JUST

JUSTIFICATORS, justificat ors.] A kind of compurgators, 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, 1.

JUSTITIA, A statute, law, or ordinance. Hoveden, p. 666. 


JUSTITION, Is often taken for jurisdiction, or the office of a Judge. Leg. Hen. 1. c. 42.

JUSTITIAM FACERE. To hold pleas of any thing. See Selden in his Notes upon Eadmerus.

JUSTITIUM, A sealing from the profession of law, and exercising justice in places judicial. Cowell.

JUSTS, Fr. justie, i.e. decuriae.] Were exercises between martial men and persons of honour, with spears on horseback; and different from tournaments, which were military contentions, and consisted of many men in troops; whereas  justes were usually between two men only. They are mentioned in Stat. 24 Hen. 8. c. 13, and are now disused.

K.

KAI A, A Key or Wharf. Selm.

KAIAGUM, Keyage; which see.

KALENDZE, Rural Chapters or conventions of the rural deans and parochial clergy; so called because formerly held on the Kalends, or first day of every month. Parish. Antig. 610.

KALENDAR and KALENDS. See Calendar and Calends.

KANTREF. See Cantred.

KARTE. See Cawrto.

KARLE, Sax.] A man; and with any addition a servant or clown; as the Saxons called a domestic servant, a kynkarle: from whence comes the modern word chamberlain. Demolay.


KAY. See Key.

KEBBARS, or Callers.] The refuse of sheep drawn out of a flock; over reicto. Cooper's Thesaur.

KELLAGE, killogram.] A privilege to demand money for the bottom of ships sailing in a port or harbour. Rot. Parl. 21 Ed. 1.

KEEMEN, Are mentioned among mariners, freemen, &c. in various statutes. See title Coals.

KEELS. This word is applied to vessels used in the carriage of coals, &c. See Keys.

KEEP. A strong tower or hold in the middle of any castle or fortification, wherein the besieged made their last efforts of defence, was formerly in England called a keep: and the inner pile within the castle of Dover, erected by King Hen. II. about the year 1153, was termed the King's Keep: fo at Windsor, &c. It seems to be something of the nature of that which is called a citadel.

KEEPER OF THE FOREST, Coitis Forester.] Or Chief-warden of the Foret, hath the principal government over all officers within the forest; and warns them to appear at the Court of Justice-peat, on a general summons from the Lord Chief Justice in Eyre. Mawwood, part 1. p. 156. See title Forester.

KEE.

KEEPER OF THE GREAT SEAL, Cofifer magnum sigilli.] Is a Lord by his office, called Lord Keeper of the Great Seal of England, and is of the King's Privy Council; through his hands pass all charters, commissions and grants of the King, under the Great Seal; without which seal many of those grants and commissions are of no force in law; for the King is by interpretation of law a corporation, and cannot seal without but by the Great Seal, which is as the public faith of the kingdom, in the high esteem and reputation justly attributed thereto.

The Great Seal consists of two impressions, one being the very seal itself with the effigies of the King stamped on it; the other has an impression of the King's arms in the figure of a target, for matters of a smaller moment, as certificates, &c. that are usually sealed sub post sigilli. And anciently, when the King travelled into France or other foreign kingdoms, there were two Great Seals; one went with the King, and another was left with the Keeper Regius, or the Chancellor, &c.

If the Great Seal be altered; the same is notified in the Court of Chancery, and public proclamations made thereof by the Sheriff, &c. 1 Hals's Hist. P. C. 171. 4.

The Lord Keeper of the Great Seal, by statute 5 Eliz. c. 18, hath the fame place, authority, pre-eminence, jurisdiction, and execution of laws, as the Lord Chancellor of England hath: and he is constituted by the delivery of the Great Seal, and by taking his oath, 4 Inst. 87. See Lamb, Archivum. 65: 1 Rot. Abr. 385: and this Dictionery, title Chancellor.

KEEPER OF THE PRIVY SEAL, Coferi privatc sigilli.] That officer, through whose hands all charters, pardons, &c. pass, signed by the King, before they come to the Great Seal; and some things which do not pass that seal at all; he is also of the Privy Council, but was anciently called only Clerk of the Privy Seal: after which he was named Guardian of the Privy Seal; and lastly, Lord Privy Seal, and made one of the great officers of the kingdom. See Stat. 12 K. 2. c. 11; Rot. Parl. 11 H. 4: and Stat. 34 H. 8. c. 4.
The Lord Privy Seal is to put the seal to no grant without good warrant; nor with warrant, if it be against law, or inconvenient, but that he first acquaint the King therewith. 4 Inst. 55. As to the fees of the clerks under the Lord Privy Seal, for warrants, &c. See stat. 27 H. 8. c. 11. See further this Dictionary, under Grant of the Kings, Privy Seal.

Keeper of the Touch, mentioned in the ancient statute 12 H. 6. c. 14, seems to be that officer in the King's mint, at this day called the Master of the Assay. See Mint.


Kendal, Consanguine. An ancient barony, MS.

Kennets, A coarse Welsh cloth. See stat. 33 H. 8. c. 3.

Kerherbe. A custom to have a cart-way; or a constumation for the customary duty for carriage of the Lord's goods. Cowel.

Kernellare Domum, from Lat. Cremus, a notch.] To build a house formerly with a wall or tower, kernelled with crannies or notches, for the better convenience of shooting arrows, and making other defence. De Fejeze derives this word from quadrans, or quadratella, a four-figure hole or notch; wherein patent quadratella five or six figures; and this form of walls and battlements for military use might possibly have its name from quadratella a four-figure dart. It was a common favour granted by our Kings in ancient times, after casts were demolished for prevention of rebellions, to give their chief Subjectes leave to fortify their manor-houses with kernelled walls. Paroq. Antiq. 533.

Kernellatus, Fortified or embattled, according to the old fashion; Dial. 31 Ed. 3.

Kernes, Idle persons, vagabonds. Ordin. Hibern. 31 Ed. 2. m. 11. 12.

Keever, A cover or vesse! used in a dairy house for milk or whey. Paroq. Antiq. p. 386.

Key, Ketia & coya, Sax. Leg. Teut. Key.] A vesse! to land or ship goods or wares at. The verb casta, in old writers, signifies (according to Scaliger) to keep in, or retaining; and so is the earth or ground where Keys are made, with planks and polls. Cowel.

The lawful Keys and wharfs for lading or landing of goods belonging to the port of London, see Chester's Key, Brewer's Key, Galley-Key, Wool-Dock, Caffon-house-Key, Bear-Key, Porter's Key, Subj's Key, Wigan's Key, Young's Key, Ralph's Key, Dyer-Key, Smart's Key, Soane's Key, Hammond's Key, Lyme's Key, Rousl-Wharf, Grant's Key, Cock's Key, and Fresh-Wharf's besides Billingsgate, for landing of fish and fruit; and Bridgehouse in Southwark for corn and other provision, &c. but for no other goods or merchandize. Doar boards, masts, and timber, may be landed at any place between Limehouse and Westminister; the owner first paying or contributing for the customes, and declaring at what place he will land them. Lex Mercant. 132, 133. Stat. 13 & 14 Car. 2. c. 11. 14: Ret. Sess. 18 Car. 2. It is sometimes spelt Quay, from the French quai. See this Dictionary, title London.

Keyage, Keyingum. The money or toll paid for lading or unloading wares at a key or wharf. Ros. Par. 1. Edw. 3. m. 10: 20 Edw. 3. m. 1.

Keys or Keels, Culti or Cilas.] A kind of long-boats of great antiquity, mentioned in stat. 23 H. 8. c. 18. Spelm.

Keying, Five or six, or spelt-keels with their wool on them. Cowel.

Keys, KEYS, A guardian, warden, or keeper. Min. Ang. 200. 2. p. 71. In the life of Man, the twenty-four chief commissaries, who were, as it were, conservators of the liberties of the people, are called Keys of the island. See title Man, life of.

Kicell, A cake; it was an old custom for godfathers and godmothers, every time their godchildren asked them blessing, to give them a cake, which was called a God's Kicell. Cowel.

Kidder, Signified one that badges, or carries corn, dead victual, or other merchandize, up and down to sell. Stat. 5 Eliz. c. 12. They are also called Kidders, in stat. 15 Eliz. c. 25.

Kiddle, Kidel, or Kedel, Kiddles.] A dam, or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fish. 2 Inst. fol. 58. The word is ancient, for we meet with it in Magna Charta. c. 24. And in a charter made by King John, to the city of London. By stat. 1 H. 4. c. 12, it was accorded, inter alias, That a survey shoule be made of the weares, mills, flanks, takes, and Kiddles, in the great rivers of England. They are now called Kettles, or Kettle-nets, and are much used on the sea-coasts of Kent and Wales. Cowel.

Kidnapping, The forcible abduction and conveying away of a man, woman, or child from their own country, and sending them to another; it is an offence at common law. Expos. give them a cake; which was called a God's Kicell. Cowel.

Kildering, The forcible abduction and conveying away of a man, woman, or child from their own country, and sending them to another; it is an offence at common law. Expos.

This is unquestionably a very heinous crime, as it robs the King of his Subjects, banishes a man from his country, and may in its consequences, be productive of the most cruel and disagreeable hardships; and therefore the common law of England has punished it with fine, imprisonment, and pillory. 2 Show. 221: Stee. 47: Comb. 10.

The stat. 11 & 12 W. 3. c. 7, though principally intended against pirates, has a clause that extends to prevent the leaving of such persons abroad, as are thus kidnapped or spirited away; by enacting, that if any captain of a merchant vesse! shall (during his being abroad) force any person on shore, and wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and defruous to return, he shall suffer (what seems no very adequate punishment) three months' imprisonment. There is no doubt, however, that the party thus injured may maintain an action against the party offending for damages sustained by occasion of such treatment. See title Imprisonment.

Kilderrkin, A vessell of ale, &c. containing the eighth part of an hogshead.

Kileth. An ancient fervile payment made by tenants in husbandry. Cowel.

Killicath, Keelage. Cowel.

Killickeyth Stallion, A custom by which lords of manors were bound by custom to provide a stallion for the use of their tenants' mares. Spelm. Cleaf.

Kilt. As onmes annuelles reditius de quadrantis confluentibus in, &c. seecat Kiltb. Par. 7 Eliz.
KINDRED. Are a certain body of persons of kin or related to each other. There are three degrees of Kindred in our law; one in the right line descending, another in the right line ascending, and the third in the collateral line.

The right line descending, wherein the Kindred of the male line are called Agenati, and of the female line Cognati, is from the father to the son, and so on to his children in the male and female line; if neither son nor daughter, or any of their children, to the nephew and his children, and if none of them, to the niece and her children; if neither nephew nor niece, nor any of their children, then to the grandnephew or granddaughters of the nephew, and if none of them, then to the great-grandnephew or great-granddaughters of the nephew and of the niece, &c. et sic ad infinitum.

The collateral line is either descending by the brother and his children downwards, or by the uncle upwards: it is between brothers and sisters, and to uncles and aunts, and the rest of the Kindred, upwards and downwards, across and amongst themselves. 2 Nels. Abr. 1077, 1078.

If there are no Kindred in the right descending line, the inheritance of lands goes to the collateral line; but it never ascends in the right line upwards, if there are any Kindred of the collateral line, though it may ascend in that line: and there is this difference between the right line descending and the collateral line; that the right of representation of Kindred in the right descending line reaches beyond the great grandchildren of the same parents; but in the collateral line, it doth not reach beyond brothers and sisters and their children; for after them there is no representation among collaterals.

In the right ascending line the father or mother are always in the first degree of Kindred; and by the civil law, if the son died without issue, his father or mother succeeded, and after them his brother or sister, uncle, aunt, &c. But in case of purchase by the son, if he died without issue, his father or mother could not inherit, but his brothers and sisters, &c. by which it appears, that the father cannot succeed the son immediately, though he is the next of kin. If a man purchase lands and dies without issue, it shall never go to the half blood in the collateral line; though it is otherwise in case of a defect from a common ancestor.

The children of the brothers and sisters of the half blood, shall exclude all other collateral ascendants, as uncles and aunts, and all remote Kindred of the whole blood in the collateral line. 2 Nels. Abr.

There are several rules to know the degrees of Kindred; in the ascending line, take the son and add the father, and it is one degree ascending, then add the grandfather, and it is a second degree, a person added to a person in the line of consanguinity making a degree; and if there are many persons, take away one, and you have the number of degrees; as if there are four persons, it is the third degree, if five, the fourth, &c. so that the father, son, and grandchild, in the descending line, though three persons make but two degrees: To know in what degree of Kindred the sons of two brothers stand, begin from the grandfather and descend to one brother, the father of one of the sons, which is one degree, then defend to his son the ancestor's grandson, which is a second degree; and then descend again from the grandfather to the other brother, father of the other of the sons, which is one degree, and descend to his son, &c. and it is a second degree; thus reckoning the person from whom the computation is made, it appears there are two degrees, and that the sons of two brothers are distant from each other two degrees: for in what degree either of them is distant from the common flock, the person from whom the computation is made, they are distant between themselves in the same degree; and in every line the person must be reckoned from whom the computation is made. If the Kindred are not equally distant from the common flock; then in what degree the most remote is distant, in the same degree they are distant between themselves, and to the kin of the most remote maker of the degree; by which rule, I, and the grandchild of my uncle, are distant in the third degree, such grandchild being distant three degrees from my grandfather, the nearest common flock. See further at length, 2 Comm. c. 14; and this Dictionary, titles Descent; Executive, III: V. 8. The common law agrees in its computation with the civil and canon law, as to the right line; and only with the canon law as to the collateral line. Wood's Ing. 48, 9.

KING.

Rex; from Lat. Regis to rule. — Sax. Cyning or Cening,] A Monarch or Potentate, who rules singly and sovereignly over a People; or he that has the highest power and rule in the land. The King is the head of the State. See Brass, lib. 1, c. 8.

The Supreme Executive Power of these Kingdoms is vested by the English laws in a single person, the King or Queen; for it matters not to which sex the Crown descends; but the Person entitled to it, whether Male or Female, is immediately invested with all the ensigns, rights, and prerogatives of Sovereign Power: as is declared by flat. 1 Mary, stat. 3, c. 1.

The Editor has endeavoured to digest and bring together much information on this head, which in former Dictionaries was either omitted or scattered through various unconnected titles. For this purpose he has, in the first place, had recourse to the valuable Commentaries; to which he has found it his duty to make continual application, through the whole of this work. The outline there furnished is here attempted to be, in some measure, filled up with various matter from other sources. It seemed, on the whole, most convenient to follow nearly the arrangement of Blackstone. The Student will, therefore, find the matter of this title thus disposed.
I. Of the Title, and Succession to the Throne.
II. Of the Royal Family.— As to the Queen, for this Dish, under that title.
III. Briefly and incidentally of the King's Councils.
IV. Of the King's Duties, and his Coronation Oath.
V. Of the King's Prerogative.

1. Generally.
2. As relates to his Royal Character; wherein his Sovereignty, Perpetuity, and Persecution.
3. With respect to his Authority, foreign and domestic; in sending Ambassadors; making Treaties; War and Peace.
4. As regards his Revenue; ordinary and extraordinary; and, in the latter, of his Civil Life.

VI. Of the King's Prerogative in relation to his Deeds; and for this Dish, titles Execution; Extent; Judgment; &c.

VII. The former and present state of the Prerogative in general.

The Executive Power of the English Nation being vested in a single person, by the general consent of the People, the evidence of which general consent is long and immemorial usage, it became necessary to the freedom and peace of the State, that a rule should be laid down uniform, universal, and permanent; in order to mark out with precision who is that single person, to whom are committed (in subervience to the law of the land) the care and protection of the community; and to whom in return the duty and allegiance of every individual are due.

When the succession to the Crown was formerly interrupted by the state of Society and the Constitution, which had not then arrived to the state of perfection it attained in later ages, and even more recently since the Revolution, definitions have been frequently made between a King de jure and de facto. Though it is to be hoped that no contest of this nature is likely again to rise in these kingdoms, what is justly hinted on this subject will doubtless be agreeable to the Student; fee further on this subject, title Treason.

If there be a King regnant in possession of the Crown, although he be but Rex de facto, and not de jure, yet he is Seignior de Roy; and another that hath right, if he be out of possession, he is not within the meaning of the Stat. 11 Hen. 7. c. 1. for the Subjects to serve and defend him in his wars, &c. And a pardon, &c. granted by a King de jure, that is not likewise de facto, is void.

3. If a King that usurps the Crown, grants licences of alienation or eichates, they will be good against the rightful King; so of pardons, and anything that doth not concern the King's ancient patrimony, or the government of the People; judicial acts in the time of such a one, bind the right King and all who submitted to his judicature. The Crown was still between the two families of York and Lancaster; and yet the acts of royalty done in the reign of the several competitors, were confirmed by the Parliament; and those resolutions were made, because the common people cannot judge of the King's title; and to avoid anarchy and confusion. 3 Jac. Cont. 150, 1.

All judicial acts done by Henry VI. while he was King, and all the pardons of felony and charters of desirability granted by him, were deemed valid; but a pardon made by Edw. IV. before he was actually King, was declared void even after he came to the Crown. See 1 Henry, P. C. c. 17.

This lays, the right Heir of the Crown, during such time as the Usurper is in plenipotence of it, and no possession thereof in the heir, is not a King within this act; as was the case of the house of York, during the plenipotence of the Crown in Hen. IV., Hen. V., and Hen. VI. But if the right Heir had once the possession of the Crown, as King, though an Usurper had got the possession thereof, yet the other continues his title, and claim thereto, and afterwards re-obtains the full possession thereof; a compelling the death of the rightfull heir, during that interval, is compelling of the King's death within this act, for he continued a King till he refund in possession of his kingdom, which was the case of Edw. IV. in that small interval wherein Hen. VI. re-obtained the Crown; and the case of Edw. V. notwithstanding the usurpation of his uncle Rich. III.

The grand fundamental maxim upon which the law of Crown, or right of succession to the Throne of these kingdoms depends, seems to be this: "That the Crown is by common law and constitutional custom hereditary; and this in a manner peculiar to itself; but that the right of inheritance may from time to time be changed or limited by Parliament, under which limitations the Crown still continues hereditary."

First, it is in general hereditary, or defensible to the next heir, on the death or demise of the last proprietor. All regal governments must be either hereditary or elective; and as no instance can be found wherein the Crown of England has ever been afforded to be elective, by any authority but that of the Regicides at the infamous and unparalleled trial of K. Charles I., it must of consequence be hereditary. Yet an hereditary, by no means extends a jus divisio, right to the Throne; save only so far as Kingdoms, like other human fabrics, are subject to the general and ordinary dispensations of Providence. Nor indeed have a jus divisio and an hereditary right any necessary connexion with each other, as some have very weakly imagined. The hereditary right which the laws of England acknowledge, owes its origin to the founders of our Constitution, and to them only. The founders of our English Monarchy might perhaps, if they had thought proper, have made it elective; but they rather chose, and upon good reason, to establish originally a succession by inheritance. This has been acquiesced in by general consent; and ripened by degrees into common law; the very same title that every private man has to his own estate. Lands are not naturally defensible any more than Thrones; but the Law has thought proper, for the benefit and peace of the Public, to establish hereditary succession in the one, as well as the other.

Secondly, as to the particular mode of inherence; it in general corresponds with the feudal path of descents, chalked out by the Common Law in the succession to landed Estates; yet with one or two material exceptions. Like Estates, the Crown will descend lineally to the issue of
of the reigning Monarch; as it did from King John to Richard II, through a regular degree of six linear generations. As in common descent, the preference of males to females, and the right of primogeniture among the males, are strictly adhered to. But among the females, the Crown descends by right of primogeniture to the Eldest Daughter only, and her issue; and not as in common inheritances, to all the Daughters at once: the evident necessity of a sole succession to the Throne having occasioned the royal law of descents to depart from the common law in this respect. The doctrine of representation also prevails in the descent of the Crown, as it does in other inheritances, whereby the lineal descendants of any person deceased hold in the same place as their ancestor, if living, would have done. Lastly, in case of lineal descendants, the Crown goes to the next collateral relations of the late King; provided they are lineally descended from the blood-royal; that is, from that royal stock which originally acquired the Crown. But herein there is no objection (as in the case of common descendants) to the succession of a Brother, an Uncle, or other collateral relation of the half blood; provided only, that the one Ancestor from whom both are descended, be that from whose veins the blood-royal is communicated to each. The reason of which diversity, between royal and common descents, may be better understood by referring to the general rules of Descent. See that title: 

If the King hath issued a son and a daughter; by one wive, and a son by another wive, and purchases lands and dc's, and the eldest son enters, and dies without issue, the daughter shall not inherit those lands, nor any other fee-simple lands of the Crown, but the younger brother shall have them together with the Crown. 

Co. Litt. 15. b.

Thirdly: the doctrine of hereditary right does by no means imply an indefeasible right to the Throne. No man will surely assert this who has considered our Laws, Constitution, and History without prejudice, and with any degree of attention. It is unquestionably in the breast of the Supreme Legislative Authority of this Kingdom, the King and both Houses of Parliament, to defeat this hereditary right; and by particular entails, limitations, and provisions, to exclude the immediate heir, and vest the inheritance in any one else. This is strictly confo-nant to our laws and constitution, as may be gathered from the expression so frequently used in our statute-book of "the King's Majesty, his heirs and successors." In which we may observe, that as the word Heirs necessarily implies an inheritance or hereditary right generally subsisting in the royal person; so the word Successors, distinctly taken, must imply that this inheritance may sometimes be broken through; or that there may be a successor without being the heir of the King.

Fourthly: However the Crown may be limited or transferred, it still retains its indefeasible quality, and becomes hereditary in the wearer of it. And hence in our law the King is said not to die in his political capacity; because immediately upon the natural death of Henry, William, or Edward, the King survives in his Successor. For the right of the Crown vests in infants upon his heir; either the heir natur, if the course of descent remains unimpeached, or the heir factus, if the inheritance be under any particular settlement. So that there can be no interregnum; but as Hale observes, the right of sovereignty is fully invested in the Successor by the very descent of the Crown. 1 H1s. P. C. 61. Hence the statutes passed in the first year after the Restoration of Car. II. are always called the Acts in the 11th year of his reign; and all the other legal proceedings of that reign are reckoned from the year 1660, and not from 1660.

On this principle, that the King commences his reign from the day of the death of his ancestor, it hath been held, that compassing his death before coronation, or even before proclamation, is compassing of the King's death within the statute of 25 Ed. 3. Stat. 5. c. 25 he being King prefently, and the proclamation and coronation only honourable ceremonies for the further notification thereof. 3 H1s. 7: 1 Hale's H1s. P. C. 101. See title Treason.

However acquired therefore, the Crown becomes in the Successor absolutely hereditary; unless by the rules of the limitation it should be otherwise ordered and determined.

In these four points consists the constitutional notion of hereditary right to the Throne; which is still further elucidated and made clear beyond all dispute, by the learned Commentator, from whom much of the foregoing and following abstract is abridged, in a short historical view which he gives, of the Succession to the Crown of England, from Edgar to the present time; of the doctrines of our ancient Lawyers; and of the several statutes that have from time to time been made, to create, to declare, to confirm, to limit, or to bar, the hereditary title to the Throne. In the pursuit of this Inquiry he clearly shews, that from the days of Edgar, the first sole Monarch of this kingdom, to the present, the four cardinal maxims above mentioned have ever been held the constitutional canons of Succession to the Crown. It is true, this succession, through fraud or force, or sometimes through necessity, when hostile times the Crown descended on a Minor, or the like, has been very frequently suspended; but has generally at last returned back, into the old hereditary channel; though sometimes a very considerable period has intervened. And even in those instances where the succession has been violated, the Crown has ever been looked upon as hereditary in the wearer of it. Of which the Usurpers themselves were so sensible, that they for the most part endeavoured to vamp up some feeble shew of a title by descent, in order to amuse the People, while they gained the possession of the kingdom. And when possession was once gained, they considered it as the purchase or acquisition of a new estate of inheritance, and transmitted, or endeavoured to transmit, it to their own posterity, by a kind of hereditary right of Usurpation. See 1 Comm. c. 3. p. 190-7.

If the Throne be at any time vacant, (which may happen by other means besides that of abdication; as if all the blood-royal should fail, without any successor appointed by Parliament,) the right of disposing of this vacancy seems naturally to return to the Houses of Lords and Commons, the trustees and representatives of the Nation. For there are no other hands in which it can so properly beentrusted; and there is a necessity of its being entrusted somewhere, else the whole frame of Government must be dissolved and perished.

R
The Preamble to the Bill of Rights expressly declares, that "the Lords Spiritual and Temporal, and Commons, being assembled at Westminster, lawfully, fully, and freely represent all the Estates of the People of this realm." The Lords are not left the trustees and guardians of their country than the Members of the House of Commons, it was justly said, when the royal prerogatives were suspended during his Majesty's illnesses, in 1788, that the two Houses of Parliament were the organs by which the People expressed their will. And in the House of Commons, on the 16th of December in that year, two Declamatory Resolutions were accordingly passed, importing:
1. The Interruption of the Royal Authority; 2. That it was the duty of the two Houses of Parliament to provide the means of supplying that defect. On the 23d of the same month a third resolution passed, empowering the Lord Chancellor of Great Britain to affix the Great Seal to such Bill of Limitations as might be necessary to restrict the power of the future Regent to be named by Parliament; this Bill was accordingly brought forward, not without considerable opposition to its provisions, as well from private motives as on forcible political grounds; and at length, happily for the Public, arrested in its progress by the providential recovery of his Majesty in March 1789. It is observable, however, that no Bill was ever afterwards introduced to guard against a future emergency of a similar nature: on the grounds undoubtedly of delicacy to a Monarch universally beloved; in the hope of the improbability that such a circumstance should recur in future; and in the confidence of the omnipotence of Parliament if necessarily called upon again. See Belsham's Memoirs of Geo. III. 1786-9; and the Journals of the Lords and Commons.

Towards the end of King William's reign, the King and Parliament thought it necessary to exert their power of limiting and appointing the succession, in order to prevent the vacancy of the Throne which must have ensued upon their deaths, as no farther provision was made at the Revolution than for the issue of Queen Mary, Queen Anne, and King William. It had been previously, by the Stat. 1 W. and M. Stat. 2 c. 2, enacted, that every person who should be reconciled to, or hold communion with, the See of Rome, who should profess the Popish religion, or who should marry a Papist, should be excluded, and for ever incapable to inherit, possess, or enjoy the Crown; and that in such case the people should be absolved from their allegiance to such person, and the Crown should be declared to such person, being Papists, as would have inherited the same, in case the person so reconciled, holding communion, professing, or marrying, were naturally dead. To all therefore, consistent with themselves, and at the same time pay as much regard to the old hereditary line as their former resolutions would admit, they turned their eyes on the Princefs Sophia, Electress and Dutchess Dowager of Hanover. For, upon the impending extinction of the Protestant popery of Charles I., the old law of regal defect directed them to recur to the descendants of James I. and the Princefs Sophia being the youngest daughter of Elizabeth, Queen of Bohemia, who was the daughter of James I. was the nearest of the ancient blood royal, who was not incapacitated by professing the Popish religion. On her, therefore, and the heirs of her body, being Protestants, the remainder of the Crown, expectant on the death of King William and Queen Anne, without issue, was settled, by Stat. 13 W. 3. c. 2. And at the same time it was enacted, that whoever should hereafter come to the possession of the Crown, should join in the communion of the church of England as by law established.

This is the last limitation of the Crown that has been made by Parliament, and all the several actual limitations, from the time of Henry IV. to the present, (rated at large in 1 Commons. c. 3.) do clearly prove the power of The King and Parliament to new model or alter the succession. And indeed it is now again made highly penal to dispute it; for by Stat. 6 Ann. c. 7, it is enacted, that if any person maliciously, advisedly, and directly, shall maintain by writing, or printing, that the King of this realm, to the authority of Parliament, are not able to make laws to bind the Crown and the descent thereof, he shall be guilty of high treason; or if he maintains the same only by preaching, teaching, or advising speaking, he shall incur the penalties of a treason.

The Princess Sophia dying before Queen Anne, the inheritance thus limited depended on her for King George I. and having taken effect in his person, from him it descended to his late Majesty King George II. and from him to his grandson and heir, our present Gracious Sovereign King George III.

The title to the Crown therefore, though at present hereditary, is not quite so absolutely hereditary as formerly; and the common stock or ancestry, from whom the descent must be derived, it also different. Formerly the common stock was King Edward, then William the Conqueror: afterwards in James I.'s time the two common stocks united, and so continued till the vacancy of the throne, occasioned by the abdication of James II. in 1688: now it is the Princefs Sophia, in whom the inheritance was vested by the King and Parliament. Formerly the descent was absolute, and the Crown went to the next heir without any restriction; but now, upon the new settlement, the inheritance is conditional; being limited to such heirs only of the body of the Princefs Sophia, as are Protestant Members of the Church of England, and are married to none but Protestants.

In this due medium appears to consult the true constitutional notion of the right of succession to the Imperial Crown of these Kingdoms. The extremes, between which it feers, are each of them equally destructive of those ends for which Societies were formed, and are kept on foot. Where the Magistrate, upon every succession, is elected by the people, and may, by the express provision of the laws, be deposed (if not punished) by his Subject; this may found like the perfection of Liberty, and look well enough when delineated on paper; but in practice will beever productive of tumult, contention, and anarchy. And, on the other hand, divine, indefeasible hereditary right, when coupled with the doctrine of unlimited passive obedience, is surely, of all constitutions, the most thoroughly flourish and dreadful. But when such an hereditary right, as our laws have created and vested in the royal flock, is closely interwoven with those liberties, which are equally the inheritance of the Subject; this union will form a constitution, in theory, the most beautiful of any; in practice the most approved; and, in duration, it is to be hoped, the most permanent. It is the duty of every expounder of our Laws to lay this
KING II

this Constitution before the Student in its true and genuine light; it is the duty of every good Engijsman to understand, to reverence, and to defend it.

II. The first and most considerable branch of the King's Royal Family, regarded by the laws of England, is the Queen; as to whom see this Dictionary, title Queen.

The Prince of Wales, or Heir-apparent to the Crown, and also his royal consoled, and the Prince of Wales, or eldest daughter of the King, are likewise peculiarly regarded by the laws, as well as by the title of a future reign. For, by Stat. 21 Eliz. 3, to compound, or to superfine the death of the former, or to violate the chaffity of the latter, is as much a high treason as to confine the death of the King, or to violate the chaffity of the Queen. See this Dictionary, title Treason. The Heir-apparent to the Crown is usually made Prince of Wales and Earl of Chester by special creation and investiture; but being the King's eldest son, he is by inheritance Duke of Cornwall, without any new creation.

The observations in Coke's reports, however, as well as the words of the statute, it has been remarked, limit the dukedom of Cornwall to the first begotten (rather first born) son of a King of England, and to him only. But although from this it is manifest, that a Duke of Cornwall must be the first begotten son of a King, yet it is not necessary that he should be born after his father's accession to the Throne.

This is, on the whole, a strange species of inheritance, and perhaps is the only mode of descent which depends upon the authority of a statute. In the Prince's case, reported by Lord Coke, the question was, whether the original grant to Edward the Black Prince, who was created in the 11th of Ed. III. Duke of Cornwall, and who was the first Duke in England after the Duke of Normandy, had the authority of Parliament; or was an honour conferred by the King's charter alone? If the latter, the limitation would have been void, as nothing less than the power of Parliament can alter the established rules of descent. But notwithstanding it is in the form of a charter, it was held to be an act of the Legislature. It concludes, nisi ipsum regem et statum consilium, &c. Christian's Note on 1 Comm. e. 4.

The title of The Royal Family may be considered in two different lights, according to the different fenses in which the term Royal Family is used. The larger sense includes all those, who are by any possibility ineritable to the Crown. Such, before the Revolution, were all the descendants of William the Conqueror, who had branched into an amazing extent, by intermarriages with the ancient nobility. Since the Revolution and act of Settlement, it means the Protestant issue of the Prince; Sophia, now comparatively few in number, but which in process of time may possibly be as largely diversified. The more confined sense includes only those who are within a certain degree of proinquity to the reigning Prince, and to whom therefore the laws pay an extraordinary regard and respect.

At the time of passing the Regency Act, Stat. 5 Geo. 3. c. 27, (see Puff V. 2), the bill, which was framed on the plan of the Regency Act in the preceding reign, empowered his Majesty to appoint either the Queen, or any other person of his Royal Family usually resident in Great Britain, to be Regent until the successor to the Crown should attain eighteen years of age. A doubt arising on the question who were the Royal Family, it was explained by the Law Lords to be the descendants of King George II. It was, therefore, found necessary expressly to insert in the act the name of her Royal Highness the Princess Dowager of Wales, widow of the King's eldest son deceased, and mother of his present Majesty; as he was not held to be comprehended under the general description of the Royal Family. See Bellamy's Memoirs of King Geo. II.

The younger sons and daughters of the King, and other branches of the royal family, who are not in the immediate line of succession, were therefore little regarded by the ancient law, than to give them a certain degree of precedence before all persons and public officers, as well ecclesiastical as temporal. This is done by Stat. 31 Hen. 8. c. 103 which enacts, that no person, except the King's children, shall presume to sit or to have place at the side of the cloth of estate in the Parliament chamber; and that certain great officers therein named shall have precedence above all dukes, except only such as shall happen to be the King's son, brother, uncle, nephew, (which latter Sir E. Coke, 4 Bog. 392, explains to signify grandson or nephew) or brother's or sister's son.

Indeed, under the definition of the King's children, his grandsons are held to be included, without having recourse to Sir E. Coke's interpretation of nephews; and, therefore, when his late Majesty King George II. created his grandson Edward, (the second son of Frederick Prince of Wales deceased,) Duke of York, and referred it to the House of Lords to settle his place and precedence, they certified that he ought to have place next to the late Duke of Cumberland, then the King's youngest son; and that he might have a seat on the left hand of the cloth of estate. Lobs. Journ. Ap. 24, 1760. But when, on the accession of his present Majesty, these royal personages ceased to take place as the children, and ranked only as the Brother and Uncle of the King, they also left their seats on the side of the cloth of estate; so that when the Duke of Gloucester, his Majesty's second brother, took his seat in the House of Peers, he was placed on the upper end of the Earl's bench (on which the Duke usually sat) next to his Royal Highness the Duke of York. Lobs. Journ. 10 Jan. 1765. And in 1789, upon a question referred to all the judges by King Geo. I. it was resolved by ten against the other two, that the education and care of all the King's grandchildren, while minors, did belong of right to his Majesty as King of this realm, even during their father's life. Pott. Al. 401—440. And they all agreed, that the care and approbation of their marriages, when grown up, belonged to the King their grandfather. And the judges have more recently concurred in opinion, that this care and approbation extend also to the Protestant Heirs of the Crown; though to what other branches of the royal family the same did extend, they did not find precisely determined. Lobs. Journ. 28 Feb. 1779. The most frequent instances of the Crown's intervention go no farther than nephews and nieces, but examples are not wanting of its reaching to collaterals. Therefore by 28 Hen. 8. c. 13. (repealed among other statutes of treasons by 1 Ed. 6. c. 12.) It was made high treason for any man to contract marriage with the
King III.

King's children, or reputed children, his sisters or aunts, ex parte paterni, or the children of his brethren or sisters; being exactly the same degrees to which precedence is allowed by the stat. 51 Hen. 8, before mentioned. And now by stat. 12 Geo. 3. c. 11, no descendant of the body of King Geo. II. (other than the issue of Princesses married into foreign countries) is capable of contracting marriage, without the consent of the Great Seal; and any marriage contracted without such consent is void; a marriage accordingly, which had, in fact, taken place against the provisions of this act, between one of the sons of Geo. III. and an English lady, was dissolved in 1794 by sentence of the Ecclesiastical Court here; but it is provided by the act, that such of the said descendants as are above the age of twenty-five, may, after a twelve-month's notice given to the King's Privy Council, contract and solemnize marriage without the consent of the Crown; and left both houses of parliament shall, before the expiration of the said year, expressly declare their disapprobation of such intended marriage.—All persons solemnizing, affixing, or being present at, any such prohibited marriage shall incur the penalties of perjury.

III. In order to assist the King in the discharge of his duties, the maintenance of his dignity, and the exertion of his prerogative, the law hath assigned him a diversity of councils to advise with. These are, his Parliament; his Privy Council; and his Council. See this Dictionary under those titles.

For law matters the Judges of the Courts of law are held to be the King's Council; as appears frequently in our statutes, particularly stat. 14 Ed. 3. c. 5: and in other books of law. So that when the King's Council is mentioned generally, it must be defined, particularized, and understood, secundum subjiciat materiam: and if the subject be a legal nature, then by the King's Council is understood, his Council for matters of law; namely, his Judges. Therefore, when by stat. 16 R. 2. c. 5, it was made a high offence to import into this kingdom any papal bulles, or other procefs from Rome; and it was enacted, that the offenders should be attached by their bodies, and brought before the King and his Council to answer for such their offence, here, by the expreeion of the King's Council were understood, the King's Judges of his Courts of Justice, the subject matter being legal; this being the general way of interpreting the word Council, 3 Rep. 125. See further this Dictionary, title Judges.

Upon the same principle, in cases where fine and ransom is imposed for any offence at the King's pleasure, this does not signify any extra-judicial will of the Sovereign, but such as is declared by his representatives, the Judges in his Courts of Justice, voluntas regis in civis, verum conscientia. 1 Hal. P. C. 375.

IV. It is in consideration of the Duties incumbent on the King by our Constitution, that his dignity and prerogative are established by the laws of the land; it being a maxim in the law, that protection and subjection are reciprocal. 7 Rep. 5. And these reciprocal duties are most probably what was meant by the Convention-Parliment in 1688, when they declared that King James II. had broken the original contract between King and People. But however, as the terms of that original contract were in some measure disputed, being alleged to exist principally in theory, and to be only deducible by reason and the rules of natural law; in which deduction, different understandings might very considerably differ; it was, after the Revolution, judged proper to declare these duties expressly, and to reduce that contract to a plain certainty. So that whatever doubts might be formerly raised about the existence of such an original contract, they must now entirely cease; especially with regard to every Prince who hath reigned since the year 1688.

The principal duty of the King is to govern his people according to law. And this is not only consonant to the principles of nature, reason, liberty, and society, but has always been esteemed an express part of the common law of England, even when prerogative was at the highest. See our ancient authors, Boyle. ii. 1. c. 8; I. a. c. 16. § 5: Boer. cc. 2, 4. But to obviate all doubts and difficulties concerning this matter, it is expressly declared by stat. 12 & 13 W. 3. c. 2, "That the Laws of England are the Birth-right of the People thereof; and all the Kings and Queens who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws: and all their Officers and Ministers ought to serve them respectively, according to the King: and therefore all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same, now in force, are ratified and confirmed accordingly." See further this Dictionary, title Librius.

As to the terms of the original contract between King and People, these it seems are now couched in the Coronation Oath, which, by stat. 1 W. & M. St. 1. c. 6, is to be administered to every King and Queen, who shall succeed to the Imperial Crown of these realms, by one of the Archbishops or Bishops in the presence of all the People; who, on their parts, do reciprocally take the oath of allegiance to the Crown.

This Coronation Oath is conceived in the following terms.

"The Archbishops or Bishops shall say, Will you solemnly promise and swear to govern the people of this Kingdom of England [Quene of Great Britain]. See stat. 5 Ann. c. 8, § 12; and this Dictionary, title Scotland.] and the dominions thereto belonging, according to the statutes in Parliament agreed on; and the laws and customs of the same? The King or Queen shall say, I solemnly promise so to do.—Abp. or Bp. Will you to your power cause law and justice, in mercy, to be executed in all your judgements?—K. or Q. I will.—Abp. or Bp. Will you to the utmost of your power maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by the law? And will you preserve unto the Bishops and the Clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them?—K. or Q. All this I promise to do.—After this the King or Queen laying his or her hand upon the Holy Gospels shall say, The things which I have here before promised, I will perform and keep, to help me God.—And then shall kisse the book."

It is also required, both by the Bill of Rights, stat. 1 W. & M. St. 2. c. 2, and the Act of Settlement, stat.
KING V.

It has been observed, that one of the principal
bulwarks of Civil Liberty; or in other words, of the Brit-
ish Constitution, is the limitation of the King's Prerogative,
by bounds so certain and notorious, that it is impossible
he should ever exceed them, without either the content
of the people, or a violation of that contract which we
have been expressly subsists between the Prince and the
Subject. When we more particularly consider this prer-
ogative minutely, in order to mark out, in the most im-
portant inferences, its particular extent and restrictions,
one conclusion will evidently follow; that the powers
which are vested in the Crown by the laws of England,
are necessary for the support of Society; and do not in-
trach any farther on our natural, than is expedient for
the maintenance of our civil, liberties.

There cannot be a stronger proof of that genuine fre-
dom, which is the boast of this age and country, than the
power of discussing and examining with decency and
respect the limits of the King's prerogative. This was
formerly considered as a high contempt in a Subject, and
the glorious Queen Elizabeth herself directed her Par-
lament to abstain from judging of or meddling with her
prerogative. It is no wonder, therefore, that her suc-
cessor, James I, should consider such a presumption as
little less than blasphemy and impiety. But whatever
might be the sentiments of some of our Princes, this
was never the language of our ancient constitution
and laws. The sentiments of Bracton and Fortescue, at the
distance of two centuries from each other, may be seen
by a reference to the place cited in the preceding divi-

cion, IV. And Sir Hen. Finch, under Charles I, after
the lapse of two centuries more, though he lays down
the law of prerogative in very strong and emphatical
terms, yet qualifies it with a general refraction in regard
to the liberties of the people. The King, says he, has
a prerogative in all things that are not injurious to the
Subject; for in them all it must be remembered, that
the King's prerogative frets not to the doing of any wrong.

The nature of our constitution is that of a limited
monarchy, in which the legislative power is lodged in
the King, Lords, and Commons; but the King is in-
trusted with the executive part, and from all science
is laid to flow; hence he is called the head of the Com-
monwealth, supreme governor, parent patriae, &c. but
still he is to make the law of the land the rule of his
government; and that being the measure as well of his power,
as of the Subjects obedience: for as the law affords, main-
tains, and protects the rights and liberties of the people,
they ought not to be allowed unto the King, as is the
extent and bounds of his prerogative, in like manner
they declare and ascertain the rights and liberties of the
people, therefore admit of no innovation or change
but by act of parliament. 4 Inf. 164: 2 Inf. 14: 478:

The rights and prerogatives of the Crown are in most
things as ancient as the law itself; for though the flate
17 Ed. 2. c. 1, commonly called the statute De
prerogativa Regin, seems to be introductive of some-
thing new, yet for the most part it is but a collection
of certain prerogatives that were known law long before.
Bend. 117: 2 Inf. 263, 265: 10 Co. C. 4. And this
flate does not contain the King's whole prerogative, but
only so much thereof as concerns the profit of his cof-
s. Ploot. 314.

The nature of the government of our King, says For-
tescue, is not only regal, but political: if it were merely
the former, regal, he would have no power to make what
alterations he pleased in our law, and impose taxes and
other hardships upon the Subject, whether they would
or no: but his government being political, he cannot
change the laws of the realm, without the People con-
fect thereto, nor burthen them against their wills. It is
also said by the same writer, that the King is appointed

KING V. I.
to protect his Subjects in their lives, properties, and
laws; for which end and purpose he has the delegation
of power from the people: likewise our King is such by
the fundamental law of our land; by which law the
meanest Subject enjoys the liberty of his person and
property in his estate; and it is every man's concern to
defend these, as well as the King in his lawful rights. Fur­
bellion, &c. Angl. 17, &c.

If a King hath a kingdom by title of descent, where
the laws have taken good effect and rooting, or if a
King conquers a Christian kingdom, after the people
have laws given them for the government of the country,
then to them they submit, so succeeding King can alter the
same without the Parliament. 7 Rep. 17. It has never­
theless been held, that conquered countries may be
governed by what laws the King thinks fit, and that the
laws of England do not take place in such countries, until
declared by the conqueror, or his successor; here, in
cause of infidels, their laws do not cease, but only such as
are against the law of God; and where the laws are re­
jected or silent, they shall be governed according to the
rule of natural equity. 2 Blk. 412, 413, 566.

If the King makes a new conquest of any country, the
persons there born are his Subjects; for by saving the
lives of the people conquered he gains a right and property
in such people, and may impose on them what laws he pleases. Dyer 224: Vaugl. 281.

But until such laws given by the conquering prince,
the laws of the conquered country hold place; unless
there are contrary to our religion, or enact any
thing that is malum in se, or are silent; for in all such
cases the laws of the conquering country prevail. 2 P.
H. 75, 76.

If there be a new and uninhabited country found out
by English subjects, as the law is the birthright of
every Subject, so wherever they go carry their laws with
them, therefore such new found country is to be gov­
ered by the laws of England; though after such coun­
try is inhabited by the English, acts of parliament made
in England, without naming the foreign plantations, will
not bind them. 2 P. H. 75: 3 Salk. 411. And see
Campbell v. Hall, 2 Camp. 204; Spragge v. Stow, cited
dOubld. 35, 37, 38.

Questions of this nature are not at present likely often
to arise, since (as in the instance of annexing the Crown
of Corsica to the British Crown in 1764) all such transa­
ctions are now regulated by express stipulations; which
neither leave to the prerogative of the conquering
monarch, nor the laws of his kingdom, any power to
interfere.

By the word Prerogative is usually understood,
that special pre-eminence, which the King hath over and
above all other persons, and out of the ordinary course
of the common law, in right of his regal dignity. It
signifies, in its etymology from prae and regis, some­
thing that is required or demanded before, or in preference
to all others. And hence it follows, that it must be
in its nature singular and eccentricial; that it can only be
applied to those rights and capacities, which the King
enjoys alone in contradistinction to others; and not to those
which he enjoys in common with any of his Subjects:
for if once any prerogative of the Crown could be held
in common with the Subject, it would cease to be
prerogative any longer. Finch, therefore, lays it down as
a maxim, that the prerogative is that law in case of the
King, which is law in no case of the Subject. Finch, L. 85.

Prerogatives are either direct or incidental. The di­
rect are such positive substantial parts of the royal cha­
racter and authority, as are rooted in, and spring from,
the King's political person, and of which we are about
to state the law at some length. The King's prerogatives
are incidental bear always a relation to something else,
distinct from the King's person, and are indeed
only exceptions in favour of the Crown, to the general
rules established for the rest of the community; such as
that no costs shall be recovered against the King; that
he can never be a joint tenant; and that his debt shall
be preferred before that of a Subject. These, and an
infinite number of other influences, will better be under­
stood by referring to the Subjects themselves, to which
these incidental prerogatives are exceptions. As to
his prerogative relating to his debts, however, here
reckoned among those considered as incidental, see
p. VI. at some length; and this Dictionary, titules Exe­
cution; Escheat; Judgment, &c.

Other incidental prerogatives are, that where the title of the King and a
common person concur, the King's title shall be preferred. 1 Inf. 50:—No dictats can be made upon
the King's parliament, but he may distrain out of his free in
other lands, &c. and may take dictats in the highway. 2 Inf. 270.—An heir shall pay the King's debt,
though he is not named in the bond; and the King's
debt shall be satisfied before that of a Subject, for which
there is a prerogative writ. 1 Inf. 130, 386. But this
is where the debt is in equal degree with that of the
Subject. See Stat. 33 H. 8. c. 30. at large; p. VI.:
may go in succession to the King, though they may not
to any other sole corporation. 1 Inf. 90. In the hands of whomsoever the goods of the King came, their lands
are chargeable, and may be seized for the same: and
the King is not bound by sale of his goods in open mar­
et. 2 Inf. 71:—No entry will bar the King, and no
judgment is final against him, but with a jus in rege regis,
Lok. 78: Finch 46: but see p. 2, as to the nullem
transact. 3 G. 19. &c. The King may plead several matters without being guilty of double pleading, and
the party shall answer them all. Br. Dougl. pl. 57. In
his pleading he need not plead an act of parliament as a
Subject is bound to do. 4 Rep. 75. He is not bound to
join in demurrer on evidence, and the Court may direct
the Jury to find the matter specially. Finch 82: 5 Rep.
104. The King's own testimony of any thing done in
his presence is of as high a nature and credit as any
record, whence, in all original writs or precepts, he
useth no other witness than himself, as teste meus. 1 Inf. 41, 57.

It is also held, that the King is by his prerogative
Universal Occupant, as all property is presumed to have
been originally in the Crown; and that he partitioned it
out in large districts to the great men who deserved well
of him in the wars, and were able to advise him in time
of peace. Hence the King hath the direct dominion;
and all lands are held mediate or immediately from

If the sea leaves any shore by the water suddenly fall­
ing off, such derelict lands belong to the King; but if a
man's
man's lands lying to the sea are increased by insensible degrees, they belong to the soil adjoining. Dyer 326: 2 Rol. Abr. 170.

So, if a river, so far as there is a flux of the sea, leaves its channel, it belongs to the King; for the English sea and channels belong to the King; and, having never distributed them out to Subjects, he hath a property in the soil. 2 Rol. Abr. 170.

But if a river, in which there is no tide, should leave its bed, it belongs to the owners on both sides; for they have in that case the property of the soil; this being no original part or appendix to the sea, but distributed out as other lands. 2 Rol. Abr. 170.

If land be drowned, and so continue for years; if it be after regained, every owner shall have his title. Saxom.

But if, so, it is held, that as such it is a reasonable cause for the security of trade and commerce; therefore the territories of the great rivers, which is plain from many acts of parliament; particularly 24 Hen. 8. c. 12: 25 Hen. 8. c. 28; which at the same time declare the King to be the supreme head of the realm in matters both civil and ecclesiastical; and, of consequence, inferior to no man upon earth, dependent on no man, accountable to no man. See also 23 Geo. 2. c. 24: 5 Geo. 3. c. 27.

No king of England used any seal of arms till the reign of Edw. 1. Before that time, the seal was the King sitting in a chair of state on one side of the sea, and on horseback on the other side; but this King sealed with a seal of two lions: and King John was the first that bare three lions; and afterwards Edward III. quartered the arms of France, which has been continued to this time. King Henry VIII. was the first to whom Majesty was attributed, before which, our Kings were called Highnesses, &c. Lex Confess. 47, 48.

The meaning of the Legislature when it uses these terms of empire and imperial, and applies them to the realm and crown of England, is only to assert that our King is equally sovereign and independent within these dominions, as any Emperor is in his empire, and owes no kind of subjection to any other Potentate upon earth.

Hence it is, that no suit or action can be brought against the King, even in civil matters, because no Court can have jurisdiction over him. All jurisdiction implies superiority of power; authority to try would be vain and idle without authority to redress; and the sentence of a Court would be contemptible, unless that Court had power to command the execution of its: but who says Finch shall command the King? Finch, 1 Salk. 357. Hence it is likewise, that by law, the person of the King is sacred, even though the measures purposed in his reign be completely tyrannical and arbitrary: for no jurisdiction upon earth has power to try him in a criminal way, much less to condemn him to punishment.

If any foreign jurisdiction had this power, as was formerly claimed by the Pope, the independence of the kingdom would be no more; and, if such a power were vested in any domestic tribunal, there would soon be an end of the constitution, by destroying the free agency of one of the constituent parts of the sovereign Legislative Power.

At length, it may be asked, the Subjects of England totally destitute of remedy, in case the Crown should invade their rights, either by private injuries, or public oppressions: To this we may answer, that the law has provided a remedy in both cases.

As to private injuries; if any person has, in point of property, a just demand upon the King, he must petition him in his Court of Chancery, where his Chancellor will administer right as a matter of grace, though not upon compulsion. Finch, 1 Sel. 257. See also Dictionary. Title Chancery, 1 and 96; as to the perfection ascribed to the King.

As to cases of ordinary public oppressions, where the vitals of the constitution are not attacked, the law has also
also asigned a remedy. For as a King cannot misuse his powers without the advice of evil counsellors, and the assistance of wicked ministers; these men may be examined and punished. The Constitution has therefore provided, by means of indictments and parliamentary impeachments, that no man shall dare to afflit the Crown in contradiction to the law of the land. But at the same time it is a maxim in those laws, that the King himself can do no wrong; since it would be a great weakness and absurdity in any system of positive law, to define any possible wrong, without any possible redress.

As to such public oppressions as tend to disfigure the Constitution, and subvert the fundamentals of Government, these are cases which the law will not, out of decency, suppose; being incapable of distracting those whom it has invested with any part of the supreme power; since such distress would render the exercise of that power precarious and impracticable. For, wherever the law expresses its distress or abuie of power, it always tells a superior coercive authority in some other hand to correct it; the very notion of which destroys the idea of Sovereignty. If therefore (for example) the Two Houses of Parliament, or either of them, had avowedly a right to animadvert on the King, or each other, or if the King had a right to animadvert on either of the Houses, that branch of the Legislature, so subjected to animadversion, would infallibly cease to be part of the Supreme Power; the balance of the Constitution would be overturned; and that branch or branches, in which this jurisdiction resided, would be completely sovereign. The supposition of Law therefore is, that neither the King, nor either House of Parliament (collectively taken) is capable of doing any wrong; since in such cases the law feels itself incapable of furnishing any adequate remedy. For which reason all oppressions, which may happen to spring from any branch of the Sovereign Power, must necessarily be out of the reach of any stated rule or express legal provision: but if ever they unfortunately happen, the prudence of the times must provide new remedies upon new emergencies.

Indeed, it is found by experience, that whenever the unconstitutional oppressions, even of the Sovereign Power, advance with gigantic strides, and threaten defolation to a State, mankind will not be reconnived out of the feelings of humanity, nor will sacrifice their liberty by a scrupulous adherence to those political maxims which were originally established to preserve it. And, therefore, though the positive laws are silent, experience furnishes us with a very remarkable case, wherein nature and reason prevailed. When King James II. invaded the fundamental constitution of the realm, the Convention Parliament declared an abdication, whereby the throne was considered vacant, which induced a new settlement of the Crown. And as far as this precedent leads, and as far as we may now be allowed to lay down the Law of redress against public oppression. If therefore any future Prince should endeavour to subvert the constitution by breaking the original contract between King and People, should violate the fundamental laws, and should withdraw himself out of the kingdom, we are now authorized to declare that this conjunction of circumstances would amount to an abdication, and the throne would be thereby vacant. In these, therefore, or other circumstances, which a fertile imagination may furnish, since both Law and History are silent, it becomes us to be silent too; leaving to future generations, whenever necessity and the safety of the whole shall require it, the exertion of those inherent (though latent) powers of Society, which no climate, time, no constitution, no contract, can ever destroy or diminish.

It may not be amiss to conclude this part of the subject, with observing that, All persons born in any part of the King's dominions and within his protection are his Subjects; thus are those born in Ireland, Scotland, Wales, the King's plantations, or on the English seas, who by their birth owe such an impenetrable allegiance to the King, that they cannot by any act of theirs renounce or transfer their subjectship to any foreign prince. 7 Co. 1. &c. Calvin's Case; Milby, 370; Co. Lit. 125; Dyer, 300. See titles Aliens; Allegiance; Treason.

Besides the attribute of Sovereignty, the law also ascribes to the King, in his political capacity, absolute Perfection. The King can do no wrong. Which antient and fundamental maxim is not to be understood, as if every thing transferred by the Government was of coercive and lawful, but means only two things. First, that whatever is exceptionable in the conduct of public affairs is not to be imputed to the King, nor is he answerable for it personally to his people. And, secondly, it means that the prerogative of the Crown extends not to do any injury; it is created for the benefit of the people, and therefore cannot be exerted to their prejudice. Plowd. 487.

Or perhaps it means that, although the King is subject to the passions and infirmities of other men, the constitution has prescribed no mode by which he can be made personally amenable for any wrong that he may actually commit. The law will therefore presume no wrong, where it has provided no remedy. The Invincibility of the King is essentially necessary to the free exercise of those high prerogatives, which are vested in him, not for his own private splendor and gratification, as the vulgar and ignorant are too apt to imagine, but for the security and preservation of the real happiness and liberty of his Subjects.

The King moreover is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness. If therefore the Crown should be induced to grant any franchise or privilege to a subject, contrary to reason, or any way prejudicial to the commonwealth, or a private person, the law will not suppose the King to have meant either an unwise or an injurious action; but declares that the King was deceived in his grant: and therefore such grant is rendered void, merely upon the foundation of fraud and deception, either by or upon those agents, whom the Crown has thought proper to employ. See title Grant of the King. — But a latitude of supposing a possibility of some failure of this personal perfection is allowed in the case of enquiries frequently instituted by Parliament, even as to those acts of royalty which are most properly and personally the King's own; but which are to be considered in those assemblies with the decency and respect due to the kingly character. See further this Dig. tit. Parliament.

It may not be amiss in this place very concisely to mention the remedies for the various injuries which may proceed from, and also for those which may affect the rights of the Crown.
The distance between the Sovereign and his Subjects as such, that it can rarely happen that any personal injury can immediately and directly proceed from the Prince to any private man; and as it can so seldom happen, the Law in decency supposes it never can or will happen at all. But injuries to the rights of property can scarcely be committed by the Crown, without the intervention of its officers, against whom the law furnishes various methods of detecting their errors or misconduct.

The common-law methods of obtaining possession or restitution from the Crown of either real or personal property are, by Position of Right (already eluded to above) or Monstruos De Droit, Manifestation or Plea of Right; as to both which see title Monstruos De Droit.

The methods of redressing such injuries as the Crown may receive from a Subject are, either by such usual common-law actions as are consistent with the royal prerogative and dignity; or by such prerogative modes of process as are peculiarly confined to the Crown. As the King, by reason of his legal ubiquity, cannot be dispossessed or dispossessed of any real property which is once vested in him, he can maintain no action which supposes a dispossess of the plaintiff, such as an Affize or Excelsior. Br. Ab. 1. Prerogative 89. But he may bring a Quietus Inquietus, which always supposes the plaintiff to be ejected or possessed of the advowson; and he may prosecute this writ like every other by him brought, as well in the court of K. B. as of C. P. or in whatever court he pleases. F. N. B. 32: 3 Comm. c. 17. So too he may bring a suit of Trepass for taking away his goods; but such actions of Trepass are not usual, though in strictness maintainable for breaking his close, or other injury done upon his soil or possession. Br. Ab. 1. Prerogative 105. F. N. B. 90: T. B. 4 H. 4. 4.

Much easier and more effectual remedies are however usually obtained by prerogative modes of process. Such is that of Inquisition or Inquest of Office; as to which see this Dictionary, title Inquest.—Where the Crown hath unadvisedly granted anything by letters patent which ought not to be granted, or where the patentee hath done any act that amounts to a forfeiture of the grant, the remedy to repeal the patent is by writ of Scire Faecias in Chancery. See Dy. 198: 3 Lev. 220: 4 Inst. 58.—So also, if upon office untruly found for the King, he grants the land over to another, he who is thereby injured, and transfers the office itself, is entitled, before issue joined, to a Scire Facias against the patentee in order to avoid the grant. Br. Ab. 1. Scire Faecias 99, 185. See this Dict. tit. Scire Facias—An Information on behalf of the Crown is a method of suit for recovering money, or obtaining damages for any personal wrong to the lands or possessions of the Crown; as to which see this Dict. title Information.—A Writ of Quo Warranto is in the nature of a Writ of Right for the King against any person claiming or usurping any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right. Finch. L. 322: 2 Inst. 282. See this Dict. tit. Quo Warranto. And something of the same nature is the Writ of Mandamus, as to which see this Dict. title Corporations; Mandamus.

The law also determines that in the King can be no negligence or laches, and therefore no delay will bar his right. Nullum tempus sequitur Regi has been the standing maxim upon all occasions: for the law intends that the King is always guilty for the public good, and therefore has not leisure to assert his right within the times limited to his subjects. Finch. L. 82: Co. Litt. 90.—This maxim applies also to criminal prosecutions which are brought in the name of the King; and therefore by the Common Law there is no limitation in treason, felonies, or misdemeanors. By Stat. 7 Wil. 3. c. 7, an indictment for treason, except for an attempt to affibrate the King, must be found within three years after the commission of the treasonable act. See this Dict. title Treson.—But where the legislature has affixed no limit, nullum tempus sequitur Regi holds true: that a man may be convicted of murder at any distance of time within his life after the commission of the crime. This maxim obtains still in full force in Ireland. 1 Lt. Mounten. 365. In civil actions relating to landed property, by Stat. 9 Geo. 3. c. 16, commonly called the Nullum Tempus Act, the King, like a subject, is limited to 60 years. For the occasion of palling this act, see Balfour's Memoirs of Geo. III. pub. an. 1768. See also the Stats. 21 Jac. 1. c. 2; 11 Geo. 3. c. 4.

Neither can the King, in judgment of law as King, ever be a minor or under age; and therefore his royal grants, and attains to acts of parliament are good, though he has not in his natural capacity attained the age of 21. Co. Lit. 43: 2 Inst. Prin. 3. Indeed by Stat. 24 H. 8. c. 17, power was given to future kings to refund and revoke all acts of parliament that should be made while they were under the age of 24: but this was repealed by Stat. 1 E. 6. c. 11, so far as related to that prince; and both statutes are declared by Stat. 24 Geo. 2. c. 24, to be determined.

It hath also been usually thought prudent, when the Heir-Apparent has been very young, to appoint a Protecor, Guardian, or Regent for a limited time; but the very necessity of such extraordinary provision is sufficient to demonstrate the truth of that maxim of the Common Law, that in the King is no Minority; and therefore he hath no legal guardian.

The methods of appointing a guardian or regent in case of an infant-heir to the Crown, have been very various, and the duration of his power to uncertain, that from hence alone it may be collected that his office is unknown to the Common Law; and therefore the safest way is to have him made by authority of the great Council in Parliament. 4 Inst. 58. The statutes 25 H. 8. c. 12: 28 H. 8. c. 7,[y. 17] provided, that the successor, if a male and under 18, or a female and under 16, should be till such age in the government of his or her natural mother, (if approved by the King,) and such other counselors as his Majesty should by will or otherwise appoint; and he accordingly appointed his sixteen executors to have the government of his son Edward VI. and the kingdom; which executors elected the Earl of Hertford Protector. The Stat. 24 Geo. 2. c. 24, in case the Crown should descend to any of the children of Frederick then late Prince of Wales under the age of 18, appointed the Prince Dowager; and the Stat. 5 Geo. 3. c. 27, in case of a like defect to any of the children of K. Geo. III. empowered the King to name either the Queen, the Prince Dowager, or any descendant of K. Geo. II. residing in this kingdom, to be Guardian and Regent, till
the successor attained such age, allied by a Council of Regency: the powers of them all being expressly defined and set down in the several Acts. See ante II.

From the maxim that the King, as King, cannot be a Minor, grants, leaves, &c. made by him, though under age, bind precisely, and cannot be avoided by him either during his minority, or when he comes of age: for it is a maxim of politics, that he who is to govern the kingdom should never be considered as incapable from minority of governing his own affairs. Dy. 209. pl. 22. Plowd. 209. Co. Litt. 43. 5 Co. 27. Rymy. 90.

The law ascribes to the King's Majesty in his political capacity an absolute Immortality. The King never dies. Henry, Edward, or George, may die; but the King survives them all. For immediately upon the decease of the reigning Prince in his natural capacity, his Kingship or Imperial Dignity, by act of law, without any interruption or interval, is vested at once in his heir, who is so infant as King to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his demise; demittis regni vel corone; an expression signifying merely a transfer of property. By the term, Demise of the Crown, therefore, is understood, that, in consequence of the division of the King's natural body from the body politic, the Kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual. Plowd. 177. 254. Thus too, when Ed. IV. in the 16th year of his reign, was drowned from his throne for a few months, by the hands of Lancaster, this temporary transfer of his dignity was denominated his demise; and all process was held to be discontinued, as it then was upon the natural death of the King. M. 49 Il. 6. pl. 1–8.

K. Henry II. took his son into a kind of subordinate regality with him, so that there were Rex Pater and Rex Filius; but he did not divest himself of his sovereignty, but referred to himself the homage of his subjects. And notwithstanding this King, by consent of Parliament, created his son John King of Ireland; and K. Rich. II. made Robert de Vere Duke of Ireland, and Ed. III. made his eldest son Lord of Ireland, with royal dominion; yet it has been expressly held, that the King cannot regularly make a King within his own kingdom. 4 Jac. 557. 360. Hen. de Beauchamp, Earl of Warwick, was by King Hen. VI. crowned King of Welsh Isles; but it was resolved, that this could not be done without consent of Parliament; and even then our greatest men have been of opinion, that the King could not by law create a King in his own kingdom, because there cannot be two Kings of the same place. And afterwards the same K. Henry made the same Earl of Warwick Prinimus Consort of Anglesea. Hol. Vis. Corv. 3

A King cannot resign or divest himself of his office of King without consent of Parliament; nor could Hen. II. without such consent, divide the sovereignty: there is a sacred bond between the King and his kingdom that cannot be dissolved without the free and mutual consent of both in Parliament; and though in foreign kingdoms there have been instances of voluntary cessions and renunciations, which possibly may be warranted by their several constitutions, yet, by the laws of England, the King cannot resign his sovereignty without his Parliament. Hol. H. Cor.
with regard to foreign powers, is the act of the whole nation: what is done without the King's concurrence is the act only of private men. And to far is this point carried by our law, that it hath been held, that should all the Subjects of England make war with a King in league with the King of England, without the Royal assent, such war is no breach of the league. 4 Inst. 152. And by the Stat. 2 Hen. 5, c. 6, any subject committing acts of hostility upon any nation in league with the King, was declared to be guilty of high treason; and though that act was repealed by the Stat. 20 Hen. 6, c. 11, so far as relates to making this offence high treason, yet still it remains a very great offence against the Laws of Nations; and punishable by our laws, either capital or otherwise, according to the circumstances of the case.

The King, therefore, considered as the representative of his people, has the sole power of sending Ambassadors to foreign States, and receiving Ambassadors at home. How far the municipal laws of England intermeddle with or protect the right of these messenger from one potentate to another, may be seen in this Dict. tit. Ambassadors; and more fully, 1 Comm. c. 7.

It is also the King's prerogative to make Treaties, Leagues, and Alliances with foreign States and Princes. For it is by the Law of Nations essential to the goodnes of a league, that it be made by the Sovereign power; and then it is binding upon the whole community; and in England the Sovereign power, should be, is vested in the person of the King. Whatever contrats therefore he engages in, no power in the kingdom can legally delay, refuse, or annul. Although, left this plentitude of authority should be abused to the detriment of the public, the Constitution (as has been already hinted) hath here interposed a check, by the means of parliamentary impeachment, for the punishment of such ministers as from criminal maxhes advise or conclude any treaty, which shall afterwards be judged to derogate from the honour and interest of the nation.

Upon the same principle, the King has also the sole prerogative of making War and Peace. For it is held by all the writers on the Law of Nature and Nations, that the right of making war, which by nature subsisted in every individual, is given up by all private persons that enter into Society, and is vested in the Sovereign power. Poth. b. 8. c. 9. § 6. This right is given up not only by individuals, but even by the entire body of people, that are under the dominion of a Sovereign. It would indeed be extremely improper, that any number of Subjects should have the power of binding the Supreme Magistrate, and putting him against his will in a state of war. Whatever hostilities therefore may be committed by private citizens, the State ought not to be affected thereby; unless that should justify their proceeding, and thereby become partner in the guilt. Such unauthorized volunteers in violence are not ranked among open enemies, but are treated like pirates and robbers. In order to make a war completely effectual, it is necessary with us in England, that it be publicly, actually or virtually, declared and duly proclaimed by the King's authority; and, then all parts of both contending nations, from the highest to the lowest, are bound by it. And wherever the right resides of beginning a national war, there also must reside the right of ending it, or the power of making peace. And the same check of Parliamentary Impeachment, for im-

proper or inglorious conduct, in beginning, concluding, or concluding a national war, is in general sufficient to restrain the Ministers of the Crown from a wanton or injurious exertion of this great Prerogative.

The power of making war or peace is enumerated by Lord Hale in those forms imports, and in England is lodged singly in the King; though, says he, it ever succeeds best when done by parliamentary advice. 1 Hals. H. P. C. 159. 7 Co. 35.

A general war, according to the same Writer, is of two kinds; 1. Bellum justum et denuntiatum. 2. Bellum non jutum et denuntiatum. The first, when a war is solemnly declared or proclaimed by our King against another Prince or State, which is the most formal solemnity of a war now in use. 2dly. When a nation slips suddenly into a war without any solemnity, which happens by granting letters of marque, by a foreign prince invading our coast, or sitting on the King's navy at sea; and hereupon a real, though not a solemn, war may arise and hath formerly arisen: therefore to prove a nation to be at enmity with England, or to prove a person to be an alien enemy, there is no necessity of shewing any war proclaimed; but it may be averred, and so put upon the trial of the country, whether there was a war or not. 1 Hals. H. P. C. 163. See further also as connected with this subject, tites Lact. of Marque; and of Safe Conduct.

In all these prerogatives of the King respecting this nation's intercourse with foreign nations, he is considered as the Delegate or Representative of his people. But in domestic affairs, he is considered in a great variety of characters, and from hence there arises an abundant number of other prerogatives.

First. He is a Constitute Part of the Supreme Legislative Power; and, as such, has the prerogative of rejecting such provisions in Parliament, as he judges improper to be passed. The experience of which Constitution is evinced at large under tit. Parliament. It may here be added, that the King is not bound by any act of Parliament, unless he be named therein by special and particular words. The most general words that can be devised (any person or persons, bodies-politic or corporate, &c.) affect not him in the least, if they may tend to restrain or diminish any of his rights or interests. 11 Rep. 74. Yet, where an act of Parliament is expressly made for the preservation of public rights and suppression of public wrongs, and does not interfere with the established rights of the Crown, it is said to be binding as well upon the King as the Subject. 11 Rep. 71. The King may likewise take the benefit of any particular act, though he be not especially named. 7 Rep. 32.

The King is considered, in the next place, as the Generalissimo, or the first in military command, within the kingdom.

In this capacity, of General of the Kingdom, the King has the sole power of raising and regulating fleets and armies. Of the manner in which they are raised and regulated, more is said in other places. We are now only to consider the Prerogative of enlisting and governing them, which indeed was disputed and claimed, contrary to all reason and precedent, by the long Parliament of King Charles I. But, upon the restoration of his son, was solemnly declared by the Stat. 13 Car. 2. c. 6, to be in the King's own; for that the sole supreme government and command of the Militia within all his Majesty's
King V. 3.

Realms and dominions, and of all forces by sea and land, and of all forts and places of strength, ever was, and is, the undoubted right of his Majesty, and his royal predecessors, Kings and Queens of England; and that both or either house of parliament cannot, nor ought to, pretend to the same. See title Militia.

This statute, it is obvious to observe, extends not only to fleets and armies, but also to forts and other places of strength, within the realm, the sole prerogative as well of erecting, as managing and governing of which belongs to the King in his capacity of general of the kingdom. 2 H.L. 30. And all lands were formerly subject to a tax for building of castles wherever the King thought proper. This was one of the three things, contributing to the performance of which no lands were exempted; and therefore called by our Saxon ancestors the frons necestionis: viz. pontis juratione, arboris construction, & expedition contra bogan. Cowell's Int. title Castellorum operari: Sold. Jan. Angl. 1. 42. See title Castles, Forts, &c.

It is partly upon the same, and partly upon a fictitious foundation, tosecure his marine revenue, that the King has the prerogative of appointing forts and havens, or such places only, for persons and merchandise to pass into and out of the realm, as he in his wisdom sees proper. See title Harbours and Havens. And to this head may be referred also, the prerogative as to the erection of Beacons and Lighthouses; as to which, see 4 H.L. 148. 12 Car. 2. c. 4. 29 Geo. 2. c. 16. of prohibiting the exportation of arms or ammunition out of this kingdom, under severe penalties; and likewise the right which the King has, whenever he deems proper, of confining his subjects to stay within the realm, or of recalling them when beyond the seas.

By the common law every subject may go out of the kingdom for merchandise or travel, or other cause, as he pleases, without any licence for that purpose; this appears from the statute 3 R. 2. c. 2. made to restrain persons passing out of the realm, but excepts lords, great men and notable merchants; as also by the statute 2 Geo. 8. c. 10. which gave power to the King during his life to restrain persons from trading to certain countries; which acts had been vain and idle, if the King by his prerogative might have done it. F. N. B. 85; Dyer 105. 159. 2 R. & Jq. c. 12. 3 Med. 131; Stil. 442.

But notwithstanding this general liberty allowed by the common law, it appears plainly that the King by his prerogative, and without any help of an act of parliament, may prohibit his subjects from going out of the realm; but this must be by some express prohibition; as by laying on embargoes, which can be only done in time of danger, or by writ of Ne exeat Regno, which, from the words Quampluvius mihi & coram officio praefectura ibidem prorsus intendis, appears to be a State writ, though it is never granted universally, but to restrain a particular person, on oath made that he intends to go out of the realm; indeed Fitzbrivet says, that the King may restrain his subjects by proclamation; and alligns as a reason for it, that the King may not know where to find his subjects, so as to direct a writ to him. 12 Co. 33; 11 Co. 92; Fitz. N. B. 89; 2 H.L. 54. See title Imprisons.

As the King may restrain any of his subjects from going abroad, in like manner he may command them to return home; and disobeying a privy seal for this purpose is the highest contempt. It is a disobedience to the command of the King himself directed to the party. 3dly, The command is, that he shall return upon his faith and allegiance, which is the strongest compulsion that can be used. 3dly, The thing required by the King is the principal duty of a subject, viz. to be at the service of his King and country. Dyer 128. b. Lawe 41. Mor. 109; 3 H. 179.

The punishment for this offence is, seizing the party's estate till he return; and of this there are many instances in our books. And when he does return he shall be fined. 1 Howk. P. C. c. 22. § 4.

William de Brittain in the 19 of Ed. 2, refusing to return on the King's writ, his goods and chattels, lands and tenements, were seized into the King's hands; so in the case of Edward of Woodstock, Earl of Kent, in the same reign. Dyer 287. a. 263. a.

So in the case of one Becton, who married the Duchess of Suffolk, they obtained a licence from S. Mary to go out of the realm, under pretence of recovering debts as executors to the Duke; when in reality it was on account of the religion established by Queen Mary, and living with other fugitives under the protection of the Palgrave of the Rhine in Germany, who was an eminent Catholic; were sent to by privy seal; but the messenger, in endeavouring to serve them with his letters, being obstructed and abus'd by their attendants, a certificate was made of this, and their lands and tenements seized. Dyer 175; T. cent. 220.

So in the case of Sir Francis Englefield, who departed the kingdom on a licence obtained for three years; but not returning at the expiration of the three years, a privy seal was sent to him by Queen Elizabeth, which he not obeying, and this matter being certified into Chancery by the Queen, under her sign manual, the lands and tenements were seized in the fifth year of her reign by virtue of a commission under the great seal. 1 Lawe 99; Mor. 109; 1 And. 95. S. C. See also 7 Co. 18; Pacy. 18; 4 Lawe 135.

So in the case of Sir Robert Dodley, who, intending to travel, obtained a licence from James the First to go to Venice; but before his departure he by indenture enrolled for valuable consideration, as was expressed in the deed, (but none paid,) conveyed the manor of Killingworth with other lands to the Earl of Nottingham and others in fee, with a proviso, that, on tender of an angel of gold, all should be void; and with a covenant on the part of the bargainers that they should make all such estates as the said Sir Robert should appoint; the bargainers were not parties to the deed, nor had they notice of it till sometime after: but afterwards they made a lease to Sir Robert Lee, to the intent that Lady Dodley should take the profits of part of the promissory for ten years; if their estate continued so long unrevoked. The King, hearing that Sir Robert had been guilty of some bad practices beyond sea, in the fifth year of his reign sent his privy seal to him, which he not obeying, the great question in this case was, Whether those lands thus
thus conveyed were forfeited; and adjudged that they were, the conveyance being fraudulent as to the King.

Lane 42, &c.

In these cases it hath been held, that the King hath only an interest in the offender's lands till he return; and that his restoring them is not a matter of grace but of right. Lane 43.

See further, on this part of the subject, this Dictionary, title No extent Regno.

The King is also considered as the Fountain of Justice, and general Conserver of the peace of the Kingdom. All jurisdiction exercised in these kingdoms are an obedience to our King, is derived from the Crown; and the laws, whether of a temporal, ecclesiastical, or military nature, are called his laws: and it is his prerogative to take care of the due execution of them. Hence it is that all Judges derive their authority from the Crown, by some commission warranted by law. Plu. c. 17: Co. Lit. 99 a. 144. See title Judges.

From the inherent right inseparable from the King to distribute justice among his Subjects, it has been held, that an appeal from the Isle of Man lies to the King in council, without any reservation in the grant of the Isle of Man of any such right; and though there had been exclusive words, yet the grant must been construed to be void on the King's being deceived, rather than the Subject should be deprived of a right inseparable to him as a Subject, of applying to the Crown for justice. 1 P. Wms. 320.

A consequence of this prerogative is the legal Ubiquity of the King; his Majesty, in the eye of the law, is always present in all his courts, though he cannot personally distribute justice. Fort. c. 6: 2 Inst. 236. His Judges are the mirror by which the King's image is reflected. It is the regal office, and not the royal person, that is always present in Court, always ready to undertake prosecutions, or pronounce judgment for the benefit and protection of the Subject. And from this ubiquity it follows, that the King can never be non sui; for a non sui is the definition of the suit or action by the non appearance of the plaintiff in Court. But the Attorney General may enter a non sui prosequi, which has the effect of a non sui. Co. Lit. 139. For the same reason also, in the forms of legal proceedings, the King is not to be joined by his Attornies, as other men do; for in contemplation of law he is always present in Court. Pitz. L. 81.

From the same original, of the King's being the fountain of justice, may also be deduced the prerogative of issuing Proclamations, which is vested in the King alone. These proclamations have then a binding force, when they are grounded upon and enforce the laws of the realm 3 Inst. 102. For though the making of laws is entirely the work of a distinct part, the legislative branch of the sovereign power, yet the manner, time, and circumstances of enforcing these laws in execution, must frequently be left to the discretion of the Executive Magistrate. And, therefore, his constitutions or edicts concerning these points, which we call proclamations, are binding upon the Subject where they do not either contradict the old laws, or tend to establish new ones, but only enforce the execution of such laws as are already in being, in such manner as the King shall judge necessary. Thus the established law is, that the King may prohibit any of his Subjects from leaving the realm: a proclamation therefore, forbidding this in general for three weeks, by laying an embargo upon all shipping in time of war, will be equally binding as an act of parliament, because founded upon a prior law. 4 Mod. 177, 179.

But a proclamation to lay an embargo in time of peace upon all vessels laden with wheat (though in time of a public scarcity) being contrary to law, and particularly to 6 J. 23 Car. 2. c. 13. the advice of such a proclamation, and all persons acting under it, have been always found necessary to be indemnified by special acts of parliaments. See 7 J. G. 3. c. 7: 30 J. G. 3. c. 1. and this Dictionary, title Embargo. - A Proclamation for disarming Papists is also binding, being only in execution of what the Legisature has first ordained; but a proclamation for allowing arms to Papists, or for disarming any Proclaimant Subjects, will not bind; because the first would be to assume a dispensing power, the latter a legislative one; to the setting of, in any singular person, the laws of England are absolutely strangers. Indeed, by the 53 Eliz. c. 9, it was enacted, that the King's proclamations should have the force of acts of parliament: a statute, which was calculated to introduce the most despotic tyranny; and which must have proved fatal to the liberties of this kingdom, had it not been luckily repealed in the minority of his successor, about five years after, by 1 Ed. 6. c. 12. - It was accordingly, though that is not now law, that the King might suspend, dispense with, or alter any particular law that he deemed hurtful to the public; and it has been said that he may dispense with a penal statute wherein his Subjects have not any interest. 4 Inst. 7: 4 Rep. 76. But by 1 W. & M. 2. c. 5. It is declared and enacted, "that no dispensation by non obstante of or to any statute, or any part thereof, be allowed, but that the same shall be held void, and of none effect, except a dispensation be allowed in such statute." - It is plain, however, that the King by his prerogative may, in certain cases, and special occasions, make out proclamations for prevention of offences, to ratify and confirm an ancient law, or as some books express it, "quod tertium populi." to admonish them that they keep the laws on pain of his displeasure; and such proclamations being grounded on the laws of the realm, are of great force. Furt. de Law. c. 6: 11 Co. 87: 12 Co. 74, 75: Dal. 20. pl. 10: 2 Red. Abr. 209: 3 Inst. 102.

It is likewise clear, that the Subject is obliged on pain of fine and imprisonment to obey every proclamation legally made, and though the thing prohibited were an offence before, that yet the proclamation is a circumstance which highly aggravates it; and on which alone the party defrauding may be punished. 12 Co. 74: 16c. 251. - It is clearly agreed, that no private person can make any proclamation of a public nature, except by custom, as is usual in some cities and boroughs; this being a prerogative act, with which alone the King is intrusted. Bro. Prec. pl. 1: 12 Co. 75: Com. Just. 41.

But, according to the principles already laid down, the King by his proclamation cannot change any part of the common law, statutes, or customs of this realm; nor can he by his proclamation create any offence which was not an offence before. 11 Co. 87: 6: 12 Co. 75.
On this foundation it hath been held, that the King's proclamation prohibiting the importation of wines from France on pain of forfeiture, was against law and void; there being at the time no war subsisting between the nations. 2 Co. 75.

So where an act was made by which foreigners were licensed to merchandise within London, and Hen. IV. by proclamation prohibited the execution of it, and ordered it should be in fulfilment, supposing a maximum parliament; and this was held to be against law. 12 Co. 75.

On a conference between some Lords of the Privy Council, and the two chief Justices (of which Lord Coke was one) and Chief Baron and Baron Altham, the question was,

11. Whether the King by proclamation might prohibit new buildings in and about London?

2d. If the King might prohibit the making flarch of wheat?

And the Judges were of opinion that the Subject could not be restrained in these particulars by the King's Proclamation. 12 Co. 75.

The King by proclamation may call or dissolve parliament, and declare war or peace; for these are prerogative acts, with which he is invested, as the executive part of the law; but if there be an actual war, it is not necessary in pleading to show that such war was proclaimed. 3 Inst. 162; 1 Hal. H. P. C. 153; Owen 45; Roff. Ent. 605. See ante.

The King by proclamation may legitimate foreign coin, and make it current money of this kingdom, according to the value imposed by such proclamation; he may legitimate base coin, or mixed below the standard of feeling; he may enhance coin to a higher denomination or value, and may decree money that is current in use and payment; and in all these cases a proclamation, with a proclamation currant under the Great Seal, is necessary. 1 Co. Lit. 207, b; 5 Co. 114, b; Dav. 21; 1 Hal. H. P. C. 152, 157. See title Coins.

The King by proclamation may appoint fals and days of thanksgiving and humiliation, and issue proclamations for preventing and punishing immorality and profaneness; and enjoin reading the fame in churches and chapels. Comp. Incumb. 354.

A proclamation must be under the Great Seal, and if denied, is to be tried by the Record thereof; but if a man pleads he was prevented doing a thing by proclamation, it is the better opinion, that he need not aver that such proclamation was under the Great Seal; for alleging that such proclamation was made, it shall be intended to have been duly made. Cre. Car. 180; See 1 Rob. Rep. 472; Vide Cre. Car. 120.

The King is likewise the Fountain of Honour, of Office, and of Privileges; and this is in a different sense from that wherein he is called the fountain of justice; for here he is really the parent of them. It is impossible that Government can be maintained without a due subordination of rank, that the people may know and distinguish such as are for them, in order to yield them their due respect and obedience; and also, that the officers themselves be encouraged by emulation, and the hopes of superiority, may the better discharge their functions: and the law supposes that no one can be to good a judge of their several merits and services, as the King himself who employs them. It has, therefore, int

truded on him the sole power of conferring dignities and honours, in confidence that he will bestow them upon none but such as deserve them. And, therefore, all degrees of nobility, of knighthood, and other titles, are received by immediate grant from the Crown; either expressed in writing by writs or letters patent, as in the creation of peers and baronets, or by corporeal incurrence, as in the creation of a simple Knight. See titles

Precedency, Peer.

From these same principles also arises the prerogative of creating and disposing of Offices; for honours and offices are in their nature convertible and synonymous. All officers under the Crown carry in the eye of the law an honour along with them; because they imply a superiority of parts and abilities, being supposed to be always filled with those that are most able to execute them. And, on the other hand, all honours in their original had duties or offices annexed to them: an Earl, Count, was the Conservator or Governor of a county; and a Knight, Stiles, was bound to attend the King in his wars. No Act, nor anything in its own nature, can confer an honour on the person of another; the honours are in the disposal of the King, ought to be so like-wise; and as the King may create new titles, so may he create new offices; but with this restriction, that he cannot create new offices with new fees annexed to them, or annex new fees to old offices, for this would be a tax upon the Subject, which cannot be imposed but by Act of parliament. 2 Inst. 533. Wherefore, in 13 Hen. 4. a new office being created by the King's letters patent for measuring cloths, with a new fee for the same, the letters patent were, on account of the new fees, revoked and declared void in Parliament.

On this subject it hath been further said, that the King, as the fountain of justice, hath an undoubted prerogative in creating officers, and all officers are said to derive their authority mediate or immediately from him; those who derive their authority from him are called the officers of the Crown, and are created by letters patent; such as the great officers of State, Judges, &c. and there needs no stronger evidence of a right in the Crown herein, than that the King hath created all such officers time immemorial. Dyer 756; 2 Roll. Abr. 152; 4 Co. 32; 2 Inst. 425; 4 Lt. 116; Roll. Rep. 223; Show. Par. Co. 111; 1 Len. 219.

But though all such officers derive their authority from the Crown, and from whence the King is termed the universal officer and dispencer of justice, yet it hath been held, that he hath not the office in him to execute it himself, but is only to grant or nominate; nor can the King grant any new powers to such officers, but they must execute their offices according to the rules prescribed by law. Co. Lit. 5, 114; 2 Pint. 270; 4 Inst. 125; 6 Co. 11, 12.

Neither can the King create any new office inconsistent with our constitution or prejudicial to the Subject. 2 Inst. 540; 2 Sid. 141; Mere 808; 4 Inst. 206.

And on this foundation an office created by letters patent for the sole making of all bills, informations, and letters missive in the council of York, was unreasonable and void. 1 Ten. 231. See further this Dictionary, title Office.

Upon the same, or a like reason, the King has also the prerogative of conferring privileges upon private persons, such as granting place or precedence to any of his Subjects.
Subjects as shall seem good to his royal wisdom. 4 Eth. 365. See title Precedence. Or such as converting aliens, or persons born out of the King's dominions, into denizens, whereby some very considerable privileges of natural-born Subjects are conferred upon them. See title Aliens. Such also is the prerogative of erecting Corporations; which is grounded upon this foundation, that the King, having the sole administration of the Government in his hands, is the best and the only Judge, in what capacities, with what privileges, and under what distinctions, his people are the best qualified to serve and act under him.

Another light in which the laws of England consider the King, with regard to domestic concerns, is as the Arbiter of domestic commerce, by the establishment of Markets, the regulating of Weights and Measures, and of the Coin. See this Dictionary under those titles.

The King is, lastly, considered by the laws of England as the Head and Supreme Governor of the national Church. To enter into the reasons upon which this prerogative is founded is matter rather of divinity than law. It shall only, therefore, be observed, that, by Stat. 26 H. 8. c. 1, (reciting that the King's Majesty fully and rightfully is and shall be reputed the only Supreme Head in earth of the Church of England, and so had been recognized by the Clergy of this kingdom in their convocation,) it is enabled, that the King shall be reputed the only Supreme Head in each of the Church of England, and shall have annexed to the Imperial Crown of this realm, as well the title and right thereof, as all jurisdictions, authorities, and commodities, to the said dignity of Supreme Head of the Church appertaining. And another statute to the same purport was made 1 Eliz. c. 1.

In virtue of this authority the King convenes, provokes, restrains, regulates, and dissolves, all ecclesiastical synods or convocations. This was an inherent prerogative of the Crown long before the time of Hen. VIII, as appears by the Stat. 8 Hen. 6. c. 1; and the many authors, both lawyers and historians, vouch'd by Sir E. Coke. 3 Inst. 326, 5. So that the Stat. 25 Hen. 8. c. 19, which restrains the convocation from making or putting in execution any canons repugnant to the King's prerogative, or the laws, customs, and statutes of the realm, was merely declaratory of the old common law. 12 Rep. 722: that part of it only being new, which makes the King's royal assent actually necessary to the validity of every canon. See further title Convocation; Bishop. - As Head of the Church, the King is likewise the supreme rector in all ecclesiastical causes; an appeal lying ultimately to him in Chancery from the sentence of every ecclesiastical judge; which right was reasserted to the Crown by Stat. 25 Hen. 8. c. 19. See title Courts Ecclesiastical.

The Kings of England not having the whole legislative power, if the King and clergy make a canon, though it bind the clergy in re ecclesiastici, it does not bind laymen; for they are not represented in the convocation, but in Parliament. In the primitive Church, the laity were present at all synods; and when the empire became Christian, no canon was made without the Emperor's consent, and indeed the Emperor's consent included that of the people, he having in himself the whole legislative power; but the Kings of this kingdom have it not. 2 Salk. 412, 673. See title Canon Law.

4. The King's Fiscal Prerogative, or those which regard his Revenue, are such as the British Constitution hath vested in the Royal Person, in order to support his dignity and maintain his power; being a portion which each Subject contributes of his property, in order to secure the remainder.

This revenue is either ordinary, or extraordinary. The King's ordinary revenue is such, as has either subsisted time out of mind in the Crown, or else has been granted by Parliament, by way of purchase or exchange, for such of the King's inherent hereditary revenues, as were found inconvenient to the Subject.

It is not, however, to be undervalued, that the King is at present in the actual possession of the whole of this revenue. Much (say, the greatest part) of it is at this day in the hands of Subjects; to whom it has been granted out from time to time by the Kings of England, which has rendered the Crown, in some measure, dependent on the People for its ordinary support and subsistence. So that among the royal revenues are now recounted, what Lords of manors and other Subjects frequently look upon to be their own absolute inherent rights, because they are, and have been, vested in them and their ancestors for ages, though in reality originally derived from the grants of our ancient princes. See 1 Crash. c. 8.


The ordinary revenue, or proper patrimony of the Crown was very large formerly, and capable of being increased to a magnitude truly formidable; for there are very few estates in the kingdom that have not, at some period of time or other since the Norman Conquest, been vested in the hands of the King by forfeiture, escheat, or otherwise. But, fortunately for the liberty of the Subject, this hereditary landed revenue, by a series of improvident management, is sunk almost to nothing; and the casual profits arising from the other branches of taure regalia, are likewise almost all of them alienated from the Crown. In order to supply the deficiencies of which, we are now obliged to have recourse to new methods of raising money, unknown to our early ancestors; which methods constitute the King's extraordinary revenue. For the public patrimony being got into the hands of private Subjects, it is but reasonable that private contributions should supply the public service. And, perhaps, if every gentleman in the kingdom was to be hired off such of his lands, as were formerly the property of the Crown, was to be again subject to the inconveniences of purveyance and pre-emption, the operation of forest laws, and the slavery of feudal tenures, and was to resign into the King's hands all his royal franchises, it

Salk. 412, 673. See title Canon Law.
waifs, wrecks, estrays, treasure-trove, mines, deodands, forfeitures, and the like; he would find himself a greater loser than by paying his quota to such taxes as are necessary to the support of government. The thing, therefore, to be wished and aimed at in a land of liberty, is by no means the total abolition of taxes, which would draw after it very pernicious consequences, and the very supposition of which is the height of political absurdity; but wisdom and moderation, not only in granting, but also in the method of raising the necessary supplies; by contriving to do both in such a manner as may be most conducive to the national welfare, and at the same time most consistent with economy and the liberty of the subject; who, when properly taxed, contributes only some part of his property, in order to enjoy the rest. See further, titles Taxes; National Debts; Exchequer; Customs, &c.

By these taxes a vast sum of money is annually raised; but the Civil List is properly the whole of the King's revenue in his own distinct capacity: the rest being rather the revenue of the Publick or its creditors, though collected and distributed again in the same manner and by the officers of the Crown; it stands in the same place as the hereditary income did formerly; and as that has gradually diminished, the parliamentary appointments have increased.

The expenses defrayed by the Civil List are those that in any shape relate to civil government: as the expenses of the royal household; the revenues allotted to the Judges previous to the year 1758; all salaries to Officers of State, and every of the King's servants; the appointments to foreign ambassadors; the maintenance of the Queen and Royal Family; the King's private expenses, or privy purse; and other very numerous outgoings, as secret-service money, pensions, and other bounties; which sometimes have so far exceeded the revenue appointed for that purpose, that application has been made to parliament to discharge the debts contracted on the Civil List.

The whole revenue of Queen Elizabeth did not amount to more than 600,000l. a year; that of King Charles I. was 800,000l.; and the revenue voted for King Charles II. was 1,200,000l. though complaints were made (in the first years at least) that it did not amount to so much. The revenue of the Commonwealth between the time of Charles I. and Charles II. was upwards of 1,500,000l. A striking instance (says Mr. Chetham in his Note on this passage in the Commentaries) to prove that the burthens of the people are not necessarily lightened by a change in the Government. A remark, which applies with tenfold force to the democratick government of France, raised by blood and slaughter on the ruins of monarchy; one pretext of the destruction of which was the enormous expense of it; an argument which has been, with equal falsehood and malice, applied also to the British Monarchy.

Under the revenue of the Civil Lists above-mentioned were included all manner of public expenses; among which Lord Clarendon in his speech to the Parliament computed, that the charge of the navy and land forces amounted annually to 800,000l. which was ten times more than before the former troubles. The same revenue, subject to the same charges, was feudal on King James II. by Stat. 1 Jac. 2. c. 1; but by the increase of trade, and more frugal management, it amounted on an average to a million and a half per annum; besides other additional subsidies granted by Parliament, Stat. 1 & 2. c. 3, 4, which produced an annual revenue of 400,000l. out of which his fleet and army were maintained at the yearly expense of 1,000,000l. After the Revolution, when the Parliament took into its hands the annual support of the forces, both civil and military, a civil list revenue was settled on the new King and Queen, amounting, with the hereditary duties, to 700,000l. per annum; and the same was continued to Queen Anne and King George I. That of King George II. was nominally augmented to 800,000l. by Stat. 1 Geo. 2. c. 2; and in fact was considerably more: and that of his present Majesty is avowedly increased to the limited sum of 900,000l.

Upon the whole, it is doublets much better for the Crown, and also for the People, to have the revenue settled upon the modern footing rather than the ancient. For the Crown, because it is more certain, and collected with greater ease; for the People, because they are now delivered from the feudal hardships, and other odious branches of the prerogative. And though complaints have sometimes been made of the increase of the civil list, yet, if we consider the sums that have been formerly granted, the limited extent under which it is now established, the expenses defrayed by it, the revenues and prerogatives given up in lieu of it by the Crown, the numerous branches of the present Royal Family, and, above all, the diminution of the value of money compared with what it was worth in the 18th century, we must acknowledge these complaints to be void of any rational foundation; and that it is impossible to support that dignity, which a King of Great Britain should maintain, with an income in any degree less than what is now established by Parliament.

VI. By Magna Charta, 9 Hen. 3. c. 8, "The King nor his bailiffs shall levy any debts upon lands or rents so long as the debtor hath goods and chattels to satisfy, neither shall the pledges be drained so long as the principal is sufficient; but if he fail, then shall the pledges answer the debt; however they shall have the debtor's lands and rents until they be satisfied, unless he can acquit himself against the pledged.''

Goods and chattels] By order of the common law, the King for his debt had execution of the body, lands, and goods of his debtor; this is an act of grace, and re­

Pledges be drained] This act does not extend, nor was ever taken to extend to forfeitures in a bond or recognizance, if they may be so called, being bound themselves equally with the principal, as forfeitures to perform covenants and agreements are in like manner; but to pledges and mortgages only, who by express words are not responsible, unless their principals become insolvent, and so are conditional debtors only. And so the act has always been construed, and the words themselves imply as much. Hard. 378.

By Magna Charta, c. 18, "The King's debtor dying, the King shall be served before the executor.''

By this statute, the King by his prerogative shall be preferred in satisfaction of his debt by the executors be­
fore any other. And if the executors have sufficient to pay the King's debt, the heir nor any purchaser of his lands shall not be charged. 2 Lev. 10.

Stat. 1 Edw. 1; 3 Edw. 1. c. 10. enacts, "That the Sheriff having received the King's debt, upon his next account shall discharge the debtor thereof, in part to for-feit three times so much to the debtor, and to make fine at the King's will. And the sheriff and his heirs shall answer all monies that they whom he employed receive; and if any other that is answerable to the Exchequer by his own hands do so, he shall render thrice so much to the plaintiff, and make fine as before. And on payment of the King's debt, the Sheriff shall give a talley to the debtor, and the process for levying the same shall be showed him on demand without fee, on pain to be grievously punished."

Be King's debt.] Under this word, all things due to the King are comprehended, and not only debt in the proper finie, but duties on things due, as rents, fines, fines, amercements, and other duties to the King received or levied by the Sheriff; for debt in its large sense signifies whatever a man doth that under-stand, of the plough or not to be taken for his debts, nor driven too far; and if the debtor can find convenient surety, the diftrafs shall in the mean time be released; and he that does otherwise shall be grievously punished.

This is an act of grace, and on this act there lies a writ directed to the Sheriff, commanding him to receive surety according to this act, if he refuses, an attachment lies against him, or the party offering surety according to this act, if it be refused, may have an action against the Sheriff, &c. 2 Lev. 10.

The Sheriff and his heirs shall answer.] This is to be understood, quasi restitutionem, but not quasi prænum; that is for the civil but not for the criminal part; for this is a maxim in law. 2 Lev. 10.

The Stat. 28 Ed. 1. § 3. c. 12, enacts, "That beasts of the plough shall not be disdained for the King's debt; so long as others are found, on such pain as is elsewhere ordained by statute; (viz. by the statute de distritione facsacris, 51 Hen. 3. stat. 4.) And the great dis-tributions shall not be taken for his debts, nor driven too far; and if the debtor can find convenient surety, the dis-tress shall in the mean time be released; and he that does otherwise shall be grievously punished." This is an act of grace, and on this act there lies a writ directed to the Sheriff, commanding him to receive surety according to this act, if he refuses, an attachment lies against him, or the party offering surety according to this act, if it be refused, may have an action against the Sheriff, &c. 2 Lev. 10.

The Stat. 25 Ed. 3. § 5. c. 19, enables a common person to sue a debtor of his (who is likewise a debtor to the King) to judgment, but he cannot proceed to execution, unless the plaintiff gives security to pay the King's debt first, and then he may take execution upon his own and the King's debt too.—For otherwise, if without giving such security, the party takes forth execution upon his judgment, and levies the money, the same money may be seized upon to satisfy the King's debt.

The Stat. 3 Hen. 8. c. 39. § 2, enacts, "That all obligations and specialties concerning the King and his heirs, or made to his or their use, shall be made to his Highness and to his heirs, Kings, in his or their name or names, by these words, domino regi, and to no other person to his use, and to be paid to his Highness, by these words, feudali aedem domino regi hereditatibus, and executory for ever, with other words used in common obligations, which obligations and specialties shall be in the nature of a statute staple."

None other are to be charged, but such as were liable to the bond when it was made. Stat. 10.

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The ifue in tail (the land being in his hands) is also liable in either of the said four cases, but not the bona fide aliena of the ifue; for the words of the statute do not extend to this aliena; the common law did not help the King in these cases; the statute helps the King in the case against the ifue in tail. *Jenk.* 226. pl. 99. 285. pl. 19.

The ifue in tail shall not be charged by this statute for the penalty on a conviction of recusacy of the tenant in tail by proclamation, under *stat.* 25 Eliz. c. 6, but otherwise it had been if he had been convicted under *stat.* 25 Eliz. c. 1: 1 *Rep.* 94.

In every such case.] By the express purview of this act, the land shall be fledly extended as long as it is in the possession or seisin of the heir in tail; for this act says: That in every such case the land shall be charged. And as the land against the ifue in tail was not extendable before this act, the King has benfit to extend it in the possession of the heir in tail, which he could not do before; but the King cannot extend the lands of the aliena: for the statute does not extend to this, and the makers of the act have reason to favour the purchasers, farmers, &c. of the heir in tail more than the heir himself; for they are strangers to the debts of tenant in tail, and they come to the land on good consideration. 7 *Rep.* 21. 6.

The same manner.] If the goods and chattels of the King's debtors be sufficient, and so can be made appear to the Sheriff, whereupon he may levy the King's debt, then the Sheriff ought to extend the lands of the debtor or his heir, or of any purchaser or tenant. 2 *Inst.* 19.

The King shall not be excluded to demand his debts against any of his Subjects, as heir to any person indebted to his Highness or to his use, albeit this word he is not comprised in such recognizance or specialty, or that such person shall say, that they have not any hereditaments to them defcended, but only such as be in tail or given to them by their ancestors. *Stat.* 33 Eliz. c. 39. § 28.

By this claufe the intent of the makers of the act appears, that the heir in tail shall be only charged with the debt of the King; but lands in fee-simple were extendable at the common law in whatever hands they came, therefore as to them this statute was only declaratum antiqui juris: but as to the estates in tail, it was introductum novi juris against the ifue in tail, 7 *Rep.* 21. 8.

One P. was indebted to the Queen, and one W. was bound to P. in 100l. in which obligation W. did not mention his heirs; P. assigned the obligation in which W. was bound to him, to the Queen; and, on this, process was made against the heir of W. And it was held by the Court, that as W. did not obligate himself and his heirs, that the heir by the death of the father was discharged. And if the assignment had been made in the life-time of the father, and then the father had died, the heir should be discharged, but the son may be charged as executor or administrator. &c. *Sav.* 2.

Provided, That the King may at his liberty demand his debts of any executors or administrators of any person indebted, if the executors, &c. have assets. *Stat.* 33 Eliz. c. 39. § 29.

J. S. was obliged to Sir Richard Cavendish, Treasurer of the Chamber to Henry VIII. in 100l. who was indebted
In law, expense, or good conscience.] A, obtained of the King a privy seal, whereby the forfeiture of certain recognizances for appearing at the assizes, amounting in the whole to 80l. was granted her. And it was made a question, Whether the Court might compound those forfeitures by their privy seal which was granted before the privy seal and grant to A.? And it was doubted whether the privy seal did not take away and revoke the power given to the Court in this particular? But it was held clearly, that the Court might upon good matter in equity discharge those debts by virtue of this statute. And the case in question seemed a hard case to the Court, because the party himself was the cause why there was no appearance, by beating the party so heinously the very day before they ought to have appeared, that they were disabled thereby to appear. Hard. 334.

W. put 100l. out at interest to defendant, and took bond in the name of one J. who became an debtor, and the plaintiff was relieved against the King on this true, or equity upon this statute. Set quarrel. Whether this statute extends to any equity against the King, otherwise it is of purchasers before the obligation made in care of the King. See 12.

If the hereditaments be evicted out of the possession of another by fraud, whereof the hereditaments shall be chargeable as is above said, then such hereditaments shall be acquired of the debts. Star. 33 Hen. 8. c. 39. § 30.

B. was indebted to the Queen, for the payment of which debt certain lands, of B. at the time of the debt, were purchased by one W. against whom and one C. and D. the said B. exhibited his bill in the Exchequer-chamber, praying that the equity of the cause might there be examined. Before any answer made, W. paid the debt, and then demanded judgment if the Court would hold further plea, as the cause of privilege was determined, which is the debt due to the Queen. And it was held, that if obligor, after the obligation made, voluntarily make feoffment of such feoffees shall be charged; otherwise it is of purchasers before the obligation made in care of the King. See 12.

If any person of whom any such debt shall be demanded, show sufficient matter, in law, reason, or good conscience, why such persons ought not to be charged with the same, and it be sufficiently proved, the Courts have power to allow the proof, and acquit all persons so implicated. Star. 33 Hen. 8. c. 39. § 31.

[Sufficient matter in law.] This proviso gives benefit not only to him who has matter in good conscience, but also to him who has good and sufficient cause, and is set forth in the first words, viz. cause and matter in law, as is above said, shall extend to all the debts of the King, and proceed thereupon, as well at common law as on this act. And the conclusion of the branch does not make against it. For the sense thereof was, that he should plead matter in law or good conscience, and that nothing contained in the act should be an impediment thereto. 7 Rep. 19. b.

Sire faciaris, as in the act. 33 Hen. 8. c. 39. It is provided, that the said act shall not take away any liberties belonging to the duchy and county palatine of Lancaster. Proceeds and executions for debts in the Court of Exchequer shall be made in the Exchequer by such officer as hath been used, as by this act is limited. § 34.

The act 13 Eliz. c. 4, enacted, That all the lands, &c. which any agent or accomplice of the Queen, her heirs and successors,
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ceffors, hath while he remains accountable, shall for the payment of the debts of the Queen, her heirs and successors, be liable, and put in execution in like manner, as if such account had been bound by writ of obligation (having the effect of the statute Staple) to her Majesty, her heirs and successors, for payment of the lands.

§ 1.

The Queen, by her letters patent, granted cattalia adagates, &c. (s. c. de le, within such a precedent; one who was indebted to the King is se det de le within the precedent. It was ruled, that notwithstanding the grant by the letters patent, the Queen shall have the goods for satisfying her debt. 3 Loo. 17: 126, 127, S. C. between the Queen of the first part, the Bishop of Sarum of the second part, and Oliver Coxehead of the third part; and there by, the patent does not extend to have the goods of se det de le against the Queen for her debt, because it wanted the words (fide tantum nos); but he agreed, that if the lands of the felon be liable to (sufficient to answer) all the debt of the patent, her debt, the Court may in disferral take all the lands in extent, and leave the goods to the patentee. And as to a post of Coxehead praying a discharge of the lands, &c. by him purchased of the officer debtor to the Queen, it was answered, that the land was subject to the Queen's extent for all arrears of receipts by his office, received before the conveyance thereof, though the receipt be after the conveyance, and that by reason of the statute; but as to another office accepted after the conveyance of the land, the arrears of that shall not charge the land if conveyed.

B. L. having purchased a long term for years in houes, afterwards purchased the inheritance; afterwards he became receiver of North Wales, and having occasion for 500l. assigned over the term by way of mortgage to J. S. Afterwards on the marriage of E. L. his son, he sold the houses in St. John's (inter alia) on himself for life, remainder to E. L. his son, and the heirs of his body. There was issue of the marriage a daughter, the wife of P. after this B. L. mortgages these houses to N. for 100l. The King extends these houses for the debt of B. L. N. gets an assignation of the extent, and a privy seal for the debt. Resolved, 19, That by the statute of Elinabeth, the land and the real estate of B. L. was bound and sold liable to answer the King's debt, although he was not actually a debtor to the King, nor any extent against him in several years after, 2dly, That where a term is attendant on the inheritance, he shall have a right to the term; but if it be a term in gross, and assignied before any actual extent, the assignation will bind good, and the term not liable to the King's debt.

2 Ser. 349, 350.

If either of the Queen's officers, on rendering of his account, shall be found in arrear, and such arrears shall not be paid within six months after the account paid, the Queen, &c. may fall so much of his estate as will answer the debt, and the overplus of the sale is to be rendered to the accountant or his heirs, by the officer that receives the purchase money, without further warrant Stat. 13 Eliz. c. 4. § 2, 3.

Upon this statute many questions were moved. 11, If the debtor died, whether the land might be sold? 2dly, When the account is determined after his death? 3dly, When the accountant, after becoming debtor, and in arrears makes seoffment, or other estate over, or charges or incumbrances the land, either to his issue, or others of his blood, to prevent the Queen's selling, or on other consideration whether he may sell the land, the words of the act being made sale, &c. of so much of the lands, &c. of every such account or debtor to be found in arrest, &c. and that the sale shall be good and available in law against the party accountant, and his heirs claiming as heirs. 4thly, if the accountant was seized of land in tail, whether this land may be sold to be good against the issue; for the ouling of which doubts the statute of 27 Eliz. c. 3, was made; but this gives remedy only, that the land shall be sold after the death of the debtor, and when the account is made after his death; therefore to remedy the other mistakes, the statute 29 Eliz. c. 7, was made (but the same being only a temporary act is expired). Mo. 646, &c. pl. 895; (where part of the last-mentioned act is set forth and explained.)

If such accountant or debtor purchase lands in others names in trust for their use, that being found by office or inquisition, those lands also shall be liable to satisfy the debt in such manner as before is expressed. Stat. 13 Eliz. c. 4. § 5.

Lands purchased by accountants since the beginning of the Queen's reign, either in their own names, or in the names of others in trust for their use, shall be liable to be sold for the discharge of their debts as aforesaid, rendering the overplus to the accountant. § 6.

Provided, That bishops' lands shall be only chargeable for subsidies or tenths, as they were before making this act, and not otherwise. § 9.

Neither shall this act extend to charge any accountant whose yearly receipt exceeds not 500l. otherwise than as he was lawfully chargeable before this act. § 10.

Neither shall this act extend to such accountants, as by order of their offices, and charge, immediately after their accounts paid, are to lay out money again; such as are treasurers of war, garrisons, navy, provision of victuals, or for fortifications or buildings, and the matter of the wardrobe; unless the Queen, &c. command prent pay. § 11, 12.

Neither does this act extend to Sheriffs, escheators, or bailiffs of liberties, concerning whose accounts the court remains the same as before. § 13.

Lands bought of an accountant bona fide, and without notice of any fraudulent intent in the accountant shall be discharged; and if they be bound by office, yet shall they, on traverse, be discharged without livery, suffer le main, or other suit. § 14.

If a man is receiver to the King, and not indebted, but is clear and sells his land, and ceases to be receiver, and afterwards is appointed receiver again, and then a debt is contracted with the King, the former sale is good. 2 M. 247.

The Queen, &c. being satisfied by sale of lands, the freesties shall be discharged for so much, and if any remain unpaid, the freesties shall pay the residue ratably according to their abilities. Stat. 17 Eliz. c. 4. § 15.

By stat. 27 Eliz. c. 5, the Queen, &c. may make issue of the accountant's lands, &c. as well after his death as in his lifetime, and as well where the account is made, and the debt known within eight years after his death, as where the account is made, and the debt known in his lifetime, § 2.

By
By § 3, it is provided, that after the accountant's death, and before the lands be sold, a sure factor shall be awarded to garnish the heirs, to shew cause why lands, &c. should not be sold, &c. whereupon, if the heir, upon such garnishment or such nobiles returned, do not prove that the executors or administrators of the accountant have sufficient, then ten months after such garnishment or return, the land, &c. shall be sold and disposed according to the statute. Eliz. c. 4.

Nevertheless, the heir's sale has been put upon good consideration before the sure factor awarded, shall be good to him who is not consenting to defraud the Queen, &c. Stat. 27 Eliz. c. 3. § 4.

This statute shall extend to all officers of receipts and accounts to her Majesty, and to no other. § 5.

If the debt grow in the Courts of the duchy of wards, a priy seal shall issue out against the heir to appear at a certain day, to shew cause, &c. where, if, when, he appear not, on affidavit made that it was duly served, an attachment with proclamation shall issue against him, to be proclaimed in some open market in the county where he dwell twenty days (at least) before the return thereof, whereupon, if he appear not, the lands, &c. shall be sold and disposed as aforesaid. § 6.

The heir's lands shall not be sold during his minority; but at any time within eight years after his full age they shall be liable as aforesaid. § 7.

VII. In King John's Magna Charta of Liberties, there was a clause making it lawful for the barons of the realm to choose twenty-five barons to sie the charter observed by the King; with power, on any Justice or other minister of the King's falling to do right, and acting contrary thereto, for four of the said barons to address the King, and pray that the same might be remedied; and if the same were not amended in forty days, upon the report of the four barons to the rest of the twenty-five, those twenty-five barons, with the commonalty of the whole land, were at liberty to dislodge the King, take his castles, lands, &c. until the evils complained of should be remedied, according to their judgment; saving the person of the King, Queen, and their children. And when the evils were redressed, the people were to obey the King as before. King John's Magna Charta. c. 7. But this clause was omitted in King Henry III's Magna Charta; though in a statute made at Oxford, anno 42 Hen. III. to reform misgovernment, it was enacted, that twenty-four great men should be named, twelve by the King, and twelve by the Parliament, to appoint Judges, Chancellors, and other officers, to see Magna Charta observed. — These regulations seem (like the constitution, framed by an assembly in a neighbouring nation, before they had directly disdained a monarchical form of government,) too laboured and unnatural to succeed in practice; the checks now formed, by the law, on the power of the Crown are of a nature in reality more forcible, though in appearance more loyal, than a measure which placed the Sovereign in subjection to a dangerous Arbitrariness.

The Barons' wars seem to have proceeded in some measure from a like power granted to them as by the charter of King John; and probably the Parliament's wars in the time of King Charles I. from their examples.

But, whatever attempts might have been previously made, it cannot but be observed, that most of the laws for ascertaining, limiting, and restraining the prerogative of the Crown, have been made within the compass of little more than a century past, from the Petition of Right in 3 Car. I. to the present time: so that the powers of the Crown are now to all appearance greatly curtailed and diminished since the reign of King James I. particularly by the abolition of the Star Chamber, and High Commision Courts in the reign of Charles I; and by the disfranchising of martial law, and the power of levying taxes on the subject, by the same Prince; by the diffusing of foresaid laws for a century past; and by the many excellent provisions enacted under Charles II; especially by the abolition of military tenures, purveyance, and preceptum, the Habeas Corpus act, and the act to prevent the disconciance of parliaments for above three years; and, since the Revolution, by the strong and emphatical words in which our liberties are asserted, in the Bill of Rights, and Act of Settlement; by the act for triennial, once turned into septennial, elections; by the exclusion of certain officers from the House of Commons; by rendering the seats of the Judges permanent, and their salaries liberal and independant; and by restraining the King's pardon from obstructing parliamentary impeachments. Besides all this, if we consider how the Crown is impoverished and stripped of all its ancient revenues, so that it must greatly rely on the liberality of Parliament for its necessary support and maintenance, we may, perhaps, be led to think, that the balance is inclined, pretty strongly, to the popular scale; and that the executive magistrate has neither independance nor power enough left, to form that check upon the Lords and Commons which the Founders of our Constitution intended.

On the other hand, however, it is to be considered, that every prince in the first parliament after his accession, has by large ufe a truly royal addition to his hereditary revenue settled upon him for his life; and has never any occasion to apply to Parliament for supplies, but upon some public necessity of the whole realm. This restores to him that constitutional independance, which at his first accession seems, it must be owned, to be wanting. And then, with regard to power, we may find perhaps, that the hands of Government are at least sufficiently strengthened, and that an English Monarch is now in no danger of being overborne either by the Nobility or the People. The ingredients of power are not, perhaps, so open and avowed, as they formerly were, and therefore are the less liable to jealous and insidious reflections; but they are not the weaker upon that account. In short, our national debt and taxes have, in their natural consequences, thrown such a weight of power into the executive state of government, as we cannot think was intended by our patriot ancestors; who gloriously struggled for the abolition of the then formidable parts of the prerogative, and by an unconditional want of foresight, established this form in their stead. The entire collection and management of so vast a revenue, being placed in the hands of the Crown, have given rise to such a multitude of new officers created by, and removable at the royal pleasure, that they have extended the influence of Government to every corner of the nation. To this may be added, the frequent opportunities of conferring particular obligations, by preference in places, subscriptions, tickets, remittances, and other money transactions, which will greatly increase this influence, and that over
KING OF HERALDS, or King at Arms, Rex Heraldum. A principal officer at Arms, that hath the precedence of the Society. Among the Romains he was called patre patrum. See titles Herald: Garter.

KING OF THE MINSTRELS, at Tavbury in com. Staff. His power and privilege appears by a charter of Rich. II. confirmed by Hen. VI. in the 28th year of his reign. Cowell.

KING'S BENCH,

Bancus Regius, from the Saxon, Bana, a bench or form.] The Supreme Court of Common Law in the Kingdom. 4 Inf. 73.

I. Of the Court itself, generally.
II. Of its criminal Jurisdiction.
III. Of its civil Jurisdiction, &c.
IV. Of the Officers of the Court; and the mode of Proceeding there.

I. The Court of King's Bench is so called because the King used formerly to sit there in person, the file of the Court being thus the regal. During the reign of a Queen it is called the Queen's Bench; and under the usurpation in Cromwell's time, it was styled the Upper Bench.

This Court consists of a Chief Justice, and three judge Judges, formerly, according to Portrey, c. 5. four or five. See again. 77. 3 Common. in m. Their Judges are, by their office, the sovereign Convenors of the peace, and Supreme Convenors of the land. Yet, though the King used himself to sit in this Court, and is supposed to do so; he did not, neither by law is he empowered to determine any cause or motion, but by the mouth of his Judges, to whom he has committed his whole judicial authority. 4 Inf. 71; see 4 Burr. 851; 2 Inf. 46.

It has been said, that King Hen. III. fate in person with the Justices in Banco Regis several times, being seated on a high bench, and the Judges in a lower one at his feet. This, however, is a doubtful point. King Edward IV. fate three days in the second year of his reign, whole, to see, as he was young, the form of administering justice. King James I. it is also said, fate there for a similar reason, see 3 Common. c. 4. in a.

This Court, which is the remnant of the ancient Aula Regia, is not, nor can it be, from the very nature and constitution of it, fixed to any certain place, but may follow the King's person whenever he goes. See stat. 28 Eliz. 1. stat. 3. c. 6. For which reason all process issuing out of this Court in the King's name is returnable, "hic unicunque fuerius in Anglia: wherever we shall then be in England." See titles Courts: Common Pless. It has, indeed, for some centuries past, usually fate at Westminter, being an ancient palace of the Crown; but might remove with the King to Tork or Exeter, if he thought proper to command it. And we find, that after Edw. I. had conquered Scotland, it actually fate at Rosburgh. M. 20, 21 Eliz. 1. id. H. C. L. 200. And this moveable quality, as well as its dignity and power, are fully expressed by Bracton, when he says, that the Justices of this Court are "capitalis, generales, patria, et majores; iudicium gestantium, qui consuetudine non re- nuntiarum, injurias, et errores. Breth. 1. 3. c. 10." And it is moreover especially provided in the Articula papier cartar. 28 Eliz. 1. c. 5. that the King's Chancellor, and the Justices of his Bench, shall follow him; so that he may have at all times near unto him some that be learned in the laws.

After the division of the Courts, and the establishment of the Court of Common Pless, for the express purpose of determining civil suits, the Court of King's Bench was accustomed, in ancient times, to be especially exercised in all criminal matters and pleas of the Crown, leaving the judging of private contracts and civil actions to the Common Pless and other Courts. Glanv. lib. 1. c. 2. 3. 4. lb. 60. c. 18; Simpson de Rep. Aug. lib. 2. c. 11; 4 Inf. fol. 70.

Toward the latter end of the Norman period, the Aula Regis, which was before one great Court where the Justice presided, was divided into four distinct Courts, i. e. the Court of Chancery, King's Bench, Common Pless, and Exchequer. Madox. c. 19: Bract. lib. 3. c. 7. fol. 105; see titles Courts: Common Pless, &c.

The Court of King's Bench retained the greater familiarity with the ancient Curia, or Aula Regis, and was always ambulatory, and removed with the King where-
II. The jurisdiction of this Court is very high and transcendental. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below. It superintends all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in every case where there is no other specific remedy. It protects the liberty of the Subject by speedy and summary interposition. It takes cognizance both of criminal and civil causes; the former, in what is called the Crown-side or Crown-office; the latter, in the plea-side of the Court.

3 Comrn. c. 4.

On the Crown-side, that is, in the Crown-Office, this Court takes cognizance of all criminal causes, from high treason down to the most trivial misdemeanor or breach of the peace. Into this Court also indictments from all inferior Courts may be removed by writ of certiorari, and tried either at bar, or in nisi prius, by a jury of the county out of which the indictment is brought. The Judges of this Court are the Supreme Coroners of the kingdom. And the Court itself is the principal Court of criminal jurisdiction known to the laws of England. For which reason, by the coming of the Court of King's Bench into any county, (as it was removed to Oxford on account of the sickness in 1665,) all former commissions of oyer and terminer, and general gaol-delivery, are at once abolished and determined ipso facto.

But this is now altered, with respect to the Session of Gaol-delivery for Middlesex, by fl. 25 Geo. 3. c. 18; which enacts, that when any felon of oyer and terminer, and gaol-delivery of the gaol of Newgate, for the county of Middlesex, shall have been begun to be holden before the ebb-stroke day of any term, that the same sessions shall be continued to be holden, and the business thereof finally concluded, notwithstanding the happening of any such ebb-stroke day of any term, or the sitting of his Majesty's Court of King's Bench at Westminster, or elsewhere in the county of Middlesex; and that all trials, &c. had at such sessions so continued to be holden, shall be good and effectual to all intents and purposes. See this Dictionary, title Justices of Oyer, &c.

Into this Court of King's Bench hath reverted all that was good and salutary of the jurisdiction of the Court of Star-Chamber (Camera Stellata,) which was a Court of very ancient origin, finally abolished, on account of the abuse of its jurisdiction, by fl. 16 Geo. 1. c. 10. See this Dictionary, title Star-Chamber.

4 Comm. c. 19.

To state its powers more particularly, this Court is termed the Castra Muriar of all the realm, and by the plenitude of its power, wherever it meets with an offence contrary to the first principles of justice, and of dangerous consequence if not restrained, adapts a proper punishment to it. 1 Sid. 168: 2 Hencok. P. C. c. 3 § 4.

The Justices of B. R. are the sovereign Justices of oyer and terminer, gaol-delivery, and of oyer, and coroners of the land; and their jurisdiction is general all over England: by their presence the power of all other Justices in the county, during the time of this Court's sitting in it, is suspended as has already been noticed; for in praesenti majoris effet postias minoris; but such Justices may proceed by virtue of a special commission, &c. H. P. C. 156: 4 Inf. 73: 2 Hencok. P. C. c. 6.

If an indictment in a foreign county be removed before commissioners of oyer and terminer into the county where the King's Bench sits, they may proceed; for the King's Bench not having the indictment before them cannot proceed for this offence. But if an indictment is found in the vacation-time in the same county in which the King's Bench sits, and in term-time the King's Bench is adjourned, there may be a special commission to hear it. 4 Inf. 73.

Justices of this Court have a sovereign jurisdiction over all matters of a criminal and public nature, judicially brought before them, to give remedy either by the common law or statute: and their power is original and ordinary: when the King hath appointed them, they have their jurisdiction from the law. 4 Inf. 74.

This Court has a particular jurisdiction, not only over all capital offences, but also over all other misdemeanors of a public nature, tending either to a breach of the peace, or to oppression or faction, or any manner of misgovernment; and it is not material whether such offences, being manifestly against the public good, directly injure any particular person or not. 4 Inf. 71: 11 G. 98: 2 H. 3. p. c. 3. § 3.

And for the better restraining such offences, it has a discretionary power of inflicting exemplary punishment on offenders, either by fine, imprisonment, or other infamous punishment, as the nature of the crime, considered in all its circumstances, shall require; and it may make use of any prison which shall seem most proper; and it is said, that no other Court can remove or recall persons condemned to imprisonment by this Court. 2 Hencok. P. C. c. 3. § 5. Newgate is as much the prison of this Court as the King's Bench prison is: every prison in the kingdom is the prison of this Court. 1 Burr. 541.

This Court hath so sovereign a jurisdiction in all criminal matters that an act of parliament appointing that all crimes of a certain denomination shall be tried before certain Judges, doth not exclude the jurisdiction of this Court, without express negative words; and therefore it hath been resolved, that fl. 33 Han. 8. c. 12, which enacted, That all treasons, &c. within the King's house, shall be determined before the Lord Steward of the King's house, &c. doth not restrain this Court from proceeding against such offences. 2 Inf. 519: 2 Jone. 53.

But where a statute creates a new offence, which was not taken notice of by the common law, and creates a new jurisdiction for the punishment of it, and prescribes a certain method of proceeding, it seems questionable how far this Court has an implied jurisdiction in such a case. 1 Sid. 296: 2 Hencok. P. C. c. 3. § 6.
KING’S-BENCH III.

This Court, by the plentitude of its power, may as well proceed on indictments returned by certiorari, out of inferior Courts, as on those originally commenced here, whether the Court below be determined, or still in effe, and whether the proceedings be grounded on the common law, or on a statute making a new law concerning an old offence. Digest 25: 44 Ed. 3: 51: 6: Group: Juris. 131.

But the Court of King’s Bench will not give judgment on a conviction in the inferior Court, where the proceedings are removed by certiorari, but will allow the party to waive the issue below, and to plead de novo, and to go to trial upon an issue joined in B. R. Chartb. 6.

Nor can a record, removed into the King’s Bench from an inferior Court, regularly be remanded after the term in which it came in; yet if the Court perceives any practice in endeavouring to remove such record, or that it is intended for delay, they may in discretion refuse to receive it, and remand it back before it is filed. 2 Hawk. P. C. c. 3: § 7, and several authorities there cited.

Also by the construction of the statutes, which give a trial by jure prius, the King’s Bench may grant such a trial in cases of treason or felony, as well as in common causes, because for such trial, not for the record, but only a transcript is sent down. 4 Inf. 74: Raym. 354: 2 Hawk. P. C. c. 3: § 7.

And by 2 Hals. 6, it is enacted, "That the King’s Bench have full authority by discretion, to remand as well the book of all felons removed thither, as their indentures, into the counties where the felonies were done; and to command the Justices of gaol-delivery, Justices of the peace, and all other justices, to proceed thereon after the course of the common law, as the said justices might have done, if the said indentures and prisoners had not been brought into the said King’s Bench." This act extends not to high treason. Raym. 367: 2 Hawk. P. C. c. 3: § 8, 9.

As the Judges of this Court are the sovereign Justices of oyer and terminer, gaol-delivery, Conservators of the peace, &c. as also the sovereign Coroners, where the Sheriff and Coroners may receive appeals by bill, a fortiori the Judges may; also this Court may admit perions to bail in all cases according to their discretion. 4 Inf. 73: 3 Co. 118: 6: 4 Inf. 74: Pasha’s 157.

In the county where the King’s Bench sits, there is every term a grand inquest, which is to present all criminal matters arising within that county, and then the same Court proceeds upon indictments to take; or if, in vacation, there be any indictment of felony before the Justices of peace of oyer and terminer or gaol delivery there sitting, it may be removed by certiorari into B. R. and there they proceed de die in diem, &c. 2 Hale’s Hist. P. C. 3.

It may award execution, against persons attainted in parliament, or any other Court; when the record of their attainder or a transcript is removed, and their persons brought thither by habeas corpus. Cre. Car. 176: Cro. Jac. 457. Partitions of persons condemned by former Justices of gaol-delivery, ought to be allowed in B. R. the record and prisoner being removed thither by certiorari and habeas corpus. 2 Hawk. P. C. c. 6: § 19.

Into the Court of B. R. indictments from all inferior Courts and orders of felons, &c. may be removed by certiorari; and inquisitions of murder are certified of course into this Court, as it is the Supreme Court of criminal jurisdiction: hence also issue attachments, for disobeying rules or orders. 4 Inf. 71, 72.

III. On the plea-side, or civil branch, this Court has an original jurisdiction and cognizance of all actions of trespass, of actions for forgery of deeds, maintenance, conspiracy, deceit, and actions on the case which allege any falsity or fraud: all of which favour of a criminal nature, although the action is brought for a civil remedy; and make the defendant liable in accordance to pay a fine to the King, as well as damages to the injured party.

The same doctrine is also now extended to all actions on the case whatsoever. F. N. B. 86, 57: 1 Lid. Proc. Reg. 503. But no action of debt or damages, or other mere civil action, can by the common law be prosecuted by any Subject in this Court, by original writ out of Chancery. 4 Inf. 76: Trost’s Inf. Eliz. 101. Though an action of debt, given by statute, may be brought in the King’s Bench as well as in the Common Pleas, Chancery 234. And yet this Court might always have held plea of any civil action, (other than actions real,) provided the defendant was an Officer of the Court, or in the custody of the Marshal, or prion-keeper of this Court, for a breach of the peace or any other offence. 4 Inf. 71. And in process of time, it began, by a fiction, to hold plea of all personal actions whatsoever, and has continued to do so, for ages; it being the King’s Bench, if the defendant was accused of a supposed trespass, which he never has to reality committed; and being thus in the custody of the Marshal of this Court, the plaintiff is at liberty to proceed against him for any other personal injury; which, though, of being in the Marshal’s custody, the defendant is not at liberty to dispute. See 4 Inf. 72.

The actions of law, though at first they may fascinate the Student, he will find upon further consideration to be highly beneficial and useful: especially as this maxim is ever invariably observed, that no fiction shall extend to work an injury; its proper operation being to prevent a mischief, or remedy an inconvenience, that might result from the general rule of law. 3 Rep. 50: 2 Roll. Rep. 502. So true it is, that in fictione juris temperr subjicit agitat. 1 Rep. 51: Co Lit. 150. In the present case, it gives the Superior his choice of more than one tribunal, before which he may institute his action; and prevents the circuit and delay of justice, by allowing that suit to be originally, and in the first instance, commenced in this Court, which after a determination in another, might ultimately be brought before it on a writ of error. 3 Comm. c. 4.

On the first division of the Courts, it was intended to confine the jurisdiction of the Court of King’s Bench to matters merely criminal; and accordingly soon afterwards it was enacted by Magna Charta, c. 11, That common pleas should not follow the King’s Court, but be held in a certain place; hence it is, that the Court of King’s Bench cannot determine a mere real action. 17 Ed. 3, 50: 1 Rel. Abr. 539, 537.

But notwithstanding common pleas cannot be immediately held in Baux Regis, yet there is a defect in the Court, where by law they be held originally, they may be held in B. R., as if a record come out of the
The Common Pleas by writ of error, there they may hold plea to the end; so where the plea in a writ of right is removed out of the county by a pawn in B. R., on a writ of sequestration, &c. 2 I. 23; 1 I. 72: 2, 11; and see Suidn. 286: Somn. P. C. 57.

So may action on & arms, where the King is to have fine, as ejectment, trespass, forcible entry, &c. being of a mixed nature, may be commenced in B. R., 2 I. 23.

Alto any officer or master of the Court entitled to the writ of sequestration there may be tried by bill in debt, covenant, or other personal action; for the act takes not away the privilege of the Court. 2 I. 23: 1 I. 71.

From hence, as was hinted before, the notion arose, that if a man was taken up as a trespasser in the King's Bench, and there in custody, they might declare against him in debt, covenant, or account; for this likewise was a case of privilege, since the Common Pleas could not procure the prisoners of the King's Bench to appear in their Court, and therefore it was an exception out of Magna Charta. 4 I. 71: Cre. Car. 330.

By the statute of Gloucester, 5 E. 1. c. 8, none shall have writs of trespas before Justices, unless he swear by his faith that the goods taken away were worth forty shillings. This oath is now disused; yet if the damages laid in the declaration (in cases cognizable in inferior Courts) do not amount to 40s., the Court will not hold plea of the matter. If laid to the amount of 40s., and there is not any set-off, and the plaintiff recovers under 40s., defendant may begg it on the roll, and plaintiff shall not have more costs than damages. See 2 I. 311.

The fact. 41 Eliz. c. 6, directs, that if in personal actions in the Courts at Westminster (not being for any title or interest of land, nor concerning the freedom or inheritance of lands, nor for any battery,) the debt or damages is under 40s., the plaintiff shall recover no more costs than damages. See this Dictionary, title Costs.

If upon a non suit in an inferior Court 166. is given for costs, by fact. 22 Hen. 8. c. 15, debt lies for it in this Court of King's Bench, because given by a statute subsequent to the statute of Gloucester. Cre. Eliz. 95: Lom. 316.

This Court is likewise a Court of Appeal, into which may be removed, by writ of error, all determinations of the Court of Common Pleas, and of all inferior Courts of record in England; and to which a writ of error also lay from the Court of King's Bench in Ireland, previous to the fact. 23 Geo. 3. c. 28. See this Dictionary, title Ireland. Yet even this, so high and honorable, Court is not the dernier resort of the Subject: for if he be not satisfied with any determination here, he may move it, by writ of error, into the House of Lords, or Court of Exchequer Chamber, and the case may happen, according to the nature of the suit, and the manner in which it has been prosecuted. See 3 Comn. c. 4.

To this Court it regularly belongs to examine errors of all Judges and Justices in their judgments and proceedings; the Court of Exchequer excepted. F. N. B. 20, 21. It hath been h.h. that a writ of error lies in B. R. of an attainder before the Lord High Steward, 1 Sid. 208. And upon judgment given in the Chancery, (i.e. in the petty bag side,) as well as other Courts, writ of error in many cases will be returnable in the Court of King's Bench. But on proceedings in B. R. by original writ, error lies not, but to the parliament. The Court of B. R. being the highest Court of common law, hath power to reform inferior Courts, reverse erroneous judgments given therein, and punish the magistrates and officers for corruption, &c. 2 Hawk. P. C. c. 3. § 10.

The Court of King's Bench, as it is the highest Court of common law, hath not only power to reverse erroneous judgments for such errors as appear the defect of the understanding; but also to punish all inferior magistrates and all officers of justice, for wilful and corrupt abuse of their authority against the obvious principles of natural justice; the influences of which are so numerous, and so various in their kinds, that it seems needless to attempt to infer them. 2 Hawk. P. C. c. 3. § 10: Vangl. 157: 1 Suid. 201.

This Court grants writs of Habeas Corpus to relieve persons wrongfully imprisoned; and may bail any person whatsoever. See titles Bail; Habeas Corpus. Writs of Mandamus are granted by this Court, to restore officers in corporations, colleges, &c. unjustly turned out; and freemen wrongfully disfranchised: also writs and informations in the nature of quo warranto against persons, or corporations, usurping franchises and liberties against the King; and on motion of privilages to seise the liberties, &c. In this Court also the King's letters patent may be repealed by jure factus, &c. Prohibitions are also issued from this Court to keep inferior Courts within their proper jurisdiction. See all these several titles in this Dictionary.

This Court in ancient times was, (as already observed,) ordinarily exercised only in criminal matters, and pleas of the Crown; leaving private contracts and civil actions to the Common Pleas, and other Courts. 4 I. 70.

IV. The officers on the Crown-side are; the King's Coroner and Attorney, commonly called the Clerk of the Crown, or Master of the Crown-office, who taxes costs, nominates all special juries on the Crown-side, takes recognizances, enquiries upon the death of any prisoner dying in the King's Bench prison, &c.—The Secretary, who draws up the paper books, and makes up an account of all fines, &c. forfeited to the Crown. The Clerk of the Rules; the Examiner; and Calendar-keeper; Clerks in Court.

The officers on the Plea-side are, the Chief Clerks; the Secretary or Master; their Deputy, Marshal, Clerk of the Rules, Clerk of the Papers, Clerk of the Day-rules, Clerk of the Dockets, Clerk of the Declarations, Clerk of the Bail, Poets, and Escheats, Signer of Writs, Signer of the Bills of Middlesex, Gaffar Brevium, Clerk of the Upper Treasury, Clerk of the Outer Treasury, Filacer, Enecynt, and Clerk of the Outlawries, Clerk of the Errors, Deputy Marshal, Marshal, and Associate to the Chief Justice, Train-bearer, Clerk of the Nisi Prius in London and Middlesex, Clerk of the Nisi Prius to the different counties appointed by the Gaffar Brevium, Crier at Nisi Prius in London and Middlesex, Receiver General of the Seal Office, Criers, Uffices, Tippetts.

The Secretary or Master commonly attends the writing of the Court, to receive matters referred to him by the Judges, to be examined and reported to the Court; he signs all judgments, and taxes costs, &c. And he also informs the Court in point of practice. The Deputy of him and of the Chief Clerks has the custody of the stamp, for signing all writs, &c. and keeps remembrances of
KING'S-BENCH.

all records; writs returned are filed in his office, and common bails, &c. The Caufa Brevarum files originals, and other writs wherein proceedings are had to outlawry, examines and seals all records of Nifi Prius for trials at the assizes, and has several Clerks under him for making up records throughout England. The Clerk of the Papers makes up the paper books of all special pleadings and demurrers, which the plaintiff's attorney commonly speaks for, and afterwards gives a rule for the defendant's attorney to bring to him again to be entered, &c. The Clerk of the Declarations files all declarations, and continues them on the back from the term of declaring till issue is joined. The Signer and Sealer of bills keeps a book of entry of the names of the plaintiffs and the defendants in all such writs and processes; and the defendants enter their appearances with him. The Clerk of the Rules takes notice of all rules and orders made in Court, and afterwards draws them up and enters them in a book at large, and attends the Court to take minutes thereof; with him also are given all rules of court on a cepo corporis, habatus corpus, writs of inquiry, &c. and he files all affidavits used in Court, and makes copies of them. The Clerk of the Errors allows all writs of error, and makes supersedes thereupon into any county, and transcribes and certifies records. The Clerk of the Bills and Petitions files the ball pies, and makes the Petitions, &c. The Fac-similes of counties make the meane process after the original, in failing to the outlawry; and have the benefit of all process and entries, therupon. The Master, chamberlain always attends the Court, to receive into his custody such prisoners as shall be committed. The Cryer makes proclamations of summons and adjoining the Court, calls nonsuits, and swears jurymen, &c.

The style of the Court is, "Pleas before our Lord the King at Westminster, of the Term of Saint Michael, in the thirtieth-year of the reign of our Soveraign Lord George the Third, by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, and in the Year of our Lord 1791."

In this Court there are two ways of proceeding; viz. by Original Writ, or by Bill. The former is generally used in case the debt is large, because, if he means to delay execution of the judgment, must bring his writ of error returnable in Parliament, which greatly enhances the expense; but the latter is more expeditious. See this Dictionary, titles Error; Bill.

If the party is privileged as an attorney or other person entitled to privilege, this Court holds plea on a writ of privilege which is the first process issued against the defendant to compel him to appear and make his defence. If attorneys, officers, or ministers of this Court are sued by persons not entitled to privilege, they must be sued by bill, which expresses either the grievance or wrong which the Plaintiff hath suffered by the Defendant, or some faults by him committed against some law or statute of the realm. See titles Attorney; Privilege.

Also a Peer (Coup. 154) Knight, Citizen, or Burgess, or other person entitled to privilege of Parliament may be sued in this Court by original writ, or by original bill, in manner as directed by Plat. 12 & 13 W. 3, c. 3, upon which a bill of summons and disaffinments may issue to compel his appearance. But no writ of summons will lie against a person, not entitled to privilege, on a bill filed against him in this Court; though many have attempted that mode of proceeding, which has been set aside with coats. Imp. 9, K. B.

It has been held, that action upon the statute of Wiser of, of robbery, does not lie by original in the Court of B. R. because it is a common plea; but it has been adjudged otherwise, and allowed on bill. 2 Dear. Abr. 279, 282.

An appeal in B. R. must be arraigned on the Pleas; except it come in by certiorari, when it is said ought to be arraigned on the Crown-pleas. 2 How. P.C. 28. § 44. Where the Court of B. R. proceeds on an offence committed in the same county wherein it sits, the process may be made returnable immediately; but when it proceeds on an offence removed by certiorari from another county, there must be fifteen days between the tinge and return of every process, &c. 9 Rep. 118.

KINGELD (rather King-geld,) Exchequer, or royal aid. As in a charter of King Henry II. to the abbots and monks of Minster. Mon. Angl. i. 360.

KING'S HOUSEHOLD, or Civil Life. See title King V.

KING'S PALACE. The limits of the King's Palace at Westminster, extend from Clearing Croft to Westminster Hall, and shall have such privileges as the ancient palaces. Stat. 28 Hen. 8. c. 12. If any person shall strike another in the King's Palace, he shall have his right hand cut off, be imprisoned during life, and also be fined. Stat. 33 H. 8. c. 12. See titles Palaces; Striking. KING'S PREROGATIVE. See title King V. &c. KING'S SILVER. The money which is paid to the King in the Court of Common Pleas, for a licence granted to a man to levy a fine of lands, tenements, or heridiments to another person; and this must be compounded according to the value of the land, in the alienation office, before the fine will pass. 2 Lev. 517. 6 Rep. 39, 47. See title Fines of Land.

KING'S SWAN-HERD. See Swan-herd.

KINTAL. See Quadrant.

KINTLIDGE. A term used among merchants and sea-faring persons, for a ship's ballast. Mrch. Dict.

KIPE, from Sax. Cypp. A barker or engine made of oars, broad at one end, and narrower by degrees, used in Oxfordshire and other parts of England for the taking of fish, and fishing with these engines is called Kipping. This manner of fishing with bullocks of the same kind and shape, is practised by the barbarous inhabitants of Cydon in the East Indies, as appears in the relation and figure of it given by Mr. Anson in his travels, p. 28.

KIPPER-TIME. No salmon shall be taken between Croomeford and Henley upon Thames in Kipper-time, which is between the invention of the Croft (3 May) and the Epiphany. Ret. Parl. 50 Edw. 3. i. 500. See title Fish.

KIRBY'S QUEST, An ancient record relating with the Remembrance of the Exchequer; so called, from its being the inquest of Jobe de Kirby, treasurer to King Edw. 1.

KIRK-MOTE. See Chichesteian.

KNAVE. An old Saxon word, which had at first a sense of simplicity and innocence, for it signified a boy; Sax. cymia; whence a Knaive-child, i.e. a boy, as distinguished from a girl, in several old writers: a Knave-child between them two they gate." Gower, Poem, p. 52, 106, and Wicksfie, in his old translation: Exod. i. 16; Hist.
be a Knave-child, i.e. a son or male child. After, it was taken for a servent boy, and at length for any servent man: also it was applied to a minurer or officer that bore the weapon or shield of his superior, as field-knights, whom the Ladies call arming, and the French savages. See the old statute 14 Ed. 3. c. 3. And it was sometimes, of old, made use of as a titular addition; as Jeanneaux C. filius Williami C. de Derby, Knave, &c. 22 H. 7. 36. In the vision of Piers Plowman, 'Cokes and her Knave cryden hewas, he was, i.e. Cokes and their boys, or scullions. Gowell.—The present use of the word to denote a false, deceitful, or deceitful fellow, has arisen by long perversion.

KNIGHTS, Sax. Gyts, Lat. Miles; and equi cavalier, from the gilt purs he usually wore, and thence called anciently Knights of the purs; the Italian term them Cavallieri; the French Chevaliers; the German Ritter; the Spanish Cavalleros, &c.

Blackstone remarks, that it is observable that almost all nations call their Knights by some appellation derived from an horse. 1 Comm. 404. Christian in his Note on this place adds, that it does not appear the Eng-lish word Knight has any reference to a horse; for Knight, or Chevalier, in the Saxon, signified pure, Sweorn, an attendant. See edin. v. vv. Knight; Miles. There is now commonly a difference where it is taken in that sense, and that is Knight of a flower, who properly serves in parliament for such a country; but in all other instances it signifies one who bears arms, who, in his virtue and martial prowess, is by the King, or one having his authority, exalted above the rank of gentleman, to a higher degree of dignity. The manner of making them, Cæ- means in his Britannia, thus shortly expressed: Nofiris were temporibus, qui equitum dignitatem fidei, ferioris generis levitae, pro amore peregrinati, principis his circuitus Gal-lici affigunt; fuas vel soli Chevalier au nom de Dei, i.e. Surco aut eis equus in nomine Dei. This is meant of Knights bachelors, which is the lowest, but most ancient degree of knighthood with us. As to the privilege belonging to a Knight, see in Frew’s Glory of Generosity, p. 119.

Of Knights there are two sorts, one spiritual, so called by divines in regard of their spiritual warfare, the other temporal. Confinatus de Cleria Mundo, par. 9. conscrip. 2. See Blackstone’s Titles of Honour, fol. 770. Chief Justice Popham affirmed, he had seen a commis-sion granted to a Bishop, to Knight all the persons in his diocese. Codd. 398.

Of the several orders, both of spiritual and temporal Knights, see Mr. Ahnale’s Infl. of the Knights of the Garter.

He who served the King in any civil or military office or dignity, was formerly called miles; it is often mentioned in the old charters of the Anglo-Saxons, which are furthered by several of the nobility, viz. after Bishops, dukes, and earls, par. A. B. miles, where miles signifies some officer of the Courts, as minister was an officer to men of quality. Thus we read in Ingelphus, De domo F. quondam Militis Kenni Regis, fol. 860.

Afterwards the word was restrained to him who served only upon some military expedition; or rather to him who by reason of his tenure was bound to serve in the wars; and in this sense the word miles was taken pro vest-salvo. Thus in the laws of William the Conqueror: Nadibus et jure deorte, emitas fax ab eo miles a Domine recipiat. And he who by his office or tenure was bound to perform any military service, was furnished by the chief lord with arms, and to adaptamur in militem, which the French call ad创投, and we to dub such a person a Knight. But before they went into the service, it was usual to go into a bath and walk themselves, and afterwards were girt with a girdle; wherein bathing was constantly observed, especially at the inauguration of our Kings, when those Knights were made, who for that reason were called Knights of the Bath, Couwell.

They were, says Blackstone, called miles, because they formed a part of the royal army, in virtue of their feudal tenures; (see title Temes III. 23) one condition of which was, that every one who held a Knight’s fee immediately under the Crown, (which in Edw. II. its time amounted to 20s. per annum. Stat. de miles, 1 Ed. 2.) was obliged to be knighted, and attend the King in his wars, or fine for his non-compliance. The execution of this prerogative, as an expedient to raise money in the reign of Charles I., gave great offence; though then warranted by law, and the recent example of Queen Elizabeth. It was therefore abolished by Stat. 16 Car. 1. e. 20. Considerable fees used to accrue to the King on the performance of the ceremony. Ed. VI. and Queen Elizabeth, 2. R. 3. 2. 11. Commissioners to compound with the persons who had lands to the amount of 40l. a year, and who declined the honour and expense of knighthood. See 1 Comm. 404.; and also 2 Comm. 62, 9: 1 Inst. 69, b: 2 Inst. 593. and the Notes on 1 Inst.

KNIGHTS BACHELORS, from Ban Chevalier, an inferior Knight. 1 Comm. 404, in n.] The most ancient, though the lowest order of knighthood amongst us; for we have an instance of King Alfred’s conferring this order on his son Ethelflaun, Wil. Malinc, lib. 2: 1 Comm. 404. See Knights of the Chamber.

KNIGHTS BANERET, Milites Fidivarii.] Knights made only in the time of war; and though knighthood is commonly given for some personal merit, which therefore dies with the person, yet John Conspalde, for his valiant service performed against the Scots, had the honour of Baneret conferred on him and his heirs for ever, by patent; 29 Ed. 3. See this Dictionary, title Banerets. These Knights rank in general next after Knights of the Garter. By Stat. 8 Ed. R. 3. 3. 11. they are ranked next after Barons; and their precedence before the younger sons of Viscounts, was confirmed by order of King James I. in the 10th year of his reign. But in order to be entitled to this rank, they must be created by the King in person in the field, under the royal banners in time of open war, else they rank after Barons. 1 Comm. 407.

KNIGHTS OF THE BATH, Milites Balani.] Have their name from their bathing the night before their creation. See Knight. This order of Knights was introduced by King Hen. IV. and revived by King George I. in the year 1725; who erected the same into a regular military order for ever, by the name and title of The Order of the Bath, to consist of thirty-seven Knights, besides the Sovereign. See the antiquity and ceremony of their creation in Dogeale’s Antiquities of Wavrookshire, fol. 534, 532. They have each three honorary Esquires; and they now wear a red ribbon across
across their shoulders; have a prelate of the order, (the Bishop of Salisbury) several heralds, and other officers. See 1 Comm. 404.

KNIGHTS OF THE CHAMBER, Militia Camera.] Seem to be such Knights Bachelor as are made in time of peace, because knifed in the King's chamber, and not in the field; they are mentioned in Raw. Parl. 13 Ed. 3. 29 E. 3. p. 1. m. 39; 2 Inf. 666.

KNIGHTS OF THE GARTER, Equites Gartaei; with per fixtures, otherwise called Knights of the Order of St. George.] An order of Knights, founded by King Edw. III. A. D. 1344, who, after he had obtained many notable victories, for furnishing this honourable order, made choice in his own real, and all Europe, of twenty-five the most excellent and renowned persons for virtue and honour, and ordained himself and his successors Kings of England, to be the Sovereign thereof, and to be to fellows and brethren, believing this dignity on them, and giving them a blue garter, decked with gold, pearl, and precious stones, and a buckle of gold, to wear daily upon the left leg only; a kirtle, crown, cloak, chapron, a collar, and other magnificent apparel, both of stuff and fashion exquisite and heretofore, to wear at high feasts, as to high and princely an order was meet. See Smith's Rep. Aug. lbd. 1. c. 20. And, according to Camden and others, this order was instituted upon King Edw. III. having great success in a battle, wherein the King's garter was used for a token. See Selden's Titl. of Hon. 2. 5. 41.

But Polydore Virgil gives it another original, and says, that the King in the height of his glory, the Kings of France and Scotland being both prisoners in the Tower of London at one time, first erected this order, anno 1350, (see infra) from the Countess of Salisbury's dropping her garter, in a dance before his Majesty, which the King taking up, and faying some of his nobles failed, he said, "Haud fecit qui mal i popel; interpreted, 'Evil (or shame) be to him that evil thinketh'; which has ever since been the motto of the garter; declaring such venation should be done to that folk tie, that the best of them should be proud of enjoying their honours that way.

Camden in his Britannia saith, that this order of Knights received great ornament from King Edw. IV. and King Charles I. as an addition to their splendour, ordered all the Knights companions to wear on their upper garment, the cross inclosed with the garter and motto. The honourableness of this order is a college or corporation, having a Great Seal, &c.

The site of the college is the royal castle of Windsor, with the chapel of St. George, and the chapter-house in the castle, for their solemnity on St. George's day, and at their feasts and installations.

Besides the King their Sovereign, and twenty-five companions, Knights of the Garter, (and also an increase in number of each of the King's sons as shall be admitted to this honour,) they have a Dean and Canons, &c., and twenty-six poor Knights, that have no other subsistence but the allowance of this house, which is given them in respect of their daily prayer to the honour of God and St. George; and these are vulgarly called Poor Knights of Windsor.

There are also certain officers belonging to the order; as Prelate of the Garter, which office is inherent to the Bishop of Winchester, for the time being; the Chancellor of the Garter, the Bishop of Salisbury; Register, always Dean of Winchflor, the principal King at Arms, called Garter, to manage and marshal their solemnities, and the Usher of the Garter, being likewise Usher of the Black Rod.

A Knight of the Garter wears daily abroad, a blue garter decked with gold, pearl, and precious stones on the left leg; and in all places of assembly, upon his coat on the left side of his breast, a star of silver emboidery; and the picture of St. George enamelled upon gold, and set with diamonds, at the end of a blue ribbon that crosses the body from the left shoulder; and when drest in his robes, a mantle, collar of S. &c.

KNIGHTS OF THE ORDER OF ST. JOHN OF JERUSALEM, Militia Sancti Johannis Hierosolimitani.] Were an order of knighthood, that began about A. D. 1120, Icornues being Pope. They had their denomination from John the charitable patriarch of Alexandria, though vowed to St. John the Baptist their patron; From Glory of Gentlemen, p. 127. They had their primary abode in Jerusalem, and then in the Isle of Rhodes, until they were expelled thence by the Turks, anno 1523. Since which time, their chief feast is in the Isle of Malta, where they did great exploits against the Infidels, but especially in the year 1595. They lived after the order of friars, under the rule of St. Augustin, of whom mention is made in the pass. 25 Hen. 8. c. 2. 26 Hen. 8. c. 2. They had in England one general priory that had the government of the whole order within England and Scotland, Reg. Orig. flb. 293; and was the first prior in England, and sat in the House of Lords. But towards the end of Henry VIII's day's they in England and Ireland, being found to adhere to the Pope too much against the King, were suppressed, and their lands and goods given to the King, by Stat. 32 Hen. 8. c. 24. For the occasion and propagation of this order more especially described, see the treatise, entitled, The Book of Honour and Arms, 2d. ed. London, 18. See in this Dictionary, title Hospitallers; Templars; and the succeeding articles.

KNIGHTS OF MALTA. These Knights took their name and original from the time of their expulsion from Rhodes, anno 1523. The island of Malta was then given them by the Emperor Charles V. whence they were therefore called Knights of Malta. See the preceding article.

KNIGHT MARSHALL, Marschallus Hospitii Regis.] An officer of the King's house, having jurisdiction and cognisance of transgressions within the King's house, and verge of it; as also of contracts made within the same house, where one of the house is a party. Reg. of Wits, flb. 165. a. and 191. b. and 391. Grof. in vice Marschallis, See Constabuli; Marshall.


KNIGHTS OF THE SHIRE, Militia Comitatus.] Otherwise called Knights of parliament; two Knights or gentlemen of worth, chosen on the King's writ, in pleno comitatu, by the freeholders of every county that can dispence 40s. a year; and these, when every man that had a Knight's fee was customarily constrained to be a Knight, were obliged to be milesi gladii in uno, for so runs.
KNIGHTS.

KNIGHTS TEMPLARS, See Templars; Hospitallers; and ante, Knights of St. John, &c.

KNIGHTS OF THE THISTLE. The honourable the Scotch knighthood, the Knights thereof wear a green ribbon over their shoulders, and are otherwise honourably distinguished.

KNIGHTS OF ST. PATRICK. A new or revived order of knighthood in Ireland. These two last obtain no rank in England. See title Precedency.

KNIGHTEN-CYLD, Was a cyld in London, consisting of nineteen Knights, which King Edgar founded, giving them a portion of void ground lying without the walls of the city, now called Persehew Ward. Stow's Annals, p. 151. This in Mon. Angl. par. 2. fol. 82. a. is written existing gold.

KNIGHTS COURT, A Court Baron, or honour-courts, held twice a year under the Bishop of Hereford, at his palace there; wherein those who are lords of manors, and their tenants, holding by Knight's service of the honour of that bishopric, are suitors; which Court is mentioned in Butterfield's Surv. fol. 244. If the suitors appear not at it, he pays 2s. suit-silver for reprieve of homage. Cowell.

KNIGHTHOOD. See Knight.

KNIGHT SERVICE. See title Tenure III. 2.

KNIGHTS FEE, Feodum militare.] It is so much inheritance, as is sufficient yearly to maintain a Knight with convenient revenue; which in Henry III's days was

13l. Canad, Brit, p. 111. In the time of Edward II, 20l. See ante title Knight. Sir Thomas Smith (in his Repub. Ang. lib. 1. c. 13,) rates it at 4cl. Stow, in his Annals, p. 285, says, there were found in England, at the time of the Conqueror, 60,211 Knights' fees, according to others 60,215; whereas the religious houses, before their suppresion, were possessed of 28,015.—Ottos caracata terra facient feodum unius militis. Mon. Ang. p. 2. fol. 825. a. Of this see more in Selden's Titles of Honour, fol. 691; and Bracton, lib. 5. trad. 1. c. 2. also 1 Inq. 69, c.—A Knight's fee contained twelve plow-lands, 2 Inq. fol. 596; 560 acres. Thus Virgate terra contineat 24. actar., 4 virgate terra make an hide, and five hides make a Knight's fee, whose relief is five pounds. Cowell. Selden infuits that a Knight's fee was estimable neither by the value nor the quantity of the land, but by the services or numbers of the Knights referred. Tit. Hon. par. 2. c. 5. § 26. See ante Knight.

KNÖPA, A knob, nob, bore, or knot.

KNOW-MEN. The Lollards in England, called Hereticks, for opposing the Church of Rome before the Reformation, went commonly under the name of Knowmen, and Juat-faith-men; which title was first given them in the diocese of Lincoln, by Bishop Smith, anno 1500.

KYDDIERS, Mentioned in Stat. 13 Eliz. c. 35. See Kidder.

KYLVW, Signifies some liquid thing, and in the North it is used for a kind of liquid victuals. It is mentioned as an exaction of foresters, &c. Mon. Angl. tom. 1. p. 722.


KYTH, Kin or kindred; Cognatus.

KYTH.
LABORERS, Conspiring together concerning their work or wages, shall forfeit 10s. for the first offence, 20s. for the second, &c. And if not paid, be set on the pillory. Stat. 2 & 3 Ed. 5. c. 15. See title Conspiring. — Justices of peace and rewards of leets, &c. have power to hear and determine complaints relating to non-payment of Labourers' wages. Stat. 4 Ed. 4. 1. Labourers taking work by the great, and leaving the same unfinished, unless for non-payment of wages, or where they are employed in the King's service, &c. are to suffer one month's imprisonment, and forfeit 5l. The wages of Labourers are to be yearly assessed for every county by the Sheriff, and Justices of the Peace, and in corporations by the head officers, under penalties. Stat. 5 Eliz. c. 4. And the Sheriff is to cause the rates and assessments of wages to be proclaimed. 1 Stat. 1. c. 6.

All persons fit for labour, shall be compelled to serve by the day in the time of hay or corn harvest; and Labourers in the harvest time may go to other counties, having testimonials. From the middle of March to the middle of September, Labourers are to work from five o'clock in the morning till seven or eight at night, being allowed two hours for breakfast and dinner, and half an hour for sleeping the three hot months; and all the rest of the year from twilight to twilight, except an hour and a half for breakfast and dinner, on pain of forfeiting 1d. for every hour absent. If any Labourer shall make an assault upon his master, he shall suffer and be punished as a servant making such assault. See 1 Stat. 5 Eliz. c. 4.

By Stat. 12 Geo. 1. c. 34; 22 Geo. 2. c. 27, All contracts of journeymen employed in any woollen, linen, silk, leather, or iron, &c. manufactures for raising wages, lessening the hours of work, &c. are illegal, and the offenders shall be sent to the House of Correction for three months. The wages &c. of journeymen tailors are by Stat. 8 Geo. 3. c. 17, to be regulated and settled at the Quarter Sessions in London.

Juries of peace may hear and determine disputes concerning the wages of servants and labourers, not exceeding 10l. Stat. 20 Geo. 2. c. 19. — Extended to the dinners in the manories, by Stat. 27 Geo. 2. c. 6. — Juries may punish servants on complaint of the masters, Stat. 20 Geo. 2. c. 19. 58. — The Stat. 20 Geo. 2. c. 19, shall extend to all servants employed in husbandry, though hired for less than a year, 31 Geo. 2. c. 11. 6. 3.

By Stat. 6 Geo. 3. c. 25, artificers, labourers, and other persons abjuring themselves from the service of their employers, before the expiration of the term contracted for, shall be punished by imprisonment for not less than one month, nor more than three. See further, titles Manufacturers; Poor; Servants; Apprentices.

LACE. See titles Manufacturers; Hawkers, &c.; Navigation Acts.

LACERTA, A fathom. Dunsday.

LACHES, from the Fr. lascber, i.e. laxare; or lascis, ignarus. Slackness or negligence; as it appears in Littleton, where Laches of entry means a neglect in the heir to enter. And probably it may be an old English word; for when we say there is Laches of entry; it is all one as if it were there is a Lack of entry, and in this signification it is used. Lit. 136. No Laches shall be adjudged in the heir within age; and regularly, Laches shall not bar either infants or sot courts, in respect of entry or claim, to avoid deficits; but Laches shall be accounted in them, for non-performance of a condition annexed to the estate of the land. Co. Lit. 146. See titles Infant; Heir, &c.

LACTA, A defect in the weight of money; whence is derived the word Lack. Du Frene.

LADA, Hath divers significations; 1st, from the Saxon Latihan, to convene or assemble, it is taken for a Lath, or inferior court of justice. See title Lath; Tributing-reve. — 2dly, It is used for purgation by trial, from ladan; and hence the lada simplex, and lada triplex or lada plena, among the Saxons, mentioned in the laws of King Ethelred and K. Henry 1. — 3dly, Lada is applied to a lade or course of water; Camden uses water-lade or water-course; and Seldam says, that Lada is a canal to carry water from wet grounds; sometimes Lada signifies a broad way. See Stat. 12 Geo. 1. c. 34; 22 Geo. 2. c. 27, All contracts of journeymen employed in any woollen, linen, silk, leather, or iron, &c. manufactures for raising wages, lessening the hours of work, &c. are illegal, and the offenders shall be sent to the House of Correction for three months. The wages &c. of journeymen tailors are by Stat. 8 Geo. 3. c. 17, to be regulated and settled at the Quarter Sessions in London.

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LESŒ MAJESTATIS, CRIMEN. The crime of high treason. So denominated by Clarendon, 1. c. 2. See Treason.

LÆSONE FIDEI, Suits pro. The clergy, so early as the reign of King Stephen, attempted to turn their ecclesiastical courts into courts of equity, by entertaining suits pro iure fidei, as a spiritual offence against conscience, in case of non-payment of debts, or any breach of civil contracts. But they were checked by the constitutions of Clarendon, 10 Hen. 2. c. 15. See this Dict. title Courts Ecclesiastical.

LÆTARE JERUSALEM. See Quadragesimae.

LAFORDSWICK, Sax. bladford, i.e. domus, and fide, probatio, s ubstitutus est dominum. A betraying one's lord or master. This word is found in King Canute's laws, c. 61. And in the laws of King Hen. 1. Leg. 1. c. 13.

LAGA, (Lex) The Law. Magna Charta. Hence we deduce Saxon-lage, Mercen-lage, Dane-lage, &c.

LAGAN, Goods sunk in the sea, from Saxon lagan embar. When mariners in danger of shipwreck cast goods over the ship, and because it is frequently used in Domesday, and the laws of Edward the Confessor, &c. 38. Sir Edw. Coke says, A Lageman was he who had faciam & faciam super hominum, i.e. a jurisdiction over their persons and estates, by which opinion were Somer & Lambard, and that it signifies the Thanes, called afterwards Barons, who as judges to determine rights in courts of justice. In factum conclus, Decimononcal Wallack, c. 3, it is said, Let twelve Laghmen, which Lambard renders Men of Law, viz. six English and six Welsh, do right and justice, &c. Blunts.

LAGEN, latima, Pleas, lib. 2. cap. 8, 9. In ancient times it was a measure of six feet. Hence perhaps our Hogsden. The lieutenant of the Tower has the privilege to take, except lagena visum, use natales & rete, of all wine ships that come up to the Thames. Sir Peter Ledgester, in his Antiquity of Chichester, interprets lagena visum, a bottle of wine.

LAGHDAY, or Lad day. See Lagdedyam, Low day: Laghman, fce Lageman.

LAGHSLITE, LAGHSLITE, LAHSLITE. Sax. leg, lex & flite, captio.] A breaking or transferring of the law; and sometimes the punishment inflicted for so doing. Leg. H. c. 13.

LAGON. See Lagon, and 3 Co. 106.

LAIA, A broad way in a wood; the same with lade, which see Mon. Ang. torn. 1. pag. 485.
LAND-TAX.  

In London, if a tenant commit felony, &c. whereby his goods and chattels become forfeit, the Landlord shall be paid his rent for two years, before all other debts except to the King, out of the goods found in the house.  Priv. Lnd. 75. See title London.

LANDLORD and TENANT. For the law chiefly relating to, see titles Diversities; Lease; Rent; Replication, ejectment, &c.

LAND-MAN. Terricella, the terre-tenant.

LAND-TAX. A tax imposed on land, (and personal property,) by statutes annually paid for that purpose. This and the malt-tax are considered as annual taxes imposed on the Subject; the other taxes are periodic. The assessment or valuation of estates hereafter mentioned, made in the year 1692, though by no means a perfect one, had this effect, that a supply of half a million sterling was equal to 1. in the pound of the value of the estates given in. And according to this valuation, from the year 1693 to the present, the land-tax has continued an annual charge upon the Subject, above half the time at 4l. in the pound; sometimes at 3l.; sometimes at 2l.; twice at 1l. (A.D. 1732 and 3) but without any total intermission.

The method of raising it (shortly stated) is by charging a particular sum upon each county, according to the valuation in 1692; and this sum is ascertained and raised upon individuals (their personal estates as well as real being liable thereto) by commissioners appointed in the act, being the principal landholders in the county, and their officers.

The commissioners are appointed annually in the renewed act, but they cannot execute the office in any county, excepting Wales, under a penalty of $6. unless they have some estate or interest in land within the county, of the clear yearly value of 100l., and which was taxed for that sum at least the year before. See the statutes 5 Geo. 3. c. 21; 28 Geo. 3. c. 2. § 49.-The affiliates and collectors are principal inhabitants appointed by the commissioners. 1 Com. c. 8.

The colleges in the two Universities, as also at Wind- for, Eton, Winchester, and Wembton, are exempted from the land-tax in respect to the estate of their colleges, and the salaries of the Masters, Fellows, &c. and also the lands annexed to them and other hospitals before 1693, not leased to under-tenants. The statute 32 Geo. 3. c. 5. also exempted superannuated tea-officers and their widows.

Clerks appointed under the Land-tax Acts receive their allowance under an annual warrant, and their appointment is at least for a year. 1 Term. Rep. 147.

For the particular provisions of the Land-tax Acts, see Burton’s Statutes; and for the origin of the Land-tax, this Dict. title Taxes. What follows may not be unacceptable in this place.

The ancient method of taxation was by tallage, which was on land held by bright service, and by tallage on the cities and boroughs, and it was made in this manner: When the King wasted money for his wars, those tenants that did not attend him in person, paid him an aid, and the aid was ascertained before the Justices itinerant. It was generally a gift of all the inhabitants as a body corporate; if they did not give according to the wants of the Crown, the Justices enquired into their behaviour, and if there were any forfeitures of their charters, quo warrantos.
of the civil war, the Long Parliament would not settle any persons to appoint commissioners, but the appointment of commissioners was made in the act itself. And in this new manner of taxing, they appointed the sum to be levied on each particular county, in the act itself, as well as the commissioners' names, and where to levy it; and the six associated counties, viz. London, Middlesex, Kent, Suffolck, Surry, and Hertford, being not spoiled and pillaged in the civil wars, and more hearty to the Parliament interest, were taxed higher than any other counties in England. Gibb. 194, 195, 196.

After the Revolution, to support King William in his wars with France, it was necessary to come into a land-tax; and from 1684 to 1693, the tax was made by a pound-rate, like the former subsidies; but when the people found that the war was like to hold, about 1693, the tax was mightily lessened, every body being willing to cale his neighbour; and then they came to lay a rate upon every county, and the associating counties, being very zealous for the government in the Revolution, and having taxed themselves higher than their neighbours in 1693, it was argued that those counties were better able to bear the tax, and therefore, in 1693, they laid the disproportioned sums, that are now the standard of the land-tax. Ibid.

On comparing the subsidy law, 4 Car. 1, with the present land-tax, and considering the manner of gathering them, the following observations arise:—In the old time, according to the way of making war then used, the tenants per baroniam, and by knight-service, were obliged to be in the camp 40 days, at their own expense, and the efcuage was levied upon the defaulters; but when the art of war improved, and armies were brought into the field that continued a long time, they made the taxation by way of subsidy; which was so much in the pound upon the personal and real estate; and where there were different times of taxation and collecting, they were called to so many different subsidies; and the Spiritually gave their tax in convocation, and the Temporality in Parliament; but the convocation-tax always passed both houses of Parliament, since it could not bind as a law till it had the consent of the legislature. Their tax was made according to the rate in the King's books, and since a tenth was paid yearly to the Crown, they therefore only taxed the other nine parts as they found in these books. The Temporality and Spiritually were taxed in the same manner as to their personal estate; but as to their real estate, what was given in convocation exceeded their tax upon their spiritualities. The commissioners for executing the act were appointed by the Lord Chancellor, Lord Treasurer, or other great officers of the Crown, or any two of them, the Lord Chancellor being one. Gibb. 197, 198.

The present land-tax, though it follows the plan of the subsidies, viz. in taxing so much on the personal, and so much on the real estate, yet it differs in two material circumstances, viz. that there is a tax imposed on each particular county, and that the commissioners are named in the act itself; this came in, in the time of the civil war, in this manner; they at first taxed according to the pound-rate, but when the zeal of the people fell off, they found it necessary to set a sum upon each particular county; so that they taxed them according to the highest sum that had been levied in such county, and obliged
Land-tax.

The commissioners by the subsidy, were duly to execute that act; but by the land-tax they were directed in a particular manner how they should do it: that is to say, by making the distribution of the particular sum upon each particular hundred, lathe and wapentake; but by both laws, they were to subdivide themselves, and the respective commissioners were not to act out of their division.

The commissioners by the land-tax acts are to give a note to the receiver-general, of the names of the acting commissioners, and sums in each division. We do not find this clause in the old subsidy law, because it was not necessary, where there was not a particular sum imposed on each county. Ibid.

The commissioners, both in the subsidy and land-tax, were to give their precepts to the county and other officers, and to appoint assessors; and by both laws, the commissioners are to give them in charge, to mark a just assessment, and to return such assessments to the commissioners, who by the land-tax were to return the names of collectors. And by both laws, the persons aggrieved might appeal from the assessors to the commissioners; and also flock upon land is excused from paying as personal estate. Gilb. 199, 200.

By the subsidy law, the commissioners appointed collectors; but by the land-tax, the assessors brought in the names of the collectors; because the place was answerable for the sums so assessed, until they were paid in to the receiver-general, and therefore it was necessary that the assessors should appoint collectors; but by the subsidy law, there was no particular sum locally fixed; and therefore the collectors were appointed by the commissioners, who acted in behalf of the crown; and the commissioners names were returned in, by both laws, to the receiver-general or high collector; and this disposition was that the receiver might know in whose hands the money was. In the subsidy, the commissioners appointed the high collectors in each shire and division, to whom the sub collectors were accountable, and the high collectors were accountants to the Exchequer; and one duplicate of the assessment was given to the high collector, and the other returned into the Exchequer, to be a charge upon the high collector's receipt; but according to the terms of the land-tax, the receiver is now appointed by the Lord Treasurer; and by this law a duplicate of each particular division is to be given to the receiver-general, and another to be returned into the Exchequer; the duplicate returned to the receiver, to charge the collectors, and that returned into the Exchequer, to charge the receiver-general. Ibid. 200, 201.

The high collectors by the subsidy law, gave security to the commissioners by recognizance, to deliver the money by them received; but now the receiver-general, by the constitution of the Treasury, gives security to the Crown. In the subsidy law and land-tax, the under-collector was to direct the parties refusing to pay the sum assessed: and by the subsidy law, the under-collectors paid in the money collected to the high collector, who

Lap.

was an accountant at the Exchequer; but by the land-tax, the collectors were to pay in the money to the receiver, and he is the accountant at the Exchequer. If the collectors did not pay in the money they had collected to the receivers, the commissioners were to imprison them, and seize their effects; but if the proportion was not answered, the place itself was answerable, by a re-assignment of the commissioners. By both laws, the collectors had precepts and assignments delivered; and, under such precepts, had authority to distrain the lands and goods of the persons so assessed, by virtue of the act. By both laws the parties were to be taxed for goods, in the place where they dwelt. By both laws the diffrs was to be fold, and the overplus paid to the owner; by the subsidy law, in eight days; by the land-tax, in four days: and for neglect or refusal to pay, and failure of discharges, the party so to be imprisoned. By the subsidy law, all the commissioners join in one certificate; but now the commissioners return their estates, which in each division are a charge upon the receiver-general; but in the land-tax, if a non-payment in any place be certified by the receiver under his hand, Exchequer-proceeds is to file against the acting commissioners. By the land-tax, if land doubly taxed comes into protestant hands, and they get a certificate from the commissioners, and prove the truth of the certificate before the barons, by two credible witnesses, the Court of Exchequer is empowered to discharge such sum from the parish or township in which the land lies, and that discharge is carried to the House of Commons, in order to be discharged out of the general sum the next year. Ibid. 203, 204.

Land-tenant. He that possesses land let, or hath it in his manual occupation. 14 Ed. 3. bat. 1. c. 2. See Tenement.

Languarri, Lords of manors; the word is thus interpreted by Sir Edward Coke. 1 Inst. 5. They are mentioned in Domains.

Langemarn, An under garment made of wool, formerly worn by the monks, which reached down to their knees; so called because lanea st. Mem. angl. tow. 1. p. 410.

Lanis de crescentia Walliae traducendis absque custuma, &c. An ancient writ that lay to the Collector of a port, to permit one to pass wool without paying custom, he having paid it before in Wales. Rigs, orig. 279.


Lapis Marmorius, A marble stone about twelve feet long and three feet broad, placed at the upper end of Westminster hall, where was likewise a marble chair erected on the middle thereof, in which our Kings anciently sat at their coronation dinner, and at other times the Lord Chancellor. Over this marble table are now erected the Courts of Chancery and King's Bench. Orig. juridical.

Lapis Pacis, The same with Credito pacis. Du Fretour.

[Lapse. Lat. f. A slip or omission of a Patron to present to a church, within six months after it becomes void. See title, Advocation II.

Lapsed Legacy. See title Legacy.

Larceny.
Larceny.

Fr. Larcin ; Lat, Latrocinium.] A Theft or Felony of another's goods, in his absence: it is usually divided into Grand Larceny, and Petty Larceny.

Grand Larceny is a felonious taking and carrying away the personal goods of another, above the value of 12d., not from the person, or by night, in the house of the owner.

Petit Larceny is when the goods stolen do not exceed the value of 12d. It agrees with grand larceny in all things except only the value of goods; so that wherever any offence would be grand larceny, if the thing stolen was above 12d. value, it is petit larceny, if the thing stolen is under that value, or under. H. P. C. 60, 69.

Blackstone, with more immediate reference to its derivation, Latrocinium, always spells the term thus, Larceny; and distinguishes the offence into two forts; simple larceny, or plain theft, accompanied with any other atrocious circumstance; and mixed or compound larceny, which also includes in it the aggravation of a taking from the house or person. 4 Com. c. 17. As to that species of the latter which consists in an open and evident taking from the person, see this Dictionary, title Robbery.

The offence of larceny or larceny then, (for either mode of spelling may be adopted) shall be considered according to the following arrangement:


2. Of its Punishment.

II. Of mixed or compound Larceny.

1. From the House.

2. Privately from the Person.

I. 1. Simple Larceny is, "the felonious taking and carrying away the personal goods of another, above the value of 40s."

First, it must be a taking. This implies the consent of the owner to be wanting. Therefore no delivery of the goods from the owner to the offender, upon trust, can ground a larceny. As if A. lends B. a horse, and he rides away with him; or if one lends goods by a carrier, and he carries them away, these are no larcenies. 1 Hal. P. C. 504. But if the carrier opens a bale or pack of goods, or pierces a vessel of wine, and takes away part thereof, or if he carries it to the place appointed, and afterwards takes away the whole, these are larcenies; for here the animus furandi is manifest, since in the first case he had otherwise no inducement to open the goods, and in the second the trust was determined, the delivery having taken its effect. 3 Inf. 107. But bare non-delivery shall not of course be intended to arise from a felonious design; since that may happen from a variety of other accidents. Neither by the common law was it larceny in any servant to run away with the goods committed to his keeping, but only a breach of civil trust. But by statute 33 Hen. 6. c. 11, the servants of persons deceased, accused of embezzling their master's goods, may, by writ out of Chancery (sufficed by the advice of the two Chief Justices and Chief Baron, or any two of them) and proclamation made thereupon, be summoned to appear personally in the Court of King's Bench, to answer their master's executors in any civil suit for such goods, and shall on default of appearance, be attainted of felony. And by Stat. 21 Hen. 8. c. 7, if any servant embezzled his master's goods to the value of 40s. it is made felony; except in apprentices and servants under eighteen years old. See titles Apprentice; Servant. But if he had not the possession, but only the care and oversight of the goods, as the butler of plate, the shepherd of sheep, and the like, the embezzling of them is felony and larceny at common law. 1 Hal. P. C. 506; 3 Inf. 108. So if a guest robs his inn or tavern of a piece of plate, it is larceny; for he hath not the possession delivered to him, but merely the use. 1 Hawk. P. C. c. 33. § 6. And if it is declared to be by Stat. 3 & 4 W. 3, c. 9, if a lender runs away with the goods from his ready-furnished lodgings. A wife cannot be guilty with her husband upon this statute, for she is under his coercion. O. B. 1783. No. 36. Nor without her husband, if it should appear the lodgings were let to him. O. B. 1761. No. 17. Nor even if it should appear that the lodgings were let jointly to both the husband and wife; for it shall be considered the husband only. O. B. 1758. No. 105. The offender must be a lodger at the time the larceny is committed. O. B. 1785. No. 74. The indictment must also set forth the name of the person by whom the lodgings were let. O. B. 1784. No. 747. And the property stolen must be such as may reasonably be confidered the furniture of the fort of lodging taken. Leach's Hawk. P. C. 1. c. 33. § 13, in n.

If the Clerk of a Banker or Merchant has the care of money, or if he has access to it; for special and particular purposes, and is sent to the bag or drawer for money, for the purpose of paying a bill, or if he is sent for the purpose of bringing money generally out of the bag or drawer; and, at the time he brings that money, clandestinely and secretely takes out other money for his own use, he is as much guilty of a felony as if he had no permission or access to it whatever. So if a servant be sent to a library for one particular book, and he takes another, or being sent for a hat and sword, and he steals a cane; in all these cases it has been said the offenders are guilty of felony, for though the property is delivered, the possession of it remains in the true owner. O. B. 1744. p. 1295, 1304. So also where a person being left in an apartment pawns the furniture or other property under his care, with a felonious design to steal it, it is felony. O. B. 1785. p. 717; O. B. 1786; Leach's Hawk. P. C. 1. c. 33. § 6, in n.

Under some circumstances also a man may be guilty of felony in taking his own goods; as if he steals them from a pawnbroker, or any one to whom he hath delivered and entrusted them, with intent to charge such barker with the value; or if he robs his own messenger on the road, with intent to charge the bearer with the loss according to the statute of Winchester. 3 Stat. 127.

So where the owner delivers goods to a carrier, and afterwards secretly steals them from him with an intent to charge him for them, &c. because the carrier had a special property, and the possession for a time. 3 Inf. 110; Dal. 373; Pull. 126.

In further explanation of this part of the subject the following is deserving of attention:

To make the crime of larceny, there must be a felonious taking; or an intent of stealing the thing, when it comes first to the hands of the offender, at the very time of the receiving. 3 Inf. 107; Dal. 367. And if one intending to steal goods, gets possession of them by
Larceny I. i.

ejfement, replevin, or other process at law unduly obtained, by false oath, &c. it is a felonious taking. 3 Inf. 64. &c. It is a felonious taking. If a man hath possession of goods once lawfully, though he afterwards carry them away with an ill intention, it is Larceny; where a tailor, or a watchmaker steals a watch, delivered to him, to make a suit of clothes, &c., it is not felony. H. P. C. 61: 3 P. rj. 31. And if I lend a person my horse to go to a certain place, and he goes there, and then rides away with it, it is not Larceny; but merely is to be had by action for the damage; though if one comes on pretence to buy a horse, and the owner gives the stranger leave to ride him, if he rides away with the horse, it is felony; for here an intention is implied. Ward's Inf. 364, 365. In the above cases, there is a lawful possession by delivery, to extinguish the offence: but persons having the possession of goods by delivery, may in some instances be guilty of felony, by taking away part thereof; as if a carrier open a pack, and take out a part of the goods; a miller, who has corn to grind, takes out part of the name, and so ground it, &c., in which case, the possession of part, distinctly from the whole, was gained by wrong, and not delivered by the owner, &c. H. P. C. 62: S. P. C. 25. 1 Hawk. P. C. c. 33. § 3. § 5.

To constitute Larceny the property must also be taken from the possession of the owner; therefore, to steal a cake more at large which has already been repeatedly alluded to, where A. intending to go a distant journey, hires a horse fairly and bona fide for that purpose, and evidences the truth of such intention by actually proceeding on his way, and afterwards rides off with the horse, it is no theft; because the felonious design was hatched subsequent to the delivery; and the delivery, having been obtained without fraud or design, the owner parted with his possession as well as his property. O. B. 1784. p. 194; and thereby gave to A. dominion over the horse; upon which, that he would return him when the journey was performed. O. B. 1786. p. 333. § 4. But if the delivery of property be obtained by aconcerted design to steal the thing delivered, although the owner, in this case, parts with the thing itself, he still retains in law the constructive possession of it; therefore, where a man, having feloniously obtained the delivery of a bill of exchange under the fraudulent and delusive pretence of discounting it, converted it to his own use, and it appearing upon the evidence that the owner never meant to part with possession, it was held to be felony. O. B. 1784. p. 294. So also where a horse was obtained with the same design, upon pretence of trying its paces. O. B. 1779. p. 303; O. B. 1784. p. 293. § 4. So also to obtain the delivery of money, with design feloniously to take it away, under the false pretence of having found a diamond ring of great value, has been determined by nine judges to be a taking from the possession of the owner, and consequently felony. O. B. 1785. p. 160. § 4. So also to obtain the delivery of goods under the pretence of purchasing them, and then to run away with them. Repp. 276. And in general where the delivery of the property is made for a certain, special, and particular purpose, the possession is still supposed to reside, un parted with, in the first proprietor. Therefore, where a master delivers goods to his servant to carry to a customer, but instead of doing it he converts them on his way to his own use, it is a felonious taking; for the master had a right to counterfeit the delivery of them, and therefore the possession remained in him at the time of the conversion. O. B. 1772. No. 375: O. B. 1783. No. 28. So also if a watchmaker steals a watch, delivered to him to clean. O. B. 1779. No. 85. Or if one steal clothes delivered for the purpose of being washed. O. B. 1758. No. 18. Or goods in a chest delivered with a key for safe custody. O. B. 1770. No. 83. Or guineas delivered for the purpose of being changed into half guineas. O. B. 1778. No. 52. Or a watch delivered for the purpose of being pawned. O. B. 1784. No. 613. In all these instances the goods taken have been thought to remain in the possession of the proprietor, and the taking of them away held to be felony. Leach's Hardw. P. C. c. 33. § 5, in n.

If one servant delivers goods to another servant, this is a delivery by the master; yet if the master or another servant delivers a bond, or cattle to sell, and the servant goes away with the bond, and receives the money thereon due, or receives the money for the cattle sold, and goes away with the same, this is no felony or Larceny within the statute. 21 &c. 6. c. 7. Dalh. 388: H. P. C. 62: 1 Inf. 105. So if a servant receives his master's rents; for the master did not deliver the money to the servant, and it must be of things delivered to keep; and if goods delivered to the servant to keep, are under 40s. value, and he goes away with them, this is only a breach of trust, by reason of the delivery; but if the goods were not delivered to him, it is felony and Larceny to go away with or embezzele them, though under the value of 40s. &c., Dalh. 369.

A man puts a child of seven years old to take goods and bring them to him, and he carries them away; the child is not guilty by reason of his infancy, yet it is Larceny in the other. 1 Hale, P. C. 514.

If a man reduced to extreme necessity (not owing to his own thriftiness) steals virtually merely to satisfy his present hunger, and keep him from starving, by our ancient books, this is not theft nor Larceny. 1 Hawk. P. C. c. 33. § 20.

It is true a judge ought to be tender in such cases, and use much discretion and moderation. 1 Hale 655. But it seems to be an unwarranted doctrine borrowed from the notions of Civilians; at least it is now antiquated, the law of England admitting no such excuse at present; it being in the power of the Crown to pardon the offenders; and the laws therefore not lying under the necessity of being explained away, as is the case in Democracies, where no such power of pardoning exists. See 4 Comm. 31: 1 Hale 54.

Secondly, There must not only be taking, but a carrying away; except in appræntitur, was the old law Latin. A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient appropriation or carrying away. As if a man be leading another's horse out of a stable, and be apprehended in the fact; or if a gend the goods out of an inn, has removed them from his chamber down stairs, there have been adjudged sufficient carryings away to constitute a Larceny. 3 Inf. 100, 109. Or if a thief, intending to steal plate, takes it out of a chest in which it was, and lays it down upon the floor, but is surprised before he can make his escape with it, this is Larceny. 1 Hawk. P. C. c. 33. § 18.

A man
A man was detected in taking the contents of a bale of goods in a waggon. It appeared that the bale laid horizontally, and that he had set it on its end; but as it had not been removed from the foot, this was held upon a case reserved, not to be a sufficient carrying away. But where a man with a felonious intention had removed goods from the head to the tail of a waggon, it was held a sufficient removal to constitute a carrying away. O. B. 1784. p. 734. So a diamond ear-ring snatched from a lady's ear, but lodging in the curls of her hair, and not taken by the thief, was held to be a sufficient appropriation. O. B. 1784. No. 537: Lead's Harw. P. C. c. 33. § 18, in n.

Thirdly, This taking and carrying away must also be felonious; that is, done animo furandi. This requisite, besides excluding those who labour under incapacity of mind or will, indemnifies also mere trespassers, and other petty offenders. As if a servient takes his master's horse, without his knowledge and brings him home again; a neighbour takes another's plough that is left in the field, and uses it upon his own land, and then returns it; if, under colour of arrest of rent where none is due, one drags another's cattle or drives them; all these are misdemeanors and trespasses, but no felonies. 1 Hal. P. C. 509. The ordinary discovery of a felonious intent, is where the party does it clandestinely; or, being charged with the fault, denies it; but this is by no means the only criterion of criminality, for in cases that may amount to Larceny, the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to recount all those which may evidence a felonious intent, or animo furandi; wherefore they must be left to the due and attentive consideration of the Court and Jury.

Fourthly, This felonious taking and carrying away must be of the personal goods of another; for if they are things real, or favour of the realty, Larceny at the common law cannot be committed of them. Lands, tenements, and hereditaments (either corporeal or incorporeal) cannot, in their nature, be taken and carried away. And of things likewise that adhere to the freehold, as corn, grass, trees, and the like, or lead upon a house, no Larceny could be committed by the rules of the common law; but the severance of them was, and in many things is still, merely a trespass; which depended on a subtlety in the legal notions of our ancestors. These-things were parcel of the real estate, and therefore, while they continued so, could not by any possibility be the subject of thefts, being absolutely fixed and immovable. And if they were severed by violence so as to be changed into moveables, and at the same time by one and the same continued act, carried off by the pernon who severed them; they could never be said to be taken from the proprietor in this their newly acquired state of mobility, (which is essential to the nature of Larceny,) being never, as such, in the actual or constructive possession of any one but of him who committed the trespass. He could not, in torts, be said to have taken what at that time were the personal goods of another, since the very act of taking was that turned them into personal goods. But if the thief severed them at one time, whereby the trespass is completed, and they are converted into personal chattels, in the constructive possession of him on whose foil they are left or laid; and come again at another time, when they are so turned into personality, and takes them away, it is Larceny; and if it is, if the owner, or any one else, has severed them. 5 Inst. 109: 1 Hal. P. C. 510. See 8 Rep. 333: Dalh. 372.—This question is now, however, very much put at rest by the following statute. By 4 & 5 Geo. 2. c. 32, to steal or nip cut or break, with intent to steal, any lead, or iron bars, rail, gate, or palisades, fixed to a dwelling-house or out-house, or in any court or garden thereof belonging, or to any other building, is made felony, liable to transportation for seven years; to steal, damage, or deftroy underwood or hedges, and the like; to rob orchards or gardens of fruit growing therein; to steal or otherwise destroy any turnips, potatoes, cabbages, parsnips, peas, or carrots, or the roots of medlar when growing, are all punishable criminally by whipping, small fines, imprisonment, and satisfaction to the party wronged according to the nature of the offence. See Stats. 45 Eliz. c. 7: 15 Car. 2. c. 2: 21 Geo. 2. c. 35: 9 Geo. 3. c. 48: 5 Geo. 3. c. 41: 15 Geo. 3. c. 32. Moreover, the stealing by night of any trees, or of any roots, shrubs, or plants, to the value of 5l. is, by 4 & 5 Geo. 3. c. 36, made felony in the principal, aiders, and abettors, and in the purchasers thereof, knowing the fame to be stolen:—By Stats. 9 Geo. 3. c. 48: 13 Geo. 3. c. 33, the stealing any timber trees therein specified, (oak, beech, chestnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, birch, poplar, larch, maple, and hornbeam,) and of any root, shrub, or plant, by day or night, is liable to pecuniary penalties for the two first offences, and for the third is constituted a felony, liable to transportation for seven years. Stealing ore also out of mine is no Larceny, upon the principle of adherence to the freehold, with an exception only to mines of black lead; the stealing of ore out of which, or entering the same with intent to steal, is felony, punishable with imprisonment and whipping, or transportation not exceeding seven years; and to escape from such imprisonment, or return from such transportation, is felony without benefit of clergy, by Stat. 25 Geo. 2. c. 10.—Upon nearly the same principles the stealing of writings relating to a real estate is no felony, but a trespass, because they concern the land; or (according to the technical language of the law,) favour of the realty; and are considered as part of it, so that they descend to the heir, together with the land which they concern. 1 Hal. P. C. 510: Sten. 1137.

Bonds, Bills, and Notes, which concern mere choses in action, were held also at the common law not to be such goods wherein Larceny might be committed; being of no intrinsic value, and not importing any property in possession of the person from whom they are taken. 8 Rep. 33. But by 2 & 3 Geo. 2. c. 25, they are now put upon the same footing with respect to Larcenies, as the money they were meant to secure. See also the Stats. 15 Geo. 2. c. 13: 24 Geo. 2. c. 11: 5 Geo. 3. c. 25: 7 Geo. 3. c. 50; which make embezzlements by the servants of the Bank, South-Sea Company, and Post-Office, capital felonies. See these titles.

Larceny also could not at common law be committed of treasure-trove, or wrecks, walls, ettrays, &c. till seized by the King, or him who hath the franchise: for till such seizure, no one hath a determinate property therein. See Dalh. 370: 5 Inst. 208: H. P. C. 67.
Larceny I. 2.

But by 26 Geo. 2. c. 19, plundering or stealing from any ship in distress (whether wreck or no wreck) is felony without benefit of clergy.

Larceny cannot also be committed of such animals, in which there is no property either absolute or qualified, as of beasts that are free nature, and unclaimed, such as deer, hares, and conies, in a forest, chase, or warren; fish in an open river or pond; or wild fowls at their natural liberty. 1 Hal. P. C. 511. 3 Foiz. 366. But if they be reclaimed and confined, and may serve for food, it is otherwise, even at common law: for of deer so inoculated in a park that they may be taken at pleasure, fish in a trunk, and placentas or partridges in a new, Larceny may be committed. 1 Hawke. P. C. c. 33. § 26.

1 Hal. P. C. 511: And see the plat. 9 Geo. 1. c. 22, in this Dict. under the title Black-del; Hunting: as also plat. 16 Geo. 3. c. 30, under the title Deer Stealers: and plat. 5 Geo. 5. c. 44, under title Fish. Stealing Hawks in disobedience to the rules prescribed by the plat. 37 Edw. 3. c. 19, is also felony. 3 Jefh. 98. It is also said that, if swans be lawfully marked, it is felony to steal them, though at large in a public river; and that it is likewise felony to steal them, though unmarked, if in any private river or pond: otherwise it is only a trespass. Dall. Jefh. c. 156. But, of all valuable domestic animals, as horses and other beasts of draught, and of all animals domestice nature, which serve for food, as neat or other cattle, swine, poultry, and the like, and of their fruit or produce, taken from them while living, as milk or wool, Larceny may be committed. Dall. 21: Crompt. 46. 1 Hawke. P. C. 53. § 20. 1 Hal. P. C. 507. The King v. Martin by all the Judges P. 17 Geo. 3. And also of the theft of such as are either domestick or free nature, when killed. 1 Hal. P. C. 511.

As to those animals which do not serve for food, and which therefore the law holds to have no intrinsic value, as dogs of all sorts, and other creatures kept for whim and pleasure, though a man may have a heral property therein, and maintain a civil action for the loss of them, yet they are not of such estimation, as that the crime of stealing them amounts to Larceny. 1 Hal. P. C. 512. But by plat. 10 Geo. 3. c. 16, very high pecuniary penalties, or a long imprisonment and whipping in their stead, may be inflicted by two Justices of the peace, on such as deal, or knowingly harbour, a stolen dog, or have in their custody the skin of a dog that has been stolen.

Notwithstanding, however, that no Larceny can be committed unless there be some property in the thing taken, and an owner, yet, if the owner be unknown, provided there be a property, it is Larceny to steal it; and an indictment will lie for the Larceny of the goods of a person unknown. 1 Hal. P. C. 512. This is the case of stealing a throad out of a grave, which is the property of those, whoever they were, that buried the deceased; but stealing the corpse itself, which has no owner, (though a matter of great indecency,) was no felony, unless some of the grave-clothes were stolen with it. It was however punishable by indictment as a misdemeanour, even though the body were taken for the improvement of the science of anatomy; it being an act contrary to common decency, and shocking to the general sentiments and feelings of mankind. See 1 Term Rep. 733; and further this Dictionary, title Robbery.

Where a person finds the goods of another that are lost, and converts them to his own use, it is no Larceny. H. P. C. 61. But it seems that in some extraordinary cases, the law will rather feign a property, where in truth there is none, than suffer an offender to escape justice. 1 Hawke. P. C. c. 35. § 29.

It is said, that a property must be proved in somebody at the trial, or it shall be presumed in the prisoner from his plea of not guilty. 2 Hale P. C. 390; 8 Mod. 249. But in a case where one Hickman was indicted for stealing lead from Hanworth church, which was laid to be the property of the Vicar: 3dly, of the Churchwardens: 3dly, of the Inhabitants and Parishioners. The property being fixed to the freehold, it was doubted whether it could be the subject of Larceny; and if it could, whether the property relided as laid in any of the counts in the indictment. The Judges were of opinion, 1st, that "a church" is included within the general words of the act, (3 Geo. 2. c. 32,) "or any other building whatsoever." 2dly, That the act having made the offence to consist in "stealing from any dwelling house or other building," the charge in the indictment, that it was stolen from Hanworth church was alone a certain and sufficient description of the offence to support the indictment; that the residence of the property was immaterial, and that the conviction was proper upon the first count. O. B. 1735. p. 732: Leach's Hawke, P. C. 1. c. 59. App. I. § 13. 119.

2. Many learned and scrupulous men have questioned the propriety, if not lawfulness, of inflicting capital punishment for simple theft. The natural punishment for injuries to property, seems to be the loss of the offender's own property; and might be universally the case, were all men's fortunes equal. But as those who have no property themselves are generally the most ready to attack the property of others, it has been found necessary, instead of a pecuniary, to substitute a corporal punishment.

Our ancient Saxon laws nominally punished theft with death, if above the value of twelvepence; but the criminal was permitted to redeem his life by a pecuniary ransom; but in the ninth year of Henry I. this power of redemption was taken away, and all persons guilty of Larceny above the value of 12d. were directed to be hanged, which law continues in force to this day. 1 Hal. P. C. 12. § 3 Jefh. 53. For though the inferior species of theft, at present Larceny, is only punished by imprisonment or whipping at common law, 3 Jefh. 218; or, by plat. 4 Geo. 1. c. 11, may be punished with transportation for seven years, (as was also expressly directed in the case of the Plate glass Company, plat. 13 Geo. 3. c. 38.) yet the punishment of grand Larceny, or the stealing above the value of 12d. (which sum was the standard in the time of King Athelstan, eight hundred years ago), is at common law regularly death; which, considering the great intermediate alteration in the price or denomination of money, seems at present a very rigorous constitution.

It has been held, that if two persons steal goods to the amount of 1s. it is Grand Larceny in both; and if more, at different times, steals divers parcels of goods from the same person, which together exceed the value of 12d. they may be put together in one indictment, and the offender found guilty of grand Larceny. H. P. C. 70. Pult. 125; 5 Jefh. 109: Helm. Rep. 66. But this
LARCENY II.

Is very seldom done; on the contrary, the mercy of Juries will often make them bring in Larceny to be under the value of 12d., when it is really of much greater value: but this, though evidently justifiable and proper, when it only reduces the present nominal value of money to the antient standard, is otherwise a kind of pious perjury. 2 Inf. 189. And it is now settled that the value of the property stolen must not only be in the whole of such an amount as the law requires to constitute a capital offence; but the stealing must be to that amount at one and the same particular time. For the law will not permit things stolen at different times, which are, in fact, different acts of stealing, to be added together; and as no number of petty Larcenies will amount to a grand Larceny, 1 no number of grand Larcenies will amount to a capital offence. O. B. 1794. p. 206. It is likewise true, that by the merciful extensions of the benefit of clergy by our modern statute law, any person who commits a simple Larceny to the value of 13d. (or thirteen hundred Pounds), though guilty of a capital offence, shall be excused the pain of death; but this is only for the first offence. And in many cases of simple Larceny, the benefit of clergy is taken away by statute; as from horse-stealing, in the principals and accessories, both before and after the fact. Stat. 1 Eliz. c. 12: 2 & 3 Eliz. c. 33: 11 Eliz. c. 12. Theft by great and notorious thieves in Northumberland and Cumberland. Stat. 18 Geo. ii. c. 5. Taking woollen cloth from off the tents; or linens, fustians, calicoes, or cotton goods from the place of manufacture, which extends, in the last case, to eiders, sifflers, procurers, buyers, and receivers. See St. 22 Geo. ii. c. 5: 15 Geo. ii. c. 27: 18 Geo. ii. c. 27. Peloniously driving away, or otherwise stealing one or more sheep or other cattle specified, or killing them with intent to steal the whole or any part of the carcasse, or aiding or affailing therein. Stat. 14 Geo. ii. c. 6: 15 Geo. ii. c. 34. Thefts on navigable rivers above the value of 40s. or being present, aiding, or affailing therein. Stat. 24 Geo. ii. c. 43. - Plundering vessels in harbours, or that have fuffered shipwreck. Stat. 15 Geo. ii. c. 18: 26 Geo. ii. c. 19. - Stealing letters sent by post. Stat. 7 Geo. iii. c. 50. - Also stealing deer, fift, hares, and conies, under the peculiar circumstances mentioned in the Wallihan Black Act. Stat. 9 Geo. i. c. 22. Which additional severity, is owing to the great malice and mischief of the theft in some of these instances; and, in others, to the difficulties men would otherwise be under to preserve those goods, which are so easily carried off. But in all these cases, where benefit of clergy is excluded, it seems that the Larceny must exceed the value of 12d. See 4 Comm. c. 17. p. 241. in n.

An acquittal of Larceny in one county, may be pleaded in bar of a subsequent prosecution for the same in another county: and an averment that the offences in both indictions are the same, may be made out by witnesses, or by that of officers, without putting it to trial by jury; though that of later years has been the usual method. 2 Hawk. P. C. c. 13. § 4. But it is no plea in bar of Larceny, that the defendant hath been found not guilty in an action of trespass brought against him by the same plaintiff for the same goods: for Larceny and trespass are entirely different; and a bar in an action of an inferior nature, will not bar another of a superior. 2 Hawk. P. C. c. 35. § 5. If a person be indicted for felony or Larceny generally, and upon the evidence it appears that the fact is but a bare trespass, he cannot be found guilty, and have judgment on the trespass, but ought to be indicted anew; though it may be otherwise where the jury find a special verdict, or when the fact is specially laid, &c. In trespasses where the taking is felonious, no verdict ought to be given, unless the defendant hath before been tried for the felony. 2 Hawk. P. C. c. 47. § 6. All felony includes trespass, so that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony or Larceny in carrying them away; and in every indictment of Larceny, there must be the words felony and larceny. &c. H. P. C. 61. 1 Hawk. P. C. c. 33. § 2.

The facts. 4 Geo. i. c. 11: 6 Geo. i. c. 25, empower the Judges, on conviction for grand or petit Larceny, (except the case of buying or receiving of stolen goods known to them to be such,) to transport the offenders, where they are entitled to benefit of clergy; or where being excluded clergy, they are pardoned on condition of transportation. See titles Felony; Clergy; Transportation.

There are no accessories in petit Larceny, therefore if two be indicted, one for privately stealing from the person a handkerchief value 12d. and another for receiving it, and the principal be found guilty value 12d. only, the accessory ought to be discharged. Fjst. 73. See this Dictionary, title Accessory.

II. 1. LARCENY from the House, though it seems to have a higher degree of guilt than simple Larceny, yet is not at all distinguished from the other as common law: unless where it is accompanied with the circumstance of breaking the house by night; and then it falls under another description, viz. that of Burglary. See that title. But now, by several acts of Parliament, the benefit of clergy is taken from Larcenies committed in a house in almost every instance. The multiplicity of the genera.tion is apt to create confusion; but upon comparing them diligently we may collect, that the benefit of clergy is denied upon the following domestic aggressions of Larceny, viz.: First, in Larcenies above the value of 12d. committed, 11th. in a church or chapel with or without violence or breaking the same. Stat. 23 Hen. 8. c. 1: 1 Eliz. c. 12: 1 Hal. P. C. 518: and see Stat. 23 Hen. 8. c. 3: 5 & 6 Ed. 5. c. 9, 10. - 2d. In a booth or tent, in a market or fair, in the day time or in the night, by violence or breaking the house; the owner or some of his family being therein. Stat. 5 & 6 E. 6. c. 91: 1 Hal. P. C. 522. - 3d. By robbing a dwelling-house in the day time (which robbing implies a breaking,) any person being therein. Stat. 3 & 4 W. & M. c. 9: 4th. By the same statute, and Stat. 23 H. 8. c. 1. In a dwelling-house by day or by night, without breaking the house, any person being therein and in fear which amounts in law to a robbery: and in both these last cases, the accessory before the fact is also excluded his clergy. Secondly, in Larcenies to the value of 5s., committed, 11th. By breaking any dwelling-house, or part of a house, shop, or warehouse thereunto belonging, in the day time; although no person be therein; which also now extends to aiders, abettors, and accessories, before the fact. Stat. 39 Eliz. c. 15: 2d. By privately stealing goods, wares, or merchandise in any shop, warehouse, coach-
houfe, or flable, by day or by night, though the fame
be not broken open, and though no person be therein;
which likewise extends to such as affit, hire, or com-
mand the offence to be committed. St. 16 & 17 W. 3. c. 23: See Poth. 78.—Lastly, in Larceny to the
value of 40. from a dwelling-house, or its out-houfes,
although the fame be not broken, and whether any per-
son be therein or no, unless committed against their
masters by apprentices under the age of fifteen: This
also extends to those who aid or affit in the commis-
ration of any such offence. St. 11 Ann. f. t. c. 7.

2d. The offence of privately taking from a man's perfon,
as by picking his pocket, or the like, privily without
his knowledge, was debarred the benefit of clergy, so early
as by f. 8 Eliz. c. 4. But then it must be such a Lar-
ceny as stands in need of benefit of clergy, viz. of above
the value of 12d. else the offender fhall not have judg-
ment of death: for the statute creates no new offence;
but only prevents the prisoner from praying the ben-efit
of clergy, and leaves him to the regular judgment of
the ancient law. This severity seems to be owing to the
casf with which such offences are committed, the difficulty of
guarding againft them; and the boldness with which they
were practifed (even in the Queen's court and prefence)
at the time when this statute was made: besides that it is
an infringement of properly, in the manual occupation
or corporal poftition of the owner, which was an offence
even in a state of nature. 4 Comm. c. 17.

LARDARIUM, The larder, or place where the lard
and meat were kept. Purch. Antig. p. 496.

LARDEROUS REGIS, The King's larderer, or
clerk of the kitchen. Cowell.

LARDING-MONEY. In the manor of Bradford in
the county of Wilt, the tenants pay to their lord a small
yearly rent by this name; which is laid to be for liberty
to feed their hogs with the malt of the lord's woods,
the fat of a hog being called lard: Or it may be a com-
munication for some culinary service of carrying fat or meat
to the lord's larder. This was called lardarium in old
6. 321.

LARONS, Fr. Thieves; mentioned in the statute
18 Ed. 2, for view of frank-pledge.

LASTATINUS, Of ten occurs in Walsingham, and
signifies an affailant or murderer. Ann. 1574.

LAST, Sax. biegarium, i.e. saxxurr, Fr. dfgh.] Denotes a
burden in general, and particularly a certain weight or
measure of fish, corn, wool, leather, pitch, &c. As a
lait of white herrings, is twelve barrels, of red herrings,
twenty-six cans or thirtens, and of pilchards, ten thou-
sand; of corn, ten quarters; and in some parts of Eng-
land twenty-one quarters; of wool, twelve facks; of
leather, twenty dickers, or ten score; of hides or skins,
twelve dozen; of pitch, tar, or asph, fourteen barrels;
of gunpowder, twenty four farks, weighing a hundred
pound cash, &c. See Stowe. 32 Hen. 8. c. 14: 1 Jac.
1. c. 33; 1 Car. 1. c. 7; and this Dictionary, title
Weights & Measures.

LAST-COURT. In the Marth of Kent, is a court
held by the twenty-four juries, and summoned by the
ballifs; wherein orders are made to lay and levy taxes,
impose penalties, &c. for the preservation of the said
marthes. Hift. of Inlandling & Draining, f. 54.

LATITAT.

LASTAGE, [lafarigium] A custom exacted in some
fairs and markets, to carry things bought where one
will, by the interpretation of Raffles. But it is more
accurately taken for the ballast or lading of a ship.
Lastage is also defined to be that custom which is paid
for wares sold by the half; as herrings, pitch, &c.
LASTAGE AND BALASTAGE, See Ballast.

LAST HEIR, Ultimus heres] He to whom land
comes by deceit for want of lawful heirs; that is, in
some cases the Lord of whom they held, but in others
the King. Bract. lib. 7. c. 17. See this Dictionary, titles
Defent: ; Election; Heir; Tenure.

LATERA, Sides-men, companions, affiliats. Cowell.

LATERARE, To lie side-ways in opposition to lying
end ways; used in the description of lands. Chart. Antig.

LATHE, Lathe, Lead, or Lethen, Lappum, Leda, Sax. lathe.] A great part of a county, containing
three or four hundreds, or wapentakes; as it is used in
Kent and Suffolk, in the latter of which it is called a rape.
1 Comm. 116; Leg. Ed. Confol. c. 55; Pat. 1. H. 4. par.
8. m. 8: See Trithing.

LATERHEVE, Ledgerve or Trithignkeve, The Officer under the Saxen government who had
authority over that division called a Lathe. See Trithing-
veve.

LATIMER, Is used by Sir Edward Coke for an
interpreter, 2 Inst. 15. It seems that the word is mit-
taken, and should be Latimer because heretofore he
had understood Latin, which in the time of the Roman
was the prevailing language, might be a good interpreter.
Cadeus agrees, that it signifies a Frenchman or in-
terpreter, and says the word is used in an old inquisition.
Britan. fol. 598. It may be derived or corrupted from
the Fr. latinier, q. d. latiere. Cowell.

LATIN. There are three forts of Latin. 1. Good
Latin, allowed by grammarians and lawyers. 2. False
or incongruous Latin, which in times past would abate
original writs; though not: made void any judicial writ,
declaration, or plea, &c. And 3. Words of Art, known
only to the Sages of the law, and not to grammarians,
called Lawyers' Latin. 1 Ed. Abr. 149, 147: See f. 56
Ed. 5. c. 17; which directed all pleas, &c. to be de-
bated in English, and recorded in Latin; but now, by
f. 4 Eng. 2. c. 26; &c. 5 Eng. 2. c. 14, the records
and proceedings are to be in English. Formerly the
use of a word not Latin at all, or not so in the sense
in which used, might in many cases be helped by an An-
glais; though where there was a proper Latin word for
the thing intended to be expressed, nothing could help
an improper one. And when there was no Latin for a
thing, words made which had some countenance of Latin,
were allowed good, as Pellicium, Anglice volver, &c. 10

LATINARIUS, An interpreter of Latin, or Latinus,
from the Fr. latinier. 2 Inst. 515. See Latimer.

LATITAT, A writ whereby all men are originally
called to answer in personal actions in the King's Bench;
and having its name upon a supposition that the defendant
didth lark and leave in bail, and cannot be found in the county
of Middlesex to be taken by bill, but is gone into some
other county, to the uttermost of which this writ is directed,
to apprehend him there. F. N. B. 78. Terms of Loy.

The origin of it is this: In ancient time, while the
King's Bench was movable, when any man was sued, a
LATITAT.

LAW.

writ was sent forth to the sheriff of Middlesex, or any other county where the court was resident, called a Bill of Middlesex, to take him; and if the sheriff returned Non est inventus, then a second writ was sued out, reciting, that it was certified that the defendant looked and lay hid in another county, and thereby the sheriff of that county was commanded to attach the party in any other place, where he might be found: and when the tribunal of the King's Bench came to be settled at Westminster, the same course was observed for a long time; but afterwards, by the contraction of time, it was devized to put both these writs into one, and so attach the defendant upon a fiction that he was not in the county of Middlesex, but lurking elsewhere; and that therefore he was to be apprehended by the sheriff of the county where he was suspected to be, and lie hid.

It is called a timplis writ, from the words "Timplis eft, It is tormenting," issuing out of B. R. grounded upon a Bill of Middlesex, supposed to be sued out before, and returned Non est inventus; and in nature of the original writ Glavam frigidus, upon which the practice is in the Common Pleas. 2 Li. Abr. 147. See this Dict. tit. Copies; Common Pleas. A Latitat cannot issue into the county of Middlesex, except the Court remove out of Middlesex into another county, for in the county where the Court of B. R. is, the process must be by Bill, and out of the county by Latitat. 2 Li. Abr. 147.

If the writ of Latitat is issued during the vacation, it must be as of the last day of the term preceding: A process or note is to be made of it on paper for the officer by the plaintiff's attorney, together with a memorandum or minute of his warrant duly stamped, pursuant to latitat. 25 Geo. 3. c. 80. § 13. The Latitat being filled up, is to be carried with the note to the King's Bench Office, and there the writ is signed; from whence it is carried to the Seal-Office, where it is sealed. See Impres, K. B.—If it is intended to hold the defendant to bail, an affidavit of the debt must be made, an ac-citation introduced into the body of the writ, the sum sworn to indorsed on the back previous to the signing and sealing of the writ, after which a warrant is to be procured from the sheriff of the county to execute the writ. See titles Arrest; Bail.

Where the defendant is in the actual or supposed custody of the Marshal of K. B. upon a Bill of Middlesex or Latitat, &c. the bill exhibited against him as a prisoner of the Court, is considered as the commencement of the suit; and the Bill of Middlesex or Latitat merely as process to bring him into Court. 1 Wif. 48. 144; 2 Barr. 960. But see 3 Barr. 1244.—Such process, therefore, may be sued out, though the defendant ought not to be arrested upon it, before the cause of action. Cro. Eliz. 271: Cro. Jac. 651: 1 Vern. 28: 8 Mod. 343: 1 Wif. 142: 2 Barr. 967: Doug. 62. And the plaintiff is allowed to give in evidence a caution of action, arising after it is sued out, and before the exhibiting of the bill. Coop. 454.

It has been frequently ruled, however, that for certain purposes a Bill of Middlesex or Latitat, out of B. R., may be taken to be in nature of an Original Writ in the Common Pleas, Coop. 456. And a Latitat, even without a Bill of Middlesex, if properly issued and continued on the roll, has been held to be a good commencement of the suit to avoid a plea of the statute of Limitation; or a tender made after suing it out. As to the former, see St. 156, 178: 1 Sid. 53, 60: 2 Lord Raym. 880: 1 Stra. 550: 2 Stra. 730: 2 Ed. Raym. 1441: 2 Barr. 961: and as to the latter, Cro. Car. 264: 1 Wif. 141. Lord Holt made a distinction between a civil and penal action; but upon a Writ of Error, all the judges in the Exchequer Chamber held that a Latitat is a kind of Original in the King's Bench. See Carlb. 233: 2 Ed. Raym. 885. And accordingly in two subsequent cases it was held to be a good commencement of the suit in a penal action. Bridges v. Knighton: Hardiman v. Whitaker: cited 2 Barr. 950: 3 Barr. 1243: Coop. 454.

If it appears that a Latitat may be considered either as the commencement of the action, or only as process to bring the defendant into Court; at the election of the plaintiff. Bull. N. P. 151: 1 Wif. 146. Though if it be stated as the commencement of the action to avoid a tender, the defendant may deny that the plaintiff had any cause of action at the time of suing it out. 1 Wif. 141. Or if it be replied to a plea of the statute of limitations, the defendant, in order to maintain his plea, may aver the real time of suing it out in opposition to the Tint. 2 Barr. 950. See Tint. Practice, K. B. c. 14; and this Dictionary, title Limitation of Actions.

It was formerly held that a writ of Latitat did not run into Wales; but the contrary has since been determined, and is now the common practice. See 1 Wif. 193: 1 Doug. 292—93. (419.)

For other matters connected with and explanatory of the subject of this title, see this Dict. tit. Process; Practice; Actions; King; Bench; Common Pleas; Capias, &c.

LATRO, Latrunicum.] He who had the sole jurisdiction de latro in a particular place: it is mentioned in Law. 1 W. I. See Infangitaf.

LATTA, A Lath. Cowell.

LAVATORIUM, A Laundry, or place to wash in. Applied to such a place in the porch or entrance of cathedral churches, where the priest and other officiating members were obliged to wash their hands before they proceeded to divine service. See Liber Statut. B. c. 146.

LAVENDER. In the county of Glamorgan, and some other parts of Wales, they make a sort of food of a sea plant, which seems to be the ooze-green, or sea liver-wort; and this they call Laverbread.

LAVINA, See Labina.


LAUDUM, An arbitration, or award. Wolvingham, p. 60.

LAUNCHAVER, A kind of offensive weapons now disused, and prohibited by the stat. 7 R. 2. c. 15.

LAUND or LAWND, laund.] An open field, without wood. Bloxam.

LAURELS, Pieces of gold coined in the year 1619, with the King's head laureated, which gave them the name of Laurels; the twenty-shilling pieces whereof were marked with XX. The ten-shilling X., and the five-shilling piece with V. Camden. Annu. J. a. I. M. S.
The latter of; and all arbitrary Laws are founded in convenience, morally indifferent, in which case both the Law and the matter, and subject of it, is likewise indifferent, or concerning the natural Law itself, and the regulating thereof; and all arbitrary Laws are founded in convenience, and depend upon the authority of the legislative power which appoints and makes them, and are for maintain-

ing public order: those which are natural Laws are from God; but those which are arbitrary, are properly human and positive institutions. Selden on Fortescue, c. 17.

The Laws of any country began, when there first began to be a State in the land: and we may consider the world as one universal society, and that the Law by which nations were governed, is called jus gentium; if we consider the world as made up of particular nations, the Law which regulates the public order and right of them, is termed jus publicum; and that Law which determines the private rights of men, is called jus civile, Selden, ubi supra. See Montesquieu on this subject.

No Law can oblige a people without their consent; this is either virbus or factis, i.e. it is expressed by writing, or implied by deeds and actions; and where a Law is grounded on an implied assent, rebus & factis, it is either Common Law or Custom; if it is universal, it is Common Law; and if particular to this or that place, then it is Custom. § 112.

The Law in this land hath been variable; the Roman Laws were in use anciently in Britain, when the Romans had several colonies here, each of which was governed by the Roman Laws: afterwards we had the Laws called Mercenage, West Saxongage, and Danegage; all reduced into a body, and made one by King Edw. Con-juratus Magna Charta, c. 1. & 14. Cant. Brit. 94.

At present the Laws of England are divided into three parts: 1. The Common Law, which is the most ancient and general Law of the realm, and common to the whole kingdom, being appropriate thereto, and having no dependence upon any foreign Law whatsoever. See title Common Law.

2. Statutes or Acts of Parliament, made and passed by the King, Lords, and Commons in Parliament; being a reserve for the Government to provide against new mischiefs arising through the corruption of the times: and by this the Common Law is amended where defective, for the suppression of public evils; though where the Common Law and Statute Law concur or interfere, the Common Law shall be preferred. See title Statutes.

3. Particular Customs; but they must be particular, for a general Custom is part of the Common Law of the land. Co. Litt. 15. 115. See title Custom.

Blackstone divides the Municipal Law of England into two kinds, Lex non scripta, the unwritten or Common Laws; and the Lex scripta, the written, that is, the Statute Law.

The Lex non scripta, or unwritten Law, includes not only general Customs, or the Common Law properly so called; but also the particular Customs of certain parts of the kingdom; and likewise those particular Laws, that are by custom observed only in certain courts and jurisdictions. 1 Comm. Intro. § 3.

There is another division of our Laws; more large and particular; as into the Prerogative or Crown Law; the Law and Custom of Parliament; the Common Law; the Statute Law; Reasonable Customs; the Law of Arms, War, and Chivalry; Ecclesiastical or Canon Laws; Civil Law, in certain Courts and Cafes; Forest Law; the Law of Marque and Reprisal; the Law of Merchants; the Law and Privilege of the Stauntries, &c. But this large division may be reduced to the common division; and all is founded on the Law of Nature and Reason, and the revealed Law of God, as all other Laws ought to be. 1 Inst. 13.
The Law of Nature is that which God at man's creation infused into him, for his preservation and direction; and this is lex attrita, and may not be changed: and no Law shall be made or kept, that are expressly against the Law of God, written in his Scripture; as to forbid what he commanded, &c. 2 B.opt. Abr. 356.

All Laws derive their force à lege nature; and those which do not, are accounted as no Laws. Fortuica. No Law will make a construction to do wrong; and there are some things which the Law favours, and some it dislikes; it favoureth those things that come from the order of nature. 1 Is. 183, 197. Also our Law hath much more respect to life, liberty, freedom, inheritance, matters of record, and of substance; than to chattels, things in the personalty, matters not of record, or circumstances. Ibid. 137; 4 Rep. 124.

As to the mode of interpreting Laws, see 1 Comm. § 2.—Of the general foundation of the Laws of England, Id. § 3.—And of the country subsjeet to the Laws of England, Id. § 4.—See also this Dict. titles Ireland; Scotland; Plantations; Statutes; Common Laws; Canon Law; Civil Law, &c.

LAW. THEOB. L 73. 74.

Common things concerning Arms and War, are under the cognizance of the Contable and Marshal of England, 13 R. 2. b. 1. c. 2. See titles Contable; Court of Chivalry.

LAW-BOOKS. All books written in the Law are either historical, as the Tear-Books; explanatory, such as Stainsdorfe's Treatise of the Royal Prerogative; miscellaneous, as the Abridgments of the Law; monological, being on one certain subject, such as Lambard's Justice of Peace, &c.; Fulbeck's Parallel, &c. 3. The books of Reports have such great weight with the Judges, that many of them are as highly valued as the Ripponia Prudentum among the Romans, which were authoritative. Wood's Hist. 10.

The decisions of Courts (says Blackstone) are held in the highest regard; and are not only preferred as authentic records in the treatises of the several Courts, but are handed out to public view in the numerous volumes of Reports which furnish the Lawyer's library. These Reports are histories of the several Cales, with a short summary of the proceedings, which are preferred at large in the record; the arguments on both sides, and the reasons the Court gave for its judgment, taken down in short notes by persons present at the determinations. And these serve as indexes to and also to explain the Records, which always, in matters of consequence and nicety, the Judges direct to be searched.

These Reports are extant in a regular series, from the reign of King Edward II. inclusive; and from this time to that of King Henry VIII. were taken by the Prothomatories or Chief Scribes of the Court at the expense of the Crown, and published annually; whence they are known under the denomination of the Year-Books. Blackstone proceeds to express his wish that this beneficial custom had been continued. He laments the deficiency and inaccuracy of the many Reports from that time to the period in which he wrote; and the neglect of the appointment which King Jas. I., at the instance of Lord Bacon, made of true reporters, with a stipend for that purpose. 1 Comm. Intro. § 3.

This evil has however been since, in a great measure, remedied, by a very excellent periodical publication at the end of each Term; now quoted and well known by the name of the Term Reports; which contain the determinations in the Court of K. B., commencing with Michaelmas Term, 26 Geo. 3. A. D. 1753; conducted by two private gentlemen, then Students, now at the Bar, and one of them a Member of the Lower House of Legislature. This publication has been followed by others for the Courts of Chancery and C. P. The public encouragement given to these works, from the accuracy and ability with which they are conducted, seems a more adequate mode of reward than Royal munificence could devise; even in a reign distinguished for his zealous care of learning and genius. And there is every reason to expect that a plan so well supported will continue to be adopted as long as it shall please Providence to prefer Law, and the Courts of Law, in Great Britain.

Some of the most valuable of the ancient Reports are those published by Lord Chief Justice Coke; and these are generally cited, by way of excellence, as The Reports; thus, 1 Rep. 2 Rep. &c. while other Reports are cited by the name of the Reporter, 1 Venr. 1 Salk. &c.

Besides the Reporters, there are also other authorities to whom great veneration and respect is paid by the students of the Common Law. Such are Gomew, Bracton, Britton, Fleet, Hengham, Littleton, Stringham, Brooke, Fitzherbert, Stainsdores, and others of ancient date.—[Hale, Hevockes, Fother, and others of modern date among whom the author of the Commentaries now holds an honourable rank.] Their treaties are cited as authority, and are evidence that cases have formerly happened in which such and such points were determined, which are now become settled and first principles. One of the last of these methodical writers (according to Blackstone) in point of time, whose works are of any intrinsic authority in the Courts of Justice, is Sir Edward Coke; commonly called Lord Coke, from his having been, as was already mentioned, Lord Chief Justice.—He left four volumes of Institutes; the first being a very extensive comment upon a little excellent treatise.


**LAW-BOOKS.**

treatise of Tenures compiled by Judge Littleton, in the reign of Edward IV. This is generally called Coke-Littleton, (meaning Coke upon Littleton,) and is so cited by lawyers; or still more usually as Post Littleton. This has been since enlarged by the very learned and laborious notes of Mr. Hargrave and Mr. Butler; and taken altogether, is a book of the greatest value and highest authority in the Law.

Of late also have appeared a vast variety of Abridgments of General Law; and Systems of particular branches of it; which, with the Statutes at Large, and other publications, swell Lawyers' libraries to a size which they perhaps, as well as their clients, would be glad to see lessened. But the delay imputed to, rather than suffered in, Courts of Justice, and the multiplication of cafes and determinations, is a price which every free and opulent commercial nation must pay for the innumerable blessings it enjoys, under such a Government as that long established in this country. See MONTAGUE SPIR. OF LATS. lib. vi. c. 2.

**LAW-DAY, Logdayum.** Called also View of Frank-pledge, or Court-leet; was any day of open court; and commonly used for the Courts of a county or hundred. Chart. 37 Hen. 3.

**LAWING OF DOGS.** The cutting off several claws of the fore-feet of dogs in the forest. Chart. Forst. c. 6. See Expeditate; Forst.

**LAWLESS-COURT.** A Court held on King's-hill at Rochford in Essex, on Wednesday morning next after Michaelmas-Day yearly, at cock-crowing; at which Court they whisper and have no candle, nor any pen and ink, but a coal; and he that owes suit or service there, and appears not, forfeits double his rent. This Court is mentioned by Camden, who says, that this servile attendance was imposed on the tenants, for conspiring at the like unreasonable time to raise a commotion. Camden. Brit. It belongs to the honour of England, and is called Lawless, because held at an unlawful hour; or quia dicta sine leges. The title of it is in rhyme, and in the Court Rolls runs thus:

*King's-hill in { Rochford.}
Curia de Domino Regis,
Dicta sine leges,
Testa et ibidem
Per ejusdem confuglatidnum,
Ante aurum foies
Lucet utip pelis,
Sempcularis fulus
Silis erigit utip colis
Vates voluerit
Gallus ut cantervet,
Per causas ful portum
Curia de jamomunis
Climas claus pro reges
In curia sine leges,
Et utip cito venirent
Citius ponsirent
Et utip claus accident
Curia non attendat,
Quia verbis cum lumen cruat in regione
Et duros sunt sine lumente, sunt in cerimine,
Curia sine cura,
Jurato de infra operator.
Testa ibidem die Mercurii (ante diem) proximi post festum
Sancti Michaelis anns regis regis, &c.*

**LAW.**

**LAY.**

**LAYLESS MAN, Exx.** An outlaw. Brad. lib. 3. c. 11.

**LAW OF MARQUE, from the Germ. march, i.e. limes.** Is where they that are driven to it, do take the shipping and goods of that people of whom they have received wrong, and cannot get ordinary justice in another territory, when they can take them within their own bounds and precincts. Stat. 27 Ed. 3. b. 2. c. 17.

**LAW MARTIAL, See title Courts Martial.**

**LAW MERCHANT, Lex mercatoria.** A special law differing from the Common Law of England, proper to merchants, and part of the Law of the realm. And the charter mercatoria. 13 Ed. 1. stat. 3, grants this perpetual privilege to merchants coming into this kingdom. See also Stat. 27 Ed. 3. b. 2. c. 17. 19. 20: Co. Lit. 182: and this Dict. title Custom of Merchants.

**LAW PROCEEDINGS, Of all kinds, as writs, processes, pleadings, &c.** are to be in the English language, by stat. 3 Geo. 2. c. 26: 5 Geo. 2. c. 27. Except known abbreviations and technical terms, stat. 6 Geo. 2. c. 14. See title Latin: Procefs.

**LAW SPIRITUAL, Lex spiritualis.** The Ecclesiastical Law, allowed by our laws where it is not against the Common Law, nor the statutes and customs of the kingdom: and regularly, according to such Ecclesiastical or Spiritual Laws, the Bishops and other Ecclesiastical Judges proceed in causes within their cognizance. Co. Lit. 344. It was also called Law Christian: and, in opposition to it, the Common Law was often called Lex Terrae, &c. See titles Canon Law: Courts, Ecclesiastic.

**LAW OF THE STAPEL, (mentioned in Stat. 27 Ed. 3. stat. 2. c. 22.)** Is the same with Law Merchant. See 4 Lev. 257, 258, and this Dict. tit. Staple.

**LAWNS.** See Cubicles.

**LAWYER, Legistis, Legistripus, Juristophilus.** By the Saxons called habmen. A Counsellor, or one learned in the law. See titles Barrister; Attorney.

**LAY-CORPORATIONS.** Are of two sorts, civil and ecclesiastical. The civil are such as are erected for a variety of temporal purposes. The ecclesiastical are such as are constituted for the perpetual distribution of the free alms, or bounty, of the founder of them to such persons as he hath directed. See title Corporations.

**LAY INVESTITURE OF BISHOPS.** Election was, in very early times, the usual mode of elevation to the episcopal chair throughout all Christendom; and this was profusely performed by the Laity as well as the Clergy: till at length, it becoming tumultuous, the Emperors and other Sovereigns of the respective kingdoms of Europe took the appointment in some degree into their own hands; by referring to themselves the right of confirming these elections, and of granting investiture of the temporalities, which now began almost universally to be annexed to this spiritual dignity; without which Confirmation and Investiture, the elected Bishops could neither be consecrated nor receive any secular profities. This right was acknowledged in the Emperor Charle- mages. A. D. 773, by Pope Hadrian I. and the council of Latona, and universally exercised by other Christian princes; but the policy of the Court of Rome at the same time began by degrees to exclude the Laity from any
L A Y.

any share in these elections, to confine them wholly to the clergy, which at length was completely effected; the mere form of election appearing to the people to be a thing of little consequence, while the Crown was in possession of an absolute negative, which was almost equivalent to a direct right of nomination. Hence the right of appointing to Bishops' See is said to have been in the Crown of England, as well as other kingdoms in Europe, even in the Saxon times; because the rights of Confirmation and Investiture were in effect (though not in form) a right of complete donation. But when, by length of time, the custom of making elections by the clergy only was fully established, the Popes began to except to the usual method of granting those investitures, which was per annum et basium, by the Prince's delivering to the Prelate a ring, and pastoral staff or crozier; pretending, that this was an encroachment on the Church's authority, and an attempt by these symbols to confer a spiritual jurisdiction; and Pope Gregory VII. towards the close of the eleventh century, published a bull of excommunication against all Princes who would dare to confer Investitures, and all Prelates who should venture to receive them. This was a bold step towards effecting the plan then adopted by the Roman see, of rendering the Clergy entirely independent of the civil authority; and long and eager were the contents occasioned by this papal claim. But at length, when the Emperor Henry V. agreed to remove all suspicion of encroachment on the spiritual character, by conferring Investitures for the future per perpetuum, and not per annum et basium; and when the Kings of England and France consented also to alter the form in their kingdoms, and receive only homage from the Bishops for their temporalities, instead of investing them by the ring and crozier; the Court of Rome found it prudent to suspend for a while its other pretensions.

This concession was obtained from King Henry the Fourth in England, by means of that obdurate and arrogant prelate Archbishop Anselmas but King John (about a century afterwards) in order to protect the Pope against his discontented barons, was also prevailed upon to give up a charter, to all the monasteries and cathedrals in the kingdom, the free right of electing their Prelates, whether Abbots or Bishops: referring only to the Crown the custody of the temporalities during the vacancy; the form of granting a licence to elect, which is the original of our congé d'élire, on refusal whereof the electors might proceed without it; and the right of approbation afterwards, which was not to be denied without a reasonable and lawful cause. This grant was expressly recognized and confirmed in King John's Magna Carta, and was again established by statute 25 Ed. 3. c. 6. § 3.

But by statute 25 H. 8. c. 26, the ancient right of nomination was, in effect, restored to the Crown. See 1 Comm. 377; and this Dict. title Bishop.

L A Y-FIEls, feudum layum.] Lands held in fee of a lay-lord, by the common services to which military tenure was subject; as distinguished from the ecclesiastical holding in frankaldom, discharged from those burdens. Kenyon's Glossary, title Tenures.

L A Y M A N, One that is not of the clergy; the Latin word Latium signifying as much as populus, that which is common to the people, or belongs to the laity.

Lit. Dict.

L A Y S T A L L. A place to lay dung or soil in.

L A Z A R E T S. Places where quarantine is to be performed, by persons coming from infected countries. Escaping from them, felony without benefit of clergy. See statutes. 1 Jac. 1. c. 31. 26 Geo. 2. c. 6. 29 Geo. 2. c. 8. and this Dict. title Plague.

L A Z Z I. The Saxons divided the people of the land into three ranks; the first they called Edilings, which were such as are now nobility; the second were termed Frilingi, from fril, signifying that he was born a freeman, or of parents not subject to any servitude, which are the present gentry: and the third and laziest were called Lazzi, as born to labour, and being of a more servile state than our servitors, because they could not depart from their service without the leave of the lord; but were fixed to the land where born, and is the nature of slaves; hence the word Lazzi, or lazy, signifies those of a servile condition. Ramburdes de Saxonia, lib. 14. It is remarkable that the lower classes of people, at Naples, are called Lazaretzi.

L E A. A quantity of yarn, so called; and at Kidderminster it is to contain 1200 threads on a reel four yards about. See statutes. 22 & 23 Car. 2. c. 8.

L E A D. Stealing of lead affixed to a house, &c. transportation for seven years. 4 Geo. 2. c. 32. And see statute 29 Geo. 2. c. 30, and this Dict. title Felony; harrymen 11.

L E A G U E. An agreement between Princes, &c. Also a measure of way by sea, or an extent of land, containing mostly three miles. Breakers of leagues and truces, how punished for offences done upon the seas. See statutes. 4 H. 5. c. 7: 31 H. 6. c. 4: see titles Confounder of the Trace; Trace.

L E A K, or LECHE, from Sax. Leccion, to let out water. In the bishoprick of Durham, it is used for a gutter; so in Yorkshire any hollow or watery hole upon the road is called by this name: and hence the water tub to put ashes in to make a lee for washing of clothes, is in some parts of England termed a Leche. Consull.

L E A K E A G E, An allowance of twelve per cent. to merchants importing wine, out of the Customs; and of two barrels in twenty-two of ale to brewers, &c. out of the duty of Excise. Merc. Dict.

L E A P, A net, engine or wheel, made of twigs, to catch fish in. Stat. 2 & 3 W. & M. c. 23. See Lepa.

L E A P-YE A R. See titles Biftextile; Yiar.

L E A S E.

From locatia, letting; otherwise called a Demife, dimiffer from dimissere to depart with.] A letting of lands, tenements or hereditaments to another for term of life, years, or at will, for a rent-reverted. Co. Lit. 43. A lease is properly a conveyance of any lands or tenements, usuall in consideration of rent, or other annual recompense, made for life, for years certain, or at will; but short; for a short time than the Lessor hath in the possession; for if it be for the whole interest it is more properly an assignment, than a Lease. Etc that letters is called the Leffer, and he who hath the lands, &c. are let, it is called the Lessor. Ship. Instal. c. 14. 2 Comm. c. 26. A Lease for years is also thus defined: A contract between Leffer and Lessor for the possession and profy of lands, &c. on the one side, and a recompense for rent or other income on the other. Bac. Abr. title Leeser.
LEASE.

This word is also sometimes, though improperly, applied to the estates, i.e. the title, time, or interest the Leaseee hath in the thing demised; and it is rather referred to the thing taken or had, and the interest of the taker therein; but it is more accurately applied rather to the manner or means of obtaining or coming to the thing letten. See Steph. Touchif. c. 14.

The usual words of operation in a Lease are "Demise, grant, and to farm let, demise, conceife, &c ad fermum trentum." — Farm or farme, is an old Saxon word signifying provision. Spelm. Gloss. 229. And it came to be used instead of rent or render, because antiently the greater part of rents were reserved in provisions: in corn, in poultry, and the like; till the use of money became more frequent; so that a farmer, fermarius, was one who held his lands upon payment of a rent or farme; though at present, by a gradual departure from the original sense, the word farm is brought to signify the very estate or lands so held, upon farm or rent. By this conveyance an estate for life, for years, or at will, may be created in corporeal or incorporeal hereditaments; though livery of seisin is indeed incident by the Common Law, as it may be created either in corporeal or incorporeal hereditaments; though livery of seisin is indeed incident and necessary to one species of Leases, viz. Leases for life of corporeal hereditaments, but to no other.

Whatever restrictions by the severity of the feudal law, might in times of very high antiquity, be observed with regard to Leases; (see title Tenures;) yet by the Common Law, as it has stood for many centuries, all persons feised of any estate might let Leases to endure so long as their own interest lasted, but no longer. Therefore Tenant in se-cumple might let Leases of any duration, for he hath the whole interest; but tenant in tail, or tenant for life, could make no Lease which should bind the issue in tail or reverfioner; nor could a husband, seized jure uxoris, make a firm or valid Lease for any longer term than the joint lives of himself and his wife, for then his interest expired. Yet some tenants for life, where the fee-cumple was in abeyance, might, with the concurrence of such as have the guardianship of the fee, make Leases of equal duration with those granted by tenants in se-cumple: such as parsons and vicars with consent of the patron and ordinary. Ca. Litt. 44. So also bishops and deans, and such other sole ecclesiastical corporations as are seised of the se-cumple of land in their corporate right, might, with the concurrence and confirmation of such persons as the law requires, have made Leases for years; or for life, eftates in tail, or in fee, without any limitation or control. And corporations aggregate might have made what estates they pleased, without the confirmation of any other person whatsoever. Whereas now, by several statutes, this power where it was unreasonable, and might be made an ill use of, is restrained; and, where in the other cases the restraint by the Common Law seemed too hard, it is in some measure removed. The former statutes are called the restraining; the latter, the enabling statute. 2 Comm. c. 20. See p. 11.

Having premised thus much, the further information on this subject may be thus conveniently classified:

I. Of Leases in general; by Persons enabled to make them at Common Law.

II. Of the Nature of a Lease, and Leasefold Estates, and the Contraction of Words in granting thereof:

II. Of Leases under the enabling and restraining Statutes.

III. Of Acceptance of Rent.

1. Where it shall 
2. Where it shall not

For other matters relative to Leases, see particularly Bac. Abr. title "Leases and Terms for Years," recommended by Blackstone to particular notice. See also Steph. Touchif. c. 143 and this Dictionary, titles Rent; Deed; and the other titles above referred to. See the Pat. &c. 2. c. 28: 11 Geo. 2. c. 19, under title Rent.

I. A Lease may be made either in writing or by word of mouth: it is sometimes made and done by record, as Fine, Recovery, &c. and sometimes and most frequently by writing, called a Lease by Indenture; albeit, it may be also made by deed-poll; and sometimes also it is (as it may be of land or any such like thing grantable without deed for life, or never so many years) by word of mouth, without any writing; and then it is called a Lease-poll. Steph. Touchif. c. 14. — But by the statute of frauds, Stat. 29. c. 2. c. 3, Leases of lands must be in writing, and signed by the parties themselves, or their agents duly authorized, otherwise they will operate only as Leases at Will; except Leases not exceeding three years.

A parol agreement to lease lands for four years creates only a tenancy at will. 4 Term. Rep. 680.

A Lease may be made by all the ways above mentioned, either for life, for years, or at will. — For life; as for life of the Leesor, or another, or both. — For years, i.e. for a certain number of years, as 10, 100, 1000, or 10000 years, months, weeks, or days, as the Leesor and Lessee do agree. And then the estate is properly called a term for years: for this word term doth not only signify the limits and limitation of time, but also the estate and interest that doth pass for that time. These Leases for years do some of them commence in possession, and some in futurum at a day to come; and the Lease that is to begin in futurum is called an interest termini, or future interest. — At will; i.e. when a lease is made of land to be held at the will and pleasure of the Leesor and Lessee together; and such a Lease may be made by word of mouth, as well as the former. Steph. Touchif. c. 14.

If the Lease be for but for half a year, or a quarter, or any less time, this Lessee is respected as a tenant for years, and is said to be in some legal proceedings: a year being the shortest term which the law in this case takes notice of. Litt. § 58.

These estates for years were originally granted to mere farmers or husbandmen, who every year rendered some equivalent in money, provisions, or other rent; to the Leesors or landlords; but, in order to encourage them to manure and cultivate the ground, they had a permanent
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permanent interest granted them, not determinable at the will of the Lord; and yet its possession was esteemed of so little consequence, that they were rather considered as the bailiffs or servants of the Lord, who were to receive and account for the profits at a settled price, than as having any property of their own; and, therefore, they were not allowed to have a freehold estate; but their interest (such as it was) vested after their deaths in their executors, who were to make up the accounts of their tillator with the Lord and his other creditors, and were entitled to the whole upon the farm. The Leases' estate might also, by the ancient law, be at any time defeated by a common recovery, suffered by the tenant of the freehold, which annihilated all Leases for years then subsisting; unless afterwards renewed by the recoveror, whose title was suppos'd superior to his by whom those Leases were granted. Co. Litt. 46.

While Leases for years were thus precarious, it is no wonder that they were usually very short, like the modern Leases upon rack-rent; and, indeed, we are told, that by the ancient law no Lease for more than forty years were allowable; because any longer possession (especially when given without any livery, declaring the nature and duration of the estate) might tend to defeat the inheritance. Mirr. c. 2. § 27: Co. Litt. 45. 5. Yet this law, if ever it existed, was soon antiquated; so we may observe, in Madox's collection of ancient instruments, some Leases for years of a pretty early date, which considerably exceed that period; and long terms for three hundred or one thousand years were certainly in use in the time of Edward III, and probably of Edward I. But certainly when by the fin. 21 Hen. 8. c. 5, the termor (that is, he who is entitled to the term of years) was protected against these fictitious recoveries, and his interest rendered secure and permanent, long terms began to be more frequent than before; and were afterwards extensively introduced, being found extremely convenient for family settlements and mortgages; containing subject however, for the future course of events; and with the same inferiority to freeholds, as when they were a little better than tenancies at the will of the landlord. 2 Comm. c. 9.

Every estate which must expire at a period certain and prefixed, by whatever words created, is an estate for years, and therefore this estate is usually called a term, terminus, because its duration or continuance is bounded, limited, and determined; for every such estate must have a certain beginning and certain end. Co. Litt. 45. But id certum est, quod certum reddi posse: therefore, if a man make a Lease to another, for so many years as J. S. shall live, it is a good Lease for years; for though it is at present uncertain, yet when J. S. hath named the years, it is then reduced to a certainty. 6 Rep. 35. If no day of commencement be named in the creation of this estate, it begins from the making, or delivery of the Lease, Co. Litt. 46. A Lease for so many years as J. S. shall live, is void from the beginning; for it is neither certain, nor can ever be reduced to a certainty, during the continuance of the Lease. Co. Litt. 45. And the same doctrine holds if a parson make a Lease of his glebe, for so many years as he shall continue parson of Dale, for this is still more uncertain. But a Lease for twenty or more years if J. S. shall so long live, or if he should so long continue parson, is good; for there is a certain period fixed, beyond which it cannot last, though it may determine sooner on the death of J. S. or his ceasing to be parson there. Co. Litt. 45.

If a parson makes a Lease of his glebe for three years, and so from three years to three years, so long as he shall be parson, it is a good Lease for six years, if he continue parson so long. 6 Rep. 35: 3 Cro. 511.

The law reckons an estate for years inferior in interest, as compared to an estate for life, or an inheritance; an estate for life, even if it be for the term of a thousand years, is only a chattel, and reckoned part of the personal estate. Co. Litt. 45. Hence it follows, that a Lease for years may be made to commence in future, though a Lease for life cannot. As if one grants lands to another to hold from Michalmas next for twenty years, this is good; but to hold from Michalmas next for the term of his natural life, is void. For no estate of freehold can commence in future, because it cannot be created at common law, except by some term or limited estate, or corporal possession of the land; and corporal possession cannot be given of an estate now, which is not to commence now, but hereafter. 5 Rep. 94. And because no livery of seisin is necessary to a Lease for years, such Leases is not liable to be forfeited, or to have true legal seisin of the lands. Nor indeed does the bare Lease vest any estate in the Leesee; but only gives him a right of entry on the tenement, which right is called, as has been already remarked, 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 seised, not properly of the land, but of the term of years; the possession of seisin of the land remaining still in him who hath the freehold, Co. Litt. 46. Thus the word term does not merely signify the time specified in the Lease, but the estate also and interest that passes by that Lease; and therefore it may expire, during the continuance of the term, as by surrender, forfeiture, and the like. For which reason, if one grant a Lease to A. for the term of three years, and after the expiration of the said term, to B. for five years, and A. surrenders or forfeits his Lease at the end of one year, B.'s interest shall immediately take effect; but if the remainder had been to B. from and after the expiration of the said three years, or from or after the expiration of the said term, in the case B.'s interest will not commence till the time is fully elapsed, whatever may become of A.'s term. Co. Litt. 45.

Generally, to the making of a good Lease several things necessarily concur; there must be a Leesor not restrained from making a Lease; a Leesee not disabled to receive; a thing demised which is demisable, and a sufficient description of the thing demised, &c. If it be for years, it must have a certain commencement and determination; it is to have all the usual ceremonies, as sealing, delivery, &c. and there must be an acceptance of the thing demised. Litt. § 46: 1 Inst. 40: Pseud. 273, 274. Whether any rent be reserved upon a Lease for life, years, or at will, or not is material, except in the case of Leases made by tenant in tail, husband and wife, and ecclesiastical persons under fin. 32. H. 8. c. 28. (See post II.) Sheep. Trench. c. 14.

A freehold Lease for three lives, differs from a chattel Lease only in this, viz. That the habendum is to the Leesee.
Though a Lease for life cannot be made to commence in future, by the common law, because livery cannot be made to a future estate, yet where a Lease is made for life, reversion at a day to come, and after the day the Leifor makes livery, there it shall be good; and a Lease in reversion may be made for life, which commences at a day that is future. 5 Rep. 94. : Hob. 314. : 1 1lf. 5. A Lease for years may begin from a day past, or to come, at Michaelmas next, or at any time after that, or after the death of the Leifor, &c. though a term cannot commence upon a contingency which depends on another contingency. 1 1lf. 5. : 1 Rep. 155. If one make a Lease for years, after the death of A. B. if he die within ten years, this is a good lease, in case he dies within that time, otherwise not. Plowd. 70. And where a man has a lease of lands for eighty years, and he grants it to another to hold for thirty years, to begin after his death, it will be good for the whole thirty years, provided there be so many of the eighty to come at the time of the death of the Leifor, : Bro. Grant. 54. : 1 Rep. 155. A Lease made from the Leifor's death, until a certain year, (i.e. A.D. 1800,) is good: and if a Lease be during the minority of J. S. or until he shall come to the age of twenty-one years, these are good Leases; and if he dies before his full age, the Lease is ended. Hob. 155. A person grants a rent of 20l. a year, till an hundred pounds be paid, it is a Lease of the rent for five years. Co. Litt. 42. If a man makes a Lease of land to another, until he shall levy out of the profits one hundred pounds, or he is paid that sum, &c. this will be a Lease for life, determinable on the payment of the hundred pounds, if livery and seisin be made; but if there is no livery it will not be good for years, but void for uncertainty. 1 1lf. 18. : Plowd. 27. : 6 Rep. 35. See Livery of Seisin.

A Lease for years to such person as A. B. shall name, is not good; though it may be for so many years as he shall name, not as shall be named by his executors, &c. for it must be in the life-time of the parties. Hob. 173: Meas. 911.

If one makes a Lease for a year, and so from year to year, it is a Lease for two years; and afterwards it is but an estate at will. 1 Mod. 4. : 1 Litt. 213. And if from three years to three years, it is a good Lease for six years; also if a man make a Lease for years, without paying for how many, it may be good for two years, to answer the plural number. Wood's Inst. 265.

Lease for one year, and so for two or three years, or any further term of years, as Leifor and Leifee shall think fit and agree, after the expiration of the said term of one year; this is a good Lease for two years; and after every subsequent year begun, is not determinable till that be ended. 1 Will. part 1. 1. 262. But if the original contract were only for a year, or if it were at so much per annum rent, without mentioning any time certain, it would be a tenancy at will after the expiration of the year; unless there were some evidence by a regular payment of rent annually or half yearly, that the intent of the parties was that he should be tenant for a year. Bull. N.P. 84. (2d edit.)

A Lease in 1785 for three, six, or nine years, determinable in 1788, 91, 94, is a Lease for nine years, determinable at the end of three or six years, by either of the parties on giving reasonable notice to quit. 3 Term Rep. 463.
If a tenant from year to year hold for four or five years, either he or his landlord, at the expiration of that time, may declare on the demise as having been made for such a number of years. 1 Term Rep. 580: See Salk. 414.

In case of a tenancy from year to year, as long as both parties please, if the tenant die intestate, his administrator has the same interest in the land which the intestate had. 3 Term Rep. 13.

A lease hath a term for a year by parol, and so from year to year, so long as both parties please; if the lessee enters on a second year, he is bound for that year, and so on; and if there is a lease by deed for a year, and so from year to year as long as both parties agree, this is binding but for one year; though if the lessee enters upon the second year, he is for that year bound: if it is for a year, and so from year to year, so long as both parties agree, till six years expire; this is a lease for six years, but determinable every year at the will of either party: but if it is for a year, and so from year to year till six years determine, this is a certain lease for six years. Med. Co. 217. If A make a lease of land to B. for ten years, and it is agreed between them, that he shall pay fifty pounds at the end of the said term, and if he does not, and pay fifty pounds at the end of every ten years, then the said B. shall have a perpetual demise and grant of the lands, from ten years to ten years continually following, extra memoriam hominem, &c. Though this be a good lease for the first ten years, as for all the rest, it is uncertain and void: by covenant a further lease may be made for the like term of years. Plead. 102: 2 Stro. Abr. 176.

A. and B. covenant in a lease for sixty-one years, "that at any time within one year after the expiration of twenty years of the said term of sixty-one years, upon the request of the lessee, and his paying Gl. to the lessor, they would execute another lease of the premises unto the lessee, for and during the further term of twenty years, to commence from and after the expiration of the said term of sixty-one years: and so in like manner, at the end and expiration of every twenty years, during the said term of sixty-one years, for the like consideration, and upon the like request, would execute another lease for the further term of twenty years, to commence at and from the expiration of the term then left before granted." Under this covenant the lessee cannot claim a further term of twenty years after the end of the lease; if he has omitted to claim a further term at the end of the first and second twenty years in the lease. 3 Term Rep. 220.

A lease made to a man for seven years, if D. shall live so long, who is dead when the lease is made; by this the lessor hath an absolute lease for seven years. 6 Rep. 62. A lease for life is granted, and says, that if the lessee within one year do not pay 20l. then he shall have a lease for two years; here, if he pays not the money, he shall have only the two years, although livery of seisin be had thereon. 1 Ingl. 218. If a lease be made to A. B. during his own life, and the lives of C. and D. it is one entire estate of freehold, and shall continue during the three lives, and the life of the survivor of them; and though the lessee can have it no longer than his own life, yet his assignee shall have the benefit of it so long as the other two are living. 5 Rep. 132: 2 Ma{}rs. Vol. II.

32. Where one grants land by lease to A. B. and C. D. to hold it during the life of the longest liver. 5 Rep. 6. A lease is made to a person for sixty years, if A. B. and C. D. each live; and afterwards A. D. dies, by his death the lease is determined. Though if the lessee be made to one for the lives of A. B. and C. D. the freehold doth not determine by the death of one of them; and if in the other case of an estate, the words of C. D. either of them be inserted in the lease, it will be good for both their lives. 15 Rep. 96.

A lease was made to a man for ninety-nine years, if he should live so long; and if he died within the term, the son to have it for the residue of the term: this was adjudged void as to the son, because there can be no limitation of the residue of a term which is determined. Cro. Eliz. 216. But if the words of the lease be, to hold during the residue of the ninety-nine years, and not during the roll of the term, in this case it may be good to the son also. 1 Rep. 153: Dyer 253.

A lease was made for twenty-one years, if the lessee lived so long, and in the service of the lessor; the lessor died within the term, and yet it was held that the lease continued, for it was by the act of God that the lessee could serve no longer. Cro. Eliz. 643.

If a lease be to a man, and to her whom he shall take to wife, it is void; because there ought to be such persons at the time of the commencement of the lease which might take. 4 Leon. 158. When a lease in reversion is granted as such after another lease, and that lease is void by re-entry, &c. the reversionary lease, express or upon the lease for years that is void, is void also. 32 Cro. Cas. 280. But where a man recites a lease, when in truth there is no lease; or a lease which is void, and misdescribes the same in a point material, and grants a further lease to commence after the determination thereof; in such case the new lease shall begin from the time of delivery. Dyer 93: 5 Rep. 56: 2 Faunt. 73, 80, &c.

A man makes a lease for years to one, and afterwards makes a lease for years to another of the same land; the second lease is not void; but shall be good for so many years thereof, as shall come after the first lease ended. 4 Noy. Max. 67. And if one make a lease for years, and afterwards the lessor enters upon the lands, before the term is expired, and makes a lease of these lands to another; this second lease is a good lease until the lease doth re-enter; and then the first lease is revived, and he is in thereby. 2 Litt. Abr. 142. It hath been held, that a lease may be void as to one, and good to another; and leases voidable, or void for the present, may after become good again. 1 Ingl. 46; 3 Rep. 51. If a lease be made to two, to hold to them and two others, it is voidable as to the two other persons; and when the two first die, the lease is at an end. 2 Leon. 1.

A lease which is only voidable, and not absolutely void, may be made void by the lessor by re-entry; but if a lease be void absolutely there needs no re-entry; and as a voidable lease is made void by re-entry, and putting out the lessee; so it is affirmed by accepting and receiving the rent which acknowledges the lessor to be tenant. 21 G. B. R. 2 Litt. 149. And where a lease is for
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for years accepts of a short term from the Leesor, even by word, it is said this is a surrender of the term which he had by deed. Style 448.

When a term for years in lease, and a fee simple, meet in one person, the lease is drowned in the inheritance; yet in some cases it may have continuance, to make good charges and payments, &c. 2 Nisi Prius, 1100. If a lease for years is made to a man and his heirs, it shall go to his executors. 1 Inst. 406, 588. And a lease for years, notwithstanding it be a very long lease, cannot be raised by deed; but may be abolished in truth, to several uses. 2 Leis. 130. A lease is sealed by the Leesor, and the Leesee hath not sealed the counterpart, action of covenant may be brought upon the lease against the Leesor: but where the lease is sealed by the Leesee, and not the Leesor, nothing operates. Teleb. 18, 100.

A man out of possession cannot make a lease of lands, without entering and sealing the lease upon the land. Daily's Case. The leasee is to enter on the premises let, and such lease for years is not in possession, so as to bring trespass, &c. until actual entry; but he may grant over his term before entry. 1 Inst. 46: 2 Litt. 160. If a lease of a future interest never enters by virtue of his term, but enters before, and continues after the commencement of the term; and then the Leesor ousts him, the leasee may assign over his term off the land. 1 Leis. 47. But a lease to begin at Michaelmas, if the leasee enters before Michaelmas, and continues the possession immediately, is a defect. Ibid. 46.

If a lease be made of a close of land, by a certain name, in the parish of A. in the county of B. whereas the close is in another county, the said parish extending into both counties, such a lease is good to pass such land: though where a lease is sealed without a name, and the parish is mistaken, it hath been held otherwise. Pocock's Case. 276. 292.

Land and mines are leased to a tenant; this only extends to the open mines, and the leasee shall have not any others, if there are such: and if land and timber are demised, the leasee is not empowered to sell it. 2 Lev. 184: 2 Mod. 103. A man makes a lease of lands for life, or years, the leasee hath but a special interest in the timber trees, as annexed to the land, to have one third and shadow for his cattle; and when they are severed from the lands, or blown down with wind, the leasee shall have them as part of his inheritance.

A demise of premises in Wrightson, late in the occupation of A. particularly describing them, part of which was a yard, does not pass a cellar siteuate under that yard, which was then in the occupation of B. another tenant of the Leesor: and the Leesor in an ejectment brought to recover the cellar, is not stopped by his deed from going into evidence, to show that the cellar was not intended to be demised. Whether parcel or not of the thing demised is always matter of evidence. 2 Term Rep. 701.

Declarations by tenants are admissible evidence after their deaths, to show that a certain piece of land is parcel of the estate which they occupied; and proof that they exercised acts of ownership in it, not refuted by contrary evidence, is decisive. 2 Term Rep. 53.

If Leesor for years loses his Leesee, if it can be proved that there was such a term let to him by Leesee, and that is not determined, he shall not lose his term; so it is of any other estate in lands, if the deed that created it be lost, for the estate in the land is derived from the party that made it, and not from the deed otherwise than instrumentally and declaratively of the mind and intent of the party, &c. 2 Litt. 132. If a person be in possession of the lands of another, and hath usually paid rent for them; the proof of a quarter or half-year's rent paid, will be good evidence of a Lease at will; though it cannot be expressly proved that the lands were demised at will to him in possession, it shall be presumed the rent was received by the owner of the land upon some private contract. Ibid. 131.

2. He that is settled of an estate for life, may make a Lease for his life according as he is settled; also he may make a lease for years of the estate, and it shall be as good as long as the estate for life doth last: one possessed of lands for years, may make a lease for all the years, except one day, or any short part of the term; and if Leasee for years makes a Leases for life, the Leasee may enjoy it for the Leesor's life, if the term of years lasts so long; but if he gives livery and seisin upon it, this is a forfeiture of the estate for years. Wood's Inst. 267. If tenant in tail or for life make a lease generally, it shall be construed for his own life. 1 Inst. 42.

By various acts of parliament, and also by private settlements, a power is granted of making leases in possession, but not in reversal for a certain time; the object being that the estate may not be incumbered, by the act of the party, beyond a specific time. Yet persons who had this limited power of making in possession only, had frequently demised the premises to hold from the day of the date; and the Courts in several instances had determined, that the words 'from the day of the date,' excluded the day of making the deed: and that in consequence these were Leases in reversal, and void; but this question having been brought again before the Court of B. R. it was determined, that the words 'from the day of the date,' might either be inclusive or exclusive; and therefore that they ought to be construed so as to effectuate these important deeds, and not to destroy them. Pugh v. Leeds, (Dukes) 714: and see Doug. 53, 185, in notes.

The Lease of a tenant for life who has power of leaving under certain conditions, must strictly comply with the conditions; and if it vary from them in the interest demised, or the rent referred, it cannot be supported against the remainder-man. 5 Term Rep. 567.

Of all kinds of powers the most frequent is that to make Leases. In the making such Leases all the requisites particularly specified in the power, must be strictly observed; and such Leases must contain all such beneficial clauses and reservations as ought to be, for the benefit of the remainder-man; the principle being, that the estate must come to him in as beneficial a manner as the ancient owners held it. See 1 Burr. 120, and this Dictionary, title Power.—If a man hath power to Lease for ten years and he leaves for twenty, the Lease shall be good in equity for ten years. 1 Ch. Ca. 23. See further Sharp. 1 T. 5. 14, in a.

A Lease executed by the tenant for life, in which the remainderman who was then under age is named, but who does not execute the Lease, is void on the death of the tenant for life; and an execution by the remainder only after—
afterwards is no confirmation of it, so as to bind the
Leesee in an action of covenant. 1 Term Rep. 86.

Under the settlement of an estate with a power to the
tenant in possession to let all or any part of the premises,
so as the usual rents be reserved, a Leafe of tithes which
had not been let before was held void. In these cases
the intention of the parties is to govern the Court in
construing the power. 3 Term Rep. 655.

Where tenant for life has a power "to grant Leases
in possession, but not by way of reversion or future in­
terest," a Leafe per vivum de profunto is not contrary to
the power; though the estate at the time of making the
Lease was held by tenants at will, or from year to year;
if, at the time, they received directions from the grantor
of the Lease to pay their rent to the Leesee. Doug. 565; 
Godtitle v. Fanucca.

Under a power "to lease all manors, messuages,
lands, &c., so as there be reserved as much rent as is now
paid for the same," such parts of the estates coter­
erated in the power as have never been demised may
be let; but in a family settlement of an estate consisting
of some ground always occupied with the family seat,
and of lands let to tenants upon rents reserved, the qua­
lification annexed to the power of leasing, "that the
ancient rent must be reserved," excludes the manfion­
house and lands about it never let. Doug. 505—9, 574.

Under a power to a tenant for life to lease for years,
reserving the usual covenants, &c., a Leafe made by
him containing a proviso that in case the premises were
blown down or burned, the Leifor should rebuild, other­
wise the rent should cease, is void, the Jury finding that
such covenant is unusual. 1 Term Rep. 703.

If an Infant be seised of land in fee-simple, and he
make a Leafe for years of it, rendering no rent, this
Leafe is void; but if there be a rent reserved upon the
Lease, then the Leafe is but voidable, and may, by the
acceptance of the rent by the tenant after his full age,
be made good. Sleph. Touch. c. 14, c. 9 & 10, 7, 45; 4 E. 4, 2; Fland. 545. In 3 Burr. 1660, it is
said to have been long settled, that an infant may make
a Leafe without rent, to try his title; and that all
Leases by an infant, whether with or without rent, if
made by deed, are voidable only. See this Dictionary,
title Infant.; and Bac. Abr. title Leafe B.

If a tenant hold under an agreement for a Leafe at
a yearly rent, by which it is stipulated that the agreement
shall continue for the life of the Leifor, and that a clause
shall be inserted in the Leafe, giving the Leifor's fon
power to take the house for himself when he came of
age, the son must make his election in a reasonable time
after he came of age. The delay of a year is unreasonable,
and the tenant cannot be ejected upon half a
year's notice to quit, served after such a delay: but if
the son had elected within a week or a fortnight, that
would have been reasonable. 2 Term Rep. 416.

By 29 Geo. 2. c. 51, 45., Lomax v. Lemaster, and Femen
coverts, may apply to the Courts of Chancery or Exche­
quer, or to the Courts of Equity of the counties palatine
of Chester, Lancaster, and Durham, or to the Courts of
Great Sessions of Wales, by petition or motion in a
summary way, and by the order of the Courts respectively,
such persons may by deed only, without levying a fine,
surrender Leases for lives or years, and take new Leases
for lives or years of the premises comprized therein.

Joint-tenants, tenants in common, and copartners,
may make Leases for life, years, or at will, of their own
parts, which shall bind their companions; and in some
cases, persons who are not seised of lands in fee, &c.,
may make Leases for life or years, by special power enabling
them to do it; when the authority must be exactly pur­
ed. Wood's Inst. 267. But there is a difference,
where there is a general power to make Leases,
and a particular power. See ante, & 8 Rep. 69.

If joint-tenants join in a Leafe, this shall be but one
Leafe, for they have but one frehold; but if tenants in
common join in a Leafe, it shall be several Leases of
their several interests. 2 Rep. Ab. 64; Com. Dig. title
Evantts. (G. 6.); Bac. Abr. Leases (I. 4.)

3. A Leifor who hath the fee cannot reserve rent to
any other but himself, &c., his heirs, &c. And if he
referves a rent to his executors, the rent shall be to the
heirs, as incident to the reversion of the land. 1 Inst. 47. The
Leifor may take a dil®ts on the tenements let for the
rent; or may have action of debt for the arrears, &c.
Also land leased shall be subject to those lawful remedies
which the Leifor provides for the recovery of his rent,
poftession, &c., into whole hands forever the land comes.
Cro. Jac. 300.

If an house falls down by tempest, &c., the Leesee
hath an interest to take the timber to re-eredit it for
his habitation. 4 Rep. 65.

Tenants suffering houses to be uncovered, or in decay;
taking away waincoat, &c., fixed to the frehold, unless
put up by the Leesee, and taken down before the term
is expired; cutting down timber-trees to sell; permit­
ing young trees to be destroyed by cattle, &c., ploughi­
ing up ground that time out of mind hath not been
ploughed; not keeping hanks in repair, &c., are guilty
of waste. 1 Inst. 52; Dicey 71; 2 Salmon. 766.

Leases are bound to repair their tenements, except it
be mentioned in the Lease to the contrary. Though a
Leesee for years is not obliged to repair the house let to
him which is burnt by accident; if there be not a spe­
cial covenant in the Lease, that he shall leave the house
in good repair at the end of the term; yet if the house
be burnt by negligence, the Leesee shall repair it, al­
though there be no such covenant. Patch. 24 Carn. B. R.
A Leesee at will is not bound to sustain or repair, as
tenant for years is. If the house of such a tenant is
burnt down by negligence, action lies not against the
tenant; but action lies for voluntary waste, in pulling
down houses, or cutting wood, &c. 5 Rep. 13. See
title Fire.

A Leesee who covenants to pay rent and to repair
with an exception of casualties by fire, is liable upon
the covenant for rent, though the premises are burnt
down, and not rebuilt by the Leifor after notice. 3 Term
Rep. 310.

A proviso in a Leafe for twenty-one years, that the
Landlord shall re-enter on the tenant's committing any
act of bankruptcy, whereon a commiffion shall issue, is
good. 2 Term Rep. 135.

The bankruptcy of the Leesee is no bar to an action of
covenant (made before his bankruptcy) brought against
him for rent due after the bankruptcy. 4 Term Rep. 95.

Though a bankrupt cannot give a lien on any partic­
ular goods, yet he may take a demife, and agree that the
rent shall be payable on a particular day; e.g. he may
agree

Lease 2.
agree to pay half a year's rent in advance; where, by the
custom of the country, half a year's rent becomes due
on the day on which a tenant enters. And in this case
the law gives the landlord a power of distraint on that
day. 2 Term Rep. 670. See this Dictionary, title Rent:
Distraint.

A covenant in a Lease that the Leesee, his executors
and administrators, shall constantly re-charge on the demised
premises during the demise, is binding on the assignee of
the Leesee, though he be not named. 2 H. Black. Rep. C. P. 137.

If both Leesee and Leesor sign a Lease, the Leesee is
effected from pleading all habitus in tenementis; to an action
of debt for rent by the Leesor. 6 Term Rep. 62.

Covenant will lie against an original Leesee, before he
takes actual possession; and so before actual possession
against an assignee, under an absolute indefeasible
assignment of the whole interest in the term; but not against
a mortgagee of the term, even after the mortgage is forfeited, till he takes actual possession. See Eaton v. Jaques,
Doug. 155 - 461, and the notes there.

Under a proviso that all assignments of a Lease shall be
void if not enrolled, Under-Leases are not included, and
an Under-Lease is no assignment to the effect of working
a forfeiture under a proviso not to assign. Doug. 156, 7, 8, 184. But what cannot be supported as an assignment shall
be good as an Under-Lease against the party granting it.
Doug. 188, in n.

When the whole term is made over by the Leesee, al-
though in the deed by which that is done, the rent and a
power of entry for non-payment is referred to him and
not to the original Leesor, this is an assignment, and not

If a Lease contains a proviso that the Leesee, his execu-
tors, &c. shall not sit, let, or assign over the whole or
part of the premises without leave in writing, on pain of
forfeiting the Lease; the administratrix of the Leesor
cannot under-let without incurring a forfeiture, though for
less time than the whole term: a parol licence to let
part of the premises does not discharge the Leesee from
the restriction of such a proviso. 2 Term Rep. 426.

A landlord cannot maintain an action of covenant for
rent against an under tenant, who holds for a term less
than the time granted in the original Lease. Doug. 12.
Holcroft v. Hinck. But if the whole of a term is made
over by the Leesee, although in the deed he reserves the
rent, and a power of entry for non-payment to himself
and not to the original Leesor; and although he intro-
duce new covenants; the person to whom it is made over
may sue the original Leesor or his assignee of the rever-
sion, or be sued by them as assignee of the term, on
the respective covenants in the original Lease. Palmer v.

An assignee of a bankrupt, a devisee, and a personal
representative, are assignees in law to the purpose of
being liable to actions on a covenant for rent in a Lease
to the bankrupt, devisee, or intestate. Doug. 184. But
whether the transfer to them is such an assignment as
will occasion a forfeiture under a proviso not to assign, is
a much litigated, but as it seems unsettled, question;
and it appears that its not. 3 Wils. 237. But see Doug.I
184, in n.

A Leesee for twenty-one years at a pepper-corn rent
for the first half year, and a rack rent for the rest of the
term, who by agreement was to put the premises in re-
pair, and covenanted to pay the land-tax, and all other
taxes, rates, affixations, and situations, having assigned
his term for a small sum in goods, was held not to be liable
to pay the expense of a party-wall; either by the provi-
sions of Stat. 14 Geo. 3. c. 78, § 41, or by the covenant;
but that charge must in such case be borne by the original
landlord: For the statute intended to throw that burden
on persons to whom long Leases had been granted, with a
view to an improvement of the estate, and who after-
wards undertook at a considerable increase of rent. 3 Term
Rep. 458.

By Stat. 32 Hen. 8. c. 54, grantees of reversion
have the same remedy against Leesors, their executors,
&c. as their grantors had. See title Covenant III.

Persons for whose lives estates are held by Leesee, &c.
remaining beyond fez, or being absent seven years, if
no proof be made of their being alive, shall be accounted
dead. St. 10 Car. 2. c. 6. See titles Life-Estates; Occupancy.

4. Lands are leased at will, the Leesee cannot deter-
mine his will before or after the day of payment of the
rent, but it must be done on that very day; and the law
will not allow the Leesee to do it to the prejudice of the
Leesor, as to the rent; nor that the Leesor shall deter-
mine his will to the prejudice of the Leesee, after the
land is sold with corn, &c. Sid. 349; Lev. 109. For
where Leesee at will sows the land, if he does not himself
determine the will, he shall have the corn; and where
tenant at sufferance. Leesee, al-
sert, or his heirs, may determine the will when they please; but if the Leesor
shall do it within a quarter, he shall lose that quarter's rent;
and if the Leesee doth it, he must pay a quarter's rent.
2 Salk. 413. By words spoken on the ground, by the
Leesor in the absence of the Leesee, the will is not deter-
mixed; but the Leesee is to have notice. 1 Inst. 55. If
a man makes a Lease at will, and dies, the will is deter-
mixed; and if the tenant continues in possession, he is
tenant at sufferance. ibid. 57. But where a Leesor makes
an estate at will to two or three persons, and one of them
dies, it has been adjudged this does not determine the
estate at will. 5 Rep. 10. Tenant at will grants over his
estate to another, it determines his will. 1 Inst. 57.
It hath been said, that where a Leesee for years accepts
of a less term from the Leesor even by word, this is a
surrender of the term he had by deed. 3 Syst. 443; Sid. 9.
No tenant shall take Leases of above two farms, in any
town, village, &c. nor hold two unles he dwell in the par-
ish, under penalties and forfeitures, by Stat. 25 H. 8.
c. 13. § 14. See also Stat. 21 H. 8. c. 15. Statutes to
which there is not any regard now paid.

Tenants for term of years hath, incident to and insep-
rable from his estate, unless by special agreement, the same
enforce which tenant for life is entitled to; that is to
say, house-bate, fire bate, plough-bate, and hay-bate. 3 Co. Lit. 45. See titles Bate & Lessor's.

With regard to emblements, or the profits of lands
owed by tenant for years, there is this difference be-
tween him and tenant for life; that where the term
of tenant for years depends upon a certain sum, as if he
holds from Midsummer for ten years, and in the last
year he sows a crop of corn, it is not ripe and cut before
Midsummer.
LEASE II.

Midsummer, the end of his term, the landlord shall have it; for the tenant knew the expiration of his term, and therefore it was his own folly to have what he could never reap the profits of. Lit. 68. But where the Lease for years depends upon an uncertainty, as, upon the death of the Leesor, being himself only tenant for life, or being a husband feized in right of his wife, or if the term of years be determinable upon a life or lives; in all these cases the estate for years not being certainly to expire at a time foreknown, but merely by the act of God, the tenant, or his executors, shall have the emblems in the same manner that a tenant for life or his executors shall be entitled thereto. Co. Lit. 56. Not so if it determine by act of the party himself; as if tenant for years does any thing that amounts to forfeiture, in which case the emblems shall go to the Leesor, and not to the Leesee, who hath determined his estate by his own default. Co. Lit. 55; and see 2 Com. 144.

Where a Lease came into the hands of the original Leesor by an agreement entered into between him and the assignee of the original Leesee, "that the Leesor should have the premises as mentioned in the Lease, and should pay a particular sum over, and above the rent annually, towards the good-will already paid by such assignee," such agreement operates as a surrender of the whole term. 1 Term Rep. 441.

If a landlord lease for seven years by parcel, and quit at Candlemas, the Lease be void by the statute of Frauds as to the duration of the term, the tenant holds under the terms of the Lease in other respects; and therefore the landlord can only put an end to the tenancy at Candlemas. 5 Term Rep. 471.

Where the term of a Lease is to end on a precise day, there is no occasion for a notice to quit; because the Lease is of course at an end, unless the parties come to a fresh agreement. In the case of a tenancy from year to year, there must be half a year's notice to quit ending at the expiration of the year. Six calendar months notice is not sufficient. And there is no distinction between houses and lands as to the time of giving notice to quit. 1 Term Rep. 54, 159, 162, 3.

Tenant from year to year before a mortgage or grant of the reversion is entitled to six months notice to quit, before the end of the year, from the mortgagee or grantee. 1 Term Rep. 350, 2.

Where an infant becomes entitled to the reversion of an estate leased from year to year, he cannot eject the tenant without giving the same notice to quit as the original Leesor must have given. 3 Term Rep. 159. But ejectment will lie by a mortgagee against a tenant, under a Lease from the mortgagor, made subsequent to the mortgage, without notice to quit. Doug. 21; Ketch v. Hall.

Where the tenant of an estate holden by a year has a dwelling-house at another place, the delivery of a notice to quit, to his servant at the dwelling-house, is strong presumptive evidence that the maker received the notice; and ought to be left to the Jury. 4 Term Rep. 454.

If notice to quit at Midsummer be given to a tenant holding from Michellina, he may insist on the insufficiency of the notice at the trial, though he did not make any objection at the time it was served. 4 Term Rep. 362.
LEASE II.

If a Lease of the wife's land is not warranted by the statute, it is a good Lease against the husband, though not against the wife; the husband and wife cannot bind him in reversion or remainder. 1 Inst. 362.

A Lease by the husband of a free covert's estate, though not within stat. 32 Hen. 8. c. 28, is only voidable. But a mortgage of a free covert's estate, though in form of a Lease, is void. Doug. 53. 42, in n.

If a Bishop have two Charters, as there may be two or more to one bishoprick; both Charters must confirm Leases made by the Bishop. 1 Inst. 151. A Lease by a Bishop made to begin presently for twenty-one years, when there is an old Lease in being, is good, notwithstanding the statute of 1 Eliz. c. 19; Moor Cas. 241. But if such Lease is to commence at a day to come, it will be void. 1 Lea. 44. Lease for three lives by a Bishop of tithes, is void against the successor; although the usual rent be duly referred. Moor Cas. 1078.

Leases of a Dean and Chapter are good, without confirmation of the Bishop. Dyer 275. 2 Nifl. Ayr. 1056. Where there is a Chapter and no Dean, they may make grants, &c. and are within the statute. 1 Mor. 204.

A prebendary is free in right of the church within the equity of the statute 32 Hen. 8. c. 28. 4 Lea. 51. A prebendary's Lease confirmed by the Archbishops who is his patron, is good, without confirmation of Dean and Chapter. 3 Byn. 290. But where a prebendary made a Lease for years of part of his prebend, and this was confirmed by Dean and Chapter; because it was not confirmed likewise by the Bishop, who was patron and ordinary of the prebend, the Lease was adjudged void. Dyer 60. If a prebendary hath rectories in two several dioceses belonging to his prebend, and his Lease of them is confirmed, by the Bishop Dean and Chapter of the diocese of which he is prebendary, it is good, though not confirmed by the other. Sid. 75.

A chancellor of a cathedral church may make a Lease, and it is said it will be good against the successor, though not confirmed. 2 C. S. 145. If a parson or vicar makes a Lease for life or years, of lands usually letten, referring the customary rent, &c. it must be confirmed by Patron and Ordinary, for they are out of the statute 32 Hen. 8. c. 28. And if the parson and ordinary make a Lease for years of the glebe to the patron; and afterwards the patron assigns this Lease to another, such assignment is good, and is a confirmation of that Lease to the assignee. 3 Rep. 15. Ancient conveys in former Leases may be good to bind the successor, so as to discharge the Lessee from payment of peniuns, tenths, &c. but of any new matter they shall not. 1 Lea. 273.

A Lease for years of a spiritual person, will be void by his death, if it is not according to the statute; and a Lease for life is voidable by entry, &c. of the successor; and so in like cases, Leases not warranted by statute are void or voidable on the death of their makers; acceptance of rent on a void Lease shall not bind the successor. 2 Cen. 172.

If a Bishop be not Bishop de jure, Leases made by him to charge the Bishoprick are void, though all judicial acts by him are good. 2 Cen. 537. And where a Bishop makes a Lease, which may tend to the diminution of the revenues of the Bishoprick, &c. which should maintain the successor; there the deprivation or translation of the Bishop, is all one with his death. 1 Inst. 359.
There is yet another restriction with regard to College-Lease by Inst. 18 Eliz. c. 6, which directs that one-third of the old rent then paid, should for the future be reserved in wheat or malt, referring a quarter of wheat for each 6r. 8d. or a quarter of malt for every 5l.; or that the Leases should pay for the same according to the price that wheat and malt should be sold for, in the market, next adjoining to the respective colleges, on the market day before the rent becomes due. This is said to have been an invention of Lord Treasurer Burleigh and Sir Thomas Smith, then principal Secretary of State; who observing how greatly the value of money had sunk, and the price of all provisions risen, by the quantity of bullion imported from the new-found Indies, which effects were likely to increase to a greater degree, devised this method for upholding the revenues of colleges. Their foresight and penetration have, in this respect, been very apparent; for though the rent so reserved in corn was at first but one-third of the old rent, or half of what was still reserved in money, yet now the proportion is nearly inverted, and the money arising from corn-rents in, communibus annis, almost double to the rents reserved in money. 2 Coom. c. 20.

It has been observed, that the price of a quarter of wheat brings at present near 50l. and the colleges receiving one-third of their rent in corn, i.e. a quarter of wheat, or its value for every 15l. 40. which they are paid in money; it follows, that the corn-rent will be in proportion to the money-rent, nearly as four to one. But these rents united are very far from the present value. Colleges, therefore, in order to obtain the difference, generally take it upon the renewal of their Leases. It was a great objection in colleges to restrain the issue from making long Leases, and impoverishing their successors, by receiving the whole value of the Lease, by a fine at the commencement of the term. The rent has made the old rent approach in some degree nearer to its present value; otherwise it should seem the principal advantage of a corn-rent is to secure the Leesor from the effect of a sudden scarcity of corn. Christian's Note to 2 Comm. c. 20. p. 322.

The Leases of beneficed clergymen are further restrained in case of their non-residence, by Inst. 13 Eliz. c. 20: 14 Eliz. c. 11: 19 Eliz. c. 11: 43 Eliz. c. 9: which directs, that if any beneficed clergyman be absent from his cure above four score days in any one year, he shall not only forfeit one year's proft of his benefice, to be distributed among the poor of the parish, but that all Leases made by him of the profts of such benefice, and all covenants and agreements of a like nature, shall cease and be void; except in the case of licensed pluralists, who are allowed to demife the living on which they are non-resident, to their curates only; provided such curates do not absbie themselves above forty days in any one year. On these statutes it has been determined, that where an incumbent had leased his rectory, and had been afterwards absent for more than eighty days in a year, his tenant could not maintain an ejectment against a stranger who had got into possession, without any right or title whatever. 2 Term Rep. 749. If the curate leaves over, the Lease will become void by his absence; but not by the absence of the incumbent. Gib. 749.

LEASE III.

III. 1. If a Bishop before the statute 1 Eliz. c. 19. § 5, leased part of his bishoprick for term of years, reserving rent, and then died; and after another was made Bishop, who accepted and received the rent when due; by this acceptance the Leesor was made good; which otherwise the new Bishop might have avoided. It is the same if Baron and lease fail of lands in right of the seigneur, join and make a Leesor or feoffment, reserving rent; and the Baron dies, after whole death the seigneur receives or accepts the rent; by this the Leesor or feoffment is confirmed, and shall bar her from bringing a suit in vico. Co. Lit. 211. Tenant in tail made a Leesor for years, rendering 200. rent, and afterwards released 170. and died; the issue in tail accepted the 120. rent: the better opinion was, that by the acceptance of theIt has been observed, that the price of a quarter of wheat brings at present near 50l. and the colleges receiving one-third of their rent in corn, i.e. a quarter of wheat, or its value for every 15l. 40. which they are paid in money; it follows, that the corn-rent will be in proportion to the money-rent, nearly as four to one. But these rents united are very far from the present value. Colleges, therefore, in order to obtain the difference, generally take it upon the renewal of their Leases. It was a great objection in colleges to restrain the issue from making long Leases, and impoverishing their successors, by receiving the whole value of the Lease, by a fine at the commencement of the term. The rent has made the old rent approach in some degree nearer to its present value; otherwise it should seem the principal advantage of a corn-rent is to secure the Leesor from the effect of a sudden scarcity of corn. Christian's Note to 2 Comm. c. 20. p. 322.

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LEASE III.

THE ADMINISTRATOR, CRO. ELIZ. 715; CITED IN WALTER’S

CITE 24.

TENANT FOR LIFE MAKES A LEASE FOR YEARS TO COMMENCE
ON A CERTAIN DAY, AND DIES BEFORE THE EXPIRATION OF THE
LEASE, IN THE MIDDLE OF A YEAR. THE REMAINDER-MAN
RECEIVES RENT FROM THE LEESOR, WHO CONTINUES IN
POSSESSION, (BUT NOT UNDER A FRESH LEASE,) FOR TWO YEARS TOGETHER, ON
THE DAYS OF PAYMENT MENTIONED IN THE LEASE.

THIS IS EVIDENCE FROM WHICH AN AGREEMENT WILL BE PRESUMED
BETWEEN THE REMAINDER-MAN AND THE LEESOR, THAT THE LEASE
SHOULD CONTINUE TO HOLD FROM THE DAY AND ACCORDING TO
THE TERMS OF THE ORIGINAL DEMISE; AND NOTICE TO QUIT ON
THAT DAY IS PROPER. 1 H. BLACK. REP. P. 97.

2. IF A PARSON, &c. MAKES A LEASE FOR YEARS NOT WARRANTED BY THE STAT.
32 HEN. 8. c. 34; BUT IS VOID BY HIS DEATH; ACCEPTANCE OF RENT BY A NEW PARSON OR FUCCECTOR WILL
NOT MAKE IT GOOD. 1 SAUND. 241. AND IF A TENANT FOR LIFE MAKES A LEASE FOR YEARS, THERE IS NO ACCEPTANCE THAT WILL
MAKE THE LEASE GOOD, BECAUSE THE LEASE IS VOID BY HIS DEATH.

DYER 40. 239.

TENANT IN TAIL MAKES A LEASE FOR YEARS, RENDERING RENT TO HIM AND HIS HEIRS, AND DIES; HIS SON AND HEIRS ACCEPTED THE RENT, AND WAS AFTERWARDS EXECUTED FOR TREASON, LEAVING ISSUE A SON; THE KING ACCEPTED THE RENT, BUT THAT DID NOT MAKE THE LEASE GOOD, THE LANDS BEING IN HIS HANDS BY THE ATTAINER, AND NOT IN THE REVERTER. Dyer 115. LEASE FOR YEARS, WITH CONDITION, THAT THE LEESOR SHALL NOT ALIEN OR ALLY, WITHOUT THE AFFECTION OF THE LEESOR, AND IF HE DID, THAT THEN THE LEESOR SHOULD ENTER; HE ALLEGED PART OF THE LAND WITHOUT AFFECTION, &c. AND THEN THE LEESOR, BEFORE NOTICE OF THE ALLIANCE, ACCEPTS THE RENT, AND AFTERWARDS ENTERED FOR THE CONDITION BROKEN; AND ADJUDGED LAWFUL; FOR THE CONDITION BEING COLLATERAL, HE MIGHT ALIEN THE LANDS TO SECRETLY, THAT IT MIGHT BE IMPOSSIBLE TO THE LEESOR TO KNOW IT. 1 REP. 65; PENNY’S CAFE. CRO. ELIZ. 553. 8 C.

LEASE FOR TWENTY-ONE YEARS, RENDERING RENT, ON CONDITION, THAT IF THE LEESOR DID NOT ANY PART OF IT ABOVE THREE YEARS, THEN THE LEASE BE VOID, AND THAT THE LEESOR MIGHT ENTER; HE LET IT OUT FOR THREE YEARS, AND SO FROM THREE YEARS TO THREE YEARS, DURING THE TERM OF TWENTY-ONE YEARS, IF HE SO LIVED; THE LEESOR ACCEPTED THE RENT OF THE ALLIANCE, AND AFTERWARDS ENTERED. THIS WAS A BREACH OF THE CONDITION, AND THE ACCEPTANCE OF IT AFTERWARDS DID NOT DISPENSE WITH IT, BECAUSE THE ORIGINAL LEASE WAS VOID AND DETERMINED.
CRO. CAR. 365. THUS IN TAIL MAKES A LEASE FOR YEARS, TO COMMENCE AFTER HIS DEATH, RENDERING RENT, IN SUCH CASE ACCEPTANCE OF RENT BY THE ISSUE WILL NOT MAKE THE LEASE GOOD TO BAR HIM, BECAUSE THE LEASE DID NOT TAKE EFFECT IN THE LIFE OF HIS ANCESTOR.
PLEAD 418.

WHERE ONE IN REMAINDER, AFTER THE EXPIRATION OF AN ESTATE FOR LIFE, GAVE NOTICE TO THE TENANT TO QUIT ON A CERTAIN DAY, AND AFTERWARDS ACCEPTED HALF A YEAR’S RENT; SUCH ACCEPTANCE BEING ONLY EVIDENCE OF A HOLDING FROM YEAR TO YEAR IS REBUTTED BY THE PREVIOUS NOTICE TO QUIT, AND THEREFORE THE NOTICE REMAINS GOOD.

SE 1.

TERM REP. 161.

THE LEESOR’S RECEIVING RENT AFTER A FORFEITURE IS NO WAIVER, UNLESS THE FORFEITURE WERE KNOWN TO HIM AT THE TIME.

2 TERM REP. 425.

A LEASE VOID IN ITS CREATION AS AGAINST A REMAINDER-MAN, DOES NOT BECOME VALID IN LAW BY HIS ACCEPTING RENT, AND SUBSIDIARIES TO MAKE IMPROVEMENTS AFTER HIS

LEASE & RELEASE.

LEASES OF THE KING. LEASES MADE BY THE KING, OF PART OF THE DUTCHY OF CORNWALL, ARE TO BE FOR THREE LIVES, OR THIRTY-ONE YEARS, AND NOT BE MADE DISPOSABLE OF WASTE, WHEREON THE ANCIENT RENT IS TO BE REFERRED; AND ESTATES IN REVERSION, WITH THOSE IN POSSESSION, ARE NOT TO EXCEED THREE LIVES.


ALL LEASES AND GRANTS MADE BY LETTERS PATENT, OR INDENTURES IN THE GREAT SEAL OF ENGLAND, OR SEAL OF THE COURT OF EXCHEQUER, OR BY COPY OF COURT-ROLL, ACCORDING TO THE CUSTOM OF THE MINORS OF THE DUTCHY OF CORNWALL, NOT EXCEEDING ONE, TWO, OR THREE LIVES, OR SOME TERM DETERMINABLE THEREON, &c. ARE CONSIDERED; AND COVENANTS, CONDITIONS, &c. IN LEASES FOR LIVES OR YEARS, SHALL BE GOOD IN LAW, AS IF THE KING WERE FEIGNED IN FEE-SIMPLE.

STAT. 12. 13. c. 9. SEE STAT. 5. & 6 W. & M. c. 13: 12 ANNO. 2. 22. LEASES FROM THE CROWN OF LANDS IN ENGLAND AND WALES, AND UNDER THE SEALS OF THE DUTCHY OF LANCASTER, &C. FOR ONE, TWO, OR THREE LIVES, OR TERMS NOT EXCEEDING FIFTY YEARS, ARE ALLOWED FOR IMPOUND;


STAT. 10. ANNO. 1. 18. SEE TITLES CORNWALL; KING.


2 MOD. 262.

Blackstone.
LEASE AND RELEASE.

Blackstone says, this species of conveyance was first invented by Sergeant Moore, soon after the Statute of Uses; and is now the most common of any, and therefore not to be shaken, though very great lawyers, as particularly Mr. Nye, Attorney general to King Charles I. formerly doubted its validity. 2 Mod. 252. It is thus contrived: a Lease, or rather Bargain and Sale upon some pecuniary consideration for one year, is made by the tenant of the freehold, to the Leesee or bargainsee. Now this, without any enrollment, makes the bargainee stand seized to the use of the bargainee, and vests in the bargainee the use of the term for a year; and then the statute immediately annexes the possession. He therefore being thus in possession is capable of receiving a Release of the freehold and reversion; which must be made to a tenant in possession, and accordingly the next day a Release is granted to him. This is held to supply the place of livery of seisin, and thus a conveyance by Lease and Release is said to amount to a feoffment. Co. Litt. 270: Cr. Fac. 603.

The form of this conveyance is originally derived to us from the common law; and it is necessary to distinguish in what respect it operates as a common-law conveyance, and in what it operates under the statute of uses. At the common law, where the usual mode of conveyance was by feoffment with livery of seisin, if there was a tenant in possession, so that livery could not be made, the reversion was granted, and the tenant attended to the reversioner. As by this mode the reversioner or remainder of an estate might be conveyed without livery, when it depended on an estate previously existing, it was natural to proceed one step further, and to create a particular estate for the express and sole purpose of conveying the reversion; and then by a surrender or Release, either of the particular estate to the reversioner, or of the reversion to the particular tenant, the whole fee vested in the surrenderer or Releasee. It was afterwards observed, that there was no necessity to grant the reversion to a stranger; and that if a particular estate was made to the person to whom it was proposed to convey the fee, the reversion might be immediately related to him, which Release operates by way of enlargement, to give the Releasee (or Releasee as he is sometimes termed) a fee. In all these cases the particular estate was only an estate for years; for at the common law the ceremony of livery of seisin is not necessary to create even an estate of freehold, as it is to create an estate of inheritance. Still an actual entry would be necessary on the part of the particular tenant; for without actual possession the Leesee is not capable of a Release, operating by way of enlargement. But this necessity of entry for the purpose of obtaining the possession was superseded or made unnecessary by the statute of uses (27 Hen. 8. c. 10; above alluded to); for by that statute the possession was immediately transferred to the Capiat que use; so that a bargainee under that statute is as much in possession, and as capable of a Release before or without entry, as a Leesee is at the common law after entry. All, therefore, that remained to be done to avoid on the one hand the necessity of livery of seisin from the grantor, and to avoid on the other the necessity of an actual entry on the part of the grantee, was, that the particular estate (which, for the reasons above mentioned, should be an estate for years) should be so framed as to be a bargain

and sale within the statute. Originally it was made in such a manner as to be both a Lease at the Common Law, and a bargain and sale under the statute: but as it is held, that where conveyances may operate both by the Common Law and statute, they shall be considered to operate by the Common Law, unless the intention of the parties appears to the contrary, it became the practice to infer, among the operative words, the words Bargain and Sale; (in fact, it is more accurate to infer no other operative words;) and to express that the bargain and sale, or Lease, is made to the intent and purpose that thereby, and by the statute for transferring uses into possession, the Leesee may be capable of a Release. The bargain and sale therefore, or Lease for a year, as it is generally called, operates, and the bargainee is in the possession, by the statute. The Release operates by enlarging the estate or possession of the bargainee to a fee. This is at the Common Law; and if the use be declared to the Releasee in fee-simple, it continues an estate at the Common Law; but if the use is declared to a third person, the statute intervenes, and annexes or transfers the possession of the Releasee to the use of the person to whom the use is declared. It has been said, that the possession of the bargainee under the Lease is not so properly merged in, as enlarged by, the Release; but at all events it does not, after the Release, exist distinct from the estate passed by the Release.

1 Sup., 271. b. 10.

As the operation of a Lease and Release depends upon the Leasee, or bargain and sale; if the grantor is a Body Corporate, the Lease will not operate under the statute of uses; for a Body Corporate cannot be seised to an use, and therefore the Leasee of possession, considered as a bargain and sale under the statute, is void; and the Releasee then must be of no effect for want of a previous possession in the Releasee. In cases of this nature, therefore, it is proper to make the conveyance by feoffment, or by a Lease and Release with an actual entry by the Leesee previous to the Release; after which the Releasee will pass the reversion. It may also be observed, that in exchange, if one of the parties die before the exchange is executed by entry, the exchange is void. But if the exchange be made by Lease and Releasee, this inconvenience is prevented, as the statute executes the possession without entry; and all incidents annexed to an exchange at Common Law will be preferred. 1 Sup. 271. b. 10.

When an estate is conveyed by Lease and Release, in the Lease for a year there must be the words, bargain and sale for money, and five shillings or any other sum, though never paid, is a good consideration, whereby the bargainee for a year is immediately in possession on the executing the deed, without actual entry: if only the words 21. 22, 435. But where Littleton says, that if a Lease is made for years, and the Leesee resides to the Leesee before entry, such Release is void; because the Leesee had only a right, and not the possession, without the possession; though this is true at Common Law, it is not so now upon the statute of uses. 1 Mod. 250, 255. And if a man make a Lease for life, remainder for lives, and the
LEASE & RELEASE.

the first Lease is diath, on which the Lessee releases to him in remainder, before entry; this is a good Release to enlarge the estate, he having an estate in law capable of transferment by Release, before entry had: 1 Ed. 27. 9. No person can make a bargain and sale, who hath not possession of the lands: but it is not necessary to reserve a rent therein; because the consideration of money raises the use. If a Lease be without any such consideration, the Lessee hath not any estate till entry, nor hath the Lessee any reversion; and therefore a Release will not operate, &c. 1 Ed. 27. 278; Cro. Jac. 169; 1 Mad. 253. On Lease at will, a Release shall be good by reason of the privity between the parties; but if a man be only tenant at sufferance, the Release will not enure to him; and as to the person who hath the reversion, it is void, for such tenant hath not any possession, there being no estate in him. Lit. 5 451, 462; Cro. Eliz. 21; Dyer 251.

In a Lease and Release, to make a tenant to the pri­ce to suffer a recovery, where the Release is made to A. B. and his heirs, &c., the tenant to the pri­ce; it must be also laid to the use of him the said A. B. and his heirs and assigns for ever; for the Release must be absolute tenant of the freehold. 5 Fos. 512; Lit. Convey­ance, 251. And a Release made on trust, must be to A. B. his heirs and assigns, to the only use and behalf of the Les­see, his heirs and assigns for ever; in trust for C. D. who is to be a party to the deed, and the purchase money to be paid by the coffer man to the price. If the words to the use, &c, are not inserted in the Release, the estate doth not execute by the statute of uses, and the trust is void. Lit. Conv. 253; 251. See titles Recovery; Trust.

A Lease and Release make but one conveyance, being in the nature of one deed. 1 Mad. 252.

For further information as to the principles in which this form of conveyance originates, and under which it operates, see this Dictionary, titles Conveyance; Deed; Fragment; Trust; Use; &c.

LEASING or LESING, See Gleasing.

LEAT, See Millot.

LEATHER. There are several flatures relating to Lea­ther: the stat. 25 Hen. 8. c. 14, directs dealers to be appointed for Leather intended to be transported; but the 18 Eliz. c. 8, prohibits the splitting of Leather, on penalty of forfeiture, &c. Though by stat. 20 Car. 2. c. 5, trans­portation of Leather was allowed to Scotland, Ireland, or any foreign country, paying a custom or duty; which statute was continued by divers subsequent acts. See stat. 1 Jac. 1. c. 22; and this Dictionary, title Navigation Acts. No person shall ingross Leather to sell again, under the penalty of forfeiture; none but tanners are to buy any rough hides of Leather, or calve-skins in the hair, on pain of forfeiture; and no person shall fell flesh or hides, under the penalty of 40s. Ed. a hide. Leather not sufficiently tanned, is to be forfeited. In London, the Lord Mayor and Aldermen are to appoint and swear searchers of Leather, out of the company of shoemakers, &c., and also tryers of sufficient Leather; and the same is to be done by mayors, &c., in other towns and corporations; and searchers allowing insufficient Leather, incur a forfeiture of 40s. Shoemakers making shoes of insufficient Leather, are liable to 31. 4d. penalty. Stat. 1 Jac. 1. c. 22.

LEKTOR.

Red tanned Leather is to be brought into open Leather markets, and searched and sealed before exposed to sale, or shall be forfeited; and contracts for sale otherwise to be void. Stat. 13 & 14 Car. 2. c. 7. Hides of Leather are adjudged the ware and manufacture of the carrier, and subject to search, &c. All persons dealing in Leather may buy tanned Leather searched in open market; and any person may buy or sell Leather hides or skins by weight. Stat. 1 W. & M. 33. Duties are granted on Leather, and entries to be made of tan-yards, under the penalty of 50l. and tanners and Leather-driers using any private tan-yards, or concealing hides, &c., shall forfeit 20l. leviable by Justices of Peace, by diff­rets, &c. Stats. 9 Geo. 1. c. 2; 9 Geo. 1. c. 27. Artificers may freely buy their Leather, and cut it and sell it in small pieces. 12 Geo. 2. c. 25. Penalty on carriers neglecting to curry Leather. Ibid. See this Dictionary, titles Tanners; Manufac­turers.

LECCATOR. A debauched person, Lecter, or whoremaker.

LECHERWITE, See Laitrivate.

LECTISTERNIUM, A bed, sometimes all that belongs to a bed. Flor. Wars. p. 631.


LECTURER, Presbyter. A reader of lectures. In London, and other cities, there are Lecturers who are apponted to the rectors of churches in preaching, &c. These Lecturers are chosen by the Vestry, or chief inhab­itants of the parish, and are usually the after­noon preachers: the law requires, that they should have the consent of those by whom they are employed, and like­wise the approbation and admission of the Ordinary; and they are, at the time of their admission, to sub­scribe to the thirty-nine articles of religion, &c. required by the stat. 13 & 14 Car. 2. c. 4. They are to be licensed by the Bishop, as other ministers, and a man cannot be a Lecturer without a licence from a Bishop or Arch­bishop; but the power of a Bishop, &c. is only as to the qualification and fitness of the person, and not as to the right of the Lectureship; for if a Bishop determine in favour of a Lecturer, a prohibition may be granted to try the right. Mich. 12 W. 3. B. R. If Lecturers preach in the week-days, they must read the common prayer for the day when they first preach, and declare their affent to that book; they are likewise to do the same the first Lecture-day in every month, so long as they continue Lecturers, or they shall be disabled to preach till they conform to the same: and if they preach before such conformity, they may be committed to prison for three months, by warrant of two Justices of Peace, granted on the certificate of the Ordinary, stat. 13 & 14 Car. 2. c. 4.

Where Lectures are to be preached or read in any cathed­ral or collegiate church, if the Lecturer openly, at the time aforesaid, declare his assent to all things in the book of Common Prayer, it shall be sufficient; and uni­versity sermons or Lectures are excepted out of the act concerning Lectures. There are Lectures founded by the donations of pious persons, the Lecturers whereof are apponted by the founders; without any interposition or consent of rectors of churches, &c., though with the leave and approbation of the bishop; such as that of Lady
LEGACY.

If the Legatee dies before the Testator, the Legacy is a void or lapsed Legacy, and shall fall into the residue.

And if a contingent Legacy be left to any one to whom it attains, or if he attains the age of twenty-one, and he dies before that time, it is a lapsed Legacy. Dy. 59.

1 Ep. Ab. 295. But if a Legacy to one to be paid when he attains the age of twenty-one years, is a vexed Legacy; an interest which commences in prospect, although it be "adveneas in futuro" and if the Legatee dies before that age, his representatives shall receive it out of the testator’s personal estate, at the same time that it would have become payable in case the Legatee had lived. This distinction is borrowed from the civil law; and its adoption in our Courts is not so much owing to its intrinsic equity, as to its having been before adopted by the Ecclesiastical Courts. For since the Conveyance has a concurrent jurisdiction with them, in regard to the recovery of Legacies, it was reasonable that there should be a conformity in these determinations: and that the Subject should have the same measure of justice in whatever Court he sued. 1 Ep. Ab. 295. But if such (contingent) Legacies be charged upon any real estate, in both cases they shall lapse for the benefit of the heir; for with regard to devised affeeting lands, the Ecclesiastical Court hath no concurrent jurisdiction. 2 P. Wm. 601, 610. And 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. Wm. 26, 7.

Besides these formal Legacies contained in a man’s will and testament, there is also permitted another deathbed disposition of property; which is called a donation, causa mortis; a gift in prospect of death. And that is, when a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered, to another, the possession of any personal goods, (under which have been included bonds and bills drawn by the deceased upon his bankers,) to keep in case of his decease. This gift, if the donor dies, needs not the assent of his executors; yet it shall not prevail against creditors; and is accompanied with this implied trust, that if the donor lives, the property thereof shall revert to himself, being only given in contemplation of death; mortis causa. Prest. Ch. 269: 1 P. Wm. 406, 441: 3 P. Wm. 357. See 2 Vern. 431.

As this donation may be avoided by creditors, so may it by the wife or children of a freeman, if it break in on their customary shares. 2 Vern. 612. The delivery of receipts for South Sea annuities does not amount to a gift of the annuities themselves. Ward v. Turner, 2 Vern. 442.

It is undecided whether the delivery of a mortgage deed will amount to a gift of the money due on the security. See Richards v. Symonds. cited 2 Vern. 438: Haffell v. Yates. Amb. 371.

One cannot sue in the Spiritual Court for a donation causa mortis. 2 Str. 777. See further this Dictionary, title Donation causa mortis.

Having said thus much on the subject of Legacies in general, we may proceed more particularly to inquire,
LEGACY.

1. Who may be Legatees; of lapsed and vested Legacies, and of the assumption of Legacies.

2. Of the Payment of Legacies; and hereof of Specific Legacies.

3. Of Interest on Legacies.

4. Of Suits to recover Legacies.

5. Of Devises to Creditors, &c., in satisfaction of Demand due from the Testator.—Of Legacies to Executors in satisfaction of the Restraint; see title Executor V. 8.

1. It seems necessary, that a Legatee should be born at the time of making the will; and it has been ad-dejudged, where Legacies were given to a man's children, that those who were born afterwards should have no share thereof. 1 Buck. 153. But it has been otherwise decreed in Chancery. 1 Ch. Rep. 301.

The name of a Legatee being very falsely spelt, it was referred to a master in Chancery, to examine who was the person intended. 1 P. Wms. 442. Some persons are incapable of taking by Legacy, under several estates; as in 17 C. 3. 2. 6. Officers, Counsel, Lawyers, &c., not taking the oaths; and 5 Geo. 1. c. 27. Attorneys going abroad, &c. See further who may be Devisors, this Dictionary, title Will.

The general rule is, that if the Legatee die before the Testator, or before the condition upon which the Legacy is given is performed, or before it be vested in interest, the Legacy is extinguished. Treat. Eq. lib. 4. pl. 1. c. 2. § 3. But a bequest may be so specifically framed as to prevent the death of the Legatee operating a lapse of the Legacy. See 3 Ark. 572, 580.—Neither will the rule extend to a Legacy to two or more; for though, by the civil law, there is no survivorship amongst Legatees, yet it is settled that a Legacy to two or more is not extinguished by the death of one, but will vest in the survivor. Gib. Rep. 157; 2 Ark. 220.—Nor will the rule extend to those cases where the Legacy is given over after the death of the first Legatee; for in such cases the Legacy in remainder shall have it immediately. 1 Adm. 33. pl. 82; 2 Vern. 207; 1 P. Wms. 274; 3 P. Wms. 113; Prov. Ch. 57; Marsh. 319; 2 Vern. 378.—Nor will a Legacy lapse by the death of the Legatee in the testator's life-time, if he be to take as a Trustee. See 1 Penn. 140: and 2 Vern. 486, in which latter case the point is doubted.

Where a father makes a provision for a child by his will, and afterwards gives to such child, being a daughter, a portion in marriage; or, being a son, a sum of money to establish him in life, (such portion or sum being in amount equal to, or greater than the Legacy,) it is an implied ademption of the Legacy; for the law will not intend that the father designed two portions to one child. 1 P. Wms. 680; 2 Ch. Rep. 85; 2 Vern. 115, 257; 2 Ark. 216; Amb. 325; 2 Bro. C. R. 307.—But this implication will not arise, if the provision by the will be by bequest of the residue. 2 Ark. 216:—or if the provision in the father's life-time be subject to a contingency; 2 Ark. 491:—or be not made generis with the Legacy; 1 Bro. C. R. 453:—or if the testator be a stranger; 2 Ark. 516; 2 Bro. C. R. 499; And such implication is always liable to be refuted by evidence. 2 Ark. 516; 2 Bro. C. R. 165, 519.

LEGACY I.

A man devised 200 l. to a piece to the two children of A. & B. at the end of ten years after the death of the testator; afterwards the child died in the ten years; and it was held a lapsed Legacy; for there is a difference where a devisee is to take effect at a future time, and where the payment is to be made at a future time; and whenever the time is annexed to the Legacy itself, and not to the payment of it, if the Legatee dies before the time happens, it is a lapsed Legacy. 2 Salk. 415. A bequest of money to one at the age of twenty-one, or day of marriage, without saying to be paid at that time, and the Legatee dies before the term; this is a lapsed Legacy: And so is it if the devisee had been to her when the child marry'd; or when a son shall come of age, and they die before. 2 Chit. 182; 2 Vern. 342.

But a devisee of a sum of money, to be paid at the day of marriage, or age of twenty-one years; if the Legatee die before either of these happen, the Legatee's administrator shall have it, because the Legatee had a present interest, though the time of payment was not yet ascertained, and it is a charge on the personal estate which was in being at the testator's death; and if it were discharged by that accident, then it would be for the benefit of the executor, which was never intended by the testator. 2 Vern. 366; 2 Lev. 207. A father bequeathed goods to his son, when he should be of the age of twenty-one years, and if he die before that time, then his daughter should have them; afterwards the father died, and then the son died before he was of age; adjudged, that the daughter shall have the goods given in Legacy immediately, and not till her brother would have been of age, if he had lived. 1 And. 33. And where a Legacy is devised to an infant, to be paid when he shall come of age, and he died before that time; it was ruled that his administrator should have it presently, and not till the infant should have been of age, if he had lived. 1 Lev. 278. In a case of this nature, it has been decreed in equity, that although the administrator should have the Legacy, yet he must wait for it till such time as the child would have come to twenty-one. 2 Vern. 199.

That if the Legacy be to the Legatee payable to him at a certain age, and the Legatee die before he attain such age, this is a vested and transferrable interest in the Legacy; See 2 Vern. 342; 2 Ch. Ca. 155; 1 Vern. 462; 3 P. Wms. 138; 2 Vern. 199. Otherwise, if the Legacy be to the Legatee generally, or at any time he attains such age. 2 Vern. 342; 2 Salk. 415; 1 Bro. Ab. 295; 6, and see 1 Bro. C. R. 119. —If the Legacy be made to carry interest, though the words to be paid, or payable, are omitted, it is a vested and transferrable interest. 2 Vern. 412; 2 Ch. Ca. 155; 2 Vern. 673; 2 Vern. 265; 2 Ark. 645. So if the bequest be to A. for life, and after the death of A. to B. the bequest to B. is vested, upon the death of the testator; and will not lapse by the death of B, in the life-time of A. 2 Vern. 347; 1 P. Wms. 560; 2 Vern. 378; Amb. 167: 1 Bro. C. R. 119: and the note there; 1 Bro. C. R. 181.

Where a Legacy is to arise out of the real estate, it shall not go to the representative of the Legatee, but to the heir in the inheritance. And yet where 1000 l. was given by a peron out of lands, to his daughter, and inten­ted to be computed from his death, or here, though the Legatee died before the time appointed for paying the
the same, it was held the Legacy should be raised notwithstanding; and the Lord Chancellor said, that this Legacy was a vested one. 2 Forn. Rep. 617; Barnard. 328, 330. A person by will, &c. gives a portion or Legacy to a child, payable at twenty-one years of age, out of a real and personal estate, and the child dies before the Legacy becomes payable; in that case, so much thereof as the personal estate will pay, shall go to the child's executors and administrators: but so far as the Legacy is charged upon the land, it is said it shall sink, 2 Peter Williams 613. Also if a Legacy be given to one to be paid out of such a fund, and the same fails, it has been resolved, that it ought to be paid out of the personal estate; and the failing of the manner appointed for payment shall not defeat the Legacy, 1 P. Wms. 779.

2. If a Legacy when due be paid to the father of an infant, it is no good payment; and the executor may be obliged in equity to pay it over again; and where any Legacy is bequeathed to a child, covering, paying to her alone, is not sufficient, without his husband. 1 Vern. 251.

Executors are not bound to pay a Legacy, without security to refund. 1 Charr. R. 149, 257. And if evidence be given for a Legacy in the Ecclesiastical Court, a prohibition lies, unless they take security to refund. 2 Vern. 358. If an executor pays Legacies, and, seven years after, covenant is broken, for which action is brought against the executor; the court inclined that it was a Covenanted, and that the executor ought to have taken security for his indemnity upon payment of the Legacies. Allen 38. Though it has been adjudged that a covenant is no duty till broken; and therefore since it is uncertain whether it will be broken or not, it shall be presumed it will not; and the Legacies being a present duty, shall be paid by theexecutor, notwithstanding any covenant not actually broken. Style. 37; 1 Nell. Ab. 786. If one binds himself and his executors in an obligation, &c. to perform a certain thing, and in his will gives divers Legacies and dies, leaving goods only sufficient to pay the obligation when forfeited, this obligation shall be no bar to the Legacies, because it is uncertain whether the same may ever be forfeited; though the executor may therefore make a delivery upon condition, viz. to return the Legacies if the obligation becomes forfeited, and the penalty be recovered. 1 Roll. Ab. 928; 2 Venr. 358.

The executor is to pay the Legacies after the debts: but executors cannot in equity pay their own Legacies first, where there is not enough to pay all of them, but shall have an equal proportion with the rest of the Legatees. 1 Charr. R. 354. An executor has election, where any chattel is given to him, to have and take it in one right or the other, viz. as executor, or Legatee, which is to be made by a special taking, or declaration, 4 Co. 10 Rep. 47; Plowd. 515; Dyer. 277.

If there be a specific Legacy given of anything, as a horse, silver cup, &c., it must be delivered before any other Legacy, provided there be affets. Offic. Exce. 317. And if there be enough to pay all the Legacies after the debts are satisfied, the Legacies shall all be paid; but if there is not sufficient to pay debts or more, the Legatees must lose their Legacies, or a propor tional part of them. Plowd. 526; See 1 Litt. Ab. 579.

A specific Legacy is, where, by the assent of the executor, the property of the Legacy will vest:—As there is a benefit one way to a specific Legatee, that he shall not contribute, (in case of a deficiency to pay all the Legacies,) so there is a hazard the other way:—For instance, if such specific Legacy, being a lease, be evicted; or, being goods, be lost or burnt; or, being a debt, be lost by the insolvency of the debtor: in all those cases such specific Legacy shall have no contribution from the other Legatees, and therefore shall pay none towards them. Hinton v. Pink. 1 P. Wms. 539.

These consequences attending a specific Legacy have railed, in the several cases to be met with in the books, the question, whether a Legacy was specific or general?—

A specific Legacy (strictly speaking) is said by Lord Hardwicke in Fovey v. Snapin, 1 Atk. 417, to be a bequest of a particular chattel, specifically described and distinguished from all other things of the same kind; or, in other words, an individual Legacy. Money, therefore, if sufficiently distinguished, may be the subject of a specific bequest; as money in a certain chest, E. L. Watson v. Stittch, 1 Atk. 508; or a particular debt; as to the admission of which latter by payment in the testator's life-time, See Thomond (E.) v. Suffolk (E.), 1 P. Wms. 461. — So of Stock in Astton v. Astton, Tab. 152: Aveyn v. Ward, 1 Vern. 424; Drinkwater v. Falconer, 2 Vern. 623.—So a bequest of a part of a specific chattel may be equally a specific Legacy, 3 Atk. 103.

But the Legatees of specific parts, though not liable to abatement with general Legacies, yet must abate proportionably among themselves upon deficiency of the specific thing bequeathed. Slech v. Thorington, 2 Vern. 503: or on deficiency of the general assets for payment of debts. Long v. Shap, 1 P. Wms. 403.—So specific Legateses of distinct chattels shall abate proportionably on a deficiency of general assets. Devon (D.) v. Atkms, 2 P. Wms. 382.

On the other hand, a mere bequest of quantity, whether of money or any other chattel, is a general Legacy; as of a quantity of Stock: Fovey v. Snapin, 1 Atk. 414: Slech v. Thorington, 2 Vern. 502: and where the testator has not such Stock at his death, it is a direction to the executor to procure so much Stock for the Legatee, Partridge v. Partridge, Tabl. 227.—So the purpose to which a general Legacy is to be applied will not alter its nature; as in the case of Hinton v. Pink, 1 P. Wms. 539. Personal annuities given by will are general Legacies, Harne v. Edwards, 3 Atk. 693; Loxton v. Lowen, 3 Vern. 417. How far a Legacy of money, to be paid out of a certain fund, shall be deemed by the failure of the fund, see Saville v. Blackett, 1 P. Wms. 578; 2 P. Wms. 330. Mr. Cox's Note (1): And see Treat. Eq. Lib. 4, ft. 1, c. 2, § 5. in n.

A sum bequeathed out of a debt must be paid though the debt is recovered by the testator; otherwise of a bequest of the debt itself. 2 St. 824.

As an executor is not obliged to pay a Legacy without security given him by the Legatee to refund, if there are debts, because the Legacy is not due till the debts are paid, and a man must be just before he is charitable; so in some cases, the executor may be compelled to give security to the Legatee for the payment of his Legacy; as where a testator bequeathed 100l. to a person, to be paid at the age of twenty-one, and made an executor, and
and died; afterwards the Legatee exhibited a bill in equity against the executor,setting forth that he had waited the estate, and praying that he might give security to pay the Legacy when it should become due; and it was ordered accordingly. 1 Ch. Rep. 136: 277. See 39, 14.

3. If a Legacy is devised, and no certain time of payment, and the Legatee is an infant, he shall have interest for the Legacy from the expiration of one year after the testator's death; for so long the executor shall have, that he may see whether there are any debts, and no laches shall be imputed to the infant: but if the Legatee be of full age, he shall have interest from the time of the demand of his Legacy. Where a Legacy is payable at a day certain, it must be paid with interest from that day. 2 Salk. 415: 2 Nelf. Abr. 1114. A person gives a Legacy charged upon land, which yields rents and profits, and there is no day of payment mentioned, the Legacy shall carry interest from the testator's death, because the land yields profit from that time; though were it charged on the personal estate, and the will mentions no time for paying it, there the Legacy bears interest only from the end of a year after the death of the testator; which is paid to be the settled difference. 2 P. Wms. 26. It has been decreed in equity, that although a Legacy be devised to be paid at a certain time, it carries interest only from such time as it is demanded: it is otherwise of a debt; and in such case none-payment at the day has been held no breach, without demand and refusal. Prerod. Chmb. 161. See Abr. Conf. Ep. 286. One having a Legacy given him, payable within a year, knew nothing of it till a great while afterwards, when the executor published it in the Gazette; here Chancery would allow no interest, but the bare Legacy. Prerod. Chmb. 11.

4. Legacies being gratuitous, and no duties, such will not be at Common Law, for the recovery of a Legacy; but remedy is to be had in the Chancery or Spiritual Court. Allen 58. The cognizance of a Legacy properly belongs to the Spiritual Courts, for such bequests were not good by the Common Law; but this is to be understood, where a Legacy is devised generally: if it is payable out of the land, or out of the profits of the land, an action on the case lies at Common Law, but the usual remedy is in Chancery. Sid. 44: 3 Salk. 223. By Hul Chief Justice, a Legatee may maintain an action of debt at Common Law against the owner of land, out of which the Legacy is to be paid, and hence the Failure of wills gives him a right, by conveyance the Legatee shall have an action at law to recover it. 2 Salk. 415. And sometimes the Common Law takes notice of a Legacy, not directly, but in a collateral way; as where the executor promised to pay the money, if the Legatee would forbear to sue for the Legacy, this was adjudged a good consideration to ground an action; but that it would not lie for a Legacy in specie; which would be to divest the Spiritual Court of what properly belonged to their jurisdiction, by turning suits which might be brought there into actions on the case. Rynm. 23. And it is now positively determined, that no action at law lies for a Legacy; the suit of Chancery being the proper jurisdiction for that purpose. Deck v. Strutt. 5 Term Rep. 695.—The reason given in this case seems to contradict the principle of another case in Comw. 284, 93 where it was held, that if an executor, in consideration of offers in his possession, promises to pay a Legacy, an action of assumpsit lies against him in his own right. In the first mentioned of these cases, however, no express promise was proved:—if security is given by bond to pay a Legacy, in such case an action at law is the proper remedy; by giving the bond, the Legacy is, as it were, extinguished, and becomes a debt at Common Law, and the Legatee can never afterward sue for it in the Spiritual Court. Yde. 39. For the recovery of a debt so purchased, given by way of Legacy, it is best to make the Legatee executor to that debt, &c. or he must have a letter of attorney in the executor's name. Wood's Inst. 135.

It is without question that the suit for a personal Legacy may be brought in Chancery; and if the matter has proceeded to a sentence in the Ecclesiastical Court, it is proper to go into Chancery for the executor's indemnity: where the Legates are to give security for the suit, and that Court will give money put out for children. On like principles a bill for the distribution of an intestate's personal estate is proper in Chancery, for the Spiritual Court in that case has but an inequitable jurisdiction. See Fonblanque's Treat. Eq. lib. 4 pt. 1 c. 1 § 2.

An executor being, in equity, considered as a trustee for the Legatee, with respect to his Legacy, and as a trustee in certain cases for the Next-of-Kin as to the undisposed surplus, is the true ground of equitable jurisdiction in enforcing the payment of a Legacy, or distribution of personal estate. See 1 P. Wms. 264 § 175.

That the jurisdiction of our Courts of Equity is, in such cases, more effective and protective of the interest of creditors and Legates, is evident in several instances, particularly in compelling executors to give security for a Legacy payable at a future day, the executor appearing to have willed the estate. 1 Ch. Com. 121:—or to bring the fund into Court. 3 Bro. C.R. 365. And there are cases in which a Court of Equity will restrain proceedings in the Ecclesiastical Court for a Legacy, as where a husband is suing for a Legacy in right of his wife. See 2 Ab. 420: 3d. 114: Prt. Ch. 348.

The Spiritual Court has jurisdiction in the case of exaction or the withholding or detaining of Legacies, as a consequential part of their testamentary jurisdiction; but in this case the Courts of Equity exercise a concurrent jurisdiction, as incident to some other species of relief required: and as it is beneath the dignity of the King's Courts to be merely ancillary to other inferior jurisdictions, the cause, when once brought there, receives there also its full determination. See 3 Comw. 98 c. 7.

5. Where a testator gives his debtors a Legacy greater than his debt, it shall be taken in satisfaction of it: though where the Legacy is less, it shall not be deemed as any part thereof; but as a Legacy is a gift, sometimes the Legatee has been decreed both. 1 Salk. 155: 2 Salk. 568. If a greater Legacy is given by a codicil, to the same person that was Legatee in the will, it shall not be a satisfaction, unless to express. 1 P. Wms. 444.

Although a Legacy is to be taken as a gift, yet a man shall be intended to be just before he is kind; so that a bequest of the same sum by the debtor to the creditor shall be applied in satisfaction of the debt. Prt. Ch. 394: 2 P. Wms. 130: 3 P. Wms. 314: 1 Fryr. 123; Mydf.
LEGACY.

Maj. 7: See 2 P. Wms. 616.—Yet where there are
allots, and the testator intended both, it may be as good
equity to construe him both just and kind; and the
construction of making a gift a satisfaction, has, in many
cases, been carried too far. See 1 Salk. 155: 1 P. Wms.
410: 2 P. Wms. 616.

If a Legacy be less than the debt, it was never held
to go in satisfaction. 2 Salk. 508: Pre. Ch. 394: 2 P.
Wms. 616: 2 Vern. 478: Maj. 295.—So if the Legacy
were upon condition, or upon a contingency; for the
will is intended for the Legatee's benefit; and therefore
it could not be supposed that the testator would give him
an uncertain recompence in satisfaction of a certain
demand. Pre. Ch. 394: Salk. 508: 2 Atk. 300, 491: 2
P. Wms. 555: 2 P. Wms. 519.—So where the Legacy is not
equally beneficial with the debt in some one particular,
although it may be so in another, as in time of pay-
ment. Pre. Ch. 246: 2 Vern. 478: 2 Atk. 300: 3 Atk.
56: 1 Bro. C. R. 139, 295.—So if the thing were of a
different nature, as land, it should not go in satisfaction
of money, unless there was a defect of allots. 2 P. Wms.
616: Salk. 508: 2 P. Wms. 616:—So if the debt was
contracted after the Legacy given, as the testator could
not have it in contemplation to satisfy a debt not then in
being. 2 Salk. 508: 2 P. Wms. 342: 1 P. Wms. 409: 3
P. Wms. 535.—So if the debt was upon an open or
running account, so that it might not be known to the
testator whether he owed any money to the Legatee or
not. 1 P. Wms. 290.

Causes of this nature therefore depend upon circum-
stances; and where a Legacy has been decreed to go in
satisfaction of a debt, it must be grounded upon some
evidence, or at least a strong presumption that the tes-
tator did so intend it; for a Court of Equity ought not
to hinder a man from disposing of his own as he pleases:
and therefore the intention of the party is to be the rule:
for where he says he gives a Legacy, the Court cannot
contradict him, and say he pays a debt. See Tract. Eq.
lb. 4. pt. 1. c. 1. § 51 and the notes there.

LEGALIS HOMO, He who stands reius in curia,
not outlawed, excommunicated, or infamous; and in
this sense are the words probis & legatus bonum; hence
also legality is taken for the condition of such a man.
Leg. Ed. Clas. c. 18.

LEGALIS MONETA ANGLIE, Lawful money
of England, is gold or silver money coined here by the
King's authority, &c. 1 Brot. 207. See title Coin.

LEGAMANNUS, See Legaman.

LEGATORY, Legatarius.] He or she to whom any
thing is bequeathed. See Legate. See Stat. 27 Eliz. c. 16.
Spelman says, it is sometimes used pro Legato et Nuncio.

LEGATE, Legatus.] An ambassador or Pope's Nuncio.
There are two sorts of Legates, a Legate & latter, and
Legatus natur; the difference between whom is thus:
Legatus in Latere was usually one of the Pope's family
vested with the greatest authority in all ecclesiastical
affairs over the whole kingdom where he was sent;
and, during the time of his legation, he might determine
even thuse appeals which had been made from thence to
Rome: Legatus natur had a more limited jurisdiction,
but was exempted from the authority of the Legate & latter;
and he could exercise his jurisdiction in his own
province. The Popes of Rome had formerly in England
the archbishops of Canterbury their Legatus natur; and,
upon extraordinary occasions, sent over a Legatus à Latere.

LEGATEE, The person to whom a Legacy is be-
queathed by a last will.

LEGATORY, See Legatary.

LEGATUM, In the ecclesiastical sense, was a legacy
given to the church, or consecrated mortuary. Cowell.

LEGEM FACERE, To make law, or write: Leg-
em habere, to be capable of giving evidence upon oath;
Minor non habet legum. Selden's note on Heng. 135.

LEGEGILD, Legegildon.] See Legawite.

LEGIOSUS, Litigious, and so subjected to a course
of law. Cowell.

LEID, Vide Legue & Lathe-reeve.

LEIPA, A departure from service.—Si quis à De-
minuo suo fine licentia deductatur, ut leipa emendetur, &
redi tre legatur. Leg. Hen. 1. c. 43. Blount.—Rather, an
Elper; the person who escapes or departs. See Serm.
in v. e.

LEIRWIT, Mulata adultiorum. Elia, lib. 1. c. 7.] Is
used for a liberty, whereby a lord challenges the
penalty of one that lieth unlawfully with his bond-
woman. Cowell.

LEITHEN, Vide Lathe and Lathe-reeve.

LEMON JUICE, See Lime.

LENT, From the Germ. Lentia. i.e. from the Spring
Fast.] A time of fasting for forty days, next before
Easter. At the time of the lean, may be commanded to
be observed in England by Ecclesiast, the seventh King of Kent, before the year See. Baker's Chron. 7. No meat was formerly to be eaten in Lent,
or on Wednesdays or other three days, but by licence,
der under certain penalties. And butchers were not to kill
flesh in the Lent, unless for virtualing ships, &c.

LEP AND LACE, Lope & Laffe.] A custom in the
manor of Writtle in Essex, that every cart which goes
over Greenbury within that manor, (except if he the cart
of a nobleman) shall pay 4d. to the lord. This Green-
bury is conceived to have been ancienly a marketplace;
on which account this privilege was granted.

LEPA, A menease which contained the third part
of two bullocks: whence we derive a jest-shop. Da
Cange.

LEPORARIUS, A greyhound for the hare. Marc.
Ang. tom. 2. fol. 283.

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LES

LETTER OF ATTORNEY.

A Letter of Attorney to receive Rents, Debts, and Dividends, and to demise Premises.

KNOW all men by these presents, That I A. B. of the parish of Christ Church in the county of Middlesex, furious, for divers good causes and considerations me before written, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, C. D. of the parish of Christ Church aforesaid, my true and lawful attorney for me, and in my name, place, and stead, and for my use, to ask, demand, and receive, all and every rent and rent, sum and sums of money now due, or which hereafter shall or may arise to me from any person or persons whatsoever, who have been, are, or hereafter shall or may be tenant or tenants of any messuages or tenements, lands, hereditaments, and premises, or of any part or parts, floor or floors, of any messuages or tenements, lands, hereditaments, and premises, in Great Britain, the island of Jamaica, or elsewhere, belonging to me; and of and from all and every other person and persons liable to or empowered to pay the same; and upon receipt thereof, or of any part thereof, or any payment of such rent or rents or any part thereof, to enter into and upon all or any of the messuages or tenements, lands and premises, liable to the payment

indelicacy of a positive refusal to give the Royal Assent to a bill paifed by the Lords and Commons is avoided. See tit. Parliament

LESCHERWES, Trees fallen by chance, or windfalls. Broke's Abr. 341.

LESIA, A leaf of greyhounds, now restrained to the number of three, but formerly more. Spen.

LESPELEGEND, Sax. Let plegen Rwa minor Sin; Jih goudet Jornom or niccrarhlied. Sumulius ex Angli Lepsegend ancipitant, Danti woven men eant, letati, qui exum et unus virinitun unten Jorganitum. 

Hence it appears that this was an inferior officer in forests, to take care of the vert and venison therein, &c.

—Confist. Canai. de Forstis, Art. 2.

LESSA, A legacy; from this word also Leafe is derived. Mon. Ang. tom. 1. pag. 562.

LESSOR AND LESSEE, The parties to a Leafe. The former he who makes the Leafe, the latter to whom it is made.

LESTARAGE, See Ballot.

LESTARAGEY, Leageh-free, or exempt from the duty of paying ballat money. Cowell.

LETT, or LEVES, Is a word used in Donzelays, to signify forests, and is still used in many places of England, and often inferred in deeds and conveyances. Cowell. Hence the modern term Leagues.

LETARE JERUSALEM, See Quadragesimalia.

LETHERWITE, See Leivut.

LETTERS, Threatening. See Threatening Letters.

LETTER MISSED FOR ELECTING OF A BISHOP. A letter from the King to the Dean and Chapter, containing the name of the person whom he would have them elect. See title Bishop.

LETTER MISSIVE IN CHANCERY, To a Peer. See Chanery.

LETTER OF ABSOLUTION, Letter abfllutoria.] Abfolutor by letters, were such in former times, when an abbot released any of his brethren ab omni subjectione & obligation, &c. and made them capable of entering into some other order of religion. Mon. Faverbypania, p. 7.

LETTER OF ATTORNEY, Lettera Attornata.] A writing, authorizing another person, who in such case is called the Attorney of the party appointing him, to do any lawful act in the stead of another: as to give feisin of lands; receive debts, or sue a third person, &c. A Letter of Attorney is either general or special. The nature of this instrumen is to give the attorney the full power and authority of the maker, to accomplish the act intended to be performed: and sometimes these writings are revocable, and sometimes not for: but when they are revocable, it is usually a bare authority only; they are irrevocable when debts, &c. are assigned to another, in which case the word, irrevocably, is inserted; and the intention of them then, is to enable the assignee to receive the debt, &c. to his own use.

In cases of Letters of Attorney it was anciently held that the authority must be strictly purged: if it be to deliver livery and seisin of lands between certain hours, and the attorney doth it before or after; or in a capital message, and he does it in another part of the land, &c. the act of the attorney to execute the estate shall be void. Ploex 475. But notwithstanding the ancient opinions for purging authorities with great strictness and

exactness, yet in case of livery and seisin they have been always favourably expanded of later times, unless where it hath appeared, that the authority was not purged at all; as if a Letter of Attorney be made to three, two cannot execute it, because they are not the parties delegated, and they do not agree with the authority. 2 Nid. Rep. 79. Where the attorney does less than the authority mentions, it is void: it is said if he doth more, it may be good for so much as he had power to do, and void for the rest; yet both these rules have divers exceptions and limitations. Vide 1 Inst. 258. Where two attorneys were made jointly and severally to deliver seisin of lands, &c. and one of them delivered seisin of part of the land, and after another attorney, being tenant thereof for years, gave livery of the other part of the land: this was held good, though made at several times. 1 And. 247. And if a man make a deed of seisin of lands in divers counties, with such a Letter of Attorney, the livery must be at several times; otherwise it cannot be made. Ibid. See 1 Lev. 132, 260.

If a Mayor and Commonalty make a seisin of lands, and execute a Letter of Attorney to deliver seisin, the livery and seisin, after the death of the mayor, will be good, by reason the Corporation dieth not. 1 Lev. 52. In other cases, by the death of the party giving it, the power given by Letter of Attorney generally determines. A person made a Letter of Attorney to a creditor to receive all his wages and pay due from a ship, and afterwards died at sea; this authority was adjudged to be determined, that all the rest of the creditors should have a share in his administration. Pre­ced. Chanc. 125; 2 Vent. 391. Sailors generally make the attorney, executor also. See title Navy. See further as to Letters of Attorney, Com. Dig. title At­tor­ney (C).
LETTER—OF ATTORNEY.

payment thereof, and distrain for the same, and the distress of distresses then and there found to take away, sell, and dispose of according to law; and else for me and in my name, and for my life, to do, demand, and receive, of all and every sum and sums of money now due or which hereafter shall or may grow due to me for dividends, interest, or profits of any sum or sums of money, parts, or shares now belonging, or which shall belong to me therein respectively; and likewise to give, demand, do, and receive, all and every debt and debts, sums and sums of monies, or to grow due and payable to me, from any other person or persons, for any other matter, cause, or thing whatsoever, and upon receipt thereof; or of any part thereof in my name, or in his own name, to make and give proper receipts and discharges for the same; and in case any tenant or tenants, of any message or conveyance, lands and premises wherein I have any right or interest, shall quit or leave the premises by them respectively held, then and in that case I do hereby give and grant to my said attorney, full power and authority to demesne, let, and to the same respectively, or any part thereof, to such person or persons, and for such rent and rents, and for such term and time, and under such covenants and agreements as my said attorney shall think fit, and to expend and apply such part of the rents and profits of the said premises as shall come to his hands, in repairing and improving the same, as my said attorney shall judge proper, and one or more attorney or attorneys under him, for all or any the purposes aforesaid, to make and do all such acts, deeds, and things as aforesaid; giving and hereby granting to my said attorney full power and authority in the performance of all and singular the premises aforesaid, as fully and amply in every respect as I myself might or could do if personally present; hereby ratifying and confirming all and whatsoever my said attorney shall lawfully do or cause to be done, in and about the said premises, by virtue hereof. In witness whereof, I the said A. B. have hereunto set and subscribed my hand and seal this —— day of —— in the year of our Lord ——.

Sealed and delivered (being first duly stamped) 

in the presence of

LETTERS CLAUS, Litera Clauis.] Close Letters, opposed to Letters-patent: being commonly sealed up with the King’s Signet or Privy Seal; whereas the Letters-patent are left open and sealed with the broad seal.

LETTER OF CREDIT, is where a merchant or correspondent writes a Letter to another, requesting him to credit the bearer with a certain sum of money. Merch. Dict. See title Bill of Exchange.


LETTER OF LICENCE, An instrument or writing made by creditors to a man that hath failed in his trade, allowing him longer time for the payment of his debts, and protecting him from arrest in going about his affairs. These Letters of Licence give leave to the party to whom granted to resort freely to his creditors, or any others, and to compound debts, &c. And the creditors severally covenant, that if the debtor shall receive any molestation or hindrance from any of them, he shall be acquitted and discharged of his debt against such creditor. &c.

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the captain and crew of the privateer. But the owners, before the commission is granted, shall give security to the Admiralty, to make compensation for any violation of treaties between those powers with whom the nation is at peace: And by Stat. 24. Geo. 3. c. 47, they must also give security that such armed ship shall not be employed in smuggling. These commissions are now upon all occasions, as well in the statute, called Letters of Marque, S. J. 24. Mem. 2 c. 34: 19 Geo. 3. c. 67: 33 Geo. 3. c. 66. § 14—20.—Sometimes the Lords of the Admiralty have this authority by a proclamation from the King in Council, as was the case in December 1780, to empower them to grant Letters of Marque to seize the ships of the Dutch. See Chirnside's Note on 1 Com'n. c. 37. 1b. 86.

If a Letter of Marque wilfully and knowingly take a ship and goods belonging to another nation, not of that State against whom the commission is awarded, but of some other in amity, this amounts to a downright piracy. Rul. Abr. 420. See further title Reproach.

LETTERS PATENT, Letters patent.] Some called Letters overt; are writings of the King sealed with the Great Seal of England, whereby a person is enabled to do or enjoy that which otherwise he could not; and so called, because they are open with the said afhay, and ready to be shown for confirmation of the authority thereby given. And we read of Letters Patent to make designs, &c. Letters Patent may be granted by common persons, but in such case they are not properly called Patentees; yet for distinction, the King's Letters Patent have been called Letters Patent Royal. See Stat. 2 H. 6. c. 10. See titles Patent; Grants to the King.

LETTERS OF SAFE CONDUCT, See title Safe Conduct.

LEVANT AND COUCHANT, Is a law term for cattle that have been so long in the ground of another, that they have lain down and are risen again to feed; in ancient records lewantes et carbones. When the cattle of a stranger are come into another man's ground, and have been there a good space of time, (supposed to be a day and a night,) they are said to be levant and carboned; 2 Leas. Abr. 167. Beasts of a stranger on the lord's ground may be disfavored for rent, though they have not been levant and couchant; but it is otherwise if the tenant of the land is in fault in not keeping up his mounds, by reason whereof the beasts escape upon the land. Wood's Inj. 150. Soc title Differs i. 2.

LEVANUM, From Lat. Levare, to make lighter.] Leavened bread.

LEVARE PÆNUM, To make hay, or properly to call it into wind-rows, in order to cock it up. Parch. Antig. pag. 520. Hence man levatio fæculi was one day's hay-making, a service paid the lord by inferior tenants. Parch. Antig. 452.

LEVARI FACIAS, A writ of execution directed to the Sheriff for levying a sum of money upon a man's lands and tenements, goods and chattels, who has forfeited his recognizance. Reg. Orig. 298. This writ was given by the Common Law, before the statute Wigt. 2. c. 18, gave the writ of eject; and a Levari Facias commands the debt to be levied & ejectus & possessi ters, &c. And cattle of a stranger on the land have been held issues of the land, which is debtor.

1 Stat. 395.

On a judgment in an inferior court, and a Levati Facias, whereupon a warrant was made to levy the debt de terris et casulis, it was adjudged that the precept ought to be to levy the money de terris et casulis, &c. 2 Lorcq. 1410. A Levati Facias in debt lies against a parson, directed to the bishop, &c., to levy the money on his spiritual goods. 13 H. 4. 17.

There is a Levati Facias donea difficilitatis, for the levying of damages, wherein the defendant has formerly been condemned to the difficulties. Reg. Orig. 241. Also Levati Facias rectum debiti, to levy the remainder of a debt upon lands and tenements, or chattels of the debtor, where part has been satisfied before. Reg. Orig. 299. And a Levati Facias quando sic comes returnetur quem non babitur emptores, commanding the sheriff to sell the goods of the debtor, which he has taken, and returned that he could not sell. Reg. Orig. 306. See title Execution.

LEUCA, A measure of land, consisting of 1500 perches. Ing. 5. c. 54, it is 2000 perches. pag. 910. In the Norman. 1. com. 1. p. 233, it is 480 perches.

LEVIATA, A space of ground, as much as a mile contains. Monaj. 1. com. 4. p. 768. And so it seems to be used in a charter of William the Conqueror to Battle Abbey, Consec.

LEVELLUS, A level, even or upon the level. Cowell.

LEVITICAL DEGREES, See title Distant.

LEVY, Levare.] Is used in the law for to collect, or exact; as to levy money, &c. Sometimes it signifies to erect, or call up; as to levy a ditch, &c. To levy a fine of land, is the usual term for the completing that conveyance; in ancient time, the word rent a fine, was made use of. 17 H. 6. See title Fine.

LEVYING MONEY WITHOUT CONSENT OF PARLIAMENT. No Subject of England can be constrained to pay any aids or taxes, even for the defense of the realm or the support of Government, but such as are imposed by his own consent, or that of his representatives in parliament. See Stat. 25 Ed. 1. c. 14. 34 Ed. 1. stat. 4. c. 1: 14 Ed. 3. stat. 2. c. 1: The petition of right, 3 Car. 1. c. 1: stat. 1 W. & M. stat. 2. c. 2: and this Dif. titles Liberty, Taxes.

LEVYING WAR AGAINST THE KING, See title Treason.

LEWDNESS. Open and notorious Lewdness, is an offence against religion and morality, either by frequenting houses of ill fame, which is an indelible offence, Poth. 2: 8; or by some groisy scandalous and public indecency, for which the punishment is fine and imprisonment; and in Mich. T. 15 Car. 2, a person was indicted for open Lewdness in showing himself naked on a balcony, and other misdemeanors, and was fined 2000 marks, imprisoned for a week, and bound to his good behaviour for three years. 1 Sid. 168. In times past, when any man granted a lease of his house, it was usual to insert an express covenant, that the tenant should not entertain any lewd woman, &c. See titles Bawdy-houses, Forbition.

At temporal punishments, they may also in certain circumstances be inflicted for having bastard children. By stat. 2 Eliz. c. 3, two justices may take order for the punishment of the
of libelous words which may be forgot, and which will survive like words which may be forgot, an action for which is confined to the person; but the cause of action for scandal in a Libel survives. 5 Rep. 125. Libels, says Blackstone, may be spoken in the largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency. Considered particularly as offences against the public peace, they are malicious defamations of any person, and especially a Magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to public hatred, contempt, and ridicule. The direct tendency of these Libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. 4 Comm. c. 11. p. 150; 3 Com. c. 8. p. 125.

From the different modes in which a Libel may be conveyed, a distinction has been made between a Libel in scriptis, and one sine scriptis; i.e. in writing, or without writing. 3 Inst. 173.

I. What shall be considered as a Libel.
II. Of its Publication.
III. In what Cases the Truth of a Libel may or may not be pleaded in justification of it.
IV. Of its Punishment. See title Jury IV. 2.

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I. A Libel is the greatest degree of scandal, and does not die like words which may be forgot, an action for which is confined to the person; but the cause of action for scandal in a Libel survives. 5 Rep. 125.

Libels, says Blackstone, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency. Considered particularly as offences against the public peace, they are malicious defamations of any person, and especially a Magistrate, made public by either writing, signs, or pictures, in order to provoke him to public hatred, contempt, and ridicule. The direct tendency of these Libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. 4 Comm. c. 11. p. 150; 3 Com. c. 8. p. 125.

From the different modes in which a Libel may be conveyed, a distinction has been made between a Libel in scriptis, and one sine scriptis; i.e. in writing, or without writing. 3 Inst. 173.

I. What shall be considered as a Libel.
II. Of its Publication.
III. In what Cases the Truth of a Libel may or may not be pleaded in justification of it.
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LIBEL I.

prejumptions, if spoken, would not have been defamation; as to call a person in writing an 'icy old maid,' was held in that case to be a Libel; although as words spoken they would not have been actionable. And on this ground a young lady of quality in the year 1793 recovered 400l. damages for reflections upon her chastity, published in a new-paper, although the could have brought no action for the grossest verbal aspersions that could have been uttered against her honour. An action for a Libel also differs from an action for words in this particular; that the former may be brought at any time within six years, and any damages will entitle the plaintiff to full costs. Critchley's note on 1 Comm. p. 125, 6.

'打印机 of any person that he is a twidder, is a Libel and actionable. 1 Term Rep. 748.

All Libels are made against private men, or magistrates, and public persons; and those against magistrates deserve the greatest punishment: if a Libel be made against a private man, it may excite the person libelled, or his friends, to revenge and break the peace; and against a magistrate, it is not only a breach of the peace, but a scandal to government, and stirs up sedition. 5 Rep. 121.

Where a writing inveighs against mankind in general, or against a particular order of men, this is no Libel; it must depend to particulars and individuals to make it a Libel. Trim. 11 W. 3. P. R. But a general reflection on the Government is a Libel, though no particular person is reflected on: and the writing against a known law is held to be criminal. 4 St. Tr. 672, 903. According to Hob C. J. scandalous matter is not necessary to make a Libel; it is enough if the defendant induces an ill opinion to be had of the plaintiff, &c. And if a man speak scandalous words, unless they are put in writing, he is not guilty of a Libel; for the nature of a Libel consists in putting the infamous matter into writing. 2 Salk. 417; 3 Salk. 226. A defamatory writing, expressing only one or two letters of a man's name, if it be in such a manner, that from what goes before and follows after, it must be understood, by the natural construction of the whole, to signify and point at such a particular person, is as properly a Libel as if the whole name were express'd at large. 1 Hawk. P. C. c. 73. § 5. For, adds Hawk. it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: and it is a ridiculous absurdity to say, that a writing which is understood by every person acquainted with the question, cannot possibly be understood by a Judge and Jury. On application for information for this offence, some friend to the party complaining should in such case state by affidavit the having read the Libel, and that he understands and believes it to mean the party. 3 Bac. Ab. in n. And in the case of actions for Libels by signs or pictures, it seems necessary always to shew by proper inferences and averments of the defendant's meaning, the import and application of the scandal, and that some special damage has followed, or it cannot appear that such Libel by picture was understood to be levelled at the plaintiff, or that it was attended with any actionable conseq lengths.

LIBEL I.

tends to a breach of the peace. 3 Hen. P. C. c. 125; 1 Hawk. P. C. c. 73. § 5. 4 Term Rep. 126; 129 in n.

But an indictment for publishing libellous matter reflecting on the memory of a dead person, not alleging that it was done with a design to bring contempt on the family of the deceased, and to stir up the hatred of the King's Subjects against them, and to excite his relations to a breach of the peace, cannot be supported; and judgment was in this case accordingly reversed. R. v. Topham, 4 Term Rep. 126. See R. v. Critchley, 4 Term Rep. 129, in n.

A private Libel for a private matter, as a letter scandalizing a person courting a woman, is indispensible, and punishable by fine. Sid. 270. No writing is esteemed a Libel, unless it reflect upon some particular person; and a writing full of obscene ribaldry, is not punishable by any proceedings at Common Law; but the author may be bound to the good behaviour, as a person of evil fame. 1 Hawk. P. C. c. 73. § 9. It was so agreed in Read's Cafe, 1 Mad. 142; but in the case of the K. v. Curl, Mich. 1 Ga. 2, for publishing an obscene book, the court were unanimous that it is a temporal offence, and that Read's case was not law. Stra. 758, 814: See also 4 Burr. 2577.

Printing or writing may be libellous, though the scandal is not directly charged, but obliquely and ironically; and where a writing, pretending to recommend to one the characters of several great men for his imitation, instead of taking notice of what they are generally famous for, pitches on such qualities only which their enemies charge them with the want of; as by proposing such a one to be imitated for his learning, who is known to be a good soldier, but an illiterate man, &c, this will amount to a Libel. 1 Hawk. P. C. c. 73. § 4. The petition of the Seven Bishops in the reign of King James II. against the King's declaration, setting forth, that it was founded on a despising power, which had been declared illegal in parliament, &c, was called a sedition Libel against the King: and they were committed to the Tower; but being after tried at bar, were acquitted. 3 Mad. 212. See State Trials. The printing of a petition to a committee of parliament, (which would be a Libel against the party complained of, were it made for any other purpose,) and delivering copies thereof to the members of the committee, is not the publication of a Libel, being justified by the order and course of proceedings in parliament. 1 Hawk. P. C. c. 73. § 8.

Scandalous matter in legal proceedings by bill, petition, &c, in a court of justice amounts not to a Libel, if the court hath jurisdiction of the cause. Dyer, 255, 4 Rep. 14. But he who delivers a paper full of reflections on any person, in nature of a petition to a committee, to any other persons except the members of parliament who have to do with it, may be punished as the publisher of a Libel. 1 Hawk. P. C. c. 73. § 8. And by the better opinion, a person cannot justify the printing any papers which import a crime in another, to instriict counsel, &c, but it will be a Libel. Sid. 414.

An order made by a Corporation and entered in their books, flattering, that A. B. (against whom a jury had found a verdict with large damages, in an action for a malicious prosecution for perjury, which verdict had been confirmed in C. B.) was actuated by motives of public
public justice in preferring the indictment, is a Libel
reflecting on the administration of public justice, for
which the Court of K. B. will grant an information
against the members making the order. 2 Term Rep.
109. But it is no Libel to assign on the books of a
Quaker meeting their reasons for expelling a member.
1 Black. Rep. 386.

II. The communication of a Libel to any one person
is a publication in the eye of the law; 2 Moore 813; and
therefore the sending an abusive private letter to a
man is as much a Libel as if it were openly printed;
for it equally tends to a breach of the peace; 2 Brow.
P. C. c. 73, § 11: 4 Comm. c. 11, p. 150: Bac. Ab.
title Libel B (2): in which latter book it is stated that
this was a matter of doubt; but a case is mentioned
where an information was granted under such circum-
cstances; and at all events it is an offence against the
King's peace, punishable by indictment; and if copies
of it are afterwards dispersed, it aggravates the crime,
or rather makes it a new crime, for which the party
may have an action. Pepb. 35: Hob. 62. Writing a let-
ter to a man, and abusing him for his public charities,
&c. is a libellous act, punishable by indictment, Hob. 215.

In the making of Libels, if one man dictates, and
another writes a Libel, both are guilty; for the writing
after another shows his approbation of what is contained
in the Libel: and the first reducing a Libel into writ-
ing may be laid to be the making it, but not the com-
posing: if one repeats, another writes, and a third
approves what is written, they are all makers of the
Libel; because all persons who concur to an unlawful
act are guilty. 5 Med. 167. The making a Libel is
the genus; and composing and contriving is one spe-
cies; writing, a second species; and procuring to be
written, a third; and one may be found guilty of writing
only, &c. 2 Saik. 419, &c. But observe, a mere
writing, without a publication, was not in question in
Saik. As it is conceived that for the mere writing of a
Libel, not published, no action can be maintained, nor
prosecution legally supported.

If one writes a copy of a Libel, and does not deliver
it to others, the writing is no publication: but it has
been adjudged, that the copying a Libel, without au-
thority, is writing a Libel, and he that thus writes it,
is a contriver; and that he who hath a written copy
of a known Libel, if it is found upon him, this shall be
evidence of the publication; but if such Libel be not
publicly known, then the mere having a copy is not a
publication. 2 Saik. 417: 2 Nels. Ab. 1122. Writing
a copy of a Libel is writing of a Libel, as it has the
same pernicious consequence; and if the law were other-
wise, men might write copies, and print them with im-
punity. 2 Saik. 419. And when a Libel appears under
a man's own hand-writing, and no author is known, he
is taken in the manner, and it turns the proof upon
him; and if he cannot produce the compositor, it is hard
to find that he is not the very man. Ibid. If one reads
a Libel, or hears it read, and laughs as if, it is not a
publishing; for before he reads or hears it read, he
cannot know it to be a Libel: though if he afterwards
reads or repeats it, or any part thereof, in the hearing
of others, it is a publication of it: yet if part of it be
repeated in mirth without any malicious purpose of de-
samation, it is said to be no offence. 9 Rep. 59: 5 Moore
864. Every one convicted of publishing a Libel ought
to be esteemed the contriver or procancer: the procurer
and writer of a Libel have been held to be contrivers;
also he who procures another to publish it, and the
publisher, are both publishers; and the contriver,
procancer, and publisher of a Libel, are punishable by
fine, imprisonment, pillory, or other corporal punish-
ment, at the discretion of the court, according to the
heinousness of the crime, &c. 5 Moore 627: 5 Rep. 125:
3 Tinf. 174: 3 Crot. 17. See 1 Hawk. P. C. c. 73.

When any man finds a Libel, if it be against a pri-
ivate person, he ouught to burn it, or deliver it to a ma-
gistrate; and where it concerns a magistrate, he should
deliver it privately to a magistrate. 5 Rep. 125. If
a Libel be found in a house, the matter cannot be pu-
lished for framing, printing, and publishing it; but it
is said he may be indicted for having it, and not deliv-
ering it to a magistrate; 1 Vent. 315; or it may in some
cases be considered as evidence of his being the au-
thor or publisher. 2 Saik. 418.

The sale of the Libel by a servant in a shop, is prima
facie evidence of publication, in a prosecution against
the matter; and is sufficient for conviction, unless con-
tradicted by contrary evidence showing that he was not
privy, or in any way attesting to it. 4 Term Rep. 126:
5 Burr. 2689, 7: 1 Hawk. P. C. c. 73, § 10, in n.

Proof that the defendant gave a bond to the Stamp-
office for the duties on the advertisements in a news-
paper, under Stat. 29 Geo. c. 50, § 10; and had occa-
nionally applied at the Stamp-office respecting the duties,
is evidence that he is the publisher. 4 Term Rep. 126.

III. It is immaterial, in a criminal prosecution,
with respect to the offence of a Libel, whether the mat-
ter of it be true or false; because it equally tends to a
breach of the peace; and the provocation, not the fal-
y, is the thing to be punished criminally; though dou-
tlefs the falseness of it may aggravate its guilt and en-
force its punishment. In a civil action, a Libel makes
one liable to be sued as well as scandalous; for if the charge
be true the plaintiff has received no private injury, and
has no ground to demand a compensation for himself,
whatever offence it may be against the public peace:
and therefore upon a civil action, the truth of the accu-
sation may be pleaded in bar of the suit. But in a cri-
minal prosecution, the tendency which all Libels have
to create animosities and to disturb the public peace is
the whole that the law considers. And therefore in
such prosecutions, the only points to be enquired into
are, first the making of publishing of a book or writing:
and secondly, whether the matter be criminal; and if
both these points are against the defendant, the offence
against the Public is complete. 4 Comm. c. 11, p. 150, 1:
See 9d. IV.

It seems to be clearly agreed, that in an indictment
or criminal prosecution for a Libel, the party cannot
justify that the contents thereof are true, or that the
person upon whom it is made had a bad reputation;
since the greater appearance there is of truth in any
malicious invective, so much the more provoking it is:
for, as Lord Coleridge observes, in a settled state of gov-
ernment the party injured ought to complain for every
injury
Injury done him, in the ordinary course of law; and not by any means to revenge himself by the ordinary course of libelling or otherwise. Bac. Abr. tit. Libel (55.) cites 1 Co. 125; Hdb. 255; More 627; 1 Hawk. P. C. c. 73.

It is termed libellus fangalis in infamataria scripta, and from its pernicious tendency has been held a public offence at the Common Law: for men not being able to bear the having their errors exposed to public view, were found by experience to revenge themselves on those who made sport with their reputations, from whence arose duels and breaches of the peace; and hence written scandal has been held in the greatest detestation, and has received the utmost discouragement in the courts of justice. Lamb. Sax. Law. 64; Bratt. lib. 3. c. 36; 3 Logl. 1744; 5 Co. 125; cited Bac. Abr. tit. Libel ad init.

The above authorities have been quoted, principally to obviate an error too generally received, that the late venerable Chief Justice of the King's Bench (the Earl of Mansfield) was the first who breached the doctrine, the greater the truth the greater the Libel. A maxim which appears to be as well founded in ancient authority, as it is in found reason, as far as relates to criminal prosecutions; and the adoption of it cannot, by any reasoning or honest man, be thought to reflect disgrace upon the high and amiable character of that upright and respectable Judge.

But although it has been held, at least for these two centuries, that the truth of a Libel is no justification in a criminal prosecution, yet in many instances it is considered as an extenuation of the offence; and the Court of King's Bench has laid down this general rule: viz. that it will not grant an information for a Libel, unless the prosecutor who applies for it makes an affidavit, affirming directly and pointedly that he is innocent of the charge imputed to him. But this rule may be dispensed with, if the person libelled resides abroad; or if the imputations of a Libel are general and indefinite; or if it is a charge against the prosecutor for language which he has held in parliament. Doug. 271 (284); 372 (388): but in this latter case, a member cannot justify publishing the speech made by him in parliament, in the public newspapers, if it contain libellous matter. Earl of Abingdon's Ca. 6 Term Rep.

Whereon application for an information the truth of the Libel is not denied, the court (except in the particular instances above mentioned) will leave the injury to be remedied in the ordinary course of justice by action or indictment. Stark. 458. See p. IV. But the Court will not grant this extraordinary remedy by information, nor should a Grand Jury find an indictment, unless the offence be of such signal enormity, that it may reasonably be conterted to have a tendency to disturb the peace and harmony of the community. In such a case the public are justly placed in the character of an offended prosecutor, to vindicate the common right of all, though violated only in the person of an individual: for the malicious publication of even truth itself cannot in policy be suffered to interrupt the tranquillity of any well-ordered Society. This is a principle so rational and pure, that it cannot be tainted by the vulgar odium which has accompanied the derivition of the doctrine from the tyranny of the Star-chamber: the adoption of it by the courts of courts can never weaken its authority, and without it all the comforts of Society might with impunity be hourly endangered or destroyed. Vide Lex Liberi: 1 Hawk. P. C. c. 73, § 6, 7. etc.

There are authorities that truth is not a justification even in an action for a Libel; and a very learned writer seems to doubt whether such a plea would now be admitted by the Courts, if the accusation in the Libel did not amount to an indictable offence, 3 Wood's 182. It seems however that the contrary is the prevailing opinion; and that in every action for a Libel, if specific instances can be stated upon the record so as to support the general charge of the Libel, the courts would determine them to be a sufficient justification of the defendant. 1 Term Rep. 748.

It is not competent to a defendant charged with having published a Libel, to prove that a paper, similar to that for the publication of which he is prosecuted, was published on a former occasion by other persons who have never been prosecuted for it. 5 Term Rep. 435.

IV. The punishment of Libellours for either making, repeating, printing, or publishing the Libel is fine, and such corporal punishment (as imprisonment, pillory, &c.) as the Court in its discretion shall inflict; regarding the quantity of the offence, and the quality of the offender, 1 Hawk. P. C. c. 75. 4 ed.

If a printer print a Libel against a private person, he may be indicted and punished for it; and to may he who prints a Libel against a magistrate, and much more one who does it against the King and State: nor can a person in such a case excuse himself by saying they were dying speeches, or the words of dying men; for a man may at his death justify his villainy; and he who publishes it is punishable: and it is no excuse for the printing or publishing a Libel, to say that he did it in the way of trade, or to maintain his family. 1 St. Tr. 952, 986.

Also if bookfellers, &c. publish or sell Libells, though they know not the contents of them, they are punishable. It has been resolved, that where persons write, print, or sell, any pamphlets, scandalizing the public, or any private persons, such libellous books may be seized, and the persons punished by law: and all persons exposing any books to his use, reflecting on the Government, may be punished: also writers of news, (though not scandalous, seditious, or reflecting on the Government, if they write false news) are punishable. 2 St. Tr. 477. See Scandalum magnatum; Falsi Novor.

One was indicted for a Libel in scandalizing the King's witticisms, and reflecting on the justice of the nation, and had judgment of the pillory and fine. 3 St. Tr. 50. A person for libelling the Lord Chancellor Bacon, affirming that he had done injustice, and other scandalous matter, was sentenced to pay 100l. fine, to ride on a horse with his face to the tail from the Fleet to Westminster, with his fault written on his head, to acknowledge his offence in all the Courts: Westminster, stand in the pillory, and that one of his ears should be cut off at Westminster, and the other in Cheapside, and to suffer imprisonment during life. Poph. 135. One who exhibited a Libel against a Lord Chief Justice, directed to the King, calling the Chief Justice traitor, perjured judge, &c. had judgment to stand in the pillory, was fined
LIBEL IV.

1000 marks, and bound to good behaviour during life. Geo. Car. 125.

With regard to Libels in general, there are, as in many other cases, two remedies, one by indictment or information, and the other by action. The former for the public offence; for, as has been repeatedly remarked, every Libel has a tendency to the breach of the peace, by provoking the person libelled to break it; and, whenever, we have been, is the same in point of law, whether the matter contained be true or false; and therefore, it is that the defendant, on an indictment for publishing a Libel, is not allowed to allege the truth of it by way of justification. But in the remedy by action on the case, which is to repair the party in damages for the injury done him, the defendant may, as for words spoken, justify the truth of the facts, and show that the plaintiff has received no injury at all. The chief excellence therefore of a civil action for a Libel consists in this, that it not only affords a reparation for the injury sustained, but it is a full vindication of the innocence of the person traduced. See 3 Comm. c. 8. p. 125, 6. & n.

It has been held, that writing a libellous Libel is not an actual breach of the peace; and that a number of pamphlets, acting as a Libel, is entitled to his privilege from being arraigned for the same. 1 Wiff. 159.

In information and law proceedings, there are two ways of describing a Libel; by the penalty, and by the words: the first is action tenor; the second is action in hoc Anglica modo, in which the description is by particular words, and whereas of every word is a mark; so that if there is any variance, it is fatal; in the other description by the pen, it is not material to be very exact in the words, because the matter is described by the sense of them. 2 Saun. 660. See Indictment; Information; Pleading.

The declaration for a Libel must lay it to be, "of and concerning the plaintiff," otherwise there can be no judgment. 2 Strange 934.

It has been frequently determined, that in the trial of an indictment for a Libel the only questions for the consideration of the jury are the facts of publishing, and the truth of the inferences: that is, the truth of the meaning and sense of the passages of the Libel, as stated and averred in the record; whether the matter be or be not a Libel is a question of law for the consideration of the Court. 3 Term Rep. 438. But see the Stat. 32 Geo. 3. c. 60; and this Dictionary, title Jury IV. 2.

When a person is brought before the Court to receive judgment for a Libel, his conduct subsequent to his conviction may be taken into consideration, either by way of aggravation or mitigation of his punishment. 3 Term Rep. 432.

In all the inferences where blaspheous, immoral, treasonable, schismatical, sedition, or scandalous Libels are punished by the English law, some with a greater, others with a less, degree of severity, the Liberty of the Press, properly understood, is, by no means infringed or violated. The Liberty of the Press is, indeed, essential to the nature of a Free State; but this consists in laying no previous restraints upon publications, and the in freedom from confinment for criminal matter, when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the Press; but if he publishes what is improper, malicious, or illegal, he must take the consequence of his own act in temerity. To subject the Press to the restrictive power of a Libel, as was formerly done both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man; and make him the arbitrary and infallible Judge of all controverted points in Learning, Religion, and Government. But to punish, as the law does at present, any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of Peace and Good Order, of Government and Religion, the only solid foundations of Civil Liberty. Thus, the will of individuals is still left free; the abuse only of that free-will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry: Liberty of private sentiment is still left.

The indiscriminating or making public of bad sentiments, destructive of the ends of Society, is the crime which Society corrects. A man (says a fine writer on this subject) may be allowed to keep passions in his closet, but not publicly to vent them as cordials. And to this we may add, that the only plausible argument herefore used for the restraining of the Press is, that the law, "that it was necessary to prevent the daily abuse of it," will entirely lose its force when it is shown, (by a favorable exercise of the laws,) that the press cannot be abused to any bad purpose, without incurring a suitable punishment; whereas it can never be used to any good one, when under the control of an Inspector. So true it will be found, that to confine the licentiousness, is to maintain the liberty of the Press. 4 Comm. c. 11. ad fin.

The above observations deserve the serious attention of every Jurman, who wishes well to the Constitution and happiness of his country; to them we shall only add the remark of another celebrated writer on this subject:— "The danger of such unbounded liberty, (of unlicensed printing,) and the danger of binding it, have produced a problem in the science of Government, which human understanding seems hitherto unable to solve. If no laws may be published, but what civil authority shall have previously approved, Power must always be the standard of Truth: if every dreamer of innovations may propagate his projects, there can be no settlement; if every murmurer at Government may diffuse discontent, there can be no peace; and if every sceptic in theology may teach his follies, there can be no religion. The remedy against these evils is to punish the Author; for it is yet allowed that every Society may punish, though not prevent, the publication of opinions which that Society shall think pernicious. But this punishment, though it may crush the Author, promotes the book; and it seems not more reasonable to leave the right of printing unrestrained, because writers may afterwards be confounded, than it would be to sleep with doors unbolted, because by our laws we can hang a thief. Taban, in exuit Milton. For further matter connected with Libel, see titles Words; Scandalum Magnatum; Treason; False Views, &c.


If upon a Libel for any ecclesiastical matter, the defendant make a formule in B. R. to have a prohibition, and such formule be insufficient, the other party may then
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LIBERTATE PROBANDA, An ancient writ which lay for such as being demanded for villains, offered to prove themselves free; directed to the sheriff that he should take security of them for the proving of their freedom before the Justices of assize, and that in the mean time they should be unmolested. F. N. B. 77.

See titles Tenant's Bill etc.

LIBERTATIBUS ALLOCANDIS, A writ lying for a citizen or barge, impeached contrary to his liberty, to have his privilege allowed. Reg. Orig. 262. And if any claim a special liberty to be impeached within a city or borough, and not elsewhere, there may be a special writ de Libertatibus allocandis, to permit the barges to use their liberties, &c. These writs are of several forms, and may be used by a Corporation, or by any single person, as the case shall happen. New Nat. Br. 509, 510. The Barons of the Cinque Ports, &c. may sue forth such writs, if they are delayed to have their liberties allowed them. Ibid.

LIBERTATIBUS EXIGENDIS IN ITINERE,

An ancient writ whereby the King commands the Justices in Excursion to admit of an attorney for the defence of another man's liberty. Reg. Orig. 19.

LIBERTIES or FRANCHISES. These are synonymous terms, and their definition is, a royal privilege, or branch of the King's prerogative, subsisting in the hands of a Subject. The kinds of them are various, and almost infinite. See title Franchise.

A LIBERTY, a privilege held by grant or prescription, by which men enjoy some benefit beyond the ordinary Subject. Ibid.

LIBERTY.

In its most general signification, is said to be a power to do as one thinks fit; unless restrained by the Law of the land: and it is well observed, that human nature is ever an advocate for this Liberty, it being the gift of God to man in his creation; therefore every thing is dearest of it, as a sort of retribution to its primitive state. Fortesc. p. 56. It is upon that account the laws of England in all cases favour Liberty, and which is accounted very precious, not only in respect of the profit which every one obtains by his Liberty, but also in respect of the public. 2 Lis. Abr. 169.

According to Montesquieu, Liberty consists principally in not being compelled to do any thing which the law does not require; because we are governed by civil laws, and therefore we are free, living under those laws. Spirit of Laws, lib. 26. c. 20.

The absolute Rights of Man, considered as a free agent, endowed with discretion to know good from evil, and with power of choosing those measures which appear to him to be most defensible, are usefully summed up in one general appellation, and denominated The Natural Liberty of Mankind. This Natural Liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endowed him with the faculty of free will. 1 Comm. c. 1.

But every man, when he enters into Society, gives up a part of his Natural Liberty, as the price of so valuable a purchase; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform
form to those laws which the Community has thought proper to establish. This species of legal obedience and conformity, is infinitely more durable than that wild and savage Liberty which is fancied to obtain it. For no man, who considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleaseth; the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals, in any of the enjoyments of life. See Mont. Spirit of Laws, part 2. ch. 11. c. 3.

Political or Civil Liberty, therefore, is that of a member of Society, as the contrary to that of the Freeborn Citizen; and conformity, infinitely more wild if is, that every other man would also have the same power; and then there would be no security to individuals, in any of the enjoyments of life. See Mont. Spirit of Laws, part 2. ch. 11. c. 3.

Political or Civil Liberty, therefore, is that of a member of Society, is no other than Natural Liberty, so far restrained by human laws, and no further, as is necessary and expedient for the general advantage of the Public. 1 Comm. 2. p. 125.

Hence we may collect that the Law, which refrains a man from doing mischief to his fellow-citizens, though it diminishes the Natural, increases the Civil, Liberty of mankind: but that every wanton and careless restraint of the will of the Subject, whether practised by a Monarch, a Nobility, or a Popular Assembly, is a degree of tyranny: may, that even laws themselves, whether made with or without our consent, if they regulate and confine our conduct in matters of mere indifference without any good end in view, are regulations destructive of Liberty; whereas, if any public advantage can arise from observing such precepts, the control of our private inclinations, in one or two particular points, will conduct to preserve our general freedom in others of more importance, by supporting that free and upright Society which alone can secure our independence. So that Laws, when prudently framed, are by no means subversive, but rather introductive of Liberty; for where there is no Law there is no Freedom. Locke on Gov. part 2. § 57. But then, on the other hand, that constitution or form of Government, that system of laws, is alone calculated to maintain Civil Liberty, which leaves the Subject entire matter of his own conduct, except in those points wherein the public good requires some direction or restraint. 1 Comm. 125, 6.

The absolute rights of every Englishman, which, taken in a political and extensive sense, are usually called their Liberties, as they are founded on nature and reason, so they are coeval with our form of Government, though subject at times to fluctuate and change; their establishment, excellent as it is, being still human. At some times we have seen them depressed by overbearing and tyrannical princes: at others, so luxuriant as even to tend to anarchy, a worse state than tyranny itself; as any government is better than none at all. But the vigour of our free constitution has always delivered the nation from these embarrassments; and as soon as the convulsive consequences on the struggle have been over, the balance of our Rights and Liberties has fallen to its proper level; and their fundamental articles have been, from time to time, enacted in Parliament as often as they were thought to be in danger.

First, By the Great Charter of Liberties, which was obtained, sword in hand, from King John; and afterwards, with some alterations, confirmed in Parliament by King Henry III. his son; which Charter contained very few new grants; but as Sir Edward Coke observes, (2 Inst. prim.) was for the most part declaratory of the principal grants of the fundamental laws of England. Afterwards by the Statute called Confirmatio Curnannum, 25 Ed. 1, whereby the Great Charter is directed to be allowed as the Common Law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches; and read twice a year to the people; and sentence of excommunication is directed to
be as constantly denounced against all those who by word, deed, or counsel, act contrary thereto, or in any degree infringe it. Next, by a multitude of subsequent corroborating statutes from Edu. I. to Henry IV; of which the following are the most forcible.

Stat. 25 Ed. 3. § 5. 6. 7. None shall be taken by petition or suggestion made to the King or his Council, unless it be by indictment of lawful people of the neighbourhood, or by process made by writ original at the Common Law. And none shall be put out of his franchise or freehold, unless he be duly brought to answer, and forejudged by course of law; and if any thing be done to the contrary, it shall be redressed and holden for none.

Stat. 42 Ed. 3. § 3. No man shall be put to answer without precedent before Justices, or matter of record of due process, or writ original, according to the ancient law of the land. And if any thing be done to the contrary, it shall be void in law, and held for error.

After a long interval these statutes were still further confirmed by The Petition of Right, which was a parliamentary declaration of the Liberties of the people, affected by King Charles I. in the beginning of his reign. This was closely followed by the still more ample concessions made by that unhappy Prince to his Parliament; (particularly the dissolution of the Star-chamber, by Stat. 15 Car. 1. c. 10;) before the fatal rupture between them; and by the many salutary laws, particularly the Haberdashers' Act, passed under King Charles II. To these succeeded The Bill of Rights, or Declaration delivered by the Lords and Commons to the Prince and Princes of Orange, February 13th, 1688; and afterwards enacted in Parliament, when they became King and Queen; which, as peculiarly interesting, is here inserted at length.

Stat. 1 Will. & Mar. § 2. c. 2. § 1. Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminister, representing all the Estates of the People of this realm, did upon the 13th of February 1688, present unto their Majesties, then Prince and Princes of Orange, a declaration, containing that,

The said Lords Spiritual and Temporal, and Commons, being assembled in a full and free representative of this nation, for the vindicating their ancient rights and liberties, declare

That the pretended power of suspending laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal;

That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal;

That the commission for erecting the late Court of Commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious;

That levying money for, or to the use of the Crown, by pretense of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;

That it is the right of the Subjects to petition the King; and all commitments and prosecutions for such petitioning, are illegal;

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;

That the Subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law;

That election of members of Parliament ought to be free;

That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament;

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;

That Juries ought to be duly impanneled and returned, and Juries which pass upon men in trials for high treason ought to be freeholders;

That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void;

And for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held frequently;

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the People in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

Stat. 6. All and singular the Rights and Liberties affected and claimed in the said Declaration are the true, ancient, and inadmissible Rights and Liberties of the People of this Kingdom, and so shall be esteemed, allowed, adjudged, and taken to be; and all the particulars aforesaid shall be firmly holden as they are express'd in the said Declaration; and all officers shall serve their Majesties according to the same in all times to come.

Stat. 12. No Dispensation by non obstante of any statute shall be allowed, except a dispensation be allowed of in such statute; and except in such cases as shall be specially provided for during this session of Parliament.

Stat. 13. No charter granted before the 25th of October 1689, shall be invalided by this act, but shall remain of the same force as if this act had never been made.

Lastly, these Liberties were again asserted at the commencement of the present century, in the Act of Settlement, Stat. 12 & 13 W. 3. c. 2. whereby the Crown was limited to his present Majesty's illustrious House; and some new provisions were added at the same session, for better securing our Religion, Laws, and Liberties, which the statute declares to be "the birthright of the people of England," according to the ancient doctrine of the Common Law. P. 55: see 1 Comm. c. 1.

Thus much for the Declaration of our Rights and Liberties. The Rights themselves thus defined by these several statutes, confer in a number of private immunities; which will appear, from what has been premised, to be indeed no other than either that freedom of Natural Liberty, which is not required by the laws of Society to be
be sacrificed to public convenience; or else those civil privileges which Society hath engaged to provide in lieu of the Natural Liberties so given up by individuals. These, therefore, were formerly, either by inheritance or purchase, the rights of all mankind; but in most other countries of the world, being now more or less debased or destroyed, they at present may be said to remain, in a peculiar and emphatical manner, the Rights of the People of England.

These Rights may be reduced to three principal or primary articles:

The Right of Personal Security.
The Right of Personal Liberty.
The Right of Private Property.

As there is no other known method of compulsion, or of abridging man's natural free will, but by an infringement or diminution of one or other of these important Rights, the preservation of these, inviolate, may justly be said to include the preservation of our civil immunities in their largest and most extensive sense. 1 Comm. 129.

The Right of Personal Security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. The enjoyment of this right is secured to every man, according to the various laws made for the punishment of those injuries, by which it is known to be violated; for a particular detail of which, see this Dictionary, titles Assault; Homicide; Matrimonial Liberty; Nuisance, &c.

Life, however, may, by the divine permission, be frequently forfeited for the breach of those laws of Society which are enforced by the sanctions of capital punishments. On this subject it is sufficient at present to observe, that whenever the constitution of a State vests in any man, or body of men, a power of destroying at pleasure, without the direction of laws, the lives or members of the Subject, such constitution is in the highest degree tyrannical; and that whenever any laws direct such destruction for light and trivial causes, such laws are likewise tyrannical, though in an inferior degree; because here the Subject is aware of the danger he is exposed to, and may, by prudent caution, provide against it. The Statute Law of England does therefore very seldom, and the Common Law does never, inflict punishment extending to life or limb, unless upon the highest necessity; and the constitution is an utter stranger to any arbitrary power of killing or slaying the Subject without the express warrant of law. The words of the Great Charter, c. 29, are "Nolite liber homini captivatis, impune iactari, sed aliquo modo destrueri, nisi per legale judicium per causam et per legem terrae. No Freeman shall be taken, imprisoned, or any way destroyed, unless by the lawful judgment of his peers, or by the law of the land." These words, aliquo modo destrueri, according to Coke, include a prohibition not only of killing or maiming, but also of torturing, (to which our laws are strangers,) and of every oppression by colour of an illegal authority. And it is enacted by Stat. 5 Eliz. 3. c. 9, that no man shall be attached by any accusation, nor forejudged of life or limb, nor shall his lands or goods be seized into the King's hands contrary to the Great Charter, and the law of the land. And again by Stat. 25 Eliz. 3. c. 3, that no man shall be put to death without being brought to answer by due process of law. 1 Comm. 153.

The Right of Personal Liberty consists in the power of loco motion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law. On this right there is at present no occasion to enlarge. For the provisions made by the laws of England to secure it, see this Dictionary, titles habeas corpus; false imprisonment; bail; arrest, &c. &c.

The absolute Right of Property, inherent in every Englishman, consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The origin of private property is probably founded in nature; but certainly the modifications under which we at present find it, the method of conferring it in the present owner, and of translating it from man to man, are entirely derived from Society; and are some of those civil advantages in exchange for which every individual has resigned a part of his Natural Liberty. The laws of England are, therefore, in point of honour and justice, extremely watchful in ascertaining and protecting this right. Upon this principle the Great Charter, c. 29, has declared, that no Freeman shall be dispossessed or divested of his freedom, or of his Liberties or free customs, or be outlawed, banished, or otherwise destroyed, nor shall the King pass or fend upon him, but by the judgment of his peers, or by the law of the land. And by a variety of ancient statutes it is enacted, that no man's lands or goods shall be feized into the King's hands, against the Great Charter and the law of the land: and that no man shall be dispossessed, nor put out of his franchises or freedom, unless he be duly brought to answer and be forejudged by course of law; and if any thing be done to the contrary, it shall be redressed and held for none. See Stat. 5 Eliz. 3. c. 9; 25 Eliz. 3. c. 1; 3 Ed. 4

So great moreover is the regard of the Law for private property, that it will not authorize the least violation of it: no, not even for the general good of the whole community. In instances where the property of an individual is necessary to be obtained for the accommodation of the public, as in the case of enlarging or turning highways, all that the Legislature does, is to oblige the owner to alienate his possession for a reasonable price; and even this is an exertion of power indulged with caution, and which none but the Legislature, or those acting under their immediate direction, can perform. See Stat. 15 Geo. 3. c. 78; and this Dictionary, title Highways.

Another effect of this right of private property is, that no Subject of England can be constrained to pay any aids or taxes, even for the defence of the realm, or the support of the government, but such as are imposed by his own consent, or that of his representatives in Parliament. By Stat. 25 Edw. 1. c. 5, 6, it is provided, that the King shall not take any aids or taxes, but by the common consent of the realm. And what that common consent is, is more fully explained by Stat. 34 Edw. 3. c. 1; which enacteth, that no talliage or aid shall be taken, without the assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other freemen of the land; and again, by Stat. 14 Edw. 3. c. 1, the Prelates, Earls, Barons, and Commons, Citizens, Burgesses, and Merchants, shall not be charged to make any aid, if
it be not by the common affent of the great men and Commons in Parliament. And as this fundamental law had been shamefully evaded, under many preceding Princes, by compulsory loans and benevolences, extorted without a real and voluntary consent, it was made an article in the Petition of Right, 3 Car. 1, that no man shall be compelled to yield any gift, loan, or benevolence, tar, or such like charge, without common consent by act of Parliament. And, lastly, by the Bill of Rights, fl. 1 W. 3, it is declared, that "no man's life or liberty should be taken, without the benefit of a grand jury, a jury of the peace, or the like, and if a case comes to be judged by a court of law, then shall be tried and determined in the ordinary way of law; and if a man be in privity to the Crown, or have any interest in the proceedings of Parliament, or for longer time, or in any other manner than the same is or shall be granted, is illegal. 1 Com. 150.

The above is a short view of the principal absolute rights which appertain to every Englishman; and the Constitution has provided for the security of their actual enjoyment, by establishing certain, other auxiliary, subordinate, rights, which serve principally as outworks or barriers to protect and maintain those principal rights inviolate. These are,

The Limitation of the King's Prerogative.
The Right of applying to Courts of Justice for Redress of Injuries.
The Right of Petitioning the King or Parliament.
The Right of having Arms for Defence.

This last auxiliary right of the Subjects of having arms for their defence, suitable to their condition and degree, and such as are allowed by law, is declared by the Bill of Rights, and it is, indeed, a public allowance, under due restrictions of the natural right of resistance and self-preservation, when the functions of Society and Laws are found insufficient to restrain the violence of oppression. See this Dictionary, title Arms.

As to the first and second of the subordinate rights above mentioned, see this Dictionary, title Parliament; King. With respect to the third and fourth some short information is here subjoined.

Since the Law is, in England, the supreme arbitrator of every man's life, liberty, and property, Courts of Justice must at all times be open to the Subject, and the law be duly administered therein. The emphatical words of Magna Carta, c. 29, spoken in the person of the King, who, in judgment of law, (fays Sir Ed. Coke,) is ever present, and repeating them in all his Courts, are these: "Non in silentio, non in nocte, sed in dissonis rection in judiciis. To none will we sell, to none will we deny, or delay, right or justice." And therefore every Subject, for injury done to him in his goods, his lands, or his person, by any other Subject, by ecclesiastical or temporal, without any exception may take his remedy by the course of law, and have justice and right for the injury done to him, freely without delay, fully without denial, and speedily without delay.

It was endless to enumerate all the affirmative acts of Parliament wherein justice is directed to be done according to the law of the land; and what that law is every Subject knows, or may know if he pleases; for it depends not upon the arbitrary will of any judge, but is permanent, fixed, and unchangeable, unless by authority of Parliament. A few negative statutes may however be mentioned, whereby abuses, perversions, or delays of justice, especially by the prerogative, are restrained. It is ordained by Magna Carta, c. 29, that no freeman shall be outlawed, that is, put out of the protection and benefit of the law, but according to the laws of the land. By stat. 2 Ed. 3. 11, it is enacted, "that no commands or letters shall be sent under the Great Seal, or the Little Seal, the Signet or Privy seal, in disturbance of the law; or to disturb or delay common right; and though such commandments should come, the Judges shall not cease to do right." This is also made a part of their oath, by stat. 18 Ed. 3. 4. And by the Bill of Rights it is declared, that the pretended power of suspending or dispensing with laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

Not only the substantial part, or judicial decisions of the law, but also the formal part, or method of proceeding, cannot be altered but by Parliament: for, if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the law itself. The King, it is true, may erect new Courts of Justice; but then they must proceed according to the old established forms of the Common Law. For which reason it is declared in the stat. 16 Car. 1. c. 10, upon the dissolution of the Star-chamber, that neither his Majesty nor his Privy Council have any jurisdiction, power or authority, by English bill, petition, articles, or bills, which were the course of proceeding in the Star-chamber borrowed from the Civil Law, or by any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of the lands or goods of any Subjects of this kingdom; but that the same ought to be tried and determined in the ordinary Courts of Justice, and by course of law. See this Dictionary, titles Judges; Courts; Chambery; &c.

The right of petitioning the King, or either House of Parliament, for the redress of grievances, appertains to every individual in cases of any uncommon injury, or infringement of the rights already particularized, which the ordinary courts of law is too defective to reach. The restrictions, for some there are, which are laid upon this right of petitioning in England, while they promote the spirit of peace, are no check upon that of Liberty, care only must be taken, left, under the pretence of petitioning, the Subject be guilty of any riot or tumult; as happened in the opening of the memorable Parliament in 1640. And to prevent this, it is provided by 11 Ed. 3. 2. 16, that no petition to the King or either House of Parliament, for any alteration in Church or State, shall be signed by above twenty persons, unless the matter thereof be approved by three Justices of the peace, or the major part of the Grand Jury in the county; and in London by the Lord Mayor, Aldermen, and Common Council; nor shall any petition be presented by more than ten persons at a time. But, under these regulations, it is declared by the Bill of Rights, that the Subject had a right to petition; and that all commitments and prosecutions for such petitions are illegal.

The function of the Grand Jury may be given either at the Assizes or Quarter Sessions; the punishment for offending against the stat. 15 Car. 2, not to exceed a fine of 500l., and three months' imprisonment. Upon the trial of Lord George Gordon, the Court of King's Bench
LIBERTY.

Booth declared, that they were clearly of opinion, that this statute was not in any degree affected by the Bill of Rights. Doug. 571.

In the several articles above enumerated, consist the Rights, or as they are more frequently termed, the Liberties of Englishmen. Liberties more generally talked of than thoroughly understood; and yet highly necessary to be perfectly known and considered by every man of rank or property; lest his ignorance of the points wherein they are founded, should hurry him into fiction and licentiousness on the one hand, or a philisitical insubordination, and a criminal submission, on the other. And all these Rights and Liberties it is our birthright to enjoy entire, unless where the laws of our country have laid them under necessary restraints: restraints in themselves to gentle and so moderate, as will appear on a minute inquiry, that no man of sense or privity would wish to see them facilitated: for all of us have it in our choice to do every thing that a good man would desire to do; and are restrained from nothing but what would be pernicious either to ourselves or our fellow-citizens. So that this review of the subject may truly satisfy the observation of a learned French author: (of former times) who hath not hesitated to profess that the English is the only Nation in the world where Political or Civil Liberty is the direct end of its Constitution. Mon. 99, Sp. 2, 403.
See: Comm. c. 1, ad fin.

LIBERTY TO HOLD PLEAS, Signifies to have a court of one's own; and to hold it before a Mayor, Bailiff, &c. See Franchise.

LIBRACUM, The manner of bestowing or any person; also a barbarous rubbish. Leg. Ashburn. 6.

LIBRÆ, ARSE, & PENSAIÆ, &c AD NUMERUM. A phrase which often occurs in the Domestick Register, and some other memorials of that and the next age, as "Althorpe in Buckinghamshire, the King's manor.—In toto vulturis recti vel liter. ajus & pensas, & de talibus ad liter ad numerum, i.e. in the whole value of one pays fifty pounds burnt and weighed; and for toll ten pounds by tale." For they sometimes took their money ad numerum, in the current coin upon current: but sometimes they rejected the common coin by tale, and money coined elsewhere than at the King's mint, by clairs, bishops, and noblemen who had mints, as of too great alloy, and would therefore melt down to take it by weight when purified from the dross; for which purpose they had in those times always a fire ready in the Exchequer to burn the money, and then weigh it. Cassell.

LIBRA PENSA, A pound of money in weight. See the preceding article.

LIBRARY. Where a Library is erected in any parish, it shall be preferred for the uses directed by the founders; and incumbents and ministers of parishes, &c. are to give security therefore, and make catalogues of the books, &c. None of the books shall be alienable, without consent of the bishop, and then only where there is a duplicate of such books; if any book shall be taken away and detained, a justice's warrant may be issued to search for and restore the same: also action of trover may be brought in the name of the proper Ordinary, &c. And bishops have power to make rules and orders concerning Libraries, appoint persons to view their condition, and inquire of the state of them in their visitations. Stat. 7 Ann. c. 14.

LICENTIA TERRÆ, Four oxgangs of land, every oxgang containing thirteen acres. Sess. curt. Berew. Boë townes. So much land, by antiquity, as was worth twenty fullings a-year: for in Henry the Third's time, he that had quinquennium libera terre, was to receive the order of knighthood. See Farding-deal.

LICENTIA, licentia, A power or authority given to a man to do some lawful acts and is a personal liberty to the party to whom given, which cannot be transferred over; but it may be made to a man, or his assigns, &c. 12 Hen. 7. 25. There may be a parcel Licence, as well as by deed in writing; but if it be not for a certain time, it passes not into right. 2 Nef. Abstr. 113. And if there be no time certain in the Licence, as if a man licence another to dig clay, &c. in his land, but doth not pay for how long, the Licence may be countermanded; though it be until such a time, he cannot. Poth. 151. If a lessor licence his lessee (who is restrained by covenant from aliening without Licence) to alien, and such lessee dies before he alien, this is no countermand of the Licence: for it is if the lessee grants over his estate. Cre. Jace. 133. But where a lord of a manor for life grants his Licence to a copyhold tenant to alien, and die; the Licence is destroyed, and the power of alienation ceaseth. 1 Lev. 52. Copyhold tenants leaving their copyhold for a longer time than one year, are to have a Licence for it; or they incur a forfeiture of their estates. 1 Lev. 63. If any Licence is given to a person, and he abuses it, he shall be adjudged a trespasser ab initio. 8 Rep. 146.

A. grants to B. a way over his ground, or Licence to go through it to the church; by this means but B. himself may go in it; but if one give me Licence to go over his land with my plough, or to cut down a tree thereon, and take it away; by this I may take what help is needful to do the same. So if it be to hunt and kill and carry away deer; not if it be to hunt and kill only. 12 Hen. 7. 85; 12 Hen. 7. 89; &c. See titles Trespass, Lock, Way; Copyhold, &c.

By Licence a man may practise physic, and surgery in London; and do divers other things. Licences are also necessary for the carrying on various trades and professions, on which a duty is laid for the purpose of raising a revenue to Government. See this Dictionary, titles Excises, Taxes.

LICENSE TO ALIEN IN MORTMAIN. Alienations in Mortmain to ecclesiastical persons, &c. are restrained by several statutes, but the King may grant Licences to any person or bodies politic, &c. to alien in Mortmain. See Stat. 7 & 8 W. 3. c. 37; and this Dictionary, titles Mortmain; Charitable Uses.

LICENSE TO ARISE, licentia jugandi.] A Liberty or space of time annually given by the Court to a tenant to arise out of his bed, who is enslaved in kind, in a real action: and it is also the writ thereupon. Brad. And the law in this case is, that the tenant may not arise or go out of his chamber until he hath been...
LIENCE.

been viewed by knights thereto appointed, and hath a
day assigned him to appear; and the reason whereof is, that
it may be known whether he caused himself to be
allowed deceitfully or not; and if the demanant can
prove that he was seen abroad before the view or li-
cence of the covert, he should be taken to be deceitfully
elained, and to have made default. Branden, lib. 5:
Lien, lib. 6. c. 10. See title Ejecta.

LICENCE TO FOUND A CHURCH, Granted
by the King. See Church.

LICENCE TO GO TO ELECTION of Bishops,
is by Chapter of Ely directed to the Dean and Chapter
to elect the person named by the King, &c. Reg. Vicris

LICENCE OF THE KING to go beyond sea may
be revoked before the time expires; because it concerns
the public good. Jenk. Cent. See title No exact Regnum.

LICENCE OF MARRIAGE. Bishops have power
to grant Licences for the marrying of persons; and
parsons marrying any person without publishing the
hans of marriage, or without Licence, incur a for-
feiture of 100l. &c. by Stat. 7 & 8 W. 3. c. 35. See
also Stat. 26 Geo. 2. c. 53: this Dictionary, title Marrage.

LICENCE TO ERECT A PARK, WARREN,
&c. See titles: Park; Warren.

LICENSING OF BOOKS, See Libel; Printing.

LICENTIA CONCORDANDI, is that Licence
for which the King's silver is paid on passing a Fme. See
title Fine of Lands.

LICENTIA SURGENDI, See Licence to arise.

LICENTIA TRANSFRETANDI, A writ or war-
rant directed to the keeper of the port of Dover, or
other sea-port, commanding them to let such persons
pass over sea, who have obtained the King's Licence

LIDPERD LAW, A proverbial speech, intending as
much as to hang a man first, and judge him afterwards.

LIEGE, ligat. Is used for Liege Lord, and some-
times for Liege Man: Liege Lord is he that acknow-
eldgeth no superior; and Liege Man is he who oweth
allegiance to his Liege Lord. The King's Subjects are
called Liege People, because they owe and are bound
to pay allegiance to him. Stat. 8 Hen. 6. c. 10: 14
H. 6. c. 2. But in ancient times, private persons, as
lords of manors, &c. had their Ligees. See faith,
that this word is derived from the Italian, Liego, a bond
or league; others derive it from Littis, which is a man
wholly at the command of the Lord. Boull. See title
Allegiance.

LIEGES AND LIEGE PEOPLE, Ligati. See
Ligat.

LIEN, Fr.] Is a word used in the law, of two figu-
ifications: personal Lien, such as bond, covenant, or
contract; and real Lien, a judgment, statute, recogni-
fices, which oblige and affect the land. Terms de ley.

It signifies an obligation, tie, or claim annexed to, or
attaching upon, any property; without satisfying which
such property cannot be demanded by its owners. Thus
the estate of an attorney are a Lien upon deeds and papers
in his hands; a factor has a Lien on goods in his hands
for balance due from his principal, &c. See titles Attorney;
Factor; Mortgage; Judgment; &c.

LIFE-ESTATES.

LIEU, instead or in place of another thing. And
when one thing doth come in the place of another, it
shall be of the same nature as that was; as in case of an

LIEU CONUS, in law proceedings, signifies a cadre,
manor, or other servitus loci, well known and generally
taken notice of by those that dwell about it. 2 Lit. Abr.
64. A nuncupatio, for a jury to appear, may be
from a lieu conus; and a Fine or Recovery of lands in a
lieu conus, is good; but it is paid in a fine facitum to have
execution of such fine, the vic or parish must be named.
2 C. 574: 2 Mod. Rep. 48, 49.

LIEUTENANT, locum tenens.] Is the King's De-
puty, or he that exercises the King's or any other's
place, and represents his person; as the Lieutenant of
Ireland. See Stat. 4 Hen. 4. c. 6: 2 & 3 Ed. 6. c. 2.

And the Lieutenant of the Tower, an officer under the
Confable, &c. The word Lieutenant is also used for a
military officer, next in command to the captain.

LIFE, Union and co-operation of soul with body;
enjoyment or possession of terrestrial existence. John.

Estates for Life, expressly created by deed or grant,
(which alone are properly conventional,) are, where
there are to be, and (solemnities, the same investiture or
livery of seisin, and an estate for life; and the
lieutenant is also used for a
military officer, next in command to
the captain.

LIFE, in the law, is determinable by a
sentence, and (solemnities, the same investiture or
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LIFE-ESTATES.

taken most strongly against the grantor, unless in the case of the King. Co. Lit. 42, 56.

Such Estates for Life will endure, generally speaking, as long as the Life for which they are granted; but there are some Estates for Life which may determine upon future contingencies, before the Life for which they are created expires. As if an Estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective Estates are absolutely determined and gone. Co. Lit. 42: 3 Rep. 20. Yet while they subsist, they are reckoned Estates for Life; because the time for which they will endure being uncertain, they may, by possibility, last for Life; if the contingencies upon which they are to determine do not sooner happen.

In case an Estate is granted to a man for his Life generally, it may also determine by his civil death; for which reason, in conveyances the grant is usually made for the term of a man's natural Life, which can only determine by his natural death. This civil death was formerly held to commence if any man was banished or absented from the realm, by the process of the Common Law; (see title Abjuration) or entered into religion, that is, went into a monastery, and became there a monk professed; in which cases he was absolutely dead in law, and his next heir should have his Estate; for such banished man was entirely cut off from society; and such monk, upon his profession, renounced solemnly all secular concerns. But even in the times of popery the law of England took no cognizance of profession in any foreign country; because the fact could not be tried in our Courts; Co. Lit. 132; and therefore, since the Reformation, this disability is held to be abolished: 1 Safo. 162. as is also the disability of banishment consequent upon abjuration, by 28 2o. 23. One species of civil death may, however, still exist in this country; that is, where a man by act of Parliament, is attainted of treason or felony; and, dying his life, is banished for ever: this Lord Coke declares to be a civil death: but he says, a temporary exile is not a civil death. Under this reasoning, where a man receives judgment of death, and afterwards leaves the kingdom for life, upon a conditional pardon, there can be very little doubt but this amounts to a civil death; this practice did not exist in the time of Lord Coke, who says, that a man can only lose his country by authority of Parliament. 1 Safo. 153. See 2 Comon. c. 1. p. 171. 2 & 3.

The incidents to an Estate for Life are principally the following, which are applicable not only to these species of Tenants for Life, which are expressly created by deed, but also to those which are created by act and operation of law. See 2 Comon. c. 8.

First, Every Tenant for Life, unless restrained by covenant or agreement, may, of common right, take upon the land demised to him, reasonable diversions or offices. Co. Lit. 41. For he hath a right to the full enjoyment and use of the land and all its profits, during his Estate therein. See titles Eivers; Common of Eivers. But he is not permitted to cut down timber, or do other waste upon the premises; for the destruction of such things, as are not the temporary profits of the tenement, is not necessary for the tenant's complete enjoyment of his Estate; but tends to the permanent and lasting loss of the person entitled to the inheritance. 1 Safo. 53. See this Dictionary, title Wafts.

In the second place, Tenant for Life, or his representatives, shall not be prejudiced by any sudden determination of his Estate; because such a determination is contingent and uncertain. Co. Lit. 55. Therefore, if a Tenant for his own Life fows the lands, and dies before harvest, his executors shall have the emoluments or profits of the crop; for the Estate was determined by the act of God; and it is a maxim in the law, acta Dei sunt semper immutabilia. The representatives therefore of the Tenant for Life shall have the emoluments, to compensate for the labour and expense of sowing, and sowing the lands; and also for the encouragement of husbandry, which being a public benefit, tending to the increase and plenty of provisions, ought to have the utmost security and privilege that the law can give it. Wherefore, by the feudal law, if a Tenant for Life died between the beginning of September and the end of February, the Lord who was entitled to the reversion was also entitled to the profits of the whole year; but if he died between the beginning of March and the end of August, the heirs of the Tenant received the whole. From hence our law of emoluments seems to have been derived, but with very considerable improvements; and its advantages are particularly extended to the parochial Clergy, by 23 2o. 8. 11: for all persons who are prestation to any ecclesiastical benefice, or to any civil office, are considered as Tenants for their own Lives, unless the contrary be expressly in the form of the donation. 1 Comm. c. 3. p. 122. 3. See title Emoluments.

A third incident to Estates for Life relates to the under-tenants or lees. For they have the same, or greater indulgencies than their lessors the original Tenants for Life. The same; for the law of evers and emoluments, with regard to the Tenant for Life, is also law with regard to his under-tenant, who represents him and hands in his place. Co. Lit. 55. Greater; for in those cases where Tenant for Life shall not have the emoluments, because the Estate determines by his own act, the exception shall not reach his lees, who is a third person. As in the case of a woman who holds during vindications, that having a husband is her own act, and therefore deprives her of the emoluments; but if she leaves her Estate to an under-tenant, who fows the land, and the then marries, this her act shall not deprive the tenant of his emoluments, who is a stranger, and could not prevent her. Co. Lit. 461; 1 Rob. Abst. 727.

The lees of Tenants for Life had also at the Common Law another most unreasonable advantage; for at the death of their lessors, the Tenants for Life, whose under-tenants might, if they pleased, quit the premises, and pay no rent to any body for the occupation of the land, since the last quarter-day, or other day assigned for payment of rent, to 1 Rep. 172. To remedy which, it is now enacted by 28 2o. 2. 17. § 157, that the executors or administrators of Tenant for Life, on whose death any lease determined, shall recover of the lessee a rateable proportion of rent, from the last day of payment to the death of such lessor. See this Dictionary, titles Leases; Litts.
LIFE-ESTATES.

By Stat. 19 C. 2. c. 6. where persons for whose lives Estates are held, shall abide themselves for seven years, they shall be presumed dead. And by Stat. 6 Eliz. c. 18. persons for whose lives Estates are sold, are, on application to the Lord Chancellor, to be produced. The tenant holding after the determination of the Life, deemed a trespasser. See title Death. Polcmonous enabled to take in remainder, where the Life Estate is determined, Stat. 10 & 11 W. 3. c. 16. See title Occupancy.

LIFE RENT. A rent which a man receives for term of Life, or for infeastment of it. See Statute, 15. Eliz. c. 4. Life.

LIGENCE; Leisnay, liqigation.] The true and faithful obedience of a Subject to his Sovereign: and is also applied to the territory and dominion of the Liege Lord: as children born out of the Ligeance of the King, &c. Stat. 25 Ed. 3.; Co. Litt. 129. See title Allegiance.

LIGHTS. Stopping Lights of a house is a nuisance; but stopping a prospect is not, being only matter of delight, not of necessity, and a person may have either an allev of nuisance against the person erecting any such nuisance, or he may stand on his own ground and abstain. 9 Rep. 58; 1 Mol. 54. For my nuisance eroded or being on the fall of my neighbour, whereby I sustain damage, I may maintain an action on the case, if a man has a vacant piece of ground, and builds thereupon a house, with good Lights, which he sells or lets to another; and after he builds upon ground contiguous, or lets the same to another heron, who builds thereupon to the nuisance of the Lights of the first house, the lease of the first house may have an action on the case against such bucker, &c. And though individually they were to be Lights of an ancient messuage, that is now altered. Mol. Cist. 116, 314. See titles Nuisance; Trespass.

LIGHTS AND LAMPS. Householders in Middlesex and Surrey within the bills of mortality, to let out lamps, from Lady-day to Michaelmas-day. 2 W. & M. sess. 2. c. 8. § 15.

With respect to London and Westminster, there are various acts, for providing, lighting, and cleansing the streets, &c. not according to annate. See title London.

LIGNAGIUM, The right of cutting of fuel in woods; and sometimes it is taken for a tribute or payment due for the same.

LIGNUM VITÆ. An apothecary’s drug. Lignum Vitæ of the product of the British plantations in America may be imported free from all customs and impositions. Stat. 1 Geo. 2. c. 2. c. 17. § 5. See title Navigation Acts.

LIGNANA, Timber fit for building. Du Frédy.

LIGULA, A copy or transcript of a court roll or deed mentioned by Sir John Maynard in his Mem. in Secret. 12 Ed. 1.

LIGURITOR, A flatterer. Leg. Canan. 29. Somner is of opinion that it signifies a gluton, from the Saxon hstrra, gulastr. Cowell.

LIMES. The limbs as well as the life of a man are of such high value, in the estimation of the law of England, that it pardons even homicide, if committed in defense, or in order to preserve them. 1 Com. 130. See titles Homicide; Malicious; Assizes.

LIME AND LEMON-JUICE. Are liable to certain duties on importation. See title Navigation Acts.

LIMITATION.

LIMITATION. A certain time, assigned by statute, within which an action must be brought.


II. More particularly of the Limitations of Actions, divided into—1. Real; 2. Personal; and 3. Personal.

III. Of the Time within the Right of Action accrued, as to be affected by the Statute; and of the Court bound thereby.


I. THE TIME of Limitation is two-fold; first, in writing, by divers acts of Parliament; secondly, to make a title to any inheritance, and that is by the Common Law, Co. Litt. 144, 145.

It terms that by the Common Law there was no fixed or fixed time to bring actions; for though it be said by Bracton, that certain actions in rem do et in rem temporis limitations habit, yet Lord Coke says, that the limitation of Actions was by force of divers acts of Parliament; also, says he, this general notion of Bracton’s admitted of several exceptions. Bract. lib. 3. fol. 228; 2 Inf. 93; Co. Litt. 145; 4 Co. 109, 111.

But by the ancient law there was a stated time for the heir of the tenant to claim his there death of his ancestor, that is to say, a year and a day after he was fourteen years old, and else he lost his land, according to the feudal text; Praeterea quis insignatus in ipsum fidei et obser. sententiam habet, sed inveniendi actum, nisi adiuvat, non est. And this, or anything he made the first born of the next owner, whether son or daughter, to have all the land, as the ancient law gave him. See title London.

The fixing upon the period of a year and a day, upon several other occasions, tends to have been deduced from this ancient rule; and on this occasion was pitched upon, because the services appointed seem to be annually computed; therefore the fee was ordered to be taken up within such time that such annual services became due, or else it was left and returned to the lord; and the same time that was appointed to the tenant to claim from the lord was also appointed, for the right of possession upon the heir; and this was to keep the same uniformity in point of time through the law, as also that the lord might be at a certainty whom he might take for his tenant, and admit upon every defendant; and since the heir of the tenant was of the whole land, in case he did not take it up within time, it was fit the tenant should lose the right and possession, in case he did not claim within the same time upon the default, that the heir of the defier might be in peace, in case the person that had right did not make his claim upon him, and that from thenceforth the lord might receive him into his feud, and as upon the ancient plan of feudal continuation,
LIMITATION OF ACTIONS II.

conflituon, if the heir did not take up the feu within a year and a day, a defenlion and dereliction was presumed; so also if the defeñee did not claim within the same time, the right of poñifion was relìnquished. Spemas. Gloss. annis & die 32, 33.

Before the flat 32 Hen. 8. c. 2, certain remarkable periods were fixed upon, within which the title, whereon men designed to be relieved, must have accrued; thus in the time of Hen. III., by the statute of Morton, 20 Hen. 3. c. 8, at which time the limitation in a writ of right was from the time of King Henry I. it is reduced to the time of King Henry II.; and for actions of mort d'ancestor, they were thereby reduced from the last return of King John out of Ireland, which was 12. February, and for actions of novel duetifion, a prime transference Regis in Normannie, which was 5 Hen. 1, and which before that had been post ultimum reddition Henrici 3. de Britannia; and this limitation was also afterwards by the statutes Wiflim. 1. (3 Ed. 1.) c. 39, and Wiflim. 2. (3 Ed. 1.) c. 45, reduced to a narrower compoñent, the writ of right being limited to the first coronaţion of Hen. III. For these ancient limitations, see Co. Lit. 14. b; 15. a; 2 Infr. 94; 95; 2 Rot. Abr. 87.; Hale's Hist. of the Law, 122.; 2 Kebl. 45. This last date of limitation continued to long unattended, that it became indeed no limitation at all; it being above three hundred years from Henry III.'s coronation to the year 1540, when the statute of Limitations, 32 Hen. 8. c. 2, was made. This statute, therefore, instead of limiting actions from the date of a particular event, as before, which in processes of feud gave almost as much occasion and more direct course, which might endure for ever, by limiting a certain period of time previous to the commencement of every suit; see 3 Term. 10. 11.

There are now several statutes of Limitation, by which a certain time is prescribed, beyond which no plaintiff can lay his cause of action. Thus, by flat. 32 Hen. 8. c. 2, in a Writ of Right is 60 years. In actions, writs of entry, or other poñifion actions real, of the feñion of one's ancestors in lands, and either of their own or one's own, in rents, suits, and services; 50 years. And in actions real for lands grounded upon one's own señion or poñifion, such poñifion must have been within 50 years. By flat. 1 Marl. flat. 2. c. 5, this Limitation does not extend to any suit for awoñesçon, upon reasons hereafter mentioned. See poñ. 11. 1.

By flat. 21 Jac. 1. c. 2, a time of Limitation was extended to the case of the King, viz. fifty years precedent to February 10, 1623; 3 Infr. 183.; but this becoming ineffectual by effeæe of the time, the same term of Limitation was fixed, by flat. 9 Geo. 3. c. 16, to commence and be reckoned backwards, from the time of bringing any suit or other process, to recover the thing in question; fo that a poñifion for fifty years is now a bar even against the prerogative, in derogation of the ancient maxim, non iam temptare rogat. See this Dictionary, title Kings V. 2.

By flat. 21 Jac. 1. c. 16, the time of Limitation in any writ of forcaanion is 20 years; and by a consequence, the same term is also the Limitation in every action of Ejeûtment; for no ejection can be brought, unless where the letter of the plaintiff is entitled to enter on the lands; and by this statute (at Jac.) no entry can be made by any man unless within 20 years after

his right shall accrue. And by flat. 4 & 5 Ann. c. 16, no entry shall be of force to satisfy the said statute of Limitations, or to avoid a fine levied of lands, unless an action be thereupon commenced within one year after, and prosecuted with effect. See this Dictionary, titles Ejeûtment; Entry; Fine.

By the same statute, 21 Jac. 1. c. 16, (which, from the general extent of it to almost all actions, is usually termed emphatically, The Statute of Limitations,) all actions of treipas, (quæ clauæum fugit, or otherwise,) detinue, trover, replevin, account, and cause, (except upon accounts between merchants,) debt on simple contract, or for arrears of rent, are limited to 6 years after the cause of action commenced; (and see flat. 4 & 5. Ann. c. 16. post. 111. ad fin.) Actions of assault, manslaughter, battery, mayhem, and imprisonment, must be brought within 4 years; and actions for words within 2 years after the injury committed.

By flat. 27 Geo. 3. c. 44. suits in Ecclesiastical Courts for defamatory words must be commenced within six months.

By flat. 31 Eliz. c. 5, all suits, indignation, and informations upon any penal statutes, where any forfeiture is to the Crown alone, shall be sued within 2 years; and when the forfeiture is to a Subject, or to the Crown and a Subject, within one year after the offence committed; unless where any other time is specially limited by the statute.

By flat. 10 W. 3. c. 14, no Writ of Error, Sure Faëria, or other suit, shall be brought to reverse any Judgment, Fine, or Recovery forever, unless it be prosecuted within 20 years. See this Dictionary, titles Error; Fine of Lands; Judgment.

In writ of Error, to reverse a Common Recovery cannot be brought after twenty years, though the right of the plaintiff in Error accrued within that time. 2 Stra. 1577.

No statute has fixed any Limitation to a Bond or Specialty; but where no interest has been paid upon a bond, and no demand proved thereon for twenty years, the Judges recommend it to the Jury to presume it dishonourd, and to find a Verdict for the defendant. 2 Term. Rep. 270. See this Dictionary, title Bond.

II. 1. By flat. 32 H. 8. c. 2, it is enacted, "That no person shall from thenceforth sue, have, or maintain, any writ of right, or make any prescription, title, or claim, to or for any manors, lands, tenements, rents, annuities, commons, pensions, portions, curacies, or other heredities, of the poñifion of his or their ancestor or predecessor, and declare and alledge any further señion or poñifion of his ancestor or predecessor, which hath been, or now is, or shall be, sealed of the said manors, lands, tenements, rents, and annuities, commons, pensions, portions, curacies, or other heredities, within three years next before the style of the same writ, or next before the said prescription, title, or claim to hereafter to be sued, commenced, brought, made, or had." And it is further enacted by the said statute, par. 29, "That no manner of person shall sue, have, or maintain any action of mort d'ancestor, covenage, suit, or writ of entry upon afeñion, done to any of his ancestors or predecessors, or any manors, lands, tenements, or other heredities, of any further señion or poñifion of his or
LIMITATION OF ACTIONS II. I.

The statute does not extend to the services of escuage, homage, and fealty, for a man may live above the time limited by the act; neither doth it extend to any other service which by common possibility may not happen or become due within fifty years, as to cover the hall of the lord, or to attend the lord in war, etc. Co. Litt. 415. n. 2. 2 J. & Star. 65. 4 Co. 10. Bevil's case: 8 Co. 65. 3 Inst. 21.

And where the tenure is by homage, fealty, and escheate uncertain, and by fait of court or rent, or any other annual service, the feisin of the fait or rent, or any other annual service, is a good feisin of the homage, fealty, or escheate, or other accidental services, as wardship, heriot-service, or the like. 2 Inst. 66: 4 Co. 8. b: Winch. 32: Holt. 50: 2 Rol. Rep. 392.

By Stat. 1 Mar. 2. c. 5, it is enacted, "That the Stat. 32 Hen. 8. c. 2, shall not extend to any writ of right of advowson, quær simplicitis, or affile of darren presentments, nor jus patronatus, nor to any writ of right of ward, writ of reviviscence of ward for the wardship of the body, or for the wardship of any castles, honours, manors, lands, tenements, or hereditaments held by knight-service; but that such suits may be brought at any time after the making of the said act."

There is, therefore, no limitation with regard to the time within which any actions touching advowsons are to be brought; at least none later than the times of Richard I. and Henry III. And this upon very good reason; because it may easily happen, that the title to an advowson may not come in question, nor the right have opportunity to be tried within sixty years; which is the longest period of limitation asigned by the Stat. 52 Hen. 8. c. 2. For Sir Edward Coke says, that there was a parfon of one of his churches that had been incumbent there above fifty years; nor are instances wanting where two successive incumbents have continued for upwards of one hundred years. Had therefore the last of these incumbents been the clerk of an usurper, or had been presented by lapse, it would have been necessary and unavoidable for the patron, in case of a dispute, to have recurred back above a century, in order to have thrown a clear title and seisin, by presentation and admission of the prior incumbent. But though, for these reasons, a limitation is highly improper with respect only to the length of time, yet as the title of adovisions is, for want of some limitations, rendered more precarious than that of any other hereditament, especially since the Stat. 7 Ann. c. 12, hath allowed peremptory actions to be brought upon any prior presentation, however distant, it might perhaps be better, if a limitation were established, with respect to the number of avoidances; or rather if a limitation were compounded of the length of time and the number of avoidances together: for instance, if no seisin were admitted to be alleged in any of these writs of patronage after sixty years and three avoidances were past. 3 Comm. c. 16. p. 250.

By Stat. 21 Jac. 1. c. 16, which the preamble declares to be for quieting men's estates, and avoiding of suits, it is enacted, "That all writs of formenon in defender, formenon in remainder, and formenon in reverter, at any time hereafter to be sued or brought of or for any manors, lands, tenements, or hereditaments, whereunto any person or persons now hath or have any title, or cause to have or pursue any such writ, shall be sued and taken within twenty years next after the end of the present feizon of parliament; and after the said twenty years expired, no person or persons, or any of their heirs, shall have or maintain any such writ of or for any of the said manors, lands, tenements or hereditaments; and that all writs of formenon in defender, formenon in remainder, formenon in reverter, of any manors, lands, tenements, or other hereditaments whatsoever, at any time hereafter to be sued or brought by occasion or means of any title, or cause hereafter happening, shall be sued and taken within twenty years next after the title and cause of action first descended or fallen, and at no time after the said twenty years; and that no person or persons that now hath any right or title of entry, their ancestor or predecessor, but only of the seisin or possession of his or their ancestor or predecessor, which was or hereafter shall be seised of the same manors, lands, tenements, or other hereditaments, within fifty years next before the issue of the original of the same writ hereafter to be brought."

It is further enacted, par. 3, "That no person shall sue or maintain any action for any manors, lands, tenements, or other hereditaments, within fifty years next before the issue of the original of the same writ hereafter to be brought."

And further, par. 4, "That no person shall hereafter make any awry or cognizance for any rent, suit or service, and allege any feisin of any rent, suit or service, in the same awry or cognizance in the possession of any other, whose estate he shall pretend or claim to have, above fifty years next before the making of the said awry or cognizance."

Fifty years is the true term of limitation in this instance, though Raffeil and some other editions of the statutes make it only forty years; an error adopted by Coke, (2 Inst. 95,) and other writers. See 3 Comm. c. 10. p. 180. in n.

And it is further enacted by the said statute, par. 5, "That all formenon in reverter, formenon in remainder, and seisin facias upon fines of any manors, lands, tenements, or other hereditaments, at any time hereafter to be sued, shall be sued and taken within fifty years next before the title and cause of action fallen, and at no time after the fifty years past."

Note: This statute hath the usual saving, for infants, female coverts, persons in prison, and beyond sea.

In the construction of this statute it hath been held, That in a formenon in reverter or remainder, or on a seisin facias, on a fine of such nature, the demandant need not mention the statute in order to make out his title; but the tenant, if he would take advantage of it, must plead it. Dyce 315. b. pl. 101. So in an awry for rent. Mor. 31. pl. 112: 1 Rol. Rep. 50.

It has been held, that this statute being in restraint of the Common Law, ought to be construed strictly; that therefore it does not extend to a formenon in defender, seisin facias nor seisin. 4 Co. 8: 1 Abol. 16: Lit. Rep. 342.

To a bill in Chancery, to be relieved touching a rentcharge upon lands by a will, the defendant pleaded the statute of Limitations, and that there had been no demand or payment in forty years; and it was held, that this statute concerns only customary rents between lord and tenant, and not any rent that commences by grant, whereas the commencement may be shewn. 2 Vern. 235.

The statute does not extend to the services of escuage, homage, and fealty, for a man may live above the time limited by the act; neither doth it extend to any other service which by common possibility may not happen or become due within fifty years, as to cover the hall of the lord, or to attend the lord in war, etc. Co. Litt. 415. n. 2. 2 J. & Star. 65. 4 Co. 10. Bevil's case: 8 Co. 65. 3 Inst. 21.

And where the tenure is by homage, fealty, and escheate uncertain, and by fait of court or rent, or any other annual service, the seisin of the fait or rent, or any other annual service, is a good seisin of the homage, fealty, or escheate, or other accidental services, as wardship, heriot-service, or the like. 2 Inst. 66: 4 Co. 8. b: Winch. 32: Holt. 50: 2 Rol. Rep. 392.
LIMITATION OF ACTIONS II. 2.

entry, into any manors, lands, tenements, or hereditaments, now held from him or them, shall thenceforth enter, but within twenty years next after the end of the present session of parliament, or within twenty years next after any other title of entry accrued; and that no person or persons shall at any time hereafter make any entry into any lands, tenements, or hereditaments, but within twenty years next after his or their right or title, which shall hereafter first descend or accrue to the same; and in default thereof such persons to not entering, and their heirs, shall be utterly excluded and dispossessed from such entry after to be made; any former law, \\

Provided, That if any person or persons, that is or shall be entituled to such writ or writs, or that hath or shall have such right or title of entry, be or shall be, at the time of the said right or title first descended, accused, come, or fallen, within the age of one and twenty years, femme covert, non capitis mentis, imprisoned, or beyond the seas; that then such person and persons, and his and their heir and heirs, shall or may, notwithstanding the said twenty years be expired, bring his action, or make his entry, as he might have done before this act; so as such person and persons, or his or their heir and heirs, shall within ten years next after his and their full age, discover, or coming into this realm, or death, take benefit of and sue for the same, and at no time after the said ten years.

In the construction of this part of this statute it hath been held,

That the possession of one joint-tenant is the possession of the others, so far as to prevent this statute. 1 Salk. 285.

That a claim of entry to prevent the statute of Limitation must be upon the land, unless there be some special reason to the contrary. 1 Salk. 285.

That if a person be barred of his former, he is not thereby hindered to pursue his right of entry which afterwards accrues to him; no more than a person who has several remedies, and discharges one of them, is excluded thereby from pursuing the others. 1 Lev. 734: 1 Salk. 339: 2 Salk. 422.

If A. has had possession of lands for twenty years without interruption, and then B. gets possession, upon which A. is put to his ejectment; though A. is plaintiff, yet the possession of twenty years shall be a good title in him, as if he had still been in possession; because a possession for twenty years is like a decents which tolls entry, and gives a right of possession, which is sufficient to maintain an ejectment. 1 Salk. 424: said to have been twice so ruled by Holz.

If one tenant in common receives the whole profits for twenty years, or more, yet this does not bar his companion; for the statute of Limitations never runs against a man, but where he is actually ousted or dispossessed. 2 Salk. 425.

It has been ruled, that copiesholds are within the statute of Limitations; because it is an act made for the preservation of the public quer, and no ways tending to the prejudice of the lord or tenant. 2 Cro. 410.

Ecclesiastical persons, it has been said, are not bound by any of the statutes of Limitations, because it would be a side-wind to evade the statutes made to prohibit their alienations. Comp. Incamb. 429.

2. By Stat. 51 Eliz. c. 5, par. 5, it is enacted, "That all actions, suits, bills, informations, which shall be brought for any forfeiture upon any statute penal, made or to be made, whereby the forfeiture is or shall be limited to the Queen, &c., shall be brought within two years after the offence; and that all actions, suits, bills, or informations, which shall be brought for any forfeiture upon any penal statute, made or to be made, except the statutes of tillsage, the benefit and suit whereof is or shall be by the said statute limited to the Queen, her heirs or successors, and to any other, shall prosecute in that behalf, shall be brought by any person that may lawfully sue for the same within one year next after the offence committed; and in default of such pursuia, that then the same shall be brought for the Queen's Majesty, her heirs or successors, any time within the two years after that year ended. Where a shorter time is limited by any penal statute, the prosecution must be within that time."

Also see Stats. 18 Eliz. c. 5: 21 Jac. 1. c. 41: the former requiring a memorandum of the day of exhibiting an information, the latter an oath from the informer.

In the construction of these statutes it hath been held,

That the Stat. 21 Jac. 1. c. 4, does not extend to any offence created since that statute; so that proceedings on subsequent penal statutes are not restrained thereby, but that statute is to them as it were repealed pro tanti. 1 Salk. 372: 3: 5 Mod. 425. And that the said statute, 21 Jac. 1, only applies to those penal statutes, on which proceedings may be had before the Justices of Assize, Justices of the Peace, &c. 3 Term Rep. 362.

That if an offence prohibited by any penal statute be also an offence at Common Law, the prosecution of it as of an offence at Common Law, is so way restrained by any of these statutes. Hdb. 270: 4 Mod. 144.

That if an information tenu quam be brought after the year on a penal statute, which gives one moiety to the informer, and the other to the King, it is sought only as to the informer, but good for the King. Cro. Cas. 331: Cro. Jac. 365: and note Dalh. 68.

When the forfeiture is to the Crown and a Subject, a common informer must sue within one year, and the Crown may prosecute for the whole penalty at any time within two years after that year ended. 3 Comm. c. 20. p. 307, in n.

That if a suit on a penal statute be brought after the limited time, the defendant need not plead the statute, but may take advantage of it on the general issue. 1 Show. 355.

That the party grieved is not within the restraint of these statutes, but may sue in the same manner as before. Cro. Eliz. 645: Noy 71: 3 Lev. 257.

It seems doubtful, whether a suit by a common informer on a penal statute, which first gives an action to the party grieved, and in his default, after a certain time, to any one who will sue, be within the restraint of these statutes. 1 Show. 353: 354.

It has been held by three judges, that ouing a latastit within the year was a sufficient commencemen of the suit to take the limited time on a penal statute; because the latastit is the original in R. P., and may be continued on record as an original. But Holz held otherwise, for the action being for a penalty given by a statute, D D 2.
statute, the plaintiff might have brought an action of debt by original in B. R. because the statute gives the action; and he held, that there was a difference between a civil action, and an action given by statute; for in the first case, the suing out a 

|latus within the time, and continuing it afterwards, will be sufficient; but in the other case, if the party proceeds by bill, he ought to file his bill within time, that it may appear so to be upon the record itself. Carib. 232: Show. 353. But upon a writ of error, all the Judges in the Exchequer Chamber held, that a fuit is a kind of original in the King's Bench. 2 Ld. Raym. 883. And accordingly, in two subsequent cases, it was held to be a good commencement of the suit in a penal action. 2 Burn. 930: 3 Burr. 1243: Conso. 454.—See as to Limitations, in Indictments, this Dictionary, ditto: Appeal; Indictment; Information; Treason, &c.

3. By Stat. 21 Jac. 1. c. 16. it is enacted, that all actions on the case for bills shall be commenced and sued within two years after the words spoken, and not after.

In the construction of this branch of the statute it hath been held, that an action for scandalum magnatum is not within the statute. Lit. Rep. 342: 3 Kebr. 642.

That it extends not to actions for slander of title; for that is not properly slander, but a cause of damage; and the slander intended by the statute is to the person. Cro. Car. 141.

That if the words are of themselves actionable, without the necessity of alleging special damages, although a loss ensues, yet in this case the statute of Limitations is a good bar; but if the words at the time of the speaking are not actionable, but a subsequent loss ensues, which entitles the plaintiff to his action, in such case the statute is no bar. 1 Sid. 95: Raym. 61: and see 3 Mod. 111.

That if an action for words be founded upon an indictment, or other matter of record, it is not within this statute. 1 Sid. 95:

By the same Stat. 21 Jac. 1. c. 16. it is enacted, that all actions of trespass, of assault, battery, wounding, imprisonment, or any of them, shall be commenced and sued within four years next after the cause of such actions or suits, and not after. It seems, that if a man brings trespass for beating his servant, for good servitutum amfit, this is not such an action as is within this branch of the statute, being founded on the special damage. 1 Sheb. 206: 5 Mod. 74.

If to an action of assault, battery, and imprisonment, the defendant pleads, as to the assault and imprisonment, the statute of Limitations, without answering particularly to the battery, otherwise than by using the words transgressio pravitatis, it is sufficient; for these words are an answer to the whole. 1 Leev. 51.

By the same Stat. 21 Jac. 1. c. 16. it is enacted, that all actions of trespass, in quare clausum fuerit, all actions of trespass, detinue, action for trespass, &c. for taking away of goods and chattels, all actions of account, other than such account as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions on the case, (other than for slander,) all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrears of rent, shall be commenced and sued within six years next after the cause of action.

Provision is made for some instruments, persons that are non compos, imprisoned, or beyond sea.

Under the head of Actions upon the Case are included actions for libels, criminal conversation, seduction, and actions for such words as are not actionable without a special damage; and all other actions on the case, being of equal mischief, and plainly within the intention of the legislation. See Cro. Car. 245: 333: 2 Saund. 120: 2 Mod. 71: 1 Sid. 455: 3 Comm. c. 8. p. 307; in n. As to actions in the Admiralty for Seamen's wages, see p. 111.

It hath been adjudged, that an action of debt on Stat. 2 & 3 Ed. 6. c. 13, for not setting out tithes, is not within the statute; the action being grounded on an act of Parliament, which is the highest record. Cro. Car. 513: Temple v. Jackson: 1 Saund. 38: 2 Saund. 66: 1 Sid. 355: 415: 1 Kebr. 95: 2 Kebr. 492.

So an action of debt for rent referred on a lease by inden­ture is out of the statute, the lease by indenture being equal to a specialty. Hatt. 109: 1 Saund. 38.

Also an action of debt for an escape is not within the statute; not only because it is founded in malfeasance, and arises on a contract in law, which is different from those actions of debt on a lending or contract mentioned in the statute, but also because it is grounded on Stat. 1 Begg. 2. cap. 12, which forbids an action of debt for an escape, there being no remedy for creditors before, but by action on the case. 1 Saund. 37: Jones v. Pope: 1 Leev. 191: 2 Kebr. 903: 1 Sid. 305.

So this statute cannot be pleaded to an action of debt brought against a sheriff for money by him levied on a fieri facies; because the action is founded in malfeasance, as also upon the judgment on which the fieri facies issued, which is a matter of record. 1 Mod. 212, 245: 2 Show. 79.

An action of debt on an award under the hand and seal of the arbitrators, though the submission was by parol, is not within the statute. 2 Saund. 64: Sid. 415: 1 Leev. 273: 2 Kebr. 462, 476, 338.

An action of debt for a fine of a copyholder is not within the statute. 1 Kebr. 530: 1 Leev. 273.

If a man recover a judgment or sentence in some actions by original, the defendant pleads, as to the whole. 1 Mod. 462, 496, 338.

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LIMITATION OF ACTIONS III.—IV. 1, 2.

A charity is not barred by length of time, nor within the statute of Limitations. 2 Vern. 399.

So hath it been held, that a legacy is not within the statute of Limitations. 1 Vern. 250.

It seems to be the doctrine of Courts of Equity, that mortgages are not within the statute of Limitations; yet where a man comes in at an old hand, it hath been sometimes decreed, that the possessor should account no further than for the profits made in his own time, to discourage the flitting in such dormant titles; also the courts have allowed a length of time to be pleaded in bar, where the mortgaged estate hath descended as a free, without entry or claim from the mortgagor, and where the possessor would be intangled in a long account; and in these cases the statute of Limitations has been mentioned as a proper direction to go by. 1 Chan. Ca. 102. See title Mortgage.

III. This statute cannot be a bar unless the six years are expired, after there hath been complete cause of action; as if a man promise to pay 1 l. to J. S. when he came from Rome, or when he marries, and ten years after J. S. marries, or comes from Rome, the right of action accrues from the happening of the contingency; from which time the statute shall be a bar, and not from the time of the promise. Gobd. 437.

So in an action on the case wherein the plaintiff declared, that in consideration he would forbear to sue the defendant for some fliep killed by the defendant's dog, the defendant promised to make him satisfaction upon request, and that at such a time he requested, &c. It was held, that the right of action accrued in bar, where the request, not from the time of killing the sheep; that therefore the defendant could not plead the statute of Limitations, the request being within fix years, though the killing the sheep and promise of satisfaction was long before. Gobd. 437: See 1 Lev. 48: 1 Sid. 66: 1 Keb. 177.

So if a note or bill of exchange is given, payable at a certain time after date, the cause of action does not accrue until after the expiration of the time specified; and if an action is brought within six years after that time, the statute is not a bar. But if the suit is not commenced within six years after that time, the defendant may plead that the cause of action did not accrue within six years, but he must not plead that he did not promise within six years, i.e. if he is the person frit liable to the payment, because the promise is made at the time of making the note, &c. It may be otherwise in the case of an indorser, who is not liable until default made by the drawer of the note, or acceptor of the bill, but in his case. Non accusat infra for anui, is a safe and good plea. For similar cases, see 2 Salk. 422: 1 Vern. 101: 3 Keb. 613: Cae. Cor. 243 & 6. 333: 1 Jan. 252: 3 Mod. 119: &c. Allen 62: 2 Salk. 420: Comb. 56.

Where a party has been guilty of any fraud in his dealings or accounts, the Courts of Law and Equity have determined, that he shall only protect himself by the statute of Limitations from the time his fraud is discovered. 3 P. Wm. 113: Doug. 630.

It is clearly agreed, that the statute of Limitations is a good plea in a Court of Equity. March 120: 1 Salk. 424.

But it has been agreed, that the statute of Limitations is no plea in the Court of Admiralty, or Spiritual Court, where they proceed according to their law, and in a matter in which they have cognizance. 6 Mod. 25: 26: 2 Salk. 424: 3 Keb. 365, 392.

Therefore, for a suit upon a contract super quiem meret, no prohibition should go upon their refusal of a plea of the statute of Limitations. 6 Mod. 26.

So it has been held not to be pleadable to a proceeding in the Spiritual Court, pro evidentia mundi injonctionis in clericis, because the proceeding is pro reformatio morum, not for damages. 2 Salk. 424.

It was formerly doubted, whether to a suit in the Admiralty for mariners wages, this statute is a good plea; because it is said, that this is a matter properly determinable at Common Law; and the allowing the Admiralty jurisdiction therein, only a matter of indulgence. 2 Salk. 424: 6 Mod. 55.

But this is now settled by Stat. 4 & 5 Ann. cap. 16, by which it is enacted, That all suits and actions in the Court of Admiralty for Seamen's wages, shall be commenced and sued within six years next after the cause of such suits or actions shall accrue, and not after.

IV. 1. The statute 21 Jac. 1, c. 16, being general, infants had been included, but they had not been particularly excepted. 1 Lev. 31.

It hath been held, that if an infant, during his infancy, by his guardian, bring an action, the defendant cannot plead the statute of Limitations; although the cause of action accrued six years before, and the words of the statute are, that after his coming of age, &c. 2 Saund. 121.

It hath been held in Chancery, that if one receives the profits of an infant's estate, and six years after his coming of age, he brings a bill for an account, the statute of Limitations is as much a bar to such a suit, as if he had brought an action of account at Common Law; for this receipt of the profits of an infant's estate is not such a suit as, being a creature of the Court of Equity, the statute shall be no bar to; for he might have his action of account against him at law, and therefore no necessity to come into this court for the account; for the reason why bills for an account are brought here, is from the nature of the demand, and that they may have a discovery of books, papers, and the party's oath, for the more easy taking of the account, which cannot be so well done at law; but if the infant lies by for six years after he comes of age, he is barred of his action of account at law, so shall he be of his remedy in this court. 1 Mer. Eq. 394. 6. 103: Pre. Ch. 518.

2. It hath been a matter of much controversy, whether the exception relative to merchants' accounts extends to all actions and accounts relating to merchants and merchandize, or to actions of account open and current only; the words of the statute being, "All actions of troth," &c. all actions of account and upon the same: other than such actions as concern the trade of merchants;" so that by the words, other than such actions, not being paid actions of account, it has been inferred that all actions concerning merchants are excepted. But it is now settled, that accounts open and current only are within the statute; that therefore a new account be settled between merchant and merchant, and a sum certain agreed to be due to one of them, if in such case the parties do not bring his action within the limited time, he is barred by the statute. See 1 Jan. 401: 2 Saund. 124, 125: 1 Lev. 287, 288.
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298: 2 Keb. 622; 1 Pint. 90; 1 Mod. 270; 2 Mod. 312; 2 Vern. 456.

So it hath been adjudged, that by the exception in the statute concerning merchants accounts, no other actions are excepted but actions of account. Carth. 226.

Also it hath been adjudged, that no suit, however for value received, are not such matters of account as are intended by the exception in the statute of Limitations. Carth. 226.

An open current account, between tradesmen or others, is not within the statute, supposing the last article of the debt in the account was contracted within six years; otherwise, in such case, the statute is a bar. J. M.

This exception does not extend to a tradesman's account with his customer; for in such case there are not mutual dealings; and the tradesman is barred by the statute from recovering for more than those articles which have been fold within six years. Bull. N. P. 149.

3. The clause of the statute as to persons beyond sea, extends only to such as are actually so. For where to non adjungit infra sex annos, the plaintiff replied, that when the cause of action accrued, he was resident in foreign parts out of the kingdom of England, viz. Glasgow in Scotland; this was held ill on demurrer; Scotland not being a foreign part within the meaning of the statute, the express words of which are, beyond the seas.

Therefore a foreigner, or person resident abroad, shall never be barred from bringing his action, from any length of time while out of the kingdom, for the statute does not begin to run until he has come into it; though any of the persons who are under the difficulties mentioned in the statute, may nevertheless, during the time such difficulties exist, bring their actions. Epinnaiff. N. P. 149, 150.

It seems to have been agreed, that the exception extends only to the creditors or plaintiffs, and not to debtors or defendants, because the first only are mentioned in the statute; and this construction has the rather prevailed, because it was reputed the creditor's folly, that he did not file an original, and outlaw the debtor, which would have prevented the bar of the statute. Cro. Cap. 245; 123; 1 Vern. 852; 1 Lev. 143; 3 Mod. 311; 2 Lart. 950; 1 Salt. 429.

But as the creditor's being beyond sea is saved by the statute; so now by stat. 4. & 5 Ann. cap. 16, in English cases, it is enacted, That if any person or persons, against whom there it is, or shall be, any cause of suit or action for persons' wages, or against whom there shall be any cause of action of trespass, detinue, action for recovery or reprieve, for taking away goods or chattels, or of action of account, or upon the case, or of debt grounded upon any lending or contract without speciality, or of debt for arrearages of rent, or assault, menace, battery, wounding and imprisoning, or any of them, be, or shall be, at the time of any such cause of suit or action given or accrued, fallen or come, beyond the seas; that then such person or persons, who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person and persons after their return from beyond the seas, within such times as are limited for the bringing of the said actions by the statute; 2 Vern. 179, 4. & 16.

If one only of a number of partners lives abroad, if the others live in England, the action must be brought within six years after the cause of action arises, 4 Term Rep. 516.

4. A. received money belonging to a person who before died intestate, and to whom B. after such receipt took out administration, and brought an action against A. to which he pleaded the statute of Limitations; the plaintiff replied, and shewed that administration was committed to him for a year, which was insufficient time; though six years were expired since the receipt of the money; yet not being so, these administration committed, the action not barred by the statute. 1 Salt. 421; Skin. 553; 4 Mod. 376; Lath. 335.

It is laid in general, that where one brings an action before the expiration of six years, and dies before judgment, the six years being then expired, this shall not prevent his executor. 2 Salt. 424-5.

But if an executor sues upon a promissory note to the teller, and dies before judgment, and six years from the original cause of action are actually expired, and the executor brings a new action in four years after the first executor's death, the statute of Limitations shall be a bar to such action; for though the debt does not become irrecoverable, by an abatement of the action after the six years elapsed by the plaintiff's death, yet the executor should make a recent prosecution, to which the clause in the statute, § 4, that provides a year after the reversal of a judgment, &c. may be a good direction, or else that he came as early as he could, because there was a contest about the will, or right of administration; for the statute was made for the benefit of the defendants, to free them from actions when their witnesses were dead, or their vouchers lost, 2 Stra. 607; Pitigeb. 81.

Under the equity of the above-mentioned section, in all cases of executors, if the six years be not elapsed at the time of the teller's death, and the executor takes out proper process within the year, it will save the bar by reason of the Limitation, even though the six years, within which the demand accrued, he elapsed before process was found out. Bull. N. P. 150; Carew v. James, Tnun. 15 Geo. 2. C. B.

If there be no executor against whom the plaintiff may bring his action, he shall not be prejudiced by the statute of Limitations, nor shall any laches in such case be imputed to him. 2 Vern. 695.

5. It seems agreed, that there being no Courts, or the Courts of Justice being that, no plea to avoid the bar of the statute of Limitations; as where after the Civil War an adjunction was brought, and the defendant pleaded the statute of Limitations; to which the plaintiff replied, that a civil war had broke out, and that the government was usurped by rebels, which hindered the course of justice, and by which the courts were shut up, and that within six years after the war ended he commenced his action; this replication was held ill, for the statute being general, must work upon all cases which are not exempted by the exception. 1 Keb. 157; 1 Lev. 31; Carth. 157; 2 Salt. 420.

It is clearly agreed, that the defendant's being a Member of Parliament, and entitled to privilege, will not save a bar of the statute; because the plaintiff might have filed an original without being guilty of any breach of privilege. 1 Lev. 31; 144; Carth. 135, 7.

It is said, that if a man sues in Chancery, and pending the suit there, the statute of Limitations attaches on his demand, and his bill is afterwards dismissed, the matter being
LIMITATION of ACTIONS IV. 6, 7.

being properly determinable at Common Law; in such case the Court will preserve the plaintiff's right, and will not suffer the statute to be pleaded in bar to his demand. 1 Vern. 73, 74.

If the statute of Limitations is pleaded to an action, the plaintiff may, to save his action may reply, that he had commenced the suit in an inferior Court within the time of Limitation, and that it was removed to Westminster by habeas corpus; and this shall be allowed by a favourable construction of the statute of Limitations; although in strictness the suit is commenced in the Court above, when it is removed by habeas corpus. 1 Sid. 238: 3 Keb. 263: 1 Lev. 143: also vide 2 Salk. 424: 2 Stra. 719: Bull. N. P. 151. See p. 6.

6. It is clearly agreed, that the suing out an original will save a bar of the statute of Limitations, and that thereupon the defendant may be outlawed; and that if beyond sea at the time of the outlawry, though it shall be dowered after his return, yet the plaintiff may bring another original by journies accounts, and thereby take advantage of his first writ. Carth. 150: 1 Salk. 420: 3 Mod. 211.

Also it is agreed, that the suing out a latitut is a sufficient commencement of a suit, to save the limitation of time, because the latitut is the original in B. R. and may be continued on record as an original writ. 1 Sid. 53, 60: Carth. 233: 1 Salk. 421: see ante II. 2.

Also it hath been ruled, that to a plea of the statute of Limitations the plaintiff may reply, that he sued out a latitut, and continued it down by a subsequent promissory note, without concluding present part per recordorum for the latitut roll is only for the private use of the Court, and no record. 2 Keb. 46. The same is law, as to a bill of Middlesex. See Sty. 156, 178: 2 Ld. Raym. 880: 1 Stra. 550: 2 Stra. 736: 2 Ld. Raym. 1441: and 2 Burn. 961.

But if the suing out a latitut be replied to a plea of the statute of Limitations, the defendant, in order to maintain that plea, may aver the real time of suing it out in opposition to the note. 2 Burm. 950. And though the suing out an original, or latitut, will be a sufficient commencement of a suit, yet the plaintiff, in order to make it effectual, must shew that he had continued the writ to the time of the action brought. Carth. 144: 2 Salk. 420: 1 Luton. 101, 254: 3 Mod. 53. That the attorney's writing the continuances on the writ in his chambers is sufficient, see 1 Sid. 53: 1 Keb. 140. Also vide Carth. 144: 2 Salk. 420: 1 Salk. 421. The continuances may be entered up, at any time, before the plaintiff replies. The process sued and filed, and the continuances thereon, must be set forth by the plaintiff in his replication. T. M. See 3 Term Rep. 662: 2 Will. 197: Epj. N. P. 151.

7. It is clearly agreed, that if after the fix years the debtor acknowledges the debt, and promises payment thereof, that this revives it, and brings it out of the statute; as if a debtor by promissory note, or simple contract, promises within fix years of the action brought that he will pay the debt; though this was barred by the statute, yet it is revived by the promise; for as the note itself was at first but an evidence of the debt, so that being barred, the acknowledgment and promise is a new evidence of the debt; and being proved, will maintain an

affirmpt for recovery of it. 1 Salk. 28, 29: Carth. 470: 5 Mod. 425, 426: 2 Show. 126: 2 Gent. 151.

Also it hath been adjudged, that a conditional promise will revive a debt barred by the statute of Limitations; as where to an affirmpt by an executor for goods sold and delivered by the testator, the defendant pleaded the statute, and upon evidence it appeared, that the defendant within six years, being applied to by the executor for the debt, said, "If you prove that I have the goods, I will pay you!" which being false, proved at the trial, it was held that this conditional promise revived the debt; and that though made to the executor, after the death of the testator, it was sufficient to maintain the issue; because the promise did not give any new cause of action, but only revived the old cause, and was of no other use, but to prevent the bar by the statute of Limitations. Carth. 470: 1 Salk. 29: 5 Mod. 425.

So it hath been held that a bare acknowledgment of the debt within six years of the action, is sufficient to revive it, and prevent the statute, though no promise was made. Carth. 470.

If an indebitatus affirmpt for goods sold, be brought against four persons, who plead the statute of Limitations, and it be found that one of them promised within six years, there can be no judgment against him; for the contract being inter partes, it must be found that they all promised. 2 Gent. 151. But where there are two or more drawers of a joint and several promissory note, the acknowledgment of one may be given in evidence in a separate action against another, and will defeat the effect of the statute. Doug. 629.

It seems to be the doctrine of the Courts of Equity, that if a man by will or deed fabis his lands to the payment of his debts, debts barred by the statute of Limitations shall be paid, for they are debts in equity, and the duty remains; and the statute hath not extinguishted that, though it hath taken away the remedy. 1 Salk. 154: 2 Gent. 141.

Also it hath been ruled in equity, that if a man has a debt due to him by note, or a book debt, and has made no demand of it for six years, so that he is barred by the statute of Limitations; yet if the debtor, or his executor, after the fix years, puts out a writ in the Gazette, or any other newspaper, that all persons who have any debts owing to them, may apply to such a place, and that they shall be paid; this (though general, and therefore might be intended of legal debts only) yet amounts to such an acknowledgment of the debt which was barred, as will revive the right, and bring it out of the statute again. 2 Gent. 125.

Any acknowledgment of the existence of the debt, however slight, will take it out of the statute, and the limitation will then run from that time; and where an expression is ambiguous, it shall be left to the consideration of the Jury, whether it amounts or not to such acknowledgment. 2 Term Rep. 760.

One of two makers of a joint and several promissory note having became a bankrupt, the payee receives a dividend under his composition, on account of the note; this will prevent the other maker from availing himself of the statute of Limitations, in an action brought against him for the remainder of the money due on the note; the dividend having been received within six years before the action brought. 2 N. Black. Rep. 340.

If
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If there be a mutual account of any sort between a plaintiff and defendant, for any item of which credit has been given within six years, that is evidence of an acknowledgment of there being such an open account between the parties, and of a promise to pay the balance so as to take the case out of the statute. 6 Term Rep. 189.

8. Where the cause of action is to arise from an expectancy, confederation, as some set to be performed, and a promise to pay in consequence of it, there is no statute of limitations not the proper plea; for the usufruct does not arise till the consideration is performed, it should be ad
er non account infra sex anno. Bipinsicus N. P. 150. See 2 Salk. 422; Bull. N. P. 151.

It seems to be admitted, that the statute of Limitations must be pleaded positively by him that would take advantage thereof; and that the fame cannot be given in evidence, especially in an usufruct, because the Usufruct breaks of a time past, and relates to the time of making the promise. 1 Lew. 144; 2 Edw. 255; and see Cre. and J. 121. &c.

But in debt for rent, upon nil debt pleaded, the statute of Limitations may be given in evidence; for the statute has made it no debt at the time of the plea pleaded, the words being in the present tense. 1 Salk. 278.

In replevin the defendant pleaded Not guilty, De parte providè at intra sex anns juxta ultimo; and though it was urged, that this was the same with pleading non requisit, if he did not take, he could not be guilty of the detainer; and if this way of pleading were not allowed, the statute would be entirely evaded as to this action; yet the plea was held sufficient, because it is not to be supposed that he ought to have answered to the detainer, as well as to the taking; also a thing may be lawfully distrained, although unlawfully kept; as by being put into a cage, &c. by which means it could not be repleited. 1 Salk. 272 and see Ryn. 36; 1 Lew. 140; 1 Kush. 576.

If a debt be set off by way of plea, the statute of Limitations may be replied to it. 2 Stra. 1271.

LIMITATION OF THE CROWN, See this Dictionary, title King I.

LIMITATION OF ESTATE: A modification or settlement of an Estate, determining how long it shall continue; or is rather a qualification of a precedent Estate. A Limitation is denominated by Littleton, a condition in law. Litt. § 580; 1 Inf. 204. It is generally made by such words as durum vitis, quamdium dom. &c. And if there be not a performance according to the Limitation, it shall determine an Estate without entry or claim; which a condition doth not. 10 Rep. 41; 1 Inf. 204. See this Dictionary, title Condition I. 2.

LIMITATION is also taken for the compasses and time of an Estate; as where one doth give lands to a man, to hold to him and his heirs male, and to him and the heirs female, &c. here the daughters shall not have any thing in fee; so far as the fee is concerned, for the Estate to the heirs male is first limited. Co. Litt. 5. 13.

If a Limitation of an Estate be uncertain, the Limitation is void; and the Estate shall remain as if there had been no such Limitation. Cro. Eliz. 216. But a thing that is limited in a will by plain words, shall not be afterwards made uncertain by general words which follow. Hill. 23 Cor. B. R. Where a devise is to the eldest son, upon condition that he pays such legacies; and if he refuses, the land shall remain to the legatees; on his refusal, the legates may enter by way of Limitation. Note, 51. And in all cases, where, after a condition, an interest is granted to a stranger, it is a Limitation.

1 Lew. 269; Cro. Eliz. 204. See title Condition I. 2.

As to the origin and progress of the Limitation of Estates, see 1 Inf. 271. b. in u. and this Dictionary under the word Conveyance;—See also titles Estate; Deced; Estament; Gift; Grant; Laps and Release; Trust; Use; Powers, &c. From the note above cited has been extracted the following summary with respect to the Limitations and modifications of landed property, unknown to the Common Law; which have been introduced under the Statute of Uses, 1761, H. 8, c. 10.

The principal of these are known by the general appellation of springing or secondary uses. No Estate could be limited upon or after a fee, though it were a bare or qualified fee; nor could a fee or estate of freehold be made to cease as to one person and to vest in another, by any Common law conveyance. But there are instances where even by the Common Law the secondarily Estates seem to have been allowed, when limited, or rather when declared by way of use. See 3 Edw. 3. 20.

After the Statute of Uses the Judges seem to have long hesitated whether they should receive them. In Chandleigh's Case, (1 Rep. 128. 256. 4 Poph. 701. 1 And. 590.) it was strongly contended that it would be wrong to make any Estate of freehold and inheritance, lawfully vested, to cease as to one, and to vest in others against the rule of law; and that no Estates should be raised by way of use, but those which could be raised by livery of seisin at the Common Law. The Courts however admitted them. After they were admitted it was found necessary to circumscribe them within certain bounds: because when an Estate in fee-simple is first limited, there is no method by which the first taker can bar or destroy the secondary Estate; as it is not affected either by a Fine or Common Recovery.

It is now settled, that when an Estate in fee-simple is limited, a subsequent Estate may be limited upon it, if the event upon which it is to take place be such, that, if it does happen, it must necessarily happen within the compass of one or more life or lives in being, and at years and some months over; [i.e. as many months as it is possible a child may be legitimately born after the death of its father:] it was long before the Courts agreed on this period; which was not arbitrarily prescribed by our Courts of Justice with respect to these secondary fees, but wisely and reasonably adopted in analogy to the cases of freehold and inheritance, which cannot be limited by way of remainder, so as to postpone a complete bar of the entail, by Fine or Recovery for a larger space.

But the reason which induced the Courts to adopt this analogy, with respect to these Estates when limited upon an Estate in fee-simple, does not hold when they are limited upon or after an Estate in tail; because in this latter case, the tenant in tail, by suffering a Common Recovery before the event takes place, bars or defeats the secondary Estate, and acquires the fee-simple absolutely discharged from it. See Page v. Hazwood, 2 Salk. 570, and 1 Lew. 555. Godman v. Cook, 2 Salk. 102.

Hence, if these secondarily Estates are limited upon or after an Estate in tail, they may be limited generally, without restraining or confining the event or contingency.
LIMITATION.

...contingency upon which they are to take place to any period.

Thus, if an Estate be limited to A. and his heirs; and if B. (a person in effe**) dies without leaving any issue of his body living at the time of his decease; or having such issue if all of them die before any of them attain the age of 21 years, then to C. and his heirs; here the Limitation to C. is limited after a previous Limitation in fee-simple, and it is a good Limitation; because the event upon which it is to take place, must, if it does happen at all, necessarily happen within the period of a life in being, and 21 years and a few months. But if the Estate were limited to A. and his heirs; and, after the decease of B., and a total failure of heirs or heirsmale of the body of B. to C. and his heirs; here as the secondary use is limited after a previous Limitation in fee-simple, and the event on which the fee limited to C. is to take place, is not such as must necessarily happen within the period prescribed by law (for B. may have issue, and that issue not fail till many years after the expiration of 21 years after B.'s decease); the Limitation to C. and his heirs is void. But suppose the Estates were limited to A. for life, then to trustees and their heirs, during his life, for preferring contingent remainders, then to A's first and other foas successively in tail-male, with several remainders over; with a proviso, that if B. dies, and there should be a total failure of heirs or heirsmale of his body, the use limited to A. and his heirs, and the remainder over, shall determine; and the lands remain and go over to C. and his heirs; here the Limitation to C. and his heirs is limited upon or after previous Limitations for life or in tail; and the event upon which it is so to take effect, may possibly not happen till after a period of one or more life or lives in being and 21 years; but so far as it is limited on an event which may happen during the continuance of either of one or more life or lives in being, it is within the bounds mentioned; and so far as it is limited on an event which may happen during the continuance of the Estate of the tenants in tail, or after them, the first tenant in tail in possession, by suffering a recovery before the event happens, may bar the Limitations over, and thereby acquire an Estate in fee-simple; and therefore the Limitation to C. and his heirs is good.

LIMOGIA, Enamel; opus de limogia, or opus linacenum, is enamelled work. Monos. 3. tom. 331.

LINARIUM. A flax plat, where flax is sown. Pet. 22 Hen. 4. 4. pr. 1 m. 33.

LINCOLN, In attaint of a verdict of the city of Lincoln, the jury shall be impannelled of the county of Lincoln. See flas. 13 Ric. 2. flas. 1. c. 18. 5 Hen. 5. 2. c. 5.

LINCOLN'S INN FIELDS, To be incolled by trustees, who may employ artificers. &c. And yearly rates shall be made on all houses there, not exceeding 2. 6d. in the pound: this square and back streets are to be a distinct ward, as to the scavengers rates and water; and persons annoying the fields by Gilbert, to forfeit 20s. and assembling to use sports, or breaking fences, &c. incur a forfeiture of 40s. levied by a Justice of Peace's warrant. Stat. 5 Geo. 2. c. 26.

LINDSBERN, A place often mentioned in our ancient histories; being formerly a Bishop's See, now Holy Island. Vol. II.

LINEAL CONSANGUINITY, Is that which subsists between persons, of whom one is descended in a direct line from the other. See titles Parent, Kindred.

LINEAL DESCENT, It is the descent of estates, from ancestor to heir, i.e. from one to another, in a direct line. See title Parent.

LINEAL DESCENT OF THE CROWN, See title King.

LINEAL WARRANT, Is where the heir derives, or may by possibility derive his title to land warranted, either from or through the ancestor who makes the warranty. See title Warranty.

LINEN. No person shall put to sale any piece of double Linen, &c., unless the just length be expressed thereon, on pain to forfeit the same. Stat. 28 H. 3. c. 4. Using means whereby Linen cloth shall be made deceitfully, incurs a forfeiture of the linen and a month's imprisonment. Stat. 1 Eliz. c. 12. And Linen of all sorts made of flax or hemp, of the manufacture of this kingdom, may be exported duty free. Stat. 3 Geo. 1. c. 7. See flas. 29 Geo. 2. c. 153 and this Dictionary, title Navigation Acts. Stealing of Linen, &c., from whitening grounds or drying houses, to the value of 10s. is felony. Stat. 4 Geo. 2. c. 16. See titles Larney, Felony. By the Stat. 17 Geo. 2. c. 30, Affixing on foreign Linens any stamp put upon Scotch or Irish Linen, or affixing a counterfeit stamp on British or Irish Linen, incurs a penalty of 5l.-By Stat. 19 Geo. 2. c. 24, the Enameller is to be sworn to the true execution of his office; and Linens to be stamped, must be sworn to be the manufacture of Scotland or Ireland, and a penalty of 5l. each piece is laid on false stamps. For encouraging the Linen manufacture in Scotland; see flas. 24 Geo. 2. c. 31: 26 Geo. 2. c. 20.

Printed Linens, Cottons, Muslins, &c.; By Stat. 27 Geo. 5. c. 38, proprietors of new patterns shall have the sole right of printing them for two months. See this Dictionary, title Literary Property.

LINSEED. All persons may import Linseed into this kingdom, without paying any custom for it. Stat. 3 Geo. 1. c. 7. § 38. See title Navigation Acts.

LIQUORICE, Is among the drugs liable to certain duties on importation, under the laws relative to the Customs.

LITERA, From the Fr. littere, or litière, Lat. lectum.] Litter; it was anciently used for straw for a bed, even the King's bed. It is now only in use in flables among horses: tres caretalis littera, three cart-loads of straw or litter. Max. Angl. tom. 2. p. 33.

LITERATURA, Ad litteraturn penes, Signifies to put children out to school; which liberty was anciently allowed to thoes parents who were servile tenants, without the consent of the lord: and this prohibition of educating sons to learning, was owing to this reason: for fear the son being bred to letters might enter into orders, and so stop or divert the services which he might otherwise do as heir to his father. Paroch. Amis. 401.


LITERÆ, Canonici ad evertendum juriditionum loco suao. Reg. Orig. 305.

LITERÆ, Per quas dominus reseditus currum suum Regi, Reg. Orig. 4.
LITERARY PROPERTY.

LITERARY PROPERTY.
The Property that the Author, or his assignees, hath in the copy of any work.

The right which an Author may be supposed to have in his original literary compositions, so that no other person without his leave may publish or make profit of the copies, is claimed by absolute among the species of property acquired by occupancy; being grounded on labour and invention. He expresses however some doubt whether it subsists by the Common Law; and this being still, after all the determinations on the subject, in some measure, vexata quæstio, the following extracts deserve the attention of the Student. See 2 Comm. 405.

When a man by the exertion of his rational powers, has produced an original work, he seems to have clearly a right to dispose of that identical work as he pleases; and any attempt to vary the disposition he has made of it, appears to be an invasion of that right. Now the identity of a literary composition consists entirely in the sentiment and the language. The same conceptions clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition, to the ear or the eye of another, by recital, (See Co. Colman v. Waterman,) by writings, or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited; and no other man, it hath been thought, can have a right to exhibit, especially for profit, without the author's consent. This concept may perhaps be exactly given to all mankind when an author suffers his work to be published by another hand, without any claim or reserve of right, and without flamping it on any marks of ownership; it being then a present to the public, like building a church or bridge, or laying out a new highway. But in case the author sells a single book, or totally grants the copy-right, it hath been supposed, in the one case, that the buyer hath no more right to multiply copies of that book for sale, than he hath to imitate for the like purpose the ticket, which is bought for admission to an opera or a concert; and, in the other, that the whole property with all its exclusive rights, is perpetually transferred to the grantee. On the other hand it is urged, that though the exclusive property of the manuscript, and all which it contains, undoubtedly belongs to the Author before it is printed or published; yet from the instant of publication, the exclusive right of the Author, or his assignees, to the full communication of his ideas, immediately vanishes and evaporates; as being a right of too subtle and unsubstantial a nature, to become the subject of property at the Common Law, and only capable of being guarded by positive statutes and special provisions of the Magistrate. 2 Comm. 466.

The Roman law adjudged, that if one man wrote any thing on the paper or parchment of another, the writing should belong to the owner of the blank materials, meaning thereby the mechanical operation of writing; for which it directed the scribe to receive a satisfaction: for in works of genius and invention, as in painting on another man's canvas, the same law gave the canvas to the painter. As to any other property, in the works of the Understanding, that law is silent; though the sale of literary copies, for the purposes of recital or multiplication, is certainly as ancient as the times of Terence, Martial, and Statius. 2 Comm. 407.

But whatever inherent copy-right might have been supposed to subsist by the Common Law, the statute 8 Ann. c. 19, hath now declared, that the Author and his assignees shall have the sole liberty of printing and re-printing his works for the term of fourteen years, and no longer; (the words of the statute;) and hath protected that property by additional penalties and forfeitures: directing further, that if at the end of that term the Author himself be living the right shall then return to him, for another term of the same duration. A similar privilege is extended to the new inventors of Prints and Engravings, by statutes 8 Geo. 2. c. 13; 7 Geo. 3. c. 38; 17 Geo. 3. c. 57.—The above parliamentary protections appear to have been suggested by the exception in the statute of monopolies, 21 Jac. 1. c. 3; which allows a Royal patent of privilege to be granted for fourteen years to any inventor of a new manufacture, for the sole working or making of the same: by virtue whereof it is held, that a temporary property therein becomes vested in the King's patentee. [See this Dictionary title Patent.] 1 Pyn. 62; 2 Comm. 407.

Whether the productions of the mind could communicate a right of property, or of exclusive enjoyment, in reason and nature; and if such a moral right existed, whether it was recognized and supported by the Common Law of England; and whether the Common Law was intended to be restrained by the statute of Queen Anne, are questions upon which the learning and talents of the highest legal characters in this kingdom have been powerfully and zealously exerted. These questions have, by the supreme Court of Judicature in the kingdom, been so determined, that an Author has no right at present beyond the limits fixed by that statute. See the case of Donaldson v. Beckett, Bro. P. C.

As that determination, however, was contrary to the opinion of Lord Mansfield, of the learned Commentator, and of several other Judges, Mr. Chriftian has remarked, that every person may still be permitted to indulge his own opinion upon the propriety of it, without incurring the imputation of arrogance; and he proceeds to deliver his sentiments in the following manner.

Nothing is more erroneous than the common practice of referring the origin of moral rights, and the fyllem of natural equity to that large state, which is supposed to have preceded civilized establishments; in which literary composition, and of consequence the right to it, could have no existence. But the true mode of ascertaining a moral right, seems to be to inquire whether it is such as the reason, the cultivated reason of mankind, must necessarily attend to. No proposition seems more conformable to that criterion, than that every one should enjoy the reward of his labour, the harvest where he has sown, or the fruit of the tree which he has planted. And if any private right ought to be preferved more sacred and inviolate than another, it is that where the most extensive benefit flows to mankind from the labour by which it is acquired. Literary Property, it must be admitted,
LITERARY PROPERTY.

is very different in its nature from a property in substantial and corporeal objects; and this difference has led some to deny its existence as property; but whether it is for general, or under whatever denomination of rights it may more properly be claffed, it seems founded upon the same principle of general utility to Society, which is the basis of all other moral rights and obligations. Thus, considered, an author's copy-right ought to be esteemed an inviolable right, established in found reason and abstract morality; no less than those of the twelve Judges were of opinion, that this was a right allowed and perpetuated by the Common Law of England: but fixed, either that it did not exist, or that the enjoyment of it was abridged by the statute of Queen Anne; and that all remedy for the violation of it was taken away after the expiration of the terms specified in the Act; and agreeable to that opinion was the final judgment of the House of Lords, 3 Comm. 407, in n.

For the arguments at length of the Judges of the King's Bench, and the opinions of the reft, see the case of Millar v. Taylor, 4 Burr. 2303: 1 Blackst. Rep. 575. In that case the Court of King's Bench determined that an exclusive and permanent copy-right did actually subsist in Authors by the Common Law. But the effect of their opinion was controverted by the determination of the House of Lords, in Donaldson v. Becket, as above stated.

In Ireland, there is yet no statute to protect the copy-right of authors. The following is a general abstract of the English statutes relative to this interesting subject, and of some points determined on their construction.

The statute of 8 Anne. c. 19, enacts, That the author of any book, and his assigns, shall have in future the sole liberty of printing it for fourteen years, to commence from the day of publishing thereof: and if any person within the said time shall print, reprint, or import any such book without the consent of the proprietor in writing, or shall knowingly publish it without such consent, the offender shall forfeit the books and sheets to the proprietor, and also 1d. for every sheet found in his custody, either printed or printed; half to the Crown, and half to him who will sue in any Court at Westminster. § 1.

No bookfeller, printer, or other person, shall be liable to these forfeitures, unless the title to the copy of the book, [the whole book and every volume thereof, statute of 15 Geo. 3. c. 53, § 6] shall before such publication be entered in the register book of the Company of Stationers, at their Hall in London, and unless the consent of the proprietor be entered, paying 6 d. for each entry; § 2; nor unless nine copies of each book be delivered to the Company's warehouse-keeper before publication, for the use of the Royal library, the libraries of the Universities of Oxford and Cambridge, of the four Universities in Scotland, of St. John's College in London, and of the advocates at Edinburgh, § 3; and see statute of 15 Geo. 3. c. 53, § 6.

But an action may be brought, or an injunction obtained in a Court of Equity, though the publication be not entered in the register of the Stationers' Company. 2 Blackst. Rep. 339.

If the Clerk of the Stationers Company shall neglect to make such entry, or to give a certificate thereof, then notice being given in the Court, the proprietor shall have the same benefit as if an entry were actually made: and the clerk shall forfeit 20l. statute of 8 Anne. c. 19, § 3.

The above statute particularly provided, by § 9, that the right of the Universities or any other person, to the printing or reprinting of any book already printed, should not be either prejudiced or confirmed: after the determination of the case of Donaldson v. Becket, the Universities were so much alarmed at the decision, that they applied for and obtained an Act, statute of 15 Geo. 3. c. 53: which secured to the two Universities in England, the Colleges or Houses of learning within the same, the four Universities in Scotland, and the colleges of Eton, Westminster, and Winchester, a perpetuity in the copy-right of all books, given, or to be given, or devised to, or in trust for, them by the authors; which was sanctioned by the same penalties as those contained in the statute, so long as the books or copies belonging to the said Universities or Colleges are printed only at their own printing presses, within the Universities or Colleges, and for their sole benefit. § 8.

Musical Compositions have been held to be within the meaning and protection of the Act. 2, 3, 4, and 5 Wm. 3. A fair and bonâ fide Abridgment of a book, is considered as a new work: but it may injure the sale of the original, yet it is not deemed in law to be a piracy, or violation of the author's copy-right. 1 Bro. C. R. 451: 2 Term. 141.

Where an Author transfers all his right or interest in a publication to another, and happens to survive the first fourteen years, the second term will return to his assigns, and not to himself. 2 Bro. C. R. 80.

Evidence that the defendant acted on the Stage, of which the plaintiff had bought the copy-right, is not evidence of a publication by the defendant, within the meaning of the statute. Colman v. Watkin, 5 Term. Rep. 245. But no one has a right to take down a play in short-hand, and to print it before it is published by the Author. Amb. 694.

The two following statutes were also made, with a view still further to secure the property in books, and also to encourage printing in this country. The statute of 12 Geo. 2. c. 35, (in force by statute of 29 Geo. 3. c. 55, § 5, till September 25, 1795, and from thence to the end of the then next session); provided, that if any book be originally written or printed and published in this country, and afterwards (within twenty years) reprinted abroad, and imported and exposed to sale here, the importer and seller should forfeit all such books to be cancelled, and for every offence should forfeit also 5l. and double the value of the books to be recovered with costs. The statute of 34 Geo. 3. c. 20, § 57, extends the penalty to 10l. and double the value of the books; and renders all persons having such books in their possession for sale, liable to the forfeiture, and empowers Custom-house or Excise officers to seize them, who shall be rewarded accordingly.

Under these statutes it seems immaterial whether the author's copy-right is extinct or not, if the book has been reprinted in England within twenty years. 1 Comm. 407, in n. Every distinct fate of one book or a parcel, is a distinct offence, by which a new penalty is incurred, though the sales be on the same day. 3 Term Rep. 569.

It is worthy of remark, that the determination of the House of Lords in Donaldson v. Becket, which was supposed, at the time, to have given a mortal blow to the property and prosperity of Authors and Bookfellers, has
in fact, been one great means of increasing both. Few books are now republished without considerable alterations, additions, or annotations, by means of which they become, in fact, new works; and it is not worth any body's while then to pirate them in their original state. This has proved a spur to the industry of Authors, and the liberality of Bookellers; and perhaps no period ever produced so many new publications of acknowledged utility, as that which has elapsed since the memorable decision above alluded to; which for the moment cast a melancholy gloom over those who now enjoy its beneficial effects.

The following are the principal features and distinctions of the three Statutes relative to Prints and Engravings. The Stat. 8 Geo. 3. c. 13, gives an exclusive privilege of publishing, to those who invent or design any print, for fourteen years only. The Stat. 7 Geo. 3. c. 28, extends the term to twenty-eight years absolutely, to all who either invent the design, or make a print from another's design or picture; and those who copy such prints within that time, forfeit all their copies to be destroyed; and 5s. for each copy. The Stat. 17 Geo. 3. c. 57, gives the proprietor an action to recover damages and double costs for the injury he has sustained by the violation of his rights.

The assignee of a print may maintain an action on this last statute against any person who pirates it; and in such action it is not necessary to produce the plate itself in evidence; one of the prints taken from the original plate is good evidence. 5 Term Rep. 31.

In analogy also to the above doctrine of Literary Property, the Stat. 27 Geo. 3. c. 38, gives to the proprietors of new patterns in printed linens, cottons, muslins, &c. the sole right of printing them for two months; and gives the proprietor injured his remedy by an action for damages.

LITH OF PICKERING, In the county of York, obtm. the liberty, or a member of Pickering, from the Saxon, leg. i. c. membraun.

LITIGIOUS. The ingenuity of a church, is where several perfons have, or pretend to, several titles to the patronage, and present several clerks to the Ordinary; it excites them from refusing to admit any of them, till a trial of the right by just patronatus, or otherwise. Frk. Cont. 11.

LITMUS. To what duties liable. See Stat. 4 W. c. 5, § 1.

LITTERA, Letter. — Trei carceres litterar, three cart loads of straw or litter. Med. Ang. 2, par fol. 33, b.

LITTLETON, Was a famous lawyer in the days of King Edward the Fourth, as appeareth by Stampf. Prac. c. 21, fol. 71. He wrote a book of great account, called Littleton's Tenures. See title Law-book.

LIVERY, from bire, i.e. insegne gishten; or Hor. tradere. Hath three significations. In one sense, it was used for a suit of clothes, cloak, gown, hat, &c. which a nobleman or gentleman gave to his servants or followers, with cognizance or without; mentioned in Jus. 1. R. c. 7, and divers other statutes. Formerly great men gave livery to several who were not of their family, to engage them in their quarrels for that year; but afterwards it was ordained, that no man of any condition whatsoever should give any livery, but to his domestics, his officers, or counsel learned in the law. By Stat. 1 R. 2, it was prohibited on pain of imprisonment; and the Stat. 1 Hen. 4, c. 7, made the offenders liable to ransom at the King's will, &c. which statute was further confirmed and explained, amic 2 & 7 Hen. 4, and by Stat. 8 Hen. 6, c. 4: and yet this offence was so deeply rooted, that Ed. IV. was obliged to confirm the former statutes, and further to extend the meaning of them, adding a penalty of 5s. to every one that gave such Livery, and the like on every one retained for maintenance either by writing, oath, or promise, for every month. Stat. 3 Ed. 4, c. 2. But most of the above statutes are repealed by Stat. 3 Car. 1. c. 4.

Livery, in the second signification, meant a delivery of possession to those tenants who held of the King in capite, or Knight's service; as the King by his prerogative hath primer folium of all lands and tenements to holden of him. Statum. Prac. 12.

In the third sense, Livery meant the writ which lay for the heir of age, to obtain the possession of his land at the King's hands. F. N. B. 135. By the statute 12 Car. 2, c. 24, all wardships, Livery, Ecc. are taken away. See title Tenures.

LIVERY, i.e. DELIVERY, OF SEISIN; Litteratio folium. A delivery of possession of lands, tenements, and hereditaments, unto one that hath a right to the same; being a ceremony in the Common-law used in the conveyance of lands, &c. where an estate of fee-simple, fee-tail, or other freehold pacts. Bract. lib. 2. c. 12. And it is a testimonial of the willing departing of him who makes the Livery, from the thing whereby the Livery is made; and of the willing acceptance of the other party receiving the Livery; first invented, that the common people might have knowledge of the passing or alteration of estates from man to man, and thereby be better able to try in whom the right of possession of lands and tenements were, if the same should be contested, and they should be impaneled on juries, or otherwise have to do concerning the same. West. Synb. par. 1. lib. 2.

The Common-law conveyance by secoism is by no means perfected by the mere words of the deed; this ceremony of Livery of Seisin is very material to be performed, for without this the secoism has but a mere effate at will. Lis. § 66. This Livery of Seisin is no other than the pure feudal secoism or delivery of corporate possession of the land or tenement, which was held absolutely necessary to complete the donation. 2 Comm. c. 20. p. 511. See this Dictionary, title Feasment III; Conveyances; Deed; Effate; Tenures.

Livery, in their original rite, were probably intended to demonstrate in conquered countries, the actual possession of the Lord; and that he did not grant a bare right or, which the holder was ill qualified to profess; but a peaceable and firm possession. And at a time when writing was seldom practised, a mere oral gift, at a distance from the spot that was given, was not likely to be either long or accurately retained in the memory of the bystanders, who were very little interested in the grant. Afterwards they were retained as a public and notorious act, that the country might take notice of and testify the transfer of the estate; and that such as claimed title by other means might know against whom to bring their actions. 2 Comm. 311.
LIVERY OF SEISIN.

In all well-governed nations, some notoriety of this kind has been ever held requisite in order to acquire and ascertain the property of lands. And even in ecclesiastical promotions where the freehold passes to the person promoted, corporal possession is required at this day to vest the property completely in the new proprietor; who, according to the canons, acquires the jus ad rem, or inchoate and imperfect right by nomination and institution; but not the jus in re, or complete and full ownership. The conveyance in writing is frequently possessed by institution; in readiness to receive and vest in him by institution. So also even in defects of lands by our law, which are called on the heir by act of the law itself, the heir has not pluvum dominion, or full and complete ownership, till he has made an actual corporal entry into the lands; for if he dies before entry made, his heir shall not be entitled to take the possession, but the heir of the person who was last actually settled, 2 Comm. 312; see title Defects.

The corporate tradition of lands being sometimes inconvenient, a symbolical delivery of possession was in many cases anciently allowed, by transferring something near at hand, in the presence of credible witnesses; which by agreement should serve to represent the very thing designed to be conveyed; and an occupancy of this sign or symbol was permitted as equivalent to occupancy of the land itself. With our senses ancestors the delivery of a turf was a necessary solemnity to establish the conveyance of lands. And to this day, the conveyance of our copyhold estates is usually made from the feller to the Lord or his steward, by delivery of a rod or verge; and then from the Lord to the purchaser, by delivery of the same in the presence of a jury of tenants. 2 Comm. 313.

Conveyances in writing were the last and most refined improvement. The mere delivery of possession, either actual or symbolical, depending on the ocular testimony and remembrance of the witnesses, was liable to be forgotten and misrepresented, and became frequently incapable of proof. Besides, the new occasions and necessities, introduced by the advancement of commerce, required means to be devised of charging and inculcating estates, and of making them liable to a multitude of conditions and minute designations, for the purposes of raising money without an absolute sale of the land; and sometimes the like proceedings were found useful, in order to make a decent and competent provision for the numerous branches of a family, and for other domestic views. None of which could be effected by a mere simple corporal transfer of the soil from one man to another, which was principally calculated for conveying an absolute unlimited dominion. Written deeds were therefore introduced in order to specify and perpetuate the peculiar purposes of the party who conveyed: yet still, for a very long series of years, they were never made use of, but in company with the more ancient and notorious method of transfer by delivery of corporal possession. 2 Comm. 314.

Livery of Seisin, by the Common Law, is necessary to be made upon every grant of an estate of freehold, in hereditaments corporeal; whether of inheritance or for life only. In hereditaments incorporeal it is impossible to be made, for they are not objects of the seises; and

in Leases for years, or other chattel-interests, it is not necessary; the solemnity being appropriated to the conveyance of a freehold. And this is one reason why freeholds cannot be made to commence in future, because they cannot, at the Common Law, be made but by Livery of Seisin; which Livery, being an actual manual tradition of the land, must take effect in present, or not at all. 2 Comm. 314. See this Dictionary, title Limitation of Estates; Remainder.

On the creation of a freehold remainder, at one and the same time with a particular estate for years at the Common Law, Livery must be made to the particular tenant, without which nothing passes to him in remainder; for he being for the benefit of him in remainder, and not the leesee, who hath only a term: and if the lease entereth, before Livery and Seisin made to him, the Livery shall be void. Lit. 60: 1 Inst. 49. But if such a remainder be created afterwards, expectant on a lease for years now in being, the Livery must not be made to the leesee for years, for then it operates nothing; nam quad faciit non est, amplius faciit non est facit; but it must be made to the remainder-man by consent of the leesee for years: for without his consent no Livery of the possession can be given; principally because such forcible Livery would be an ejection of the tenant from his term; and partly for reasons connected with the doctrine of attornments. 2 Comm. 314. 5. See 1 Inst. 48, 9.

A lease for years is granted to A. B. with remainder to his right heirs, wherein Livery is made; the remnant is void, because there is not any person in fee, who can presently take by the Livery. 4 Leon. 31. There was a Lease made to a man and his wife, and their daughter, to hold from Michaelmas next, and the lefor made Livery after Michaelmas; this was adjudged good, being made by the lefor himself; but it had been otherwise, if it had been to be done by attorney, or if the lefor had made Livery before Michaelmas. 2 Rep. Rep. 109. Lease for twenty years to a man to commence from a time past; and after the expiration of the said term, then to him and his wife, and their son, for their lives, and the longest liver of them, with a letter of attorney to make Livery and Seisin, &c. It is a good lease for years, with remainder for life, if Livery and Seisin be made by the attorney at the time of executing the Lease; but if the Livery and Seisin be made by the attorney some time afterwards, in such case it is said the Livery is void. 1 Mer. 14.

A man may make a letter of attorney to deliver Seisin by force of the deed, which may be contained in the same deed; and a letter of attorney may be likewise made to receive Livery and Seisin. 5 Rep. 91: 1 Inst. 49, 17.

This Livery of Seisin is either in deed or in law: the distinctions between which are stated and explained in this Dictionary, title Feudum III. Ancester this seisin was obliged to be delivered coram parvis de visu, before the peers or freeholders of the neighbourhood, who attested such delivery in the body or on the back of the deed; according to the rule of the feudal law, pars debent intercire investiture factis. and non est, vel in excusationibus, for which reason this is expressly given; because the peers or vassals of the Lord, being bound by their oath of fealty, will take care that no fraud be committed to his prejudice, which strangers might be apt to conceive. And though afterwards the pecuniary satisfaction of the peers was
was held unnecessary, and Livery might be made before any credible witnesses, yet the trial in case it was disputed (like that of all other attestations) was still referred to the jurors, or jury of the county; and this is the reason why, if lands conveyed by feoffment lie in several counties, there must be as many Liberries of seisin as there are counties. 2 Comn. 325. 6. See title Feoffment III. In addition to what is there said, the following determinations afford information on the subject.

Where a house and lands are conveyed, the house is the principal, and the lands accessory; and therefore the Livery must be made, and not upon the land. 2 Rep. 31: 4 Leon. 374.

If a house or lands belong to an office, by grant of the office by deed, the house or land passeth without Livery: and by a lease, which is a feoffment of record, by a lease and release, bargain and sale by deed enrolled, exchange, &c., a freehold passeth without Livery; and so in a deed of seoffment to uses, by virtue of the nature of uses, 1 Inst. 20. So that Livery and Seisin is not so commonly used as formerly; neither can an estate he created now by Livery and Seisin only; without writing. Stat. 29 Car. 2: c. 3. See titles Conveyance; Efftare.

If a deed of seoffment be delivered upon the land, "in the name of seisin of all the lands," it will be a good Livery and Seisin; but the bare delivery of a deed upon the land, though it may make the deed, it shall not amount to Livery and Seisin, without those words. 1 Inst. 52, 181. If one makes a seoffment to four persons, and Seisin is delivered to three of them, in the name of all; the estate is vested in all of them. 3 Rep. 26.

No person ought to be in the house, or upon the land, when Livery is made, but the seffor and seffrice; all others are to be removed from it: if the seffor makes Livery and Seisin, the seffice being upon the land contradicting it, the Livery is void. 4 Com. Eliz. 321. A seffor enforces a stranger, and came to make Livery and seisin, the seffice's wife being in the house, the seffice enters, and by force turns the wife into the backside, which was part of the land let, and then he makes Livery in the house, in the name of all the lands let; but the woman was remaining all the while upon the land, and contradicting the Livery, the Livery was held void; but if she had voluntarily gone out of the house, upon part of the land; or the seffice had turned her into the street, so that she had not been upon any part of the land, it had been good. Daily Rpt. 94.

If a man agrees to make a seoffment upon condition, and after makes a charter of seoffment without any condition, and then makes Livery and seisin, secundum formam charte, this is absolute without any condition; for the Livery is not made according to the agreement, but according to the charter. 34 Eliz. But if a person enforces another, as a security for the payment of money, and afterwards makes Livery of seisin to him and his heirs generally, the estate hath been held to be upon condition; since the intent of the parties was not changed, but continued at the time of the Livery, 1 Inst. 222. And where a charter of seoffment is made, and in the deed there is no condition; but when the seffor would make a Livery of seisin to the seffice, by force of the deed, he, expressing the estate, makes Livery of seisin upon condition, the seoffment is of force as if it had not been made. Lit. Stat. 359: 2 Danw. Abr. 13.

Lode

Form of Livery and Seisin indorsed on the deed.

MEMORANDUM. That on the day and year within written, full possession and seisin was had and taken of the messuage or tenement, and presents within granted, by A. B. one of the attornies within named, and by him delivered ever unto the seisin named C. D. To hold to him, his heirs, &c. according to the contents and true meaning of the within written indorse, in the presence of &c.

LIVERY AND OUSTER LE MAIN. Where by inquest before the Escheator, it was found that nothing was held of the King; then he was immediately commanded by writ, to put from his hands the lands taken into the King's hands. Stat. 29 Ed. 1: 28 Ed. 3: c. 4. See Oyster le Main.

LIVERY-MEN OF LONDON. In the Companies of London, Livery-men are choused out of the freemen, as assistants to the masters and wardens, in matters of council, and for better government; and if any one of the Company refuse to take upon him the office, he may be fined, and an action of debt will lie for the sum. 1 Mod. 19. See title London.

LIVRE. The denomination of a French coin, valued at ten-pence-halfpenny.

LOBBE, A large kind of North-sea fish. See flat. 31 Ed. 5: st. 3: c. 2. And loffe comprehends loss, lingers, and cod.

LOBSTERS May be imported by natives or foreigners, and in any vessels, notwithstanding flat. 10: 19 W. 3: c. 24: 1 Geo. 1: stat. 2: c. 18. No person shall, with trunks, bino-pnets, &c., take any lobsters on the sea-coast of Scotland, from the 1st of June to the 1st of September yearly, on pain of 5l. to be recovered before two Justices. Stat. 9 Geo. 2: c. 33. See tides Fifth; Navigation Acts.

LOCAL, localis. Tied or annexed to a certain place: Real actions are Local, and to be brought in the county where the lands lie; but a personal action, as of trespass or battery, &c., is transitory, not local; and it is not material that the action should be tried, or laid in the same county where the fact was done; and if the place be set down, it is not needful that the defendant should traverse the place, by saying he did not commit the battery in the place mentioned, &c. Kitch. 250. See titles Action; Venue. A thing is Local that is fixed to the freehold. Kitch. 180.

LOCKMAN. In the Isle of Man, the Lockman is an officer to execute the orders of the governor, much like our under-sheriff. King's Descrip. Isle of Man 26.

LOCKS, In navigation: To d. take any sluice or lock on a navigable river, is made felony without benefit of clergy, and the offender may be tried, as well in an adjacent county, as in that wherein the act is committed. Stat. 8 Geo. 2: c. 20. made perpetual by flat. 25 Geo. 2: c. 15.

LOCULUS, A coffin. Sim. Danlum. c. 6.

LOCUS IN QUO, The place where any thing is alleged to be done in pleadings, &c. 1 Salk. 94. See title Trespass.

LOCUS PARTITUS, A division made between two towns or counties, to make trial where the land, or place in question lies. Heli. lib. 4: c. 15.
LOLLOLD. TOGETHER among themseſfes, which room, for that fociable have a withdrawing room, where they met and talked together among themselves, which room, for that sociable use and converſation, they called locatorium, &c.; as we call fuch a place in our houses parlour, from the French parlor: and they had another room which was called locatorium forinfeorum, where they might talk with laymen. Walf. 257.

LODGE-MANAGE, The hire of a pilot, for conducting a vessel from one place to another. Cewell. The pilot receives Lodge-manage of the master for conducting the ship up the river, or into port; but the Loadfman is he that undertakes to bring a ship through the haven, after being brought thither by the pilot, to the quay or place of discharge: and if through his ignorance, negligence, or other fault, the ship or merchandise receive any damage, action lies against him at the Common Law. Roughton, f. 27.

LODE MEREGE, Mentioned in the laws of Olcron, is expounded to be the skill or art of navigation. Cewell. Quote, if it is not a corruption of Lodge manage.

LODE-SHIFT, A kind of fishing vessel, mentioned in Stat. 31 Ed. 3. c. 2.

LODGERS AND LODGINGS. Stealing furniture from lodgings, felony, Stat. 3 & 4 W. & M. c. 9. See titles Felony, Larceny.

LOGATING, An unlawful game, mentioned in Stat. 33 H. 8. c. 9; now difufed.


LOITH, or LOYCH FISH, A large North sea fish, mentioned in Stat. 31 Ed. 3. p. 3. c. 2. Vide Lobke.

LOLLARDS, Had their name from one Walter Lolland, a German at the head of them, who lived about the year 1311. And they were certain Hereticks, (in the opinion of those times) that abode here in England, in the reigns of King Edward III. and Hen. V. whereof Wickliffe was the chief in this nation. Swow's Amals, 425. Soprwood, in his History of Scotland, says, The intent of these Lollards was to subvert the Christian faith, the law of God, the church and the realm; and so fled the Stat. 2 Hen. 5. c. 7. But that statute was repealed 1 Ed. 6. c. 12. Several decrees were made by our archbishops against these Sectarists, as well as furious; and the High Sheriff of every county was anciently bound by his oath to suppress them. 3 Stat. 41. See title Hereby. These Lollards were in fact the founders of the Protestant religion.


LOMBARDS. The company shall be answerable for their debts. 25 Ed. 3. Stat. 5. c. 23. See titles Bills of Exchange.

LONBE, (Sir THOMAS,) How recompensed for discovering the art of making, and working, the three capital Italian engines, for making organizes sails. See Stat. 1 Geo. 2. c. 8.

LOLTH, how may be brought from foreign parts; prohibited by Stat. 5 Ed. c. 6, and made a distinct ward. By charter 1 Ed. 3, and patent 4 Ed. 6, the King granted to the citizens and their successors, the villa, manor, and borough of Southwark; whereupon, by an order of the Court of Mayor and Aldermen, confirmed by the Common Council, Southwark was made the 26th ward, by the name of the Bridge Ward-without; on the last day of July, 4 Ed. 6. See Com. Dig. title London (A).

Before:
LONDON.

Before and since the Conquest, to the time of Ric. I. London was governed by a Port-Revée, and 1 R. 1. by two bailiffs, and afterwards by a Mayor appointed by the King; but King John, in the 10th of his reign, granted them liberty to chuse a Mayor. 2 Inst. 243. &c. See 2 Soc. 450: Com. Dig. title London (C). The presenting and inquiring of the Lord Mayor at Wiltshire, to be on the 9th of November, New Style. 24. Geo. 2. c. 48. § 11: to be admitted and sworn at Guildhall, London, the day preceding. Stat. 25 Geo. 2. c. 30. § 4.

The Lord Mayor of London, for the time being, is Chief Justice of gaol delivery; Escheator within the liberties, and Bailiff of the river Thames, &c. He is a high officer of the city, having all Courts for distribution of justice under his jurisdiction, &c. The Court of Husting, Sheriff's Court, Mayor's Court, Court of Common Council, &c. 2 Inst. 350.

There are three ways to be a freeman of London: by servitude of an apprenticeship; by birthright, as being the son of a freeman; and by redemption, i.e. by purchase, under an order of the Court of Aldermen. 4 Mod. 145.

The child of a freeman, when of age, may, in consideration of a present fortune, bar herself of her customary part. 2 Strange 947. An agreement on marriage, that the husband shall take up the freedom of London, binds the distribution of his effects. 1 Strange 455. See title Executive V. 9.

King Henry IV. granted to the Mayor and Commonalty of London the affise of bread, beer, ale, &c. and viandas, and things lateable in the city. In London every day, except Sunday, is a market overt, for the buying and selling of goods and merchandise. 5 Rep. 65. But no person, nor being a freeman of London, shall keep any shop or other place to put to sale by retail any goods or wares, or use any handicraft trade for hire, gain or sale within the city, upon pain of forfeiting 5l. 8 Rep. 124: Chart. Car. 1.

Persons making ill and unseaviceable goods in London, the chief officers of the company to which such persons do or ought to belong, may seize and carry them to the Guildhall, and have the goods tried by a Jury; and if found defective, they may break them. &c. Try. 34 Car. 2. B. R. A person must be a freeman of London to be entitled to carry on merchandise there. Chart. Car. 1.

By charter Henry I. all the men of London, and all their goods shall be free from foot and lot, dene-gilt and murder; and from all tall, paillage and Leaflage, and all other callous through all England and the ports of the sea. So by charters 11 Hen. 3, and 50 H. 3. See 4 Inst. 252. But he who claims these privileges must not only be a freeman, but an inhabitant of London. 2. II. Black. Rep. 206: 4 Term Rep. 144.

The customs of London are many and various. — They are against the Common Law, but made good by special usage, and confirmed by act of Parliament. 4 Inst. 249: 8 Rep. 126. In setting forth a custom or usage in the city of London, it must be said antiqua civitas, or it will not be good. 2 Leam. 99.

There is a custom in London to punish by information in the Mayor's Court, in the name of the common sergeant of the city, affaults on Aldermen, and aspersion language, &c. 7 Mod. 28. 29.

Where a woman exerciseth a trade in London, wherein her husband doth not intermeddle, by the custom they shall have all advantages, and be freed as a femme sole merchant: but if the husband meddle with the trade of the wife, or carry on the same trade, it is otherwise. 1 Card. 63: 3 Sc. 50. See title Barons and Fees; Bankruptcy.

An arrest may be made in London on the plaintiff's entering his plaint in either of the Compters, and a feargent of London need not swear his naice when he arresteth one; and the liberties of the city extend to the suburbs and Temple Bar. Jenk. Com. 251.

The customs of the city of London shall be tried by the certificate of the Mayor and Aldermen, certified by the moat of their Recorder, upon a petition from the party alleging it, that the custom ought to be thus tried: 61 it must be tried by the county. 1 & 2. 74: 4 Barr. 248: 95. 8 Barr. title Trial. 1. 90. As, the custom of distributing the effects of freemen deceased; (see this Dictionary, title Executive V. 9,) of confenting apprentices: or that he who is free of one trade may use another; if any of these or other familiar points come into suit. But this rule admits of an exception where the corporation of London is party, or interested in the suit: as in an action brought for a penalty inflicted by the custom: for there the reason of the law will not endure a partial trial; but this custom shall in such cases be determined by a Jury. Hob. 89. In some cases the Sheriff of London's certificate shall be the final trial; as if the plea be whether the defendant be a citizen of London or foreigner, in case of privilege pleaded to be sued only in the city Courts. 1 Inst. 74. See this Dictionary, title Customs of London.

Upon the customs of London concerning the payment of wharfage, &c. by every freeman to the corporation, the trial shall not be by the mouth of the recorder, as customs generally are, but by the county, and a Jury from Serjey adjoining. Manor. c. 129.

The Mayor of London is to caufe errors, defaults, and misprisions there to be redressed, under the penalty of the marks; and the constable of the Tower shall execute process against the Mayor for default, &c. 28 Ed. 4. c. 16. See Stat. 28. Ed. 4. c. 12: 1 H. 4. c. 15, by which latter the fine is to be at the discretion of the Justices.

The several Courts within the city of London (and other cities and corporations throughout the kingdom) held by prescription, charter, or act of parliament, are of a private and limited species. The chief of these in London are the Sheriff's Courts, held before their Steward or Judge; from which a writ of error lies to the Court of Husting, before the Mayor, Recorder, and Sheriffs; and from thence to Justices appointed by the King's Commission, who used to sit in the church of St. Martin-le-grand. F. N. B. 32. And from the judgment of these Justices a writ of error lies immediately to the House of Lords. 3 Comm. So. n. See this Dictionary, titles Courts; Court of Husting; Inferior Courts, &c.

The Court of Requests, or Court of Conience for the recovery of debts not exceeding 40s. was first established in London, so early as the reign of Henry VIII., by an act of their Common Council: which however was certainly insufficient for that purpose, and illegal, till confirmed by Stat. 3. 45. 1. 15, which has since been explained and amended by Stat. 14. Geo. 2. c. 10: 3 Com. 81. See this Dictionary, title Courts of Conience; and the Addenda at the end of this volume.

The gaol-delivery for the county of Middlesex, as well as that for London, being held at the Old Bailey in the
the city of London, eight times in the year, it is by
flat. 25 Geo. 3. c. 18. provided, that when such Session shall have begun before the Edin­day of any Term, it may continue to be held, and be concluded notwithstanding the sitting of the Court of King's Bench.

And this Act, by flat. 32 Geo. 3. c. 48, it extended to the Middlesex Sessions. See title Tutes of Goal Deliver.

After the fire of London, a Judicature was erected for determining differences relating to houses burnt; and several rules were laid down for rebuilding the city, the several streets, lanes, &c. The Lord Mayor and Aldermen were to set out markets; the number of parishes and churches was ascertained, and a duty granted on costs for rebuilding the churches, &c. See stat. 15 Har. 2. c. 2, 3; 22 Har. 2. c. 11, 14; 25 C. 2. c. 10.

A great variety of statutes have been passed to regulate various concerns of the city of London, besides those already alluded to: the following is a very short abstrat of the purport of those most material.

By flat. Civ. London, 13 Eliz. 1. b. 5. None shall walk the streets armed after curfew; unless noblemen or their servants with lights; taverns and alehouses shall be shut at curfew; fencing schools for bucklers shall not be kept in London; none but freemen shall keep inns in the city; none shall be brokers in London but those who are admitted and sworn by the Mayor and Aldermen; (see pub., Brokers) the officers of the city shall not be punished for false imprisonment, unless it appears to be of malice.


Damages shall be ascertained by the affize in novel dis­ciplin, and amercements shall be ascertained before the Baron of the Exchequer, Ser. Glouc. c. 14.

Wines sold contrary to the assize shall be presented to the Baron. Ser. Glouc. c. 15.

The manner of proceeding for arrears of rents and services. Stat. de Gauvert, 10 Eliz. 2.

Merchants of London free to pack their cloths, Stat. 1 H. 4. c. 16.

Freemen of London may carry their goods to any Fair; or market notwithstanding their bye-laws. Stat. 3 H. 7. c. 9.

All vintners, victuallers, fishmongers, butchers, and poulterers to be under the rule of the Mayor and Aldermen. Stat. 31 Eliz. 3. b. 1. c. 10: 7 R. 2. c. 11.

The 2d of September to be observed annually as a public Fast; in commemoration of the dreadful fire in 1666. Stat. 15 Car. 2. c. 3.

See this Dictionary under the several titles following, and the statutes referred to, for further information.

Aldermen, not to be elected yearly, but remain till they are put out for reasonable cause. Stat. 17 Eliz. 2. c. 11.

Their negative in Commons Council established; flat. 11 Geo. 1. c. 18. § 15. Repealed; flat. 10 Geo. 2. c. 8.


Ballad-songs; see flats. 6 Geo. 2. c. 29: 3 Geo. 2. c. 16.

Blackwell-Hall; market for the sale of woollen cloth, to be held there every Thursday, Friday, and Saturday; and regulations relating thereto. Stat. 8 & 9 W. 3. c. 9: and see flats. 4 & 5 P. & M. c. 5. § 25: 39 Eliz. c. 18. § 12: 1 Geo. 1. c. 15.

Beggars; see flat. 3 Eliz. c. 10.

Vol. II.
**LONGITUDE.**

Water-courses, to supply the city with water. See flats. 35 H. 8. c. 19; and 6 March. 1798: 4 March. 1801, as to the New River; and 7 Jan. 1. c. 9, as to Chelsea Waterworks.

Commissioners appointed for supplying the city of London with water from the river Thames, &c. An affailing Civil into water-courses, means 40l. penalty. Stat. 8 Geo. 1. c. 26.

Watermen, for regulating their fares, and the Company of Watermen, and their conduct as to apprentices, their privilege from being pressed, &c. See flats. 2 & 3 P. & M. c. 10: 8 Estn. c. 13; 1 Jan. 1. c. 12: 11 & 12 W. 3. c. 21: 4 & 5 Ann. c. 13: 19: 2 Geo. 2. c. 26: 4 Geo. 2. c. 24: 10 Geo. 2. c. 11: 2 Geo. 5. c. 28, the last act as to selling liquors, &c. to seamen, and beams, market ships, &c.

Wharfage; regulations of rates of wharfage and carriage, and the situation of wharves, are settled by Stat. 22 Car. 2. c. 11.

Weights and Measures; inspectors of, appointed in the parish of St. Mary-le-bone. Stat. 10 Geo. 3. c. 23. § 5: 1732.

**WESTMINSTER.** Several acts have been passed for the internal regulation of this district of the metropolis, an a private statute passed in 17 Estn. continued and confirmed by Stat. 16 Geo. 3. c. 4, for the nomination and appointment of burgesses and chief burgesses. The Stat. 29 Geo. 1. c. 25: 31 Geo. 2. c. 17, as to the appointment of Constables and Annoncyance Jurors, and the seiling, weights and measures. Stat. 31 Geo. 2. c. 25 (never carried into execution,) for a free market. As to paving, cleaning, and lighting the streets, squares, lanes, &c. In Westminster, and parts adjacent; See Stat. 2 Geo. 3. c. 21: 3 Geo. 3. c. 23: 4 Geo. 3. c. 37: [5 Geo. 3. c. 13: 26 Geo. 3. c. 102, imposing certain street-tolls for those purposes.]

Wills. By Stat. 11 Geo. 1. c. 13, §§ 37, 18. Freemen of London were empowered to digge of their personal estates by will, as they think fit, notwithstanding the custom of the city; but which remains as before in cases of intestacy, and of agreements in consideration of marriage. See this Dictionary, titles Execut. V. 9; Marriage.

**LONDON ASSURANCE;** See Assurance.

**LONGELLUS, A word used in Torn's Chronicle, it signifies a coverlet. Cowell.**

**LONGITUDE.** Of a place, in geography, is an arch of the equator intercepted between the first meridian, and the meridian passing through the proposed place; which is always equal to the angle at the pole, formed by the first meridian, and the meridian of the place.

The first meridian may be placed at pleasure, passing through any place, as London, Paris, Turin, &c., but with us it is generally fixed at London; and the degrees of Longitude counted from it, will be either East or West, according as they lie on the east or west side of that meridian.

In other words, to explain the subject in a familiar manner, to those wholly unacquainted with it, as by the Latitudes we learn the distance North or South, so by knowing the Longitude, we know the distance from any given place, East or West, allowing for the difference of a degree.
a degree of Longitude at the equator (or middle of the globe) and at the Arctic Circle.

The Longitude, as before described, in other words, the distance of a place, East or West, from that imaginary line drawn from North to South, through a place fixed on for that purpose, and called the first meridian, i.e., the meridian of whence from whence we reckon, East or West; so that, by ascertaining the Latitude and Longitude of a place, its situation on the natural or artificial globe, with respect to all other places, is known.

By Stat. 12 Ann. c. 2. st. 15: 26 Geo. 2. c. 25: 50 Geo. 3. c. 14, the Lord Admiral and Commissioners of the Admiralty were appointed Commissioners to receive proposals for the discovery of a method to ascertain the Longitude at sea: and were empowered to give rewards accordingly. Under stat. 5 Geo. 3. c. 20, the Commissioners may construct and publish nautical almanacs, which now must publish without their licence, under forfeiture of 10l. And by Stat. 14 Geo. 3. c. 66, (repealing all former acts, except such clauses of them as relate to the authority of the Commissioners,) rewards of 5,000l., 7,500l. and 10,000l. are offered to the discoverer of a method to find the Longitude, in the first instance if determined within one degree, in the second if within two-thirds; and in the last if within half a degree. And by this statute, and Stat. 21 Geo. 2. c. 52: 30 Geo. 3. c. 14, the Commissioners may also grant smaller rewards for less useful discoveries on the same account, not exceeding 5,000l. under each statute.

Also by Stat. 16 Geo. 3. c. 6, if any ship discovers a passage between the Atlantic and Pacific oceans beyond the 52d degree of North latitude, the owner or commander, if a King's ship, shall receive 20,000l.; and 5,000l. shall be given in like manner to the first ship that shall approach within one degree of the North Pole.


LORD, dominus.] A word or title of honour, diversely used, being attributed not only to those who are noble by birth or creation, otherwise called Lords of Parliament, and Peers of the realm; but to such, as called by the courtesy of England, as all the sons of a duke, and the eldest son of an earl, and to persons honorable by office, as the Lord Chief Justice, &c., and sometimes to a private person, that hath the fee of a manor, and consequently the homage of the tenants within his manor; for by his tenants he is called Lord. In this last signification, it is most used in our law-books; where it is divided into Lord Paramount, and Lord Major; and Very Lord, &c. Old, Nat. Br. 79. See titles Man; Nobility; Parliament; Peer.

LORD IN HIGH ADMIRAL; See Admiral.

LORD IN GROSS, F. N. B. fol. 3. Is He that is Lord, having no manor, as the King in respect of his Crown. Ibid. fol. 51; and there is a case wherein a private man is Lord in gross, _vulgo._ A man makes a gift in tail of all the land he hath, to his heir, and dies; his heir hath but a feignitory in gross, F. N. B. 8.

LORD IN MANOR; See Copyhold.

LORD IN MANOR; See Feoffment.

LORD IN MANOR. In the time of the feudal tenure, the grantor of land was called the Proprietor, or Lord; being the person who retained the dominion or ultimate property of the fee or fee: and the gran-tees, who had only the use of possession, according to the term of the grant, was called the Feudatory or Vassal, which was only another name for the tenant or holder of the land; though, on account of the prejudices we have justly conceived against the drawbacks which were afterwards grafted on this system, we now use the word _vassal_ only in the sense of some word synonymous to have or bondman. 2 Vent. See this Dictionary, title Tenures.

LORDS MARCHERS; See Wales.

LORIMERS, Fr. Larmiers, from Lat. _laurum._ One of the companies of London, that make bits for bridles, spurs, and such like small iron ware, mentioned in Stat. 1 R. 2. c. 12.


LOT, A contribution, or duty. See Stat.

LOT or LOTI, The thirteenth dith of lead in the mines of Derbyshire, which belongs to the King. Eichard. Anno 16 Ed. 1. See Gope.

LOOTHERWITE, or LEYERWIT, A liberty or privilege to take amends of him that defileth a bondwoman without licence; Rightfully Exposition of Words; so that it is an amends for lying with a bondwoman. Cawell. See Latiswa.

LOTTERIES. Several statutes have been from time to time made for raising money for the use of Government, by way of Lottery. These State Lotteries are publicly drawn, by commissioners appointed, according to schemes, which vary with almost every year.

It has been a disputed point among politicians, whether the benefits of a Lottery arising from the large sum thus voluntarily subscribed to the exigencies of the Government, are not more than counterbalanced by the evils through this means introduced, formerly by private Lotteries, and, of late years, by the more pernicious mode of gambling by _injustice of numbers_. Repeated attempts have been made to repress this fatal mischief, and the measure of treating the persons taking money for insurance as _rogues and vagabonds_, seems to have been attended with the most success. The following is a short summary of the acts now in force on this subject. See also this Dictionary, title Advertisements; Lottery.

Stat. 10 & 11 Will. 3. c. 17, Declares all Lotteries public nuisances; and all persons for Lotteries void, and against law; (the State Lotteries are all managed under annual acts of parliament passed for each;) imposes a penalty of 500l. on every proprietor of a private Lottery, and 20l. on each adventurer.

Stat. 9 Ann. c. 6, Commands Justices of Peace to affish in suppressing private Lotteries.

Stat. 10 Ann. c. 26, Imposes the like penalty of 500l. on persons keeping offices for illegal insurances on marriages, &c., under various pretexts.

Stat. 5 Geo. 1. c. 9, puts the sale of _Chances_ on the footing of private Lotteries, and imposes a penalty of 100l. (above all other penalties), recoverable by the persons penalized of the ticket, the chance of which was sold; and the offender may also be committed to the county jail for a year.

Stat. 8 Geo. 1. c. 2, imposes a penalty of 500l. on persons keeping offices for the disposal of _keeps, lands, advowsons_, &c., by Lottery; and adventurers to forfeit double the sum contributed.

This
This statute and those of 10 & 11 W. 3, and 9 Ann. above mentioned, are explained and rendered more effectual by Stat. 12 Geo. 2. c. 28, which imposes 10l. penalty on justices neglecting their duty under those acts; and prohibits the games of Act of Heart, Porrabdy, Basset, and Hazard, as Lotteries, and imposes 50l. penalty on the players: and see Stat. 13 Geo. 2. c. 19, as to the game of Passe and other games with dice.

Stat. 9 Geo. 1. c. 19, and 6 Geo. 2. c. 35, impose a penalty of 20fl. and a year’s imprisonment on persons felling tickets in, or publishing schemes of, any foreign Lottery. Ireland is excepted under Stat. 22 Geo. 3. c. 47. Stat. 29 Geo. 2. c. 7, provides that offences against the English acts against private Lotteries, though committed in Ireland, shall be liable to all the penalties imposed, as if they were committed in England; but quo, how far this act is in force since Stat. 25 Geo. 3. c. 28? See this Dictionary, title Ireland.

By Stat. 22 Geo. 3. c. 47, All Lottery-office keepers must take out a licence from the Stamp-office, for which they pay 50l. Offices to be open only from eight in the morning to eight in the evening (except the Saturday evening preceding the drawing). The sale of chances (and shares of tickets not their own), prohibited under 50l. penalty; shares to be stamped.

By Stat. 27 Geo. 3. c. 5, All unlicensed Lottery-office keepers, and all persons, directly or indirectly, as principals or servants, selling chances, or infecting any person to infringe for or against the drawing of any ticket in any State Lottery, shall be deemed vagabonds within the first letter of Stat. 17 Geo. 2. c. 5, and other statutes relating to vagabonds. But the proprietor of a whole ticket may infure it, for its value only, with a licensed office-keeper for the whole time of drawing, (from the time of the issuance,) under a bond for agreement (without stamp). Persons convicted as vagabonds are discharged from the pecuniary penalties.

Love. Provoking unlawful Love, was one of the principal crimes of witchcraft, punishable by Stat. 1 Jac. 1. c. 12, now repealed.

LOURCUDUS, A ram or bell-wether. Cowell.

LURGULARY, The casting any corrupt or poisonous thing in the water, was styled lurgulary, and felony. Stat. pro Statutis London. Ann 1573.

LOWBELLERS, Such persons as go out in the night-time with a light and a bell, by the fight and noise whereof birds sitting upon the ground are frightened, and so are covered and taken with a net: the word is derived from the Sax. loca, which signified a flame of fire. Antig. Warwicke. p. 4.

LOWBOTE, A recompense for the death of a man killed in a tumult; or, as we say, by the mob. Cowell.

LUDI DE REGE & REGINA, Playing at cards, so called, because there are Kings and Queens in the pack. Cowell.

LUMINARE, A lamp or candle, for burning on the altar of any church or chapel; for the maintenance whereof lands and rent-charges were frequently given to parish churches. St. Kenelms Choff.

LUNATICK, See this Dictionary, title Idiots and Lunatics.

LUNDA, A weight or measure formerly used here.

LUNDA, anguillarinum confuf de 10 Sicis. Pliny, lib. 2. cap. 12.

LUNDRESS, A shining silver penny, which had its name from being coined only at London, and not at the country mints. Lowndes's Essay on Coins, p. 17.

LUPANATRIX, A bawd or thumpet: and by the custom of London, a confable may enter a house, and arrest a common thumpet and carry her to prison. 3 Inst. 206, &c. Claus. 4 Ed. 1. p. 1. m. 16.

LUPINUM CAPUT GERERE, Signified to be outlawed, and have one's head exposed like a wolf's, with a reward to him that should bring it in. Plac. Coron. 4 John. Rot. 2. See Outlawry.

LUPICETUM, Lat. A hop-garden, or place where hops grow. 1 Inst. 4.

LUSHERBURGS or LUXENBURGS, A base sort of foreign coin, made of the likeness of English money, and brought into England in the reign of King Edward III. to deceive the King and his people: on account of which, it was made treason for any one unwittingly to bring any such money into the realm, knowing it to be false. Stat. 25 Ed. 3. b. 5. c. 2, 3. Inst. 1.

LUSTRINGS, A company was incorporated for making, drolling, and lustrating Alamos and Lustrings in England, who were to have the sole benefit thereof, confirmed by the following statute; by which no foreign silks known by the name of Lustrings or Alamos are to be imported, but at the port of London, Sec. Stat. 9 & 10 W. 3. c. 43. See titles Silk; Navigation Acts.

LUXURY. There were formerly various laws to restrain excess in apparel, all repealed by Stat. 1 Jac. 1. c. 25. But as to excess in diet, there still remains one ancient statute unrepaled, viz. 10 Ed. 3. b. 3, which ordains, that no man shall be served at dinner, or supper, with more than two courses; except upon some great holydays there specified, in which he may be served with three, 4 Comm. 179, 1.

LYE-FIELD, (i.e. GELD,) LEF-SILVER, A small fine or pecuniary composition, paid by the customary tenant, to the lord for leave to plow or sow, &c. Some of Genevan-kind.

LYING-IN-HOSPITALS; See Hospitals.

LYMPUTA, A lime-pit. Cowell.

LYNDEWODE, Was a lime-pit. Cowell.