgment to his creditor voluntarily, that Judgment shall stand, although there be no attorney. 7 Mod. 115. See title Arrests.

If a warrant of attorney to confess a Judgment is given unconditionally, or without delay of execution, Judg.
Judgment may be signed, and execution taken out upon the same day it is given; and thus a debtor may give one creditor a preference to another, who has obtained judgment after a long litigation. 5 Term Rep. 235.

If one gives a warrant of attorney to confess judgment, and dies before it is confessed, this is a countermand of the warrant. 1 Pott. 310. Though the Courts have, on motion, allowed Judgment to be entered up. Where they may be entered after the party's death, see Ansly 158. But the rule does not hold in adversary suits. Ibid. 183. If a femelle sole gives warrant of attorney to confess judgment, and marries before it is entered, the warrant is absolutely countermanded; and judgment shall not be entered against husband and wife. 1 Salk. 330.

A judgment confessed upon terms, being in effect, conditional, the Court will fix the terms performed; but where a Judgment is acknowledged absolutely, and a subsequent agreement is made, this does not affect the Judgment, and the Court will take no notice of it. 7 Mid. 400. If a warrant be to enter Judgment as of such a term, or any time after; the attorney may enter it at any time during life: but without these words the Judgment must be entered the term expressed in the warrant: and if no term be mentioned, it may be intended the next term. 1 Mid. 1. Or it has been held it may be entered within a year after the date of it; and if judgment upon a warrant of attorney be not entered within the year, it cannot be done without leave of the Court, on motion and affidavit made of the party's being living, and the debt not satisfied. Grem. Pract. 2 Lill. Abr. 118: 2 Show. 253.

It is dangerous to take a judgment acknowledged in the vacation, as of the preceding term; and if any such Judgment be taken, the warrant of attorney to confess the same must bear date before, or in the term whereof it is confessed: but the safest way is to make it a Judgment of the subsequent term. 2 Lill. 103.

By Holt, Chief Justice, if one will enter a Judgment as of a precedent term, he must actually enter it before the disquisition of the succeeding term: and if judgment be signed in Hilary term, and in the subsequent vacation the defendant sells lands, if before the disquisition of Easter term, the plaintiff enters his judgment, it shall affect the lands in the hands of the purchaser; (but see 6th C. 2, c. 34) and if one enters judgment so in vacation, when the party is dead, the judgment shall be good by relation, if he was living in the precedent term. 1 Salk. 401. As to complaints for delay of entering judgments, the same shall be examined into by commissioners and ordered to be entered, &c. See stat. 14 Edw. 3, b. 1, c. 5.

Judgments, as against purchasers, shall only relate to the day of signing. Stat. 29 Car. 2, c. 3, s. 15. See title Execution. If any person having acknowledged or suffered a judgment as a security for money, afterwards on borrowing other money of another, mortgage his lands, &c. without giving notice of such judgment, unless he pay it off in six months, he shall forfeit his equity of redemption, &c. Stat. 4 W. & M. c. 16. See title Mortgage. To learn for judgments a fee is paid of 4 d. a term.

On Judgments, a release of errors is usually entered into at the time of the warrant of attorney given, or

Judgment had. And in case of several judgments, if two are given in one term, and the last is first executed, that creditor hath the best title. Latch. 55. When a Judgment is satisfied, it is to be acknowledged on record by attorney, &c. Acknowledging a judgment in the name of another, who is not privy or confounding to the same, is felony, by 3 Jac. 1, c. 26.

Judgments in Criminal Cases. When, upon a capital charge, the jury have brought in their verdict, Guilty, in the presence of the prisoner, he is either immediately, or at a convenient time soon after, asked by the court, if he has anything to offer why judgment should not be awarded against him. And if the defendant be found guilty of a misdemeanor, (the trial of which may, and does usually, happen in his absence, after he has once appeared,) a copy is awarded and set, to bring him in to receive his judgment; and if he absconds, he may be prosecuted even to outlawry. But whenever he appears in person, upon either a capital or inferior conviction, he may, at this period, as well as at his arraignment, offer any exceptions to the indictment, in arrest or stay of judgment; as for want of sufficient certainty in setting forth either the person, the time, the place, or the offence. And, if the objections be valid, the whole proceedings shall be set aside: but the party may be indicted again. 3 Rep. 45. And we may take notice, 1. That none of the statutes of feaisals, for amendment of errors, extend to indictments or proceedings in criminal cases; and therefore a defective indictment is not aided by a verdict, as defective pleadings in civil cases are. 2. That in favour of life, great strictness has at all times been observed, in every point of an indictment. Sir Matthew Hale, indeed, complains, of this strictness has grown to be a blemish and inconvenience in the law, and the administration thereof: for that more offenders escape by the easy ear given to exceptions in indictments, than by their own innocence." And yet no man was more tender of life than this truly excellent Judge. See 2 Hal. P. C. 193.

A pardon also may be pleaded in arrêt of Judgment: and it has the same advantage when pleaded here, as when pleaded upon arraignment; viz. the faving the attainder, and of course the corruption of blood, which nothing can restore but parliament, and therefore a pardon is not pleaded till after sentence. And certainly, upon all accounts, when a man hath obtained a pardon, he is in the right to plead it as soon as possible. See title Pardon.

Praying the benefit of clergy may also be raked among the motions in arrêt of Judgment. See title Clergy, Benefit of.

If all these resources fail, the Court must pronounce that judgment which the law hath annexed to the crime, for which reference may be made to the titles of the several offences, in this Dictionary. Of these some are capital, which extend to the life of the offender, and consist generally of being hanged by the neck till dead; though in very atrocious crimes other circumstances of terror, pain, or disgrace are superadded: as, in treasons of all kinds, being drawn or dragged to the place of execution: in high treason affecting the King's person, or government, or embowelling alive, beheading, and quartering: and in murder, a public disfigure. And, in case of any treason committed by a female, the judg-
ment at common law was to be burned alive. But now, by Stat. 30 Geo. 3. c. 43, it is enacted, "that in all cases of conviction of any woman for high or petit treason, the judgment shall be, that she shall be drawn and hanged, and not burned; and if any woman is convicted of petit treason, the said shall be liable to such further judgment as is directed by Stat. 25 Geo. 2. c. 37, to be given upon persons convicted of wilful murder. Indeed the humanity of the English nation has ever authorized by a tacit consent, an almost general mitigation of such part of these judgments as favours of torture or cruelty: a pledge or hurdle being usually allowed to such traitors as are condemned to be drawn; and there being very few instances (and those accidental, or by negligence) of any persons being embowelled or burned, till previously deprived of sensation by strangling. Some punishments consist in exile or banishment, by abjuration of the realm or transportation; others, in loss of liberty, by perpetual or temporary imprisonment. Some extend to confiscation, by forfeiture of lands, or movables, or both, or of the profits of lands for life; others induce a disability of holding offices or employments, being heirs, executors, and the like. Some, though rarely, occasion a mutilation or dismembering, by cutting off the hand or ears; others fix a lasting stigma on the offender, by filling the nostrils, or branding in the hand or cheek. Some are merely pecuniary, by flayed or discretionaries fines; and, lastly, there are others that consist principally in their ignominy, though most of them are mixed with some degree of corporal pain; and these are inflicted chiefly for such crimes as either arise from indigence, or render even opulence disgraceful; such as whipping, hard labour in the House of Correction, or otherwise, the pillory, the stocks, and the ducking-stool. Disgusting as this catalogue may seem, it will afford pleasure to an English reader, and do honor to the English law, to compare it with that shocking apparatus of death and torment, to be met with in the criminal codes of almost every other nation in Europe. And it is, moreover, one of the glories of our English law, that the species, though not always the quantity or degree, of punishment is ascertained for every offence; and that it is not left in the breast of any judge, nor even of a jury, to alter that judgment, which the law has before-hand ordained, for every subject alike, without respect of persons. For, if judgments were to be the private opinions of the Judge, men would then be slaves to their magistrates, and would live in society, without knowing exactly the conditions and obligations which it lays them under. And besides, as this prevents oppression on the one hand, so on the other it affords all hopes of impunity or mitigation, with which an offender might flatter himself, if his punishment depended on the humour or discretion of the court. Whereas, where an established penalty is annexed to crimes, the criminals may read their certain consequence in that law, which ought to be the unvaried rule, as it is the inflexible judge, of his actions. 4 Comm. 375, 86. The discretionary fines and discretionary length of imprisonment, which our Courts are enabled to impose, may seem an exception to this rule. But the general nature of the punishment, viz., by fine or imprisonment, is, in those cases, fixed and determinate; though the duration and quantity of each must frequently vary,
dilum. But an opinion, though erroneous, concluding to the judgment, is a judicial opinion, because delivered under the sanction of the Judge's oath upon deliberation, which affords that it is or was, when delivered, the opinion of the deliverer. Vaugb. 382. See title Judges.

JUDICIAL POWER. See title Judges.

JUDICIAL WRITS. The Capias, and all other subsequent to the original writ, not issuing out of Chancery, but from the Court into which the original was returnable, and being grounded on what has passed in that Court in consequence of the sheriff's return, are called Judicial, not original writs; they issue under the private seal of that Court, and not under the Great Seal of England; and are sealed, not in the King's name, but in that of the Chief Justice only. 3 Comm. 282. See titles Capias; Writs; Proces.

JUDICIAM DEI. The Judgments of God; so our ancestors called those, now prohibited, trials of ordeal, and its several kinds. Legis. Extra. Conf. c. 16.

See Spelman's Glossary on this word, and Dr. Brady in his Glossary, at the end of his Introduction to Eng. And this Dictionary, title Ordeal.

JUDICIAIUM PARIUM. See Jury.

JUG, A watery place. Domby.

JUGULATOR, A cut-throat, or murderer. Tamba. Wallingham, p. 343.

JUGUM TERRAE. A yoke of land, in Doemday, contains half a plow-land. So also 1 Eng. fo. 5. a. So in Doemday, Unum Jugum de ora, & Unum Jugum de terce; i.e. The rent of a yoke of land, and another yoke of land to plough. Gale 760.

UNCARE, To draw ruthes, as was of old the custom for accommodating the parochial church, and the very bed-chamber of princes. Pat. 14 Ed. 1.

UNCARIA, or JONCARIA, from Juncus, the Latin word for a rush.] A fell or place where ruthes grow. C.l. Lit. fo. 5. Pat. 6 Ed. 3. p. 1. m. 25.

JUNCTAM; JUNCTA, A measure of salt. 2 Mon. Aug. p. 76.

JURA REGALIA. See title Regalia; King.

JURATS, jurati.] Officers in nature of aldermen, sworn for the government of many corporations. As Romsey Mayle is incorporate of one bailiff, twenty-four jurats, and the commonalty thereof, by Chart. 1 Ed. 4.

And we read of the mayor and Jurats of Maidstone, Rey. Windelfell, &c. Also Jeramy hath a bailiff and twelve Jurats, or sworn affiants, to govern that island. See Star. 2 Ed. 6. c. 30. 13 Ed. 1. c. 26.

JURE-DIVINO Right to the throne. See title King.

JURE-DIVINO Right to titles. See title TitRES.

JURIDICAL DAY'S, Dies juriditi.] Days in court, on which the law was administered. See Day.

JURISDICTION, jurisdic.] An authority or power, which a man hath to do justice in causes of complaint brought before him: of which there are two kinds; the one, which a person hath by reason of his fee, and by virtue thereof, both right in all plaints, concerning the lands within his fee; the other is a Jurisdiction given by the prince to a bailiff, as divided by the Normans; and by him whom they called a bailiff, we may understand all who have commission from the King to give judgment in any cause. Cuthum. Normand. cap. 2.

The Courts and Judges at Westminster have Jurisdiction all over England; and are not restrained to any county or place: but all other Courts are confined to their particular Jurisdictions; which if they exceed, whatever they do is erroneous. 2 Litt. Abr. 120.

A Court shall not be presumed to have a Jurisdiction, where it doth not appear to have one. 2 Howel. c. 10.

If an action is brought in a corporate town, and the plaintiff sheweth not that the matter arises infra Jurisdictionem, the Court will be wrong, though the town be in the margin; but the county serves in the margin for the superior Courts. 3 &c. Stat. 32. The declaration in a safe Court must allege, that the goods were sold and delivered within the Jurisdiction thereof, as well as that the defendant promised within it. 1 Wilk. par. 2. p. 16. See title Inferior Courts.

After a verdict for the plaintiff in C. B. for less than 40s. the defendant may enter a suggestion on the roll, that he resided in Middlesex, which if true, the Court of C. B. hath no Jurisdiction, bystat. 22 Geo. 2. c. 33. See titles County Courts; Courts of Conscience.

Where commissioners or inferior jurisdictions, whose powers are limited, assume a Jurisdiction they have not, the law gives an action against them. 2 Wilk. 382.

Although a case may be debated and have Judgment in the Spiritual Courts, yet the King's Courts afterwards discuss the same matter. Artic. Cliri. Stat. 9 Ed. 2. c. 6.

In some cases, the Spiritual and Temporal Courts have a concurrent Jurisdiction. See title Prohibition; and further on this subject, titles Cognizance; Courts; Abatement.

JURIS UTRUM. A writ which lies for the parson of a church, whose predecessor hath alienated the lands and tenements thereof. F. N. B. 48. When a clerk is in full possession of the benefice, the law gives him the same posseMount remedies to recover his glebe, his rents, and all his other similar writs, as are grounded upon the mere right; because he hath not in him the entire fee and right; (F. N. B. 493) but he is entitled to a special remedy called a writ of Juris Utrum, which is sometimes filed the Parson's writ of right; (Beach 221;) being the highest writ which he can have. F. N. B. 48. This lies for a person or a prebendar on a common law, and for a vicar by f. 14 E. 3. b. 1. c. 17, and is in the nature of an alize, to inquire whether the tenements in question are frank-almoign belonging to the church of the demandant, or elles the lay fee of the tenant. Rigid. 32. And thereby the demandant may recover lands and tenements, belonging to the church, which were alienated by the predececor, or of which he was dispossessed; or which were recovered against him by verdicts, confession, or default, without praying in aid of the patron and Ordinary, or on which any person has intruded since the predececor's death. F. N. B. 48, 5.

But since the reposing of that estate of 13 Eliz. c. 10, whereby the alienation of the predececor, or a recovery suffered by him of the lands of the church, is declared to be utterly void, this remedy is of very little use: unles where the parson himself has been deforced for more than twenty years. Beach. 221.
JURIS

For the successor, at any competent time after his accession to the benefice, may enter, or bring an ejectment.

3 Comm. 252, 3.

A Vicar shall have a Juris Utrum against a Person for the glebe of his vicarage, which is part of the same church: and the plaintiff ought to be named patron or vicar, or such name in right of which he bringeth his action. New Nat. Br. 111.

JURNALF, From jur, or journic, Fr. a day.] The journal or diary of accounts in a religious house. Parob. Antig. p. 571 : Cowell.

JURNEDEUM, A journey, or one day's travelling. Cowell.

JUROR jurator.] One of those persons who are sworn on a Jury. See title Jury.

JURY; JURATA: from Lat. jurare, to swear.

A certain number of Men sworn to inquire of, and try, a matter of Fact, and declare the truth, upon such evidence as shall be delivered them in a cause: and they are sworn judges upon evidence in matter of fact.

The privilege of Trial by Jury, is of great antiquity in this kingdom; some writers will have it that Juries were in use among the Britons: but it is more probable that this trial was introduced by the Saxons: yet some say that we had our trials by Jury from the Greeks: the first trial by a Jury of twelve, being in Greece. By the laws of King Ethelred, it is apparent that Juries were in use many years before the Conquest; and they are, as it were, incorporated with our constitution, being the most valuable part of it. Witk. Ly. Augl. Sax. 147.

The truth seems to be, that this tribunal was universally established among all the northern nations, and interwoven in their very constitution, that the earliest accounts of the one give us also some traces of the other. Its establishment, however, and use, in this island, of what date ever it be, though for a time greatly impaired and shaken by the introduction of the Norman trial by battle, was always so esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it. In Magna Charta it is more than once affirmed, as the principal bulwark of our liberties; and especially by chapter 29, that no freeman be shall be hurt in either his person or property; "nulli per legale judicium parvum fieri sed per legem terrae." And it was ever esteemed, in all countries, a privilege of the highest and most beneficial nature.

Trials by jury in civil causes are of two kinds: extraordinary, and ordinary. The extraordinary shall be only briefly hinted at. The first species of extraordinary trial by jury is, that of the Grand Assize, which was instituted by King Henry VII. in parliament, by way of alternative offered to the choice of the tenant or defendant in a writ of right, instead of the barbarous and unchristian custom of dwelling. For this purpose a writ de magnius auscultatio is directed to the sheriff, to return four knights, who are to elect and chuse twelve others to be joined with them, in the manner mentioned by Glanville (I. 2. c. 11, 213) who, having probably advised the measure himself, is more than usually copious in describing it: and these all together, form the grand assize, or great Jury, which is to try the matter of right, and must now consist of sixteen Jurers. F. N. B. 4: Finch L. 412: 1 Levn. 303. It seems not, however, to be ascertained that any specific number above twelve is absolutely necessary to constitute the grand assize; but it is the usual course to swear upon it the four knights, and twelve others. Vin. Abr. title Trial Xc. See the proceedings upon a writ of right before the sixteen recognitions of the grand assize in 2 Wils. 541. And further this Dictionary, title Writ of Right.

Another species of extraordinary Juries, is the Jury to try an Ataint, which is a process commenced against a former Jury, for bringing in a false verdict. It is sufficient here to observe, that this Jury is to consist of twenty-four of the best men in the county, who are called the Grand Jury in the Ataint, to distinguish them from the first or petit Jury; and these are to hear and try the goodness of the former verdict. See this Dictionary, title Ataint.

With regard to the Ordinary Trial by Jury, it may be considered, according to the following divisions: first premising, that these Juries are not only used in the courts of the Judges, but in other Courts and matters: as if a Coroner inquire how a person killed came by his death, he doth it by Jury; and the Justices of peace in their Quarter-sessions, the Sheriff in his County Court, the Steward of a Court-Lect or Court-Baron, &c. if they inquire of any offence, or decide any case between party and party, they do it in like manner. Lamb. Eiren. 384.

I. Of the Moot of summoning, and compelling the Appearance, of Juries.

II. Of Challenging Jurors; and herein of their Qualifications.

III. Of the Verdict of a Jury in civil Causes.

IV. 1. Of Juries in criminal Causes; and 2. How far they are Judges of Law, as well as Fact.

J. When an issue is joined, between the parties in a suit, by these words, "and this the said A. prays may be inquired of by the country," or, "and of this he puts himself upon the country, and the said B. does the like," the Court awards a writ of amercies facias upon the roll or record, commanding the Sheriff, "that he cause to come here, on such a day, twelve free and lawful men (libres et legales homines) of the body of his county, by whom the truth of the matter may be better known, and who are neither of kin to the aforesaid A., nor of the aforesaid B., to recognize the truth of the issue between the said parties." And such writ is accordingly issued to the Sheriff.

Thus the cause stands ready for a trial at the bar of the Court itself: for all trials were there anciently had, in actions which were there first commenced; which then never happened but in matters of weight and consequence; all trifling suits being ended in the Court-Baron, Hundred, or County Courts; and indeed all causes of great importance or difficulty are still frequently retained upon motion, to be tried at the bar in the Superior Courts. (See title Trial.) But when the suits began, to bring actions of any trifling nature in the Courts of Westminster Hall, it was found to be an intolerable burden to compel the parties, witnesses, and Jurors to come from Westminster, or Cornwall, to try an action of assault at Westminster. A practice, therefore, very early obtained, of continuing the cause from term to term in the Court above, provided the Justices
to the Jury is repeated, through the County
bodys, to that of the Justices in eyre. Brad. 1. 3. tr. 1.
c. 11 § 8. Afterwards, when the Justices in eyre were
superceded by the modern Justices of Assize, (who
came twice or thrice in the year into the several coun-
ties, c. capendas affiisse, to take or try writs of assize, of
most d'accomplir, nova diffusa, nuisance, and the like,) a
power was superadded by stat. Wajung. 2. 3 Ed. 1.
c. 30, to those Justices of Assize to try common affiisse in
trepassis, and other less important affiisse, with directions
to return them (when tried) into the Court above;
where alone the judgment should be given. And as
only the trial, and not the determination of the case,
was now intended to be had in the Court below,
therefore the clause of nisi prius was left out of the conditional
continuance before-mentioned, and was directed by the
statute to be inserted in the writs of venire facias; that is,
that the Sheriff should cause the Jurors to come to
Westminster, (or wherever the King's Courts should be
held,) on such a day in Ester and Michaelmas terms;
nisi prius, unless before that day the Justices assigned
to take affiisse shall come into his said county." By virtue
of which the Sheriff returned his Jurors to the Court of
the Justices of Assize, which was sure to be held in the
vocation before Easter and Michaelmas terms, and there
the trial was had. See title Justices of Assize.

An inconvenience attended this provision: principally
because as the Sheriff made no return of the Jury to the
Court at Westminster, the parties were ignorant who
they were till they came upon the trial, and therefore
were not ready with their challenges or exceptions.
For this reason, by stat. 42 Edw. 3. c. 11, the method
of trials by nisi prius was altered; and it was enacted
that no inquiries be made of the Sheriff and gaol-delivery
should be taken by writ of nisi prius, till after the Sheriff
had returned the names of the Jurors to the Court above.
So that now in almost every civil cause the clause of
nisi prius is left out of the writ of venire facias, which is
the Sheriff's warrant to warn the Jury; and is in-
erted in another part of the proceedings: for now the
cause is to make the Sheriff's venire returnable on the
last return of the same term wherein issue is joined. viz. Hilary or Trinity terms; which from the
making up of the affiisse therein, are usually called
affises terms. And he returns the names of the Jurors
in a panel (a little pane, or oblong piece of parchment)
annexed to the writ. This Jury is not summoned, and
therefore not appearing at the day, must unavoidably
make default; for which reason, a compulsiye process
is now awarded against the Jurors, called in the Common
Plea, a writ of habeas corpora juratum, and in the
King's Bench, a ditionings, commanding the Sheriff to
have the Jurors taken up to draw their indictment,
that they may appear upon the day appointed.
The entry, therefore, on the roll or record is, "that the
jury is estopped, through the defect of the Jurors,
till the first day of the next term, then to appear at
Westminster; unless before that time, viz. on Wednesday
the fourth of March, the Justices of our Lord the King,
appointed to take affiisse in that county, shall have come
to Oxford;" [that is, to the place assigned for holding
the affiisse;] and thereupon the writ commands the
Sheriff to have their bodies at Westminster on the said
first day of next term, or before the said Justices of
affiisse, if before that time they come to Oxford; viz. on
the fourth of March aforesaid. And, as the Judges
are sure to come and open the circuit commissions on
the day mentioned in the writ, the Sheriff returns and
summons this Jury to appear at the affiisse, and there
the trial is had before the Justices of affiisse and nisi prius:
among whom are usually two of the Judges of the Courts
at Westminster, the whole kingdom being divided into
six circuits for this purpose. (See titles affiisse. Circuits.)
Thus it may be observed, that the trial of common
affiisse, at nisi prius, which was in its original only a collat-
oral incident to the original business of the Justices of
affiisse, is now, by the various revolutions of practice,
become their principal civil employment; hardly any
thing remaining in use of the real affiisse but the name.

If the Sheriff be not an indifferent person, as if he be
a party in the suit, or be either related by blood or
affinity to either of the parties, he is not then trusted
to return the Jury; but the venire shall be directed to the
Coroners, who, in this, as in many other instances, are
the substitutes of the Sheriff, to execute process when he
is deemed an improper person. If any exception lies to
the Coroners, the venire shall be directed to two clerks
of the Court, or two persons of the county named by
the Court, and sworn. And these two, who are called Esrjors,
or electors, shall individually name the Jury, and their
return is final; no challenge being allowed to their
array. Fortes. de Laud. li. c. 25: Co. Litt. 158: see
3 Comm. c. 23.

The learned Commentator here pauses to enlarge in
the praise of this mode of trial, even in these prepara-
tory stages, as most admirably adapted for the im-
partial investigation of truth. He then proceeds:

When a cause is ready for trial the Jury is called and
sworn. To this end the Sheriff returns his compulsiye
process, the writ of habeas corpora, or diffiniges, with the
panel of Jurors annexed, to the Judge's officer in Court.
The Jurors contained in the panel are either special or
common Jurors.

Special Juries were originally introduced in trials
at bar, when the causers were of too great nicety for the
discussion of ordinary freeholders; or where the Sheriff
was suspected of partiality, though not upon such appa-
rent cause as to warrant an exception to him; he is, in
such cases, upon motion in Court, and a rule granted
thereupon, to attend the praetorium or other proper
officer with his freeholder's book; and the officer is to
take, indifferently, forty eight of the principal free-
holders in the presence of the attorneys on both sides;
who are each of them to strike off twelve, and the re-
maning twenty-four are returned upon the panel. By
stat. 3 Geo. 2. c. 25, either party is entitled upon mo-
tion to have a Special Jury struck upon the trial of any
issue as well as at the assizes at bar; he paying the
extraordinary expenses, unless the Judge will certify (in
pursuance of stat. 24 Geo. 2. c. 18;) that the cause
required such special Jury.

By the said stat. 3 Geo. 2. c. 25, when any Special
Jury shall be ordered by rule of the said Courts in any
cause arising in any city, &c. the Jury is to be taken
out of lists or books of persons qualified, which shall be
produced
produced and brought by the Sheriff, &c. before the proper officer, as the freeholder's book is for striking Juries in causes arising in counties. And by 3 & 4 Geo. 2. c. 25, which makes perpetual the Justices of Assize for the counties palatine of Chester, Lancaster, &c. upon motion in behalf of the King, or any prosecutor, or defendant, in an indictment, information, or any suit, may appoint a Jury to be struck for trial of issues in like manner as Special Juries in the Courts of law at Westminster.

Though this Special Jury is allowed as well in indictments and informations for misdemeanors as in civil actions; but there cannot be a Special Jury in cases of trespass or felony, on account of the prisoner's privilege of peremptory challenge. See 33 Geo. II. 21 Vin. Abr. 301.

If a Special Jury has been struck, the cause goes on for default of Jurors, no new Jury can be struck, but the cause must be tried by the Jury first appointed.

The nomination of a Special Jury is to be in the presence of the attorneys on each side; but if either of them refuse to come, then the Second, &c. may proceed ex parte, and he shall strike twelve for the attorney who makes default. R. Trin. 8 W. 3. B. P.

It has been also adjudged, that if a rule is made for a Special Jury, and it is not expressed, that the Master of the office or Secretary shall strike eight freeholders, and that each of the parties shall strike out twelve; in such case the Master may strike twenty-four, and neither of the parties shall strike out any. 1 Salk. 405. A Special Jury may be granted to try a cause at bar, without the consent of parties. Pith. 10 Geo. 3.

A rule may be made for a good Jury, and that a special verdict may be found, &c. Med. Cal. in Law and Eq. 221.

A Common Jury is one returned by the Sheriff according to the directions of 3 & Geo. 2. c. 25; which appoints that the Sheriff or officer shall not return a separate panel for every separate cause, as formerly, but one and the same panel for every cause to be tried at the same assizes, containing not less than forty-eight, nor more than seventy-two. Jurors; and that their names being written on tickets, shall be put into a box or glass, and when each cause is called, twelve of these persons, whose names shall be first drawn out of the box, shall be sworn upon the Jury, unless absent, challenged, or excused; or unless a previous view of the meafurages, lands, or place in question, shall have been thought necessary by the Court: in which case it is prescribed by 3 & 4 Ann. c. 16, that six or more of the Jurors returned, to be agreed on by the parties, or named by a Judge or other proper officer of the Court, shall be appointed by special writ of habeas corpus, or affinckes, to have the matters in question shewn to them by two persons named in the writ: and then such of the Jury as have had the view, or so many of them as appear, shall be sworn on the inquest previous to any other Jurors. See this Dictionary, title View. These Rattles are well calculated to restrain any supposition of partiality in the Sheriff, or any tampering with the Jurors when returned.

It may be proper also to notice certain other provisions made with a view to the same desirable purposes. Panels of Juries returned to inquire for the King, may be reformed by the Judges of gaol delivery. &c. Stat. 3 Hen. 8. c. 12. Jurymen not appearing shall forfeit fines, if they have no reasonable excuse for their defaults, viz. 5l. on the first writ, upon the second 10l. and the third writ 15l. 46. Stat. 35 Hen. 8. c. 6. No Jury is to appear at Westminster for a trial, when the offence was committed thirty miles off; except the Attorney General require it. Stat. 18 Eliz. c. 5. § 2. Corporals of parishes, &c. at Michaelmas quarter-sees yearly, are to return to the Justices of peace, lists of the names and places of abode of persons qualified to serve on Juries, between the ages of twenty-one and seventy, attested upon oath, on pain of forfeiting 5l. And the Justices of peace shall order the Clerk of the peace to deliver a duplicate of those lists to the Sheriff, &c. And Sheriffs are to impanel no other persons, under the penalty of 20l. &c. St. 7 & 8 W. 3. c. 32: 3 Ann. c. 18.

No Sheriff, Bailiff, &c. shall return any person to serve on a Jury, unless he hath been duly summoned six days before the day of appearance; nor shall any money or other reward be given to induce the appearance of any Jurymen, on pain of forfeiting 10l. Stat. 4 & 5 W. & M. c. 24.

By the 3 & Geo. 2. c. 25, lists of Jurors qualified are to be made from the rates of each parish, and fixed on the doors of churches, &c. twenty days before the feast of St. Michael, that public notice may be given of persons qualified omitted, or of persons inferred who are not so, &c. and the lists being set right by the Justices of peace in quarter-sees, duplicates are to be delivered to the Sheriffs of counties, by the clerks of the peace; the names contained in which shall be entered alphabetically by the Sheriff's in a book, with their places and places of abode, &c. If any Sheriff shall return other persons to serve on Juries, or the clerk of the sheriff return any appearance, when the party did not appear, they shall be fined by the Judges not above 10l. or less than 40s. The like penalty for taking money to excuse persons from serving; and the Sheriff may be fined 5l. for returning Jurors, who have served two years before, &c. Jurors making default in appearance shall be fined not exceeding 5l. nor under 40s. By 1st Geo. 2. c. 7. § 2, no person shall be returned as a Jury at Nift prins in Middlesex, who has been returned there in the two preceding terms, or vacations. By 3 & Geo. 2. c. 25, no persons shall be returned as Jurors at assizes in counties who have served within two years, except in Rutlandshire, (the smallest county in England,) where the time is limited to one year; and in Yorkshire, (the largest,) where it is extended to four years. The 23 Geo. 2. c. 19, excuses, that persons summoned on Juries in Courts of Record in London, or in any other cities, corporations, and franchises, not attending, may be fined from 20l. to 200l.

If the Sheriff return twelve Jurors only according to the writ, where he ought to have returned twenty-four according to the usage, for speeding the trial in case of challenge, death, or sickness, &c. he shall be amerced, Jenk. Cent. 172.

Either the plaintiff or defendant may use their endeavours for any Jurymen to appear; but one who is not a party to the suit, may not; and an attorney was thrown over the bar, because he had given the names of several persons.
persons in writing to the Sheriff, whom he would have returned on the Jury, and the names of others whom he would not have returned. Moor 932. If a Juryman appear, and refuse to be sworn, or refuse to give any verdict, if he endeavours to impose upon the Court, or is guilty of any misbehaviour after departure from the bar, he may be fined, and attachment issue against him. 2 Chit. P.C. c. 22. § 13—18.

If, by means of challenges, or other cause, a sufficient number of unexceptionable Jurors do not appear at the trial, either party may pray a new jury. A jury is a body of such men, as are summoned upon the first panel, in order to keep up the deficiency. For this purpose a writ of decem tales, de decem tales, and the like, was used to be issued to the Sheriff at common law, and must be still do so at a trial at bar, if the Jurors make default. But at the Assizes or Nisi prius, by virtue of stat. 35 Hen. 8. c. 6, and other subsequent statutes, (14 Eliz. c. 9. 7 & 8 W. 3. c. 32. &c.) the judge is impowered at the prayer of either party to award a tales de circumstantibus of such persons present in Court, as are duly qualified to be joined to the other Jurors to try the cause, who are liable however to the same challenges as the principal Jurors. This is usually done till the legal number of twelve be completed. See 10 Rep. 102: Finch 214: 2 Blk. Ab. 67.

Upon a trial at bar, if the Jury do not appear full, the Court cannot grant a tales de circumstantibus, but will grant a decem tales, returnable in some convenient time the same Term, to try the cause. 2 Litt. Ab. 552. A plaintiff or defendant may have a tales de circumstantibus; and the statutes which authorise Justices of nisi prius to award a tales de circumstantibus, extend as well to capital cases as to others; but such a tales cannot be prayed for the King upon an indictment or criminal information, without the warrant of the Attorney General, or an express attestation from the Court before which the inquest is taken; though it may be awarded on an information qui tam, &c. because of the interest which the prosecutor hath in such prosecutions. 2 Hawk. P.C. c. 41. § 18: 3 Bell. 339. A tales is not to be granted where the whole Jury is challenged, &c. but the whole panel, if the challenge be made good, is to be quashed, and a new Jury returned; for a tales confinls but of some persons to supply the places of such of the Jurors as were wanting of the number of twelve, and is not to make a new Jury. 2 Litt. Ab. 252.

If but one Juror appears on the principal panel, the Court may order a tales under stat. 35 Hen. 8. c. 6: 10 Rep. 102. And if upon a bonns corpora, or a disstringas jury, none of the Jury appear, it is said a decem tales shall be awarded: but it shall not be had upon a overt fact. Cro. Eliz. 502: Moor 528. See 21 Dyer 215: 2 Roll. Rep. 75. At the assizes, one of the principal panel appeared, and no more, and a tales was awarded, the place whereof was nominis decem talibus, and under it eleven were returned; this was, notwithstanding, held good; for it is only a misprision of the clerk, and decem was struck out, and then the title was nominis talibus, &c. And it was adjudged, that if, after a tales granted, the principal panel should be quashed, the tales should stand good, and more be added. 4 Rep. 103: 2 Cro. 316.

Before the stat. 3 Geo. 2. c. 25, twenty-four different jurors were returned for the trial of each separate cause in the manner of twenty-four special Jurymen at present; hence the necessity of praying a tales, from the non-attendance of twelve unexceptionable persons in each panel, would frequently occur. And by stat. 7 & 8 W. 3. c. 32, it was enacted, that a tales should be selected from those who had been summoned on other panels. But since the practice was introduced by the said stat. 3 Geo. 2. c. 25, of impanelling not less than forty-eight, nor more than seventy-two, for the trial of all common causes, the provisions of the statutes respecting a tales, are now confined, in a great measure, to Special Juries. If a tales in default of special Jurymen is prayed, it is supplied agreeably to stat. 7 & 8 W. 3. c. 32, from the panel of common Jurymen. No tales can be prayed where all the special Jurymen are absent. A tales may be prayed as in civil actions in cases of misdemeanors tried by writ of nisi prius. 3 St. Tr. 57.

When a sufficient number of persons impanelled, or tales-men, appear, they are then separately sworn, "as well and truly to try the issue joined between the parties, and a true verdict to give according to the evidence," and hence they are denominated the Jury, jurata; and Jurors, &c. juratores.

The number of the Jury thus sworn must in general be twelve; to this there are, however, a very few exceptions.

In the manor of Pernw Parvania, in Cornwall, there was a custom to try an issue with six Jurors; but this custom was adjudged good custom, as Rulle, Chief Justice, affirmed, Mich. Term, 1652. MSS. N.o. The printed books also furnish two cases against such a custom; in the first of which cases, Rulle appears to have argued for it; and to have noticed, that there was a multitude of records in twenty several Courts in Cornwall, proving its prevalence. See Freehook v. Perryman, Cro. Car. 259: 1 Rep. Ab. 645; and Alle v. Al. 2 Jnko, 1 Sd. 233. In some special cases only, the Jury may be less than twelve; and in some, more or may be more. —They may be left: Thus it may be in Wales under the provision of stat. 34 & 35 Hen. 8. c. 26, concerning Wales, which allows of six: See the Stat. § 74: Cro. Car. 259: 1 Sd. 213; and Stat. 3 Geo. 2. c. 25. § 9. So also it is in some special cases in England, as six or eight in inquiry of damages on default, and in inquiry of waste; though this latter has been questioned, and even denied. Spec. Glos. vol. Jurata: P. N. B. 107. (C) Dan. Trial at Ffast, c. 6: 1 Vent. 116: Finch L. 400. Further, there is in Glamour, a writ for a Jury of eight to inquire into the age where infancy is alleged. Glos. L. 13, c. 14. 15. 16. See title Infant—Infants, in which the law allows or requires more than twelve, are, at least, in which there must be twenty-four; the Grand Jures, in which there must be fifteen; the Grand Jury, for indictments, which usually consist of some number between twelve and twenty-three; a writ of inquiry of Waste, in which thirteen have been allowed. Finch L. 483: Spec. Glos. vol. Jurata: 2 H. H. P. G. 161: Cro. Car. 414: 1 Inf. 155 a. in u. n.
II. At the Jurors appear, when called, they shall be sworn, unless challenged by either party. Challenges are of two sorts: challenges to the array, and challenges to the polls.

Challenges to the Array, are at once an exception to the whole panel, in which the jury are arrayed or set in order by the Sheriff in his return; and they may be made on account of partiality, or some defect in the Sheriff, or his under officer who arrayed the panel. And, generally speaking, the same reasons that before the awarding the array were sufficient to have directed it to the coroners or others, will also be sufficient to quash the array, when made by a person or officer of whole partiality there is any tolerable ground of suspicion.

Alto, though there be no personal objection against the Sheriff, yet if he arranges the panel at the nomination, or under the direction of either party, this is good cause of challenge to the array. Formally, if a Lord of Parliament had a cause to be tried, and no knight was returned upon the Jury, it was a cause of challenge to the array. C. Litt. 156: Selden Barracune, II. 11. But an unexpected use has been made of this dormant privilege by a spiritual Lord, (the Bishop of Worcester, M. 23 Geo. 2. B. R.) it was abolished by Stat. 24 Geo. 2. c. 18. But still, in an attain, a knight must be returned on the Jury. C. Litt. 156.

Alto by the policy of the ancient law, the Jury was to come de vicinato, from the neighbourhood of the villa or place where the cause of action was laid in the declaration, and therefore some of the Jury were obliged to be returned from the hundred in which such villa lay; and, if none were returned, the array might be challenged for defect of hundreders. For, living in the neighbourhood, they were properly the very country, or part, to which both parties had appealed; and were supposed to know before-hand the characters of the parties and witnesses, and therefore the better knew what credit to give to the facts alleged in the evidence. But this convenience was over-balanced by another very natural and almost unavoidable inconvenience; that Jurors coming out of the immediate neighbourhood, would be apt to intermix their prejudices and partialities in the trial of right. And this our law was so sensible of, that it has for a long time been gradually relinquishing this practice; the number of necessary hundreders in the whole panel, which, in the reign of Edward III., were constantly fixed, being in the time of Fortescue reduced to four. Giff. H. J. C. P. c. 8: Fortescue de Laud. I. 1. c. 25. Afterwards, indeed, Stat. 35 Hen. 8. c. 6, restored the ancient number of 40; but that clause was soon virtually repealed by Stat. 27 Eliz. c. 6, which required only two. And Sir Edward Coke also gives us such a variety of circumstances, whereby the Courts permitted this necessary number to be evaded, that it appears they were heartily tried of it. 1 Inst. 157. At length, by Stat. 4 & 5 Ann. c. 16, it was entirely abolished upon civil actions, except upon penal statutes; and upon those also by Stat. 24 Geo. 2. c. 18, the Jury being now only to come de corpopere comitatu from the body of the county at large, and not de vicinato, or from the particular neighbourhood.

The array, by the ancient law, may also be challenged, if an alien be party to the suit, and, upon a rule obtained by his motion to the Court, for a Jury de modiata legata; such a one be not returned by the Sheriff, pursuant to the stat. 23 Ed. 3. c. 13, enforced by Stat. 8 Hen. 6. c. 29; which enacts, that where either party is an alien born, the Jury shall be one half denizens, and the other aliens, (as so many be forth-coming in the place, for the more impartial trial. A privilege indulged to strangers in no other country in the world, but which is as antient with us as the time of King Ethelred. But when both parties are aliens, no partiality is to be presumed to one more than another; and therefore it was resolved soon after the Stat. 8 Hen. 6, that where the issue is joined between two aliens, (unless the plea be had before the Mayor of the Staple, and thereby subject to the restrictions of Stat. 27 Edw. 3. c. 2. & 3.) the Jury shall all be denizens. 2 Del. 1 Hen. 6. 4. And it now might be a question, how far the Stat. 3 Geo. 2. c. 25, (before referred to) hath in civil causes undeniably abridged this privilege of foreigners, by the positive directions therein given concerning the manner of impanelling Jurors, and the persons to be returned in such panel. So that, (unless this statute is to be construed by the same equity, which Stat. 8 Hen. 6. c. 29, declared to be the rule of interpreting Stat. 2 H. 5. c. 2. & 3., concerning the landed qualification of Jurors in suits to which aliens were parties,) a Court might perhaps hesitate, whether it has now a power to direct a panel to be returned de modiata legata; and thereby alter the method prescribed for striking a Special Jury, or balloting for common Jurors.

Challenges to the Polls, in capita, are exceptions to particular Jurors; by the laws of England, in the time of Bracton and Felton, a Judge might be refused for good cause; but now the law is otherwise, and it is held, that judges and Justices cannot be challenged. See Bract. 1. 5. c. 15: Felton, 1. 6. c. 37: C. Litt. 294.

Challenges to the Polls of the Jury (who are judges of fact) are reduced to four heads by Sir Edward Coke; propter honoris visitation; propter defension; propter officium; & propter delitiem. 1 Inst. 156. Propter honoris visitation, as if a Lord of Parliament be impanelled on a Jury, he may be challenged by either party, or he may challenge himself. Propter defension, as if a Jury-man be an alien born, this is defect of birth: if he be a slave or bond-man, this is defect of liberty, and he cannot be liberi et legislib us. Under the word bonus also, though a name common to both sexes, the female is however excluded, propter defension fœtus: except when a widow feigns herself with child, in order to exclude the next heir, and a suppofitious birth is suspected to be intended; then upon the writ de ventre iusicitando, a Jury of women is to be impanelled to try the question, whether with child or not.' Cro. Eliz. 506. See this Dictionary, title Ventre iusicitando.

But the principal deficiency is defect of estate, sufficient to qualify him to be a Juror. This depends upon a variety of statutes. First, by Stat. Wyst. 2. 13 Ed. 1. c. 38, none shall pass on Juries in affairs within the county, but such as may dispense twenty shillings by the year, at the least, which is increased to forty shillings by Stat. 21 Edw. 1. c. 1: 2 Hen. 5. c. 2. c. 3. This was doubled by Stat. 27 Eliz. c. 6, which requires, in every such case, the Jurors to have estate of freehold to the yearly value of four pounds at the least. This qualification was raised by Stat. 16 & 17 Car. 2. c. 3, to twenty pounds per annum; which being only a temporary
JURY II.

rily 20, to three years, was suffered to expire without renewal, to the great debarlement of Juries. However, by stat. 4 & 5 W. 8, c. 24, it was again raised to ten pounds per annum in England, and six pounds in Wales, of freehold lands or copyhold; which is the first time that copyholders (as such) were admitted to serve upon Juries in any of the King's Courts; though they had before been admitted to serve in some of the Sheriff's Courts, by stat. 1 Ric. 3, c. 4; 9 Hen. 7, c. 13. All cities, boroughs, and corporate towns, are excepted out of the stat. 4 & 5 W. 8, c. 24. And by an ancient statute, 23 Hen. 8, c. 15, trials of Felons in corporations may be by freemen worth forty pounds in goods. Lastly, by stat. 3 Geo. 2, c. 25, any leasholder for the term of five hundred years absolute, or for any term determinable upon life or lives, of the clear yearly value of twenty pounds per annum, over and above the rent reserved, is qualified to serve upon Juries. On account of the small number of freeholders in the county of Middlesex, and the frequent occasion for Juries at Westminster, in that county, it is enacted, by stat. 4 Geo. 2, c. 7, that a leasholder for any number of years, if the improved annual value of his lease be fifty pounds, above all ground rents and other reservations, shall be liable to serve upon Juries for that county. By stat. 3 Geo. 2, c. 25, persons impanelled upon any Jury within the city of London shall be householders, and poiseffed of some estate either real or personal of the value of one hundred pounds. When the Jury is de mediate lingue, that is, one moiety of the English tongue or nation, and the other of any foreign one, no want of lands shall be cause of challenge to the alien; for as he is incapable to hold any, this would totally defeat the privilege. See ante, and stats. 2 Hen. 5, 2 & 3: 8 Hen. 6, c. 29.

Juries may be challenged proper affections, for suspicion of bias or partiality. This may be either a principal challenge, or to the favour. A principal challenge is such, where the cause adjourned carries with it praemá facie evident marks of suspicion, either of malice or favour: as, that a Juror is of kin to either party within the ninth degree, Finch L. 401 that he has been arbitrator on either side, that he has an interest in the cause; that there is an action depending between him and the party; that he has taken money for his verdict; that he has formerly been a Juror in the same cause; that he is the parties major, servant, counselor, steward, or attorney, of the same society or corporation with him; all these are principal causes of challenge; which, if true, cannot be over-ruled, for Jurors must be amiti exceptions majoris. Challenges to the favour, are where the party hath no principal challenge; but objects only some probable circumstances of suspicion, as acquaintance and the like; the validity of which must be left to the determination of Trier; whose office it is to decide whether the Juror be favourable or unfavourable. The Trier, in the case the man called be challenged, are two indifferent persons named by the Court, and, if they try one man, and find him indifferent, he shall be sworn; and then he and the two Triers shall try the next, and when another is found indifferent and sworn, the two Triers shall be superceded, and the two first sworn on the Jury shall try the reft. Co. Lit. 158.

Challenges proper delictum are for some crime or misdemeanor, that affects the Juror's credit and renders him infamous. As for a conviction of treason, felony, perjury, or conspiracy; or if for some infamous offence he hath received judgment of the pillory, tumbril, or the like, or to be branded, whipt, or branded; or if he be outlawed or excommunicated; or hath been attainted of false verdict, praemunire, or forgery; or, lastly, if he hath proved recreant when champion in the trial by battel, and thereby hath lost his liberam legem. A Juror may himself be examined on oath of suum dicere, veritatem decere, with regard to such cause: of challenge, as are not to his dishonour or discredit, but not with regard to any crime, or any thing which tends to his disgrace or disadvantage. Co. Litt. 158. & see the notes there.

Besides these challenges, which are exceptions against the fitness of Jurors, and whereby they may be excluded from serving, there are also other causes to be made use of by the Jurors themselves, which are matter of exception; whereby their service is excused. As by stat. 49 Eliz. 1, c. 38, sick and decrepit persons, persons non camorant in the county, and men above seventy years old; and by the stat. 7 & 8 W. 3, c. 32, infants under twenty one. This exemption is also extended by divers statutes, customs, and charters, to physicians, and other medical persons, counsel, attorneys, officers of the Courts, and the like: all of whom, if impanelled, must shew their special exemption. Clergymen are also usually excused, out of favour and respect to their function: but if they are seized of lands and tenements, they are, in right, liable to be impanelled in respect of their lay fees, unless they be in the service of the King or some Bishop. F. N. B. 166: Reg. Brev. 179.

Barons of the realm, as has been already hinted, and all above them, are not to serve in any ordinary Jury; and others may have this privilege by writ, or the King's grants, &c. Rep. 53: 1 Brown. 30. But such as have charters of exemption, shall be sworn on great affairs, and in attaints, &c. when their oath is requisite. Stat. 52 H. 3, c. 14.

It has been already remarked that a person indicted of treason may challenge thirty-five of those returned on the panel of Jurors to try him, without cause shown; and if two or more are to be tried, they may challenge so many each; but then they are to be tried singly, or all may challenge that number in the whole, and be tried jointly. 3 Salt. 81. By stat. 3 Hen. 7, c. 14, in treason, by the King's sworn servants, for compaining to kill the King, tried before the feward of the King's household, &c. no challenge shall be allowed but for malice. Some statutes which take away the benefit of clergy from felons, exclude those from their clergy who peremptorily challenge more than twenty, whereby they are liable to judgment of death. See stat. 22 Hen. 6, c. 14: 28 Hen. 8, c. 11: 1 & 2 E. 6, c. 12, § 11: 3 & 4 W. & M. c. 9. But it is now settled, that if the offender be within the benefit of clergy, the challenge shall be over-ruled, and the party put upon his trial. 2 Howk. P. C. c. 43.

All peremptory challenges are to be taken by the party himself; and where there are divers challenges, they must be taken all at once. But there can be no challenge till the Jury is full; and then the array is to be challenged before one of them is sworn. Hob. 235. Where the King is party, if the other side challenge a Juror above the number allowed by law, he ought to shew the cause
courage of his challenge immediately. 1 Bulst. 191. A defendant shall shew all causes of challenge, before the King shall shew any. 2 Hawk. P. C. c. 42.

If the Juror is convicted and attainted of treason, felony, perjury, adjudged to the pillory, or other punishment whereby he becomes infamous, or is outlawed or excommunicate, these are all principal challenges; but in these cases and others, he that challengea is to shew hered, whether he must conclude to the favour, unless it be a record of the same Court. Co. Litt. 157. A person under protest for any crime, may, before indicted, challenge any of the Grand jury, as being outlawed, &c. or returned at the instance of the prosecutor, or not returned by the proper officer, 2 Hawk. P. C. c. 25, § 16.

A principal challenge being found true, is sufficient without leaving it to Triers; but if one of a Jury are challenged for favour, they shall be tried by the rest of the Jury whether indifferent. Co. Litt. 158. Where a challenge is made to the array, the Court appoint the two Triers, who are sworn, and then the cause of favour is shewn to them, which may be called the issue they are to try; and if it is proved, then they give their verdict that they are not indifferently impanelled, and this is entered of record; but if the favour is not proved, then they say the jury were indifferently impanelled, and so the trial goes on, without making any entry of the matter. 1 Bulst. 114.

If one take a principal challenge against a Juror, he cannot afterwards challenge that Juror for favour, and waive his former challenge; but a challenge may be made to the new Triers after it has been made to the array. Wood. 592.

A new Jury is to be impanelled by the Coroner, where the array is qualified for partiality, &c. of the Sheriff. Trials per pari, 15.

If a plaintiff or defendant have action of battery, &c. against the Sheriff, or the Sheriff against them, it is cause of challenge; and if either of the parties have action of debt against the Sheriff; or if the Sheriff hath any parcel of land depending on the same title as the parties; or if he, or his bailiff, who returned the Jury, be under the distress of either party, &c. there are good causes of challenge. Where one of the Jurors hath a suit at law depending with the plaintiff, it is good challenge. Stil. 129. An action depending between either of the parties and a Juror, implying malice, is cause of challenge; and a Juror may be challenged for holding lands by the same title as the defendant. 2 Lew. 42.

If a person owes suit of court, &c. to a lord of a hundred who is plaintiff, it is a principal challenge, as he is within the distress of the plaintiff. Dyer. 175. But it is said to be no challenge, that a person is in debt to either party. 1 Nelf. Abrid. 426. A Juror returned by a wrong name may be challenged and withdrawn, so that the Jury shall not be taken; yet a new may be granted. 1 Lit. Abrid. 260. And if a Juror declares the right of either of the parties, &c. it is cause of challenge; though it hath been ruled that it is not sufficient cause of challenge, that a Juror delivered his opinion touching the title of the land in question, because his opinion may be altered on hearing the evidence. Fawch. 23 Car. B. R.

If there are two defendants in a real action, or two tenants, and one challenge a Juror, and the other will not, the Juror (the challenge being allowed) shall be drawn Vol. II.

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against the ret. 11 H. 6. 15: Jent. Cont. 114. To say of a person to be tried for any crime, that he is guilty, or will be hanged, &c. is good cause of challenge; but the prisoner must prove it by witnesses, and not out of the mouth of the Jurymen, who may not be examined; and though a Jurymen may be asked upon a voir dire, whether he hath any interest in the case, or whether he hath a frehold, &c. yet a Juryman or a witness shall not be examined whether he hath been convicted of felony, or guilty of any crime, &c. which would make a man discover that of himself which tends to make him infamous, and the answer might charge him with a misdemeanor. 1 Bulst. 153.

If one challenge a Juror, the challenge is entered, he may not have him afterwards sworn on the Jury. And if the defendant do not appear at the trial when called, he loses his challenge to the Jurors, though he afterwards appears. 1 Lit. Abrid. 259. When the Jury appear at a trial, before the Secondary calls them to be sworn, he bids the plaintiff and defendant to attend their challenges, &c.

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III. The Jury, after the proofs in a case are summed up, unless the case be very clear, withdraw from the bar to consider of their verdict; and, in order to avoid intertemperance and caufetical delay, are to be kept without meat, drink, fire, or candle, unless by permission of the Judge, till they are all unanimously agreed. If they eat or drink at all, or have any cattables about them, without content of the Court, and before verdict, it is satisfiable; and if they do at his charge for whom they afterwards find, it will set aside the verdict. Also if they speak with either of the parties, or their agents, after they are gone from the bar, or if they receive any fift evidence in private; or if, to prevent disputes, they call lots for whom they shall find: any of these circumstances will entirely vitiate the verdict. And it has been held, that if the Jurors do not agree in their verdict before the judges are about to leave the town, though they are not to be threatened or imprisoned, the Judges are not bound to wait for them, but may carry them round the circuit from town to town in a cart. Mer. c. 4. § 24: Lit. Abrid. fol. 40, 41. This necessity of a total unanimity seems to be peculiar to our own condit. See Barrington on the Statutes, 19, 20, 21: 3 Conn. c. 23; and Mr. Christie's notes there; and p. IV.

After a Juror is sworn he may not go from the bar until the evidence is given, for any cause whatever, without leave of the Court; and with leave he must have a keeper with him. 2 Lit. 123, 127. A witness may not be called by the Jury to recite the same evidence he gave in Court, when they are gone from the bar. Cro. Eliz. 189. Nor may any party give a brief or notes of the case to the Jury to consider of; if he doth, he and the Jurors may be fined. Mer. 815.

If Jurymen after sworn, either before or after they are agreed of their verdict, eat and drink, the verdict may be good; but they are finable: and if it be at the charge of either party, the verdict is void. Dalby. 10: Cro. Jac. 21. If they agree to cast lots for their verdict, or to bring in guilty or not guilty, as the Court shall feem inclined, they may be fined. 2 Lev. 205: Cro. Eliz. 779. But a Jury have been permitted to recall their verdict; as where one was indicted of felony, the Jury found
found him not guilty, but immediately before they went from the bar, they laid they were mistaken, and found him guilty, which last was recorded for their verdict. 29. J. 211.

The Jury are to judge upon the evidence given, but the J.ower may not contradict what is agreed in pleading between the parties; if they do, it shall be rejected; and where the Jury find the fact, but conclude upon it contrary to law, the Court may reject the conclusion. 1. Add. 41: 10 Rep. 50: Co. Litt. 22: H. 211. The Jury may find a thing done in another county, upon a general issue; and foreign matters done out of the realm, &c. 3. 29. J. 

And sometimes when the evidence has been heard, the Jury obtained from their confinement, obtain leave (in civil causes) to withdraw or discharge. 1. 29. J. 211.

If a juryman is guilty of bribery, he is disabled to be of any issue or jury; and shall be imprisoned, and, upon conviction of bribery, is to be tried presently by a jury then put together. 29. J. 211. And if a juryman takes any thing of either party; to give his verdict, he shall pay ten times as much as taken; or suffer a year's imprisonment. 29. J. 211.

And if a verdict is. And if on this statute a writ of quo warrant? was agreed, and this though they gave no verdict, or the verdict be true; if they take money. Reg.Orig. 188; F.N. B. 171: New Nat. Br. 380: 1. 29. J. 211.

A verdict, even in a case where the Crown has with excellent arguments the liberties of every subject of Great Britain; and is secured, as has already been mentioned, by the Great Charter, § 30. 29. J. 211. And sometimes when the evidence has been heard, the jurors doubting of the verdict, do content that a juror shall be withdrawn or discharged. 1. 29. J. 211.

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JURY IV. I.

that no man should be called to answer for any capital crime, unless on the preparatory accusation of twelve or more of his fellow-subjects, the Grand Jury: and that the truth of every accusation should be afterwards confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen, and superior to all suspicion. So that the liberties of England cannot but subsist so long as this Palladium remains sacred and inviolate; unawed by the power of the Monarch, and unattained by the weakness or wickedness of those who are called upon to exercise this invaluable privilege.

The Grand Jury generally consists of twenty-four men of greater quality than the other, chosen indifferently out of the whole county by the Sheriffs; and the Petit Jury consists of twelve men, of equal condition with the party indicted, impanelled in criminal cases, called the Jury of Life and Death; The Grand Jury find the bills of indictment against criminals, and the Petit Jury consider them by verdict, in the giving whereof all the twelve must agree; and according to their verdict the judgment paffeth. 3 Inf. 50. 31. 221. See this Dict. title Indictment.

When a prisoner on his arraignment has pleaded not guilty, and for his trial hath put himself upon his country, which country the Jury are, the Sheriffs of the county must return a panel of jurors; freeholders without just exception, and of the neighbourhood; that is, of the county where the fact is committed. 2 Hal. P. C. 254: 2 Hawk. P. C. c. 40. If the proceedings are before the Court of K. B. time is allowed, between the arraignment and trial, for a Jury to be impanelled by writ of assistance facias to the Sheriff as in civil causes: But before Commissioners of eye and termion, and gaol deliver, the Sheriff, by virtue of a general precept directed to him beforehand, returns to the Court a panel of forty-eight Jurors, to try all felons that may be called upon their trial at that session. 4 Comm. c. 27.

Challenges may be made in criminal cases either on the part of the King, (the prosecution,) or on that of the prisoner; and either to the whole array or to the separate polls, for the very same reasons that they may be made in civil causes. For it is here, at least as necessary as there, that the Jury be liable to no objection; that the Sheriff or returning officer be totally indifferent; and that where an alien is indicted, the Jury should be half foreigners, if no many are found in the place; this latter privilege however does not hold in treasons, aliens being very improper judges of the breach of allegiance. See 2 Hawk. P. C. c. 43. § 37: 2 Hal. P. C. 271.

Challenges upon any of the accounts specified in civil cases are styled challenges for cause: which may be without flint in both criminal and civil trials. But in criminal cases, at least in capital ones, there is in favour of life allowed to the prisoner an arbitrary and capricious species of challenge, to a certain number of Jurors, without relating any cause at all: a provision full of that tenderness and humanity to prisoners for which the English laws are justly famous. This is grounded on two reasons, viz. the sudden impressions and unaccountable prejudices, which every one is apt to conceive on the bare looks and gesture of another; and the consideration that the very questioning of a person's indifference may provoke resentment;—a Juror therefore challenged for insufficient cause may afterwards be peremptorily challenged.

This privilege of peremptory challenges, though allowed to the prisoner is denied to the King, by 33 El. I. c. 4; which enacts, that the King shall challenge no Jurors without assigning a cause certain, to be tried and approved by the Court. However, it is held that the King need not assign his cause of challenge till all the panel is gone through, and unless there cannot be a full Jury without the persons so challenged: and then and not sooner the King's counsel may show the cause, otherwise the Jurors shall be sworn. 2 Hawk. P. C. c. 43. § 3: 2 Hal. P. C. 271: Resyn. 473.

These peremptory challenges of the prisoner must however have some reasonable boundary: this is settled by the common law at the number of thirty-five, that is one under the number of three full Juries: and if a prisoner peremptorily challenged above that number, and would not retract his challenge, he was formerly to be dealt with as one who stood mute, or refused his trial, by sentencing him in cases of felony to the paine forte & dure (preting to death, now totally abolished: See that title, and title Trial,) and by attaining him in treason. And to the law stands at this day with regard to treason of any kind. But by 22 H. 8. c. 14. (which with regard to felonies stands unpealed by 1 & 2 P. & M. c. 10,) no person arraigned for felony can be admitted to make any more than twenty peremptory challenges. If in such case the prisoner peremptorily challenged twenty-one, the old opinion was, that judgment of paine forte & dure should be given as where he challenged thirty-five at the common law. 2 Hawk. P. C. c. 43. § 9. But the better opinion seems to be, that such challenge shall be only disregarded and overruled, and the Jury be regularly sworn. 3 Inf. 227: 2 Hal. P. C. 270.

If by reason of challenges, or the default of Jurors, a sufficient number cannot be had of the original panel, a tales may be awarded, as in civil causes: Though this cannot take place in mere commisions of gaol-delivery, but in which the Court may by word order a new panel to be returned infiniter. 4 Inf. 68: 4 St. Tr. 728. Cook's Ca. See ante. When at length the number of twelve is completed, they are sworn, "well and truly to try, and true deliverance make, between our Sovereign Lord the King, and the prisoner whom they have in charge; and a true verdict to give according to their evidence," 4 Comm. 27.

When the evidence on both sides is closed, and indeed when any evidence hath been given, the Jury cannot be discharged, unless in cases of evident necessity, till they have given in their verdict; but are to consider of it, and deliver it in with the same form as upon civil causes: only they cannot, in a criminal case which touches life or member, give a privy verdict. See 1 Inf. 227: 3 Inf. 110: 4 St. Tr. 27: 2 Hal. P. C. 300: 2 Hawk. P. C. c. 47. § 1, 2. But the Judges may adjourn, while the Jury are withheld to confer, and return to receive the verdict in open Court. 3 St. Tr. 731: 4 St. Tr. 231. 455: 485.

On the State Trials for High Treason, at the Sessions house in the Old Bailey, London, under a special commiision in 1794, against Tho. Hardy, Horne Tooke, and several others charged with having formed the destructive project...
JURY IV. 1.

project of *A Convention of the People*, to overthrow the Monarchy and the Constitution, the Jury on each Prisoner were kept together in the Custody of the Sheriff or his Bailiff night and day, for several days successively, during the whole of the proceedings on each trial, and till they gave their verdicts. The Court adjourned from evening till morning; and also once in the day for the purpose of refreshment, and from Saturday evening till Monday morning, when Sunday intervened.—The Sheriff was charged to see that no improper communication was had with the Jury during these intervals. And the first Jury having been sent several nights to an Hotel in Covent Garden, at some distance from the Court, a slight suspicion arising that they were not kept quite free from extraneous information, the subsequent Juries were accommodated with beds, in rooms nearly adjoining the Court.

A Culprit was indicted for murder. The Jury were sworn, and part of the evidence given, but before the trial was over, one of the Jurymen was taken ill, went out of Court with the Judge's leave, and presently after died. The Judge, doubting whether he could swear another Jury, discharged the eleven, and left the Prisoner in gaol. The Court was moved for a writ of habeas corpus, to bring up the prisoner that he might be discharged, having been once put upon his trial. This being a new case, the Court said they would advise with the other Judges upon it; and afterwards they all agreed that the prisoner might be tried at the next assizes, or the Judge might have ordered a new Jury to have been sworn immediately. *Mich. 4 G. 5. R. v. Gould.*

The verdict in a criminal case thus publicly and openly given may be either general, Guilty, or Not Guilty; in which precise terms alone a general verdict must be given; or special, when it must set forth all the circumstances of the case, and pray the judgment of the Court whether for Instance, on the facts stated, it be murder, manslaughter, or no crime at all.

This special verdict is where the Jury doubt the matter of law, and therefore debase to leave it to the determination of the Court; though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict if they think proper so to hazard a breach of their oaths: and if their verdict be notoriously wrong, they may be punished, and the verdict set aside by attaint at the suit of the King, but not at the suit of the prisoner.


The instances which formerly happened of faulty, improper, or otherwise punishing jurors, merely at the discretion of the Court, for finding their verdict contrary to the direction of the Judge, were arbitrary, unconstitutional, and illegal; and indeed it would be a most unhappy case for the Judge himself, if the prisoner's fate depended on his directions; unhappy also for the prisoner; for if the Judge's opinion must rule the verdict, the trial by Jury would be useless. *2 Hal. P. C. 313.*

Yet in many instances where, contrary to evidence, the Jury have found the prisoner guilty, their verdict hath been mercifully set aside, and a new trial granted by the Court of King's Bench: for in such cases it cannot be set right by attaint. *1 Lees. 9. T. Jones. 163; 10 S. Tr. 416.* As the party is found guilty in fact, by twenty-four: *1 Edw. 280. 1. 2. 7.* But the Court have never interfered even to grant a new trial where a prisoner is once acquitted; however contrary the verdict might be to the opinion of the Judge, or to what, in the eyes of all, but the Jury, might be deemed the real justice of the case. See *2 Hawk. P. C. c. 47. § 11, 12*; where it is positively flatted as settled, that the Court cannot set aside a verdict which acquits a defendant of a prosecution properly criminal. See *this Dict. title Trial; (Novo Trial).*

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2. The Question whether Juries are, or are not, Judges of Law as well as of Fact, has been long agitated with great zeal and energy; probably more through a spirit of party, than from a desire of establishing any undoubted determination on the subject. There cannot, after all, as it seems, be any great difficulty, to an unbiased and unprejudiced mind, in determining the controversy.

We have already seen, that Juries may, by a general verdict of acquittal in criminal prosecutions, prevent the case from coming under the final consideration of the Court; who, in that event, have no opportunity of deciding on the question of law. But in cases of conviction, it is the established rule, that the Judges of the Court in which the prosecution is carried on, may arrest the judgment, or grant a new trial, where they are of opinion, that the offence is not such as is charged in the indictment; that the indictment is defective in charging it; or, that the verdict is against evidence. Thus much therefore appears indubitable, that in one event the Court are the acknowledged Judges of the law, as the Jury are of the fact: and that the latter have the absolute power of acquittal in criminal cases; but not of conviction. A provision, indeed, full of that wisdom and mercy which so eminently characterize the English law.

This long and important question has principally arisen on prosecutions for *Libel,* and above all others on those for *State Libel,* in which it had for a long time been the usage for the Judge to direct the jury, as if the fact of the publication of the paper charged to be a libel was proved, and if they believed the innuendoes in the indictment, they must find the defendant guilty; without advertising to any other circumstances, such as whether the paper were in their opinion a libel, or published with a malicious, seditious, traitorous, &c. intention.—The Counsel for the defendants in such prosecutions, always maintained, that it was the province of the Jury to judge whether the paper was a libel; (undoubtedly a question of mere law); and also whether it were published with a malicious, seditious, &c. intention, as charged;—a complicated question of law and fact.

Mr. *Edwin* was the most strenuous asserter of this latter doctrine; and by the indefatigable exertions of him and Mr. *Peece,* the following act of Parliament was obtained with a view expressly of settling this question by legislative authority:

The Act 32 Geo. 3. c. 60, after reciting that "doubts had arisen whether, on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the party and the defendant, on the plea of not guilty pleaded, it is competent to the Jury, impaneled to try the same, to give their verdict upon the whole matter in issue:" enacts, that "on every such trial, the Jury, sworn to try the issue, may give a general verdict of guilty or not guilty, upon the whole matter put in issue, upon such indictment or information; and shall not be required or directed, by
the Court or Judge, before whom the indictment, &c. shall be tried, to find the defendant guilty, merely on the proof of the publication, by such defendant, of the paper charged to be a libel, and of the sense ascribed to the same in such indictment.” § 1.

But it is provided by the said statute, that the Court or Judge shall, according to their discretion, give their opinion and directions to the jury on the matter in issue, as in other criminal cases—that the jury may also find a special verdict; and that in case the jury shall find the defendant guilty, he may move in arrest of judgment, as by law he might have done before the passing of the act. §§ 2, 3, 4.

The above is the whole substance of the statute: the only case that appears on the subject of libels, in the books, subsequent to the passing that act, is R. v. Holt; 5 Term Rep. 436; which does not seem to bear upon the question, further than that Mr. Erskine incorrectly stated the statute, as giving the jury a right to take into their consideration the intention of the defendant.

It is observable, however, that as the rule on this subject laid down by Lord Coke, 1 Inst. 159, b, is in a negative way; “ad questionem facti non respondent judices, ad questionem juris non respondent juratores—judges are not to answer to the question of fact; juries are not to answer to the question of law;” so this modern statute, in the same kind of language provides, that “the jury shall not be required or directed to find a verdict of guilty, merely on the proof of publication, and the sense ascribed to the paper.” The statute does not proceed any further to state what matters may or may not be given or produced in evidence in such trials; nor does it lay one word as to the coloured point, the settling of which was the pretext for its being procured, as to the right or province of the jury to decide the question of law. On the contrary, it is most remarkable that the doubt, expressed to have been entertained, is, whether it was competent to the jury to give their verdict upon the whole matter in issue. Now this doubt certainly never existed; since, wherever the question of law is in issue, it is always tried by the Court on a demurrer, and is never submitted to all a jury. On an issue of Fact, (such as that joined on all indictments,) the law is never in dispute.

The provision in the act, “that in cases where the jury shall find a verdict of guilty, the defendant may move in arrest of judgment, as by law he might have done before the passing of the act,” seems as express a denial of the right of the jury to determine the question of law, as could possibly be framed; since that question can never arise on a verdict of Not guilty. It was, doubtless, adopted in magno scatulone; left by any forced construction, the statute should have been interpreted as taking into consideration the question how far the jury could act as judges of law.

The whole fallacy of the controversy seems to have originated, first, from the complication of fact and law, which is more apparent in prosecutions for libel, than in other criminal cases: and, secondly, from confounding the terms power and right, as synonymous: faculties frequently so similar in their operations, that it requires the discrimination of a penetrating mind, to adjust the effects arising from either to their proper source. The jury, as the law at present stands, have the power of acquitting, absolute and uncontrolled; except may-Be, by the tedious and now most uncertain process of Attaint; which, though it might punish the jury for their verdict, yet could not convict the defendant, whom they had acquitted; and it is even doubted whether such attaint could be maintained, in a criminal case, against a jury. 1 Vaughan 149. See 1 R. & C. 281. 5 F. N. B. 107. D. cites 22 E. 3. 26, that it may; but which seems rather to apply to the circumstances of a civil action. In Vaughan 164, Bullard’s Case, the great case on the power of Juries, Vaughan, Chief Justice, cites 10 Hen. 4. Attaint, 66, 64, and says, that there is no case, in all the law, of such an attaint; nor any opinion but that of Thorne in the case cited, for which there is no warrant in law; and thinks the law clear that an attaint did not lie. 3 V. & C. tit. Attaint, (A) 17 pl. 17. See also the same title A. 2. pl. 12: O. pl. 3. A. 2. pl. 16: G. pl. 1. 12. 13: 1 Inst. 228. a. In 1 Ld. Raym. 469, it is observed, that in an attaint in a civil case, a man’s property is only brought into question a second time, and not his liberty or life. And Hawkins states, that it seems to be certain that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a criminal matter, either upon a grand or petty jury. See 1 Hawkins P. C. c. 72. § 5. 2 Hawkins P. C. c. 22. § 20—23.

From all which authorities, it appears on the whole, that attaint in criminal cases is a very rare and doubtful proceeding; and that only instances of very undoubted and corrupt contumacy can justify even the laying a fine upon a jury. See also that Dict. title Attaint.

Let it not, however, be thought invidious to remark, that there may have been verdicts in which none but the jury themselves, or the party whose case they espoused, were capable of conceiving that they had the right of acquitting, by constituting themselves judges of the law. But there are cases over which it becomes a sincere lover of the Constitution, and of this most valuable branch of it, to draw a veil; in pity to the perhaps laudable and often irresistible prejudices, to which the frailty of human nature is liable.

There is no doubt that, before the passing of the above mentioned Statute 32 Geo. 3 c. 1, if a jury were convicted, either that the paper alleged to be a libel was not such in law, or that the defendant published the same through an innocent negligence, or inadvertence, they had always the power of giving a verdict of acquittal, which could never be called in question. Whether that statute has conferred any further privilege on them is left for the Reader to determine; after confounding the foregoing observations, and those which follow; extracted from two most learned, ingenious, and constitutional writers. Some repetition may, perhaps, appear in them of what has been already advanced from the pen of the Editor. He only has to say in excuse, that he considered his own thoughts to paper, before consulting those authorities.

On the trial of John Liburne for treason, in 1613, high words passed between the Court and him, in consequence of his saying that the jury were Judges both of law and fact, and citing passages in 1 Inst. 228. a, to prove it. 2 St. Tr. 4 ed. 69. In the case of Penn and Mace, who, in 1670, were indicted for unlawfully assembling the people, and preaching to them, the jury gave
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gave a verdict against the directions of the Court in point of law, and for this were committed to prison. But the commitment was questioned, and on a habeas corpus brought in the Court of Common Pleas, it was declared illegal, Vaughan, Chief Justice, distinguishing himself on the occasion by a most profound argument in favour of the rights of a jury, Bagwell's Ca. 1: From: 1: Vaughan, 135. However, the content did not please, as appears by Sir John Harwood's famous Dialogue between a Barrister and a Juryman, which was published in 1680, to affect the claims of the latter, against the then current doctrine, decreeing their authority. Since the Revolution also, many cases have occurred, in which there has been much debate on the like topic. See Hamburg 23: Franklin's Ca. 9 St. Tr. 275: Peter Zenger's, ibd.; Ousey's Ca. 10 St. Tr. 196. App. Woodfall's Ca. 5 Barr. 241. [R. v. Shipley, Dean of St. John's.] By attending to the cases before referred to, it will be easy to trace the progress of this controversy on the limits of the Jury's province, 1 Inf. 152. b. in n.

Mr. Hargrave, the author of the above note, then proceeds to give his own ideas on the subject, which from the known learning and probity of the writer, are deferring very serious attention.

"On the one hand, says he, as the jury may, as often as they think fit, find a general verdict. I therefore think it unquestionable that they so far may decide upon the law as well as fact; such a verdict necessarily involving both. For this, there is the authority of Littleton himself, who writes, that, "If the inquest will take upon them the knowledge of the law upon the matter, they may give their verdict generally." § 368; 228. a. But, on the other hand, it seems clear that questions of law generally, and more properly, belong to the Judges. And that, exclusively of the finest of having the law explained by those who are trained to the knowledge of it by long study and practice, this appears from various considerations.—First, if the parties litigating agree in their facts, the cause can never go to a jury, but is tried on a demurrer; it being a rule, apparently without exception, that issues of law are never determined by the Judges, and only issues of fact are tried by a Jury. 1 Inf. 71. b.—Secondly, even when an issue of fact is joined, and comes before a jury for trial, either party, by demurring to evidence, which includes an admission of the fact, to which the evidence applies, may so far draw the cause from the cognizance of the jury; for in that case, the law is referred for the decision of the Court, from which the issue of fact comes; and the jury is either discharged, or at the utmost, only averts the damages. 1 Inf. 72. a. Cokelidge v. Fussitzau, Doug. 119—134; Coote v. Birbeck, Doug. 218—225; Eoll. N. P. 2d edit. 513.—Thirdly, the jury is supposed to be so inadequate to finding out the law, that it is incumbent on the judge who presides at the trial, to inform them what the law is; and as a check to the judge in the discharge of this duty, either party may, under statute, Water. 2 c. 31, make his exception in writing to the judge's direction, and enforce its being made a part of the record, so as afterwards to found error upon it. See 2 Inf. 426: Trials per post, 8 ed. 212, 468; Fabriggs v. Maholm. 11 St. Tr.: Money v. Leach, 3 Burr. 1742: Bull. N. P. 2d edit 315: [This Dict. title Bill of Exceptions.]—Fourthly, the jury is ever at liberty to give a special verdict, the nature of which is to find the facts at large, and leave the conclusion of law to the Judges of the Court from which the issue comes. Formerly, indeed, it was doubted whether, in certain cases in which the issue was of a very limited and restrained kind, the jury was not bound to find a general verdict, but the contrary was settled in Downes's Ca. 9 Ca. 1: b; and the rule now holds both in criminal and civil causes without exception. See 1 Inf. 227. b: Staunf. P. C. 165. a: 2 Ed. Rep. 1494.—Thirdly, whilst attains, which still suffice in law, [See ante.], were in use, it was hazardous in a jury to find a general verdict where the cause was doubtful, and they were apprised of it by the Judges; because if they took the law, [against the direction of the Judge], they were in danger of an attaint. 1 Inf. 228. a: Hibb. 227: Vaughan 144: 2 H. H. P. C. 510: Gilb. C. P. 2d edit. 128.—Sixthly, if the jury find the facts specially, and add their conclusion as to the law, it is not binding on the Judges; but they have a right to controvert the verdict, and declare the law as they conceive it to be. At least this is the language of some most respectable authorities. Staunf. P. C. 165. a: Plowd. 114. a, b: 4 Co. 42. b: Hal. H. P. C. 1. 471, 6, 7; ii. 502. See ante III. Lastly, the Courts have long exercised the power of granting new trials in civil cases, where the jury finds against that which the Judge, trying the cause, or the Court at large, holds to be law: or where the jury finds a general verdict, and the Court conceives that on account of difficulty of law there ought to have been a special one. Hamburg 26. [And the Court will grant such new trial, even a second and a third time, till the jury give a general verdict consonant to law; or a special verdict, on which the Court may pronounce the law. See Tindal v. Brown, 1 Ed. Rep. 177: and this Dict. title New Trial: (New Trial).] Though too in criminal and penal cases the Judges do not claim such a discretion against persons acquitted, the reason presumed is in respect of the rule, non his petitur aet writs pro eundem delictis: or the hardship which would arise from allowing a person to be twice put in jeopardy for one offence; and if this be so, it only shows, that on that account an exception is made to a general rule. 4 Comm. 56: 2 Edl. Rep. 158: 2 Sirs. 895: 4 Co. 40. a: Wiggate's Maxims, 695. Upon the whole, (says Mr. Hargrave,) the result is, that the immediate and direct right of deciding upon questions of law is entrusted to the Judges; that in a jury it is only incidental. That in the exercise of this incidental right, the latter are not only placed under the superintendence of the former, but are in a degree controllable by them; and therefore, that in all points of law arising on a trial, Judges ought to shew the most respectful deference to the advice and recommendation of Judges. Nor is it any mean merit in this arrangement, that, in consequence of it, every person accused of a crime, is enabled by the general plea of not guilty, to have the benefit of a trial, in which the Judge and jury are a check upon each other. 1 Inf. 155. a. &c. in n."

The Student will perceive from the above extract, that Mr. Hargrave admits the incidental right of the jury to determine questions of law; in which he goes further than the writer from whom the subsequent long quotation is introduced; who supports his reasonings by very ingenious, if not unanswerable arguments; and which will be found to coincide with those offered at the beginning.
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Beginning of this division, by the present Editor of this Dictionary.

Mr. Wynn, in his Eunomos, or Dialogues concerning the Law and Constitution of England, Dial. 3. § 53, & seq., examines the dispute, very elegantly, in the following manner:

"All that may here be said upon the subject of Juries is agreeable to the established maxim above recognized, od quoque factum, &c. This is the fundamental maxim acknowledged by the Constitution; and yet this is the maxim, which those who have advanced declamations against the Constitution have ever in their mouths.

"Fundamental maxims of Law or Government are so plain and intuitive, that every body understands them; those of the lowest capacity make them their standard in their own breasts to judge by. And therefore they who would lend a party in a wrong cause his success, plainly and intuitively, that every man, or any particular Jury, when they are left altogether to the Jury, as the law has explained of as contrary to the Judge's direction, which in general, for the reason the Judge has given, is impossible; it is a case, where a Judge asks the Jury previous to the verdict, How they find such a particular thing propounded to them? If on their giving an answer the Judge adds, Then, as you agree to find the fact so, the law is for the plaintiff or defendant: and if the finding is afterwards contrary to what he declares, they do in that case find contrary to the Judge's direction in matter of law. But in that case, the regular order of proceeding is directly inverted; the Judge makes them find a particular fact previous to his declaration of the law: whereas, what Vaughan, C. J. calls the direct and lawful allowance of a Judge to a Jury, is always to give an hypothetical direction to the Jury; not by previously having their answer to the fact, and thereupon declaring the law to control their verdict; but to leave their verdict free, by saying, If you find the fact so, and so, then the law is for the plaintiff; or you are to find for the plaintiff; or vice versa. See Vaughan 116, 143, 4.

"All this reasoning flows, that the province of Judge and Jury, as to law and fact, are separate and exclusive: that in the general and regular form of proceeding, it is impossible for a verdict to be made to be against a direction in law; but if the case should happen, the verdict must be rectified; for this plain reason, that it appears in such a case the Jury have taken upon them the determination of the law, which is entirely out of their jurisdiction.

"Besides what has been already said, it seems undeniably to appear, that Juries are designed by the Constitution to be Judges of the fact only, and not of the law, for these reasons: First, Because the contrary supposition is against the plain tenor of their Oaths. The form of every oath administered in a court of justice, is either according to common law, or as required by some act of parliament. 3 Inst. 165. An oath of office contains a summary description of duty; and the terms of a Jury's oath are so strictly applicable to fact only, that they do by the strongest implication exclude any cognizance of the law. Every Juror, in a cause, is enjoined by his oath "well and truly to try the issue joined between the parties, and a true verdict to give according to the evidence." Now to confute this by parts. 1. He is well and truly to try; How can one well and truly any point but according to his knowledge? Either, as has been contended, according to his own previous knowledge, or according to the information he meets with as
the time of the examination: A Juror may have knowledge of both kinds as to the fact; but it is not requisite he should have either as to the law.—2. The oath directs the Jury to try the issue joined; this issue is always a fact denied on one side, and affirmed on the other; where the law is strictly in dispute, the issue (as has been already repeatedly observed in the remarks on the Art. 32 Gros. 5, c. 60,) goes before the Court, and not at all before a Jury. And though during the trial of an issue of fact, points of law do very often incidentally arise, it does not follow from thence that they are under the cognizance of the Jury: any more than disputes about practice, the competence of witnesses, or whether such and such evidence is admissible; which do as often arise in the course of a trial, and were never intended to belong to the Jury. The law, therefore, because it arises out of the fact, and because in the end it is to govern it, does not, on that account, appertain to the Jury, if from other considerations it appears to be improper.—3. What can be meant by a true Verdict?—Truth, both Philosophers and Lawyers will refer to fact, rather than opinion about law: when it is referred to opinion, we mean the agreement of a proposition with our own ideas, or the ideas of others. But low those who have such faint and imperfect ideas as Jurors have of law, can discern this agreement, or judge of the truth, in such a case, every reasoning man must be at a loss to determine.—4. But to exclude the possibility of a doubt in this question, their oath does not only direct them to find the truth, but tells them what rule or measure they are to go by in their enquiry. They are to find a true verdict, according to the evidence. This branch of the oath, which governs the whole, can be applied only to the fact. *A fact only is in evidence, and consequently the law not being in evidence is not before them.* See Vaugb. 143. Thus in the clearest terms does the oath limit and define their duty.

But, secondly, in the course and management of a trial, other persons are likewise under an oath, and have duties incumbent on them also. Now without looking into the oath of a Judge, it will be easily understood to be inconstant with his duty and his oath to be a mere cypher on the Bench. A Judge however will be little more than a cypher, either if he fits and says nothing, or if what he does say is to go for nothing. The Jury’s ignorance of law makes it necessary for the Judge to tell them what the law is in the case before them; but he tells it them surely to very little purpose, if they think themselves afterwards at liberty to determine otherwise.

Other arguments there are also which defer to have weight on this question, drawn from the forms of pleading and the general frame of records: than which none perhaps can be produced more worthy to be relied on.

1. It is well known in constant experience, that by the mode of drawing a demurrer, the matter in debate is referred altogether to the decision of the Court, and in reality never does go before a Jury. By a demurrer, the bare law is in question; the fact being contently admitted, it clearly expressed. The reason of admitting the fact in that case seems to be, that without such a confession of the fact the Court have no ground to go upon; for the law in every case arises from the fact. The case then must really exist before the legality of it, as to circumstances, can be determined. But if a matter

where the law only is in question, it never, nor can it in its nature be, sent to a Jury, it proves almost to a demonstration, that the Jury have nothing to do with bare law.—2. Nor is the argument to be drawn from the nature of a special verdict of less force on this occasion. The ignorance of the Jury as to the law in the case, and their reference to the Court, is the constant language of special verdicts, so that the Jury can in reality be supposed more ignorant of the law arising in such a case, than they are in a thousand others, where all is concluded under a general verdict. Indeed in that light, the common Juries are now much improved in their knowledge of the law, there being very few instances of their expressing their doubts in special verdicts at this day. The reason of having special verdicts was, at all times, in order to have the point of law solemnly determined, and remain on record: without which, in many cases, no writ of error could have been brought in former times, nor the point referred for the consideration of the Court. The usage of putting in a case, and having a general verdict, subject to the opinion of the Court afterwards on the circumstances of the case, is an invention of late times; and is found in practice to be less expensive, and to answer to the parties as well as a special verdict. But the case tried, and the special verdict, are equally proofs of what is here contended for, by expressly leaving the law to the Court for their determination. See diff. 1.

The professed patrons of the right of the Jury to be judges of law have principally applied their doctrine, as has been already remarked, to the case of libels; but they were aware that the conclusion would be general, though the case was particular; because the right of the Juries to determine the law in the case of libels, could only be a consequence of their right to find the law in other cases. There seems to be this fatality that has in practice attended the case of libels, that the law and the fact have not been always accurately distinguished: and perhaps in severer times, some particulars have been contended for as implications of law, which ought rather to have been considered as facts, and left to the Jury. [An evil, and perhaps the only one, in some measure guarded against, by the construction put on the Art. 32 Gros. 5, c. 60; mentioned at the beginning of this discussion.]

It seems however universally, that any action, the intention of the agents, and every other circumstance under which that action was done, are equally facts, and as such cognizable by a Jury; but whether that action, under all the circumstances in which it has been admitted or proved to have been done, is a crime or not, is what the law alone can determine; and the Judges, whose breaths are the depositories of the law, alone can pronounce. Otherwise it is evident the quality of human actions, more especially of those that are in themselves indifferent, and have been defined by Society alone, would be referred not only to a very variable standard, but an incompetent one. Apply this particularly to the case of libels, and the least reflection will be sufficient to shew, that the power and province of Juries is the fame in case of libels as in every other case. And that in no case whatever a Jury has, in its nature, a cognizance of law, though by accident the law may have been sometimes left to them."

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To draw towards a conclusion of this long diffusion; the very interesting nature of which must plead the Editor's excuse for the foregoing multiplied extracts and observations:—There are some arguments in favour of the Jury's right, as relates to criminal cases, which seem not answered by the remarks arising from the conduct of civil causes. In the first place, their Oath is, that they shall "well and truly try, and a true delivener race, between our Sovereign Lord the King and the Prisoner whom they have in charge, and a true Verdict give according to the evidence."—Now it is not expressed what they shall try; it is therefore inferred, that the whole of the cause is submitted to their determination. But we must recollect that in all cases, an issue is joined, between the King and the Prisoner, of Not guilty; and Guilty: (See this Dict. tit. Trial.) The Verdict according to the Evidence must be therefore on the issue, as in all other cases; and the Fact only, not the Law, is submitted to the consideration of the Jury.—Some doubt has arisen on the word Delivenerance; whether it applies to delivering the verdict, to the deliverance of the culprit from his charge and imprisonment; or whether it does not simply mean a true deliberation on, and consideration of, the evidence produced to them: which latter is the sense most approved by legal writers and historians on the subject. If indeed it does apply to the deliverance of the prisoner, still it must be a true deliverance, on proof of his innocence, or rather on failure in the proof of his guilt.

Another argument, which at first bears the appearance of more weight than those just mentioned, though it has not been frequently relied on, is this; That, from the very nature and words of the verdict the Jury are confined Judges of the law, as well as the fact, in criminal cases.—That the words Guilty or Not Guilty do not merely ascertain the commission or non-commission of any indifferent fact; but that the commissio of a criminal fact; or the being free from any crime, as the fact is not done, or as the fact though done were lawful, or performed without any illegal or criminal intention. That therefore the Jury in terms decide, by their verdict, not only on the perpetration of the fact, but on the criminality annexed to it: that fact of the fact be not criminal, no guilt is involved in it; and therefore the verdict of guilty would be false, and of not guilty non-facile; no guilt attaching to a praise-worthy, an indifferent, or an innocent act. Two answers suggest themselves; one, that the language in which alone the Jury can deliver a general verdict, according to the rules positively prescribed to them by law, at all events allows the fact charged to be criminal as far as the judgment or discretion of the Jury on that question can be exercised, whatever may be the subsequent decision of the Court. The second, that the language of the verdict, interpreted according to the rules of law, of practice, and of common sense, is this—"GU1TY —If the fact, with which the prisoner is charged be sufficiently stated, and is a crime in the eye of the law." And that this is the true interpretation of the verdict of guilty, the right of the Court to arrest the judgment, in case, on inspection of the record, they are of opinion that the fact charged is no crime, or, if a crime, is defectively charged, is undeniable proof. This right of the Court to decide the law in the event of a verdict of guilty is recognised by Stat. 32 Geo. 3. c. 60. already so oftentimes cited.

JUS

Still it may be objected, that the Jury by a verdict of Not Guilty have a right to decide the law. But the fallacy of confounding the terms right and power has already been noticed: and it may be added that though nineteen Juries were successfully to acquit nineteen defendants on a charge of publishing the same libel, their verdicts could never be produced as precedents in law, that a twentieth person might not be indicted for the same libel, and found guilty by a twentieth Jury. —To put the case still stronger; it is by no means an uncommon circumstance, that where several criminals are included in the same indictment, they suffer in their challenges, and are therefore tried separately: but it was never imagined that the conviction or acquittal of one, had the least effect upon the question of the guilt or innocence of the others.—Whereas the decision of the Court, on an indictment, that the fact charged in it as a crime was not such, or was defectively charged, would quash the whole indictment against all; and be a precedent for arresting the judgment on any subsequent conviction, or indictment under the same circumstances——Why? Clearly because in one case the mere fact is decided, as relates to the Individual accused; in the other the question of law, as relates to the Crime charged.

In fine, it will doubtless be granted, that this dispute on the power, province, and rights of Juries has arisen from a jealousy, on their part, of the predilection supposed to be entertained by Judges of the Courts of Law, in favour of the King's prerogative; and, on the other hand, from the opinion those courts entertain, that Juries may be too much inclined to screen popular offenders from the punishment of the law. —It may not be unjust to imagine, that as Judges are now independent of the Crown, they are, from their education, habits, and characters, full as likely to act from unbiased principles of justice, as any Jury selected from the defendant's equals: and who, from what may well be considered as a praise-worthy anxiety in behalf of a fellow-citizen, must unavoidably feel every cause as in some measure affecting themselves: no less than the party accused.

For further matter incidental to the duty and office of a Jury, see this Dict. titles Trial; Verdict.

JURROCK, A kind of cork; see lat. 1. A. 6. c. 8.
JUS ANGLOREM, The laws and customs of the Anglo Saxons, in the time of the Heptarchy: by which the people were for a long time governed, and which were preferred before all others, were termed Jus Anglorum.
JUS COROER, The right of the Crown; and it is part of the law of England, though it differs in many things from the general law relating to the Subject. 1 Inst. 15. The King may purchase lands to him and his heirs, but he is seized thereof in Jure Comune; and all the lands and possessions whereof the King is thus seized, shall follow the crown in defeants, &c. See title King.
JUS CURIALITatis ANGL. See this Dict. title Curial of England.
Jus Duplicatum is where a man hath the possession as well as property of any thing. Bract. lib. 4. trait. 4. c. 4. 2 Comm. 89.

Jus Gentium, The Law of Nations. The law by which kingdoms and societies in general are governed. Sedley. See title Ambassador.

Jus Habendi & Retenendi, Right to have and retain the profits, titles, and offerings, &c. of a rectory or parsonage. Hughes's Parson Law, 188.

Jus Hereditatis, The right or law of inheritance. See title Defents.

Jus in ui. Complete and full right. Such as a patron acquires, on promotion to a living, who, after nomination and institution, hath corporal possession delivered to him; for till such delivery of corporal possession he had only Jus in rem. 2 Comm. 342.

Jus Patronatus, A Commission granted by the bishop to some persons, usually his Chancellor, and others of competent learning, to inquire who is the rightful patron of a church. If two patrons present their clerks, the bishop shall determine who shall be admitted by right of patronage, &c. on commission of inquiry of six clergy-men, and six laymen, living near to the church; who are to inquire on articles as a jury. Whether the church is void? Who presented last? Who is the rightful patron? &c. But if coparceners severally present their clerks, the bishop is not obliged to award a Jus Patronatus, because they present under one title; and are not in like case where two patrons present under several titles; 5 Rep. 102: 1 Lev. 116.

The awarding a Jus Patronatus is not of necessity, but at the pleasure of the Ordinary, for his better information who hath the right of patronage, for if he will at his peril take notice of the right, he may admit the clerk of either of the patrons, without a Jus Patronatus, 1 Lev. 268. A bishop may award a Jus Patronatus with a solemn premonition to all persons, quorum intere†, &c. where he knows not who is the patron, to give notice of an avowal by deputy, &c. Heb. 9. This inquiry by Jus Patronatus is to excuse the Ordinary from being a disturber. See 3 Comm. 246. Jus Patronatus is not within the statute of limitations, 1 M. Lev. 2. c. 5. In whose name, and under what title a Jus Patronatus is to issue, see flat, 1 Ed. 6. c. 2. sect. 3.

Jus Possessio, A right of seisin or possession; and a parson hath a right to the possession of the church and glebe, for he hath the freehold; and is to receive the profits to his own use. Prof. Law 183. See title Parson.

Jus Presentatio, The right of the patron of presenting his clerk unto the Ordinary to be admitted, instituted, and inducted into a church. See this Dist. title Anteposion.

Jus Recuperandi, Infrandi, &c. A right of recovering and entering lands, &c. All these rights following the relation of their objects, are the effects of the Clavis habe. Co. Litt. 266.

Jusa, A certain measure of liquor, quasi Jusa mensurata; being as much as was sufficient to drink at once. Mon. Lib. 1. pag. 140.

Justice, Jusdictio. It is defined to be an constant, righteous inclination to give every one his due; or the act of doing what is right and just, Chamb. Johnson Locke. Jusdictio. The delaying Justice is an obstruction to and kind of denial thereof; but this is understood of unnecessary and unjust delay, for sometimes it is convenient for the better finding out the truth, and preparation of parties, that they may not be surprized.

Justice and right shall not be told, denied, or delayed. Mag. Chart. 9 Hen. 6. c. 29. Right shall be done to all without respect. Stat. Woff. 3 Ed. 1. c. 1. Justice shall not be delayed for any command under the Great Seal, &c. 2 Ed. 3. c. 3. 14 Ed. 3. Rot. 1. c. 14. 11 R. 2. c. 10. See titles Habemus Corpus; Liberitas.

Justicements, from justitia. All things belonging to justice. Cen. 1 Woff. 1. fol. 225. Also the effects or execution of justice or of jurifiction.

Justices, Officlers deputed by the King to administer justice, and deputing by way of judgment. They are called Justices because in ancient time the Latin word for a Judge was justitia, and for that he had his authority by delegation, and not by magistratus. Chum. lib. 2. c. 6. See title Judges.

Of these Justices there are various sorts, with various powers and duties, as hereafter shortly set forth under the subsequent titles Justices of Assize, &c. and see this Dist. titles Courts; Chancery; Equity; King's Bench; Common Pleas, &c.

Justices of Assize, Justiciarii, ad capiendas assizes. Such as were wont by special commission to be sent (as occasion was offered) into this or that county, to take affises for the sake of the Subjects; for, as these actions pass always by Jury, many men could not, without damage and charge, be brought to London, therefore Justices for this purpose, by commission particularly authorized, were sent to them. For it seems, that the Justices of the Common Pleas had no power to take affises till the flat. of S 2 Ed. 2, by which they were enabled to do it, and to deliver galls. And the Justices of the King's Bench have by that statute such power affirmed unto them, as they had one hundred years before.

These commissions ad capiendas assizes have of late years been settled and executed only in Law, and the long vacation, (called now the Lent and Summer Assizes,) when the Justices, and other learned lawyers, may be at leisure to attend those controversies; whereupon it also falls out, that the matters that were wont to be heard by more general commissions of Justices in Eyre, are heard all at one time with these affises, which was not so of old, as appears by Beverlin lib. 3. cap. 7. num. 2. And by this means the Justices of both Benches being worthily accounted the fittest of all others, and their affidants, were employed in these affairs. That Justices of Assize and Justices in Eyre did anciently differ, appeareth by flat. 27 Ed. 3. c. 5. And that Justices of Assize and Justices of Gaol-delivery were different, is evident by flat. 4 Ed. 5. c. 3. The oath taken by the Justices of Assize is all one with that taken by the Justices of the King's Bench. Old Abridgment of Statutes, tit. Suavissimum Justiciarum. Cowell. See further title Assize.

To what is said under this Dist. title Assize, may be added, that

The Courts of Assize and Nig. Prior are composed of two or more commissiories, who are sent twice in every year, by the King's special commission, all round the kingdom, (except London and Middlesex, where Courts
of *Nifi Prior* are held in and after every Term, before the Chief or other Judge of the several superior Courts; and except the four Northern Counties, where the affies are only held twice a year,) to try by a jury of the respective counties the truth of such matters of fact as are then under dispute in Westminster-Hall. These Judges of Affile came into use in the room of Jullices in Eyre, *judiciarii in itinere* (or *itinerantes*); who were regularly established, if not first appointed by the parliament of Northampton, A.D. 1176, 22 Hen. 2, with a delegated power from the King's Great Court, or *aula regia*, being looked upon as members thereof; and they afterwards made their circuit round the kingdom once in seven years for the purpose of trying causes. *Co. Lit. 293.*

They were afterwards directed by Magna Charta, c. 12, to be sent into every county twice a year, to take (or receive the verdict of the jurors, or recognize in certain actions then called) recognizances in affies; the most difficult of which they are directed to adjourn into the Court of Common Pleas, to be there determined. The Itinerant Judges were sometimes mere judges of Affile, or of Dower, or of Gaol-delivery, and they had sometimes a more general commission, to determine all manner of causes, being constituted *judiciarii ad omnia placita*. *Brom. 1. 3. tr. 1. c. 11.* But the present Judges of Affile and *Nifi Prior* are more immediately derived from the stat. *Wifin. 2. 13 E. 1. c. 30,* which directs them to be assigned out of the King's sworn Judges, associating to themselves one or two different knights of each county. By stat. 27 E. 1. c. 4, (explained by 12 E. 2. c. 3,) affies and inquests were allowed to be taken before any one Judge of the court in which the plea was brought; associating to him one knight, or other approved man of the county. And, lastly, by stat. 14 E. 3. c. 16, Inquests of *Nifi Prior* may be taken before any Judge of either Bench, (though the plea be not depending in his own court,) or before the Chief Baron of the Exchequer, if he be a man of the law; or otherwise before the Judges of Affile, so that one of such Judges be a Judge of the King's Bench or Common Pleas, or the King's Serjeant sworn. They usually make their circuits in the respective vacations after Hilary and Trinity Terms; affies being allowed to be taken in the holy time of Lent by consent of the Bishops at the request of the King, as expressed in stat. *Wifin. 1. 3 Ed. 1. c. 51.* And it was also usual, during the times of popery, for the prelates to grant annual licences to the Judges of Affile to administer oaths in holy times: for oaths being of a sacred nature, the logic of those ages concluded that they must be of ecclesiastical cognizance. Induces hereof may be met with in the Appendix to *Selden's Original of the Terms,* and in *Parkes Antiquities* 109. The prudent jealousy of our ancestors ordained, that no man of law should be Judge of Affile in his own county wherein he was born or both inhabit. *Statutes 4 E. 3. c. 2. 8 Rich. 2. c. 3. 35 Hen. 8. c. 24.* But this restraint is now taken off, as to Judges of Oyer and Terminer, by stat. 12 Geo. 2. c. 27. See post, that title: and for further information on this head, see this Dict. ut *Affile*.

The Courts of *Nifi Prior* in London and Middlesex are called *Sittings*; and those for Middlesex were established by the legislation in the reign of Queen Elizabeth. In ancient times all issues in actions brought in that county were tried at Westminster in the Terms, at the bar of the Court in which the action was instituted: but when the business of the Courts increased, these trials were found to great an inconvenience, that it was enacted by stat. 18 Eliz. c. 12, that the Chief Justice of the King's Bench should be empowered to try within the term, or within four days after the end of the term, all the issues joined in the Courts of Chancery and King's Bench; and that the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, should in like manner try the issues joined in their respective Courts. In the absence of any one of the Judges, the same authority was given to two of the Judges or Barons of his Court. The stat. 12 Geo. 1. c. 31, extended the time to eight days after term; and empowered one Judge or Baron to sit in the absence of the Chief. *Stat. 24 Geo. 2. c. 18,* extended the time after term till further to 14 days.

**Justices of both Benches, Shall decide pleas commenced before other matters be arraigned. Stat. Wifin. 1. 3 Ed. 1. c. 45.* See this Dict. titles *King's Bench; Common Pleas.*

**Justices in Eyre, *Judiciarii itinerantes.* So termed of the old French word *or* as a grand or, i.e. *magni itineris,* proverbially spoken.] These, in ancient time, were sent with commission into divers counties to hear such causes especially, as were termed *Pleas of the Crown.* And this was done for the sake of the people, who must else have been hurried to the King's Bench, if the same were too high for the county-courts. They differed from the *Justices of Oyer and Terminer,* who were sent upon one or a few special causes, and to one place; whereas the *Justices in Eyre* were sent through the provinces and counties of the land, with more indefinite and general commission, as appeareth by *Bracton, lib. 3. cc. 11, 12, 13,* and *Bracton, cap. 2.*

And again, because the Justices of Oyer and Terminer were sent uncertainly upon any uproar, or other occasion in the country, but these in *Eyre* (as Mr. Groot feys done in the Preface to his *Reading*) were sent but once in every seven years; with whom agrees *Horne* in his *Mirror of Justices,* l. 2. c. 8. Deucor point est fieri debeat, &c. & l. 2. cap. De pecunia criminali, &c. de fini del Rei. &c. *And lib. 3. cap. De Justiciis in *Eyre,* where he also declares what belongs to their office. But according to *Orig. Jurisdictio,* they went ofter. These were instituted by King Henry the Second, as *Camden* in his *Brit. Antiqu. p. 104.* — *Hendin per. pag. 258. Anno. Anyh. fol. 113.* hath of them these words, *judiciarii itinerantes,* constanter per Henricum secundum, qui divistit Regnum juxta in *sex partes,* per quorum jugis talia pleading in *lytie* cons titunt, &c. In some respect they resembled our *Justices of Affile* at present, though their authority and manner of proceeding much differ. *L. 293.* Cowell. See ante tit. *Justices of Affile.*

**Justice of the Forest, *Judiciarii forester,* is a Lord by his office, and hears and determines all offences within the forest, committed against vert or venison. Of these there are two, whereof one hath jurisdiction over all *forsetis* on this side *Treas,* the other of all beyond it. The chief point of their jurisdiction consists upon the articles of the King's charter, called *Charter de forester,* made *ann 9 Hen. 3.* concerning which see *Camb.Brit.*
JUSTICES —of GAOL-DELIVERY —of OYER, &c.

p. 214. The court where this Justice fits and determines, is called The justice-seat of the forest, held once every three years. Mawwood's Forst Lawes, cap. 24. He is also called Justice in Eye of the Forest; and is the only Justice that may appoint a deputy by the statute of 32 Hen. 8. c. 35. See title Forst.

JUSTICES OF GAOL-DELIVERY, Justiciarior ad Gaolias deliberandum.] Are those who are lent with commission, to hear and determine all causes appertaining to such, who for any offence are cast into gaol: part of their authority is to punish such as let to malprize their prisoners who are not bailable by law, nor by the statute De Finibus, cap. 3. F. N. B. fol. 151. These seem in ancient time to have been first into the country upon several occasions; but afterwards Justices of Affise were likewise authorized to the like purposes. Ann. 3 Ed. 3. c. 3. Their oath is all one with others of the King's Justices of either Bench. See Stat. 2 B. 3. c. 2: Old Abridgment of the Statutes, tit. Sacramentum Justiciariorum: Cowell. Justices of Assize, if laymen, shall deliver the gaols. Stat. 2 Ed. 1. β. 1. c. 3.—The Justices of Peace shall deliver over their indentures to the Justices of Gaol-delivery, Stat. 4 Ed. 3. c. 2.—See p. 754, Justices of Oyer and Terminer.


JUSTICES OF THE JEWS, Justiciarior ad judicium Judæorum aggregati.] King Richard I. after his return out of the Holy Land, anno 1194, appointed particular Justices, laws, and orders, for preventing the frauds, and regulating the contracts and usury of the Jews. Hoveden, parte post. p. 745: Clavius, 3 Ed. 1. m. 19.

JUSTICES OF LABOURERS. Justices heretofore appointed to redress the wrongs of labourers, who, either be ill-used, or have unreasonable wages. See the old Statutes 21 Ed. 3. c. 1. 25 Ed. 3. c. 8: 51 Ed. 1. c. 6.

JUSTICES OF NISI PRIUS, Are all one at this time with Justices of Affise, for it is a common adjournment of a cause in the Commons Pleas, to put it off to such a day, Nisi Prius Justiciariorum ad causas pari ad capias ad venire ad judicium; unless the Justices shall first come to a place named to take the affise; which they are sure to do; and upon this clause of adjournment they are called Justices of Nisi Prius, as well as Justices of Affise. Their commission you may see in Cramp, Juris. fol. 209; yet with this difference between them, that Justices of Affise have power to give judgment in a cause, but Justices of Nisi Prius only to take the verdict. But in the nature of both their functions, this seems to be the greatest difference, that Justices of Nisi Prius have to deal in causes personal as well as real; whereas Justices of Affise, in first acceptance, meddle only with the postrervice writs called Affise. Cowell. See title Justices of Affise; and titles Jury; Judges; Affise.

JUSTICES OF OYER AND TERMINER, Justiciarior ad audiendum & terminandum.] Were Justices deputed upon some special or extraordinary occasions. Finsborough in his Nat. Brv. faith, That this commission of Oyer and Terminer is directed to certain persons upon any great riot, insurrection, heinous misdemeanors, or trespasses committed. And because the occasion of granting this commission should be maturely weighted, it is provided by the statute made 2 Ed. 3. c. 2. That no such commission ought to be granted, but that they shall be dispatched before the Justices of the one Bench or other, or frie, by a Bench, except in cases of horrible trespasses, and that by the special favour of the King. The form of this commission, see F. N. B. s. 110.

The Courts of Oyer and Terminer, and general Gaol-delivery, are of a general nature, and universally diffused over the kingdom; but yet are of a local jurisdiction, and confined to particular districts. These are held before the King's Commissioners, among whom are usually two Judges of the Courts at Westminster, twice in every year, in every county of the kingdom; except the four northern ones, where they are held only once, and London and Middlesex, wherein they are held eight times. These were rightly mentioned under the foregoing article, Justices of Affise; and under title Affise, it is observed, that, at what is usually called the Affises, the Judges fit by virtue of five several authorities: two of which, the Commission of Affise and its attendant jurisdiction of Nisi Prius, being principally of a civil nature, are there explained: to which may here be added, that these Justices have, by virtue of several statutes, a criminal jurisdiction also, in certain special cases. 2 Hal. P. C. 30: 2 Hawk. P. C. c. 7. As to another authority, the Commission of the Peace; See p. 753, title Justices of the Peace. It may here be mentioned, that all the Justices of the Peace of any county wherein the affises are held, are bound by law to attend them, or else are liable to a fine, in order to return recognizances, &c., and to assist the Judges in such matters as lie within their knowledge and jurisdiction, and in which some of them have probably been concerned, by way of previous examination. But the authority now to be explained is the commission of Oyer and Terminer, to hear and determine all treasons, felonies, and misdemeanors. This is directed to the Judges and several others, or any two of them; but the Judges or Serjeants at Law only are of the quorum, so that the rest cannot act without the presence of one of them. The words of the commission are, "to inquire, hear, and determine:" so that by virtue of this commission they can only proceed upon an indictment found at the same affise; for they must first inquire, by means of the Grand Jury or Inquest, before they are empowered to hear and determine by the help of the Petit Jury. Therefore they have besides all these a commission of general Gaol-delivery, which empowers them to try and deliver every prisoner, who shall be in the gaol when the Judges arrive at the circuit town, whenever, or before whosoever indicted, or for whatever crime committed. It was anciently the course to issue special writs of gaol-delivery for each particular prisoner, which were called the Writs de bono et malo; 2 Inst. 43: but these being found inconvenient and oppressive, a general commission for all the prisoners has long been established in their stead. So that, one way or the other, the gaols are in general cleared, and all offenders tried, punished, or delivered, twice in every year: a constitution of singular use and excellence, Some-
Sometimes also, upon urgent occasions, the King issues a special and extraordinary commission of Oyer and Terminer, and Gaol-delivery, confined to those offences which stand in need of immediate inquiry and punishment, upon which the course of proceeding is much the same as upon general and ordinary commissions.

Formerly it was held, in pursuance of the statutes 8 R. c. 2; 33 H. 8. c. 4, that no Judge or other lawyer could act in the commission of Oyer and Terminer, or in that of Gaol-delivery, within his own county where he was born or inhabited; in like manner as they are prohibited from being Judges of Affiace, and determining civil causes. But that local partiality, which the jealousy of our ancestors was careful to prevent, being judged likely to operate in the trial of crimes and misdemeanors, than in matters of property and disputes between party and party, it was thought proper by the stat. 12 Geo. c. 27, to allow any man to be a Justice of Oyer and Terminer and general Gaol-delivery within any county of England. 4 Comm. 260—271. In fine, as the Justices of Assize and nisi Prius are appointed to try civil causes, so are the Justices of Oyer and Terminer and Gaol-delivery to try indictments for crimes all over the kingdom, at what are generally denominated the Circuits of Assizes; and the towns where they come to execute their commissions are called the Assize towns, and generally the County towns.

**Justices of the Pavilion, Justiciarii Pavini.** Are certain Judges of a Pie-pow’d Court; of a most transcendental jurisdiction, held under the Bishop of Winchester at a fair on St. Giles’ Hill near that city, by virtue of letters patent granted by Richard II. and Edward IV. Episcopus Wynton, & iucceptores suis, a tempore quo, &c., Justiciarios suis, qui vocantur Justiciarii Pavini: cognitiones placiurum & aliorum negotiorum etivm serva durantes, nunc claves portarum & custodiam preditarum civitatis a nobis Wynton, pro certo tempore fere illius, & omnium alias libertates, immunitates & confidantes hancis. &c. See the patent at large in Pryme’s Animad. on 4 Inf. fol. 151.

**Justices of the Peace;** Judges of Record, appointed by the King’s commission to be Justices within certain limits; generally within the counties where they are resident; for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers matters committed to their charge. Dals. c. 2. See Burn’s J. cit. Justices of the Peace. The principal of these is the Collector Rundobum, or Keeper of the Records of the County. 1 Comm. 349.

I. Of the Origin of these Officers.

II. Of their Commission, and its Determination.

III. Of their Qualifications.

IV. Of their Power, Duty, and Office.

I. The Common Law hath ever had a special care and regard for the conservation of the peace; for peace is the very end and foundation of Civil Society. And therefore before the present constitution of Justices was invented, there were peculiar officers appointed by the common law for the maintenance of the public peace. Of these, some had and still have this power annexed to other offices which they held; others had it merely by itself, and were thence named Constables or Conservatores.
pro pace conjoinvanda. Mr. Pryme affirms that in the reign of King Hen. III. after the agreement made between that King and his barons, Guardians ad pace conjoinvandam were constituted: And Sir Henry Selden differs from both these; being of opinion that they were not made until the beginning of the reign of King Ed. III. when they were thought necessary for suppressing commotions, which might happen upon dethroning of K. Ed. II. It is certain the general commission of the peace, by statute, began 1 Ed. III; though before that time there were particular commissions of peace to certain men, in certain places; but not throughout England. 2 Nolf. Ab. 1063.

To explain further what has been said above, as to the election of the Conservators of the peace being taken from the people and given to the King, it should be remarked, that such election, when made, was by force of the King's will; after which election so made and returned, the King directed a writ to the party so elected, to take upon him and execute the office, until the King should order otherwise. 2 Iust. 155, 9.

Justices of Peace were formerly to be allowed 4: a-day during their attendance at the quarter sessions, to be paid by the Sheriffs of counties. 12 R. 3: 2 H. 5: 19 H. 6.

II. These Justices are appointed by the King's special commission under the Great Seal, the form of which was settled by all the Judges, A. D. 1590; Lamb. 43. 35. The power of constituting them is only in the King; though they are generally made at the discretion of the Lord Chancellor or Lord Keeper, by the King's leave, and the King may now appoint in every county in England and Wales as many as he shall think fit. 1 Iust. 174, 175. See post. III. Their commission appoints them all, jointly and severally, to keep the peace; and any two more of them to inquire of and determine felonies and other misdemeanours: in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence; the words of the commission running thus, "Quorum (Of whom) aliquam reversionem, A. B. C. D. &e., nonum et vice, one of you the aforesaid A. B. C. D. &e. we shall be one;" whence the persons so named are usually called Justices of the Quorum. And formerly it was customary to appoint only a select number of Justices, eminent for their skill and discretion, to be of the Quorum; but now the practice is to advance almost all of them to that dignity, naming them all over again in the Quorum clause, except perhaps only some one person for the sake of propriety: and no exception is now allowable for not expressing in the form of warrants, orders, &c. that the Justice who issued them is of the Quorum. Stat. 26 Geo. 2. c. 27. See also Stat. 7 Geo. 3. c. 21. When any Justice intends to act under this commission, he must have a writ of Dedimus potestatem, from the Clerk of the Crown in Chancery, empowering certain persons therein named to administer the usual oaths to him; which done, he is at liberty to act.

As the office of these Justices is conferred by the King, so it subsists only during his pleasure; and is determinable. 1. By the demise of the Crown; that is, in six months after. Stat. 1 Ann. c. 8. But if the same Justice is put in commission by the Successor, he shall not be obliged to sue out a new dedimus, or to swear to his qualification. 2. Stat. 1 Gen. 5. c. 15: nor, by reason of any new commission, to take the oaths more than once in the same reign. Stat. 7 Geo. 3. c. 9. 2. By express writ under the Great Seal, discharging any particular person from being any longer Justice. Lamb. 57, 3. By superseding the commission by writ of supersedeas, which suspends the power of all the Justices, but does not totally destroy it, seeing it may be revived again by another writ called a procedendo. 4. By a new commission, which virtually, though silently, discharges all the former Justices that are not included therein: for two commissions cannot subsist at once. 5. By accession of the office of Sheriff or Coroner. Stat. 1 Mar. 1. c. 8. [A Sheriff cannot act as Justice during the year of his office; but it has been observed, that neither this statute referred to by Blackstone, nor any other, disqualifies a Coroner from acting as a Justice of the Peace; nor do the two offices in their nature seem incompatible. 1 Comm. c. 9. n. 14.] Formely it was thought, that if a man was named in any commission of the peace, and had afterwards a new dignity conferred upon him, that this determined his office; he no longer answering the description of the commission; but now by Stat. 16 Geo. 6. c. 7, it is provided, that, notwithstanding a new title of dignity, the Justice on whom it is conferred shall still continue a Justice. If a new commission is made and granted for Justices of Peace, out of which some of the Justices in the old commission are omitted, yet what acts they do as Justices are lawful till the next sessions, at which the new commission is published; and when the new commission is published, they are to take notice of it, and not act further. Mor. 137. Though by granting a new commission, discharge under the Great Seal, accession of another office, and by the demise of the King, the power and offices of Justices of Peace determine, 4 Iust. 165; yet till then they are empowered to act in a great many particular cases by statute.

On renewing the commission of the peace, (which generally happeneth as any person is newly brought into the form of Dedimus potestatem, directed out of Chancery, to some ancient Justice (or other) to take the oath of him which is now preferred, which is usually in a schedule annexed: and to certify the same into that court, as such a day as the writ commandeth. Unto which oath are usually annexed the oaths of allegiance and supremacy. Lamb. 53. The form of which oath of office at this day is as followeth:

"Ye shall swear, that as Justice of the Peace in the county of W., in all articles in the King's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your feoffions after the form of the statutes thereof made: And the duties, fines, and amercements that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment (or embrazzling), and truly send them to the King's Exchequer. Ye shall not let, for gift or other cause, but well and truly ye shall do your office of Justice of the Peace in that behalf: And that you take nothing for your office of Justice of the Peace to be done, but of the King and fees accustomed;
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III. Touching the Number and Qualifications of these Justices; it was ordained by Stat. 18 Eliz. c. 2, that no justice of the peace in every county should be appointed to keep the peace. But this rule was not so rigid, and the custom of ministers, or other persons to whom the office was assigned, was to keep the peace. Jiufices; it was ordained by Stat. 18 Eliz. c. 2, that one lord, and three or four of the most worthy men in the county, with some learning in the law, shall be made Justices in every county. But afterwards the number of Justices, through the ambition of private persons, became so large, that it was thought necessary, by Stat. 12 Ric. 2. c. 10, and 14 Ric. 2. c. 11, to restrain them at first to fix, and afterwards to eight only. But this rule was now disregarded, and the case seems to be: as Lumond observed long ago that the growing number of statute laws, committed from time to time to the charge of Justices of the Peace, have occasioned also (and very reasonably) their increase to a larger number. And as to their qualifications, the statute just cited directed them to be of the best reputation, and most worthy men in the county; and Stat. 13 Ric. 2. c. 7, orders them to be of the most sufficient knights, esquires, and gentlemen of the law. Also, by Stat. 2 Hen. 5. c. 1. c. 42, and Stat. 22. c. 1, they must be resident in their several counties. And consequently to these statutes, men of small substance had crept into the commission, whose poverty made them both covetous and troublesome service. This qualification is found rather in Stat. 18 Hen. 6. c. 11, that no Justice should be put in commission, if he had not lands to the value of 50l. per annum. And the rate of money being greatly altered since that time, it was enacted by Statutes 5 Geo. 2. c. 18, 18 Geo. 2. c. 20, that every Justice, except as is therein excepted, shall have 100l. per annum clear of all deductions; and if he acts without such qualification, he shall forfeit 100l. This qualification is almost an equivalent to the 50l. per annum required in Henry the Sixth's time; and of this the justice must now make oath. Stat. 18 Geo. 2. c. 20. Also, it is provided by the Stat. 5 Geo. 2. c. 18, that no pleading attorney, solicitor, or proctor, shall be capable of acting as a Justice of the Peace for any county.

The said Stat. 18 Geo. 2. c. 20, provides that no person shall be capable of being a Justice of the Peace, or acting as such, who shall not have in law or equity, for his own use in possession, a freehold, copyhold, or customary estate for life, or some greater estate, or for years determinable upon a life or lives, or 21 years, in lands, &c. of the clear yearly value of 100l. over and above all incumbrances, rents, and charges; or entitled to the immediate reversion or remainder in lands, &c., of 300l. per annum, and who shall not take the oath in this act mentioned, under the penalty of 100l. to be recovered by action of debt; and the proof of the qualification to lie on the defendant; and if he infalls on any lands not mentioned in the oath, he is to give notice of them; and lands, not mentioned in the oath or notice, are not to be allowed. This act not to extend to Corporation Justices, or to the eldest sons of peers, and of gentlemen qualified to be knights of shires, the officers of the Board of Green Cloth, principal Officers of the Navy, Under Secretaries of State, Heads of Colleges, or to the Mayors of Oxford and Cambridge; all of whom may act without any qualification by statute.

IV. The Power, Office, and Duty of a Justice of the Peace depend on his commission, and on the several statutes which have created objects of his jurisdiction. His commission, first, empowers him fairly to preserve the peace; and thereby gives him all the power of the ancient conservators at the common law, in suppressing riots and array, in taking securities for the peace, and in apprehending and committing felons, and other inferior criminals. It also empowers any two or more to determine all felonies, and other offences; which is the ground of their jurisdiction at the Sessions. And as to the powers given to one, two, or more Justices by the several statutes, which from time to time have been made upon them such an infinite variety of business, that few care to undertake, and fewer understand, the office; they are such, and of so great importance to the public, that the country is greatly obliged to any worthy magistrate that, without further views of his own, will engage in this troublesome service. 

1 Comm. c. 9; and see 4 Comm. c. 20. If therefore a well-meaning Justice makes any undesigned slip in his practice, great lenity and indulgence are shown to him in the Courts of Law; and there are many statutes made to protect him in the upright discharge of his office; which, among other privileges, prohibit such Justices from being sued for any overights without notice before hand; and stop all suits begun on tender made of sufficient amounts. See statutes 7 Jac. 1. c. 5; 21 Jac. 1. c. 12; 24 Geo. 2. c. 44. But, on the other hand, any malicious or tyrannical abuse of their office is usually severely punished; and all persons who recover a verdict against a Justice, for any wilful or malicious injury, are entitled to double costs. See 1 Comm. 350–4.

Justices of Peace are to hold their sessions four times a year, i.e. the first week after Michaelmas, the Epiphany, Easter, and St. Thomas called Becket, being the 7th of July. Statute 36 Edw. 3. c. 12: 12 R. 2. c. 10. They are Justices of Record, for none but Justices of Record can take a recognition of the peace. Every Justice of Peace hath a separate power, and may do all acts concerning his office apart and by himself; and even may commit a fellow Justice upon treason, felony, or breach of the peace; and this is the ancient power which Conservators of the peace had at common law. But it has been held, that one Justice of the Peace cannot commit another Justice, for breach of the peace; though the Justices in feoff may do so. Lamb. Jux. 385; Titus, Com. 174. By several statutes Justices may act in many cases where their commission doth not reach; the statutes themselves being a sufficient commission. Lamb. lib. 4: Wood's Inst. 79. 8o.

The statute 4 H. 7. c. 12, (and statutes 3 & 4 H. 8. c. 10: 37 H. 8. c. 7,) give them a further general power than is expressed either in their commission, or in any particular statute. The particular statutes are to be executed as they direct; wherein no express power is given to any one Justice, he can administer only, and if not obeyed, may make presentment of the offence upon the statute, and with his fellow Justices hear and determine it in Sessions; or he may bind the offender to the
peace; or the good behaviour: some statutes empower
one Justice of Peace alone to act; some require two,
three, four Justices, &c. And where a special au-
thority is given to Justices of Peace, it must be exactly
pursued; or the acts of the Justices will not be good. 2 Saull, 475.

If a Justice of Peace does not observe the form of pro-
ceeding directed by statute, it is called non judice, and
void; but if he acts according to the direction of the sta-
tures, neither the Justices in seッション nor B. R. can reverse
what he has done. Jones 170.

The power of Justices is ministerial when they are
commanded to do any thing by a superior authority, as
by the court of B. &c. In all other cases they act as
judges: but they must proceed according to their com-
mision, &c. Where a statute requires any act to be done
by two Justices, it is an established rule, that if the act is
of a judicial nature, or is the result of discretion, the two
Justices must be present to act; and join in it, or, if
they will be void; as in orders of removal and liti-
tion, the appointment of overseers, and the allowance
of the indentsure of a parish apprentice: but where the act is
merely ministerial, they may act separately, as in the
allowance of a poor rate. This is the only act of two Justi-
ces which has yet been construed to be ministerial; and
the propriety of this construction has been justly questioned.
4 Term Rep. 386. A Justice is to exercise his authority
only within the county where he is appointed by his com-
mision; not in any city which is a county of itself, or town
corporate, having their proper Justices, &c. though in
other towns and liberties he may. Dal. 49.

From the general rule, that a Justice is to act only
within his own county, two considerations arise: One,
how far a Justice can act when he is out of the county;
the other, when he is in the county, how far his power
extends to other counties.

As to the former case, when he is out of the county,
it is said that the Justices have no coercive power when
out of the county; and therefore the and order of bailiffs,
or foremen of labourers' wages, made by them out of
the county, is not binding. Yet it is said, that recogniz-
ances and informations voluntarily taken before them in
any place are good. 2 Hawk. F. C. And Hale says,
that a Justice of the Peace may do a ministerial act out
of his county, as examining a party robbed whether
he knows the felons: but that he cannot do a com-
palmary act, as committing a person for not giving a
recognizance.

When a Justice of Peace acts to compel another to per-
form any thing required by law, as where he impris-
on or commands any one to be imprisoned, &c. he cannot
act out of the jurisdiction of his county; but he may take
informations anywhere to prove offences in the county
where committed, and he principally refine, or take
a recognizance to prosecute. Cro. Car. 213. Now, how-
ever, by stat. 28 Geo. 3. c. 49, any Justice acting as such
for any two or more counties, being adjoining counties,
may act in all matters concerning any or either of the
said counties; and all acts of any such Justice, and of any
officer in obedience thereto, shall be as valid as if done
in the county to which they relate. Provided that such
Justice be personally resident in one of the said counties
at the time of doing such act, and that his warrants, &c.
be directed, in the first instance, to the constable, &c.
of the county to which the same relate.

As to the latter case, wherein it is supposed that the
Justice's power is limited to that county only, the Stat.
2 Geo. 2. r. 55, enacts, That where a Justice shall grant
a warrant against a person escaping or refusing out of his
jurisdiction, a Justice of the county, &c. where such per-
son shall reside, shall indorse his name on the warrant,
which shall be a sufficient authority to the person to
whom the warrant was originally directed, to execute the
warrant, and carry the person before the Justice who in-
dorsed the warrant, or any other Justice of the same
county, who, if the offence be bailable, shall take bail for
the person's appearing at the next sessions for the coun-
ty, &c. where the offence was committed, and deliver
the recognizance and all proceedings to the constable, &c.
who apprehended the party, to be by him delivered to
the clerk of the peace of the county, &c. where the fact
was committed; if the fact be not bailable, or the party
shall not give bail, the constable may carry the party be-
fore a Justice of the county where the fact was committed.
No action lies against the Justice who indorses such war-
rant, but only against the Justice who granted it, if caufe.

Justices either of the county from which tenants
fraudulently remove goods, or of that in which they are
concealed, may convict the offenders in their respective
counties. While facts are stated to make the contrary
appear, the court always presumes in favour of the acts
of inferior jurisdictions. R. v. Morgan, Cold. ca. 156.

Also, by stat. 9 Geo. 1. c. 7, a Justice dwelling in a city
or precinct, that is a county of itself within the county at
large, may act at his own dwelling-house for such county
at large. This statute is explained by stat. 28 Geo. 3.
c. 49, § 7, which provides, that any Justice acting for any
county at large, may act as such at any place within any
city, &c. being a county of itself, and situate within,
or adjoining to such county at large; but not to extend to
give such Justices of the county, not being Justices of the
city, &c. power to act in any matters relating to such
city, &c.

A man may be a Justice of Peace in one part of York-
shire, and yet not be a Justice of Peace in every part of
the county; this county being divided into separate rid-
ings. Hill. 22 Car. S. R.

By Stat. 16 Geo. 2. c. 18, Justices of Peace may do all
things relating to the laws for relief of the poor, the pa-
ssing and punishing vagrants, the repairs of the high-
ways, or concerning parochial taxes or rates, although such
Justices are rated to the taxes, within any place where they
execute their office: but no Justice shall act in determin-
ing any appeal to the quarter-sessions, from any order
that relates to the parish where he is so charged. In the
case of R. v. Yarpoole, it was determined, that on an ap-
peal to the sessions, against an order of removal, those
Justices who are rated to the relief of the poor in either
of the contending parishes have not a right to vote.
4 Term Rep. 71.

By Stat. 5 Geo. 2. c. 15, on appeals to Justices of Peace
in the sessions, they are to cause defects in form in orders,
&c. to be notified without charge, and then determine the
matters according to the merits of the case; and their
proceedings shall not be removed into B. R. without en-
tering into recognizance of 50/. to prosecute with effect,
and pay costs if affirmed.

By Stat. 1 Geo. 2. c. 18, no curia iurati shall issue to re-
move any order, made by Justices of Peace of any county,
&c.
If a commission of 
and in 

and the party ought to be examined, and make report to them for their determination. 2. If be on the information of another, he shall not be punished. 13 Rep. 76: 38. If on the information of another, he shall not be punished. 13 Rep. 76: 38.

and to certify them to the next session, and if they do not certify examinations and informations to the next gaol-delivery, or do not bind over professors, &c. they shall be fined. Dalt. c. 11.

For petit larceny and small felonies, the Justices in their Quarter Sessions may try offenders; other felonies being of course tried at the Assizes: and in case of felonies, and pleas upon penal statutes, they cannot hold cognizance without an express power given them by the statutes. Justices of Peace in their sessions cannot try a cause the same sessions, without consent of parties, &c. for the party ought to have convenient time to another to examine, and make report to them for their determination. 2 Salk. 477. The Sessions is all as one day, and the Justices may alter their judgments at any time while it continues. Ibid. 494. See ut. Sessions.

It is incident to the office of a Justice of Peace to commit offenders: and a Justice may commit a person that doth a felony in his own view, without warrant; but if it be on the information of he must make a warrant under hand and seal for that purpose. If a Justice issues a warrant to arrest a felon, and the accusation be false, the Justice is excused, where a felony is committed: if there be no accusation, action will lie against the justice. 1 Leon. 187. A Justice makes a warrant to apprehend a felon, though he is not indicted, he who executes the warrant shall not be punished. 13 Rep. 76: Cro. Jac. 432.

If complaint and oath be made before a Justice of Peace, by one, of goods stolen, and that he suspects they are in such a house, and shows the cause of his suspicion; the Justice may grant a warrant to the constable, &c. to search in the place suspected, and seize the goods and persons in whose custody they are found, and bring them before him, or some other Justice, to give an account how he came by them; and farther to abide such order, as to law shall appertain. 3 Hale's Hist. P. C. 114. The search on these warrants ought to be in the day-time, and doors may be broken open by constables to take the goods; which are to be deposited in the hands of the sheriff, &c. till the party robbed hath prosecuted the offender, to have restitution. Ibid. 150, 151.

A Justice of Peace may make a warrant to bring a person before himself only, and it will be good; though it is usual to make warrants to bring the offenders before him or any other Justice of the county, &c. And if a warrant directs his warrant to a private person, he may execute it. 3 Rep. 60: 1 Salk. 437.

It seems now to be indisputable, that in all cases where Justices of Peace have a jurisdiction over the offence, they may grant a warrant in order to compel the person accused to appear before them; for it would be absurd to give them power to examine an offender, unless they had also a power to compel him to attend and submit to such examination. 2 Hawk. P. C. c. 13, § 15. And this extends undoubtedly to all treasons, felonies, and breaches of the peace, and all to all such offenses as they have power to punish by statute. Sir E. Coke hath laid it down, that a Justice of the Peace cannot issue a warrant to apprehend a felon upon bare suspicion; no, not even till an indictment be actually found; 4 Inst. 176: and the contrary practice is by others held to be grounded rather upon convenience, than the express rule of law, though now by long custom established. 2 Hawk. P. C. c. 13, § 15. A doctrine which in most cases give a loose to felons to escape without punishment; and therefore Sir Matthew Hale hath combated it with invincible authority and strength of reason: maintaining, 1. That a Justice of Peace hath power to issue a warrant to apprehend a person accused of felony though not yet indicted; 2 Hal. P. C. 108; and, 2. That he may also issue a warrant to apprehend a person suspected of felony, though the original suspicion be not in himself, but in the party that prays his warrant, because he is a competent judge of the probability offered to him of such suspicion. But in both cases it is fitting to examine upon oath the party requiring a warrant, as well to ascertain that there is a felony or other crime actually committed, without which no warrant should be granted; as also to prove the cause and probability of suspecting the party against whom the warrant is prayed. Ibid. 110. This warrant ought to be under the hand and seal of the Justice, should set forth the time and place of making, and the cause for which it is made; and should be directed to the constable, or other peace-officer, (or, it may be, to any private person by name;) Salk. 176: requiring him to bring the party either generally before any Justice of the Peace for the county, or only before the Justice who granted it; the warrant in the latter case being called a special warrant. 2 Hawk. P. C. c. 13, § 26. A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty, 1 Hal. P. C. 880: 2 Hawk. P. C. c. 13: for it is the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion. And a warrant to apprehend all persons, guilty of a crime therein specified, is no legal warrant; for the point, upon which its authority rests, a fact to be decided on a subsequent trial; namely, whether the person apprehended thereupon be really guilty or not. It is therefore in fact no warrant at all; for it will not justify the officer who acts under it; whereas a warrant properly drawn, (even though the magistrate who issues it should exceed his jurisdiction,) will, by jut. 21, G. P. c. 4, § 3, at all events indemnify the officer who executes the same ministerially. And, when a warrant is received by the officer, he is bound to execute it, so far as the jurisdiction of the magistrate and himself extends. A warrant from the Chief or other Justice of the Court of King's Bench extends all over the kingdom; and is return'd, or dated.
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England, not Oxfordshire, Berks, or any other particular county. But the warrant of a Justice of the Peace in one county, as Yorkshire, must be backed, that is, signed, by a Justice of the Peace in another, as Middlesex, before it can be executed there. Formerly, regularly speaking, there ought to have been a fresh warrant in every fresh county; but the practice of backing warrants had long prevailed without law, and was at last authorized by Stat. 25 Geo. 2. c. 76: 26 Geo. 2. c. 55. And now, by Stat. 13 Geo. 3. c. 31, any warrant for apprehending an English offender, who may have escaped into Scotland, and since appear, may be indorsed and executed by the local magistrates, and the offender conveyed back to that part of the united kingdoms in which such offence was committed. 4 Comm. 290. See ante.

Justices of Peace may make and persuade an agreement in petty quarrels and breaches of the peace, where the King is not entitled to a fine: though they may not compound offences, or take money for making agreements. Noy. 103. Justices may not intermeddle with property; if they do, action lies against them and the officers who execute their orders. 5 Bkt. 217. But see title Forcible Entry.

A Justice of Peace hath a discretionary power of binding the good behaviour; and may require a recognizance with a great penalty of one for his keeping of the peace, where the party bound is a dangerous person, and likely to break the peace, and do much mischief. P. J. 1652: 2 Litt. Abr. 131. And where a person is to be bound to the good behaviour, for default of forfeitures he may be committed to gaol. But a man giving security for keeping the peace in B. R. or the Chancery, may have a supersedeas to the justices in the county not to take security; and so where a person hears of a warrant out against him, and gives security of the peace to any other Justice, &c. See title Peace, Power of.

If one make an assault upon a Justice of Peace, he may apprehend the offender, and send him to gaol till he finds sureties for the peace; and a justice may record a forcible entry upon his own pollition: in other cases he cannot judge in his own case. Wood's Inf. 81. Where a man abuses a justice by words, before his face or behind his back, in relation to his office, he may be bound to his good behaviour; and if a Justice of Peace be abused in the execution of his office, the offender may be also indicted and fined. Cremp. 149: 4 Rep. 16. To vary a justice of Peace he doth not understand law, &c. is indigible; and contemns against justices are punishable by indictment and fine at the Sessions. 3 Mill. 139: 1 Stat. 144. But abusing a justice out of his office, by words that do not relate to his office, seems to stand only as in the case of other persons.

If a magistrate abuses the authority reposed in him by the law, in order to gratify his malice, or promote his private interests or ambition, he may be punished accordingly by indictment or information. But the Court of K. B. have frequently declared, that though a Justice of Peace should act illegally, yet if he has acted candidly without any bad view or ill intention whatsoever, the Court will not punish him by the extraordinary mode of an information, but will leave the party complaining to the ordinary method of prosecution by action or indictment. Burr. 536, 785, 1162: 1 Term Rep. 653, 692. And in no case will the Court grant an information, unless an application for it is made within the second Term after the offence is committed, and unless notice of the application be previously given to the justice, and the party injured will undertake to bring no action. And if the party proceeds both by action and indictment, the Attorney General will grant an information to the indictor. Indeed where a justice has committed an involuntary error, without any corrupt motive or intention, it may be questioned, whether it is an indictable offence. 1 Comm. 354. c. 9: and Mr. Christian's note there.

Justices shall not be regularly punished for any thing done by them in Sessions as Judges; and if a Justice of Peace be indicted for any thing done in his office, he may plead the general issue, and give the special matter in evidence; and if a verdict goes for him, or the plaintiff be nonsuit, he shall have double costs. Stat. 21 Jac. 1. c. 12. Though if a Justice of Peace is guilty of any misdemeanor in his office, Information lies against him in B. R. where he shall be punished by fine and imprisonment. Stat. 193. If a person be never summoned by justices of Peace, to be heard and make his defence, before the justices make any order against him, it is a misbehaviour for which an information will lie against them. See title Conviction.

The Court of B. R. will grant an information against a Justice of Peace on motion for denying a servant to the House of Correction without sufficient cause; if the justice do not give good cause, &c. Mod. Cas. 12 L. and E. 45, 46. And for contempt of laws, &c. attachment may be had against justices of Peace in B. R. on motion of the Attorney General, &c. A Justice of Peace fined a thousand marks, for corrupt practices. See 1 Keb. 727.

The Stat. 24 Geo. 2. c. 44. particularly provides, that no writ shall be sued out against any justice of Peace, for anything done by him in the execution of his office, until a notice in writing shall be delivered to him one month before the suiting out the same, containing the cause of action, &c. within which month he may tender amends, and if the tender be found sufficient, he shall have a verdict. No such plaintiff shall recover against the justice, unless such notice shall be proves at the trial. If the justice shall neglect to make such tender, or shall make an insufficient tender, he may, before it be joined, pay into Court such sum as he shall think fit. Where an action is against a justice and contable, if there be a verdict against the justice, and the contable be acquitted, the plaintiff shall recover such costs against the justice, as to include the costs the plaintiff shall be obliged to pay to the contable. And this statute enacts, that if the plaintiff in any such action shall recover against a justice, and the Judge shall certify that the injury was wilfully and maliciously done, the plaintiff shall recover double costs. No action shall be brought against a justice for any thing done in the execution of his office, unless commenced within six months after the act committed.

By the Stat. 27 Geo. 2. c. 20, in all cases of a warrant of distress for levying any penalty inflicted, or money directed to be paid, the Justice or Justices granting such warrant, may therein order the goods distrained to be sold within a certain time limited in the warrant, to be not less than four days, nor more than eight days, unless
the penalty or money, with the reasonable charges of taking and keeping such distress, be sooner paid. The officer may deduct the reasonable charges of taking, keeping, and selling the distress; and if required, shall show the party his warrant, and permit him to take a copy of it. This not to extend to parts 7 & 8 W. 3. c. 34; 1 Cor. i. 6, as to levying tithes, &c. on Quakers. — The 38 & 39 Ed. 1. c. 19, enables judges to award collogue determination of complaints before them, and to levy by distress and sale of the parties goods, or commit the offender to the House of Correction. General rules as to coils may be settled in Sessions, and allowed by the Judges on their circuits.

The 26 Geo. 2. c. 11, was made for the regulation of fees of Justices' clerks; a table of which is to be made at seissen, and allowed by the Judges on their circuits; and in Middlesex, by Stat. 17 Geo. 3. c. 16, by the Chief Justices at Westminster, or any two of them.

For further matter relative to this extensive and useful office, see Baron's Justices, title Justice of the Peace; and that book, and this Dictionary, pages 12, 13, particularly under titles Commitment; Conviction; and other apposite titles.

**Justices of Peace within Liberties;** [Justiciarii ad pacem infra libertates.] Are such as in cities, and other corporate towns, as the others are of the county; and their authority is all one within the several territories and precincts, having besides the office of ale and beer, wood, victuals, &c. See Stat. 27 H. 8. c. 5. But if the King grant to a Corporation, that the Mayor and Recorder, &c. shall be Justices of Peace within the city; if there be no words of exclusion, Justices of the county have concurrent jurisdiction with them; and the King, notwithstanding his charter, may grant a commission of the peace specially in that city or county. 2 Hale's Jew. P. C. 47. Also where the Justices of any corporate town, deny doing right, Justices of the Peace of the county may inquire into it. Mod. Cai. 164. The Justices of Peace in cities, or towns corporate, may commit persons apprehended within their liberties to the House of Correction of the county, &c. which persons shall be liable to the like correction and punishment, as if committed there by any Justice of the same county. Stat. 15 Geo. 2. c. 24. Justices of cities and corporations are not within the qualification act, 5 Geo. 2. c. 18. See titles Mayors; Corporations; Justices of the Peace.

**Justices of Trial-biston.** Were Justices appointed by King Ed. I. during his absence in the Scotch and French wars. They were so called, says Hollingshed, of trailing or drawing the staff of justice; or for their summary proceeding, according to Sir Edward Coke, who tells us, they were in a manner Justices in Eyre; and it is said, they had a balfon, or staff, delivered to them as the badge of their office, so that whoever was brought before them was trail by balfon, traditus ad balfon, traditus ad balfon, or Justiciarii ad trebundum offendentes ad balfon vel balfon. Their office was to make inquisition through the kingdom on all officers and others, touching extortion, bribery, and such like grievances; cf. intruders into other men's lands, barretors, robbers, and breakers of the peace, and divers other offenders; by means of which inquisitions, some were punished with death, many by ransom, and the rest flying the realm, the land was quieted, and the King gained riches towards the support of his wars. Mat. Westm. anno 1150. A commission of trial-baison was granted to Roger de Grey, and others his associates, in the reign of King Ed. III. Spec. Giff. 18.

**Justice-court.** Is the highest Court that is held in a Forest, and is always held before the Lord Chief Justice in Eyre of the forest, upon warning forty days before; and there fines are set for offences, and judgments given. See Manwood's Forest Law, cap. 24. The fine and amercement of the Justices in Eyre, for false judgment, or other trespass, shall be attested by the said Justices upon the oaths of Knights, and other honest men, and be entered into the Exchequer. Stat. 3 Ed. 1. c. 18. And the Justices in Eyre shall appoint a time for delivering in all writs by the Sheriff, &c. Stat. 13 Ed. 1. c. 10. See this Dictionary, title Forset.

**Justiciar, or Justicer, Fr. Justiciier.]** A Judge, justice, or as he was sometimes termed, Justiciary; Shakespeare uses the term Justicer for Judge. The Lord Birmingham, Justiciar of Ireland. Baker's Chron. Angl. fol. 113.

The whole jurisdiction which is now distributed among the several Courts of Westminster Hall, seems in the first reigns after the Conquest to have been lodged in one Court, commonly called the King's Court, wherein justice is said to have been administered sometimes by the King himself in person, and sometimes by the High Justiciar, who was an officer of very great authority, and used in the King's absence beyond sea to govern the realm as Vice-Roy. 2 How. F. C. c. 3.

The first Justiciaries after the Conquest were Odo bishop of Bayeux in Normandy, half brother by the mother to the conqueror, and William Fitz Osbern, who was viceregent, and had the same power in the north that Odo had in the south, and was the chief in the Conqueror's army. The next Justiciaries were William Earl of Warren in Normandy, a great commander in the battle against Harold, and Richard de Benedicta, alias Richard de Tonebridge, son to Gilbert Earl of Brus in Normandy, and were constituted in 1073. In a great plea between Lanfranc and the said Odo, Gevignier Bishop of Coutances in Normandy, was Justiciary. In the beginning of William Rufus, Odo was again Justiciary, William de Corby, bishop of Durham, a Norman, succeeded Odo, and then followed Ralph Flambeard in 1088. Afterwards, in the reign of Hen. I. in 1100, Hugo de Bulandra, a Norman, was Justiciary, and after him his son Richard Basset; then Roger Bishop of Salisbury, was Justiciary and Chancellor. The next, in the time of King Stephen, was Henry Duke of Normandy, afterwards King Henry II. And in Henry the Second's time was Robert de Bello Monte Earl of Leicester in 1168, but Alan de Vire Earl of Guisnes, is said to have been Justiciary before him; and after Earl of Leicester, Richard de Lusis was made Justiciary; after him in 1182, Ralph de Glanville, that famous lawyer, was made Justiciary; after him, Hugo de Putacius, commonly called Pajus, Pasius, or Pasley, nephew to King Stephen by his sister, was made Justiciary in the north parts beyond Trent; and William de Longe-Campo, or Long-Champ, Bishop of Ely, was
was at the same time, by Richard the First, made Jus-
ticiary on the south parts of this side from. Then, after the
deprivation of William Bishop of Ely, Walter Arch-
"bishops of Rouen in Normandy, was made Jus-ticiary of all
England. 

(A) (B) (C): See Dugd. Chron. Series, 1, 2, 3, 4, 5.  

William Long-Champ Bishop of Ely, Chief Jus-ticiar
and Lord Chancellor to Rich. I. Speed. 473. Pitz Peter,
Chief Jus-ticiar in the first of John. Ib. 187. Hubert de
Burgh Earl of Kent, Chief Jus-ticiar. 1 Hen. 3: 2. B. 513.

Towards the latter end of the Norman period, the
power of the Grand Jus-ticiar was broken, so that the
Aula Regis, which before was one great Court where
the Jus-ticiar presided, was divided into four distinct
Courts, viz. Chancery, Exchequer, King's Bench, and
Common Pleas. Gibb. Hist. View of the Court of Exche-
quer, 7, cites Math. 2, 4. It determined about the 45

The Chancellor was the first on the order of the
Jus-ticiary, and as he was a great person in Court, so he was in the Exchequer; for no great thing paffed but with his consent and advice: nothing could be
feasled without his allowance and privy. But the Jus-
ticiary formanded him and all others in authority; and
he alone was endowed with and exercised all the power
which afterwards was executed by the four chief judges,
viz. the Chief Jus-tice of B. R. the Chief Jus-tice of
C. B. the Chief Baron of the Exchequer, and the
Master of the Court of Wards. Bradly's Preface to the
Roman History, 151; (B). As long as the power of the
Jus-ticiar continued, the Aula Regis was one Court, and
only distinguished by the several officers; for all the
officers were united under the Jus-ticiar, and he was the
governor and superintendent of the Courts.

Justiciarius, Jus-ticature, Prerogative. Cowell.

Justice, is a writ directed to the Sheriff in some
special cases, by virtue of which he may hold plea of
debt in his County Court for a large sum; whereas,
otherwise, by his ordinary power, he is limited to sums
under 40s. F. N. B. 177. Kitche. 74. It is called jus-
ticiary, because it is a commission to the Sheriff to do a
man justice and right, beginning with the word Jus-ticiary,
&c. Brad. Lib. 4, makes mention of a Jus-ticiary to the
Sheriff of London, in a case of dower: and it lies in ac-
count, annuity, customs, and services, &c. New Nat. Br.
In debt, the writ runs thus: The King to the Sheriff of S.
greeting: We command you, that you Jus-tice A. B. that
justly and without delay he render to C. D. five pounds,
which is due to us, as it is just, and as reasonably he
can show, that he ought to render, him, that no more claim
thereof we may have, for default of justice, &c.

This writ of Jus-ticiary imposes the Sheriff, for the
take of dispatch, to do the same justice in his County
Court as might otherwise be had at West-magister. Finc.
318: F. N. B. 152. The freeholders of the county are
the real Judges in this Court, and the Sheriff is the mi-

Jus-ticiary. See title Jus-ticiary.

JUSTIFIABLE HOMICIDE. See title Homicide.

JUSTIFICATION, juftification. A maintaining or
shewing good reason in Court why one did such a thing
which he is called to answer. Broke. Please in Jus-
tification are to let forth some special matter whereby
the party justifies what he hath done concerning lands
or goods; so that he did it by authority: and this may
be by the law, or from another person; wherefore, to
make it right, there must be good authority, which is
to be exactly proved. Stup. Epit. 1641. Jus-tification
may be in treas, and under writs, procedur., &c. But
a person cannot justify a trespass, unless he confess it;
for he ought to plead the special matter, and confess
and justify what he hath done; 1 Saok. 218. Where
a defendant justifies in trespass on his possession, by vir-
tue of any estate, he must shew his title; but when
the matter is collateral to the title to the land, it is other-
wise. 2 Mod. 70. Sir. 2. If he should not give colour
or probably such plea may amount to the general iufus.
If a sheriff, or other officer, justifies by virtue of any re-
turnable writ, he is to shew that the writ was returned;
though he need not if the writs are not returnable
writs. 1 Saok. 409. And it must be shewn from what
Courts the writs issued. Ibid. 517.

When the action concerns a tranfitory thing, if the
defendant justify the taking or doing in one place; it is
a Jus-tification in all places: if the action concern a local
thing, a Jus-tification in one place is not a Jus-tification
in another place; for in the former case the place is not
material, but the mere doing or taking of the thing is
the subsistence; and in the latter, the place is material,
as the defendant may be able to justify as to one place,
and not in another. 2 Lit. Acl. 174. If the matter of
Jus-tification is local, there the defendant ought to shew
the cause specially, and traverse the place; but not
where it is tranfitory. Cow. Eliz. 607. If one have
corn upon the lands of another, and he take it, and the
owner of the ground fues him, he must justify, and not
plead the general iufus. 5 Rep. 85. In actions for en-
tering a close, and taking corn; the defendants may
justify they did it as servants to the parson; and that
the corn was tube, severed from the nine parts, &c. 2
H. 44. A man may plead in Jus-tification, that land is
his freehold, on making an entry thereon, &c. And
that one entered a house to apprehend a felon; or by war-
tant to levy a forfeiture; or to take a defirers, &c. And
in iufus that he did it in his own defence, &c. Lib. Ent.
Words spoken may be justified, because spoken in a legal
way; for words the defendant may justify in an action;
but not in an indictment, &c. 1 Dav. 167: 3 Saok.
265. See titles Action; Words; Label.

A Jus-tification (in other words) is a special plea in
bar, as in actions of assaulf and battery, for assault de-
tective, viz. that the plaintiff first, with force and arms,
assaulted the defendant, and he defended himself, and
therefore, if any damage happened to plaintiff, it was
even to the assault he made on defendant, and in his
necessary defence; in other actions of trespass, that the
defendant did the thing complained of in right of some
office which warranted him to do it; or in an action of
fiander, that the plaintiff was guilty of such or such a
crime, and therefore he, the defendant, spoke the words.
See titles Pleading; Trifffafs, &c.

JUSTIFI.
JUSTIFICATORS, iustificatores. A kind of com-purgators, or those that by oath justified the innocence, or oaths of others; as in the case of waging of law. See Wager of Law.

JUSTIFYING BAIL. See title Bail, l.

JUSTITIA, A statute, law, or ordinance. Hoveden, p. 666.


He who is now called Justitiarius was formerly called Justitia, i.e. a Judge. Leg. Hen. 1. c. 42.

JUSTITIAM FACERE. To hold plea of any thing. See Selden in his Notes upon Endemium.

JUSTITIUM, A sealing from the profession of law, and exercising justice in places judicial. Cowell.

JUSTS, Fr. Joufle, i.e. deparer. Were exercises between martial men and persons of honour, with spears on horseback; and different from tournois, which were military contemptions, and consisted of many men in troops; whereas Joufle were usually between two men singly. They are mentioned in stat. 24 Hen. 8. c. 13, and are now divided.