RAC

RACETUM, from the Fr. racheter, i. e. redeem.] The compensation or redemption of a thief. Stat. Rev. K. Scot. c. 9.

RACK, An engine to extort confession from delinquents, but utterly unknown to the Law of England. See title Miss.

RACK RENT, The full yearly value of the land let by lease, payable by tenant for life or years, &c. Wood's Inst. 15.; See title Rent.

RACK-VINTAGE, A second vintage; or voyage made by our merchants for racked wines, i. e. wines drawn from the lees. See flat ante. 32 H. 8. c. 14.

RAGEMAN, A statute of judicature signed by Ed. I. and his Council, to hear and determine all complaints of injuries done throughout the realm, within the five years next before Michaelmas, in the fourth year of his reign.

RAGLORIA, A word mentioned in the charter of Edw. Ill by which he created his eldest son Edward, Prince of Wales, in Parliament at Westminster, the seventeenth year of his reign. rec. by Selden in his Titles of Honour, 597—Com forstis, parcis, chafis, bofis, Warrenis, b[end]ris, constis, Raglornis, ringelatis, woodwardis, confubanitaris, bailiwis, &c. Daws in his Dictionary lays, that rubigus among the Welsh signifies fausbread, surrogatus, præppotitum.

RAGLORIUS, A reward. Sel. Tit. of Honour 597.

RAGMAN'S ROLL; Racheis, Ragmanus's Roll: so called from one Ragmanus, a legate in Scotland, who, calling before him all the beneficed clergy men in that kingdom, caused them on oath to give in the true value of their benefices; according to which they were after wards taxed by the Courts of Rome: and this Roll, among other records, being taken from the Scots by Edward I. was delivered over to them in the beginning of the reign of Edward III.

Sir Richard Baker states, that Ed. III. surrendered, by charter, all his right of sovereignty to the kingdom of Scotland, and restored divers instruments of their former homages and fealties, with the famous evidence called Ragman's Roll.

RAN, Sex.] Apera rapiunda, open or public theft. Lamb. Arch. 125; Lil. Camer. c. 58; Hovenden.

The term, as that a man can rap and run, or still more corruptly rap and rend, is by some derived hence; rap from rapio, to take by force.

RANGE, from Fr. ranger, to order, dispose of.] It is used in the Forest Law, both as a verb, as, to range; and a substantive, as, to make range. Charta de Foresta, c. 6.

RANGER, A sworn officer of the forest, of which there are twelve. Charta de Foresta. His authority is in part described by his oath set down by Moirwood, part 1. c. 50;—but more particularly part 2. cap. 260. num. 15.

RAPE, RAPE, Raptus vel Rapta.] A division of a county, similar to that of a hundred; but oftentimes containing in it more hundreds than one.

Suffix is divided into six Rapes only, viz. Chichester, Arundel, Bramber, Lewes, Pevensey, and Hastings; every one of which, besides hundreds, hath a cattle, river, and forest belonging to it. Camden Brit. 225, 219. These Rapes are incident to the county of Sussex; as Lathes are to Kent; and Wapentakes to Yorkshire, &c.

These Rapes and Lathes are considered by Blackstone as an intermediate division between the Shire and the Hundreds; each of them containing about three or four hundreds a-piece. These had formerly their Rape-recus and Lath-recipient, acting in subordination to the Shire reeve (Sheriff).

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RAPE OF WOMEN.

(Sheriff): Where a county is divided into three of these intermediate jurisdictions, they are called Triftings, which were anciently governed by a Trifting-reeve. These Triftings fell subdut in the large county of York, where, by an easy corruption, they are denominated Ridings:

The North, East, and West Riding. 1 Comm. Introduct. § 4. 116. See the several titles.

RAPE OF THE FOREST, Rapius Forcopm.] Tres-

paß committed in the Forest by violence; it is reckoned among those crimes, whose cognizance belonged only to the King. Leg. Hen. i. c. 10. See title Forcif.

RAPE OF WOMEN, Rapius; from rape.] An unlaw-

ful and carnal knowledge of a woman, by force, and against her will: a ravishment of the body, and violent deflowering her: which is Felony by the Common and Statute Law. Co. Litt. 190. The word Rape (ravished) is so appropriated by Law to this offence, that it cannot be expressed by any other; even the words Car-

nalisier Cognoovitis, &c. without it, will not be sufficient.


Rape was punished by the Saxon laws, particularly those of King Æthelstan, with death, Bradon. I. 3. c. 28. But this was afterwards thought too hard: and in its stead another severe, but not capital, punishment, was inflicted by William the Conqueror: viz. castration and loss of eyes; which continued till after Bradon wrote, in the reign of Henry the Third. Li Gual. Conq. c. 19.

But, in order to prevent malicious accusations, it was then the Law, (and, it seems, till continues to be so in appeals of Rape,) that the woman should, immediately after, "cum remit juriit malicitiam," go to the next town, and there make discovery to some credible persons of the injury she has suffered: and afterwards should acquaint the High Constable of the hundred, the Coroners, and the Sheriff, with the outrage. Glau. I. 14. c. 6; Bradon. I. 3. c. 28. See 1 Hale P. C. 632. Afterwards, by statute Woffm. i. 25, the time of limitation was extended to forty days. At present, there is no time of limitation fixed: for, as it is usually now punished by indictment at the suit of the King, the maxim of Law takes place, that nullum tempus accurrat Regi: but the Jury will rarely give credit to a stale complaint. During the former period also it was held for Law, that the woman (by consent of the Judge and her parents) might redeem the offender from the execution of his sentence, by accepting him for her hus-

band: if he also was willing to agree to the exchange, not otherwise. Glau. I. 14. c. 6; Bradon. I. 3. c. 28.

But this is now not held for Law; and it is said, that the election of the woman is taken away by virtue of statute Woffm. 2, making the Rape felony, although the consent afterwards. See post.

By stat. Woffm. 1, 3 Ed. 1. c. 15, the punishment of Rape was made mitigated: the offence itself, of ravishing a damsel within age, (that is, under twelve years old,) either with her content or without, or of any other woman against her will, being reduced to a trespass, if not prosecuted by appeal within forty days, and subjecting the offender only to two years' imprisonment, and a fine at the King's will.

But this lenity being productive of so many terrible consequences, it was soon found necessary to make the offence of forcible Rape felony, which was accordingly done by stat. Woffm. 2, 13 Ed. 3. c. 34. And by stat. 18 Eliz. c. 7, it is made Felony without be-

neft of Clergy: as is also the abominable wickedness of carnally knowing and abusing any woman-child under the age of ten years; in which case the consent or non-consent is immaterial, as by reason of her tender years she is incapable of judgment and discretion.

Before this statute it was a question, whether a Rape could be committed on the body of a child of the age of six or seven years; and a person being indicted for the Rape of a girl of seven years old, although he was found guilty, the Court doubted, whether a child of that age could be ravished; and it was said, if she had been nine years old the night, for at that age she may be endowed. (Dyer 324.

Hale is indeed of opinion, that such profligate actions committed on an infant under the age of twelve years, the age of female discretion by the Common Law, either with or without consent, amount to Rape and Felony, as well force as before the statute of Queen Elizabeth. 1 Hal. P. C. 631.

That Law, however, has in general been held only to extend to infants under ten; though it should seem that damselfs between ten and twelve are fill under the protection of the stat. Wessm. 1, the Law with respect to their reduction not having been altered by either of the subsequent Statutes. 4 Comm. c. 15.

A male infant, under the age of fourteen years, is presumed by Law incapable to commit a Rape, and therefore, it seems, cannot be found guilty of it. For though in other felonies majoria dextra statuat, yet, as to this particular species of felony, the Law supposes an imbecility of body as well as mind. 1 Hal. P. C. 631.

It is no excuse or mitigation of the crime, that the woman at first yielded to the violence, and consented either after the fact or before, if such consent was forced by fear of death or dures; or that she was a common harlot, for she is still under the protection of the Law, and may be forced: but it was antiently held to be no Rape to force a man's own concubine: and it is said by some to be evidence of a woman's consent, that she was a common whore. 1 Hawk. P. C. c. 41, 5: Co. Litt. 124: See 1 Hal. P. C. 629.

Also, formerly, it was adjudged not to be a Rape to force a woman, who conceived at the time; because it was imagined, that if she had not consented, she could not have conceived: though this opinion hath been once questioned, by reason the previous violence is no way extinguished by such a subsequent consent; and if it were necessary to throw the woman did not conceive, to make the crime, the offender could not be tried till such time as it might appear whether she did or not. 2 Jul. 190: 1 Hawk. P. C. c. 41, 52: Co. Litt. 124.

As to the material facts requisite to be given in evidence and proved upon an indictment of Rape, they are of such a nature, that though necessary to be known and settled, for the conviction of the guilty and preservation of the innocent, and therefore are to be found in such criminal treatises as discourse of these matters in detail, yet they are highly improper to be publicly discussed, except only in a Court of Justice. The following remarks, with regard to the competency and credibility of the witeness, may, falvo judicato, be considered.

And, first, the party ravished may give evidence upon oath, and it is in Law a competent witness; but the credibility of her testimony, and how far forth she is to be believed,
Believed, must be left to the Jury upon the circumstances of fact that concur in that testimony. For instance; if the witness be of good fame; if the pretends discovered the offence, and made search for the offender; if the party accused fled for it; these and the like are concuring circumstances, which give greater probability to her evidence. But, on the other side, if the be of evil fame, and stand unsupported by others; if the concealed the injury for any considerable time after he had opportunity to complain; if the place where the fact was alleged to be committed, was where it was possible the might have been heard, and the made no outcry; these and the like circumstances carry a strong, but not conclusive, presumption that her testimony is false or feigned.

Moreover, if the Rape be charged to be committed on an infant under twenty years of age, she may still be a competent witness, if the hath sense and understanding to know the nature and obligations of an oath; or even to be felid of the wickedness of telling a deliberate lie. Nay, though the hath not, it is thought by Sir Matthew Hale, that the ought to be heard without oath, to give the Court information; and others have held, that the child told her mother, or other relations, may be given in evidence; since the nature of the case admits frequently of no better proof. But it is now settled, by a solemn determination of the twelve Judges, that no hearsay evidence can be given of the declarations of a child who hath not capacity to be sworn, nor can such child be examined in Court without oath; and that there is no determinate age, at which the oath of a child ought either to be admitted or rejected. Yet, where the evidence of children is admitted, it is much to be wished, in order to render their evidence credible, that there should be some concurrent testimony of time, place, and circumstances, in order to make out the fact; and that the conviction should not be grounded singly on the unsupported accusation of an infant under years of discretion. There may be therefore, in many cases of this nature, witnesses who are competent, that is, who may be admitted to be heard; and yet, after being heard, may prove not to be credible, or such as the Jury is bound to believe.

Aiders and abettors in committing a Rape, may be indicted as principal felons, whether men or women. 1 Halsk. P. C. c. 41, § 6. Lord Berkeley was indicted and executed as a principal, for assisting his servant to ravish his own wife, who was admitted a witness against him. Dalt. 107: 1 St. Trinbl 265.

Hale observes, though a Rape is a most deceitful crime, it is an accusation easily made, and hard to be proved, but harder to be defended by the man accused, although ever so innocent: and he mentions several instances of Rapes, which at the time were apparently fully proved, but were afterwards discovered to have been malicious contrivances, 1 Hale's Hist. P. C. 635; 536. See further, title Appeal of Rape.

RAPINE, Rapin.] To take a thing in private, against the owner's will, is properly theft; but to take it openly, or by violence, is Rapine. See title Robbery: And as to Rapine on the Northern borders, see titles Misd. Malignius; Malicious; Northumberland.

RAPTI HEREDIS, A Writ for taking away an Heir holding in socage; of which there are two forms, one when the Heir is married, the other when he is not; see Reg. Orig. 163; and this Dict. title Guardian.

RAPE, Rapia.] Seems to have been a measure of corn now diluted. "Toll shall be taken by the Rape, and not by the heap or cantel. Ordinances for Bakers, &c. c. 4.

RASURE of a Deed, so as to alter it in a material part, without consent of the party bound by it, &c. will make the same void, and if it be refused in the date, after delivery, it is said it goes through the whole. 5 Rep. 23, 119.

Rasure, &c. is most suspicious, when it is in a Deed, that there is but one part of the Deed, and it makes to the advantage of him to whom made. And where a Deed, by Rasure, addition, alteration, becomes no Deed, the defendant may plead non est factum. 5 Rep. 23, 119. See title Deed; Phalange.

RATE, A valuation of every man's estate; or the appointing and setting down how much every one shall pay, or be charged with, to any tax.

RATE-TITHE, Is when any sheep or other cattle are kept in a parish for less time than a year, the owner must pay Tithe for them pro Rata, according to the custom of the place. F. N. B. 51. See title Tithe.

RATIFICATION, Ratification.] A ratifying or confirming : it is particularly used for the confirmation of a Clerk in a prebend, &c. formerly conferred on him by the Bishop, where the right of patronage is doubted, or supposed to be in the King. Reg. Orig. 304.

RATHABITIO, Confirmation, agreement, consent. See 18 Vin. Abr. 156.

RATIO, An account: as reddere rationem, to give an account, and so it is frequently used. According to some it is a cause, or giving judgment therein; and ponere ad rationem, is to cite one to appear in judgment. Walf. 88.

RATIONALIBUS DIVISIS, A Writ which lies where two lords, in divers towns, have feignories joining together, for him who findeth his waste by little and little to have been encroached on, against the other who hath encroached, thereby to rectify their bounds; in which respect Fitzherbert calls it in his own nature a Write of Right. The Old Nat. Brev. says, that this is a kind of Suffixes, and may be removed by a part out of the county to the Common Bench. See the form and use in F. N. B. 128: and Reg. Orig. 157: and this Dictionary, title Perambulation.

RATINABILE ESTOVERIUM, Alimony was heretofore so called. Rot. 7 H. 3. See Baron and Fines XI.

RATIONALIS PARTE, A Write of Right for Lands, &c. See Right, Writ of, Redo de Rationabilis Parte.

RATIONALIBIS PARTE BONORUM, A writ which lays for a wife, after the death of her husband, against the executors of the husband, denying her the third part of his goods after debts and funeral charges paid. F. N. B. 222.

It appears by Glanville, that by the Common Law of England, the goods of the deceased (his debts first paid) shall be divided into three parts: one for the wife, another for his children, and the third to the executors: and this writ may be brought by the children, as well as the wife. Reg. Orig. 142.

But it seems to be used only where the custom of the county serves for it; and the writs in the register rehearse the customs of the counties, &c. New Nat. Br. 270, 271.
RAV

As to children bringing this writ, their marriage is no
advancement; if the father's goods be not given in his
lifetime; but if a child be advanced by the father,
this writ will not lie. Now N. B. 270. See this Dict.
titles Executor V. 8; Will; and 18 Vin. Abr. 178.
RAVISHMENT. Fr. Ravissement, i. e. Direcitio.
[An unlawful taking away, either a woman, or
as heir in ward; sometimes it is used in the same sense
with Rape.
RAVISHMENT DE GARD, Ravishment of Ward] A
Writ which lay for the guardian by knights-service,
or in regcio, against a person who took from him the
body of his ward. F. N. B. 140.
By 6 st. 12 Car. 2 c. 24, this writ is taken away, as
to lands, held by knights-service, &c. but not where
there is guardian in regcio, or appointed by will. See
title Guardian.
The Mayor and Aldermen and Chamberlain of Lon-
don, who have the custody of orphans, if they commit
any orphan to another, he shall have a writ of Ravishment
of Ward against him who taketh the Ward out of his
RAY, Cloth never coloured or dyed. See 8 R. 2 c. 11 H. 4 c. 6: 1 R. 3 c. 8.
REEFORESTED, Is where a forest which had
been deforested is again made forest; as the forest of
Dean is by stat. 20 Car. 2 c. 3.
REALTY, Is an abstract of real, as distinguished
from Personalty.
REASON, is the very life of Law; and what is con-
trary to it is unlawful.
When the Reason of the Law once ceases, the Law it-
self generally ceases; because Reason is the foundation
of all our Laws. Co. Litt. 97, 83.
If maxims of Law admit of any difference, those are to
be preferred which carry with them the more perfect
and excellent Reason. Ibid. See I Comm. 70.
REASONABLE AID. A duty claimed, by the lord
court of the fee, of his tenants holding by knights service, to
maintain his daughter, &c. Stat. Will. 2 c. 24. See
title Tenures.
REASONABLE PART: See Rationalis Parte.
REATTACHMENT, Reattachment. A second
Attachment of him who was formerly attached and dis-
missed the Court without day, by the not coming of the
Justices, or some such casualty. Brink Reg. Orig. 35.
A cause discontinued, or put without day, cannot be
revived without Reattachment or Refummons which, if
they are special, may revive the whole proceedings; but,
if general, the original record only. 2 Hawk. P. C.
c 27, § 105. And on a Reattachment, the defendant is
to plead de novo. &c. See Day.
REBATE; Discount. The abating what the intered
money comes to, in consideration of prompt payment.
Merc. Dict. See title Usury.
REBELLION, Rebellion.] Among the Romans, was
where those who had been formerly overcome in battle,
yielded to their subjection, made a second resistance:
but with us it is generally used for the taking up of arms
traiterously against the King, whether by natural Sub-
jects, or others when once subdued; and the word Rebel
is sometimes applied to him who wilfully breaks a Law:
so to a villein disobeying his lord. See 8 R. 2 c. 6.
There is a difference between Enemies and Rebels:
Enemies are those who are out of the King's allegiance;
therefore Subjects of the King, either in open War, or
Rebellion, are not the King's Enemies, but Traitors. Thus
Dissent, Prince of Wales, who levied war against Edw. I.
because he was within the allegiance of the King, had
sentence pronounced against him as a Traitor and Rebel.
Flata. Ed. 1 c. 16. Private persons may arm them-
theselves to suppress Rebels, Enemies, &c; 1 Hawk. P. C.
c 63, § 10.
REBELLIOUS ASSEMBLY: See title Rint.
REBUTTER, from the Fr. rebutter, to put
base or bar.] The answer of a defendant to a plain-
tiff's surrejoinder. See title Rejoinder.
Rebutter is also where a man by deed or fine grants to
warranty any land or hereditament to another; and
the person making the warranty, or his heir, sues him to
whom the warranty is made, or his heir or assignee, for
the same thing; if he is so sued, pleads the deed or
fine with warranty, and pray judgment if the plaintiff
shall be received to demand the thing which he ought to
warrant to the party, against the warranty in the deed,
&c, this is called a Rebutter. Terms of Div. And if I
grant a tenant to hold without impeachment of waif, and
afterwards impeach him for waif done, he may debar me of
this action, by fowling my grant; which is
RECAPTION, Recapit. The taking a second dis-
trieves of one formerly distreased, during the plea ground-
on the former distresses; and it is a writ to receive da-
gages for him whole goods being distreased for rent, or
service, &c. are distreased again for the same cause,
keeping the pleas in the County-Court, or before the Jus-
A Recapition lies where the lord distrains other
attle of the tenant than he first distreased, as well as
if he had distrained the same cattle again, if he be for one
and the same cause; but anno 19 Ed. III, fine was taken
whether the cattle were other cattle of the plaintiff, &c.
RECEIVER.

Reception, &c. And if a person be convicted before the Sheriff in a writ of Reception, he shall not only render damages to the party, but be amerced for the contempt, and be fined. 39 Ed. 3. See further, title Réftrições.

For damage-causing, brevis may be disclaimed as often as they be found on the land; because every time is for a new trespass and a new wrong, and no reception lies.

Reception is also a species of remedy by the mere act of the party injured. It has happened, when any one hath deprived another of his property in goods or chattels personal, or wrongfully detained one's wife, child, or servant; in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them, wherever he happens to find them; to be not in a rigorous manner, or attended with a breach of the peace. 3 Inst. 134. Hel. Annal. f. 56.

The reason for this is obvious; since it may frequently happen that the owner may have this only opportunity of doing himself justice: his goods may be afterwards conveyed away or destroyed; and his wife, children, or servants, concealed or carried out of his reach; if he had no speedy remedy than the ordinary process of Law. If therefore he can so contrive it as to gain possession of his property again, without force or terror, the Law favours, and will justify, his proceeding. But, as the public peace is a superior consideration to any one man's private property; and as, if individuals were once allowed to use private force as a remedy for private injuries, all social justice must cease, the strong would give law to the weak, and every man would revert to a state of nature; for these reasons it is provided, that this natural right of Reception shall never be exercised, where such exertion must occasion strife and bodily contention, or endanger the peace of society. If, for instance, my horse is taken away, and I find him in a common, a fair, or a public inn, I may lawfully seize him to my own use: but I cannot justify breaking open a private stable, or entering on the grounds of a third person, to take him, except he be feloniously stolen; but must have recourse to an action at law. 2 Roll. Rep. 55, 56, 203; 2 Roll. Ab. 365, 566; 3 Com. 4. As to the recovery of stolen goods on conviction, see title Restitution.

RECEIPT, &c. See Réfi. It is by us, as with the Civilians, commonly used in the evil part, for such as receive stolen goods, &c. The receiving a felon, and concealing him and his offence, makes a person accessory to the felony. 2 Inst. 183. See title Accessory. 2. 3

By the Common Law, the RECEIVING of StOLEN GOODS was a misdemeanour: but by 2 3 & 4 W. & M. c. 9, it is enacted, "that Receivers of stolen goods, knowing them to be stolen, shall be deemed accessories after the fact."

But this offence being dependent on the state of the principal, a Receiver thus circumstanced could not be tried till after the conviction of such principal; so that however strong and conclusive the evidence might be, the Receiver was still safe, unless the thief could be apprehended: and even if apprehended, and put upon his trial, if acquitted through any defect of evidence, the Receiver, although he had actually contrived the crime, and the goods in his possession could be proved to be stolen, must be acquitted also; and this offence, even if completely proved, applied only to capital felonies, and not to petty larceny.

These defects were afterward rectified, and partly remedied by 2 Stat. 1 Ann. c. 2. c. 2; 5 Ann. c. 51; which enacted, "that Buyers and Receivers of stolen goods, knowing them to be stolen, may be prosecuted for a misdemeanor, and punished by fine and imprisonment; though the principal be not previously convicted of felony: or though he cannot be taken to as to be prosecuted and convicted."

This act also greatly improved the laws applicable to this species of offence: by empowering the Court to substitute a corporal punishment instead of fine and imprisonment; and by declaring, that if the felony shall be proved against the thief, then the accessory should receive judgment of death; but the benefit of clergy was reserved.

The mischief still increasing, and these laws being found insufficient, the 4 Geo. 1. c. 11, enacted, "that Receivers of stolen goods, knowing them to be stolen, should, on conviction, be transported for fourteen years; and that, buying at an undervalue should be presumptive evidence of such knowledge." And the same statute makes it felony, without benefit of clergy, "for any person, directly or indirectly, to take a reward for helping any person to stolen goods; unless such person bring the felony to his trial, and give evidence against him." See title Advertisements.

But still these amendments proved insufficient; and not being found to apply immediately to persons receiving stolen lead, iron, copper, brass, bell-metal, or folder, taken from buildings, or from ships, vessels, wains, or quays: It was enacted by 29 Geo. 2. c. 35, "that the Receivers of such articles, knowing the same to be stolen, or who shall privately purchase the respective metals, by fuffering any door, window, or shutter to be left open between sunsetting and sun rising, or shall buy or receive any part of the said metals in a clandestine manner, shall, on conviction, be transported for fourteen years; although the principal felony has not been apprehended or punished." § 1.

The same statute empowers one Justice to grant a warrant to search in the day-time for such metals suspected to be stolen, as by the oath of one witness may appear to be deposited or concealed in any house or place; and if goods are found, the statute empowers two Justices to adjudge the person having the custody of the same, guilty of a misdemeanor, if he does not produce the party from whom he purchased, or give a satisfactory account how they came into his possession; and the offender shall forfeit 40s. for the first offence: 4l. for the second: and 5l. for every subsequent offence. §§ 2, 6.

This statute also empowers officers of justice (and watchmen while on duty) to apprehend all persons suspected of conveying any stolen metals, as already described, after sun-set or before sun-rise: and if such persons cannot give a good account of the manner by which they were obtained, two Magistrates are in like manner authorized to adjudge them guilty of a misdemeanor, and they to forfeit 40s. &c. §§ 3, 6.

The persons also to whom such articles are offered for sale, or to be pawned, where there is reasonable ground to suppose they were stolen, are empowered to apprehend and secure the parties, and the materials, to be dealt
RECEIVER OF STOLEN GOODS.

dealt with according to Law. And if it shall appear, even on the evidence of the thief, corroborated by other testimony, that there was cause to suspect the goods were stolen, and that the person, to whom they were offered, did not do his duty in apprehending the person offering the same, he shall be adjudged guilty of a misdemeanour, and forfeit 20s. for the first offence: 40s. for the second; and 4l. for every offence subsequent. § 5.

And so anxious has the Legislature been to suppress the evil of stealing and receiving metals, that § 8, of the said statute, 29 Geo. 2. c. 30, entitles the actual thief to a pardon, on the discovery and conviction of two or more of the Receivers: And § 9, screens from prosecution any person dealing with such metals, who shall discover the Receiver to whom the same were delivered, so as a conviction might follow.

Under these statutes, § 5, & 4 W. 3 M. c. 9; § 5 Ann. c. 31: 29 Geo. 2. c. 30, the prosecutor has two methods in his choice: either to punish the Receivers for the misdemeanour, immediately, before the thief is taken; or to wait till the felon is convicted, and then punish them as accessories to the felony. But it is provided by the statutes, that he shall only make use of one, and not both, of these methods of punishment. Poster 374.

By statute, 30 Geo. 2. c. 24, it shall be lawful for any pawnbroker, or any other dealer, their servants, or agents, to whom any goods shall be lawfully pawned, exchanged, or sold, which shall be suspected to be stolen, to seize and detain the persons offering the same, for the purpose of being examined by a Justice; who is empowered, if he sees any grounds to apprehend that the goods have been illegally obtained, to commit the persons offering the same, to prison, for a period not exceeding six days; and if on the further examination, the Justice shall be satisfied that the goods were stolen, he shall commit the offender to prison, to be dealt with according to Law; and although it may afterwards appear that the goods in question were fairly obtained, yet the parties who seized the suspected offender shall be indemnified.

It has been determined, that money and bank-notes are not goods within the meaning of these statutes. Lush 206, 368. Upon the trial of the Receiver, the principal felon may be admitted a witness. Lush 325.

It is well observed, by the ingenious author of the Treatise on the Police of the Metropolis, that it would have been useful if the principles of the first of these statutes had extended to every kind of goods and chattels, horses, cattle, money, and bank notes, as well as to the metals therein described: but it is to be lamented, that the system has not been so much at large features of abuse in the codes, as to meet every exigence of public safety at once; and therefore another partial statute was made, in Geo. 3. c. 29, extending the provisions of statute, 29 Geo. 2. c. 30, to goods, stores, or materials taken from ships in the River Thames; by enacting, "that all persons purchasing such goods, knowing them to be stolen, or receiving the same in a concealed or clandestine manner, between fun-setting and sun-rising, shall, on conviction, be transported for fourteen years, although the principal felon be not convicted": but, by the wording of this act, it is doubtful if it applies to receiving stolen goods from vessels arriving before the sun rises.

The next statute applicable to the Receivers of stolen goods, is statute, 10 Geo. 3. c. 48; whereby it is enacted, "that the Buyers and Receivers of jewels, gold, silver, plate, or watches, knowing the same to be stolen, where such stealing was accompanied by burglary or highway robbery, may be tried, as well before as after the principal felon is convicted; and whether he be in or out of custody; and if found guilty, shall be transported for fourteen years."

Eleven years after the passing of the above-mentioned statute, the Legislature, appearing to be impressed with the great extent of the depredations committed by persons dealing with houre pots, and défini, of punishing the Receivers, the statute, 21 Geo. 3. c. 69, was passed; which enacted, "that any person who shall buy or receive any pewter pot or other vessel, or any pewter in any form or shape whatsoever, knowing the same to be stolen, or who shall privately buy or receive stolen pewter in a clandestine manner, between sun-setting and sun-rising, shall, on conviction, be transported for seven years, or detained in the House of Correction, at hard labour, for a term not exceeding three years, nor less than one year, and may be whipped not more than three times; although the principal felon has not been convicted."

In the following Session of Parliament, the statute, 22 Geo. 3. c. 58, (aid to have been framed by an able and experienced Lawyer and Magistrate, Mr. Sergeant Adair, then Recorder of London,) removed many of the imperfections of former statutes, and particularly that which respected Petty Larceny; by enacting, "That where any goods (except lead, iron, copper, brass, bill-metal, or foldets, the Receivers of which, it has been already declared, are punishable, under statute, 29 Geo. 2. c. 30, by transportation for fourteen years,) have been stolen, whether the offence amount to Grand Larceny, or some greater offence, or to Petty Larceny only; (except where the offender has been convicted of Grand Larceny, or some greater offence when the Receiver must be adjudged an accessory to the felony; and under statute, 14 Geo. 1. c. 11, already noticed, may be transported for fourteen years;) every person who shall buy or receive the same, knowing them to be stolen, shall be guilty of a misdemeanour, and punished by fine, imprisonment, or whipping, as the Quarter Sessions who are empowered to try such offender, or any other Court, before whom he shall be tried, shall think fit, although the principal be not convicted; and if the felony amounts to Grand Larceny, or some greater offence, and the person committing such felony has not been before convicted, such offender shall be exempted from being punished as accessory, if the principal shall be afterwards convicted."

This statute also empowers one Justice to grant a warrant to search for stolen goods in the day-time, on oath being made, that there are just grounds of suspicion; and the person concealing the said goods, or in whose custody they are found, shall, in like manner, be guilty of a misdemeanour, and punished in the manner before mentioned. § 1.

The same statute extended the powers granted by former acts relative to metals, to any other kind of goods, by authorizing peace-officers (and also watchmen while on duty) to apprehend all persons suspected of carrying stolen goods after sun-setting, and before sun-rising, who shall, on conviction, be adjudged guilty of a misdemeanour and imprisoned; not exceeding five, nor less than three months. § 3.
Power is also given by this act to any person to whom goods suspected to be stolen, shall be offered to be sold or pawned, to apprehend the person offering the same, and to carry him before a Justice.

And as an encouragement to young thieves to discover the Receivers, the same act provides, "That if any person or persons, being out of custody, or in custody, if under the age of fifteen years, upon any charge of felony within the benefit of clergy, shall have committed any felony, and shall discover two Receivers, so as that they shall be convicted, such discoverers shall have pardon for all felonies by him committed before such discovery."

When the Stat. 3 & 4 W. & M. c. 9, had made the Receiver of stolen goods an accessory after the fact, his punishment in the case of Grand Larceny was the same as that of the principal; viz. burning in the hand, and imprisonment not exceeding a year. By Stat. 4 Geo. 1. c. 11, the punishment of the principal might be changed, at the discretion of the Court, into transportation for seven years; but it seems to be understood, that the clause respecting the Receiver is peremptory, and that the Court is obliged to sentence him to transportation for fourteen years. Perj. 73. The words of the statute, however, it has been remarked, are, "That if such and shall be lawful for the Court to order Receivers to be transported for fourteen years; which seem to leave it to the discretion of the Judge, whether he will inflict this, or the former punishment of burning in the hand, upon the offender."

RECEIVER. Annexed to other words, as Receiver of rents, signifies an officer belonging to the King, or other personage. Compt. Jurisd. 18. See Account.

RECEIVER OF THE FINES; An officer who receives the money of all such as compound with the King, on original writs sued out of Chancery. Wtit. Symb. par. 2. Jett. 106: Stat. 1 Ed. 4. c. 1.

RECEIVER-GENERAL OF THE DUCHY OF LANCASTER; An officer of the Duchy Court, who collects all the revenues, fines, forfeitures, and assizes, within the Duchy, or what is there to be received, arising from the profits of the Duchy Lands, &c. Stat. 39 Eliz. c. 7.

RECEIVER OF THE KING'S RENTS AND TENTHS; What he shall take for acquittances, see Stat. 33 H. 8. c. 39. § 65.

How the King's Receivers and Collectors shall be charged. See Stat. 34 & 35 H. 8. c. 2.

Officers accountable to the Crown shall find sureties, and make their accounts duly. Stat. 7 Ed. 6. c. 1.

Receivers to pay 12l. per cent. in case they neglect to account for two months. 20 Car. 2. c. 2.

The Treasury empowered to make allowances to Receivers. Stat. 3 G. 1. c. 4. §§ 5. 7 G. 1. f. 1. c. 20. § 36.

See Stat. 25 Geo. 3. c. 35. enabling the Court of Exchequer to sell the estate of a debtor to the Crown; and to apply the same in liquidation of the King's demand, under an extenuation or diminution extenuation.

RECEITAL, Recital; Is the rehearsal or making mention, in a deed or writing, of something which has been done before. 1 Litt. Abr. 416.

A Recital is not conclusive, because it is no direct affirmation; otherwise, by feigned Recitals in a true deed, men might make what titles they pleased, since false Recitals are not punishable. Co. Litt. 352: 2 Lev. 108.

If a person by deed of assignment recite that he is possessed of an interest in certain lands, and assign it over by the deed, and become bound by bond to perform all the agreements in the deed; if he is not possessed of such interest, the condition is broken; and though a Recital of title is nothing, yet, being joined and considered with the rest of the deed, it is material. 1 Lev. 112. A Recital, that before the indenture the parties were agreed to do such a thing, is a covenant; and the deed itself confirms it. 3 & 4 K. 466.

The Recital of one lease in another, is not a sufficient proof that there was such a lease as is recited. 4 & 5 K. 74. But the Recital of a lease in a deed of release, is good evidence of a lease against the releasor, and those who claim under him. Mod. Ca. 44.

A new reversionary lease shall commence from the delivery, where an old lease is recited, and there is none, 6 & 7 Dyr. 36: 6 Rep. 36.

A. recites that he hath nothing in such lands, and in truth he hath an estate there, and makes a lease to B. for years: the Recital is void, and the lease good. 3 & 4 W. 355. In this case, if the Recital were true, the lease would not bind. See title Deeds.

RECOGNITIO AD NULLANDA per Viam et Dominum facta, A Writ to the Justices of C. B. for sending a record touching a Recognizance, which the Recognizer fuggetus was acknowledged by force and duress; that, if it do appear, the Recognizance may be disallowed. Reg. Org. 183.

RECOGNITORS, Recognizers. The Jury impelled on an Affidavit; so called, because they acknowledge a diffinition by their verdict. Brad. lib. 5. See titles Affidavit, Jury.

RECOGNIZANCE, Fr. Reconnaisance; Lat. Recognitio; Obligatio. An Obligation of Record, which a man enters into, before some Court of Record, or Magistrate duly authorized, with condition to do some particular act; as to appear at the Affises, to keep the peace, to pay a debt, or the like. It is in most respects, like another bond; the difference being chiefly this, that the bond is the creation of a fresh debt, or Obligation de novo; the Recognizance is an acknowledgment of a former debt upon record; the form whereof is, "That A. B. doth acknowledge to owe to our Lord the King, to the plaintiff, to C. D. or the like, the sum of 10l." with condition to be void on performance of the thing stipulated; in which case the King, the plaintiff, C. D. or the like, enter into the Recognizance, it being either confirmed to, or taken by, the officer of some Court, is witnessed only by the record of that Court, and not by the party's seal; so that it is not, in first propriety, a deed, though the effects of it are greater than a common Obligation, being allowed a priority in point of payment, and binding the hands of the Cognizant from the time of enrolment on record. Stat. 29 Car. 2. c. 3. See p. 291.

As to Recognizances of a private kind, in nature of a Statute-Staple, by virtue of Stat. 23 Eliz. 8. c. 6, and which
are a charge on real estate, the following observations will serve at present; and see further, title Statute-Staple.

For debt, or bail, they are taken or acknowledged before the Judges, a Maller in Chancery, &c. See title Bail. And to appear at the Assizes, or Sessions, they may be taken by Justices of Peace; which Recognizances are to be returned by the Justices to the Seffons, or an information lies against them. 2 Lit. Abr. 417. See Justices.

By the statute, 23 H. 8. c. 6, the Chief Justices of the King's Bench and Common Pleas in term time, or, in their absence out of term, the Mayor of the Staple at Wapping, and the Recorder of London, jointly, have power to take Recognizances for the payment of debts, in this form, 

Negocitatum unius partis pro pretibus Not A. B. 
& C. D. tenendi & forum desolati B. F. in certain libris, &c. They are to be sealed with the seal of the Cognizor, and of the King appointed for that purpose, and the seal of one of the Chief Justices, &c. And the Recognizors, their executors and administrators, have the like process and execution against the Recognizors, as on Obligations of Statute-Staple. 2 Inst. 678.

A Recognizance for a debt is a Recognizance or statute, pursuant to stat. 23 H. 8. c. 6, it is called a surety; and the body of the Cognizor, (if a layman,) and all his lands, &c. into whose hands forever come, are liable to the extent; goods (not of other persons in his possession) and chattels, as leaves for years, cattle, &c. which are in his own hands, and not sold bond fide, and for valuable consideration, are also subject to the extent. 3 Rep. 13.

But the land is not the debtor, but the body; and land is liable only in respect that it was in the hands of the Cognizor at the time of the acknowledgment of the Recognizance, or after; and the person is charged, but the lands chargeable only. Plowd. 71.

Lands held in tail are chargeable only during life, and do not affect the issue in tail; unless a recovery be pasted, when it is as fee simple land: Copyhold lands are subject to the extent, only during the life of the Cognizor. The lands a man hath in right of his wife, shall be chargeable only during the lives of husband and wife together; and lands which the Cognizor hath in joint-tenancy with another, are liable to execution during the life of the Cognizor, and no longer; for after his death, if no execution was fixed in his life, the surviving joint-tenant shall have all; but if the Cognizor survive, all is liable. 3 Inst. 675.

If two or more join in the Recognizance, &c. the lands of all ought equally to be charged; and where a Cognizor, after he hath entered into a Recognizance or statute, conveys his lands to divers persons, and the Cognizor dues execution on the lands of some of them, and not all; in this case he or they, whose lands are taken in execution, may, by sundeum aliquo or jure facultatis, have contribution from the rest, and have all the lands equally and proportionally extended. But the Cognizor, or his heirs, when he sells part of his lands, and keeps the remainder, shall not have any contribution from a purchaser, if his land be put in execution. 3 Rep. 14. Plowd. 71.

If there be a Recognizance, and after a statute entered into by one man to two others; his lands may be extended pro rata, and so taken in execution. Telp. 12.

This kind of Recognizance may be used for payment of debts; or to strengthen other assurance. Wood 288.

If a Recognizance is to pay 100L. at five several days, viz. 10L. on each day, immediately after the first failure of payment, the Cognizor may have execution by elegis on the Recognizance for the 20L. and shall not stay till the last day of payment is past, for this is in nature of several judgments. Co Litt. 292. 2 Inst. 393, 471. When no time is limited in a statute or Recognizance for payment of the money, it is due presently. See title Bond.

A Recognizance for money lent, though it is not a perfect record till entered on the roll; yet, when entered, it is a Recognizance from the first acknowledgment, and binds persons and lands from that time. Hid. 190. By stat. 26 Car. 2. c. 5, no Recognizance shall bind lands in the hands of purchasers for valuable consideration, but from the time of enthrallment; which is to be set down in the margin of the roll; and Recognizances, &c. in the counties of York and Middlesex, shall not bind lands, unless registered, pursuant to statute, 2 Ann. c. 4; 3 Ann. c. 18; 4 Ann. c. 35; 7 Ann. c. 20. See tit. Registry of Deeds. The Clerk of the Recognizances is to keep three several rolls of the entering Recognizances taken by the Chief Justices, &c. and the persons before whom the Recognizances are taken; and the parties acknowledging, are to sign their names to the roll, as well as to the Recognizance. Stat. 8 Geo. 1. c. 25.

To make a good Recognizance or obligation of record, the form prescribed must be pursued; therefore they may not be acknowledged before any others, besides the persons appointed by the statutes, and the substantial forms of the nature are to be observed herein. But a Recognizance may be taken by the judges in any part of England. Dyer 211. Hid. 195.

Recognizances and statutes are like judgments; and the Cognizor shall have the same things in execution, as after judgment. The body of the Cognizor himself, but not of his heir, or executor, &c. may be taken, though he be lands, goods, and chattels to satisfy the debt; and if a Cognizor is taken by the Sheriff, the other lands go; yet his lands and goods are liable. 12 Rep. 1, 2; Plowd. 62; 1 And. 273.

By Recognizances of debt, and bail, the body and lands are bound; though some opinions are, that the lands of bail are bound from the time of Recognizance entered into; and some that they are not bound but from the recovery of the judgment against the principal. 2 Lem. 34: Cor. Jac. 272, 449. See title Bail.

In B. R. all Recognizances are entered as taken in Court; but in C. R. they enter them specially where taken, and their Recognizances bind from the caption; but those in B. R. from the time of entry; in C. R. a jure facultatis may be brought on their Recognizances either in London or Middlesex; on those in B. R. in the county of Middlesex only. 2 Balf. 659.

A Recognizance of bail in C. R. is entered specially; the bail are bound to pay a certain sum of money, if the party condemned doth not pay the condemnation, or render his body to prifon; and in B. R. Recognizances are entered generally; that if the party be condemned in the suit of action, he shall render his body to prison, or pay the condemnation-money, or the bail shall do it for him. 2 Lit. Abr. 417. See title Bail.
RECOGNIZANCE.

It was formerly a question, whether a 
ae. fa. would lie on a Recognizance taken in Chancery; but adjudged, that immediately after the Recognizance is acknowledged, it is a judgment on record; and then by stat.
25 Ed. 3. c. 17. a ae. fa. will lie, it being a debt on record. 2 Blant. 62.

If a Recognizance be made before a Master in Chancery, for a debt, or to perform an order or decree of the Court, if the condition be not performed, an exent shall issue; or a fiere facias is the proper process, for the Recognizor to swear what he can say, why execution should not be had against him; upon which, if a fiere facias or two nolens returned, and judgment thereupon, the proper execution is an eject. 3 Ed. 5. Jac. 1.

Where a map is bound by Recognizance in Chancery, and the Cognizor hath certain indentures of defeasance; if the Recognizor will not execute on the Recognizance, the Recognizor may come into Chancery, and file the indentures of defeasance, and that he is ready to perform them; and hence he shall have a fiere facias against the Recognizor, returnable at a certain day; and in the same writ, he shall have a supersedeas to the Sheriff not to make execution in the mean time. New Nat. Br. 589.

If a person is bound in a Recognizance in Chancery, or other Court of Record, and afterwards the Recognizance die; his executors may sue forth an eject. to have execution of the lands of the Recognizor; and if the Sheriff return that the Recognizor is dead, then a special fiere facias shall go against the heir of the Recognizor, and those who are tenants of the lands which he had at the day of the Recognizance entered into. New Nat. Br. 590.

One of the best securities we have for a debt is the Recognizance in Chancery, acknowledged before a Master of that Court; which is to be signed by such Master, and afterwards enrolled: and the King may, by his commission, give authority to one to receive a Recognizance of another man, and to return the same into Chancery; and on such a Recognizance, if the Recognizor do not pay the debt at the day, the Recognizor shall have an eject on the Recognizance so taken, as if it were taken in the Chancery. New Nat. Br. 589.

In case lands are mortgaged, without giving notice of a Recognizance formerly had, if the Recognizor be not paid off and vacated in five months, the mortgager shall forfeit his equity of redemption. 4 Stat. 4 & 5 W. & M. c. 16. See title Mortgage III.

When a statute has been shown in Court, and the plea discontinued, the Crown, on a recommittal, may have execution without producing it again. Stat. 5 H. 4. c. 12.

On a fiere facias to defeat a Recognizance, the Crown shall have jury in the party, as well as to the King. Stat. 11 H. 6. c. 10.

Recognizances for keeping the peace shall be returned to the Sessions. Stat. 3 H. 7. c. 1.

Recognizances for debt may be taken before the chief Justices, &c. 23 H. 8. c. 6.

See further, titles Statute Mercantile; Statute-Failes; Surety of the Peace; and 18 Wm. Ab. 193—170.

Recognizor, He to whom one is bound in a Recognizance, mentioned in Stat. 11 H. 6. c. 10.

RECORD.

RECORD, Recordum, from the Lat. Recordari, to remember. A Memorial or Remembrance; An authentic Testimony in writing, contained in rolls of parchment, and preserved in a Court of Record, Britton, c. 27. In these rolls are contained the judgment of the Court on each case, and all the proceedings previous thereto; carefully registered, and preserved in public repositories, set apart for that purpose. The term Record is applied to such proceedings of superior Courts only, and does not extend to the rolls of inferior Courts; the regisries of proceedings whereof are not properly called Records. Co. Lit. 160. See title Courts.

All Courts of Record are the King's Courts in right of his Crown and royal dignity; and therefore no other Court hath authority to fine or imprison. A Court not of Record, is the Court of a private man; whom the Law will not intrust with any discretionary power over the fortune or liberty of his fellow-subjects. Such are the Courts-Barons incident to every manor, and other inferior jurisdictions; where the proceedings are not enrolled or recorded: but as well their existence, as the truth of the matter contained therein, shall, if disputed, be tried and determined by a Jury. 3 Comm. c. 3. p. 24.

There are three kinds of Records, &c. A judicial Record, as an attestor, &c. a ministerial Record on oath, being an office or inquisition found: and a Record made by conveyance and content, as a Fine, Recovery, or a Dued enrolled. 4 Rep. 54. But it has been held, that a deed enrolled, or a decree in Chancery enrolled, are not Records, but a deed and a decree recorded; and there is a difference between a Record and a thing recorded. 2 Lev. 421.

Records, being the rolls or memorials of the Judges, import in themselves such incontestable verity, that they admit of no proof or averment to the contrary; inasmuch that they are to be tried only by themselves; for otherwise there would be no end of controversy; but during the term wherein any judicial act is done, the roll is alterable in that term, as the Judges shall direct; when the term is past, then the Record admitted of no alteration, or proof: that it is false in any instance. Co. Lit. 260: 4 Rep. 52.

Matter of Record is to be proved by the Record itself, and not by evidence, because no issue can be joined on it to be tried by a Jury like matters of fact; and the credit of a Record is greater than the testimony of witnesses. 21 Car. 2. Although the matter of Record is mixed with matters of fact, it shall be tried by Jury. Hob. 124.

A man cannot regularly aver against a Record; yet a Jury shall not be stopped by a Record to find the truth of the fact; And it was adjudged, that on evidence, it is at the discretion of the Court to permit any matter to be shown to prove a Record. 1 Bent. 325: Allen 18.

A Record may be contradicted in appearance, and yet be good: And though it hath apparent falseness in it, it is not to be denied; but a Record may in some cases be avoided by matter in fact. Style's. Reg. 281; Co. Lit. 8. 320: H. 20.

The Judges cannot judge of a Record given in evidence, if the Record be not exemplified under seal: But a Jury may find a Record although it be not so, if they have a copy proved to them, or other matter given in evidence, sufficient to induce them to believe that there was such a Record. 2 Ld. Ab. 421: See p68, Trial by Record.
RECORD.

Judges may reform defects in any Record, or Proceed, or variance between Records, &c. And a Record exemplified or enrolled may be amended for variation from the exemplification. Stat. 8 H. 6. c. 15. See Amendment.

If the transcript of a Record be false, the Court of B. R. will, on motion, order a Transcript to an inferior Court, to certify how the Record is below; and if it be on a writ of error on a judgment of the Common Pleas, they will grant a rule to bring the Record out of C. B. into this Court, and then order the transcript to be amended in Court, according to the roll in C. B. And a Record cannot be amended without a rule of the Court, grounded on motion. 2 Litt. Abr. 431, 2.

Where a Record is so drawn, that the words may receive a double construction, one to make the Record good, and another to make it erroneous, the Court will interpret the words that way which will make the Record good, as being most for the advancement of justice: So if a letter of a word in a Record be doubtful, that it may be taken for one letter or another, the Court will continue it to be that letter which is for upholding the Record. See 2 Cro. Eliz. 101; Cro. Jac. 119, 153, 244, &c.

The Court will not supply a blank left in a Record, to make it perfect, when before it was defective; as this would be to make a Record, which is not the office of the Court to do, but to judge of them. 2 Litt. Abr. 420.

If a subsequent Record hath any relation to one that is precedent; in such case it must appear in pleading, &c. to be the same without any variation. 3 Litt. 905.

Records certified out of Inferior Courts, on writs of error, and the judgments on such Records are to be entered in B. R.; for until then the Records are not perfected: And if a Record once comes into B. R. by writ of error, it never goes out again; but a transcript of it may go to the House of Lords, on a writ of error there. 2 Litt. 422. Writ of error removes the Records; but the original is no part of it. 1 Turk. Engl. 154. A Record cannot be removed by writ of error, until the judgment in that Record is entered: And when and how a Record may be removed, and where and how removed, see Cro. Jac. 209; 2 Browne. 1455 and this Dict. tit. Error.

Justices of Assize,Goal-delivery, &c. are to lend all their Records and processes determined, to the Exchequer at Michaelmas in every year; and the Treasurer and Chamberlains, on sight of the commissions of such Justices, are to receive the same Records, &c., under their seals, and keep them in the Treasury. Stat. 9 Ed. 5. Stat. 3. c. 5.

IMPEACHING or CHANGING RECORDS, (or falsifying certain other proceedings in a Court of Judicature,) is a felonious offence against public justice. It is enacted by Stat. 8 H. 6. c. 17, that if any clerk, or other person, shall wilfully take away, withdraw, or avoid, (vacate,) any Record or Proces, in the superior Courts of Justice in Westminster-Hall; by reason whereof the judgment shall be reversed, or not take effect: It shall be felony, not only in the principal actors, but also in their procures and abettors: And this may be tried, either in the King's Bench or Common Pleas, by a Jury de mediate, half Officers of any of the superior Courts, and the other half common Jurors. So by Stat. 21 Jac. 1. c. 26, to acknowledge any Fine, Recovery, Dedit-impleaded, Statute, Recognition, Bail, or Judgment, in the name of another not privy to the same, is felony without clergy. This Law extended only to proceedings in the Courts themselves; but by Stat. 4 W. 3. c. 4, to peremptorily any other as bail before Judges of Assize, or the Commissioners in the country, is also felony. See titles Bail; Fine; Recovery, &c.

A Record that is raised, if legible, remains a good Record notwithstanding the same; but he who raised it is to go unpunished for his offence. And in case of a Rule or judgment, done by fraud to hinder execution, the Record has been ordered to be amended, and a special entry thereof to be made; but though the Record by this means be made perfect, the offender may be indicted for the felony. 2 Roll. Rep. 81. See Trial by Record.

Trial by Record, is used where a matter of Record is pleaded in any action, as a Fine, a Judgment, or the like; and the opposite party pleads not real Record, "that there is no such matter of Record existing." — Upon this issue is tendered, and joined in the following form: "And this he prays may be inquired of by the Record; and the other doth the like." And hereupon the party pleading the Record has a day given him to bring it in; and proclamation is made at the rising of the Court on that day, for him "to bring forth the Record by him in pleading alleged, or else he shall be condemned;" and, on his failure, his antagonist shall have judgment to recover, by rule of the Court, according to the circumstances of the case. The trial of this issue is merely by the Record, on the principle already stated.

Titles of Nobility, as whether Earl or no Earl, Baron or no Baron, shall be tried by the King's writ or patent only, which is matter of Record. 6 Rep. 53. Also in case of an alien, whether alien friend or enemy, shall be tried by the law or treaty between his Sovereign and ours, for every law or treaty of Record. 9 Rep. 31: And, also, whether a matter be to be held in ancient demesne, or not, shall be tried by the Record of Domesday in the King's Exchequer. 3 Comm. c. 12. p. 350. See title Ancient Domesday.

Thus, also, upon the plea of a former judgment recovered by the plaintiff against the defendant for the same cause of action; or of another action depending upon the same cause; or of certanny; or of certamnes ad item to a bail-bond; or of any act of Parliament; or, in short, of any other matter of Record, the general replication is "that real Record, upon which the parties join issue, and the truth or falseness of such issue is determined by the party producing, or failing to produce, the Record in question, on a day given him for that purpose." Selby's Pratts. c. 15. See trial Ancient Domesday.

Where the Record pleaded is the Record of another Court, the only way of producing it is by suing out a Certiorari from the Court of Chancery, for the Court where the Record is to certify the Record: and upon the return of the Certiorari, but not till then, the Record will be sent by minitus to the Court where it is to be produced: and thus a Record of K. B. may be removed into C. B. contrary to the general rule, that they are not removable out of that Court. 3 Car. 1. p. 571; 2 South. 344. See record Certiorari.

Where Records are pleaded, they must be shewn; and one may not plead any Record, if it be not in the same Court where it remained, unless he shew it under the
RECORD

RECOVERY,

RECUPERATIO, from Fr. recuperer, recuperare.] In a
general sense, the obtaining any thing by judgment or
trial of Law.

There is a true Recovery and a feigned one.

A true Recovery is a real or actual Recovery of any
thing, or the value thereof, by judgment; as if a man
sue for any land, or other thing moveable or immoveable,
and have a verdict or judgment for him.

A feigned Recovery is a certain form or course set down
by Law to be observed, for the better effecting lands or
tenements; and the effect thereof is to discontinue and
destroy estates-tail, remainders and reversions, and to bar
the entail thereof. 

The power of suffering a Common Recovery is a privi-
lege inseparably incident to an estate-tail: and cannot be
restrained by condition, limitation, custom, recognizance,
statute, or covenant.

A true Recovery is as well of the value as of the thing:
For example, If I buy land of another with warranty,
which land a third person afterwards by suit of law re-
coverei against me, I have my remedy against him
who sold it me, to recover in value, that is, to recover
so much in money as the land is worth, or other lands
of equal value by way of exchange. 

A Common Recovery is so far like a Fine, that it is a
suit or action, either actual or fictitious; and in it the
lands are recovered against the Tenant of the Frehold:
which Recovery, being a foppoped adjudication of the
right, binds all persons, and vests a free and absolute
fee-simple in the recovery.

Fines and Recoveries are now considered as mere forms
of Conveyances, or Common Affurances, the theory and
original principles of them being little regarded. See
1 Wilf. 73. Common Recoveries were invented by the
Ecclesiastics, to ease the statutes of Mortmain, and after-
wards encouraged by the issue of the Courts of Law in
12 El. 4, in order to put an end to all fettered inheri-
cances; and bar not only estates-tail, but all remain-
ders and reversions expectant thereon. See further this
Dist. titles Mortmain; Tail and Fee-tail, &c. In
addition to what is laid under those titles, and title Fine
of Lands, the following will serve to develop the original
principle of these conveyances. See Grants of Recoveries.

A Recovery, is a large sense, is a restitution to a former
right by solemn judgment; at Common Law, judgments,
whether obtained after a real defence made by the tenant
to the writ, or whether pronounced on his default or ject
plea, had the same efficacy to bind the right of the land
in question; and from hence men took an opportunity of
making use of the decisions of the Court to their own
advantage, and to the prejudice of others, who, though
in some cases strangers to the action, yet were interested
in the land for which it was brought. 2 Inst. 75, 429.
For whilst these Recoveries were governed by the strict rules of Common Law, particular tenants, as tenant in dower, court sey, in tail after possi­bility of issue extinct, and for life only; all those who had made leases for years, and those whole wives were entitled to dower, often took advantage of them; and by selling the lands, and suffering their purchasers to recover them, thereby defeated the right of those in remainder or rever­sion, etc., which were incon­venience to great, that it was thought necessary to provide against them by positive laws. Thus the Act 23 Ed. 1. c. 41., makes provision for him in reversion, against the Recoveries suffered either by the tenant in dower, by the courtsey, or in tail after possibility of issue extinct, or for life; and by the 4th chapter of this statute, the wife is secured as to her dower; and the statute of Gloucesters, 6 Ed. 1. c. 14, and stat. 7 Hen. 8. c. 41, 21 Hen. 8. c. 15, have esta­blished the rights of tenants, and enabled them to fall­ify such Recoveries. See Co. Litt. 104; Kel. 109; F N. B. 468; Plowd. 57; Dev. & Stud. 47.

But there is no express provision made by any statute to preserve the interest of the issue in tail, or of him in reversion, against a Recovery suffered by the donee; yet it seems, that for two hundred years after the making the statute De dotes, they were protected by that statute; therefore we find no express revocation, where such Recovery was allowed to bar the issue in tail, or those in remainder or reversion, till the reign of Ed. IV. and Hen. VII. though in some cases the donee in tail was allowed to change the entail, and even to bar it. See 1 Roll. Abr. 342; Co. Litt. 343; 10 Co. 37; Plowd. 436; 2 Inst. 335; Co. Litt. 174; 4 Leon. 132, 133.

When those Recoveries were established as a common conveyance, and the best way of barring the issue in tail, and those in reversion or remainder, the tenant for life began to apply them once more to the prejudice of those who had the inheritance; and though the former statutes gave those who had the inheritance a remedy, yet the provision made by them being tedious and expensive, it was thought proper to make the stat. 32 H. 8. c. 31, which declared all such cousinious Recovery, against the particular tenants to be void, in respect to him in reversion or remainder; and though the Judges very rea­sonably determined Recoveries against that act to be not only void, but a forfeiture of the particular estate, because it was a manner of conveyance as much known at that time as a fine or fee-simple, therefore, by parity of reason, ought to have the same operation, yet that statute did not fully answer the end for which it was made. Co. Litt. 356; a. 1 Co. 15; Vaughan 51.

For if A. had been tenant for life, and made a lease for years to B., and B. had made a fee-fine in fee, if the feoffee had suffered a Recovery, and vouched the tenant for life, this was no void Recovery within the statute; because A. the tenant for life was not feized at the time of the Recovery, for the fee-simple of the tenant was a fee-fine to A. and him in reversion; and the statute makes Recoveries of tenants for life in possession only void against them to whom the reversion then belongs. 10 Co. 45; a. Co. Litt. 451.

Yet where tenant for life bargained and sold his land in fee by indenture enrolled, and the bargainee suffered a Recovery, and vouched the bargainor, this was a void Recovery, and a forfeiture within the stat. 32 H. 8. c. 31; for though the bargain and sale was of the inheritance, yet it passed only an estate for life of the bargainor, which was the greatest estate he could lawfully pass, consequently the recoverer was not de­volved; therefore the bargainee being a legal tenant for life in possession, the Recovery against him, though with a voucher of the bargainor, was void within that act against him in recovery, whereas recovery was not turned to a right as in the former case of a dower. 1 Co. 15, 1 Leon. 249.

But the former defect was turned by the Act 3 Ed. 8, which repeals the said stat. 32 H. 8. c. 31, and declares all Recoveries (had by agreement of the parties, or by vo­uche) against tenant for life, of any lands whereof he is legal, or against any other with voucher over of him, to be void, as against the recoverers and their heirs.

These statutes made no provision for reversion or re­versions expirant on estates tail; therefore, if there be tenant for life, remainder in tail, remainder in fee; and tenant for fee suffers a Recovery, and vouches the remainder-man in tail, who vouches the common voucher, this is so far from being a void Recovery within those statutes, that the recovery in fee is actually barred by it; for the intended remainder, which the remainder-man in tail is to have against the common voucher, is to go in fe­cession, as the estate-tail would have done; and it cannot be a cousinious Recovery within the act, because the remainder-man in tail joined in it, who may at any time suffer such a Recovery to destroy the remainder in fee. 10 Co. 39; Op. 45; Co. Litt. 462; a. 3 Co. 60; b.; Cro. Eliz. 563; 1 Mor. 590; Cro. Eliz. 570.

These common Recoveries were no longer allowed by the Judges to bar estates-tail, but men began to improve them into a common way of conveyance, and to declare uses on them, as on fines and fee-conscious. Hence it is, that the statutes, which provide against any alienations or discontinuances of particular tenants, provide at the same time against their Recoveries; thus stat. 15 H. 7. c. 20, declares all Recoveries, as well as other discontinuances by fine or fee-simple of women tenants in tail, of the gift of their husbands, or their ancestors, to be void; so, a Recovery against husband and wife of the inheritance of the wife, without any voucher, is declared to be void within stat. 32 H. 8. c. 28; though the statute says, "suffered or done by the husband;" for this, like a fee-simple by baron and feme, is in substance, the act of the baron only, and so within the statute; but a Common Recovery suffered by a feme covert, where her husband joins with her, is good to bar her and her heirs. Don. and Stud. 54; Co. Litt. 320; a. 8 Co. 72; 10 Co. 43; 2 Inst. 342; 2 Rel. Abr. 205; See title Baron and Feme; and Inst. 11; and Cruque. in Rec.

I. The Nature of a Common Recovery, who may suffer it; of what Things it may be suffered.

II. The Effect of a Recovery. 1. What Estates and Interests may be bar­red by a Common Recovery. 2. Of simple and double Voucher, and Tenant in the Premises. 3. Of Deeds to lead to declare the Uses of a Recovery; or Fine.

III. Of various and void Recoveries; who may avoid them, and by what Method; and see Div. 1.
RECOVERY I.

I. In order to explain the nature of a Common Recovery, Blackstone gives the following account of its progress:Premising, that it is in the nature of an action at Law, not immediately compromised like a Fine, but carried on through every regular stage of proceeding. See 2 Comm. c. 21.

Let us, in the first place, suppose one David Edwards to be tenant of the freehold, and defirous to suffer a Common Recovery, in order to bar all entails, remainders, and reversions, and to convey the same in fee-simple to Francis Golding. To effect this, Golding is to bring an action against him for the lands; and he accordingly sues out a writ, called a Precipe quod reddat, because those were its initial or most operative words, when the Law proceedings were in Latin. In this writ the demandant Golding alleges, that the defendant Edwards (here called the tenant) has no legal title to the land; but that he came into possession of it after one Hugh Hunt had turned the demandant out of it. The subsequent proceedings are made up into a Record or Recovery roll, in which the writ and complaint of the demandant are first recited: whereupon the tenant appears, and calls upon one Jacob Morland, who is supposed, at the original purchase, to have warranted the title to the tenant; and thereupon he prays, that the said Jacob Morland may be called in to defend the title which he so warranted. This is called the Voucher, warrant, or calling of Jacob Morland to warranty; and Morland is called the Vouchee. Upon this, Jacob Morland, the voucher, appears, is impelled, and defends the title. Whereupon Golding, the demandant, defires leave of the Court to impeal, or confer with the voucher in private; which is (as usual) allowed him: and soon afterwards the demandant, Golding, returns to Court, but Morland, the voucher, disappears, or makes default. Whereupon judgment is given for the demandant, Golding, now called the Recoverer, to recover the lands in question against the tenant, Edwards, who is now the Recoveree: and Edwards has judgment to recover of Jacob Morland lands of equal value, in recompence for the lands so warranted by him, and now lost by his default; which is agreeable to the ancient doctrine of Warranties. See 4 Boc. Abr. p. 446. This is called the Recompence, or Recovery in value. But Jacob Morland having no lands of his own, being usually the crayer of the Court, (who, from being frequently thus vouched, is called the common vouchee,) it is plain that Edwards has only a nominal recompence, for the lands so recovered against him by Golding: which lands are now absolutely vested in the said Recoveror by judgment of Law; and since thereof is delivered by the Sheriff of the county. So that this collusive Recovery operates merely in the nature of a conveyance in fee-simple, from Edwards the tenant in tail, to Golding the purchaser.

The Recovery, so described, is with a single voucher only; but sometimes it is with double, triple, or farther vouchers, as the exigency of the case may require. And indeed it is now usual always to have a Recovery with double voucher at the least: by first conveying an estate of freehold to any indifferent person, against whom the præcipe is brought; and then he vouches the tenant in tail, who vouches over the common vouchee. For, if a Recovery be had immediately against tenant in tail, it bars every latent right and interest which he may have in the lands recovered. 2 Boc. Abr. tit. Tail. 37: Plowd. 8.

If Edwards therefore be tenant of the freehold in possession, and John Barker be tenant in tail in remainder, here Edwards doth first vouch Barker, and then Barker vouches Jacob Morland the common vouchee; who is always the last person vouched, and always makes default: whereby the demandant Golding recovers the land against the tenant Edwards, and Edwards recovers a recompence of equal value against Barker the first vouchee; who recovers the like against Morland the common vouchee, against whom such ideal Recovery in value is always ultimately awarded. See p. 242.

This supposed recompence in value is the reason why the issue in tail is held to be barred by a Common Recovery. For, if the Recoveree should obtain a recompence in lands from the common vouchee, (which there is a possibility in contemplation of Law, though a very improbable one, of his doing,) these lands would supply the place of those so recovered from him by collusion, and would descend to the issue in tail. 2 Boc. Abr. rec. 6. Dial. 26. This reason will also hold with equal force, as to all remainder-men and reverfioners; to whom the possibility will remain and revert, as a full recompence for the realty, which they were otherwise entitled to; but it will not always hold; and therefore the Judges have been ever averse, in inventing other reasons to maintain the authority of Recoveries. And, in particular, it hath been said, that, though the estate-tail is gone from the Recoveror, yet it is not destroyed, but only transferred; and still subsists, and will ever continue to subsist, (by construction of Law,) in the Recoveror, his heirs, and assigns; and, as the estate-tail continues to subsist for ever, the remainders or reversioners, expectant on the determination of such estate-tail, can never take place: 2 Comm. e. 24.

To such awkward shifts, such subtle refinements, and such strange reasoning, remarks the learned Commentator, were our ancestors obliged to have recourse, in order to get the better of that stubborn statute De denis. The design, for which these contrivances were set on foot, was certainly laudable; the unriveting the fetters of estates-tail. Our modern Courts of Justice have therefore adopted a more manly way of treating the subject; by considering Common Recoveries in no other light, than as the formal mode of conveyance, by which tenant in tail is enabled to alienate his lands. And it has therefore been avowed by the Judges, that the true reason of Common Recoveries being bars, is not the recompence in value, though that is the foundation of all the arguments on the subject, but that they are common conveyances. See 2 Boc. 37: Plowd. 144. See also Bro. Abr. Recovery (A): Plowd. 514: Boc. Law 97, 149: Com. Dig. Estates (R. 37).

Since, however, the ill consequences of fettered inheritances are now generally seen and allowed, and of course the utility and expediency of settling them at liberty are apparent: it hath often been wished, that the process of this conveyance was shortened, and rendered less subject to uncertainties; by either totally repealing the statute De denis, which, perhaps, by reviving the old doctrine of conditional fees, might give birth to many
litigation: See title Tail and Fee-tail: Or by vesting in every tenant in tail of full age the same absolute fee-simple, at once, which now he may obtain whenever he pleases, by the collusive fiction of a Common Recovery; though this might possibly bear hard upon those in remainder or reversion, by abridging the chances they would otherwise frequently have; as no Recovery can be suffered in the intervals between term and term, which sometimes continue for near five months together: Or, lately, by empowering the tenant in tail to bar the estate-tail by a solemn deed, to be made in term-time, and enrolled in some Court of Record; fee 1 P. Wms. 91; which is liable to neither of the other objections; and is warranted not only by the usage of our American Colonies, and the decisions of our own Courts of Justice, which allow a tenant in (without Fine or Recovery) to appoint his estate to any charitable use; see title Will; but also by the precedent of the Rul. 21 Jac. t. c. 19, which, in case of a bankrupt tenant in tail, empowers his Commissioners to sell the estate at any time, by deed indented and enrolled. See title Bankr. Ill. 2. And if, in any case a concern, the emoluments of the Officers, concerned in passing Recoveries, are thought to be worthy attention, those might be provided for in the fees to be paid upon each enrolment. 2 Comm. 361.

Infants are not capable of suffering Common Recoveries, on account of their want of understanding: although, if an Infant is permitted to suffer a Common Recovery in person, he must, as in the case of a Fine, and for the same reason, receive it during his minority; which must be tried by inspection of the Judges; otherwise the Recovery will bind him for ever afterwards. But if an Infant suffers a Common Recovery, in which he appears by Attorney, he may reverse it in any time after he has attained his full age; as it may be tried by a Jury, whether he was an Infant or not: when he appointed an Attorney, and which, by Law, an Infant is capable of performing. Cruife on Rec.

It was formerly doubted, whether a Common Recovery bound an Infant who appeared by his Guardian: and the practice therefore was, when an Infant intended to suffer a Common Recovery, that he and his Guardian should petition the King to grant letters, under the Privy Seal, to the Judges, of the Court of C. B., directing them to permit such Infant to suffer a Recovery: But it was still in the discretion of the Judges to permit the infant to suffer it or not, according to the circumstances of his case: and if the Judges, upon examination, found it necessary, or that it would be advantageous to the Infant, that he should suffer a Recovery, they then admitted provisions of known integrity and fortune to appear as his Guardians, and to suffer a Recovery for him in Court: but these sort of Recoveries, suffered by Privy Seal, are now disused; and private Acts of Parliament are universally substituted in their stead. Cruife on Rec.

An Infant Trustee may join in a Common Recovery, if he is directed so to do by the Court of Chancery. Sess. 7 Ann. c. 19. See further, title Infant V.

A Recovery, as well as a Fine, by a Feme-covert, is good to bar her, because the privity in the Recovery answers the writ of covenant in the Fine to bring her into Court; where the examination of the Judges destroys the presumption of Law, that this is done by the coercion of her husband, for then it is presumed they would have refused her. 10 Co. 43. a : 2 Rel. Abr. 395.

Whenever a husband and wife appear in the Court of C. B., to suffer a Common Recovery, the wife is always privately examined as to her consent. And where a Warrant of Attorney is acknowledged before Commissioners appointed by a writ of delimus processus de Attornato factiendo, by a husband and wife, the Commissioners are positively directed by a rule of Court (Hil. 14 Geo. 3.) to examine the wife, separately and apart from her husband, as to her free and voluntary consent to the suffering such Recovery. Cruife on Rec.

The King cannot suffer a Common Recovery; for if he does, he must be either tenant or vouches; and, in both cases, the demandant must count against him, which the Law does not allow. Pig. 74: Plow. 244.

Idiots, Lunatics, and generally all persons of Non-Instant Memory, are disabled from suffering Common Recoveries, as well as from levying Fines; though, if an Idiot or Lunatic does suffer a Common Recovery, and appears in person, no averment can afterwards be made that he was an Idiot or Lunatic. But, if he appears by Attorney, it seems that such an averment would be admitted upon the same principle, that an averment of Infancy may be made against a Warrant of Attorney, acknowledged by an Infant, for the purpose of suffering a Common Recovery; since the fact of Idiocy may be tried by a Jury, with as much propriety as the fact of Infancy. Cruife on Rec.

In a celebrated case (Hume v. Burton) determined by the House of Lords in Ireland, since the independence of that jurisdiction, the majority of the Judges were of opinion, that the caption of a Warrant of Attorney, taken by the Chief J uice of the Court of Common Pleas, for the purpose of suffering a Common Recovery, was not conclusive evidence of the capacity of the person acknowledging such Warrant of Attorney, See Cruife on Rec. and Appendix to Vol. 2.

Although no averment of Idiocy or Lunacy can be made against a Recovery, where the parties appear in person, yet evidence of weakness of understanding has been admitted, on a trial in ejectment, to invalidate a deed to make a tenant to the privity for suffering a Recovery, and the Recovery has in that manner been set aside. Cruise on Rec. See further this Dist. cites Fine or Lords IV: Idiots and Lunatics IV.

As to persons restrained by statute from suffering Common Recoveries, see ante, the Introduction to the present title.

Recoveries, being now settled as common assurances to establish men in their purchases, are very much favoured by the Judges, and not compared to judgments in other real actions or adversary suits. 2 Rob. 333; Plow. 23, 33: 2 Enc. 31.

If a man be sealed of a reputed manor, which really is no manor, and he suffers a Common Recovery of the by the name of a manor, this is a good Recovery of the lands which constituted the reputed manor, though strictly speaking there is no manor recovered; because the law supports this, as all other conveyances, according to the intention of the parties, for it would be severe to vacate this conveyance, when the purchaser recovered them by the assent of the vendor under such a denomination.
A Recovery in the Common Pleas of Copyhold lands, will not pass them: though it is said, if lands be Copyhold Freshold, if lands be Copyhold Freshold, and pass by surrender in a Borough Court, a Recovery in C. B. of such lands will be good.

1 Ath. 474; but see contra, 2 Esp. 503. For the method of suffering Recoveries of Copyholds, see Pig. 100, 8th, Abr, Copyhold (C.).

Recovery may be suffered of a Trust estate by Confut quia

See further, of what things a Recovery may be suffered, Fin. Abr, Recovery (S.): Wils. 283: Pig. 97.

If 1. The force and effect of Common Recoveries may appear, from what has been said, to be an absolute bar, not only of all estates tail, but of remainders and revoces expectant on the determination of such estates. So that a tenant in tail may, by this method of assurance, convey the lands held in tail to the Recoveror, his heirs and assigns, absolutely free and discharged of all conditions and limitations in tail, and of all remainders, reversions, charges, and incumbrances dependent upon it. But, though a Common Recovery bars a contingent remainder, by destroying the particular precedent estat which supported it, yet it does not bar a springing use, nor an Executory Deed. See 277. And it is a rule, that an Executory Deed cannot be prevented or destroyed, by any alteration whatsoever in the estate out of which, or after which it was granted, according to the terms of the estate; or with regard to the estate itself, so as to make it a sufficient estate to the same execution. See 276. See this Dec. titles Executory Deeds, Perpetuity. If the remainder be in advance, a Common Recovery will bar it. 6 Co. 33 a.a.

A term limited to commence, on failure of life, may also be barred by a Recovery, 1 Lev. 25. 2o a power appendant, or in gross, is barable by a Recovery. Pig. 105. But a Recovery will not bar a Mortgage, because that is to be considered as a charge upon the estate, and cannot be defeated. 2 Ath. 591. Tenant in tail mortgaged for years, and died, without suffering a Recovery, the mortgage was held not good; but if he had suffered a Recovery afterwards, it would have letter in the mortgage. 1 Wil. 276. As to the operation of a Recovery in general, by letting in all the preceding incumbrances, and rendering valid all the preceding acts of tenant in tail, see Pig. 120, Cruize on Rec. 159.

By flut. 34 & 35 Hen. 8. c. 20, no Recovery had against tenant in tail of the King's gift, whereof the remainder or reversion is in the King, shall bar such estate tail, or the remainder or reversion of the Crown. See title Tail and Feudtail. And by flut. 11 Hen. 7. c. 20, no woman, after her husband's death, shall suffer a Recovery of lands settled by her by her husband; or settled by her and her by any of his ancestors. And by flut. 14 Edw. c. 8, no tenant for life, of any sort, can suffer a Recovery, so as to bind them in remainder or reversion. For which reason, if there be tenant for life, with remainder in tail, and other remainders over, and the tenant for life is desirous to suffer a valid Recovery; either by his own, or the tenant to the present in him made, must vouch the remainder in tail; otherwise the Recovery is void: but if he does vouch such remainder man, and he appears and vouches the common vouchers, it is then good; for if a man be vouched and appears, and suffers the Recovery to be had against the tenant to the present, it is as effectual to bar the estate tail, as if he himself were the Recoveror. Salis. 571.

A special verdict found, that there was a parast of Ribon, and the will of Ribon, but the latter not of equal extent with the former; and that f. 3, was seised of land in tail in the parish, but not in the will; and bargained and sold land in the parish of Ribon, with covenant to levy aFine, and suffer a Recovery to the uses in the deed; but the Fine and Recovery were only of the lands in Ribon; the question was, whether this Recovery would pass for the land in the parish of Ribon? The Court, in favour of Common Recoveries, extended this Recovery to the lands in the parish of Ribon; because the verdict found, that he who suffered the Recovery had no lands in the will, consequently that the Recovery must be void, if not extended to the parish; and though parishes are not so ancient as wills, and therefore till lately were never inferred in wills, yet now they are, and the Law takes notice of them. 2 Vent. 31: 32: 1 Med. 250: 2 Med. 243: But for this see Hat. 105: Cro. Car. 269: 2 Rol. Abr. 20: Cvo. Jac. 120: 574: 1 Med. 206: 2 Med. 47: 1 Vent. 413: 170: 1 Med. 78: 2 Kel. 503: 811: 848: Owen 60: and 2 Med. 256, which seems against this case; but is reconcilable with this diversity, that in those cases there were lands on which the Fine might operate, viz. the lands in the will of Street, without taking in the Parish of Street to carry the lands in Walton, a will of that parish; but here, if those in the parish should not pass, there were no other to pass. See pig. 111.

A Common Recovery in the Common Pleas of Copyhold lands, will not pass them: though it is said, if lands are Copyhold Freshold, and pass by surrender in a Borough Court, a Recovery in C. B. of such lands will be good.
R E C O V E R Y II.

In all Recoveries it is necessary that the Recoveror, or tenant to the præcipe, as he is usually called, be actually seized of the freehold, else the Recovery is void. P. 28. For all actions of the tenures of lands, must be brought against the actual tenant of the freehold, else the suit will lose its effect; since the freehold cannot be recovered of him who has it not. And, though these Recoveries are in themselves fabulous and fictitious, yet it is necessary that there be actus fabulae properly qualified. But the nicety, thought by some modern practitioners to be requisite in conveying the legal freehold, in order to make a good tenant to the præcipe, is removed by the provisions of the stat. 1Ec. 2, c. 20; which enacts, with a retrospect and conformity to the ancient rule of law, that, though the legal freehold be vested in Jeoffe, (for life,) yet those who are entitled to the next freehold estate in remainder or reversion may make a good tenant to the præcipe; that, though the deed or fine which creates such tenant be subsequent to the judgment of Recovery, yet if it be in the same term, the Recovery shall be valid in law; and that, though the Recovery itself do not appear to be entered, or be not regularly entered, on record, yet the deed to make a tenant to the præcipe, and declare the uses of the Recovery, shall, after a possession of twenty years, be sufficient evidence, on behalf of a purchaser for valuable consideration, that such Recovery was duly suffered. A Comm. c. 31. And by this act also, Common Recoveries shall, after twenty years from the time of suffering them, be deemed valid, if it appear, on the face of such Recovery, that there was a tenant to the writ; and if the persons joining in such Recovery had sufficient estate and power to suffer the same; notwithstanding the deed or deeds for making the tenant to the præcipe, should be lost or not appear. For the operation of this statute, see 1 Burr. 115; 2 Burr. 1074.

In respect to estates-tail, and barring them by Recovery, what is principally to be regarded is, that there must be a legal tenant to the præcipe at the time of the writ purchased, or at the return; for since estates-tail are only barred on account of the intended reversion, which is to follow the defeat of the tail, where there happens to be no tenant to the præcipe, the demandant can really recover nothing; consequently the tuppified tenant can have no recompense in value against the voucher; for that is only given against the voucher, in consideration of what the tenant lost. Hob. 262.

As if there be tenant for life, remainder in tail, remainder in fee, and tenant for life with the remainder in tail suffer a Recovery, with voucher over, this shall not bar the remainder in tail, nor the remainder in fee; because the remainder-man in tail was not tenant to the præcipe, consequently could not have the intended reversion, because that was given in lieu of the estate recovered, which was no greater than the estate for life, he only being legal tenant to the præcipe. 1 Rel. Abr. 395; Dyce 352; Cr. Eliz. 670; Mor. 255, 256.

In a writ of error to reverse a Common Recovery, the tenant to the præcipe was made by a Fine, the Recovery was suffered, and the Fine reversed; yet it was held a good Recovery, for there was a good tenant to the præcipe at the time. 2 Saalk. 568. See title Fine of Lands.

If a manor be given to a man and a woman, and the heirs of the body of the man begotten on the woman, and they intermarry, and then the husband suffers a Recovery of the whole manor, this is good for a moiety; because, the gift being made before marriage, they had each an undivided moiety of the land, and the Recovery can operate but for a moiety, because the husband only was tenant to the præcipe, consequently the demandant only could recover his interest in the manor, which was but a moiety. Mor. 95. See this Dictionary, title Baron and Femm.

If lands are given to a man and his wife, and the heirs of the body of the husband, and a Recovery is had against him only, this Recovery will neither bar the reversion, nor the tail; for the reversion being to go in succession, as the estate which the tenant lost would have done, the husband could not lose all the land, because he was not a legal tenant to the whole, his wife being joint tenant with him who was no party to the writ; nor could the Recovery be good for a moiety, because there are no moieties between baron and feme, but both are considered as one person in Law; but if the husband had levied a fine, and the conuete suffered a Recovery, and vouched the husband, who vouched the common voucher, this had been a good bar of the entail; for there the husband came in to defend the estate-tail, which the wife was a stranger to; and the issue which he recovered over is a recompense for the estate-tail, which he only had a right to, without the feme, and which the Law gives him a power to dispose of. Mor. 210; 3 Ec. 5; 2 Rel. Abr. 395; 4 Leon. 351; 1 And. 1621; 2 Saalk. 568.

In ejectment, on special verdict, the case was, A, feised in fee of the lands in question, hath issue D, his eldest son, C, his second, and D, his third son; on a marriage intended between D and his youngest son, and one E, he (A.) before the marriage, covenants to stand feised to the use of himself for life, remainder to D, and E and the heirs male of their two bodies, remainder to D and the heirs male of his body, remainder to C and the heirs male of his body, remainder to B, and the heirs male of his body, the remainder to his own right heirs; A, dies, a præcipe is brought against one Upton as tenant of the freehold, and after, before the return of the writ, D by bargain and sale conveys the land to Upton and his heirs, and the deed was enrolled after the return of the writ, and within six months: Upton vouches D only, without his wife, and a common Recovery was suffered to the use of D and his heirs; then E dies, and after E dies without issue male, having issue four daughters; and between them and C in remainder was the question, what was barred by this Recovery? if it. It was agreed on both sides, that here was a good tenant to the præcipe, the bargain and sale being made to Upton before the return, yet, it being enrolled in due time, the freehold was in Upton, ab initio. 2dly, That this settlement being made before marriage, when the husband and wife took by moieties and not by intestacies, the husband had absolute power over his own moiety; therefore, for that, the Recovery was an absolute bar; wherein this differs from the case of Owen and Morgan, (the preceding case,) 3 Ec. 5, where they took by intestacies. 3dly, That this Recovery was no bar to the other moiety of E, because she was not party; but her estate tail in that continued untouched, though it was urged also to be a bar for her moiety, the dying first, and so her husband in as sole tenant of the whole ab initio; and that, during the
RECOVERY II. 7, 8.

coverture, the husband had power to make a good tenant of the whole; but the Court held otherwise, 4thly. It was held, that the estate-tail to D. and E. being determined, the remainder to D. in tail male general, and all the other remainders depending thereon, were barred absolutely by this Recovery; for D. coming in as vouchee, comes in privity and representation of all the estates he hath or had, consequently he comes in representation of the remainder to himself in tail male general, and then the recompence in value goes to that, and also to all the other remainders depending thereupon, and by consequence all are barred by the Recovery, 3 Lev. 107.

Tenant in tail, in consideration of his son's marriage, covenants to stand feised to the use of himself and his heirs till the marriage, and then to the use of himself for life, and after to the use of his son and to the heirs of his body, and suffers a common Recovery with single voucher to this purpose, and then dies without issue: This Recovery did not bar the remainder expectant on the estate-tail, for the covenant had changed the estate-tail into a fee, consequently the recompence could not be in lieu of the entail; since the tenant to the præcipe was not feised of the estate-tail at the time of the Recovery, 7 Ves. 51. But see 2 Salk. 619, which seems contrary.

A tenant in life, remainder to B. in tail, the remainder to C. in fee, A. and B. join in a Fine co man, &c. to a stranger, who renders it to A. for life, remainder to D. and his heirs; afterwards A. and B. suffer a Recovery with single voucher to the use of B. and his heirs: This Recovery did not bar the remainder in fee, because by the render they were feised of a new estate, and B. was not either tenant in possession, or feised in right of the entail; consequently, the recompence being given in lieu of the estate recovered, the tail could not be docked, nor the remainder-man barred by this Recovery, because the tenants to the præcipe were not feised of it at the time of the Recovery suffered. 58 Eliz. 607; Moor 634.

If the tenant in tail, to whom the estate has descended

et parte materiæ, suffers a Recovery, and declares the use to himself in fee, the estate will descend to an heir on the part of the mother, even if he had the reversion in fee from his father; and vice versa; but if he took the estate-tail by purchase, the new fee will descend to the heirs-general. 5 Term Rep. 104. If then a person who has inherited an estate tail from his mother, wishes to cut off the entail, and to make the estate descendable to his heirs on the part of the father; after the Recovery, he ought to make a common conveyance to himself; and to have the estate recovered back by them; by which means he will take the estate by purchase, which will then descend to his heirs-general.

2 Comm. 362, in n.

2. As to the use of the single and double voucher, it has been already observed, that the tenant who loses the land has, on his vouching over, a recompense being adjudged against his vouchee, which is to go in the same faction as the land recovered would have done: Now, a Recovery with single voucher is sufficient to bar an estate-tail, where the tenant in tail is tenant to the præcipe, and seised of the lands in tail at the time of the præcipe brought against him; for the recompence in value must follow the descent of the land which he loses; and when that proves to be the estate-tail, then the issue is supposed to have an equivalent for it, consequently not prejudiced by the Recovery; but because a single voucher can bar only the estate which the tenant is seised of at the time of the præcipe brought, and not any right which he hath, it was found necessary to admit the use of a double voucher; for if such tenant in tail discontinue the tail, and take back an estate or dispose the discontinuance, a Recovery against him with a voucher over could not bar the estate-tail; for the recompence comes in lieu of the land recovered, which was the defeasible estate, consequently the issue has nothing in value for the estate-tail, without which he cannot be barred. Bro. title Recovery. Ves. 51: 3 Co. 5: Moor 256.

But if in this case tenant in tail after dissolution had, either by fine, or release, made a tenant to the præcipe, and came in himself as vouchee, and then vouchèd over the common vouchee; this double voucher had been sufficient to bar the tenant in tail, and his heirs, of every estate of which he was at any time seised; for when the tenant in tail comes in as vouchee, it is presumed he will, and he has an opportunity to set up every title he has to defeat the demandant; and since what he offered was not sufficient to bar the demandant, the Court takes it for granted, he had no other title than what he set up; therefore will give him but one recompence for all.

3 Co. 6, b; Plownd. 8; Eliz. 562: Pep. 100: Mod. 365: Hebr. 263.

Thus, if A. be tenant for life, remainder to B. in tail, and a stranger dissolves A. and enforces B. if a præcipe be brought against B. and a Recovery suffered as usual, this shall not affect the estate-tail; because B. had only a right to that, and was not seised of it; and the recompence was not given in lieu of the tail, because the estate-tail was not in question, on the Recovery, for B. could not lose the estate he had not; but if in this case B. had made another tenant to the præcipe, and came in himself as vouchee, this had barred the entail. 3 Co. 58, b: 2 Rel. Abr. 395.

If A. be tenant for life, remainder to B. in tail, and B. dissolves A. and suffers a common Recovery, himself being tenant to the præcipe; this Recovery with a single voucher is sufficient to bar the estate-tail in B. because he was actually seised of that, at the time of the præcipe brought against him; for his dissolution did not divest his own estate, but only gave him a defeasible estate for life, which was immediately merged in his remainder; because the estate for life, and his inheritance, could not fold together at the same time in him. 2 Rel. Abr. 395.

Thus we see how estates-tail are barred by Recoveries, and the uses of the single and double voucher; and in this respect the operation of a Recovery is correspondent to that of a Fine, for they are but different ways of transferring estates-tail for security of purchasers; but the operation of a Fine differs from a Recovery in respect to strangers who have reversion or remainders exceptant on estates-tail; for a Fine does not bar them, until they omit to make their claim within five years after the estate-tail is spent, and their reversion or remainder becomes executed; but a Recovery reaches them immediately, and at the same time bars the estate-tail and all revocations and remainders on account of this supposed and imaginary recompence. 2 Co. 372, a: 2 Rel. Abr. 396: Mod. 156: Bro. title Recovery, 28, 55.
RECOVERY II. 2, 3, 3 III.

And as a Common Recovery suffered by tenant in tail bars all reversions and remainders expectant, so it avoids all charges, leases, and incumbrances made by these in reversion or remainder, and the Recoveror shall enjoy the land, free from any charge, forever; as where he in remainder on an estate-tail, granted a rent charge, and the tenant in tail suffered a Recovery; it was adjudged, that the grantee could not dispossess the Recoveror; for since the rent was only at the first good, because of the possibility of the grantor's remainder coming in possession, when that possibility ceases, by the Recovery of tenant in tail, such grant must then become void. 

Moor 150: Cro. Eliz. 1718: 1 Co. 62: 2 Rel. Abr. 366: 

Moor 154: 4 Leav. 150, &c: Popb. 5, 6. See ante II. 1.

Tenant to the præcie may be made either by fine, settlement, lease, and release, or by bargain and sale enrolled. 

Wilf. 181. See further, Fin. Abr. Recovery (U): Com. Dig. Recovery (b. 3.): Fig. 65, 72. As to the doctrine of tenant to the præcie by different, see 1 Burr. 66. 

Tenent to the præcie made by Fine, Recovery suffered, Fine reversed; yet held a good Recovery; for there was a tenant at the time. 2 Gai. 568. 

For if the person against whom the præcie is brought, be at the time when the præcie is fixed, or at any time before judgment, actual tenant of the feised, it is immaterial what becomes of it afterwards. 1 H. 203, b. in n.

Though there is no tenant to the præcie, the Recovery is good against the party who suffered it, by way of cripo, though against remainder-men or strangers. 10 Mod. 45. And though the tenant for life keeps the possession, yet the Recovery will be good. Fig. 41. 

And a surrender for tenant for life shall be presumed of a Recovery of 40 years standing. 2 Sina. 1129.

1:27: fee 2 Burr. 1069.

3. If Fines or Recoveries be levied or suffered without any good consideration, and without any ufs declared, they, like other conveyances, enure only to the use of him who levies or suffers them. Dyer 18. 

And if a consideration appears, yet as the most usual fine, "for cognizance de droit como, &c." conveys an absolute estate, without any limitations, to the cognizant: (see title Fine) and as Common Recoveries do the same to the Recoveror; these assurances could not be made to answer the purpose of family settlements, (wherein a variety of uses and designations is very often expedient,) unless their force and effect were subjected to the direction of other more complicated deeds, wherein particular ufs can be more particularly expressed. The Fine or Recovery itself, like a power once gained in mechanics, may be applied and directed to give efficacy to an infinite variety of movements, in the vast and intricate machine of a voluminous family settlement. And, if these deeds are made previous to the Fine or Recovery, they are called deeds to lead the ufs; if subsequent, deeds to declare them. As, if A. tenant in tail, with reversion to himself in fee, would settle his estate on B. for life, remainder to C. in tail, remainder to D. in fee; it is what, by Law, he has no power of doing effectually, while his own estate-tail is in being. He therefore usually, after making the settlement propounded, covenants to levy a Fine, (or, if there be any intermediate remainders, to suffer a Recovery,) to E. and directs that the same shall enure to the ufs in such settlement mentioned. This is now a deed to lead the ufs of the Fine or Recovery; and the Fine when levied, or Recovery when suffered, shall enure to the ufs so specified, and no other: For though E. the Cognizant or Recoveror, hath a fee simple vested in himself by the Fine or Recovery; yet, by the operation of this deed, he becomes a mere instrument or conduit-pipe, feised only to the use of B., C., and D. in successio: order: which use is executed immediately, by force of the Statute of Uses. Or, if a Fine or Recovery be had without any previous settlement, and a deed be afterwards made between the parties, declaring the ufs to which the same shall be applied, this will be equally good, as if it had been expressly levied or suffered in conformity of a deed directing its operation to those particular uses. For by stat. 4 & 5 Ann. c. 10, indentures to declare the ufs of Fines and Recoveries, made after the Fines and Recoveries had and suffered, shall be good and effectual in Law, and the Fine and Recovery shall enure to such ufs, and be effectually to be only in use, notwithstanding any doubts that had arisen on the Statute of Frauds, 29 Car. 2. c. 3, to the contrary. See 2 Comm. c. 21, and the Appendix in that volume: and this Dictionary, title Uses.

III. The judgment obtained in a Common Recovery being a matter of record, and similar in almost every respect to a judgment in an adversary suit, can only be reversed by a writ of error: but no person has a right to bring such writ of error, unless he has an immediate interest in the lands whereof the Recovery was suffered; though the right of bringing such writ is not forfeited to the Crown on an attainted for High Treason. 

Craife on Rec.

A Recovery ought not to be reversed unless writes of false facts are alleged against the terre-tenants and the heir: because the errors in a Recovery ought not to be examined until all the parties interested in supporting it be before the Court: but this circumstance is discretionary, and not nisi prius. 3 Mod. 1197; 274: Hol. 64. 

Nothing can be alleged for error in a Common Recovery, which contradicts the record; and therefore no incapacity in a vouchee can be alleged for error, where he appeared in person: but if a vouchee appears by attorney, an averment may then be made, either that such vouchee died before the day on which judgment was given; or that he laboured under some personal disability, which rendered him incapable of suffering a Recovery. See 1 Wilf. 42: 4 Rep. 7: Cro. Eliz. 739, and ante I. 

By stat. 23 Eliz. c. 3, it is enacted, that no Recovery (Fine, &c.) shall be reversed for false or incongruous uses, latrunce, interlining, misnaming of a Warrant of Attorney, or not returning of the Sheriff, or other want of form in words, and not in matter of substance. And by stat. 10 & 11 W. 3. c. 14, that no Recovery (Fine, or Judgment in a real action, &c.) shall be reversed or avoided, for any error or defect therein, unless the writ of error, or suit for reversing such Recovery, &c. be brought and prosecuted with effect within twenty years after such Recovery suffered, &c. Saving the right of infants, females covert, &c. so as they bring their writ of error within five years after their disabilities removed. By this latter statute, a writ of error must be brought within twenty years after the Recovery has been suffered; and not within twenty years after the title has accrued. 

Craife on Rec. And by stat. 21 Ann. 1. & 26, persons
RECOVERY III.

Persons suffering Recoveries in the name of others are guilty of felony without benefit of clergy. See title Fine of Lands VII.

Where a Recovery is suffered of lands held in ancient demesne, it must be reversed by writ of deceit. See title Ancient Demesne.

A Common Recovery suffered in a copyhold Court can only be reversed by petition to the lord, in the nature of a writ of false judgment. But it seems that the lord of a manor is not, in all cases, bound to disentitle one who has an immediate interest in the lands, the Law allows all strangers, whose interests are affected by a Recovery to falsify it, by entry, action, or plea. Thus, where a Recovery is suffered by tenant in tail, although the issue in tail cannot enter, because the Recovery operates as a discontinuance, yet he may bring a formenon, and if the Recovery is pleaded against him, he may falsify by pleading matter to avoid it; but in cases of this kind he is restrained, in the same manner as in a writ of error, from pleading any thing contrary to the record. Cr, 5.; see ante, 77. As to the remedies for terms affected by Recoveries, see ante; the introduction to this title.

A Common Recovery may also be invalidated, circuitously, by evidence on a trial in ejectment. See ante I. Although a Common Recovery can only be reversed by writ of error, or some proceeding of a similar nature, to which none are entitled but those who have an immediate interest in the lands, the Act only allows all strangers, whose interests are affected by a Recovery to falsify it, by entry, action, or plea. Thus, where a Recovery is suffered by tenant in tail, although the issue in tail cannot enter, because the Recovery operates as a discontinuance, yet he may bring a formenon, and if the Recovery is pleaded against him, he may falsify by pleading matter to avoid it; but in cases of this kind he is restrained, in the same manner as in a writ of error, from pleading any thing contrary to the record. Cr, 5.; see ante, 77. As to the remedies for terms affected by Recoveries, see ante; the introduction to this title.

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If A. be tenant in tail, remainder to B. and A. suffers an erroneous Recovery, and the common vouchee relates to the Recoveror; yet if A. dies without issue, B. may, notwithstanding the release, reverse it by writ of error; for the common vouchee is only called in for form, and as he has really no interest in or title to the land, so really neither does he make any recompence to the person who loses the land; therefore it were unreasonable to carry the notion of the imaginary recompence so far as to suppose him a real sufferer, and thereby give him the privilege of setting aside the conveyance, by which he is in no way affected. 2 Co. 2. 3.

In a writ of error to reverse a Recovery, suffered by an infant who appeared by guardian, the error assigned was in the entry of his admission by guardian, viz. quod A. B. fequeat pro J. S.; whereas it was objected, that since the infant was tenant to the writ, it ought to have been made by tenant in tail, although the advowson of the church, out of which the rent issues, was in the demand; therefore the recovery was good, for though the pension cannot be in nature of an annuity, yet for the greater security of the tenant to the land in demand, comes in as vouchee, and then, it has been already observed, (see ante I.) that a Recovery suffered by an infant in person shall not bind him; but though he may avoid it, yet it cannot be done by any entry in pais, but by writ of error, and this too during his minority; for the judgment of the Court being on record must be set aside by an act of equal authority; but an infant may avoid a Recovery by writ of error, as well where he comes in as voucher, as where he is tenant to the recovery; for though (strictly speaking) the Recovery is not against him where he is not tenant to the recovery, yet for the greater security of the purchaser, and to strengthen the Recovery by the use of the double voucher, the person, who really has the right to the land in demand, comes in as voucher; and then, by voyching over the common voucher, has one recompence for his costs; consequently, if he be the person who really loses the land, he ought in reason to reverse the Recovery, as well where he comes in as voucher, as where he is setled of the land and is tenant to the recovery. 7 Rol. Ab. 742; 1 Lev. 1. 142.

If tenant in tail within age comes in as voucher by attorney in a Common Recovery, he in remainder may affign this for error, for he is party in interest to the Recovery; and where a man's interest is bound by another's act, it is but reasonable he should be allowed to free himself from the mischief by taking advantage of any error in it. 1 Rol. Ab. 755; 796.

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RECOUPE, from the Fr. recuper.] The keeping back or lopping something which is due; and in our Law, we use it for, to defalk, or discount; as if a person hath a rent of ten pounds out of certain lands, and he disfartes the tenant of the land; in an affize brought by the disseffee, if he recover the land and damages, the disseflor shall recope the rent due, in the damages, is of an rent-chargc issuing out of land, paid by the tenant to another, &c. he may recover the same.

Terms de Leg. Dyer 2. See title Set-off.

RECREANT, Fr.] Cowardly, faint-hearted. See title Champion.

RECTORI PRISA REGIS, The King's right to Prifage or taking of any butt or pipe of wine before, and another behind the mail, as a cufrom for every ship laden with wines. Edw. I. in a charter of many privileges to the Barons of the Cinque-Ports, discharged them of this duty. Cowell. See titles Prifage; Cufmons on Mercantin.

RECTITUDO, Right, or Justic; sometimes it signifies legal dues, a tribute or payment. Leg. Ed. Confess. c. 30: Leg. Hen. 1. c. 6.

RECTOR, Right; Breve de Recto; A Writ of Rights, which is of so high a nature, that no other writs in real actions are only to recover the possession of the land, &c. in question: this aims to recover the seifin, and the property, and thereby both the Rights of possession and property are tried together. Co. Lit. 158. See title Writ of Rights.

It hath two species: Writ of Right patent, and Writ of Right close: the first is so called, because it is sent open, and is the highest writ of all others; lying for him who hath a fee-simple in the lands or tenements sued for, against tenant of the freehold at least, and in no other case. F. N. B. 1. 2, &c. But this Writ of Right patent seems to be extended farther than originally intended; for a Writ of Right of Dower, which lies for tenant in dower is patent, as appears by F. N. B. 7. And the like may be said in some other cases. Table Reg. Orig. Afo there is a special Writ of Right patent in London, otherwise termed a Writ of Right according to the cufrom, which lieth of lands or tenements within the city. &c. The Writ of Right patent is likewise called breve magnam de Recto. Reg. Orig. 9: 8ta, lit. 5. c. 52.

A Writ of Right close is brought where one holds lands and tenements by charter in ancient demesne, in fee-simple, fee tail, or for term of life, or in dower, and is disfarted; it is directed to the bailiff of the King's manors, or to the lord of ancient demesne, if the manor is in the hands of a Subject, commanding him to do Right in his Court: this writ is also called breve parsum de Recto. F. N. B. 11: Reg. Orig. 9: Britton, c. 120.

If a person feised in fee-simplc dies seised of such estate, and a stranger doth abate and enter into the land, and defarge the heir; the heir may sue a Writ of Right patent against the tenant of the freehold of the same land, or an affize of Morte's ancestor. 11 Aff. 17.

In a Writ of Right patent, the demandant is to count of his own seifin, or of the seifin of his ancestor; if one bring the writ as heir to an ancelor, he may lay the seifin and cefiples as in pannery of the profits of the lands in his ancestors; and where it is brought by a Bishop or Body-politic, seifin of the cefiples is to be laid in themselves, or in their predeceffors. New Nat. Br. 10.

Where a Writ of Right close is directed to the lord of whom the lands are held, and he will not hold his Court to proceed on it; a writ shall issue requiring him to hold his Court, &c. And if the lord hold his Court, but will not do the demandant right, or delay it, the plea may be removed by the writ called Talc into the County-Court of the Sheriff; and from thence by Recipaci into the Common Pleases. New Nat. Br. 6. 7. See title Writ of Right.

Glansul seems to make every writ, whereby a man sues for any thing due unto him, a Writ of Right. c. 10-12.

RECTO DE ADOVCTIONE ECCLESIAE, A Writ which lay at Common Law, where a man had right of advowson, and the parson of the church dying, a stranger presented his clerk to the church; the party who had the right, not having brought his action of quare capita or dragework protestament, but having suffered the stranger to usurp on him; and it lay only where an advowson was claimed in fee to him and his heirs. F. N. B. 30. See title Aduonclos III: 3 Comm. c. 16.

RECTO DE CUSTODIA TERRÆ ET HEREDIS, A Writ of Right of Ward.] A Writ which lay for him who had a tenant, holding of him in chivalry, died in nonsuit, against a stranger who entered on the land, and took the body of the heir. By the fiat, 12 Car. 2. c. 24, it is become useless as to lands helden in capite, or by knight's-service; but where there is guardian in feeage, or appointed by the last will and testament of the ancestor. For the form, see in F. N. B. 159: Reg. Orig. 161.

Guardians in foage was always, and still is, entitled to an action of Reviviscens of Ward, (Reviviscens de Garde; fee that title:) if his ward or pupil be taken from him; but then he must account to his pupil for the damages he recovered. Hale in F. N. B. 159. And as he was entitled at Common Law to this Writ of Right of Ward, so it seems that he is still entitled to this antiquated remedy. 3 Comm. 141. But a more speedy and summary method of redressing all complaints relative to Wards and Guardians hath of late obtained, by an application to the Court of Chancery: which is the supreme guardian, and has the superintendence jurisdiction of all the infants in the kingdom. See title Guardian I. 3, 45 and passim.

RECTO DE DOTI, A Writ of Right of Dower, which lies for a woman who has received part of her Dower, and demands the residue against the heir of the husband, or his guardian. F. N. B. 7. 9. 147: Co. Lit. 52. 38. See title Dower.

RECTO DE DOTI UNDE Nihil HABIT, A Writ of Right which lies in case where the husband, having divers lands or tenements, hath assigned no Dower to his wife, and the thereby is driven to sue for her thirds against the heir, or his guardian. Old Nat. Br. 6: Reg. Orig. 170. See title Dower.

RECTO QUANDO (or quia) DOMINUS REmi­sIT; A Writ which lies where lands or tenements, in the feigniory of any lord, are in demand by a Writ of Right; if the lord in such case holdeth no Court (or hath waived his right) at the prayer of demandant or tenant, but sends to the King's Court his writ to put the cause thither for that time, (having to him at other times the right of his seigniory,) then this writ shall issue out for the other party, and hath its name from the words therein contained. F. N. B. 16. See title Writ of Right.
RECTO DE RATIONABILI PARTE; A Writ of Right lying between privies in blood, as brothers in generation, sisters, and other coheirs, for land in fee-simple. If there be two fillets, and the ancestor dieth seised of land in fee, and one of the fillets enters into the whole, and dejects the other, the heir is dejectd shall have the Writ of Right de rationabili Parte; to have her reasonable or proportionable Part: And if, where there are two fillets, after the death of the ancestor they enter and occupy in common as coheirs, and then one of them deiects the other to occupy that which is appendant or appurtenant to the mettelose, &c., which they have in coparerciery; the heir is dejectd shall have this writ. Also, if the ancestor were dejectd of lands, and die, and one fillet entereth into the whole land, and dejects her fillet, she shall have the writ against her other fillet: For it lieth well as upon a dying seised of the ancestor, if one fillet enter upon all, where the ancestor doth not die seised, and it is a writ of right-pauper, &c., Part. 2. New Nat. Br. 10, 120.

In this writ the demand shall be of a certain portion of land, to hold in severalty; and voucher and dejects do not lie in it, because of the privy of blood, but in a rationabili Parte the view was granted, an. 15 H. 6; for that the ancestor did not die seised, &c. The procexr on the writ, after removing into C. B. is Simons, Grand Cape, and Petit Cape, &c. F. N. B. 9. See Bost. on real actions.

RECTO SUR DISCLAIMER, A Writ which lies where the lord, in the Court of Common Pleas, allows the tenant, and the tenant disclaims to hold; on which Disclaimer the lord shall have this writ, and if he avers and proves that the land is helden of him, he shall recover back the land from the tenant for ever: this writ is grounded on the faute of Wyham, 2. c. 2. Old Nat. Br. 150. See title Disclaimer.

RECTOR, Lat. A Governor; Rector Ecclesie Parochialis, is he who hath the charge and cure of a parish church. It hath been held, that Rector Ecclesie is one who hath a parsonage where there is a vicarage endowed.

And when dioceses were divided into parishes, the Clergy who had the charge in those places were called Rectors; afterwards, when their Rectories were appropriated to monasteries, &c., the Monks kept the great tithes; but the Bishops were to take care that the Rector's place should be supplied by another, to whom he was to allow the small tithes for his maintenance; and this was the Year. See titles Parson; View.

RECTOIAL TITHES; See title Tithes.

RECTORY, Rectore.] 1. taken pro integra Ecclesie Parochialis, cum eam hab. jur. judic. frond. destr. obi. et qu. proventuum frond. Spemino. Also the word Rectory hath been often applied to the Rector's mansion, or parsonage-house. Paroch. Antig. 549. See titles Parson; Parsonage.

RECTUM, Right; anciently used for a trial or accusation. Bract. lib. 3.

RECTUM IN CURIA, i.e. Right in Court; one who stands at the bar, and no man objects any offence.

RECUSANTS. Smith de Repub. Angl. lib. 2. c. 3. When a person outlawed hath reversed the outlawry, so that he can participate of the benefit of the Law, he is said to be Rectus in Curia.

RECUSANTS; See title Papists I. 2; and also titles Onera; Nonconformists.

The following determinations may perhaps be useful by analogy; and are therefore here preserved as supplementary to what is said upon the subject under the titles referred to.

As to licensing a Recusant to travel, the Bishop, Lieutenant, or Deputy-lieutenant, who gives his consent to it, must be a distinct person from the Justice of Peace who gave the licence; therefore, if one and the same person be a Justice of Peace, and Deputy-lieutenant, he cannot act in both capacities; but if he sign and seal the licence as a Justice of Peace, the assent of some other Deputy-lieutenant, &c., must he had: And it is a good exception to a licence by four Justices, that no particular cause of the Recusant's travelling is expressed in it. Cro. Jac. 352; Cowley 210.

A person was indicted for Recusancy, but committed before conviction; and so again the second time, and was indicted a third time for a relapse: And on motion, that it might be certified into the Exchequer, because, by the statute 35 Eliz. c. 2, it is to lose all the benefit which he was to have by his former conformity, the relapse was certified accordingly. 1 Bulk. 133.

It hath been adjudged, that a writ of error will not lie on a conviction of a Recusant, for not rendering himself to the Sheriff, &c., because the conviction is no judgment, but the statute gives process on it for the forfeiture: So that if there be any faults in it, the same is to be quashed in the Exchequer, the party first conforming. Raym. 433.

An Information qui tam was brought against a defendant, setting forth, that before and on such a day he was a Recusant convict, and that afterwards he confirmed, &c., and for three years after had not received the Sacrament, and so demanded 5d. for every year; On not guilty pleaded, the plaintiff had verdict, and therefore it was moved that the information was inaccertain because neither the time was alleged, nor how, or in what Court, nor before whom the conviction was; and the informer demands the penalty for three years, when by statute no information can demand a penalty upon the penal Law, but by an information exhibited within a year after the offence: But it was resolved, that the first exception had been good on demurrer; but the defendant having pleaded Not guilty, all the circumstances of his conviction were admitted, and nothing remained to be tried but the fact: and as for the second exception it was good against the informer for his part, but should not prejudice the King. Cro. Jac. 365.

The Stat. 25 Eliz. c. 1, gives several remedies against Recusants; one for the King alone, and there the prosecution must be by indictment in R. R.; the other for a common person, and that is to by action of debt, bill, plaint, or information. And the Stat. 29 Eliz. c. 6, was made for the benefit of the Crown on indictments, and doth not extend to informations; therefore such informations may be brought in any Court of Record. Hob. 204.
Where the defendant is indicted on the statute of Re- 
cusancy, conformity is a good plea; but not if an action 
of debt be brought. 1 Mod. 213; but vide 2 Show. 332.

A Recusant certified into the Court of King's Bench, 
according to 25 Eliz. c. 1, shall give security for his 
good behaviour, &c. 2 Bails. 155. The judgment in Re- 
cusancy is good evidence of: 2 Strange 1049.

RED, San. red., Advice; and redemption is one who 
avoided the death of another. See Deduma.

Red Book of the Exchequer, Liber Rubros 
Staccatos.] An ancient record, wherein are registered, 
the names of those who held lands per baroniam in 
the time of Hen. II. Rylay 667. It is a manuscript volume 
of several miscellaneous treatises, in the keeping of the 
King's Remembrancer, in his office in the Exchequer, and 
has some things (as the number of the hides of lands 
in many of our counties, &c.) relating to the times be- 
fore the Conquest. There is likewise an exact collec- 
tion of the ecuages under King Hen. I. Rich. II., and 
King John; and the ceremonies used at the coronation 
of Queen Eleanor, wife to King Henry III., &c.

REDDENDUM, is used substantively for the clause 
in a lease, whereby the rent is referred to the lessor; 
which anciently consisted of corn, fielth, &c., and other 
valuables. 2 Rep. 727.

In debt for rent, the plaintiff declared on a lease made 
25 Augst. 11 W. 3. of a messuage, &c. for seven years, 
to commence from the 24th day of June before; Redde- 
dandum quarterly at Michaelmas, St. Thomas's day, Lady-day, 
and Midsummer, three pounds ten shillings, the first 
payment to be made at Michaelmas then next; and assigned 
for breaches that fourteen pounds of the rent was in arrear 
for one year, ending 24 December anno 13 Will. And on 
demurrer to this declaration, it was objected that on this 
lease there was no year could be ended on the 24th of 
December, but on St. Thomas's day, according to the Red- 
dandum; which was held to be true, because where spe- 
cial days are limited in the Rededandum, the rent must be 
computed from those days, not according to the ben- 
enium, and that the rent is never computed from the 
hundred day, but when the Rededandum is general, i.e. paying 
quarterly so much. 1 Saik. 141. See titles Died II.; 
Rent; Lease.

Reddidit SE, Hoth renderd himsell.] Where a 
man procures bail for himself an action in any Court 
at Law: if the party bailed at any time before the return 
of the fecon de facias against the bail, renders 
himself in discharge of his bail, they are thereby dis- 
charged. 2 Litt. Abr. 450. See titles Bail; Seire facias 
against Bail.

Redditarius, A Renter; Redditarius, a Rental of 
a manor, or other estate. Cod. Ala. Glosn. MS. 92.

Reddition, Redditt.] A surrendering or returning; 
being also a judicial acknowledgment that the thing in 
demand belongs to the demandant, and not to the per- 
son to surrendering. See fat. antig. 34 & 35 H. 8. e. 24.

Reddittus Assissus, A set or pending Rent.
See Affiatio.

Redelivery, A yielding and delivery back of a 
thing: if a person has committed a robbery, and stolen 
the goods of another, he cannot afterwards purge the 
offence by any redelivery, &c., Co. Lit. 69; H. P. C. 
72. See titles Redelivery; Larceny.

Redemise, A re-granting of lands demised or 
feated. See Demise and Re-demise.

Redemption, Redemption.] A Ranom or Commu- 
tation: By the old Saxon Laws, a man convicted of a 
crime paid such a fine according to the estimation of his 
head, pro redemptione fun.

Redemption, Redemption.] A Difficult made by 
him, who once before was found and adjudged to have 
debt; and for payment of the same man's lands or tenements; 
for which there lies a special writ called a Writ of Re-dif- 
sfein. Old Nat. Br. 105; F. N. B. 188. See this Dict., 
Diffein; Affiat of Novel DiffEfia.

Redress of Injuries. The more efficaciously 
to accomplish the Redrefs of Injuries, Courts of Juftice 
are instituted in every civilized society, in order to pro- 
tect the weak from the infuls of the stronger; by ex- 
pounding and enforcing these laws, by which rights are 
defined, and wrongs prohibited: This remedy is there- 
fore principally to be sought by application to these Courts 
of Juftice; that is by civil suit or action. 3 Comm. 2.

Redubbers, Thole that buy stolen cloth, and turn 
it into some other colour or fashion, that it may not be 
known again. Britton, c. 29: 3 Inf. 134.

Red-Entry, from the Fr. re-enter, cursus intrane.] The 
renewing or retaking a poiffession lately had; as if 
a man makes a lease of lands, &c. to another, he thereby 
quite the poiffession; and if he covenants with the 
lessor, that, for non-payment of rent at the day, it shall 
be lawful for him to re-enter; this is as much as if he 
conditioned to take again the land into his own hands, 
and to recover the poiffession by his own act, without 
suit the Law. But words in a deed give no Re- 
entry, if a clause of Re-entry be not added. Wood's 
Inf. 149.

One may reserve a rent on condition, in a feoffment, 
lease, &c. that if the rent be behind he shall re-enter, 
and hold the lands till he is satisfied, or paid the rent in 
arrear; and in this case if the rent be behind, he may 
re-enter; though when the feuor, &c. pays or tenders 
on the land all the arrears, he may enter again. And the 
seor, &c. by his Re-entry, gaineth no estate of free- 
hold, but an interest, by the agreement of the parties, to 
take the profits in the nature of a distress: Here the pro- 
fits shall not go in part of satisfaction of the rent; but it is 
otherwise if the feuor was to hold the land till he 
was paid by the profits thereof. Law. 347: Co. Lit. 204.

The distinction, when the profits taken by the lessor 
after entry are, and when they are not, to be in satis- 
faction of the rent, is not admitted in equity; for the Courts of Equity will always make the lessor account to 
the lessor for the profits of the estate, during the time 
of his being in possession of the lessor's); and decree him, after 
he is satisfied the rent in arrear, and the costs, charges, 
and expenses attending his entry, and detention of the 
lands, to give up the poiffession to the lessor; and deliver 
and pay him the surplus of the profits of the estate, and 
the money arising thereby. 1 Inf. 283, (a) in n.

All persons who would re-enter on their tenants for 
non-payment of rent, are to make a demand of the rent; 
and, to prevent the Re-entry, tenants are to tender their 
rents.
Rent, &c. 1 Inst. 301. If there is a lease for years, rendering rent, with condition, that, if the lessee assigns his term, the lessor may re-enter; and the lessor assigneth, and the lessee receiveth the rent of the assignee, not knowing or hearing of the assignment, he may re-enter notwithstanding the acceptance of the rent. 3 Rep. 65; 8 G. E. &c. 553. See further, title Rent.

A feoffment may be made upon condition, that if the feoffor pay to the feoffee, &c. a certain sum of money at a day to come, then the feoffor to re-enter, &c. See title Feoff for pay.

RE-EFFECTED; as the Exchange of the sum mentioned in the bill, is, back again to the place whence it was drawn. 1 Lex Mercet. 58. See title Bill of Exchange.

RE-EXTENT, A second extent on lands or tenements, on complaint, that the former was partially made. &c. 2 Broke 413. See title Extent.

RE-FA-LO, The abbreviation of Recuerdario fueras iniqua, &c. See that title.

REFARE, from Sax. refer, or referen. To bereave, take away, or rob. Leg. Hen. 1. c. 83.

REFERENCE, The lending any matter by the Court of Chancery to a Master; and by the Courts at Law a Prothonotary, or Secondary, to examine and report to the Court. 2 Litt. Abr. 452.

In Chancery, by order of Court, irregularities, exceptions, matters of account, &c. are referred to the examination of a Master of that Court. In the Court of B.R. matters concerning the proceedings in a cause, by either of the parties, are proper matters of Reference under the Secondary, and for him in some ordinary cases to compose the differences between them; and in others to make his report how the matters stand, that the Court may settle the differences according to their rules and orders. Pape. 1650.

If a matter in difference be referred to the Secondary, and one of the parties will not attend at the time appointed, after notice thereof given, to hear the business referred; the other party may proceed in the Reference alone, and get the Secondary to make his report without hearing of the party not attending. 2 Litt. 542.

If a question of mere law arises in the course of a cause in Chancery, as whether, by the words of a will, an estate for life or in tail is created; or whether a future interest devised by a telletor shall operate as a remainder on an executory devise; it is the practice of that Court to refer it to the opinion of the Judges of the Court of K.B. or C.P. upon a cause cited for that purpose, wherein all the material facts are admitted, and the point of law is submitted to their decision; who thereupon have it solemnly argued by counsel on both sides, and certify their opinion to the Chancellor; and on such a certificate the decree is usually founded. It seems that the Master of the Rolls, sitting for the Chancellor, may make such Reference; but not when sitting at the Rolls.

* Brac. C. 88. The Court of Exchequer is both a Court of Law and Equity; therefore, if a question of mere Law arises in the course of the exercise of its equitable jurisdiction, the Barons will decide upon it in that suit, without referring it to another jurisdiction. 3 Comm. 452; 1, and 2.

REFERENCE TO WORDS. The King granted to A. and D., and their heirs, all those messuages, &c. late in the tenure of J. S., situate, &c. in the city of W., and in the suburbs thereof, and out of the city, within the jurisdiction and liberties thereof, belonging to the late priory of, &c. which messuage, &c. in the city and suburbs, belonging to the late priory, were of the clear yearly value of 40l. Resolved, that the words (all those messuages, &c.) make a necessary Reference, by reason of the whole word (tho'fe), as well as to the will, as to the tenure of J. S.; if to the one or the other fails, the general grant is void; for (tho'fe) is not satisfied till the sentence be ended. Dodington's case. See 18 Vin. Abr. 272.

REFERRANDARY, Referendaries. An officer abroad, of the same nature as Masters of Requests were to the King among us: The Referendaries being those who exhibit the petitions of the people to the King, and acquaint the Judges with his commands. And there was also an officer in the time of the English Saxons here. Spelman.

REFORMATION OF RELIGION. The change from the Catholic to the Protestant Religion, and the destruction of the power of the Pope in these kingdoms, which commenced in the reign of Hen. VIII., was established, after some interruption, in the reign of Queen Elizabeth; and finally sanctioned at the Revolution, on the abdication of James II.

REFUNDING. A. an attorney being ill, takes B. for his clerk, and receives 120l. of the money, and gives the father of B. to return 60l. of the money he paid him within a year. A. died within three weeks. The executor of A. was decreed to pay back 100 guineas. Vern. 456. See title Attorney.

A. was indebted to B. by mortgage in 400l. principal monies, and died. B. died, leaving J. S. executor. On a bill in Chancery, for payment of debts of A. out of lands charged with the same, the Master reported 700l. due on the mortgage, and the executor received the whole 700l.; but afterwards it appeared that 552l. 13s. 4d. had been paid to B. the tellator, by A. in his lifetime; whereupon the trustees and executors of an infant, brought a bill to be received against this over-payment; the executor (defendant) pleaded all the former proceedings; and also that he, before any notice of the over-payment, as executor of B., had paid away the 700l. in the debts of B. The Master of the Rolls decreed the executor to repay the purses, and he to be at liberty to sue such creditors, as through mistake he had paid, to refund; and this decree was approved by Lord Chancellor Cowper, who compared it to the case of a judgment obtained by an executor, and after reversed in error; and to that decree which is afterwards reversed by appeal, though he said, that, in the last case of an appeal, if the defendant had delayed the appeal, and willingly forced by willful the executor paid away money to the tellator's creditors, it would be otherwise; for this would be drawing the executor into a snare. 1 P. Wm. 355. See title Executor.

A. for 600l. purchases B.'s interest and estate in such an estate, to him and his heirs; the land is evicted. A. is not entitled to have his 600l. back; but his bill was dismissed. Finch, Rep. 288.
REFUSAL, It where one hath by Law a right and power of having or doing something of advantage to him, and he declines it. An executor may refuse an executorship; but the refusal ought to be before the Ordinary: If an executor be summoned to accept or refuse the executorship, and he doth not appear on the summons, and prove the will, the Court may grant administration, &c. which shall be good in Law till such executor hath proved the will; but no man can be compelled to take him on the executorship, unless he hath intermeddled with the estate. 1 Leas. 154. Cr. Eliz. 8. 9. Where there are several executors, and they all refuse, none of them shall administer afterwards; but if there is a refusal by one, and the other proves the will, the refusing executor may administer when he will, during the life of his co-executor. 1 Rep. 28. If there is but one executor, and he administer, he cannot refuse afterwards; and if once he refuse, he cannot administer afterwards: Thus, where a tenant being pelleled of lands, &c. for a term of years, devoted the same to the Chief Justice Cottle, and died; afterwards the executor wrote a letter to the Judge of the Prerogative Court, intimating, that he could not attend the executorship, and desiring him to grant administration to the next of kin to the deceased, which was done accordingly; and after this the executor entered on the lands, and granted the term to another; it was adjudged void, because the letter which he wrote was a sufficient refusal; and he may not once refuse, and afterwards take upon him the executorship. Mor. 272.

An executor, after a consent entered against the will, took the usual oath of an executor, and afterwards refused to prove the will; and it was held, that having taken the oath of executor, the Court could not admit him to refuse afterwards, but ought to grant probate to him, notwithstanding the caveat, on another's contending for the administration, &c. 1 Feli. 335. See tit. Executor.

There is a refusal of a clerk presented to a church, for illiterature, &c. in which case, if a Bishop once refuses a clerk for insufficienty, he cannot accept of him afterwards, if a new clerk is presented. 5 Rep. 58. Cr. Eliz. 177. See title Parson.

In trover, a demand of the goods, and refusal to deliver them, must be proved, Cr. 10 Rep. 56. See to title Trover.


REGALES, The King's servants or officers. Will.ingham, anno 1501.

REGAL PISIES, Whales and Surgeons, some add persons. See Fac. antiqu. 1 Eliz. c. 5 and this Dictionary, titles King; Queen.

REGALIA, Jurisprudenciae Jcymen fieplantia; Stolman.] The Royal Rights of a King, which the Civilian reckons to be fix; viz. Power of judicature; of life and death; of war and peace; matters of goods, as waifs, eflay, &c.; alliments; and waste of money. See title King.

The Crown, sceptre with the crofs, sceptre with the dove, St. Edward's staff, four several swords, the globe, the orb with the crofs, and other articles used at the Coronation of our Kings, are commonly called the Regalia. See the relation of the Coronation of King Charles II. in Baker's Chronicle.

REGALIA FACERR. To do homage or fealty, when he is invested with the Regalia. Malmby, de Gesta Pontificum, p. 127. de Astelisla.

RECORD, Recordarius; record; recordus, recordator.] Signifies, generally, any care or diligent respect; yet it hath also a special acceptation, where it is only used in matters of the forest; either for the office of Registrar, or for the compas of the ground belonging to that office. Crom. Jur. 175. 199. Touching the former, see Manwood, part 1. 194. 195. And touching the second significations, the compas of the Registrar's charge is the whole forest; that is, all the ground which is parcel of the forest, for there may be woods within the limits of the forest, that are not parcel thereof, and those are without the forest. Manwood, part 2. c. 7. p. 49. And see flat. 20 Car. 2. c. 3. As to the Court of Regard, and the office of Registrar, see this Dictionary, title Forest.

REGARDANT, Fr. seeing, marking, vigilant.] A Villein Regardant was called, Regardant to the Manor, because he had the charge to do all base services within the same, and to see the same freed of all things that might annoy it. This word is only applied to a villein or rief, yet in old books it was sometimes attributed to services. 1 Inst. 120. A Villein Regardant, it seems, was rather so called, because annexed to the manor; regarding, or relating to it. See titles Villeins; Tenures.

REGARDER, Regardarius, Fr. regarder, separator.] The officer of the King's Forell, who is sworn to make the regard of it; and has been used in ancient time, to view and inquire of all offences of the forest, as well of the men that offend as of venison; and of concealment of any offences or defaults of the foresters, and all other officers of the King's Forest, relating to the execution of their offices, &c. Comp. Jurid. 153. Manwood.

This office was ordained in the beginning of the reign of Henry II. Regarders of the Forest must make their regard, before any General Sessions of the Forell, or Judicat Seat, can be held; when the Regarder is to go through the forest, and every balmuck, to see and inquire.
inquire of the trespassers therein; ad avidendum, ad inqui-
reandum, ad interrogiandum, ad scripturandum, &c. Mano.
part 1. p. 194. A Regarder may be made either by the
King's letters patent; or by any of the Justices of the
forei, at the general Eies, or such times as the regard
is to be made, &c. Mano. See title Regard.

REG INCONSULTO, A Writ issued from the
King to the judge, not to proceed in a cause which may
prejudice the Reg. or interest of a third party. 

James I. granted the office of Superintend. in C. B. to
one Mitchell, and thereupon Browndown, Chief Prothono-
matic, brought an adile against him; and the defendant
Mitchell obtained the King's writ to the judges, reciting
the grant of this office, commanding them not to pro-
ceed Reg inconsulto. And it was argued against the writ,
that the Court might proceed, because the writ does not
mention that the King had a title to the thing in de-
mand, nor any prejudice which might happen to the
King, if they should proceed: The cause was compri-
mned. 3 Mar. 844.

A Reg inconsulto may be awarded, not only for the
party to the piece, but on suggestion of a stranger; on
cause shown that the King may be prejudiced by the
proceeding, &c. 3 Bank. 97.

A Writ of Reg inconsulto does not lie, but when it ap-
ppears plainly to the Court, that the party's title is in
disaffirmance of the King's title. Hard. 1797.

When the defendants will not pray in aid, this writ
is in nature thereof, to inform the Court how it con-
cerns the Crown, and to inhibit their proceedings. See
8 Rep. 16. a. Cro. Eliz. 417. Where the tenant or de-
fendant does not pray in aid, but a writ de Domino Regi
inconsulto is brought, and directed to the judges, and it
appears to the Court, that the cause is not available or
sufficient in Law, the Court ought to disallow the writ,
and proceed in the action; and if the cause appears to
the Court to be just and lawful, and not brought for
delay, then the Judges ought to return the. See 2 Eng.
269: Aud. 280: Nis. 441. And further, Vin. Abr. title
Reg inconsulto.

REGENT; See titles King V. 2-3: Queen.

REGIO ASSENSU, A Writ whereby the King
gives his Royal Assent to the election of a Bishop, Regi-
Orig. 294.

REGISTER, more correctly Register; Registrar.] An
officer who writes and keeps a Register. See Register.

Register is the name of a book, wherein are entered
most of the forms of writs, original and judicial, used at
Common Law, called the Register of Writs: Coke affirms,
that this Register is one of the most ancient books of the
Common Law. 2. Coke, Litt. 159.

Blackstone terms it, the most ancient and highly ve-
nerable collection of legal forms, upon which Ffuzer-
ter's Natura Benevoli. is a comment; and in which every
man who is injured will be sure to find a method of re-
liED, exactly adapted to his own case, described in the
compas of a few lines, and yet without the omission of
any material circumstance. 3 Comm. 183.

REGISTRY, Register, from the old Fr. giffer, i.e.
in leto repore. Properly the same with Repository: The
office books, and rolls wherein the proceedings of the
Chancery, or any Spiritual Court, are recorded,
&c. are called by this name.

REGISTRY, or Register of the Parish
Church, Register Ecclesi Parochialis.] That where-

in baptisms, marriages, and burials are registered in each
Parish every year; which was instituted by Lord Crome-
nell, anno 15 Henry VIII., while he was Vicar-general to
that King.

These Parish Registers are to be subscribed by the
Minister and Churchwardens; and the names of the
persons shall be transmitted yearly to the Bishop, &c.
See title Marriage.

REGISTER, of Register of Deeds. The regis-
tering of Deeds and Incumbrances is a great security of
titles to purchasers of lands, and to mortgagees; and some
laws have been made requiring the same. By the 2. Geo.
c. 4, A Registry is to be kept of all Deeds and Convey-
ances affecting lands, executed in the West Riding of
Yorkshire; and a public office erected for that purpose;
and the Register is to be chosen by the holders having
real for annuums, &c. 8 Geo. c. 1: ordains,
that a Memorial and Register of all Deeds, Conveyances,
Wills, &c. which affect any lands or tenements, shall be
made in the East Riding of the county of York; and
the Register is to be sworn by the Justices in Quarter
Sessions, and every leaf of his book signed by two Justices.

By the 8. Geo. 2. c. 6, A Registry shall be of all Deeds
made in the North Riding of the county of York. Memori-
als of Wills must be registered within six months
after the death of the testator; the Register neglecting
his duty, or guilty of fraudulent practices, shall forfeit
his office, and pay treble damages; and persons coun-
tering any Memorial, &c. be liable to the common
penalties of forgery.

By the 7. Ann. c. 20, A Memorial and Register is
to be made of all Deeds and Conveyances, and of all
Wills, whereby lands are affected; &c. in the county of
Middlesex, in the like manner as in the West and East
Ridings of Yorkshire.

Deputy of the Chief Clerk of the King’s Bench, ap-
pointed a Register for Middlesex, instead of the Chief
Clerk. 25 Geo. 2. c. 4.

It is provided, by the 5. Ann. c. 18, and subse-
quent statutes, that Bargains and Sales may be inrolled
with the Register, and shall be as valid as if enrolled
according to the 27. 3. S. 1. 15. See titles Bargain and
Sale; Instrument.

It is observed, by Blackstone, that however plausible
these provisions as to a Registry may appear, in theory,
to remedy the inconvenience arising from the want of
notoriety attendant on modern Deeds, it has been doubted
by very competent Judges, whether more disputes have
not arisen in those counties, by the irregularities and
omissions of parties, than have been prevented by the
use of Registrars. 2 Comm. c. 29.

By these statutes, Deeds, Conveyances, and Wills, shall
be void against subsequent purchasers or mortgagees,
unless registered before the Conveyances under which they
claim; and no judgment, statute, or recognizance, shall
bind any lands in those counties, but from the time a
Memorial thereof shall be entered at the Register's
office; but the acts do not extend to Copyhold Estates,
Leases, or Rents, or to any Leases, not exceeding
twenty one years, where the possession goes with the
lease; nor to any Chambers in the lands of Court.

An annuity was granted out of lands lying in Middle-
sex; A. B. who had notice of the grant, purchases the
lands s
lands; the grantee shall have the annuity against A. B.,
though the grant of the annuity was not registered; for
the statute was intended to give notice of incumbrances
to purchasers, that they might not be defrauded; but
if a man knows of an incumbrance, and will, notwithstanding,
purchases, he is bound, though the incumbrance was
not registered. 1 Strange 604. See 1 Pet. 64.
A mortgage of a lease was registered, but not the
lease itself; this will not bar a subsequent purchaser.
2 Strange 1694. See further, title Notice.
REGISTRY OF PAPISTS’ ESTATES: See this Dict.
title Papists II. 4.
REGIUS PROFESSOR. A Reader of Lectures in
the Universities, founded by the King; King Hen. VIII.
was the founder of five lectures in each University of
Oxford and Cambridge, viz. of Divinity, Greek, He-
brew, Law, and Papists; the Readers of which are called
in the Universities Regii Professores.
REGNI POPULI, A name given to the people of Sir-
ry and Suffolk, and on the sea-coasts of Hampshire, Devon.
REGENERATION. A mortgage of a de-
defendant in any matter, or if defendant do in his Rejoiner depart from his plea pleaded
in bar, the Rejoiner is not good, because this is uncer-
tain, and to say and say, which the Law doth not allow.
Mich. 22. Car. B. R.
RELATION. It is observed, that in many cases, if the plaintiff in his
replication alleges any new matter, the defendant may
there make a new answer in the Rejoiner; though if
the defendant pleads a general plea, he shall not com-
monly make that good afterwards, by a particular thing
in his Rejoiner. 5 H. 7. 19: Rejoin. 22. See titles
Departures; Plundering.
RELATION, Rejoiner. It is, where, in consideration
of Law, two different times or other things are accounted
as one; and by some act done, the thing subsequent is
said to take effect by Relation from the time preceding:
as if one deliver a writing to another, to be delivered to
a third person as the deed of him who made it, when such
third person hath paid a sum of money; now, when the
money is paid, and the writing delivered, this shall be
taken as the deed of him who made and delivered it,
at the time of its first delivery, to which it has Relation;
(see titles Deed III. 7; Esse:z and things relating
to a time long before, shall be as if they were done at
This device is most commonly to help acts in Law,
and make a thing take effect: and shall relate to the
same thing, the same intent, and between the same par-
ties only; and it shall never do a wrong, or lay a charge
upon a person that is no party. Co. Lit. 190: 1 Rep. 99:
Plead. 186: 2 Plead. 200.
When the execution of a thing is done, it hath Rela-
tion to the thing executory, and makes all but one act
to record, although performed at several times. 1 Rep.
199. Judgment shall have Relation to the first day of
the term, as if given on that very day, unless there is a
memorandum to the contrary; as where there is a con-
tinuance till another day in the same term. 5 Bake. 212.
A verdict was given in a cause for a plaintiff, and there
was a motion in arrest of judgment within four days; the
court took time to advise, and in four days afterwards
the plaintiff died; it was adjudged, that the favour of
the Court shall not prejudice the party, for the judgment
ought to have been given after the first four days; and
though it is given after the death of the party, it shall
have Relation to the time when it ought to have been
given. 1 Leon. 187.
Rule was had for judgment, and two days after the
plaintiff died; yet the judgment was entered, because it
shall have Relation to the day, when the rule was given,
which was when the plaintiff was alive. Poth. 132. Judg-
ment against an heir of the obligation of his ancestor,
shall have Relation to the time of the writing put forth
purchased; and from that time it will avoid all alienations made
by the heir. Cro. Car. 102. If one be bail for a defendant,
and before judgment he leaves his lands; they shall be
liable to the bail, and judgment by Relation. Poth. 132.
See titles Judgment; Bail.
It was formerly held, that where the defendant in a
suit after the issue of the fere facies, but before the Sherif

REJOINDER, Rejunctio.] The answer or exception
of a defendant to any action to the plaintiff’s replication.
Relation.

If a bankrupt, by Commissioners, shall have Relation to the first act of bankruptcy; and be good, notwithstanding the bankrupt sells them afterwards. See title Bankruptcy.

The words generally used in such Releases are, remised, released, and for ever quit claimed. See pt. II.

I. Of Releases generally.

II. Of the Words and Ceremony required in a Release; and how for a Covenant, Agreement, or a Disposition by Will, may operate as a Release.

III. What shall be released, by a Release of all Claims and Demands.

IV. What shall be released, by a Release of all Actions and Suits; and of all Right and Title in Land.

V. How far a Possibility, or contingent Interest, may be released.

I. There is a Release in Fact, and a Release in Law. Perkins' Counts 71. A Release in Fact, is that which the very words expressly declare. A Release in Law, is that which doth acquit by way of confection or intention of Law. How these are available, and how not, see Liti-lation at large 1, 2, 3, 4, 5, 6, 7.

A Release is the giving or discharging of a right of action which a man hath claimed, or may claim, against another, or that which is his; or in the conveyance of a man's interest or right which he hath to a thing, to another who hath possession thereof, or some estate therein.

According to Coke, Releases are distinguished into express Releases in Deed, and those arising by operation of Law; and are made of lands and tenements, goods and chattels; or of actions real, personal, and mixt. 1 Plow. 306, a.

Releases of Land, may enure or take effect in various ways: Either, by a Deed, by way of enlarging an estate; or by an estate where the possession and inheritance are separated for a particular time; and he who hath the reversion or inheritance, releases to the tenant in possession all his right and interest. Such Release is said to enlarge his estate; and to be equal to an entry and fee-simple, and to amount to a grant and attornment. 1 Brem. 75, 76, 77. Thus, if there be tenant for life or years, remainder to another.
RELEASE I.

in fee, and he in remainder releases all his right to the particular tenant and his heirs; this gives him the estate in fee. Litt. § 455. But in this case the Releasor must be in possession of some estate, for the Releasor to work upon; for if there be a Leesee for years, and before he enters and is in possession, the lessor releases to him all his right in the reversion, such Releasor is void, for want of possession in the Releasor. Litt. § 459.

When it is said, however, that a Release, which enures by enlargement, cannot work without a possession, it must be understood to mean, not that an actual estate in possession is necessary, but that a vested interest suffices for such a Release to operate upon. By comparing this with the operation of a Lease and Release, (see that title,) it will be seen, that not only estates in possession, but estates in remainder and reversion, and all other incorporeal hereditaments, may be effectively granted and conveyed by Lease and Release: but it is an inaccuracy to say, that the Release, in these cases, is in the actual possession of the hereditaments: the right expression is, that they are actually vested in him, by virtue of the Lease of possession and the statute. 1 Inst. 270, (a) s. 3.

To make Releases operate by enlargement, it is generally necessary, that the Releasor, at the time the Release is made, should be in actual possession of, or have a vested interest in, the lands intended to be released; that there should be a privity between him and the Releasor; and that the possession of the Releasor should be notorious. To this latter circumstance, however, the Statute of Uses furnishes an exception, exemplified in the operation of a Lease and Release: where the Bargain has a vested interest, immediately after the execution of the bargain and sale, without any entry, attornment, or other act of notoriety whatever: though, at Common Law, till entry or attornment, the lessor was not capable of a Release. But, from the general principles above noticed, tenants by estate or estate merchant in are capable of a Release that is to operate by enlargement; while tenants in dower, or by the curtesy, are, as they have the notoriety of possession and privity of estate with respect to the Releasor. See 1 Inst. 271, (a) n. 7.

Secondly: By way of passing an estate; (niter Releasor;) as when one of two coparceners releaseth all her right in the other, this passeth the fee-simple of the whole. 1 Inst. 273.

In both these cases there must be a privity of estate between the Releasor and Releasee; that is, one of their estates must be so related to the other, as to make but one and the same estate in Law. 1 Inst. 272, 3; 1 Commen. c. 20.

3dly: By way of passing a right; (niter Releasor;) as if a man be divided, and releaseth to his dower all his right; hereby the dower acquires a new right, which changes the quality of his estate, and renders that lawful which before was tortious or wrongful. Litt. § 406.

Releases of this kind must be made either to the disseisor, his feejee, or his heir. In all these cases, the possession is in the Releasor; the right in the Releasor; and the uniting the right to the possession, completes the title of the Releasor. But the different degrees of title in the disseisor, his feejee, or his heir, give the Releasors made to them different operations. They all agree in this respect, that no privity is required, or indeed can, from the nature of the case, exist between them and the Releasor. 1 Inst. 274, (a) n. 1.

RELEASE I.

At Common Law, lands could not be transferred from one to another, but by feoffment with livery of the seftee. This produced a necessity of the transmission of the possession. This necessity was, in some measure, effected by a dower; but that was only a visible possession, liable to be defeated by the disseisor. Thus the disseisor had the possession, the disseisee the right. To complete the title of the disseisee, it was necessary he should acquire the right. This could be done by a sefete, as that was a transfer of the possession, but it was effected by a Releasor, which, in this case, operated as an actual transfer of the right. 1 Inst. 264, (a) n. 7.

Thus, in the case of a Releasor, per niter le dower, when made to the feoffee of the disseisor, the disseisee is in his title, his estate cannot be devolved or disaffirmed, but by an act equal to that which created it: A Release does not affect his possession or title, but discharges it from the right of the disseisor; so that, whether the whole fee is in the feoffee, or carved out into particular estates, it remains unaltered by the Releasor, except as it is discharged by it from the right of the disseisor. 1 Inst. 275, (a) n. — in the case of a Releasor to the heir of the disseisor, it is to be observed, that a disseisor has a mere naked possession, unsupported by any right; and that the disseisee may restore his possession, and put a total end to the possession of the disseisor by entry. But though the feoffee of the disseisor comes in by title, still the right of possession remains in the disseisee, and he may equally enter on the feoffee as on the disseisor; so that a Release, per niter le dower, gives both to the disseisor and his feoffee the right of possession, and the right of property: But if the disseisee dies, the entry of the disseisee is taken away, and a presumptive right of possession is in the heir; so that the Release of the disseisee only passes the right of property. 1 Inst. 277, (a) n. 1.

5thly: By way of extinguishment; as if my tenant for life makes a lease to A. for life, remainder to B. and his heirs, and I release to A.: this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder as well as of A.'s particular estate. Litt. § 420. See title Extinguishment. Where the Releasor cannot have the thing per niter le dower, yet the Releasor shall enure, by way of extinguishment, against all manner of persons; as when the lord grants the fegnor to his tenant, such Releasors absolutely extinguish the rent, &c., although the Releasor be only tenant for life. See 1 Inst. 267, (a) n. : 193, (b) : 273, (b).

6thly: By way of entry and feoffment; as if there be two joint disseisors, and the disseisor releaseth to one of them, he shall be sole feett, and shall keep out his former companion; which is the same in effect as if the disseisee had entered, and thereby put an end to the disseisee; and afterwards had enfeoffed one of the disseisors in fee. 1 Inst. 278. It has been already observed, that when a man has in himself the possession of lands, he must, at the Common Law, convey the freehold by feoffment and livery; which makes a notoriety in the country; but if a man has only a right or a future interest, he may convey that right or interest by a mere Releasor, to him that is in possession of the lands, or to the occupant of the Releasor is considered as a matter of sufficient notoriety already, 2 Commen. c. 20 and see 1 Inst. 275, (b) n. 9.

A Release is to be adapted to the nature of the case, and the purposes for which the Releasor is intended; so that...
that if a man be dispossessed of lands, or dispossessed of goods, and release all actions, he may, notwithstanding, enter into his lands, or retake his goods, the right and property being full in him, though he has devolved himself of his remedy. 1 Hob. 163; 4 Co. 63.

So, where a man has divers means to come to his right, he may release one, and yet take advantage of the other; but if a man has not any means to come to his right but by way of action, there, by a Release of all actions, his right by judgment of Law is gone, because by his own act he has barred himself of all means to come to it. 1 S. 152; Co. Litt. 286.

Herefore, Releaves were confirnd with much nicey and great strictness; and, being considered as the deed or grant of the party, were, according to the rule of Law, taken strongest against the Releases: They now receive such interpretation as these grants and agreements do, and are favoured by the Judges as tending to repose and quietness. Dyer 56: Plowd. 289; Hatl. 152; 8 Co. 148.

Hence it hath been established as a general rule in the construction of Releaves, that where there are general words only in a Release, they shall be taken most strongly against the Releaver; but where there is a particular recital in a deed, and then general words follow, the general words shall be qualified by the special words. 1 Mod. 99: 1 Ld. Raym. 235.

It is necessary, in all cases where a Release of lands is made, that the estate be turned to a right; as in a diffisive, &c. where there are two rights, a right of possession in the diffisive, and a right to the estate in the disseex; now when the disseise hath released to the diffisive, here the disseise hath both the rights in him, &c. The right to the estate, and also to the possession; or else it is requisite that there be privy of estate between the Tenant in possession and the Releaver; for a Releafe will not operate without privity. 2 Lit. 435. A Releafe, made by one that at the time of the making thereof had no right, is void; and a Releafe made to one that at the time of making thereof had nothing in the land, is also void, because he ought to have a freehold, or possession, or privity. Nay's Max. 74.

He that makes a Release must have an estate in himself, out of which the estate may be derived to the Releesee; the Releese is to have an estate in possession in deed, or in Law, in the land where the Releese is made, as a foundation for the Releese; there must be privity of estate between the Releaver and Releese; and sufficient words in Law, not only to make the Releese, but also to create and raise a new estate, or the Releese will not be good. 1 Inf. 22. A Releese to a man and his heirs will pass a fee-simple; and if made to a man, and the heirs of his body, by this the Releese hath an estate-tail: But a Releese of a man's right in fee-simple, is not sufficient to pass a fee-simple. 1 Inf. 273.

A Releese made by deed-poll, of right to lands, &c. needs no other execution than sealing and delivery; and will operate without consideration: But it is convenient to put a valuable consideracion therein; lest it should be judged fraudulent by statute. Lit. § 445. Lit. Conv. 230, 248: Cro. Jac. 270. See title Consideration.

II. A Release which operates by mutter &c., where two persons come in by the same feudal contract, as joint tenants or coparceners, and one of them releases to the Vol. II.
It seems agreed, that a will, though sealed and delivered, cannot amount to a Release, because it is amulatory and revocable during the testator's life; and by reason of the executor's content, requisite to every disposition of a personal thing by will, and the injury that might accrue to the testator's creditors, were it not allowed to operate as a Release. Stil. 285: 1 Vern. 499.

Therefore, where in debt on an obligation, by the representative of a testator, a defendant pleaded, that the testator by his last will in writing released to the defendant; this was adjudged ill, and that no advantage could be taken by plea. 1 Stil. 421.

But it has been held in equity, that though a will cannot amount as a Release, yet provided it was expressed to be the intention of the testator that the debt should be discharged, the will would operate accordingly; and that in such case it would be plainly an absolute discharge of the debt, though the testator had survived the legatee. 1 P. Wm. 85; 1 Vern. 342.

So, in another case, it was held, that a Release by will can only operate as a legacy, and must be affects to pay the testator's debts; and if a debt be released by will be afterwards received by the testator himself in his lifetime, the legacy is extant; and such Release by will intimates no more than that the executor should not, after the testator's death, trouble or molest the debtor. 2 P. Wm. 322.

If a debt is mentioned to be devolved to the debtor, without words of Release or discharge of the debt, and the debtor die before the testator; this will not operate as a Release, but will be considered as a lapsed legacy, and the debt will subsist. 2 Vern. 552.

A debt is only a right to recover the amount of the debt by way of action; and as an executor cannot maintain an action against himself, or against a co-executor, the testator, by appointing the executor an executor of his will, discharges the action, and consequently discharges the debt. Still, however, when the creditor makes the debt to his executor, it is to be considered but as a specific bequest or legacy, devolved to the debtor to pay the debt; and therefore, like other legacies, it is not to be paid or retained, till the debts are satisfied; and if there are not affects for the payment of the debts, the executor is unfavorable for it to the creditors. In this case, it is the same whether the executor accepts or refuses the executorship. On the other hand, if the debtor makes the creditor his executor, and the creditor accepts the executorship, if there are affects, he may retain his debts out of the affects, against the creditors in equal degree with himself; but if there are not affects, he may sue the heir, where the heir is bound. 1 Inst. 264. (k) in n. See this Dictionary, title Executor; Legacy; Will.

In the case of Smith v. Stafford (Hob. 216), the husband promised the wife, before marriage, that he would leave her worth 100£. The marriage took effect, and the question was, whether the marriage was a Release of the promise: All the Judges but Hart were of opinion, that as the action could not arise during the marriage, the marriage could not be a Release of it. The doctrine of this case was admitted in that of Gage v. Acton; which arose upon a bond executed by the husband to the wife, before marriage, with a condition making it void if the survivor lived, and he left her 100£. Two of the Judges were of opinion, that the debt was only suspended, as it was on a contingency which could not, by any possibility, happen during the marriage. But Holb., Chief Justice, differed from them: he admitted, that a covenant or promise by the husband to the wife, to leave her so much in case she survives him, is good; because it is only a future debt; on a contingency, which cannot happen during the marriage, and that is precedent to the debt; but that a bond debt was a present debt, and the condition was not precedent, but subsequent, that made it a present duty, and the marriage was consequentially a Release of it. The case afterwards went into Chancery. The bond was taken there to be the agreement of the parties, and relief accordingly decreed. See 1 Saum. 325; 12 M. & W. 290; 2 Vern. 481. A like decree was made in the case of Camel v. Buckle, 2 P. Wm. 243. See further, this Dictionary, title Baron and Feme.

III. Littleton says, that a Release of all Demands is the bell Release to him to whom it is made; and Coke says, that the word Demand is the largest word in Law, except Claim; and that a Release of all Demands discharges all sorts of actions, rights and titles, conditions before or after breach, executions, appeals, rents of all kinds, covenants, annuities, contracts, recognizances, latters, commons, &c. Litt. 508: Co. Litt. 271.

But notwithstanding the large import of the word Demands, yet there are several differences where the generality of the word hath been restrained to the particular occasion for which the Release was made.

By a Release of all Demands, all actions, real, personal, and mixed, and all actions of appeal, are extinct. Litt. § 509: 8 Co. 154.

So a Release of all Demands extends to inheritances, and takes away rights of entry, seizures, &c. Co. Litt. 291. But if the King releases all Demands, yet as to him the inheritance shall not be included. Brat. Prerogative, pl. 62: Bridge. 124.

By a Release of all Demands made to the tenant of the land, a common of pasture shall be extinguished. Co. Litt. 259.

A Release of all Demands will bar a demand of a reliev, because the relief is by reason of the feignory to which it belongs. Cro. Jac. 170.

If A. being possessed of goods loses them, and they come to the hands of B. who being in possession, A by deed releases to B. all actions and demands personal which at any time before habitant vel laboravit points against B. for any cause, matter, or thing whatsoever; this shall bar A. of the property of the goods; so that B. has the absolute right in him by this Release. 2 Rol. Abr. 407.

By a Release of all Demands, all manner of executions are gone, for the receiver cannot sue out a fieri facias, capias, or elizet, without a demand. Litt. § 508: 2 Rol. Abr. 407.

By a Release of all Demands to the conuor of a fiatute merchant, before the day of payment, the conuor shall be barred of his action, because the duty is always in demand; yet if he releases all his right in the land, it is no bar. Co. Litt. 294: Bridg. 124.

So, a bond conditioned to pay money at a day to come, is a debt and duty presently, and may be discharged by a Release of all actions and demands before the day of payment. Cro. Jac. 300.

But
RELEASE III.

But in an action of debt for non-performance of an award made for payment of money at a day to come; there is no present debt, nor any duty before the day of payment is come, therefore it cannot be discharged before the day, by a Release of all actions and demands, 1 Tift. 214; Cro. Jac. 300.

So, if a man devises a legacy of 20l. to J. S. at the age of 23, though the legatee, after he attains the age of 21, and before the day of payment, may release it, yet by the word, Demands, it is not released, but there must be special words for the purpose. 10 Co. 51.

A Release of all Demands does not discharge a covenant not broken at the time; but a Release of all Covenants will release the Covenant. Cro. Jac. 173; 2 Roll. Abr. 407; Ray 123. For the difference when broken or not, see Dyce 217; 7 Litt. Rep. 85; 6 Leon. 69; 5 Cr. 71: 1 Hie's case: 10 Co. 51: Cro. Litt. 202; 8 Co. 153: 1 And. 6, 64: and this Dictionary, title Covenant.

If a Leissee for life grants over his estate by indenture, retaining rent during the continuance of the estate, and afterwards releases to the assignee all demands, he shall discharge the rent, for he had the freedom of the rent in him at the time. 2 Roll. Abr. 468: Cro. Jac. 486: Bridge. 153; 2 Roll. Rep. 201; Poph. 176.

So, if a Leissee for years grants over by indenture all his estate, retaining a rent during the term, and afterwards releases to the assignee all demands, this shall release the rent; for though he cannot have an action to demand all the estate, yet this is an estate in him of the rent, and assignable over; and in an action of debt for any arrears after, he shall claim it as a duty accrued from the estate; and it shall not be said that the duty arises annually on the profits, but this had its commencement and creation by the reservation of the contract, which was before. 1 Roll. Abr. 468.

If there be Leissee for years rendering rent, and the Leissee grants over the reversion, and the Leissee assigns, and after the Leissee assigns over his estate, and after, the Assignee of the reversion releases all demands to the first Leissee, yet this shall not release the rent; for there is neither privy of the estate or contract between them after the assignment; but if the Release had been made to the Assignee, it had extinguished the rent. 2 Roll. Abr. 408: Mor. 544: Cro. Eliz. 666.

If he who has a rent-charge in fee releases to the tenant of the land all demands from the beginning of the world till the making of the deed of Release; this shall discharge all the rent, as well as to come as what is past. 26 Sc. 71; 5 Co. 408.

It is laid by Littleton and Coke, that by a Release of all demands a rent-service shall be released; but this it is said is to be intended of a rent-service in groves, as a feigniory. Litt. 6510: Co. Litt. 291. Therefore, where in action of covenant on a lease for years, to pay the rent referred, the defendant pleaded Release by the plaintiff of all demands, at a day before the rent in question became due; the plaintiff replied, that the Release was in performance of an award of all matters in controversy between the plaintiff and defendant; and on demurrer it was adjudged, that the rent was not discharged by this Release, as it became due by the perception of the profits, and was not to be a rent-charge, or a rent-parcel of a feigniory; and that this rent being incident to the reversion, and part thereof, was no more released than the reversion itself; and this construction should the rather prevail, as it was not the intention of the party to release this rent; but Tawton laid, that in Releases and Deeds, when words are heaped up, the party who is to take advantage may take the strongest word, and the strongest sense, and that is the reason they are put in; and as to the intent, that must be gathered from the words, and men must take care what words they use: And he said, he could see no difference between this rent, and a rent in fee, both are rent-services, and neither demandable before they become due; otherwise than as in 40 Ed. 3, 47, it is said, there is a continual demand between lord and tenant; and in this case there is a tenure between the Leissee and him in reversion; but the reason why the reversion is not touched by this Release is, because it can work only by way of extinguishment, and not by way of passing an interest; but it was adjudged against the Release. 1 Litt. 99, 100: 1 Sid. 141: 1 Keb. 499, 510: See 2 Sail. 578.

RELEASE IV.

IV. A Release of all Actions discharges a bond to pay money on a day to come; for it is debetur in praesenti, quamvis sit solvendum in futuro; and it is a thing merely in action, and the right of action is in him who releases, though no action will lie when the Release is made. Cro. Litt. 292. See title Bond.

But a Release of Actions does not discharge a rent before the day of payment, for it is neither debetur in praesenti, but at the time of the Release, for it is merely a thing in action, for it is grantable over. Cro. Litt. 293.

So, if a man has an annuity for a term of years, for life, or in fee, and he, before it be in arrear, releases all Actions; this shall not release the annuity, for it is not merely in action, because it may be granted over. Cro. Litt. 295: 1 Bull. 178; Cro. Eliz. 897: Monr. 115.

But such Release shall release the arrears incurred before. 19 H. 6, 43: 2 Roll. Abr. 404.

By a Release of all manner of Actions, all Actions, as well criminal as real, personal, and mixed, are released. Co. Litt. 287.

A Release of Actions real is a good bar in actions mixed; as, Assault of novel disability, Waste, Quare impedit. Annuity; and so is a Release of Actions personal. Cro. Litt. 284: But not after the grantee has made his election. 1 Jones 215.

In an appeal of robbery or felony, a Release of all Actions personal will not bar; because an appeal, in which the appelees is to have judgment of death, is higher than a personal action; but a Release of all manner of Actions, or of all Actions criminal, or of all Actions mortals, or of all Actions concerning the Peace of the Crown, or of all Appeals, or of all Demands, will be a good bar of any such appeal. Cro. Litt. 287.

And in appeal of malice a Release of all Actions personal may be pleaded, because damages only are recovered. Cro. Litt. 288.

A Release of all Actions is regularly no bar to an execution; for execution is no action, but begins when the action ends. Cro. Litt. 289: 8 Co. 153.

Also a Release of all Actions does not regularly release a Writ of Error; for it is no action, but a committal to the judges to examine the record; but if therein the plaintiff may recover, or be restored to any thing, it may
may be released by the name of Action. 2 Ish. 40 : 39 Edw. 209 : Co. Litt. 288. But, by a Release of all Suits, a man is barred of a Writ of Error. Litt. 110. So, by a Release of all Suits, a man is barred of execution, because it cannot be had without application to the Court, and prayer of the party, which is his suit. Co. Litt. 291 : 8 Co. 153.

A Release of all Actions is a good bar to a seire faciæ, though it be a judicial writ, for the defendant may plead to it, and it is in nature of a new original given by the statute. Co. Litt. 290 : Comb. 455.

So, in replevin, a Release of all Actions is a good bar, for the avowant is defendant, though in some respects he is plaintiff. 2 R. Rep. 75.

So, if a man by wrong takes away my goods; if I release to him all Actions personal, yet by Law I may take the goods out of his possession. Co. Litt. 286 : Sten. 57.

If a man releases all Actions, by this he shall release as well Actions which he hath as executor, as those in his own right. 39 Ed. 5 : 2 Roll. Abo. 491 : 2 Lit. Rep. 1707. & C. cited by Peowell; and laid by him to be clearly so, unless there was an Action of his own for the Release to work upon.

If a man releases all guards; a man's deed being taken most strongly against himself, it is as beneficial as all Actions, for by it all Actions real, personal, and mixed, are released; and all causes of Action, though no action then depending. Co. Litt. 292.

If a person release to another all his right which he hath in the land, without using any more words, as, To hold to him and his heirs, &c., the Release hath only an estate for life. Dyer 265. A Release made to a tenant in tail, or for life, of right to land, shall extend to him in remainder or reversions. 1 Ish. 267. By Release of all a man's right unto lands, all actions, entries, titles of dower, rents, &c., are discharged; though it bars not a right that shall descend afterwards: And a Release of all right in such land will not discharge a judgment not executed; because such judgment does not vest any right; but only makes the land liable to execution. 8 Rep. 151 : 3 Salk. 255.

It is said a Release of all one's title to lands, is a Release of all one's right. Lit. 5509 : 1 Ish. 262. By a Release of all entries, or right of entry, which a man hath into lands, without more words, the Releasor is barred of all right or power of entry into those lands; and yet if a man have a double remedy, viz., a right of entry, and an action to recover, and then release all entries, by this he is not barred and excluded his action; nor doth a Release of Actions bar the right of entry. Pisosul. 484 : 1 Ish. 345.

If a disseiseree releases to the disseiseree all Actions; this is no Release of his right of entry; for when a man hath several means to come at his right, he may release one, and yet take benefit of the other. Co. Litt. 285 : 3 Ish. 141.

V. To prevent maintenance, and the multiplying of contentions and suits, it was an established maxim of the Common Law, that no possibility, right, title, or any other thing that was not in possession, could be granted or assigned to strangers: A right in action could not be transferred even by act of Law; nor was it considered as transferred to the King by the general transferring words of an Act of Attainder. See 3 Rep. 2, b. But a right or title to the freehold or inheritance of lands might be released in five manners. 

1. To the tenant of the freehold, in fact, or in law, without any privity. 2. To him in Remainder. 3. To him in reversion. 4. To him who had right only, in respect of privity; as if the tenant were deceased, the lord, notwithstanding the disaff debating, might release his services to him. 5. To him who had privity only, and not the right; as, if tenant in tail made a feoffment in fee, after this feoffment, no right remained in him; yet in respect of the privity only, the donor might release to him the rent and services. So, if the territent, and the person entitled to the right or possibility, joined in a grant of the lands, it would pass them to the grantee, discharged from the right or possibility. See to Rep. 49, (b). But the law is now altered, in the above instances, in many respects. As to the alignment of things in action, see title Assignment. A contingent remainder in real estates can only be transferred by a fine and a common recovery, in which the remainder-man comes in upon the voucher. See titles Recovery, Remainder.

On the principles of the Common Law above stated, it was held, that an heir at law cannot release to his father's disseiseree in the lifetime of the father; for the heirship of the heir is a contingent thing, for he may die in the lifetime of the father, or the father may alien the lands. Lit. 5 § 456 : Co. Litt. 265 : a. 10 Co. 1 : Bridges. 76.

So, if the confesse of a statute released to the confessor all his right to the land, yet he might afterwards sue execution, for he had no right to the land, but only a possibility. 1 And. 133 : Co. Litt. 265 : 2 Roll. Abo. 495 : Cro. Eliz. 552.

So, if a creditor releases to his debtor all the right and title which he hath to his lands, and afterwards gets judgment against him, he may extend a moiety of the same land; for he had no right to the land, but only a possibility. 2 Mod. 281 : 2 Lev. 215.

So, if a plaintiff releases all demands to the bail in the King's Bench, and afterwards judgment be given against the principal, execution may be fixed against the bail; for this, at the time of the Release, there was only a possibility of the bail becoming chargeable. 5 Co. 70 : Co. Litt. 265 : Meas. 492 : Cro. Eliz. 575 : Hunt. 17: and see Meas. 825.

So, if A. recovers in trespass against B. in B.' R., and B. brings a writ of error, pending which A. releases to B. all executions, and afterwards the judgment is affirmed, and new damages given to A. for the delay, (on julf. 3 H. 7. 101) this Release shall not bar A. to have execution of those damages, because he had not any right to have execution, nor to any duty when the Release was made. 2 Roll. Abo. 494 : Cro. Jac. 337 : 1 Roll. Rep. 11.

If the next presentation to a church be granted to A. and B. and living the incumbent, A. releases all his estate, title, and interest to B., this Release is void, it being of a chose in action; otherwise, had the Release been made after the avoidance, at which time the interest would have been vested in A. Cro. Eliz. 175 : 650. Owen 85: 1 Leav. 167 : 3 Leav. 235 : Dyer 244 : 7 Co. 48.

A city orphan cannot at Law release her orphanage part to her father, for the hath no right in her during the life of her father; but it hath been held in equity, that such Release
RELEASE.

Release being for a valuable consideration, as on the marriage of a daughter, and a portion given her by the father, such Release may operate as an agreement to waive the orphanage, and hath accordingly been declared in equity. 1 P. Wms. 638; 2 P. Wms. 527. Post. 431a. 543.

If there be a devise of a term for years to A. for life, remainder to B — B. may release his right to A., and such Release shall extinguish his interest, though it was objected that B. had only a possibility at the time of the Release made. 10 C. 47.

But it was held, that B. could not assign over his interest to a stranger in the lifetime of A., the same being only a chose in action, and a mere possibility; inasmuch as an estate for life is in supposition of Law a larger estate than for any number of years. 10 C. 47; 7 C. 66: 1 Sid. 183: R. 146.

Later lotteries, however, in Courts of Equity, have made a great alteration in this doctrine. 2 Vern. 563. See this Dict. title Assignment.

A duty uncertain at first, which on a condition precedent, is to be made certain afterwards, is but a possibility, which cannot be released, 5 C. 703; 2 Mod. 481.

As a nominee pass on a rent, which cannot be released till the rent is behind, as the non-payment of the money shall ever be paid, for it becomes a duty on delivery of the rent only, and not before. 16 C. 215. See title Award.

In debt on bond against the defendant as administrator, &c. the defendant pleaded a Release, whereby the plaintiff, reciting that there were several controversies between the defendant and him, about a legacy and the right of administration, released to the defendant all his right, title, interest, and demand of, in, and to the personal estate of the intestate; and, on demurrer, this was held to be no plea; and a difference was taken by Held, between a Release of all Demands to the person of the obligor or administrator, and a Release of all Demands to the personal estate of the obligor or intestate; that the last will not discharge the bond, as the other may, because the bond does not give any right or demand upon the personal estate, &c. until judgment and execution. Salk. 575; 2 Ed. 786.

If A. promises B. in consideration that he will fall to his son certain merchandize, at such a price, that if his son does not pay it at the feast of St. Michael next ensuing, he himself will pay it; and before Michaelmas, A. releases all actions and demands to him who made the promise, this shall not release the obligator: For till Michaelmas it cannot be known whether his son will have paid it or not, and, till default by him, the other is not bound to pay it; so it is a mere contingency till Michaelmas, which cannot be released. 2 Rot. Abr. 407-8.

For more learning on this subject, see 4 New Abr. 18 Vin. Abr. and Com. Dig. tit. Release.

RELIEF.

RELEGATION, Religation.] A banishing, or sending away: Abrogation is overthrowing the realm for ever; Religation is banishment for a time only. Co. Litt. 123. See title Transportation.

RELICTA VERIFICATIONE. Where a judgment is confessed by cognovit actio after plea pleaded, and the plea is withdrawn, it is called a Confession, or Cognovit actio relicta verificatione. See tit. Judgments acknowledged.

RELIEF, Releasenam; but in Domains, Relatio, relevium.] A certain sum of money which the tenant, holding by knights-service, grand ferjeanty, or other tenure, (for which homage or legal service is due,) and being at full age at the death of his ancestor, paid unto his lord at his entrance. See Bracton, lib. 2. c. 36; Britton, c. 69: Grand Covenant of Normandy, c. 34.

Skein, de aen. sign. orb. Relevium, faith, Relief is a French word, from the Latin relevium, to relieve, or take up that which is fallen; for it is given by the tenant or vassal, who is of perfect age, after the expiring of the wardship, to his superior lord, of whom he held his lands by knights-service, that is, by Ward and Relief. For, by payment thereof, he relieves, and, as it were, rafheth up again his lands, after they were fallen down into his superior's hands, by reason of wardship, &c.

Relief is otherwise thus explained, viz. A feudatory or beneficiary estate in lands was at first granted only for life; and after death of the vassal it returned to the chief lord, for which reason it was called Erendum caducum, viz. fallen, to the lord by the death of the tenant; afterwards, these feudatory estates being turned into an inheritance, by the connivance and affent of the chief lord, when the possessor of such an estate died, it was called Hereditatem caducam; i.e. it was fallen to the chief lord; to whom the heir having paid a certain sum of money, he did then receive hereditatem caducam out of his hands; and the money thus paid was called a Relief.

This must be understood after the Conquest; for, in the time of the Saxons, there were no Reliefs, but benefices paid to the lord at the death of his tenant; which in those days were horses, arms, &c. and such tributes could not be exacted by the English immediately after the Conquest, for they were deprived of both by the Normans; and instead thereof, in many places, the payment of certain sums of money was subsitituted, which they called a Relief, and which continues to this day.

Relief reasonable, or, as it is sometimes called, lawful and ancient Relief, is such as is enjoined by some law, or becomes due by custom, and doth not depend on the will of the lord. What that was, we may read in the Laws of William the Conqueror, c. 32. and of Henry I. c. 14; and, before that time, in the Laws of Canute, c. 97; &c.

The Relief of an Earl was eight war-horses, with their bridles and saddles, four lances, four helmets, four shields, four pikes, four swords, four hunting horses, and a palfrey, with their bridles and saddles: the Relief of a Baron or Thane was four horses, two with furniture, and two without, two lances, four shields, and a helmet, cuirass, and fifty marks in gold. The Relief of a Vassal was his father's horse, his helmet, shield, lance, and sword which he had at his death.

The Relief of a Villain, or countryman, was his broad beard, &c. Co. 36. See tit. Tenures.

RELIGION.
RELIGION, Religion.] Virtue, as founded on reverence of God, and expectation of future rewards and punishments; a system of Divine Faith and Worship as opposed to others. Taste. That habit of reverence towards the Divine Nature, whereby we are enabled and inclined to reverence the Most High, after such a manner as we conceive most acceptable to Him, is called Religion. Wisks.

All blasphemies against God, as denying his Being or Providence, all profane scoffing at the Holy Scripture, or exploding any part to contempt or ridicule; all impurities in Religion, as falsely pretending to extraordinary communions from God, and terrifying or abusing the people with false denunciations of judgments, &c.; all open lewdness, and other scandalous offences of this nature, because they tend to subvert all Religion or Morality, which are the foundation of Government, are punishable by the Temporal Judges; with fine and imprisonment; and also such corporal infamous punishment as to the Court in discretion shall seem meet, according to the heinousness of the crime. 1 Howk. P. C. c. 5.

Blackstone enumerates the following, as the crimes against God and Religion, which are punishable by the Laws of England: APOTHECARY; as to which see this Dist. tit. God and Religion—HEResy; see this Dist. under that title—REVELING the ORNAMENTS of the Church; see that title—NONCONFORMITY; see title Difficulties; Nonconformity; Quakers—POPERY; see tit. Papists—BLASPHEMY; SWEARING (profane); CONJURATION, or Witchcraft; see those titles—RELIGIOUS IMPOSTORS; see tit. Prophets—SIMONY, DRUNKENNESS; see these titles—PROFANATION OF the Lord's Day; see tit. Sunday—LEWDNESS; see that title;—See also titles Service and Sacrifice; Papists; Clergy, &c.

Seditious words, in derogation of the established Religion, are indictable, as tending to a breach of the peace. 1 Howk. P. C. c. 5 § 6.

Repeal of the former acts relating to Religion, flat. 1 Ed. 5. c. 12. § 3.—Images in churches, &c. to be destroyed, flat. 3 & 4 Ed. 6. c. 10—Preachers, &c. to subdivide the Articles, flat. 13 Edw. c. 12.—Articles to be subscribed by Protestant Diffusing Teachers, flat. 1 W. & M. c. 18 § 3. 10.

RELIGIOUS HOUSES, Religious domus.] Houses set apart for pious uses, such as Monasteries, Churches, Hospitals, and all other places where charity is extended to the relief of the Poor and Orphans, or for the use or exercise of Religion.

See Nativia Monasteric, or, A Short History of the Religious Houses in England and Wales, by Tanner, see in which, in alphabetical order of counties, is accurately given a full account of the Founders, the time of foundation, titular saints, the order, the value, and the dissolution; with reference to printed authors, and manuscripts which preserve any memoirs relating to each House; with a Preface of the institution of religious orders, &c. Cowell. See also this Dist. title Abbot.

RELIGIOUS MEN, Religion.] Such as entered into some monastery or convent, there to live devoutly: and in ancient deeds of sale of land, the purchasers were often restrained by covenant from giving or alienating it, thus religious, to end the land might not fall into mortmain. Cowell. See tit. Mortmain.

RELIGIOUS ORDERS. For the qualification of clergy. See title Ordination.

REMAINDER. A forfaking, abandoning, or giving over. It hath been adjudged, that a person may relinquish an ill demand in a declaration, &c., and have judgment for that which is well demanded. 3 Story. 175. In a will, the count was of a meafage, and four Tenors of land in B., and the jury having a view only of the land, the demandant relinquished his plaint to the house. 686. But on a will, where the plaint was for fifty-three dillings and four-pence rent, no part of that rent could be relinquished, because a rent is an entire thing. 4 Edw. 6., 61. In a Suit of Annuity, where the Jury found the arrears, but did not state damages or costs, which could never be supplied by a Suit of Inquiry; the plaintiff was admitted to relinquish and release the damages, and had judgment for the arrears. 11 Rep. 59. See title Damages.

RELIQUES, Religion.] Remains, such as the bones, &c. of Saints who are dead, preferred by persons living, with great veneration, as sacred memorials of them: They are forbidden to be used, or brought into England, by several statutes; and justices of Peace were, by flat. 3. 3. Inst. 1. c. 26, empowered to search houses for Popish books and Reliques, which, when found, are to be defaced and burnt. See title Papists.

REMAINDER. Remanentia.] An estate limited in lands, tenements or rents, to be enjoyed after the expiration of another particular estate. And a Remainder may be either for a certain term, or in fee-simple, or fee-tail, dimes and Remainders, 235; Glanv. lib. 7. c. 1. The difference between a Remainder and Reversion, according to Spelman, is this: That by a Reversion, after the appointed term, the estate returns to the donor, or his heirs, as the proper fountain; whereas by Remainder it goes to some third person, or a stranger. Cowell.

Remainder is described to be a remain of an estate in lands or tenements, expectant on a particular estate created together with the same, and at the same time; and is so expectant on the particular estate, that unless it can take effect when the particular estate determines, it is void. Co. Lit. 49. 143: 2 Co. 51: Mor. 344: Vaughan. 269.

1. Of the Nature of Remainders, vested or contingent; and the general Rules relating thereto.

2. Of Contingent Remainders, and Remainders in Abeyance.

3. Of Cestui Remainders, and those arising by Implication and Contraction of Law.

4. Of what Things a Remainder may be made, or limited.

5. What Words are sufficient to create a Remainder; and wherein, in what Cases the heirs shall take by Words of Purchase, or Words of Limitation, and the Effect thereof: And see this Dictionary, title Purchase.

I. An Estate in Remainder may be defined to be, an estate limited to take effect and be enjoyed after another estate is determined. As, if a man, seated in fee-simpl, grant lands to A. for twenty years, and after the determination of the said term, then to B. and his heirs for
REMAINDER I.

for ever: Here A. is tenant for years, Remainder to B. in fee. In the first place, an estate for years is created or carved out of the fee, and given to A.; and the residue or Remainder of it is given to B. But both these interests are in fact only one estate; the present term of years and the Remainder afterwards, when added together, being equal only to one estate in fee. 

Co. Lit. 143. They are indeed different parts, but they continue only one whole: they are carved out of one and the same inheritance: they are both created, and may both subsist, together: the one in possession, the other in expectancy. So, if land be granted to A. for 20 years, and after the determination of the said term to B. for life; and, after the determination of B.'s estate for life, it be limited to C. and his heirs for ever. This makes A. tenant for years, with Remainder to B. for life, Remainder over to C. in fee. Now, here the estate of inheritance undergoes a division into three portions: there is first A.'s estate for years carved out of it; and after that B.'s estate for life; and then the whole that remains is limited to C. and his heirs. And here also the first estate, and both the Remainders, for life, and in fee, are one estate only, being nothing but parts or portions of one entire inheritance; and if there were a hundred Remainders, it would still be the same thing; upon a principle grounded in mathematical truth, that all the parts are equal, and no more than equal, to the whole. And hence, also, it is easy to conclude, that no Remainder can be limited after the grant of an estate in fee-simple: because a fee-simple is the highest and largest estate that a Subject is capable of enjoying; and he that is tenant in fee hath in him the whole of the estate: a Remainder therefore, which is only a portion, or residuary part, of the estate, cannot be referred after the whole is disposed of. Plowd. 30: Vaugh. 269. A particular estate, with all the Remainders expected thereon, is only one fee-simple, as 40l. is part of 100l.; and 60l. is the Remainder of it: wherefore, after a fee-simple once vested, there can no more be a Remainder limited thereon, than after the whole 100l. is appropriated there can be any residuary subtilings. 2 Comm. c. 11.

Thus much being premised, the Student will be the better enabled to comprehend the rules that are laid down by Law to be observed in the creation of Remainders; and the reasons upon which those rules are founded.

First, There must necessarily be some particular estate, precedent to the estate in Remainder. As, an estate for years to A. Remainder to B. for life; or, an estate for life to A. Remainder to B. in tail. This precedent estate is called the particular estate, as being only a small part, particular, of the inheritance; the residue or Remainder of which is granted over to another. The necessity of creating this preceding particular estate, in order to make a good Remainder, arises from this plain reason; that Remainder is a relative expression, and implies that some part of the thing is previously disposed of: for, where the whole is conveyed at once, there cannot possibly exist a Remainder; but the interest granted, whatever it be, will be an estate in possession. See Co. Lit. 49: Plowd. 35.

An estate created to commence at a distant period of time, without any intervening estate, is therefore properly no Remainder: it is the whole of the gift, and not a residuary part. And such future estates can only be made of chattel interests, which were considered in the light of mere contracts by the ancient Law, to be executed either now or hereafter, as the contracting parties should agree: But an estate of freehold must be created to commence immediately; for it is an ancient rule of the Common Law, that an estate of freehold cannot be created to commence in futurum, but it ought to take effect presently, either in possession or Remainder: 5 Rep. 94. Because, at Common Law, no freehold in lands could pass without livery of seisin; which must operate either immediately, or not at all. It would therefore be contradictory, if an estate, which is not to commence till hereafter, could be granted by a conveyance, which imports an immediate possession. Therefore, though a lease to A. for 7 years, to commence from next Michaelmas, is good; yet a conveyance to B. of lands, to hold to him and his heirs for ever, from the end of three years next ensuing, is void. So that, when it is intended to grant an estate of freehold, whereas the enjoyment shall be deferred till a future time, it is necessary to create a previous particular estate, which may subsist till that period of time is completed; and for the grantor to deliver immediate possession of the land, to the tenant of this particular estate; which is confirmed to be giving possession to him in Remainder, since his estate and that of the particular tenant are one and the same estate, in law. As, where one leaves to A. for three years, with Remainder to B. in fee, and makes livery of seisin to A.; here, by the livery, the freehold is immediately created, and vested in B. during the continuance of A.'s term of years. The whole estate passes at once from the grantor to the grantees, and the Remainder-man is settled of his Remainder at the same time that the termor is possessed of his term. The enjoyment of it must indeed be deferred till hereafter; but it is, to all intents and purposes, an estate commencing in present, though to be occupied and enjoyed in future.

As no Remainder can be created, without such a precedent particular estate, therefore the particular estate is said to support the Remainder. But a lease at will is not held to be such a particular estate, as will support a Remainder over; 8 Rep. 75. For an estate at will is of a nature to flounder and precarious, that it is not looked upon as a portion of the inheritance; and a portion must first be taken out of it, in order to constitute a Remainder. Besides, if it be a Freehold Remainder, livery of seisin must be given at the time of its creation; and the entry of the grantor, to do this, determines the estate at will in the very instant in which it is made. Dyer 13. Or, if the Remainder be a chattel interest, though perhaps the deed of creation might operate as a future estate, if the tenant for years be a party to it, yet it is void by way of Remainder? For it is a separate independent contract, distinct from the precedent estate at will; and every Remainder must be part of one and the same estate, out of which the preceding particular estate is taken. Royal 151. And hence it is generally true, that if the particular estate is void in its creation, or by any means is defeated afterwards, the Remainder supported thereby shall be defeated also: as, where the particular estate is an estate for the life of a person not in office; or an estate for life upon condition, on breach of which condition the grantor enters and avoids the estate; in either of these cases the Remainder over is void. Co. Lit. 258: 2 Roll. 415: 1 Jor. 58.
REMAINDER I. II.

Secondly, The Remainder must commence, or pass out of the grantor, at the time of the creation of the particular estate. Lit. § 671: Plowd. 25. As, where there is an estate to A. for life, with Remainder to B. in fee; here B.'s Remainder in fee passes from the grantor at the same time that feisin is delivered to A. of his life estate in possession. And it is this, which induces the necessity at Common Law of livery of feisin being made, on the particular estate, whenever a Freehold Remainder is created. For, if it be limited even on an estate for years, it is necessary that the livery for years should have livery of feisin, in order to convey the freehold from and out of the grantor; otherwise the Remainder is void. Lit. § 60. Not that the livery is necessary to strengthen the estate for years; but, as livery of the land is requisite to convey the freehold, and yet cannot be given to him in Remainder, without infringing the possession of the livery for years, therefore, the Law allows such livery, made to the tenant of the particular estate, to relate and enure to him in Remainder, as both are but one estate in law. Co. Lit. 49.

Thirdly, The Remainder must vest in the grantee during the continuance of the particular estate, or as incidents that it determines. Plowd. 25: 1 Rep. 66. As, if A. be tenant for life, Remainder to B. in tail; here B.'s Remainder is vested in him, at the creation of the particular estate to A. for life: Or, if A. and B. be tenants for their joint lives, Remainder to the survivor in fee; here, though during their joint lives, the Remainder is vested in neither, yet, on the death of either of them, the Remainder vests instantly in the survivor: wherefore both these are good Remainders. But, if an estate be limited to A. for life, Remainder to the eldest son of B. in tail, and A. dies before B. hath any son; here the Remainder will be void, for it did not vest in any one during the continuance, nor at the determination, of the particular estate; and, even supposing that B. should afterwards have a son, he shall not take by this Remainder, for, as it did not vest or before the end of the particular estate, it never can vest at all, but is gone for ever. 1 Rep. 138. And this depends upon the principle before laid down, that the precedent particular estate, and the Remainder, are one estate in Law; they must therefore subsist and be in effect at one and the same instant of time, either during the continuance of the first estate, or at the very instant when that determines, so that no other estate can possibly come between them. For there can be no intervening estate between the particular estate, and the Remainder supported thereby; 3 Rep. 21: the thing supported must fall to the ground, if once its support be severed from it. 2 Comm. 11.

If a man makes a lease to A. for life, and that after the death of A., and one day after, the land shall remain to B. for life, &c. this is a void Remainder, because not to take effect immediately on the determination of the first estate, and so during that time there would be an interruption of the livery, and no tenant of the freehold, either to do the services, or answer to the princes of strangers: Plowd. 25: Rym. 144: that the Law is nice to an infant. 1 Ld. Rym. 516.

It is upon these rules, but principally the last, that the doctrine of Contingent Remainders depends. For Remainders are either vestal or contingent. Vestal Remainders, whereby a present interest passes to the party, though to be enjoyed in future, are where the estate is invariably fixed, to remain to a determinate person, after the particular estate is spent. As, if A. be tenant for twenty years, Remainder to B. in fee; here B.'s is a vested Remainder, which nothing can defeat, or set aside. See p. 71. II. and also p. 72. V. as to the distinction between Remainders vested and executed.

II. Contingent or Executory Remainders (whereby no present interest passes) are where the estate in Remainder is limited to take effect, either to a dubious and uncertain person; or upon a dubious and uncertain event; so that the particular estate may chance to be determined, and the Remainder never take effect. 3 Rep. 29.

Thus, if A. be tenant for life, with Remainder to B.'s eldest son (then unborn) in tail, this is a Contingent Remainder; for it is uncertain whether B. will have a son or no; but the infant that a son is born, the Remainder is no longer contingent, but vested. Though, if A. had died before the contingency happened, that is, before B.'s son was born, the Remainder would have been absolutely gone; for the particular estate was determined before the Remainder could vest. Nay, by the strict rule of Law, if A. were tenant for life, Remainder to his own eldest son in tail, and A. died without issue born, leaving his wife joint, or big with child, and after his death a posthumous son was born, this son could not take the land, by virtue of this Remainder; for the particular estate determined before there was any portion in effe, in whom the Remainder could vest. Salt. 228: 4 Mod. 232. But, to remedy this hardship, it is enacted, by 25 Geo. 3, c. 16: That posthumous children shall be capable of taking in Remainder, in the same manner as if they had been born in their father's lifetime: that is, the Remainder is allowed to vest in them, while yet in their mother's womb.

The particular case on which this statute was passed, (as many statutes have arisen from circumstances of private hardship, or injustice,) was as follows:—A father had devised an estate to his son for life, with a Remainder to the first and other sons of the son in tail; the son died, leaving his wife pregnant, who was afterwards delivered of a son: The Courts of C. P. and K. B. held clearly, that the grandson, not being born at the expiration of the estate for life, was not entitled to take it: But the Lords, moved by the hardship of the case, reversed the judgment of the Courts below, contrary to the opinions of all the Judges. Race v. Long, 1 Salt. 227, & alibi. But the House of Commons, in reproof of what they considered as an assumption of legislative authority in the Lords, immediately brought in an act, which passed into the above statute. The statute only mentions marriage and other settlements; and it is probable that devises were designedly omitted to be expressed, from delicacy, and that the authority of the judgment of the Peers might not be too openly impeached. As the statute says, that the posthumous son, in this case, shall take the estate if born before the death of the father, he is entitled to the intermediate profits from the death of the father; 3 Ath. 203; which is different from the case of a deponent devised by the birth of a posthumous child. See title Disputes; Rule I.

This species of Contingent Remainders, to a person not in being, must however be limited to some one, that may,
may, by common possibility, or potentia pro priusa, be in effect or before the particular estate determines. 2 Rep. 34.

As, if an estate be made to A. for life, Remainder to the heirs of B.: now, if A. dies before B. the Remainder is at an end; for during B.'s life he has no heir, none of heirs or assigns; but if B. dies first, the Remainder then immediately vests in his heirs, who will be entitled to the land, on the death of A. See 377.

This is a good Contingent Remainder, for the possibility of B.'s dying before A. is potentia pro priusa, and therefore allowed in Law. Ca. Lit. 278. But a Remainder to the right heirs of B. (if there be no such person as B. in effe) is void. 6 Eliz. 1.

For here there must two contingencies happen: first, that such a person as B. shall be born; and, secondly, that he shall also die during the continuance of the particular estate; which makes it potentia remissions, a most improbable possibility. A Remainder to a man's eldest son, who hath none, (we have feen,) is good: for by common possibility, he may have one; but if he be limited in particular to his son John, or Richard, it is bad, if he have no son of that name; for it is too remote a possibility that he should not have only a son, but a son of a particular name. 5 Rep. 51. A limitation of a Remainder to a bastard, before it is born, is not good: for though the Law allows the possibility of having bastards, it presumes it to be a very remote and improbable contingency. Cro. Eliz. 509.

Next; with respect to a Contingent Remainder, where the person to whom it is limited is fixed and certain, but the event upon which it is to take effect is vague and uncertain. —Where land is given to A. for life, and in case B. survives him, then with Remainder to B., in fee; here B. is a certain person, but the Remainder to him is a Contingent Remainder, depending upon a dubious event, the uncertainty of his surviving A. During the joint lives of A. and B. it is contingent; and if B. dies first, it never can vest in his heirs, but is for ever gone; but if A. dies first, the Remainder to B. becomes vested. 2 Comm. c. 11.

Contingent Remainders of either kind, if they amount to a freehold, cannot be limited on an estate for years, or any other particular estate, less than a freehold. Thus, if land be granted to A. for ten years, with Remainder in fee to the right heirs of B.; this Remainder is void: but if granted to A. for life, with a like Remainder, it is good. 1 Rep. 139. For, unless the freehold passes out of the grantor at the time when the Remainder is created, such freehold Remainder is void: it cannot pass out of him, without telling somewhere; and in the case of a Contingent Remainder it must vest in the particular tenant, else it can vest nowhere: unless, therefore, the estate of such particular tenant be of a freehold nature, the freehold cannot vest in him, and consequently the Remainder is void. 2 Comm. c. 11.

A Contingent Remainder is defined, by Fevs., to be a Remainder limited so as to depend on an event or condition, which may never happen or be performed; or which may not happen or be performed, till after the determination of the preceding estate; or for the preceding estate (unless it be a mere trust-estate) determine before such event or condition happens, the Remainder will never take effect. Under this definition, we may properly distinguish four sorts of Contingent Remainders: —

First. Where the Remainder depends entirely on a condition.

Secondly, Where the contingency on which the Remainder is to take effect is independent of the determination of the preceding estate. —

Thirdly, Where the condition, upon which the Remainder is limited, is certain in event, but the determination of the particular estate may happen before it. —

Fourthly, Where the person, to whom the Remainder is limited, is not yet ascertained, or not yet in being. Fevs. 3. 4.

In the case of Dormer v. Fortescue; [reported in its various stages by the name of Dormer v. Fortescue: Dormer v. Parkhurst; Barrington v. Dormer v. Parkhurst; Smith v. Parkhurst; or Parkhurst v. Smith, &c. See Bro. 1. C. titles Fing: Remainder;] an estate was limited (after several precedent estates) to the use of A. for 99 years, if he should live long; and after his decease, or the sooner determination of the estate limited to him for 99 years, to the use of trustees, and their heirs, during his life, upon trust, to preserve the Contingent Remainders: and after the end or determination of that term, to the use of A.'s first and other sons, successively in tail-male; Remainder to the heir of the original settlor; Remainder to such settlor's right heirs. All the preceding estates being determined, A. came into the possession of the lands limited to him for 99 years; and having a son, they joined in levy ing a fine, and suffering a common recovery, in which the son was vouch'd.

If the trustees took a vested estate of freehold during the life of A., the recovery was void, there not being a good tenant to the præcept, the father being only tenant for years; but if they took a contingent estate, the freehold was in the son, and of course there was a good tenant to the præcept. Upon this point, the case was argued in the Court of K. B. and afterwards on appeal before the House of Lords, where all the judges were ordered to attend. Lord, when the case was heard in K. B. and Wills, C. J. in delivering the opinion of the Judges in the House of Lords, entered very fully into the distinction between contingent and vested Remainders. They seem to have laid down the following points: —

1. A Remainder is contingent, either where the person to whom it is limited is not in esse, or where the particular estate may determine before the Remainder can take place: but that in every case where the person to whom the Remainder is limited is in esse, and is actually capable, or entitled, to take, on the expiration or sooner determination of the particular estate, supposing that expiration or determination to take place at that moment, there the Remainder is vested. That the doubt arose, by not advert ing to the distinction between the different nature of the contingency, in those cases where the Remainder is limited to a person in esse, but the title of the Remainder man depends on a collateral or extraneous contingency, which may, or may not, take place during the continuance of the preceding estate; and those cases where the preceding estate may endure beyond the continuance of the estate in Remainder. Thus, if an estate is limited to A. for life, and, after the death of A. and J. S., to B. for life, or in tail, there, during the life of J. S., the title of B. depends on the contingency of J. S. dying in the lifetime of A. This being an event, which may, or may not, take place during the continuance of the preceding estate, B.'s estate is necessarily contingent. But then, supposing J. S. to die, still it remains an uncertainty whether
whether B.'s estate will ever take place in possession:

for, if the Remainder be limited to B., for life, there, if B. dies in A.'s life-time, A.'s estate would endure beyond the continuance of the estate limited in Remainder. The same would be the case if the Remainder over were limited to B. in tail, and B. was to die in A.'s life-time without issue. Yet, in both cases, it was agreed, that B. took not a contingent, but a vested Remainder. Hence they inferred, that it was not the possibility of the Remainder ever having effect in possession, but the Remainder-man's not having a capacity or title to take, supposing the preceding estate at that instant to expire or determine, together with its being uncertain whether he ever would obtain that capacity or title, during the continuance of the preceding estate, that makes the Remainder contingent. Upon these grounds they determined, that the Tuckers took a vested Remainder, and that the Recovery therefore was void.—The doctrine established in this case is laid down very precisely by Coke, 10 Rep. 85, where he, with great accuracy of expression, observes, that where it is doubtful and uncertain whether the use or estate limited in future shall ever vest in interest, or not, then the use or estate is in contingency; because, upon a future contingency, it may either vest or never vest, as the contingent happens. See 1 Rep. 125, 6: 1 Iste. 265, n. in. : 2 and p. 5. V.

If an estate be limited, either at Common Law, or by way of use, to one for life, or in tail, Remainder to the right heirs of J. S. who is then dead; this is a good Remainder, and vests presently in the person who is heir at law to J. S. by purchase; see post. V., and though a daughter be then heir at law, and after a son is born, yet shall the daughter retain the land against him; for the benefit of her; and coming within the description at the time when the Remainder was limited, it then vested and vested in her, immediately, as a Remainder by purchase, and shall not, by any accident after, be defeated. 2 Rol. Abr. 412: 1 Co. 95, 103: Plow. 50.

But if J. S. be living at the time of the Remainder limited to his right heirs, this puts such Remainder in abeyance or contingency: that is, it is in no person, but in abeyance, till the contingency happens; that is not in the fe自然而 or donor, because he has limited it out of bis, and all Remainders must pass out of him at the time of the limitation, though they do not presently vest in the person intended; and in the right heirs of J. S. it cannot be, because he cannot have heirs during life; for there is no person, in rem natura, within the description, to take it; therefore it is, in the mean time, in abeyance, or expectancy, to vest or not vest, as the case happens; for if J. S. dies during the particular estate, then the Remainder presently takes place in his heirs; but if the particular estate determines, by death or otherwise, in the life of J. S. then such Remainder is become totally void, and can never vest, but the estate settles again in the fe自然而 or donor, as if no such limitation in Remainder had been; and he becomes tenant to the principle, and is obliged to do the services; and though J. S. die soon after, yet his heir can have no benefit by it, not being capable of taking the Remainder when it fell. 1 Co. 145: Co. Lit. 378, a: 2 Co. 51: 2 Rol. Abr. 415: Plow. 58, 56: Poph. 74: Moer 720: 3 Co. 20: 10 Co. 50: Rasm. 145: Poph. 56. See Fearm. 526; 534: &c., where this doctrine of the Remainder being in abeyance, is considered as in some measure unintelligible; and another question depending thereon is stated thus: "A man [by]settlement or will makes a disposition of a Remainder, or future interest, which is to take no effect at all until a future event or contingency happens; it is admitted, that no interest passes by such a disposition, to any body, before the event referred to takes place. The question is, What becomes of the intermediate reversionary interest, from the time of the making such future disposition, until it takes effect? It was in the grantor, or tenant, at the time of making such disposition, is considered not included in it: The natural conclusion seems to be, that it remains where it was, viz., in the grantor, or the tenant, and his heirs; for want of being departed with to any body else.—When the future disposition takes effect, then the reversionary or future interest passes, pursuant to the terms of it; but if such future disposition fails of effect, either by reason of the determination of the particular estate, failure of the contingency, or otherwise, what is there then to draw the estate, which was the intended subject of it, out of the grantor or his heirs, or the heirs of the tenant? or who can derive title to an estate under a prospective disposition, which confessedly never takes any effect at all? Fearm 525, 5: 533.

But if there be no such J. S. at the time of the limitation, though he be after born, and dies, during the particular estate; yet his heirs shall never have the Remainder. So, if a Remainder be limited to A. son of B. in tail, or. to E. wife of D., where in truth there is no such A. or B., though B. has a son called A., or D. marries one E., yet they can never take the Remainder; because, if there be such persons as the words of the gift import, there the Remainder ought to vest in them presently, and they will never after be made capable of taking it, but if there be no such person then in effect, none who come within that description after, can lay claim to it, because the limitation was future to such persons; but a Remainder limited primogenitum filio, or proximo heredi meo velo de A., or progeniturores heredibus de juxtaque puero, or secundo puero de A., or to the right heirs of A., there being then such A. in effe, or to the wife A. shall marry; these are good Remainders, and vest when such persons come in effe as are within the description; because here appears no present regard for any person in particular; therefore, if they answer the description at any time before the particular estate determines, it is time enough; and so there is a diversity between a Remainder limited to one, by name in particular, and such Remainder limited by description or circumscription, or between a general name and a special name. Co. Lit. 3: 1 Co. 66: 2 Co. 51: Hob. 33: Moer 104: Dyer 337: 1 Leom. 510: 1 Rol. Rep. 235. A. makes a lease to B. for life of B., and after the death of B. to remain to B. and his heirs; this Remainder is contingent, and cannot vest presently, for if A. survives B. it is void; and because, otherwisc, the operation of livery would be interrupted during the life of A.; for he cannot give himself any estate, his livery operating to pass estates from him, not to give any to him who had the whole before; therefore, during his life, the operation of the livery must cease, and by consequence no Remainder can take effect in virtue of that livery, which pro tempore being at an end, all that depended thereon ceases too, and can never after be revived: for
REMAINDER II. III.

the livery must carry all the estates at once from the
feantor; and if he comes again into the possession before
they can take effect, this breaks the force of the
livery, and brings back again to him all such livery
had taken out from him, and then they never can take
effect but by a new livery: This is the reason of the
common caufe, that one cannot give lands to another to
begin after his death, because, being to make a livery
directly, if that cannot operate directly, it can never
operate at all; for it is a contradiction to give lands to
one by a solemn livery, which is an act executed, and
works prontly; and yet, by words, to restrain that op­
eration to a future time: But in the principal case, where
A. dies first, there is no interruption of the livery, for
B. had an estate for life by virtue thereof; and before
that determines, the fame livery which carried the
Remainder in abeyance, for the uncertainty of its taking
effect, does on A.'s death direct and settle, or bring
down the Remainder to B. and his heirs. 10 Co. 85.

If a lease be made to A., B., and C., for their lives, and
if B. survives C., then to remain to B. and his heirs;
this Remainder is in abeyance, because, though the
performance may be certain, yet since it depends on C.'s dying before
him, till that be known the Remainder cannot vest. So
if a lease be made to A. for life, and after the death of
B. who is a stranger, to remain to C. in fee, or to A. in fee; these Remainders are in abeyance or contingency,
and depend on B.'s dying before C. or A., for if he
survives them, the Remainder cannot take effect.
3 Co. 20. 10 Co. 85; Co. Liir. 378.

If a lease were made to A. for life, Remainder to the
Abbot of D., and his successors, though the Abbot were
dead, so as there were then no abbot at all, yet the
Remainder should be good, if an abbot were made before
the death of A. So, of a Remainder to a Mayor and
Commonalty, Dean and Chapter, Prior and Convent, &c.,
though there be then no mayor, dean or prior. So, of
a Remainder to the Bishop of D., Parson of D., or other
corporations, and his successors; these Remainders
(not being limited to them by name specially, but to
them generally, and so whoever comes within the descrip­
tion before the determination of the particular estate, is
capable of taking by virtue thereof) are good Remainders
in abeyance, &c. But if there be no such corporations
at the time of the limitation, then the Remainders are
totally void, and none created after, though by the same
name, can take these Remainders, not even if a patent
be then passed to make such corporation. Co. Liir. 264:
Heb. 33.; 2 Co. 51.; 10 Co. 30.; Moore 104.; 1 Rol.

Contingent Remainders may be defeated, by destroy­ing
or determining the particular estate upon which they
depend, before the contingency happens whereby they
became vested. 1 Rep. 65.; 135. Therefore, when there
is tenant for life, with divers Remainders in contingency,
he may, not only by his death, but by alienation, for­
sender, or other methods, destroy and determine his own
life estate, before any of these Remainders vest; the
consequence of which is, that he utterly defeats them all.
As, if there be tenant for life, with Remainder to his
elder son unborn in tail, and the tenants for life, before
any son is born, forsender his heir life-estate, he by that
means defeats the Remainder in tail to his son: for his
son not being in esse, when the particular estate deter­
mired, the Remainder could not then vest; and, as it
could not vest then, by the rules before laid down, it
never can vest at all. In these cases, therefore, it is ne­
cessary to have trustees appointed to preserve the Con­
tingent Remainders; in whom there is vested an estate
in Remainder for the life of the tenant for life, to com­
cence when his estate determines. If, therefore, his
estate for life determines otherwise than by his death, the
estate of the trustees, for the residue of his natural life,
will then take effect, and become a particular estate in
possession, sufficient to support the Remainders depend­
ing in contingency. See post. V. This method is said
to have been invented by Sir Orlando Bridgman, Sir
Geoffrey Palmer, and other eminent Counsel, who be­
took themselves to corresponding during the time of the
Civil Wars; in order thereby to secure, in family settle­
ments, a provison for the future children of an intended
marriage, who before were usually left at the mercy of
the particular tenant for life: and when, after the Re­
formation, these gentlemen came to fill the chief offices
of the Law, they supported this invention, within reasonable
and proper bounds, and introduced it into general use.

III. When lands are given in undivided shares to
two or more for particular estates, so as that, upon
the determination of the particular estates in any of those
shares, they remain over to the other grantees, and the
Reversioner or Remainder-man is not left in, till the deter­
mation of all the particular estates, then the grantees
take their original shares as tenants in common; and the
Remainders limited to them, on the determination of the
particular estates, are known by the appellation of Crosf
Remainders. These Remainders may be raised both by
deed and will; in deeds they can only be created by ex­
press words, but in wills they may be raised by impli­
cation. 1 Tris. 155.; 6. In n.

A. having issue five sons, his wife being enfeint, devi­
ded two thirds of his lands to his four younger sons, and the
child in ventre suo. more, if he were a son, and his heirs;
and if all died without issue male of their bodies, or
any of them, that the lands revert to the right heirs of
the devior: By this devise, the younger sons were tenants
in tail in possession, with Crosf Remainders in tail to each
other, and no part shall revert to the heir of the devior,
and all the younger sons be dead without issue male of
their bodies. Dyers 103.

But where one having issue three sons, A., B., and D.,
devises one house to A. and his heirs, another to B. and
his heirs, and a third to D. and his heirs; provided, that
if all his said children die without issue, then the
crofs remain and be to his wife and her heirs; it
was held by three Judges, that, on the death of one of
such houses, the same might enter, and that here
there were no Crosf Remainders from one son to another,
being, because being devised severally by express
limitation, there shall be no greater estate to them by
2 Tuf. 82.; Carth. 173.

In the above case it was said, by Justice Doderidge, that
Crosf Remainders should never be raised, by implication,
between more than two. This doctrine received some
4 F. 2; 1066; 26. 113; 1 Ser. 166; 2 Der. 104.
countenance from what was said by the Courts in the cases of Cale v. Loving, 1 Tant., 224; Holmes v. Meunier, T. Raym. 452; and some other cases. See 4 Leav. 14. But it seems entirely exploded by the cases of Burden v. Burville, B. R. P., F. 15 Geo. 5; Richmond (D) v. Cahuel (E), Chanc. May 1773; Wright v. Holford & al. Comp. 315; and some other subsequent cases. It seems, however, to be admitted in these cases, that to raise Crofs Remainders between more than two, stronger implication is required, than to raise them between two only. 1 Leav. 155, b. in u.

One fealed of lands in fee, by will devolves Block Acres to A. his daughter, and her heirs, and White Acres to his daughter B. and her heirs; and if she die before the age of sixteen years, living A., then A. to have White Acres to her and her heirs; and if A. die, having no issue, living B., then B. to have the part of A. to her and her heirs; and if both die, having no issue, then to J. S. and his heirs; the Teydor dies, D. attains her age of sixteen years, and issue dies, without issue in the life of A., and it was held by the Courts in the case of Dyer v. 16; that the daughter had an estate in tail of the whole will, and not a free determinable on a contingency subsequent: 3dly, That, by the words "if both die without issue," no Crofs Remainders in tail were created by implication, but that on B.'s death without issue, after sixteen, J. S. should have her part presently without paying till the death of A. without issue. Dyer 350: 1 Broil. 212: 1 Roll. Abr. 855: Vaughan 287.

A. seised of lands in fee, by will devolves all his lands in the county of, &c. to his two daughters B. and D. and their heirs, equally to be divided between them; and in case they happen to die without issue, then to his nephew J. S. and the heirs male of his body, and dies; and it was adjudged, that on the death of B., one of the daughters of the other sister took her moiety as a Crofs Remainder. Raym. 452: Skin. 17: 2 Jon. 172: 2 Sheen. 136: Folle. 434; and eve. 2 Vern. 545: 3 Mod. 179.

Richard Holles seised in fee, and having issue a son and their two grandchildren, by his will devised part of his estate to his wife for her life; and the remainder of such parts, contingent on her death, and all other his freehold tenements, &c. he gave to his son Richard for life, and after his death to his first and other sons successively in tail male, and for default of such issue, and after the determination of the tail estates, he gave the premises to his grandson Richard Holles, and his granddaughter Elizabeth Holles, to be equally divided between them, and to the heirs of their respective bodies issuing; and for default of such issue, he gave the premises to his granddaughter Anne in fee: The teydor died seised, Richard the son died without issue male, whereupon Elizabeth and the grandson entered, and Elizabeth died without issue generally; Anne Holles married John Jerous, and the question was, Whether there wereCrofs Remainders between Elizabeth and Richard the grandson, or whether the moiety of Elizabeth should go to Anne or to Richard? And it was resolved, that there were no Crofs Remainders between them, because there are no express words, nor is there a necessary implication, without one of which Crofs Remainders cannot be raised; that the words, and for default of such issue, being relative to what goes before, mean only, and for default of heirs of their respective bodies; and therefore it is no more than as if it had been a devise of one moiety to Richard and the heirs of his body, and of the other moiety to Elizabeth and the heirs of her body, and for default of heirs of their respective bodies, Remainder over; in which case there could be no doubt; and it was held, that this case differed from the case, jurisprud., the word respective being in that case, and the first devises were the teydor's daughters, and the Remainder man only a nephew; whereas, in the present case, Anne was as near to the teydor as Richard. Conyers v. Hill, 2 Kelly, 183: 2 Barn. A. B. 567, 443; Browne v. Williams, Mich. 8 Geo. 2.

IV. As to cures of inheritance, there can be no doubt but that the grantor, having a perpetual and durable interest in the estate, may have and divide it, or grant as many Remainders over as he thinks proper. 4 New Abr. 452.

But it to personal goods and chattels, it was formerly held, that they, in their own nature, were incapable of any limitation over; being things transitory, and by many accidents subject to be lost, destroyed, or otherwise impaired, and the exigencies of trade requiring a frequent circulation thereof, in which they differ from lands and tenements which are permanent; therefore, what is called an estate in lands, is termed property in personal chattels: Wherefore it was held, that a grantor's devise of a personal thing to one, though but for an hour, or minute, was a gift for ever; and an absolute disposition of the entire property. Bro. Devise 13: Plowd. 521: Dyer 74: 8 Ca. 94.

Hence it was a long time before the Courts of Justice could be prevailed upon to have any regard for a devise over ever, even of a chattel real, or a term for years, after an estate for life limited thereon; because the estate for life being, in the eye of the Law, of greater regard and consideration than an estate for years, they thought he, who had it devised to him for life, had therein included all that the deviseur had a power to dispose of; but now such Remainders over are allowed, under the name of Executory Devises, and are established both in the Courts of Law and Equity, provided they tend not to a perpetuity, so as to make estates unalienable. 4 New Abr. 294. See this DIs. title Executory Devises.

Also, a distinction was formerly taken between a devise of a personal chattel to one for life, with a Remainder over, and of the use only; that, in the first case, the devise for life had the absolute property; but not so in the second, for that the first devise had not the property of the goods, but only a special interest in them, so that there still remained a property which might be limited over: But this distinction is now exploded, and the devise in Remainder is allowed in Equity the like remedy in both cases. Plowd. 521: Cre. Cas. 346: 1 Rel. Abr. 610: March 106: Owen 33: 1 Co. Ca. 129: 2 Vern. 245: 1 P. Wms. 1, 502, 651: 2 Comm. e. c. 25, p. 598.

But a devise of a term for years, or personal chattel, to one, for a day, or an hour, is a devise of the whole term or interest, if the limitation over is void, and it appears at the same time that the whole was intended to be disposed of from the executor. 1 P. Wms. 665.

A. being possessed of a term for ninety-nine years, devised it to B. for life, and after to six others, successively, for their lives, if the term so long continue; and all the seven
seven periods being dead, and the term continuing, it was adjudged, that it should revert to the executors of the testator, and that it did not vest in the survivor of the devisees, so as to transmit it to his representatives. 1 Salk. 231. 1 Le. Rm. 125.

A farmer devised his stock (which consisted of corn, hay, cattle, &c.) to his wife for life, and after her death to the plaintiff. It was objected, that no Remainder can be limited over of such chattels as these, because the use of them is to spend and consume them; but the Master of the Rolls said the devisee's bequest was good, but added, if any of the cattle were worn out in using, the defendant was not to be answerable for them; and if any were sold as stock, the defendant was only to answer the value of them at the time of the sale; and an account was decreed to be taken accordingly. Abr. Eq. 561.

A. gives his fitter, by will, 101, and directs, that such part of his personal estate, as his wife should leave of her substantial, should go to the fitter; whatever the wife has not employed in that way shall go over, and be accounted for. 1 P. Wms. 653.

But if a chattel real, money, goods, or other personal things, are devised to one, and the heirs of his body, or to one, and, if he dies without heirs of his body, Remainder over, by which the devisee has an estate-tail, this Remainder is totally void, and the Courts of Equity will not allow of a bill by the Remainder-man to compel security, &c., or to have the money, &c., after the death of the first devisee, but it shall go to his executors or administrators; for the first devisee gives the absolute property of a personal estate, as the like devisee of a real estate, before the statute De densis, gave the absolute fee, upon which no limitation could be made further; and as the heirs are the representatives to take the real estate, so are the executors to take the personal estate; and this is not within the statute De densis, but remains as at Common Law. 2 Vern. 319; 2 Vern. 620; 1 Salk. 156.

If A. devise, that his goods and furniture shall remain in his house, to be enjoyed, according to the limitations of his will, by those entitled to the house; the first, who would be tenant in tail of the house, becomes absolute owner of the goods. See further, title Executory Devise.

Not only lands and tenements, but also rents, commons, escheors, or any other interest or profits in eftate, wherein the grantor has the absolute property to him and his heirs, may be granted with Remainder over. Plowd. 379: 9 Co. 48, 97.

So, if one have the office of park-keeper, forester, gaoler, sheriff, &c., to him and his heirs, he may grant those offices to one for life, Remainder to another for life, &c.; for none majus content in fessum; and as they are grantable over in fee, so may they be granted in succession to one for life, with Remainders over, &c. 9 Co. 48; 1 and. pl. 201.

It was formerly doubted, whether there could be a Remainder of a rent de novo; that is, whether a man, feiled of lands in fee, could thereout grant a rent-charge to one for life or years, Remainder to another in fee, or in tail; and this doubt arose from the rent not having any existence before it was created, consequently, no reversion could be left to the grantor, out of which the Remainder was to arise: But it is now settled, that such grant in Remainder is good, the grantor having the absolute interest in the estate out of which it is to arise, and his intention gives it, being for the whole, out of which the lesser estates are carved. But if he grant such rent for life or years, to one, without going further, he cannot after grant the reversion thereof to another, because he has no reversion in him. 2 Roll. Abr. 245; 2 Co. 70, 79; 2 Vent. 240; 1 Lev. 141; 1 Sid. 285; 2 Salk. 577; 2 Lew. 123; Moz. pl. 100. See title Rent.

The King may grant an estate in an office, to commence in futuro, or on a contingency, for he hath no inheritance in the office, as to the execution of it, but in point of interest only to grant. And there is a diversity between offices in fee existing, and such are granted only for life, which, being as a new thing created, may, as a rent de novo, be granted to commence in futuro. 1 Mod. 275: 1 Le. Rm. 52: Carth. 350; Salk. 405; Comb. 314.

If one be created Baron, Wilsont, Earl, &c., by patent, and after, in the same patent, the same honour is granted to another in Remainder, yet this operates as a new grant, and not as a Remainder; for the King had no reversion of that honour in him, though he had full the same power of appointing one in succession to take it, as he had of granting it to the first. Stow. Par. Ca. 5, 11.

V. The word Remainder is no term of art, nor is it necessary to create a Remainder. So that any words, sufficient to shew the intent of the party, will create a Remainder; because such estates take their denomination of Remainders, more from the nature and manner of their existence, after they are limited, than from any previous quality inherent in the word Remainder. To make them such, therefore, if a man gives land to A. for life, and that after his death the land shall revert, or descend, to B., for life, &c., this is a good Remainder, and may be pleaded as such. 1 Rol. Abr. 416: Plowd. 292; 1 Rol. Rep. 319: Dyer 125.

So, if lands are given to one, and the heirs male of his body, and to him, and the heirs female of his body; this limitation to the heirs male is a Remainder; because it is not to take place till the estate to the heirs male is spent. Co. Litt. 377, 2.

So, if lands are given to a widow, and to the heirs of the body of her late husband, or her legatees. This is a Remainder to the heirs of the body of the husband; because it cannot take effect till after the widow's death, who has an estate for life. Co. Litt. 16, 200: 2 Mol. 210.

So, an estate limited to A. for life, or in tail, and after his decease, or for default of such issue, to B. and the heirs of his body, is good, though there be not the word Remainder. So, if a lease be made to A. for life, and that after his death B. shall have the profit; this is a good Remainder to B. Plowd. 159: Moz. pl. 54: Dyer 125; 1 Rol. Rep. 319: Cor. Eliz. 10, 712.

So, a lease to A. for life, and that after his death his children shall have it, is a good Remainder. 6 Co. 17, b: Raym. 83.

Nay, though an estate be limited expressly as a Remainder, yet, if it be not so in construction of Law, the word Remainder will have no force to make it such. As, if A. feiled of lands in fee, he and B. levy a fine to D. in fee, who grants and renders to B. in tail, rendering rent to A., and if B. died without issue, tenant in tail to A., and his heirs; B. suffers a common recovery; A. dilinrains for his rent; This was adjudged at Westminster, and at such the rent paide with it to A., and was chargeable on the land in whose hands foever it came, by virtue of the contract, which cannot be destroyed.
If a lease be made to A. for eighty years, if he so long live, and if he die without the term, then the land to go over to another for the residue of the eighty years; this is a good Remainder, because, though the term or interest be determined, yet the land, and part of the years, still remain; these years may be made the measure of the succeeding interest, as any other number of years may be. Cre. El. 210: 1 Leas. 215: 1 Co. 151: 3 Leon. 195: 2 Rel. Abr. 415: Plowd. 198: Moor. 247: 2 Ste. 444: 1 And. 259;

f. S. cited of lands in fee, by indenture, demises them to A. for life, habendum to B., D., and E., his three sons for their lives, and the life of the survivor of them successively; after the death of A., it was adjudged in this case: First, That if the sons could take, it must be by way of Remainder, not being parties to the deed; and then it must be as joint-tenants, which could not be by reason of the word "successively." Secondly, That the sons could not take in succession, for the uncertainty whose estate or interest was to commence first. Hab. 3:13; hut. 87.

A., by indenture, makes a lease to B. for forty years, if A. so long live, and after his death to D. (who was no party to the deed,) for one thousand years; and then A. leaves a fine, and dies, and five years pass after his death, and then the plaintiff claiming under D. enters, &c. This is no Remainder at all to D.; for, First, Presently it cannot vest by reason of the lessor's life interposing, therefore no Remainder is vested. Secondly, As a Contingent Remainder, it cannot be good; because then it ought to have a particular estate to support it, and ought to be in abeyance, or contingency, to vest or not vest, when that determines: But here the first lease is no such particular estate; because that reaches not to the commencement of the Remainder, nor is the Remainder limited with any regard to the particular estate; because it is not to commence on the determination of that, but at a future time, viz. on the death of the lessor; and there is no contingency in the case, for it is to take effect, at all events, on the death of the lessor, be it before or after the end of the term, therefore, it can be no other than a future interest, terminus, to begin after the death of the party who grants it, which, being but for years, it may well do; because it emerges by way of contract; and though the grantee there was no party to the deed, and therefore, as objected, could take nothing, yet it appears that judgment was given for the plaintiff which proves. First, That the grantee had an interest; Secondly, That this interest was not barred by the fine, and five years non-claim after the death of the grantor, not being touched, dethroned, or turned to a right; Thirdly, That though the grantee was no party to the indenture, yet he might well take by virtue thereof, if he gets the indenture to make out his title; for the indenture cannot derogate from his own grant, or avoid his own ads. Rym. 140.

We next come to consider the question, what shall be words of limitation, and what words of purchase.

In a grant of an estate in fee-simple to A., it is necessary to give it to A. and his heirs; Of an estate in fee-tail, to A. and the heirs of his body: And a grant to A. without any additional words, gives him only an estate for life. Hence the word heirs, and the words heirs of the body in the second, are said to be words of limitation; because they limit or describe what interest A. takes by the grant, viz. in one case a fee-simple, in the other a fee-tail: And the heirs, in both instances, take no interest, any farther than as the ancestor may permit the estate to descend to them. But if a Remainder is granted, or an estate devised, to the heirs of A. where no estate of freehold is at the same time given to A., the heirs of A. cannot take by descent from A.; but he takes by purchase under the grant, in the same manner as if the estate had been given to him by his proper name. Here the word heirs is called a word of purchase. 2 Comm. 211. p. 172, in n.

Further to elucidate this contested question, it may be proper to state the much-talked-of rule in Sheby's case, and Mr. Phear's definition of the terms words of limitation, and words of purchase.

The rule in Sheby's case is this:—When the ancestor, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediate or immediately, to his heirs in fee, or in tail, always in such cases the heirs are words of limitation, and not words of purchase. 1 Co. 104. And the Remainder is said to be executed in the ancestor, where there is no intermediate estate; or vested, where an estate for life or in tail intervenes. 2 Comm. c. 11, in n. Otherwise, (continues Coke,) it is where an estate for years is limited to the ancestor, the Remainder to another for life, the Remainder to the right heirs of the lessor for years, then his heirs are purchasers, &c. 1 Co. 104.

Mr. Phear, after examining the terms used by Coke, in laying down the above rule, and vindicating them from the charge of inaccuracy, to which Mr. Douglas had considered them liable, seems to have fully settled the distinction between words of limitation and words of purchase, in the following manner:

When the words heirs, &c. operate only to expand an estate in the ancestor, so as to let the heirs described into its extent, and entitle them to take derivatively through or from him, as the root of succession, or person in whom the estate is considered as commencing, they are properly words of limitation; but when they operate only to give the estate, imported by them, to the heirs described, originally, and as the persons in whom that estate is considered as commencing, and not derivatively from or through the ancestor, they are properly words of purchase. Lord Coke, in the rule above alluded to, very properly refers the word purchase to the express objects of limitation, viz. heirs, &c. And when such heirs, &c. originally acquire the estate by those words, he styles them words of purchase; otherwise, not. In general, words of purchase are those, by which, taken absolutely without reference to, or connexion with, any other words, the estate first attaches, or is considered as commencing in the person described by them: whilst words of limitation operate by reference to, or connexion with, other words, and extend or modify the estate given by those other words. This is evidently the line of distinction adopted by Lord Coke, and which pervades the terms of the rule in question; and is in fact admitted by all who do not deny the word heirs, in the common limitation to a man and his heirs for ever, to be words of limitation. But it is to be remarked, that when the words heirs male of the body, &c. operate as words of purchase, that...
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that is, when they do not attach in the ancestor, but vest in the person answering the description of such special heir, they appear to have a sort of equivocal or mixed effect: for though they give the estate to the special heir originally, and not through or from that ancestor, yet the estate which he so takes has such a reference to the ancestor, as to pursue the same course of succession, in the same extent of duration or continuance, through the same persons, as if it had attached in and descended from the ancestor. *Eccles. Cont. Rem.* 1067-1095; &c. edit. 1791.

If, then, an estate be given to A for life, and after death to the heirs of his body, this Remaider is executed in A, or it unites with his estate for life; and the effect is the same as if the estate had at once been given to A, and the heirs of his body; which expression limits an estate tail to A, and the issue have no indefeasible interest conveyed to them, but can only take by descent from A. So, *if,* if an estate be given to A for life, with Remaider to B for life, or in tail, Remainder to the heirs, or the heirs of the body of A; in this case, A takes an estate for life, with a vested Remainder in fee, or in tail; and his heir, under this grant, can only take by descent at his death. *Fearn* 21. But in order that the estate for life, and the Remainder in tail or in fee, should thus unite and coalesce, and heirs be a word of limitation, the two estates must be created by the same instrument, and must be either both legal, or both true estates. *Doug.* 490; 2 *Term Rep.* 444. The rule with regard to the execution or completion of such estates seems now to be the same as in equitable as in legal estates. 1 *Bro.* C. R. 256. And in all these cases where a person has an estate tail, or a vested Remainder in tail, he can cut off the expectations or inheritance of his issue by a fine or a recovery. *Doug.* 253.

In order, therefore, to procure a certain provision for children, the method was invented of granting the estate to the father for life, and after his death to his first and other sons in tail; for the words for or daughter were held to be words of purchase, and the Remainder to them did not, like the Remainder to heirs, unite with the prior estate of freehold. But if the son was unborn, the Remainder was contingent, and might have been defeated by the alienation of the father, by testament, fine, or recovery; (though a conveyance of a greater estate than he has by bargain and sale, or by lease and release, is no forfeiture, and will not defeat a Contingent Remainder. 2 *Leom.* 60; 3 *Mad.* 191.) To prevent this alienation by tenant in title, it was necessary to interpose trustees, to whom the estate is given upon such a determination of the life-estate, and in whom it rests till the contingent estate, if at all, comes into existence; and thus they are laid to support and preserve the Contingent Remainders. This is called a Strick Settlement, and is the only mode (Executive Dovers excepted) by which a certain and indefeasible provision can be secured to an unborn child. But in the case of articles or covenants before marriage, for making a settlement upon the husband and wife, and their offspring, if there be a limitation to the parents for life, with a Remainder to the heirs of their bodies, the latter words are generally considered as words of purchase, and not of limitation: And a Court of Equity will decree the articles to be executed in strict settlement. See *Fearn* 124, and the examples there cited. It being the great object of such settlements to secure fortunes for the issue of the marriage, it would be useless to give the parents an estate tail, of which they would almost immediately have the absolute disposal: And therefore the Courts of Equity will decree the estate to be vested upon the parent or parents for life; Remainder (i.e., upon the determination of such estate for life by forfeiture) to trustees, to support Contingent Remainders, for their lives; Remainder (after the decease of the parents) to the first and other sons successively in tail; with Remainder to all the daughters in tail, as tenants in common; with subsequent Remainders, or provisions, according to the occasions and intentions of the parties.

In these strict settlements, the estate is unalienable till the first son attains the age of twenty-one; who, if his father is dead, has then, as tenant in tail, full power over the estate; or, if his father is living, the son can then bar his own issue by a fine, independent of the father. *Gruse* 161. See title *Fine.* But the father, and the son at that age, can cut off all the subsequent limitations, and dispose of the estate in any manner they please, by joining in a common recovery. See title *Recovery,* and ante II. This is the origin of the vulgar error, that a tenant of an estate tail must have the consent of his eldest son to enable him to cut off the tail; for that is necessary where the father has only a life-estate, and his eldest son has the Remainder in tail.

But there is no method whatever of securing an estate to the grandchildren of a person who is without children at the time of the settlement; for the Law will not admit of a perpetuity; which has been defined to be " any extension of an estate beyond a life in being, and twenty-one years after." 2 *Bro.* C. R. 30. See this Dict. title *Executive Dovers.* Hence, where in a settlement the father has a power to appoint an estate to or amongst his children, he cannot afterwards give this to his children in strict settlement, or give any of his sons an estate for life, with a Remainder in tail to his eldest son: for if he could do this, a perpetuity would be created by the original settlement. 2 *Term Rep.* 241. See 2 *Comm.* c. 115, in n.

From what has been imperfectly stated under this title, the Student will observe how much nicety is required in creating and securing a Remainder; and, in some measure, to see the general reasons upon which this nicety is founded. It was needful to attempt to enter upon the particular subtleties and refinements into which this doctrine, by the variety of cases which have occurred in the course of many centuries, has been spun out and subdivided: It has been already hinted, (see ante IV.) that in devices by last will and testament, (which, being often drawn up when the party is insomn. sleeps,) are always more favoured in construction than formal deeds, which are presumed to be made with great caution, forethought, and advice,) Remaniders may be created, in some measure, contrary to the rules laid down; though Lawyers will not allow such dispositions to be strictly Remainders; but call them by another name, that of *Executive Dovers,* or devises hereafter to be executed; as to which see further, this Dict. under that title.

For more information on this subject, see 4 *New Abr.* *Finn. Abr.* title *Remanider;* this Dict. titles *Executive Dovers;* *Recovery,* and, for a clear and comprehensive statement of this abstruse branch of legal learning, *Fearn's valuable Essays on Contingent Remainders and Executive Dovers.*

REMANENTES,
REMA

REMANENTES, Remanent.] Belonging to—de bo
minibus fines tenuatibus qui haec mensura remansit. Dunsdai.

REMEDY, Remedium.] The action or means given by Law for the recovery of a right; and it is a maxim of Law, that whenever the Law grants any thing, it gives a Remedy for the same.

REMEMBRANCERS, Remembrancers.] Formerly called Clerks of the Remembrance; Officers of the Exchequer, of which there are three, distinguished by the names of the King's Remembrancer, the Lord Treasurer's Remembrancer, and the Remembrancer of First Fruits: Upon whose charge it lies, to put the Lord Treasurer and the Judges of that Court in Remembrance of such things as are to be called on and dealt in for the King's benefit.

The King's Remembrancer enters in his office all recognizances taken before the Biron for any of the King's debts, for appearances, &c.; and he takes all bonds for such debts, and makes out processes for breach of them; also he writes processes against the Collectors of Customs, Subsidies, Excise, and other public payments for their accounts: All informations on Penal Statutes are entered and filed in his office; and he makes the bills of composition on Penal Laws, and takes the infliction of debts: And all matters of Registral bills in the Exchequer-Chamber remain in the office of this Remembrancer. He has delivered his office the indentures, fines, and other evidences, which concern the pushing any lands to or from the King. In Graffiti Animanum, yearly, he reads in the Court the oath of all the Officers of the Court, when they are admitted. Writs of Prerogative, or Privilege, for Officers and Ministers of the Court, are made out by him; and commissions of Aijt Pris, by the King's warrant, on trial of any matters within his office: At the Assizes in the country, he hath the entering of judgments, of pleas, &c. And all differences touching irregularities in proceedings shall be determined by the King's Remembrancer; who is to settle the same, if he can, and give his where he finds the fault; but if no, the Court is to determine it, &c.

By order of Court, his Majesty's Remembrancer, or his deputy, are diligently to attend in Court, and to give an account touching any proceedings as they shall be required; and they enter the rules and orders of the Court.

The Treasurer's Remembrancer takes out processes of Fisci Fidatis and Extents, for debts to the King; and against Sheriffs, Escheatours, &c. not accounting. He takes the accounts of all Sheriffs, and makes the record, whereby it appears whether Sheriffs, and other Accountants, pay their proffes due at Layfair and Merchandis and he makes another record, whether Sheriffs, and other Accountants, keep their days prefixed: There are also brought into his office all the accounts of customers, controllers, and accounted to make entry thereof on record. All charges of fines, fees, and amendements, let in any of the Courts at Westmuir, or at the Assises, or Sessions, are certified into his office; and by him delivered to the Clerk of the Exchequers, to make out processes on them; and he may issue processes for discovery of tenures; and all such revenue as is due to the Crown by reason thereof, &c.

The Remembrancer of the First Fruit's Office is to take all compositions, and bonds for payments of First Fruits and Tents; he makes process against all such persons as do not pay the same. Statut. 5 R. 2. st. 1. c. 14. 37 Ed. 2. c. 4.

REMITTER, from the Lat. remittere, to restore, or send back.] An operation in Law, upon the meeting of an ancient right, remediable, and a latter (defeasible) estate, in the same person (the latter being cast upon him by Law); whereby the ancient right is restored and set up again; and the new defeasible estate ceased; and thus he is in, of his first or better estate. See 3 M. 547. &c. Litt. 869.

Remitter is elected (with Retainer), by Blanket, among those remedies for private wrongs, which are affected by the mere operation of Law, and is defined to be, where he who hath the true property, or jus proprietas, in lands, but is out of possession thereof, and hath no right to enter, without recovering possession in an action, hath afterwards the seisin cast upon him by some substitute, and, of course, defeasible title: In this case, he is remitted, or sent back, by operation of Law, to his ancient and more certain title. The right of entry, which he hath gained by a bad title, shall be in futuro annexed to his own inherent good; and his defeasible estate shall be utterly defeated and annulled, by the instantaneous act of Law, without his participation or consent. Litt. 669; Co. Litt. 338; Cro. Jac. 489.

As if A. defeises B., that is, turns him out of possession, and dies, leaving a son C. whereby the estate descends to C. the son of A., and B. is barred from entering thereon till he proves his right in an action: Now, if afterwards C., the heir of the defeiser, makes a lease for life to D., with remainder to B. the defeasible for life, and D. dies; hereby the remainder accrues to B., the defeasible; who, thus gaining a new freehold by virtue of the remainder, which is a bad title, is by act of Law remitted, or is, of his former and future estate. For he hath thereby gained a new right of possession, to which the Law immediately annexes his ancient right of property. Finch. L. 154; Litt. 669.

If the substitute estate, or right of possession, be gained by a man's own act or consent, as by immediate purchase, being of full age, he shall not be remitted; for the taking such substitute estate was his own folly, and shall be looked upon as a waiver of his prior right. Co. Litt. 348, 350. Therefore, it is to be observed, that to every Remitter there are regularly these incidents; an ancient right, and a new defeasible estate of freehold, uniting in one and the same person; which defeasible estate must be cast upon the tenant, not gained by his own act, or folly. The reason given by Littleton, why this remedy, which operates silently, and by the mere act of Law, was allowed, is because, otherwise, he who hath right would be deprived of all remedy. Litt. 661.

The above definitions may seem superfluous to an hasty observer, who perhaps would imagine, that since the tenant hath now both the right, and also the possession, it little signifies by what means such possession shall be laid to be gained. But the wisdom of our ancient Law determined nothing in vain. As the tenant's possession was gained by a defeasible title, it was liable to be overturned by showing that defect, in a Writ of Entry; and then he must have been driven to his Writ of Right to recover his just inheritance; which would have been doubly
There shall be no Remitter to a right, for which the party has no remedy by action: as if the issue in tail be barred by the fine or warranty of his ancestor, and the freehold is afterwards called upon him; he shall not be remitted to his estate-tail: for the operation of the Remitter is not to be made, after the union of the two rights, as that of a real action would have been, before it. As then, the issue in tail could not, by any action, have recovered his ancient estate, he shall not recover it by Remitter. See Co. Litt. 347; Moz. 115; 1 Ann. 286; 3 Comm. 19; and 1 Inst. 347, a. in n.

There are different degrees of title which a person, defirous of another of his lands, acquires in them, in the eye of the Law, independently of any anterior right. Thus, if A. is defirous of B., while the poiffession is in B., it is a mere naked poiffession, unsupported by any right, and A. may recover his poiffession, and put a total end to the poiffession of B., by an entry on the land, without any previous action; but, if B. die, the poiffession descends on his heir, by act of Law: in this case, the heir comes to poiffession of the land by a lawful title, and acquires, in the eye of the Law, an apparent right of poiffession; which is so far good against the person defirous, that he has lost his right to recover the poiffession by entry, and can only recover it by an action at Law. The actions used in these cases are called Poiffessor Actions. But if A. permits the poiffession to be withheld from him, beyond a certain period of time, without claiming it, or suiting judgment in a poiffessor action to be given against him by default; or if, being tenant in tail, he makes a discontinuance; in all these cases B.’s title is strengthened, and A. can no longer recover by a poiffessor action, and his only remedy then is by an action on the right. These last actions are called Devisatorial Actions, and are the ultimate resource of the person defirous. Now if, in any of these three cases of the adverse title, the defirer, without any fault in him, comes to possession of the estate by a defeasible title, he is not to be in, not as of his new right, but as of his ancient and better right; and, consequently, the right of the poiffessor, who, supposing the defeasible title to be in, as of his defeasible estate, would be entitled to the lands upon the cession or determination of that estate, is gone for ever. In these circumstances, the defeasible title is said to be remitted to his ancient estate: the principal reason whereof is, as has already been stated, that the person so remitted cannot sue or enter upon himself; so that in these cases where the poiffession is recoverable by entry, the Remitter has the effect of an entry; and in those cases where it is recoverable by action, it has the effect of a judgment at Law: But since there is no Remitter where he who comes to the defeasible estate, comes to it by his own act, or his own affent, hence the defeasible estate, to enable the party to be remitted, must be made to him or her, during infancy or coverture, or must come to them by defeat, or act of Law: Neither is there any Remitter

where the ancient estate is not recoverable either by action or by entry. So that in those cases where the disaffection is beyond the three stages just alluded to, if he afterwards come to the estate by a defeasible title, he remains seized of that estate, and is not remitted to his more ancient title. 1 Inst. 347, b. in n. See title Remitter.

These are the doctrines of the Common Law respecting Remitter: But they are greatly altered by Stat. 27 H. 8. c. 10: that statute executes the poiffession to the party in the same plight, manner, and form as the use was limited to him. It operates only with respect to the first stages, and therefore the issue of the issue is remitted. By Stat. 32 H. 8. c. 28, s. 5, it is enacted, that no fine, feoffment, or other act, by the husband alone, of the wife’s lands, shall be any discontinuance; but that the wife, and her heirs, and such others to whom the right shall appertain after her decease, shall, notwithstanding such fine, or other act, lawfully enter into her lands, according to their rights and titles therein. This takes from the wife, and those claiming under her, the effect of Stat. 27 H. 8; so that she has her election to take by Stat. 27 H. 8, or enter by Stat. 32 H. 8, upon which she shall be remitted. See Dumont v. Wingfield, Hob. 254: 1 Inst. 347, b. in n.

The reason of this invention of the Law is in favour of right; and that title which is first, and most ancient, is always preferred. Dixon 68: Finch’s Law 119.

In Remitters to restore rights, the first interest which works such Remitter, must be a right, and not a title of entry, and there can be no Remitter before an entry, Co. Litt. 348: 2 B. & B. 29.

A Remitter must be to a precedent right; for regularly to every Remitter there are two incidents, one an ancient right, and a defeasible estate of freehold, coming together. Dodd. & Stud. c. 5; Wood’s Inst. 528.

Tenant in tail makes a feoffment in fee, on condition, and dies; and his issue, being within age, enters for the condition broken, by virtue of the feoffment; he shall be first in all tenant in fee-simile, and be remitted as heir to his father: But, if the heir be of age, he shall not be remitted; but is to bring his writ of fieri exon for the feoffment. Co. Litt. 202, 319. And if tenant in tail infeoff his son, or heir apparent, who is within age, and after dies, that is a Remitter to the heir; though, if he were at full age, at the time of such feoffment, it is no Remitter, because it was his folly, that, being of full age, would take such a feoffment. Lit. 655.

If a husband alien lands which he hath in right of his wife, and after take an estate again to him and his wife, for their lives, this is a Remitter to the wife; for the alienation is the act of the husband, and not of the woman; ye; if the alienation be by fine in a Court of Record, such a taking again afterwards to the husband and wife shall not make the wife to be in by her Remitter, the being excluded by the fine for ever, Termes de Ley.

Lands are given to a man and his wife, and the heirs of their two bodies; and after, the husband aliens the land in fee, and then takes back an estate to him, and his wife, for their lives; here they will both be remitted; but, if he take an estate again to himself for life, Remitter will not be allowed against his own alienation. Co. Litt. 554.

When the entry of a person is lawful, and he takes an estate in the land for life, or in fee, &c. (except it be
by matter of record, or otherwise to conclude or ellip him,) he shall be remitted. Co. Lit. 364. And a Remitter to one in possession, may be a Remitter to another in remainder; if the remainder be not bound, which elips it. Co. Car. 145.

If there be tenant in tail, remainder in fee to A. B., and the tenant in tail discontinues, and takes back an estate in fee; and then devies the lands to his wife for life, with remainder to W. R. for years, remainder to the same A. B. in fee, and dies, and his wife enters, and dies: it has been held, that he in remainder in fee may cuter, and avoid the term for years to W. R., because he is remitted to his first remainder in fee; and a Remitter avoids a lease for years, without entry. Noc 48.

A father was tenant for life, remainder to his son for life, remainder to the right heirs of the body of the father; he and his son conveyed the lands to the uncle in free, who died without issue; so that the son, who was heir in tail to the father, was now heir at Law to the uncle, and the fee descented on him, the uncle of the uncle brought dower, but the son being remitted to his former estate, no dower accrued to the wife, for the estate of which the claims dower is gone, 1 Lev. 37: 9 Rep. 130.

Lands were purchased by a man, and settled on himself and his wife in tail, and they had issue two sons; then he made a feoffment to the use of himself for life, remainder to the wife for life, remainder in fee to his second son: the wife, after his death, entered, and made a feoffment to the life of the second son; and then the eldest son entered for a forfeiture, on the part 11 H. 7. c. 20: and it was adjudged a forfeiture, by reason the wife having two titles, one as tenant in tail, the other as tenant for life, by her entry she is remitted to her estate for life, so that the feoffment made by her is a forfeiture of her estate. Sid. 65: 3 Nell. Abr. 100.

If land be given to a woman in tail, the remainder to another and a third in tail, remainder to a fourth in fee; the same takes husband, and he discontinues the lands in fee, and after an estate is made to the husband and wife for their lives, or other estate; this is a Remitter to all in remainder, and, if the wife die without issue, they may enter; and so it is of those who have the reversion after such intervals. Lit. § 697.

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

If one be deceased, and the devisee makes a feoffment to the devisee; in this case, the devisee may be remitted to his elder title, or he may choose to take by the feoffment; and if it be with warranty, he may if he will make use of the warranty. 1 H. 7. c. 20: 3 Steph. Abr. 237.

Tenant in tail hath two sons, and leaves the land intailed to his eldest son for life, remainder to his youngest son; it is no Remitter to the eldest: but, if his die without issue of his body, the youngest son shall be remitted. Lit. § 693.

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

For more learning on this subject, see 18 Vin. Abr. title Remitter.
RENT

Refereed every second, third, or fourth year: yet, as it is to be produced out of the profits of lands and tenements, as a recompence for being permitted to hold or enjoy them, it ought to be referred yearly; because those profits do annually arise, and are annually renewed. It must issue out of the thing granted, and not be part of the land or thing itself; wherein it differs from an exception in the grant, which is always of part of the thing granted. *Plovd. 13: 8 Rep. 71.* It must, lastly, issue out of lands and tenements corporeal; that is, from some inheritance whereto the owner or grantee of the rent may have recourse to distrain. Therefore, a rent, briefly speaking, cannot be referred out of an advowson, a common, an office, a franchise, or the like; but a grant of a common right, without clause of distress; and although a rent of the thing granted, and not of the thing itself; wherein it differs from an exception in the grant, which is always of part of the thing granted. *Plovd. 13: 8 Rep. 71.*

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

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

III. In what Cases a Demand of Rent is necessary.

IV. Of the Times and manners of Demanding Rent, and the Place where the Demand is to be made.

I. There are, at Common Law, three manner of Rents; Rent-service, Rent-charge, and Rent-fock. *Lit. § 213.* Rent-service is so called, because it hath some corporal service incident to it; as, the lease, fealty, or the feudal oath of fidelity. *1 Ital. 142.* For, if a tenant holds his land by fealty, and 10 s. Rent; or by the service of ploughing the Lord's land, and *rt Rent; these pecuniary Rents, being connected with personal services, are therefore called Rent-service. And for these, in case they be behind, or arrere, at the day appointed, the Lord may distrain of common right, without referring any special power of distress; provided he hath in himself the revisors, or future estate of the lands and tenements, after the lease or personal estate of the lessor or grantee is expired. *Lit. § 215.*

The services are of two sorts, either expressed in the lease or contract, or raised by implication of Law. When the services are expressed in the contract, the quantum must be either certainly mentioned, or be such as, by reference to something else, may be reduced to a certainty; for if the lessor's demands be uncertain, it is impossible to give him an adequate satisfaction or compensation for them, as the Jury cannot determine what injury he has sustained. *Co. Lit. 96a, a. *Sed. 397; 2 d. Ren. 1460.*

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

A Rent-charge is, where the owner of the Rent hath no future interest, or reversion expectant, in the land; as where a man, by deed, makes over to others his whole estate in fee-simple, with a certain Rent payable thereout, and adds to the deed a covenant or clause of distress, that if the Rent be arrear, or behind, it shall be lawful to distrain for the same. In this case, the land is liable to the distress, not of common right, but by virtue of the clause in the deed: and therefore it is called a Rent-charge, because, in this manner, the land is charged with a distress for the payment of it. *1 Ital. 143.* A clear Rent-charge must be free from the land-tax. *Doug. 62.*

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

A Rent granted for equality of partition by one co-par-ecer to another, is a Rent-charge, and distrainable of common right, without clause of distress; and although there be no tenure of the fetor who grants it; for as the Law, for the convenience of co-parcebers, allows of such grants, it must consequently give a remedy to the grantee for recovery of it. *Lit. § 252.*

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

A Rent-fock, reddius facies, or barren Rent, is in effect nothing more than a Rent reserved by deed, but without any clause of distress. A Rent-fock is so called, because it is unprofitable to the grantee; as, before tenia had, he can have no remedy for recovery of it; as where a man, seized in fee, grants a Rent in fee for life or years, or where a man makes a feoffment in fee or for life, remainder in fee, reserving Rent, without any clause of distress; these are Rent-focks; for which, by the policy of the ancient Law, there was no remedy, as there was no tenure between the grantor and
and grantee, or feoffor and feoffee; consequently, no
fealty could be due. Lit. 4 215, 216: Cro. Eliz. 520: 
Kesw. 104: Cro. Eliz. 656.

And it hath been held in equity, where an annuity
was devised by will to A. and the land, subject to the
annuity, to B., that B. should give seisin of the Rent-
seck to A., that he might have remedy for recovery of
it at Common Law; it being the original intention of
the gift, that the devisee should have some benefit from
it. 2 Hare. 5:6, 6; 3 Chan. Ca. 93.

So, when a bill was brought for 5l., for a Rent of 5l.,
arrear for twelve years, the equity of the bill being that
the deeds by which the Rent was created were lost, con-
sequently no remedy for the Rent at Law; the Court,
on the plaintiff’s proving constant payment till the last
twelve years, decreed the defendant to pay the arrears
for six years, by payment; it was evident the plaintiff
had a right to the Rent, and that he could
not, without his deeds, make a title at Law; therefore
the Court decreed the defendant to pay the Rent, and so
subjected his person, which possibly might not have been
liable by the deed which created the Rent. 1 Chan. Ca.
126. This was previous to Hill 4 Gen. r. 28. See
p. 47. II.

Though a Rent is an incorporeal hereditament, it
is susceptible of the same limitations as other hereditaments.
Hence it may be granted or devised for life, or in tail, with
reminders or limitations over. But there is this difference
between an intail of lands, and an intail of Rent;
that the tenant in tail of lands, with the immediate
reversion in fee in the donor, may, by a common recovery,
bar the intail and the reversion: See title Reo-
cery. Whereas the grantee in tail of a Rent de novo,
without a subsequent limitation of it in fee, acquires, by
a common recovery, only a base fee, determinable upon
his decease, and failure of the issue in tail: but if there
is a limitation of it in fee, after the limitation in tail,
the recovery of the tenant in tail gives him the fee-sim-
ple. This was resolved in the cases of Smith v. Farndale,
Cart. 52: Sid. 285: 2 Kebe. 20, 55, 84: Wickl. v. Plumb,
Laws. 1224: Chaplin v. Chaplin, 3 P. Wms. 229:
2 Eq. Ab. 384: 5.

The reason of this difference is, that it would be un-
just that the conveyance of a grantee of a Rent, should
give a longer duration or existence to the Rent, than it
had in its original creation. It is true that the barring
of an estate in tail, is equally contrary to the inten-
tion of the grantor. But a Rent differs materially from
land. The old principles of the Feudal Law looked
upon every modification of landed property, which was
considered to be against common right, with a very jea-
nousy eye. Now a Rent-charge was supposed to be
against common right; the grantee of the Rent-charge
being subject to no feudal services, and being a burden
on the tenant who was to perform them. Upon this
principle, the Law, in every instance, avoided giving,
by implication, a continuation to the Rent, beyond the
period expressly fixed for its continuance. Thus, if a
tenant in tail of land die without issue, his wife is entitled
to dower for her life out of the land, notwithstanding
the failure of the issue; but the widow of a tenant in
tail of Rent is not entitled to her dower against the donor.
RENT II.

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

The administrator of the landlord may have an action against the officer for taking the goods in execution, and removing them from man premises before the landlord was paid a year's Rent. 1 Strange 217.

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

This statute extends to the immediate landlord, and not to the ground landlord. 2 Strange 287. After the landlord had been paid a year's Rent on one execution, another execution came in, and he moved to be paid another year's Rent on the last execution, but was denied; for the intent of the Act was only to continue a lien as to one year, and to punish him for his lack of, if he lets more run in arrear. 2 Strange 1024.

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

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

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

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

If the tenant, at any time before trial, tender or pay into Court all arrears with costs, Proceedings on Ejectment shall cease. § 4.
R E N T II.

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

By stat. 1. Gen. 2. c. 19. It shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the tenements occupied by defendants, in an action on the cove, for the use and occupation of what was held; and if in evidence on the trial any parol demife, or agreement, not by deed, wherein a certain Rent was reserved, shall appear, plaintiff may make use thereof as an evidence of the quantum of the damages. § 14.

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

The above clause gives action on the cove to executors of a lessor or landlord, being only tenant for his own life, where he dies before or on a Rent-day; and by his death the lease or demise determines: In which case the lessor or under-tenant, by the Common Law, might have avoided paying any Rent. 1 Lush. 162; 2. in n.

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

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

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

By Action of Debt, for the breach of the express contract. This is the most usual remedy, when recourse is had to any action at all for the recovery of pecuniary Rents: to which species of render, almost all free services are now reduced since the abolition of the military tenures. But for a freehold Rent, referred on a lease for life, &c., no Action of Debt lay, by the Common Law, during the continuance of the freehold, out of which it issued; for the Law would not suffer a rent to be remitted by an action that was merely personal. 1 Rep. Abr. 395.

But by stat. 8. Ann. c. 14. § 4, an Action of Debt is given for Rents on leases for life or lives, as upon a lease for years: And by stat. 5. Geo. 3. c. 17, which enables ecclesiastical persons to lease tithe lands and other incorporeal inheritances, Action of Debt is given (by § 7) for recovery of Rent on such leases; and perhaps the effect of these statutes extends to leases of incorporeal hereditaments. See 1 Lush. 471. a. in n.

An affile of mort d’assembler, or novel diffierres, will lie of Rents, as well as of lands; if the lord, for the sake of trying the pothouse right, will make it his election to supple himself out of or defilet thereof. This is now seldom heard of; and all other real actions to recover Rent, being in the nature of Writ of Right, and therefore more dilatory in their progress, are entirely diluted, though not formally abdolished, by Law.—Such are the Writ de Confectionibus & Servicios, the Writ of Coffinet, and the Writ of Right for Disclaimer: As to which, see this Dict. under those titles: and see also title Guavinc. On the other hand, the Writ of Non injurio bonor; (fee that title) and the Writ of Moible, (fee Mean.) are remedies for the tenant against the opprobrium of the lord.

The Rent in a lease must be referred to the lessor, or his heirs, &c., and not to a stranger. See 1 Inst. 213. b.

The principle which gave rise to this rule is, that Rent is considered as a retribution for the land; and is therefore payable to those who would otherwise have had the land. It is to be observed, that remainder-men, in a settlement, being at first view neither feoffors, donors, lessors, nor the heirs of feoffors, donors, or lessors, there seems to have been, for some time after the Statute of Uses, a doubt, whether the Rents of leases, made by virtue of powers contained in settlement, could be referred to them. In Cloughleigh’s Caw, 1 Rep. 25, it was adjudged, that the remainder-men might detain in these cases: And in T. Jones, 35, the dictum in Cloughleigh’s case is denied to be Law. The determination in Harcourt v. Pole will appear incontrovertibly right, if we consider, that both the lessors and remainder-men derive their eftate out of the reversion or original inheritance of the feantor; and therefore the Law, to use Coke’s expression in Whitchurch’s case, 8 Rep. 71, will disburse the Rent to every one to whom any limitation of the use is made. 1 Inst. 214. a. in n.; and see Id. 213. b. in n.

R E N T III.

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

With respect to the necessity of demanding Rent, there is a material difference between a remedy by re-entry, and a remedy by distress, for non-payment of the Rent; for where the remedy is by way of re-entry for non-payment, there must be an actual demand made, previous to the entry, otherwise it is tortious; because such condition of re-entry is in derogation of the grant, and the estate at law being once defeated, is not to be restored by any subsequent payment: and it is presumed, that the tenant is there residing on the premises, in order to pay the Rent for preservation of his estate, unless the contrary appears by the lessor's being there to demand it: Therefore, unless there be a demand made, and the tenant thereby, contrary to the presumption, appears not to be on the land ready to pay the Rent, the Law will not give the lessor the benefit of re-entry, to defeat the tenant's estate, without a willful default in him; which cannot appear without a demand has actually been made on the land.

Co. Lit. 201. b: Hob. 20: 331. 5 Co. 56: Dy. 51: Plow. 70: 7 Co. 56: Vaug. 32. This was at Common Law; but, with the last 95. 2. c. 28. § 2: ante, Div. II. and this Dict. Ent. Rent.

So, if there had been a non-residence given to the lessor for non-payment, the lessor must demand the Rent before he can be entitled to the penalty. Hat. 1: 14: Hob. 207: 331: 7 Co. 56.

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


But this general distinction must be understood with these restrictions:

That if the King makes a lease, referring Rent, with a clause of re-entry for non-payment, he is not obliged to make any demand previous to his re-entry; but the tenant is obliged to pay his Rent for the preservation of his estate, because it is beneath the King to attend his Subject's demand on his Rent. 4 Co. 73: 5 Co. 56: Lateh. 28: Mor. 1: 12: Dyer 87: 88.

But this exception is not to be extended to the Duchy lands, though they be in the hands of the King, for the King must make a demand before he can re-enter into such lands; but this is by the statute 17 H. 4 c. 18, which provides, that, when the Duchy lands come to the King, they shall not be under such government and regulations as the domains and possessions belonging to the Crown.

Moor 149: 160.

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


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

Another exception is, where the Rent is payable at a place off the land, with a clause that if the Rent be behind, being lawfully demanded at the place off the land, or where the clause is, that if the Rent be behind, being lawfully demanded of the person who is to pay it, that then he may distrain; in these cases, though the remedy be by distress only, yet the grantee cannot distrain without a previous demand; because here the distress and demand being not complicate, but different acts, to be performed at different places and times, the demand must be previous to the distress; for distress is an act of grace, not of common right, and therefore must be used in the manner that it is given. Hob. 208: 2 Rel. Abr. 426: Moor 83: Brown. 17: But see Hat. 25: contra.

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

And there seems to have been formerly another exception admitted, that where the remedy was by way of entry for non-payment, that yet these needed no demand; if the Rent were made payable at any place off the land; because they looked on the money payable off the land to be in nature of a fine or fee, which the tenant had at his own peril undertakes to pay; but this opinion has been entirely exploded, for the place of payment does not change the nature of the service, but it remains in its nature.
tured a Rent, as much as if it had been made payable on
the land; therefore the presumption is, that the tenant
was there to pay it, unless it be overthrown by the proof
of a demand; and without such demand, and a neglect or
refusal, there is no injury to the lessor, consequently
the estate of the lessee ought not to be defeated. Plow. 70 : 4
Co. 73; 3 Mere 408, 598; Cro. Eliz. 415, 425, 538.

But when the power of re-entry is given to the
lessor for non-payment, without any further demand, there
it seems that the lessor has undertaken to pay it, whether it
be demanded or not; and there can be no presumption
for non-payment, without any further demand, there it
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ready to tender and pay the
Rent. Dyer 68.

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

And where the tender was made by a tenant on the land
at the day, there a demand on the land is sufficient to
justify a diftrrefis after the day; because the demand in
such cafe is of equal notoriety with the tender, and by
parity of reason the tenant ought to take notice of such
demand, as well as the lessor of the tender on the land.
Hob. 207.

But if the tenant had tendered the Rent on the day to
the person of the lessor, and he refused it, it seems, by
the better opinion, that the lessor cannot diftrrefis for that
Rent, without a demand of the person of the tenant;
because the demand ought to be equally notorious to the
tenant, as the tender was to the lessee. Hob. 207 : 2 Rol.
Abr. 427.

So, if the services by which the tenant holds be per-
sonal, as homage, fealty, &c. the demand must be of the
person of the tenant; because this service is only perform-
able by the very person of the tenant; therefore a
demand, where he is not, would be improper. Harts. 13 :
Hob. 207.

Again, if the Rent be Rent-feck, and the tenant be
ready at the last instant of the day of payment to pay the
Rent, and the grantor is not there to receive it, he must
afterwards demand it of the person of the tenant on the
lands, before he can have his affife; because the tenant,
by the tender at the day, has done all that was required
on his part; and if the grantee might have his affife, af-
ter such tender on the day, without a demand of the per-
son, the tenant might be made a diftrrefor, and damages
for the diftrrefis laid on him without any willful default in

him; but in the cafe of a Rent-chARGE, after such tender
of the tenant on the land, the grantee may afterwards
demand the Rent on the land, because he has his remedy
by diftrrefis, which is no more than a pledge for the Rent;
and this being to be found and taken on the land, the
grantee need only demand his Rent where he can find
his remedy, which is on the land; but in this case if the
grantee cannot find the tenant on the land to demand the
Rent, he may, on the next feast on which the Rent is
payable, demand all the arrears on the land; and the
tenant is not there to pay it, he has failed of his duty,
and is guilty of a willful default, which amounts to a de-
nial; and that denial being a diftrrefis of the Rent, the
grantee may have his affife, and by that shall recover the
Abr. 427.

But if there has been neither a tender of the Rent, nor
a demand of the grantee on the day, there the grantee
may afterwards demand the Rent on the land; because
the tenant having omitted to do his duty by a tender on
the day, he is still obliged to answer the legal demands of
the grantee, which is well made on the land, because
Rent issues thereon; for where there is no tender on the
day of payment, the Rent is due and payable every day
afterwards; therefore a demand in the same manner as
the Law requires is sufficient; consequently the non-pay-
ment, after a demand on the land, is a denial and diffiffis,
for which the grantee may have his affife. Lit. § 213 :
7 Co. 57 : 2 Rol. Abr. 427.

If a lease be made, reserving Rent, and a bond given
for performance of covenants and payment of the Rent,
the lessor may sue the bond without demanding the Rent.

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

Also as to the necessity of a demand of the Rent, there
is nothing between a condition and a limitation; for
instance, if tenant for life (as the case was by marriage
settlement with power to make leases for twenty-one
years, so long as the lessee, his executors or assigns, shall
duly pay the Rent referred) makes a lease pursuant to
the power; the tenant is at his peril obliged to pay the
Rent without any demand of the lessor; because the
estate is limited to continue only as long as the Rent is paid;
therefore, for non-performance, according to the limita-
tion, the estate must determine; as if an estate be made
to a woman dwn John Smith, this is a word of limitation
which determines her estate on marriage. Vaugh. 31, 32:
Vide Hob. 131 : 2 Rol. Abr. 429 ; 2 Mad. 264 : 3 Co.
64 : Dyer 87, 88 : Noy 145.

IV. Rent is regularly due and payable upon the
land from whence it issues, if no particular place is men-
tioned in the reservation: Co. Lit. 201: But, in case of
the King, the payment must be either to his Officers at
the
RENT.

the Exchequer, or to his Receiver in the country. 4 Rep. 73. And, briefly, the Rent is demandable and payable before the time of sun-set of the day whereon it is reserved; though, perhaps, not absolutely due till midnight. Co. Lit. 502; 1 And. 253; 1 Saund. 287; Prev. Chance. 555; Salk. 578.

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

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

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

The time for payment of Rent, and consequently for a demand, is such a convenient time before the sun-setting of the last day, as will be sufficient to have the money counted; but if the tenant meet the lessee on the land at any time of the last day of payment, and tenders the Rent, that is sufficient tender, because the money is to be paid indebid on that day, therefore a tender on the day is sufficient. Co. Lit. 202, a; Dalj. 44; Sav. 253; 4 Leon. 171; 1 Saund. 287.

If a lease is made, rendering Rent at Michaelmas, between the hours of one and five in the afternoon, with a clause of re-entry, and the lessee comes at the day, about two in the afternoon, and continues to five, this is sufficient. Cro. Eliz. 15. The demand may be by Attorney. 4 Leon. 479. But the power must be special, for such land and of such tenant. 2 Tol. 37; 1 Brevard. 138. Demand must be proved by witnesses. Dyer 68. Must be made of the precise sum due. 1 Leon. 555; Sav. 121; Mo. 207.

If a lease be made, rendering Rent on condition, that if the Rent be behind at the day, and ten days after, (being in the mean time demanded,) and no diffirets to be found upon the land, that the lessee may re-enter; if the Rent be behind at the day, and ten days after, and a sufficient diffirets be on the land till the afternoon of the tenth day, and then the lessee takes away his cattle, and the lessee demands the Rent at the last hour of the day, and the lessee does not pay, and there is not any diffirets on the land; yet the lessee cannot enter, because he made no demand in the mean time between the day of payment and the ten days, which by the clause he was obliged to do. Cro. Eliz. 63. But see Stat. 4 Geo. 2. c. 28: ante. 11. Vol. 11.

As to the place of demanding Rent, there is a difference between a remedy by re-entry and diffirets; for when the Rent is reserved, on condition, that if it be behind, that the lessee may re-enter, in such case the demand must be upon the most notorious place on the land; therefore, if there be a house on the land, the demand must be at the fore-door thereof, because the tenant is presumed to be there residing, and the demand being required to give notice to the tenant that he may not be turned out of possession, without a wilful default, such demand ought to be in the place where the end and intention will be best answered. Co. Lit. 153; 2 Rol. Abr. 428.

And it seems the better opinion, that it is not necessary to enter the house, though the doors be open, because that is a place appropriated for the peculiar use of the inhabitant, into which no person is permitted to enter without his permission; and it is reasonable that the lessee shall go no further to demand his Rent, than the tenant should be obliged to go, when he is bound to tender it, and a tender by the tenant at the door of the house of the lessee is sufficient, though it be open, without entering; therefore, by parity of reason, a demand by the lessee at the door of the tenant, without entering, is sufficient. Dalj. 59; Co. Lit. 201; 1 And. 27; 3 Leon. 4; and See Cro. Eliz. 15.

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

See other cases, on this subject, Co. Lit. 202; Bend. 59; Cro. Eliz. 324; Cro. Car. 507, 521; Co. Lit. 153; 201; 4 Geo. 73; Cro. Eliz. 462; Mo. 404; Dyer 37; 2 Rol. Abr. 428; Dyer 229.

For more learning on this subject, see 4 New Abr. 182, 4 New Abr. title Rent.

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

RENTS OF ASSISE. The certain Rents of freeholders, and ancient copyholders; so called, because they were paid, and different from others which were uncertain, in the ancient custom, and are called Rents of Assise. 1 And. 27; 3 Leon. 4; and See title Rent.

RENTS RESOLUTUS, Redutissimus resolutus.] Are accounted among the free farm Rents, to be held by f. 23. Cam. 2. c. 67. being such Rents or Tents as were annually payable to the Crown, from the lands of abbeys and religious houses; and after their dissolution, notwithstanding the lands were demised to others, yet the Rents were still reserved, and made payable again to the Crown. Compl. Court Reg.

REPARATIONS. A tenant for life or years may cut down timber-trees to make Reparations, although he be not compelled thereto; and where a house is ruinous at the time of the lease made, and the lessee suffers it to fall, he is not bound to rebuild it; and yet if he fell timber for Reparations, he may justify the same. Co. Lit. 49.

Lessee's covenants. That from and after the amendment and Reparation of the houses by the lessee, he at his own charges will keep and leave them in repair: In this case the lessee is not obliged to do it, unless the lessee first demand.
make good the Reparations: And if it be well repaired at first, when the lease began, and after happen to decay; the lessor must first repair, before the lease is bound to keep it so. Curo.: Fac. 4. 45: see also 2 Lien. c. 72: and this Dist. titles Lease; Covenant; Waife.

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

And if a man have a house adjoining to my house, and he suffer his house to lie in decay, to the annoyance of my house, I may have a writ against him to repair his house. So, if a person have a passage over a bridge, and another ought to repair the bridge, who suffers it to fall to decay, &c. New Nat. Br. 261.

REPEAL, from the Fr. rappell. i. e. revocation. A Replication as the repealing of a statute is the revoking or disannulling it. Repel.

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

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

REPLEADER, Replevnot {. To plead again. See title Pleading 1. 3. ad femum.

Repleader is to be had where the pleading hath not brought the issue in question, which was to be tried: Also, if a verdict be given where there was no issue joined, there must be a Repleader to bring the matter to trial, &c. 2 L. Atr. 450.

In debt on a Sheriff's bond, for defendant's appearance in B. R. upon the return of the writ, the defendant pleaded, that he had appeared se reason, &c. and on this they were at issues; and there being a verdict for the plaintiff, a Repleader was allowed, because the appearance was not triable by a Jury, but by the record. 1 Com. 90.

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

Though a Repleader is allowed after verdict; it has been adjudged, not to be awarded after demurrer: (But a Repleader hath formerly been granted after demurrer, and likewise after the demurrer argued;) and that a Repleader can never be awarded after a writ of error; but only after issue joined, &c. Leth. 147: 3 Lec. 94: Med. Ca. 122: See the Form of a Repleader. Leth. 162.

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

REP LEVIN.

REPUGNARE DE AVERIIS, A Writ brought by one whose cattle are displeased, or put in the pound, on any cause, by another person, on security given to the Sheriff to prosecute or answer the action at Law. F. N. B. 68: Reg. Orig. : Stat. 7 H. 8. c. 4. See Replein.

REPLEVIN,

PLEVEN; from repugnare, to retitle to the owner on Pledges; 1 Geo. 145: b. or to take back the Pledge; 3 Comm. 15: It is sometimes incorrectly used for the bailing a man.

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

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

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

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

V. Of the Original Writ, and the Writs of Withersam.

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

VII. Of the Writ De Retorno habendo; of Returns irrepleivable; and in what Manner the Sheriffs is to return and execute such Processus.

I. A Replein is, a remedy grounded and granted on a Distress; being a redeliverance of the thing displeased, to remain with the first possessor, on security (or pledges) given by him, to try the right with the distrainer, and to answer him in a course of Law. — Or, it is bringing the Writ called Repugnaria, &c. by him who has his cattle or goods displeased by another, and putting in surety to the Sheriff, that, on delivery of the thing displeased, he will prosecute the action against the distrainer. Leth. c. 12. 241. 1 Jac. 147: 6. 8.

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

An Action of Replein is founded upon, and is the regular way of compelling the validity of, a distress: being a redeliverance of the pledge, or thing taken in distress, to the owner, by the Sheriff, or his Deputy: upon the owner's giving security to try the right of the distresses, and to reprove it, if the right be adjudged against him: after which, the distrainer may keep it, till tender made of sufficient amends, but must then deliver it to the owner. 3 Comm. c. 9. 147: 3 Jac. 145: 8 Rep. 147.

In this writ, or action, both plaintiff and defendant are called Addors; the one, i. e. the plaintiff, suing for damages; and the other, the avowant, or defendant, to have a return of the goods or cattle. 3 Bald. 84: See Stat. 7 H. 8. 4. 149. Therefore, either party may carry the cause, and if the defendant give security, and do not go on to trial, the Court will give costs against him; for the
REPLEVIN I.

The same reason, the defendant may not move for judgment of non suit, unless the plaintiff has given notice of trial, Bell. N. P. 61.

That the averment (the person making the distress) is in nature of a plaintiff, appears, 1st, from his being called an Avoir, which is a term in the Civil Law, and signifies plaintiff, 2dly, from his being entitled to judgment de returno bilutedo, and damages, as plaintiff; 3dly, from this, that the plaintiff may plead in abatement of the averment, consequently such averment must be in nature of an action. Comb. 2: 6 Mod. 103: T. d. 148.

The averment, being in nature of a plaintiff, need not aver his averment with as much particularity, more than any other plaintiff need aver his count. T. d. 203.

See p. 114.

Nor shall he have a protection call for him more than any other plaintiff: 2 Inf. 739.

But though an averment be in nature of an action, yet one tenant in common may aver for taking cane damage agains. Cro Eliz. 330.

Reprieve is an action founded on the right, and different from trespas. Comb. 74: T. d. 148: Rob. 16: Cro Eliz. 739.

It is now held, that, as no lands can be recovered in this action, it cannot, with any propriety, be considered as a real action; though the title of lands may incidentally come in question, as it may do in an action of trespass, or even of debt, which are actions merely personal. Finch's Law 516: and see Comb. 476: Fis. 100.

Formerly, when the party distraint upon intended to dispute the right of the distrainers, he had no other process by the old Common Law, than by a Writ of Replevin, repugnans faciis; which ousted of Chancery, commanding the Sheriff to deliver the distrainers to the owner, and afterwards to do justice, in respect to the matter in dispute, in his own County Court. P. N. B. 68. But, this being a tedious method of proceeding, the beads, or other goods, were long detained from the owner, to his great loss and damage, 2 Inf. 150. For with this reason, the Statute of Marlbridge, (21 Hen. 3.) c. 21. directs, that (without suing a writ out of the Chancery) the Sheriff immediately, upon plaint to him made, shall proceed to reprieve the goods. See p. 113.

And, for the greater ease of the parties, it is farther provided, by stat. 2 Eliz. 2 P. & M. c. 15. that the Sheriff shall make at least four Deputies in each county, for the sole purpose of making Replevis. See p. 111. Upon application, therefore, either to the sheriff, or one of his said Deputies, security is to be given; in pursuance of the statute of Woff. 2. 15 Edw. 1. c. 22. If. 11. That the party reprieving will pursue his action against the distrainers; for which purpose he puts in pleges de profugnoque, or pledges to profecute: sedly. That if the right be determined against him, he will return the distrainers again; for which purpose he is also bound to find pleges de returno biluteo. See p. 114.

Belides these pledges, the sufficiency of which is discretionary, and at the peril of the Sheriff, the stat. 1 Gal. 2. c. 19. § 23. requires, that the officer granting a Replevin on a distrain for rent, shall take a bond with two sureties in a sum of double the value of the goods distrained, conditioned to prosecute the suit with effect, and without delay, and for return of the goods; which bond shall be assigned to the avowant, or person making cognizance, on request made to the officer; and, if satisfied, may be

fixed in the name of the assignee. See p. 114.

And certainly, as the end of all distrains is only to compel the party distrained upon, to satisfy the debt or duty owing from him, this end is as well answered by such sufficient security, as by retaining the very distrains, which might frequently occasion great inconvenience to the owner; and that the Law never wantonly inflicts. The Sheriff, on receiving such security, is immediately, by his officers, to cause the chattels, taken in distrains, to be restored into the possession of the party distrained upon; unless the distrainer claims a property in the goods so taken. For if, by this method of distrains, the distrainer happens to come again into possession of his own property in goods, which before he had lost, the Law allows him to keep them, without any reference to the manner by which he thus has regained possession; being a kind of personal Remitter. See title Remitter. If, therefore, the distrainer claims any such property, the party reprieving must sue out a writ of de proprietae promissa, in which the Sheriff is to prove, by an inquest, in whom the property, previous to the distrain, was liable; Finch's Law 516. And if it be found to be in the distrainer, the Sheriff cannot take farther; but must return the claim of property to the Court of King's Bench or Common Pleas, to be there farther prosecuted. It is thought advisable, and there finally determined. Co. Lit. 145: Finch. L. 450.

But if no claim of property be put in, or if (upon trial) the Sheriff's inquest determines it against the distrainer; then the Sheriff is to reprieve the goods; (making use of even force, if the distrainer makes resistance; 2 Inf. 153;) in case the goods be found within his county. But if the distrains be carried out of the county, or concealed, then the Sheriff may return, that the goods, or beads, are esclated; elongatus, carried to a distance, to places to him unknown: and that upon the party reprieving shall have a writ of capias in wibinam, in multis, (or, more properly, repetitio) namio; a term which signifies a second or reciprocal distrains, in lieu of the first which was esclated. It is therefore a command to the Sheriff to take other goods of the distrainer, in lieu of the distrains formerly taken, and esclated, or withheld from the owner. P. N. B. 69. 73. So that here is now distrains against distrains; one being taken to answer the other, by way of reprisal, and as a punishment for the illegal behaviour of the original distrainer. For which reason, goods taken in wibinam cannot be reprieved, till the original distrains is forthcoming. 3 Comm. c. 9. See p. 113.

But, in common causes, the goods are delivered back to the party reprieving, who is then bound to bring his action of Replevin; which may be prosecuted in the County Court, be the distrains of what value it may, 2 Inf. 159. But either party may remove it to the superior Courts of King's Bench or Common Pleas, by writ of recordari, or pair; 2 Inf. 25: the plaintiff at pleasure, the defendant upon reasonable cause; P. N. B. 60. 70: And also, if in the course of preceding any right of freehold comes in question, the Sheriff may proceed no farther; so that it is usual to carry it up, in the first instance, to the Courts of Westminster Hall, Finch. L. 417. Upon this action brought, and a declaration delivered, the distrainer, who is now the defendant, makes Answer; that is, he avows taking the distrains in his own right, or the right of his wife; and sets forth the reason of it, as for rent arrear, damage done, or other
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A Replevin doth not lie of things which are free nature, as oxen, horses, monkeys, dogs, &c.; but if things, wild by nature, are made tame, or are reclaimed, so long as they continue in that condition, they belong to the person who hath the possession of them, and he may bring Replevin; and the general rule herein seems to be, that a Replevin lies for anything that may be lawfully distrained. See title Distraint.

We read of Cases regispiis, bounds repleved, in a case between the abbots of St. Alban’s and Geoffrey Childwick, 24 Hen. 3.

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

A Replevin lies of a leasement; for it has uniam resur­tritus; for the same reason it lies of a ferrett; but it is said not to lie for a mistiff dog, though an action of trespass will. Br. Repl. 63; 2 Rol. Abr. 430. See title Distraint.

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

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

A Replevin does not lie of deeds or charters concerning lands, for they have no value, but as they relate thereto.

Nor of money, or leather made into shoes. Mor. 394, 2 Broun. 139.

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

Replevin lies for a ship; so for the sails of the ship.

March 1105: Raym. 232. Replevin lies not for goods taken beyond sea, though brought hither by the defendant afterwards. 1 Show. 91.

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

If I distrain another’s cattle damage-feasant, and, before they are impounded, he tenders me sufficient amends; now, though the original taking was lawful, my subseuent detention of them, after tender of amends, is wrongful, and he shall have an action of Replevin against me to recover them; in which he shall recover dam­ages only for the detention, and not for the caption, because the original taking was lawful. F. N. B. 69.

See 3 Comm. c. 9. But if the tender were before the taking, the taking is torious; if after impounding, neither the taking nor detaining is torious. And after the avowant has had return irreplevivable, yet if the plain­tiff make sufficient tender, he may have his action of detinue for the distrainer after. Bull. N. P. 60.

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other cause; or else, if he justifies in another’s right as his bailiff or servant, he is said to make Cognizance: that is, he acknowledges the taking, but infilts that such taking was legal, as he acted by the command of one who had a right to distrain: and on the truth and legal merits of this avowry or cognizance the cause is determined.

If it be determined for the plaintiff, viz. that the distrain was wrongfully taken; he has already got his goods back into his own possession, and shall keep them, and moreover recover damages. F. N. B. 69. See Stat. 21 H. 8. c. 19; and P. 4. 4. It.

But if the defendant prevails, by the default or nonstuit of the plaintiff, then he shall have a writ de return bulloco, where­by the goods or chattels (which were distrained and then repleved) are returned again into his custody; to be sold, or otherwise disposed of, as if no Replevin had been made. And at the Common Law, the plaintiff might have brought another Replevin, and so in iugati­tum, to the intolerable vexation of the defendant. Where­fore the statute of Whigm. 2. c. 2, restrains the plaintiff, when nonstuit, from suing out any fresh Replevin; but allows him a judicial writ, issuing out of the original record, and called a Writ of Second Deliverance, in order to have the same distrain again delivered to him, out of the like property, if any. And, if the plaintiff be a second time nonstuit, or if the defendant has judgment upon verdict or demurrer in the first Replevin, he shall have a Writ of Return irreplevivable: after which, no Writ of Second Deliverance shall be allowed. 2 Inst. 340. But in case of a distress for rent arrear, the Writ of Second Deliverance is in effect taken away by Stat. 17 Car. 2. c. 7; which directs that, if the plaintiff be nonstuit before issue joined, then, upon suggestion made on the record in answer of an avowry or cognizance; or if judgment be given against him on demurrer, then, without any such suggestion; the defendant may have a writ to inquire into the value of the distrain by a Jury, and shall recover the amount of it in damages, if less than the arrear of rent; or, if more, so much as shall be equal to such arrear, with costs: or, if the nonstuit be after issue joined, or if a verdict be against the plaintiff, then the jury impannelled to try the cause shall inquire concerning the form of the arrear, and the value of the goods, &c. distrained, and thereupon the defendant shall have judgment for such, or so much thereof, as the goods, &c. distrained amounted unto: And if (in any of these cases) the distrain be insufficient to answer the arrears distrained for, the defendant may take a further distress, or dis­treffes. See 1 Vent. 64. But otherwise, if, pending a Replevin for a former distrain, a man distrains again for the same rent or service, then the party is not driven to his action of Replevin, but shall have a writ of reception, and recover damages for the defendant, the re­di­strainer’s, contempt of the process of the Law. F. N. B. 31. 3 Comm. c. 9. See title Reception.

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

Replevin may be made either by original writ of Replevin, at Common Law, or by plaint, under the Act of March 2d H. 3. c. 21: Co. Lit. 145; F. N. B. 60.

The following are the words of the statute: "If the beasts of any person be taken, and wrongfully withheld, the Sheriff, after complaint made to him thereof, may deliver them, without let or hindrance, to the person from whom they were taken, by habeas corpus; and if the beasts were taken within any liberties, and the bailiff of the liberty will not deliver them, then the Sheriff, for default of these bailiff, should cause them to be delivered.

The mischief before this act, as has been already hinted, were the great delays and loss the party was at, by having his beasts or goods withheld from him; as also that, when cattle were disfuein and impounded within any liberty which had return of writs, the Sheriff was obliged to make a warrant to the bailiff of the liberty to make delivery; and there was another mischief, when the disfuein was taken without and impounded within the liberty. To remedy which, by this statute, the Sheriff, in plaint made to him without writ, may, either by parol or preceps, command his bailiff to deliver the beasts or goods, that is, to make Replevin of them: and by these words (post quernominem fusi fuit?) the Sheriff may take a plaint out of the County Court, and make a Replevin presently, which he is to enter in the Court; as it would be inconvenient, and against the scope of the statute, that the owner, for whose benefit the statute was made, should tarry for his beasts till the next County Court, which is held from month to month. And, by this act, the Sheriff may hold plea in the County Court on Replevin by plaint, though the value be of 40 l., or above; and yet, in other actions, he shall only hold plea where the matter is under 40 l. value.

2 Lees. 139: 13 Ca. 11: 1 Edw. 205: Dalt. 549.

Replevin by writ issue, properly, out of Chancery, returnable into the Courts of K. B. and C. B. at Westminster. F. N. B. 68: C. 68. & Repil. 68. and post. V.

Replevin by plaint are made by the Sheriff by force of the above-mentioned statute of Marshbride; by which he directed, on complaint made to him by the party, that his goods or cattle are disfuein, to command his bailiff (which may be by parol or preceps) to make delivery; and which plaint may be taken at any time, and as well out of as in Court. Bro. Repl. pl. 4: Co. Lit. 145:

2 Lees. 139.

It becomes the Sheriff's duty, on complaint, by parol or by preceps to his bailiff, to render the cattle, which preceps may be given before any Court; but such plaint is afterwards to be entered by the party who made the complaint, and not by the Sheriff. 2 Com. Rep. 501.

The action of Replevin is of two sorts: 1. In the *de strict*; 2. In the *de strict*, where the party has had his goods delivered to him by the Sheriff, upon a writ of Replevin, or upon a plaint issued before him, the action is in the *de strict*, but where the Sheriff has not made such Replevin, but the defendant still has the goods, the action is in the *de strict*. However, of late years, no action has been brought in the *de strict*, though there is much curious learning in the old books concerning it. The advantage the plaintiff has in bringing an action of Replevin in the *de strict*, in preference to an action of tref-
and Powell, Justice, said, He remembered a case in the Exchequer, where a distress was taken for a rent due to the King, and a Replevin granted, yet, on debate, no attachment was granted, though it was in the King's case. 

But it is now determined that, if goods be taken in execution, (or on a conviction before Justices,) the Sheriff shall not make Replevin of them; and if in such case the Sheriff should make Replevin, he would subject himself to an attachment; for goods are only replicable where they have been taken by way of distress. 

IV. 1. When the Sheriff makes Replevin he ought to take two kinds of pledges; pledgi de prejngenda, by the Common Law, and pledgi de retorno habendo, by the statute of W. 2. c. 2; by which it is provided, "that Sheriffs or Bailiffs, from thenceforth, shall not only receive of the plaintiff pledges for pursuing the suit, before they make deliverance of the distresses, but also for return of the beasts, if return be awarded; and if any take pledges otherwise, he shall answer for the price of the beasts, and the lord that disfrains shall have his recovery by writ, that he shall restore to him so many beasts or cattle; and if the plaintiff be not able to restore, his superior shall restore." 

In the construction hereof the following points have been ruled, and opinions holden: 

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

In Replevin the Sheriff did not return any pledges, and after issue joined and found, it was moved, if they could be put in by the Court after verdict; and the Court held they might, notwithstanding the statute of W. 2. c. 2, as before that statute the Court might take pledges on the omission of the Sheriff; and a diversity was taken between pledges for prosecuting, which were at Common Law, and pro return habendo given by this statute; and the Court held, that though on default of the Sheriff he was subject to the action of the party, that yet the taking of pledges by the Court did not make the judgment erroneous. Noy. 156. And that the omission of pledges by the Sheriff was an error; but the omission of pledges de retorno habendo does not vitiate the proceedings, but subjects the Sheriff to an action. 

A Replevin by plaint was first in the Sheriff's Court in London, and pledges were bound de retorno habendo, &c. this plaint was removed according to their custom into the Mayor's Court, and after into the King's Bench by certiorari, and there was the Sheriff being demanded, the party declared in B. R. On this return was awarded, and on an ex aequo returned, in fact, if the plaintiff went against the pledges in the Sheriff's Court of London. On demurrer, the question was, Whether, this case being removed by certiorari, the pledges in the inferior Court are discharged, or whether they remain liable to be charged by this factum? It was adjudged, that the pledges were not discharged. 

The plaintiff declared, that he had returns for 7l. 10s. rent, retained on a lease, and that the defendant delivered the cattle without taking pledges; to which the defendant pleaded, that the plaintiff was delivered to him 31. 10s. for pledges, which he accepted; and on demurrer the Court held, that pledges being to be found to answer the party, if he had good cause of avowry, and to be answerable for amercement to the King, if not furnished, or if it be found against him; the taking of money for a pledge was not lawful; and that although he might take money for pledges, yet he ought not to accept less than the plaintiff's demand; on which account the Court likewise held the plea vicious; but they agreed, that if the defendant had taken but one pledge (if he had been sufficient,) it had been well enough. Cro. Car. 440: 1 Ed. 378. 

A bond taken by the Sheriff, conditioned that if the party applying for the Replevin should appear at the next County-Court, &c. and prosecute his action with effect, and should make return of the thing applved, if return should be adjudged, and on the return, a Writ of Error, &c. in good Law; and agreeing to the intent of the statute of Marlborough which requires pledges or forfeites, of which nature the obligors are; and this method of taking bond instead of pledges was said to be of ancient usage; and that in the old books pledgi signified the same as forfeites; and that there being a proper remedy on such bond, it differed from the case of taking a deposit or sum of money; but the Court agreed, that at Common Law this bond had been void, because it had been to save the Sheriff harmless in making Replevin by plaint, which he could not have done before the statute of Marlborough. 1 Ed. Raym. 278: 2 L. & E. 668. 

If in Replevin in an inferior Court, the condition of the bond is, if he prosecute his suit commenced with effect in the Court of, &c. and make return, &c. if a return be adjudged by Law, and it happens, that the plaintiff hath judgment in the Court below, which is afterwards reversed on a Writ of Error in B. R.; in such case, unless the party make a return, he forfeits his bond; for though he had judgment in the Court below, the Court above, if he prosecute his suit commenced with effect in the Court of, &c. extend to the prosecution of the Writ of Error, which is part of the suit commenced in the Court below; and in this case, the taking such bond was held to be lawful, and said to be common practice. 3 Camb. 248: 1 Show. 400: Fitzt. 178. 

In debt on a Replevin, bond taken by the Sheriff, conditioned that if C. B. appear at the next County-Court, and
and prosecute with effect for taking, &c. and make return, &c. if return be adjudged, and save harmless the Sheriff, &c. and the defendant after over pleaded, that at the next County-Court, held on such a day, he did appear, and prosecute, &c. until it was removed by record, &c. and save the Sheriff harmless, but doth not say, that no return is made, &c.; on demurrer, &c. the Court inclined for the plaintiff; &c. for the defendant shall have said, &c., &c. return is adjudged at all, &c. and though he prosecute to the record, &c. until return is made, &c. might be adjudged afterwards; and the condition goes to any adjudication of return, Comb. 218.

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

In an action on a Replevin-bond common bail shall be filed. 1 Salk. 90. See title Bail.

Under flaut. W. 3. c. 2. an action lies against the Sheriff, if he omit to take pledges, or if he take those that are insufficient; &c. and the party may have a fictum faciat against the pledges, where the suit is in any Court of Record; &c. though in the County-Court, &c. a fictum faciat will not lie against the pledges, because these are not Courts of Record, &c. and every fictum faciat ought to be grounded on a Record, &c. yet there the party may have a precept, in nature of a fictum faciat, against the pledges. 1 Ed. R. 278: See 1 Comb. 1: 2: Comb. 513.

In such action against the Sheriff, some evidence must be given, by the plaintiff, of the insufficiency of the pledges or sureties; &c. but very slight evidence is sufficient to throw the proof on the Sheriff: for the sureties are known to him; &c. and he is to take care that they are sufficient. Bull. N. P. c. 4. p. 40.

An action on the caafe was brought against a Sheriff for taking insufficient pledges on a Replevin; to which he pleaded not guilty; &c. and a verdict being found against him, &c. and judgment given thereon in the Court of C. B., on a Writ of Errer brought in B. R.; &c. it was objected, &c. that an action on the caafe was not the proper remedy; &c. Supposing such action lay, &c. that there ought to have been a fictum faciat, &c. &c. &c. As to the first, the Court held, That the party directing has, by the statute of W. 3. c. 2. an interest in the pledges; &c. and if the Sheriff omits to take such, or, which is the same thing, takes insufficient ones, &c. he is aggrieved, and consequently entitled to his action; &c. &c. That though a fictum faciat may be brought against the pledges, yet it does not follow from thence, that an action does not lie against the Sheriff, without any such previous fictum faciat; &c. and such fictum faciat, which is only to certify the insufficiency of the pledges, is the less necessary in the present case; &c. such insufficiency being set forth in the declaration, and found by the verdict. Mich. 12 Geo. 2. R. c. v. Patterson, in B. R.: 10 Fin. Ab. 390. c. 4.

The following is the clause of the flaut. 11 Geo. 2. c. 19. alluded to ante, Div. I. "That officers, having authority to grant Replevins, shall, in every Replevin of a theft, or forgery, or theft, &c. in their own name, or from the plaintiff, and two sureties, a bond in double the value of the goods distrained; &c. which oath to be taken by the person granting such Replevin, is to administer; &c. conditioned for prosecuting the suit with effect, &c. and for returning the goods, &c. if a return shall be awarded, before any deliverance be made of the distress; &c. and such officer, taking such bond, &c. shall, at the request of the avowant, or person making complaint, &c. assign such bond to the avowant, &c. by indorsing the same, and after at this under his hand and seal, in the presence of two witnesses; &c. which may be done without stamp, &c. may be done before any action brought thereon; &c. and if the bond be forfeited, &c. the avowant, &c. may bring an action thereupon in his own name; &c. and the Court may by rule give such relief to the parties on such bond, &c. &c."

2. The declaration in Replevin ought to be certain in setting forth the numbers and kinds of cattle distrained; &c. because, otherwise, the Sheriff cannot tell how to make deliverance, if it should be necessary; &c. yet an avowant may make that good, which would be bad on demurrer; &c. both parties agreeing what the quantum is, &c. And the Sheriff may require the defendant to shew him the goods; &c. &c. &c. As well as of Replevins, &c. Stile 71.

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

A man may count of several takings, part at one day and place, and part at another; &c. if the plaintiff allege both parties agreeing what the whole is, &c. &c. &c. But if the plea begins only as an answer to part, &c. it is a discontinuance; &c. and the plaintiff must not demurr, but must take his judgment for that by nihilo dicte; &c. if he demurr or plead over, the whole action is discontinuance. But if a plea begin with an answer to the whole, &c. it is only an answer to part, the whole plea is nought, &c. And the plaintiff may demurr. F. N. R. 68: Salk. 176. Where the defendant avows at a different place, &c. in order to have a return, he must traverse the place in the Court, &c. because his avowry is inconsistent with it; &c. but where he does not insist upon a return, he may plead non cognitum; &c. and prove the taking to be at another place, &c. For the place is material. Sir. 507.

This is to be understood where the defendant never had the cattle in the place laid in the declaration at all; &c. for if on the plea of non cognitum, the plaintiff prove that the defendant had the cattle in the place laid in the declaration, he will have a verdict; &c. and if the fact be, that the defendant...
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defendant took the cattle in another place, and only had them in the place mentioned in the declaration, in the way to the pound, he ought to plead that matter specially. Bull. N. P. 4. p. 54.

The general issue in Replevin is non capit; upon which property cannot be given in evidence, for that ought to be pleaded; and if he plead property in himself, he may either plead it in bar, or in abatement; but if he pleads it in a stranger, it ought strictly to be pleaded in abatement; though it may likewise be pleaded in bar.

If the defendant plead property, whether it be in himself or a stranger, he shall have a return without making an avowry for it; but where the plea in abatement is of a collateral matter, such as capite in alio loco, he must make an avowry in order to have a return; for he must shew a right to the property, or at least to the possession, to have a return; but the plaintiff ought not to traverse the matter of the conveyance; and if he do, and demurrer be joined upon it, it is a continuance, and the defendant will have judgment. Saalk. 93. Bull. N. P. 54.

The defendant may either avail the taking, or justify it; if he avow, it must be upon a right forbidding, such as rent-earre, &c, and then he entitles himself to a return; but where by matter subsquent, he is not to have the thing for which the diftres was taken, there he will not be entitled to a return, and therefore cannot avow, but must justify; as, if a lord shireham for heage, and afterwards the tenant die, and then his executor bring Replevin. But a man may diligently for one thing, and avow for another. 3 Co. 26, at Bull. N. P. 5455.

By flut. 11 Co. 2. c. 10. § 22, any person disclaiming for rent, relief, herald, or other service, may in Replevin avow or make cognizance generally, without setting out a title.

If a defendant make cognizance as bailiff to J. S. the plaintiff may traverse his being bailiff, for this is different from trespasses guare clamiam fugit; for there, if the defendant justify an entry by command, or as bailiff to one in whom he alleges the freehold to be, the plaintiff shall not traverse the command, because it would admit the truth of the rest of the plea, wise, that the freehold was in J. S. which would be sufficient to bar his action. But in trespasses de bosi alsportatt, e. g. for taking the plaintiffs sheep, if the defendant justify the taking them, damage tenant, as servant to J. S. the plaintiff may traverse the command or authority; for though J. S. had a right to take the cattle, yet a stranger, who had no authority from him, would be liable. And there is a great difference between a justification in trespass, and an avowry in Replevin, in another respect, e. g. for an amercement in a Court Leet; in the justification it is necessary for the defendant to set forth a warrant or precept, &c. but not to aver the matter of the presentment, because his plea is only in excuse; but in avowry he ought to aver, in fact, that the plaintiff committed the crime for which he is amerced; because he is an actor, and is to recover, which must be upon the merits. Bull. N. P. 555; cit. 1 Saalk. 107.

If an avowry be made for rent, and it appear by the defendant's own shewing, that part of it is not yet due, yet the avowry will be good for the residue. In such case the avowant must abate his avowry, sound the rent not due, and take judgment for the rent; but if it appear that he has title only to two undivided parts of the rent, the avowry shall abate. 1 Saalk. 285; Gnor. 281; Salk. 580. So, if the avowry be for part of a quarter or half a year's rent, he must shew how the rest is satisfied, or it will be had. Harlou. 84. Comb. 402. 1 Saalk. 191. In avowry for rent, and a nomine prise together, without alleging any demand of rent, the avowry is good for the rent, though it will be ill for the penalty. 1 Saalk. 256; Bull. 143. Avowry for rent due at a latter day, is no bar to avowry for rent due at a former day: but an acquittal under seal is, if not under seal, contrary proof will be admitted. Bull. N. P. 56. See farther, this Dictionary, title Avowry; Rent; Differs.

By flut. 21 H. 8. c. 19, if the avowry, cognizance, or justification be found for the defendant, or the plaintiff be nonsuited, the defendant shall recover such damages and costs as the plaintiff would have had if he had recovered. But this act mentions only perons avowing or making cognizance for rent-service, customs, services, damage-tenant, or for other rent, or rents; so that it does not extend to an avowry for a nomine prise, or for an elrvey; and therefore, if in such case damages and costs were given, the judgment would be reversed. 1 Jan. 1553; and see Bull. N. P. 57.

The avowant or defendant in Replevin, though not within the words, is plainly within the meaning of the flut. 4 Ann. c. 16; (by which a plaintiff in replevin, which to certain purposes an avowant is, may plead as many pleas as he may think necessary.) And accordingly, where some issues in Replevin are joined for the plaintiff, which entitle him to judgment, and some for the defendant, the latter must be allowed the costs of the issues found for him, out of the general costs of the verdict; unless the judge certify, that the plaintiff had a probable cause for pleading the matters on which those issues are joined. Bull Rep. 235.

If issue be joined on the property, the defendant may give in evidence the plaintiff's having the cattle, in mitigation of damages. Godl. 98. If the plaintiff plead viene arre in bar to an avowry for rent, he cannot, upon such issue, give in evidence min-tenture. Bull. N. P. 59. In an avowry for rent, the plaintiff may plead a tender and refusal, without bringing the money into Court; because, if the defendant were not rightfully taken, the defendant must answer the plaintiff his damages. Bull. N. P. 60.

V. The original writ of Replevin issues out of Chancery, and neither it nor the alias Replevin are returnable, but are only in nature of a justification, to empower the Sheriff to hold plea in his County-Court, when a day is given the parties; but the pluris Replevin is always with this clause, set capia infra figurat, and it is a returnable process. F. N. B. 60, 70; Dix. P. 513, 514; 2 Ed. 109; Saalk. 420. It is usual to take out the alias and pluris at the same time. Dalt. 68. 275.

A pluris Replevin returned in Michaelmas Term, the defendant claimed property, and nothing was afterwards done, nor any appearance nor continuance till Easter Term following, at which term they appeared and pleaded, and judgment was thereupon given; though no continuance was between Michaelmas and Easter, yet this was not any continuance, because there is not any continuance till appearance;
APPEARANCE; for the parties have not any express day in Court, and where there is not any continuance, there cannot be any discontinuance. 1 Rol. Abr. 485.

The plurie Replevin supersede the proceedings of the Sherifff, and the proceedings are on that, and not on the plaint, as they are when that is removed by recordi; and though there is no summons in the writ, yet it gives a good day to the defendant to appear; and if he does not appear, then a poon issuers, and then a capias. 1 Ld. Raym. 617.

Capias and process of outlawry lies in Replevin; for when on the plurie replegiari, fac. the Sheriff returns averia elongata, then a capias in withernam issuers; and on that being returned nulla bona, 2 capias issuers; and so to outlawry. Capias and process of outlawry in Replevin were given by Salf. 25 Ed. 3. 57. c. 17; 6 Mod. 84.

If on the plurie Replevin the Sherifff return, that the cattle are eloginta to places unknown, &c. so that he cannot deliver them to plaintiff, then shall issue a withernam, directed to the Sherifff, commanding him to take the cattle or goods of the defendant, and detain them till the cattle or goods distrained are restored to the plaintiff; and if, on the first withernam, a nihil be returned, there an alias and plurie Replevin issuers; and so to a capias and exigens. F. N. B. 73.

The writ of withernam ought to rehearse the cause which the Sherifff returns, for which he cannot replevy the cattle or goods; so that it does not lie on a bare fuggellion, that the beasts are eloginta, &c. F. N. B. 69, 73. See ante 111.

If on the withernam the cattle are restored to the party who eloginta them, yet he shall pay a fine for his contempt. 2 Lom. 174.

Cattle eloginta in withernam may be worked, or, if cows, may be milked; for the party has them in lieu of his own. 1 Lom. 220: Dyer 280.

And as the party is to have the use of the cattle, he is not to have any allowance made for the expenses he has been at in maintaining them. Owen 46: Cro. Eliz. 162: 3 Lom. 235.

Seireficius against an executor, reciting, that where Replevin was brought against his tenant for a cow, and judgment against him de retorno habendo, which was not executed, that he should shew cause why he should not execute. The executor pleads plena administra- vit, upon which the plaintifl demurred; and Wfjld., justice, said, that upon the judgment the cow is in the custody of the Law, therefore he ought to have execution; but the doubt is, because the Replevin is determined by the death of the party; yet (by him and Rainford, being only in Court) the plaintifl shall have execution, for the defendant cannot be prejudiced; for if the Sherifff return averia elongata, he shall not have a withernam, but of the goods of the tenant; or, if there are no goods of the tenant, the Sherifff can take nothing, but shall return nulla bona, and then the plaintifl hath his ordinary way to charge the defendant, if he hath made a defegra- viti; and it was adjudged for the plaintifl. Pash. 20 C. 2. in B. R. Sucklin v. Green.

W. faces a Replevin, B. removes it by recordi into the King's Bench, the plaintifl does not declare, and on that a return awarded to H. upon which the Sherifff returns averia elongata, and then a withernam was awarded and executed; and now the plaintifl comers and prays he may be admitted to declare, and prays a delivervance of

THE Writ of Second Deliverance is a judicial Writ depending upon the first original, and is given by Salf. 84. 2 H. 3. 1; 2 which recites, that, after the return is awarded, the plaintifl distrained does replevy again, and so the judgments given in the King's Courts take no effect, whereof it entails, that when return is awarded to the distrainer, the Sherifff shall be commanded by a judicial Writ to make return, in which it shall be expressed that the Sherifff shall not deliver them without writ making mention of the judgment: And it further entails, that if the party make default again, or, for any other caufe, return of the distress be awarded, being now twice repleved, the distress shall remain irrepleviable. See ante 1.

If a defendant in Replevin has return awarded on non- suit of plaintifl, on which he fues a 'Writ de retornu habendo, upon which Writ the Sherifff returns averia elongata per quemtem, and on this a withernam is awarded, and on the withernam the defendant has tot Tataba to him delivered of the goods of the plaintiff, and the thereof the plaintiff fues a Second Deliverance; he shall sue it for the first distress taken, not for the withernam; and this by the nature and form of the Writ of Second Deliverance, 2 Rol. Abr. 451.

If a retour habendo be awarded to the Sherifff after a Writ of Second Deliverance prayed by plaintifl, this is a superflue to the returns habendo, and closes the Sherifff's hand from making any return thereto; and if the Sherifff will not execute the Writ of Second Deliverance, the party has his remedy against him. Dyw. 41: Dal. 58. 375.

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

In Replevin a defendant avowed, that the plaintifl being nonshoit brought a Writ of Second Deliverance, whereupon it was moved to lay the Writ of Inquiry of Damages; And per Curiam, this is a superflue to the returns habendo, but not to the Writ of Inquiry of Damages; for these Damages are not for the thing avowed for, but are given by Salf. 21 H. 8. c. 19; as a compensation for the expense and trouble the avowant has been at. 1 Salf. 95. See Palm. 403: Latch. 172.

Error of judgment in C. B. in a Second Deliverance; on demarrer in pleading, the error affigned was, there was not any Writ of Second Deliverance certified;
and in null or erratum being pleaded, it was moved not to be material, because it is awarded on the roll, and the parties had appeared and pleaded to it; but it was adjudged ill, and revered for that cause; for there ought to be a writ, and if it vary from the declaration in the Replevin, it shall be abated. _C.__tac. 424.

No Second Deliverance lies after a judgment on a demurrer, or after verdict, or confession of the avowry; but, in all these cases, the judgment must be entered with a return irrepleivable; but on a nonuit, either before or after evidence, a Second Deliverance will lie, because there is no judgment of the matter, and therefore a Writ of Second Deliverance lies to bring the matter in question; but, in the case of demurrer and verdict, the matter is determined by confession of the party. _2 L._ Reg. 457.

If the plaintiff's Writ abates, he may have a new Writ, and is not put to his Writ of Second Deliverance. _C._ Tac. 122.

If the plaintiff in Replevin be nonsuited for want of delivering a declaration, if it happened through default of the person employed to prosecute, the Court will order the defendant to accept a declaration on payment of costs; otherwise plaintiff would be remediless, the Writ of Second Deliverance being taken away by _fl._ 17, _c._ 2, _c._ 7, in case of difficulty of rent arrear. See ante 1.

If the person taking the goods claims property, the Sheriff cannot make Replevin of them; for property must be tried by Writ, and in this case the plaintiff may have the _Writ de proprietate probandæ_ to the Sheriff; and if it be found for the plaintiff, then the Sheriff is to make Replevin; if for the defendant, then he is to proceed no further; but as this is but an impound of office, though the property be found in the defendant, yet the plaintiff is not concluded, for he may still have his action of Replevin, or of trespass; but if in an action of Replevin the defendant plead property, and it be found for him, the plaintiff is concluded: And if the Sheriff return the claim of property, yet shall it proceed in _C._ 2, where the plaintiff shall be put in issue, and finally tried. _Co._ _Lit._ 145 2, _F._ _N._ _B._ 77, _Dyer_ 173: _Co._ 502, _Bull._ _N._ _P._

None but he who is party to the Replevin shall have the _Writ de proprietate probandæ_; so that if on a Replevin the beasts of a stranger are delivered to the plaintiff, such stranger, being no party to the Replevin, shall not have this Writ. _14 Hen._ 4, _c._ 25: _2 Roll._ _abr._ 431.

The Sheriff is to return the claim of property on the _pluribus_, before which time the _Writ de proprietate probandæ_ does not issue, for it recites the _pluribus_. _Reg._ 83: _Co._ 505.

The _Writ de proprietate probandæ_ is an impound of office, and the Sheriff is to give notice to the parties of the time and place of executing it. _Dal._ _Sb._ 274.

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

If the plaintiff has property, and omits to claim it before the Sheriff, he may notwithstanding plead property in himself or in a stranger, either in abatement or in bar; though it was formerly held, that property in a stranger could only be pleaded in abatement. _Co._ _Eliz._ 475: _Winch._ 26: _2 Shaw._ 402: _Salk._ 594: _6 Mod._ 81.

In Replevin the defendant in his avowry pleads, that the beasts taken belong to a third person, and not to the plaintiff; therefore prays a return; to which the plaintiff demurs; for on the avowant's own showing he ought not to have return, having admitted the property of the beasts to be in another; but judgment was given for the defendant; for the prior possession was in him, and he hath a right against all others but the right owner, and the plaintiff by his demurrer hath admitted, that he hath no property in them. _Cont._ 477: _See 2 Mod._ 139: _2 Mod._ 292.

_VII._ The _return babendo_ is a judicial Writ, which lies for him who has avowed the defendants, and proved the same to be lawfully taken; or where, on removal of the plaintiff from the Courts above, the plaintiff, whose cattle were repleved, makes default, or does not declare or profess his action; and thereby becomes nonsuited, &c., and by this Writ the Sheriff is commanded to make a return of the cattle to the defendant in the Replevin. _35 Hen._ 6, _c._ 40: _Dyer_ 280: _Co._ _Lit._ 145. See ante _1_.

A bailiff who makes confession may have judgment of a return, and consequently a _Writ de returno babendo_ grounded on such judgment. _Co._ _Ent._ 59.

If a defendant hath a return awarded him, and he sueth a _Writ de returno babendo_, and the Sheriff return on the _pluribus_, _quo averta locata avis_, &c., he shall have a _fons factit servit._ 

Since the _fl._ 17, _C._ 4, _c._ 7, (see ante _1_), it has been the custom, as it was before, to enter judgment for a _return babendo_; but, notwithstanding, the defendant may enter a _suggestion_ on that statute, and a _Writ of Second Deliverance_ will be _nonsuitetur_ to such Writ.

The whole fact is to be proved, and may be litigated in the _Writ of Inquiry_, directed by that statute. _Bull._ _N._ _P._ 58. And if the Jury, impaneled to try a cause in Replevin, omit to inquire the value of the rent arrear, or of the trespass, according to the directions of the said statute, it cannot be supplied by a _Writ of Inquiry_, because the statute confines the inquiry to the Jury impaneled in the cause. Therefore, in such case, the defendant must take judgment of _return babendo_ at _Common Law_; but it is not the same upon _fl._ 21, _H._ 8, _c._ 104. (see ante _IV._ 23) nor upon _fl._ 43, _Eliz._ _c._ 2; if the defendant avow as overseer for a _defraud_ for a poor's rate. Because, if the Jury had inquired, it had been as an inquiet, on which no attaint would have lain, and the statute does not tie it up to the same Jury. And if the plaintiff, being nonsuited, bring a _Writ of Second Deliverance_ though it will be a _suggestion_ to the _Writ of Deliverance_ taken by the plaintiff, yet it will be none to the _Writ of Inquiry_. _Bull._ _N._ _P._ 48.

Return irrepleivable is a judicial Writ, directed to the Sheriff, for the final restitution or return of cattle unjustly taken by another, and so found by verdict, or after a nonsuit in a Second Deliverance. _2 Roll._ _abr._ 434.

If the plea be to the Writ, or any other plea be tried by verdict, or judged on demurrer, return irrepleivable shall be awarded, and no new Replevin shall be granted, nor any Second Deliverance by that _fl._ _Wife._ 2, but only on nonsuit. _2_I._ 340: _Dyer_ 280. See _I._ _V._

If, on issue joined in Replevin, the plaintiff does not appear on the trial, being called for that purpose, yet return irrepleivable shall not be awarded, as in case of a verdict's being given, but the party may have a _Writ of_
REPLEVIN.

of Second Deliverance, as well as if it had been a non- suit before declaration, or appearance. 3 Leon. 49. See ante VI.

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

If return irreplievable be awarded, the owner of the cattle may offer the appear; and if the defendant refuses to deliver the diffres, the plaintiff may have his action of devente, because the diffres is only in nature of a pledge. 1 Ed. Raym. 720.

By the statute of Wm. 1, 2 &c. 17, if the party who diffres, conveys the diffres into any house, park, castle, or other place of strength, and refuses to suffer them to be replied, the sheriff may take the posse committee, and, on request and refusal, break open such house, castle, &c., and make deliverance; and this was a necessary law so soon after the irregular time of Hen. III.

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

If the Sheriff return, quod mandavit bulla sua libertatis, &c. qui nullum vidit mihique responsum, or that the bulliall not make deliverance of the cattle, there are not good returns; for by statute of Wm. 1, the Sheriff, on such return made to him by the bailiff, ought presently to enter into the franchise, and make deliverance of the cattle taken. F. N. B. 157.

If a man sue a Replevin in the County-Court without writ, and the bailiff return to the Sheriff, that he cannot have view of the cattle to deliver them, the Sheriff, by inquest of office, ought to inquire into the truth thereof; and if it be found by a Jury, that the cattle are elsigned, &c., the Sheriff in the County-Court may award a writemam to take the defendant's cattle; and if the Sheriff will not award a writemam, then the plaintiff may have a writ out of Chancery, directed to the Sheriff, rehearing the whole matter, commanding him to award a writemam, &c.; and he may have an alias, and after a pluries, and an attachment against the Sheriff, if he will not execute the King's command. F. N. B. 158.

If the Sheriff return, quod aves ait slugata ad locum in- cognitum, this is a good return, and the party must pursue his writ of writemam; but if the Sheriff return aves ait slugata ad locum in cognitum infra contumacitum, he shall be amerced, for the Law inteds that the party may have notice in his county. Bro. Retur. de Br. pl. 100.

If in Replevin the Sheriff return, quod aves ait morta- juit, that is a good return. Bro. Retur. de Br. pl. 125.

If the Sheriff be an owner's stranger's goods, and he takes them, an action of trespass lies against him, for otherwise he could have no remedy; for being a stranger he cannot have the Writ de propriete prohida, and were he not entitled to this remedy, it would be in the power of the Sheriff to stop a man's house of all his goods; but Keinon seems to hold, that the action lies the more properly against the person who shows the goods. 2 Roll. Abr. 525; Chum. 586.

The Sheriff comes to make Replevin of beasts impounded in another man's foit; if the place be inclosed, and has a gate open to the inclosure, he cannot break the inclosure, and enter thereby, when he may enter by the open gate; but if the owner hinder him so that he cannot go by the open gate for fear of death, he may break the inclosure, and enter there. 20 Hen. 6, 28: 2 Roll. Abr. 525.

The Sheriff is to return, that the cattle are elsigned, or that no person came to hew, &c. or a delivery; but he cannot return, that the defendant non occupit the cattle, because it is supposed in the Writ, and is the ground of it, which the Sheriff cannot falsify. 1 Ed. Raym. 613.

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

REPLEVISH. To let one to mainprize on forfeit. Star. 3 Ed. 1, c. 11.

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

The Replication is to contain certainty, and not vary from the declaration, but must pursue and maintain the cause of the plaintiff's action; otherwise it will be a de- parture in pleading, and going to another matter. Co. Litt. 304. Though as a faulty bar may be made good by the Replication; so sometimes a Replication is made good by a rejoinder; but if it wants substance, a rejoinder can never help it. 2 Litt. Abr. 462. A Replication being entire, and ill in part, is ill in the whole: but if there be three Replications, and one is superfluous, and the other too sufficient, and the defendant demurs generally, the plaintiff may have judgment on those which are sufficient, 1 Sand. 348: 2 Sand. 17.

Where the defendant pleads in bar, and the plaintiff replies insufficiently; if the defendant demurs specially on the Replication, and the bar is insufficient, if the action be of such a nature that a title is set forth in the declaration, or count, as in a former, &c., judgment may be given for the plaintiff on the insufficient bar of the defendant, and where the title doth not appear till the Replication, and that is insufficient, then judgment shall be had for the defendant for the ill Replication. Godl. 138: 1 Leon. 75.

A Replication concludes either with hoc paratus si veri- ficare, or to the country, In action on a bond to pay all sums expended about certain bovines, &c. on the defendant's pleading he paid all; the plaintiff replies that he had not, et hoc paratus, &c. Upon a demurrer it was held, that the plaintiff ought to have concluded to the country, because there is an affirmative and negative, and if he might be admitted to aver his Replication thus, there would be no end in pleading. Rayn. 98.

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

There are likewise Reports, when the Court of Chan- cery, or other Court, refer the slating some case, setting some account, &c. to a Master of Chancery, or other referee; his certificate therein is called a Report. This
Reprisals are to arrest and take the goods of merchants proceeding of Law for that time, and may be excepted to, disapproved, or overruled; where things are kept; a warehouse.

And the Court directed, though not done within four days after making, Ld. C. J. was sufficient if the Report were filed before any proceedings had thereupon, when and where they may come to be filed. It was made on an order of the Court; without any further title. See title, Reproduction.

A Report by a Master in Chancery, is as a judgment of the Court. 1 P. Wms. 522.

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

2 P. Wms. 517.

It is not lawful to confirm Reports of Receiver's accounts, per Master of the Rolls. 2 P. Wms. 561.

Reposition of the forest, Reprisal. A Statute, whereby certain Forest-grounds, being made public, on view, were, by a second view, put to the Forest again. Manw. par. 1.

Repositorium, Let. A florehouse or place wherein things are kept; a warehouse. Cro. Car. 555.

Representation, Repræsentatio. The personating another; there is an heir by Representation, where a father dies in the life of the grandfather, leaving a son, who shall inherit his grandfather's estate, before the father's brother, &c. Bro. Abr. 393. Also, executors represent the person of the testator, to receive money and effects. Co. Litt. 399. See title: Heirs; Executors.

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

Reprisals, Reprisal; reprisals. The taking one thing in satisfaction for another, derived from the Fr. Reprisal; and is one all in the Common and Civil Law.

Reprisals are ordinary and extraordinary; ordinary Reprisals are to arrest and take the goods of merchant-strangers within the realm; and the other is for satisfaction out of the realm, and is under the Great Seal, &c. Lex Mercat. 150.

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

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

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

Reputation or Wills; See title Will.

Repugnant, Repugnancy. What is contrary to anything said before: Repugnancy in deeds, grants, indentures, verdicts, &c. make them void. 3 Nels. 135. See title: Deeds, &c.

The Common Law abhors Repugnancies, and all incongruities; but the former part of a deed, &c. shall stand, where the latter part is repugnant to it. Jent. Cent. 25; 525.

Where contrarieties are in several parts of deeds or fines, the first part shall stand; in wills, the last, if the several clausules are not reconcileable. Jent. pl. 86.

In contrats, gifts, verdicts, evidences, &c. where direct contrarieties are for the same thing at the same time, all is void. Jent. pl. 86.

A. made B. and C. executors, provided that C. shall not administer his goods. B. and C. brought debt on bond, as executors. It was held, that the action was well brought; for the proviso is void. Dy. 3, b. 4, pl. 7, &c.

A gives lands to B. in tail, provided C. shall take the profits of part for 1000 years; the proviso is void; for in common presumption it takes away the benefit and interest of the grantee in that parcel. Cro. Eliz. 35.

An award, that each shall give the other a general release within four days after the award; proviso that if either dislik'd the award within 20 days after made, and should pay to the other within the said twenty days 10s. that then the award should be void, the proviso is repugnant, and judgment for plaintiff. Cro. Eliz. 291. See title Award.

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

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

A little time is sufficient for gaining Reputation,
which needs not a very ancient pedigree to establish it;
for general acceptance will produce a Reputation. Cro.
Facc. 308. But it has been held, that common Repu-
tation cannot be intended of an opinion which is con-
ceived of by or five years standing; but of long time.
And some special matter must be averred to induce a Re-
putation. 2 Litt. Abr. 454.

Land may be reputed parcel of a manor, though not
really so. 1 Vent. 51: 2 Mod. 63: 3 Nelf. Abr. 137. And
there is a parish, and office, in Reputation, &c.

REPUTATION of NAME, Is under the protection
of the Law, as all persons have an interest in their good
name; and scandal and defamation are injurious to it,
though defamatory words are not actionable, otherwise
than as they are a damage to the estate of the person in-
jured. Wood's Left. 37.

The security of Reputation, or good name, from the
arts of detraction and slander, are rights to which every
man is entitled, by reason and natural justice; since, with-
out these, it is impossible to have the perfect enjoyment of
any other advantage or right. 1 Comm. 134. See title
Liberty.

REQUEST, of things to be done: Where one is to
do a collateral thing, agreed on making a contract, there
ought to be a Request to do it. 2 Litt. Abr. 464. If a duty
is due, it is payable without Request; on promise to pay
a duty precedent on Request, there needs no actual Re-
sult; but on a promise for a penalty, or collateral sum,
there should be an actual Request before the action is
If a debt is before a promise, a Request is not neces-
sary, for then a Request is not any cause of the action;
though, upon a promise generally to pay on Request, the
action arises on Request, and not before. Cro. Jacc. 201:
1 Lew. 48. See 597.

Action of debt for money due on a bond, may be
brought without alleging a special Request. Cro. Eliz.
219: 523.

A man promises to redeem, on Request, such goods
as were delivered to him; if an action of detinue is
brought, the plaintiff need not allege a special Request,
because the action is for the thing itself; but if an action
on the case is had for those goods, then the Request must
be specially alleged; as it is not brought for the thing
itself, but for damages. Sid. 66: 3 Salt. 399.
If a promise is made to pay money to the plaintiff, on
Request, no special Request is required: But where
there are mutual promises between two persons to pay
each other money on Request, if they do not per-
sue such an award, the Request is to be specially al-
lleged. And if there is a promise to pay money to a

man on Request, and he dies before any Request made,
it shall be paid to his executors; but not till Request
made. 3 Salk. 309: 3 Bulst. 259.

Where a person promises to pay a precedent duty, the
general allegation is sufficient, because there was a duty
without a promise: As for instance; if one buys or
borsrows a horse, and promises to pay so much on Re-
sult: But where the promise is collateral, as to pay the
debt of a stranger on Request, &c. the Request is part
of the agreement, and transferable, there being no duty
before the promise made; and for that reason the Re-
sult must be specially alleged, for bringing the action
will not be a sufficient Request. Latitb. 93: 3 Leon. 200:
3 Salt. 399.

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

If a Request is to be specially made, the day and year
when made should be specially alleged. 1 Lew. 231:
2 Litt. Abr. 466: Cro. Car. 280. But where a person is
not restrained to make the Request by a time limited, if
made at any time during his life, it has been held to be
good. Cro. Eliz. 136. And a Request at any other time
than named may be given in evidence. S. 628.

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

At a trial, the defendant would have the plaintiff to
prove the Request; but it was ruled that he need not
for, not being traversed in the plea, it is admitted.
1 Lev. 166.

Unreasonable Requests are not regarded in Law; and
there is no difference where a thing is to be done on Re-
sult, and reasonable Request. Dyer 218: Cro. Car. 176:
3 Nelf. Abr. 140, 142. See titles Action; Declaration;
Pleading; Rent, &c.

REQUESTS, Court of; See Court of Requests.

REPO COUNTY; See Rier County.

RESCUIT, (or receipt,) Receptio.] An admission or
receiving of a third person to plead his right in a
cause formerly commenced between two other persons;
as, where an action is brought against tenant for life or
years, or any other particular tenant, and he makes de-
fault, in such a case he in the reversion may more that he
may be received to defend his right, and to plead with
demandant. Rescuit is likewise applied to the admittance of a plea,
where the controversy is between the same two persons.
Bros. 205: Co. Litt. 192: 3 Nelf. Abr. 140.

He in reversion may come into Court, and pray to be
received in a suit against his particular tenant; and after
such Receptio the business shall be had, as much as
may be by Law, without any delay of either side. Stat.
13 R. 2. c. 17. But Receptio is admitted only for those
who have estates depending on particular estates for life,
tenants by the curtesy, or after possibility, &c. and not
for him in remainder after an estate-tail, which is per-
durable. 1 And. 135.
Husband and wife were tenants for life, remainder to another in fee; a servarden was brought against the husband, who made default after default; and thereupon the wife prayed that she might be received to defend her right, but it was denied by the Court, because, if defendant should recover against her husband, it would not bar her right if she procured him, therefore it would be to no purpose. Then he in remainder prayed to be received, which at first the Court doubted, by reason if the husband should recover, he might satisfy such Recovery; and because his estate did not depend on the estate of the husband alone, but on the estate of the husband and wife; but at last he was received. 1 Leon. 86.  

The statute of Guaranty, 6 E. 1. c. 11, enables, that a tenant may be received to satisfy, if he hath a deed, and comes before judgment; this is where he in security enafteth himself to be impleaded by collusion, to make the tenant lose his term, &c. And by 60 E. 3. c. 3, if any stranger come in by a collateral title, before he is received, he shall and suety to satisfy the demandant the value of the lands, if he recovers from that time till final judgment; and demandant recovering, he shall be grievously amerced, &c.

RESCEIT or HOMAGE, Rescuit Homagii.] The Lord's receiving Homage of his tenant, at his admission to the land. Kibb. 148. See title Homage.

RESCOUS, or RESCUE.

Rescussion, from the Fr. Recoufe, i. e. Liberation.] A resistance against lawful authority.

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

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

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

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

I. In the case of a distraint, the goods being, from the first taking, considered as in the custody of the Law, and not merely in that of the distrainer, the taking them back by force is looked upon as an atrocious injury, and denominated a Rescue; for which the distrainer has a remedy in damages, either by Writ of Recous, in case they were going to the pound; or by Writ de pace fraudo, or Pound-breach, in case they were actually impounded. F. N. B. 100, 101. He may also, at his option, bring an action on the case for this injury, and shall therein, if the defraiture were taken for rent, recover treble damages. Salk. 2 W. & M. 3. c. 5; see p. 11; and this Dictionary, titles Distraint; Rent; Recovery; Pound-breach.

The term Rescue is likewise applied to the forcible delivery of a defendant, when arrested, from the officer who is carrying him to prison. In which circumstances, the plaintiff has a similar remedy by action on the case, or of Rescue; or if the Sheriff makes a return of such Rescue to the Court out of which the process issued, the Rescue will be punished by attachment. 6 Mod. 411; Cro. Jus. 419; Salk. 580. See 3 Comm. c. 9; and p. II. III. IV.

If a bailiff, or other officer, on a writ, arrest a man, and others by violence take him away, or procure his escape; this is a Rescue in fact. So, if one distrains, besides damage-sealant, in his ground, as he drives them in the highway towards the pound, they enter into the owner's house, and he withholds them there, and will not deliver them on demand, this detainer is a Rescue in Law. Co. Litt. 62. c. 12. 161. Cassius, in his book De Compend. Burg. f. 294, hath the same words coupled with pensions.

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

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

If on the first the Sheriff seizes goods, which are taken away by a stranger, this is not properly a Rescue; for by seizure of the goods, by virtue of the executant, the Sheriff has a property in them, and may maintain trespass, or trover, for them; also the party injured may have an action on the case against the wrong-doer. Hat. 145: Litt. Rep. 296.

If the lord distrains for rent when none is due, the tenant may lawfully make Rescous; so may a stranger, if his beasts be distrained when no rent is due. So, if the tenant render the rent when the lord comes to distrain, and yet he does distrain, or if he distrain anything not distrainable, as beasts of the plough, when other sufficient distraiture may be taken, the tenant may make Recous; so, if the lord distrain in the highway, or out of his fee. Co. Litt. 473. 160, b.; 161, a.

But though there must be reason for the distraiture, and that otherwise the Rescue cannot be unlawful; yet it has been held, in a pace fraudo, that a defendant cannot justify breaking the pound and taking out the cattle, though the distrain was without cause, because they are now in the actual custody of the Law. Salk. 247.

There is a difference between a man's being arrested by a warrant on record, and by a general authority in Law; for if a capias be awarded to the Sheriff to arrest a man for felony, though he be innocent, he cannot make Rescue; but if the Sheriff will, by the general authority committed to him by Law, arrest any man for felony, if he be innocent, he may rescue himself. Co. Litt. 161. See 3 Co. 68: 6 Co. 54: Cro. Jus. 450.

II. Rescue is class'd, by Blackstone, amongst offences against public justice; and is deemed to be the forcibly and knowingly freeing another from an arrest or imprisonment: and it is generally the same offence in the stranger so rescuing, as it would have been in a gaoler to have voluntarily permitted an escape. A Rescue, therefore, of one apprehended for felony, is felony;
RESCUE II.

for treason, treason; and for a misdemeanor, a misdemeanour also. But here, likewise, as upon voluntary escapes, the principal must be first attained, or receive judgment, before the Rescuer can be punished; and for the same reason, because perhaps, in fact, it may turn out that there has been no offence committed. 4 Com. c. 10. p. 131: 1 Hal. P. C. 607: Foot. 344. And see this Dictionary, title Escape.

By stat. 16 Geo. 2. c. 11, to convey to any prisoner, in custody for treason or felony, any arms, instruments of escape, or disguise, without the privity of the gaoler, though no escape be attempted; or any way to assist such prisoner to attempt an escape, though no escape be actually made, is felony; and subjects the prisoner to transportation for seven years; or if the prisoner be in custody for petty larceny, or other inferior offence, or charged with a debt of less than a debt of roo/., it is then a misdemeanour, punishable with fine and imprisonment. See title Escape (B) LV. 3.

By several special statutes, to rescue, or attempt to rescue, any person committed for the offences enumerated in those acts, is felony without benefit of clergy. See stat. 6 Geo. 1. c. 23, § 5; 24 Geo. 3. c. 56, as to Transportation; and this Dictionary under that title, and title Escape. Stat. 9 Geo. 1. c. 22: 27 Geo. 2. c. 15; as to offences against the Black Act; stat. 8 Geo. 2. c. 20, as to destroying Turnpike stiles; and this Dictionary, title Highways VI. (B) 105: 19 Geo. 2. c. 34, as to Smuggling; stat. 25 Geo. 2. c. 0, as to Murder.

Under the last-mentioned statute, to rescue, or attempt to rescue, the body of a felon executed for murder, is felony punishable by transportation for seven years; and a like punishment is inflicted by stat. 11 Geo. 2. c. 26: 24 Geo. 2. c. 0, § 48; against persons assembling, to the number of five or more, to rescue any unlawful retailers of spirituous liquors, or to assault the informers against them.

Even if any person, charged with any of the offences against the Black Act, stat. 9 Geo. 1. c. 22; and being required by order of the Privy Council to surrender himself, neglects to do so for forty days, both he and all that knowingly conceal, aid, abet, or succour him, are declared felons without benefit of clergy.

It seems agreed, that the rescuing a person imprisoned for felony, is also felony by the Common Law: 1 Hal. P. C. 606.

Also it is agreed, that a stranger who rescues a person committed for, and guilty of, high treason, knowing him to be so, is in all cases guilty of high treason. Steadfs. P. C. 11: 1 Jov. 455. Whether he knew that the prisoners were so committed or not. Co. 2 Cas. 582.

To make a Rescue felony, it is necessary that the felon be in custody, or under arrest for felony; therefore, if A. hinder an arrest, whereby the felon escapes, the township shall be amerced for the escape, and A. shall be fined for the hindrance of his taking; but it is not felony in A., because the felon was not taken. 1 Hal. P. C. 606: 3 Ed. 3. Coram. 333: Steadfs. 31.

So, to make a Rescue felony, the party rescued must be under custody for felony, or fullpicon of felony; and it is all one whether he be in custody for that account by a private person, or by an officer, or warrant of a justice; for where the arrest of a felon is lawful, the Rescue of him is felony; but it seems necessary that he should have knowledge that the person is under arrest for felony, if he be in the custody of a private person. 1 Hal. P. C. 606.

But if he be in custody of an officer, there, at his peril, he is to take notice of it; so if there be felons in a prison, and A. not knowing it, breaks the prison, and lets out the prisoners, though he knew not that there were felons there, it is felony. 1 Hal. P. C. 606: Co. 2 Cas. 353.

A person committed for high treason, who breaks the prison, and escapes, is guilty of felony; unless he lets others also escape, whom he knows to be committed for high treason; in which case he is guilty of high treason, not in respect of his own breaking of prison, but of the Rescue of the other. 2 Hark. P. C. c. 21 § 7.

If the person rescued were indicted or attained of several felonies, yet the escape or Rescue of such a person makes but one felony. 1 Hal. P. C. 599.

Wherever the imprisonment is so far groundless or irregular, or the breaking of a prison is occasioned by such necessity, e. g., that the party himself, breaking prison, is either by the Common Law, or by the Statute de frangentes prizonum, saved from the penalty of a capital offender, a stranger who rescues him from such imprisonment, in like manner, is also executed; and see § 16. 2 Hark. P. C. c. 21 § 6.

The return of a Rescue of a felon, by the Sheriff against A., is not sufficient to put him to answer for it as a felony, without indictment or presentment, by the statute 25 Ed. 3. c. 5. 4: 1 Hal. P. C. 606.

As in case of an escape, so in case of a Rescue, if the party rescued be imprisoned for felony, and rescued before indictment, the indictment must name a felony done, as well as an imprisonment, or felony, or upon thereof; but if the party be indicted, and taken by a capias, and rescued, then there needs only a recital that he was indicted pro re, and taken and rescued. 1 Hal. P. C. 607.

Though the Rescuer may be indicted, before the principal is convicted and attained, yet he shall not be arraigned or tried before the principal be attained; but if the person rescued were imprisoned for high treason, the Rescuer may immediately be arraigned, for high treason, and for all other felonies whatever; but it seems that he may be immediately proceeded against for a misprisonment only, if the King pleases. 2 Hark. P. C. c. 21 § 8.

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

As the offence of rescuing persons in cases of high treason and felony is usually punished by indemnity, so the offence of rescuing a person arrested on misprison, or in execution after judgment, subjects the offender to a Writ of Reconcious, or a general action of trespass vi et armis, or an action on the case, in all which damages are recoverable. Also it is the frequent practice of the Courts to grant an attachment against such wrong-doers, being the highest violence and contempt that can be offered to the processes of the Court. Co. Litt. 161: Co. 6 Ed. 615: Ref. Ent. 577.

He who rescues a prisoner from any of the Courts of Westminster Hall, without striking a blow, shall forfeit his goods.
R E S C U E. II.

goods and profits of his lands, and suffer imprisonment during life; but not lose his hand, because he did not strike.

22 Ed. 3, 136: 3 Lev. 141: 1 Hawk. P. C. c. 21, § 5.

It is clearly agreed, that for a Rescue on mene processes, the party injured may have either an action of trespass ouet armis, or an action on the case, in which he shall recover his debt and damages against the wrong-doer; and the rather, because on mene processes he can have no remedy against the Sheriff. Cro. Juc. 480: Hold. 180. See p. 7. IV.

Also it has been adjudged, that for Rescue of a person in execution on a ca. Jus. or ca. mulag, an action will lie against the Rescuer, though the party injured hath his remedy against the Sheriff, and the Sheriff hath his remedy against the wrong-doer; for perhaps the Sheriff may be dead or insolvent; but herein it hath been held, that if he bring his action against the party who made the Rescue, he may plead it in bar to an action brought by the Sheriff; so, if against the Sheriff, or his bailiff, they may plead that he had satisfaction from the party, so that if he recovers against one, the other is discharged. Hold. 155: Cro. Car. 149: Hunt. 38: Hold. 180.

By 25 W. & M. b. 1. c. 6. § 5, on Pound.-breach, or Rescue of goods disinfrained for rent, the person griefed shall, in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his life.

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

An attachment will be granted not only against a common person, but against a Peer of the Realm, for rescuing a person arrested by due course of Law: so that if the Sheriff in any case return to the Court, that a person arrested, or goods seized, or possession of lands delivered by him, by virtue of the King's writ, were rescued or violently taken from him, &c. they will award an attachment against the Rescuers. Dyer 2122: 2 Juv. 39: Salk. 322.

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

A distinction was taken where an attachment is prayed for a Rescue in the first instance, and where a rule to show cause is only asked; in this, affidavits of the fact are sufficient; in the other case, the Sheriff's return is requisite. Trin. 5 Gro. 1. in B. R. Tynge v. Payne.

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

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

R E S C U E. III.

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

It has been adjudged, on exceptions taken to an indictment for a Rescue, that it was not necessary to allege the place where the Rescue was made, and that it should be intended that where the arrest was made, there also was the Rescue. Cro. Juc. 345: 1 Salk. 208.

An exception was taken to an indictment of Rescue, that it wanted the words 'ouet armis, or main forte,' but overruled, it being held by the Court, that the word 'main forte' was implied to be done by force. Cro. Juc. 345.

The same exception taken in Cro. Juc. 475; overruled, and there held, that though it were suits at Common Law, yet it is made good by the part. 37 ibid. 8. c. 8.

It is said, that an indictment of Rescue is not within the Statute of Additions, and that naming the person indicted of such a parish, without giving him any title, is sufficient. 2 Lev. 656: 2 Show. 84.

Note; on an indictment of Rescue, if it were on an arrest upon mene processes, and the party has appeared, the Court will be easily induced to qualify; so, if it be on processes out of an inferior Court, though the party has not appeared, for no aid is given to inferior jurisdictions.

In an action for a Rescue, the plaintiff must allege in his declaration all the material circumstances; as such a writ issued, that he was arrested, and in custody, and that he was rescued, &c. Godb. 125: 1 Law. 150.

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

F O R M OF THE W R I T OF R E S C U E.

GEORGE the Third, &c. To the Sheriff of M hunting: If A. B. shall make you sever, &c. Then put C. D. &c. to show whysoever, whereas the said A. B. at, &c. certain heists of the said C. D. had taken, and disinfrained for the said C. D. at, &c. and to show whysoever, according to the Law and custom of our kingdom of England, we have impounded, the said C. D. the heists aforesaid, with force and arms, recused, and other enormities there did, to the contempt of us, and grievous damage of the said A. B. and against our peace, &c.

OR THUS;

PUT E. F. and G. H. to answer, &c. whysoever, whereas the said A. B. according to the duty of his office, C. D. whom by our Sheriff of the county of Aforesaid, by word to him directed, we commanded to be taken, at L. by virtue of
Where the Sheriff returned a verdict brevis mihi, scriptum cautelarum
A. & B. [several names] nisi quo rate inde captae
the defendant, & in causis manibus habentur quaestiones
such that he was refused out of the bailiff's custody, or that he was refused
out of the Sheriff's custody; but to say that he was in the custody
of the Sheriff, and yet refused out of the custody of the bailiff,
is repugnant. 2 Sel. 385.

It seems that, anciently, when the Sheriff returned a
Recovery, the party was admitted to plead to it as to an
indictment; but the course of late has been not to admit
any plea to it, but drive the party to his action against
the Sheriff, in case the return were false; hence it is
now settled that the return of a Recovery is not traversable, but
yet it has been held that submission to the fine does not
conclude the party guilty of bringing his action for the
false return, if it were so. Cro. Eliz. 741: Dyer 212: 2
Per. 29: 2 Vent. 224: 2 Vent. 175: Thorn. 295.

If a pris. facias the Sheriff returned that he had
served the goods, but that they were rescued by B. and C.
this is not a good return, but he shall be
amerced; the party also, at whose suit the execution
followed, may charge him by seque facias for the value of
the goods. 1 Vent. 21: 2 Saund. 343: 1 Shaw. 189.

See further, as to exceptions to returns of Recovery: Febr. 51: 2 Rep. 255: Stil. 155: 1 Sid. 332: 1 Lew. 214:
Sans. 142: Reams. 161: 7 Mod. 217: and also, 19 Pitt.
Adv. title Recovery; and Cons. Dig. title Rescuses.

RESCUSOR, The party making a Recovery.

RESERVISER, Reserisere.] The taking lands into the
hands of the King, where a general seisin or seisin le
main was formerly mulled, contrary to the order of

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

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

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

The Reservatio of Rent is good, although it is
not referred by apt and usual words, if the words are
equivalent. Pium. 120. But Reservatio of a Rent securitatis
residui, is a void Reservatio. 2 Vent. 274. See titles
Deed: Redemtus: Rent, &c.

RESISTANCE, Resistentia.] Residence; abide or
continuance; whence comes the participle Resistere, that is,
continually
continually dwelling or abiding in any place. Old Nat. Br. 85: Kitch. 33.

RESIANT ROLLS, t. e. Rolls containing the Resi- 
ants in a titheing, &c. which are to be called over by 
the reeve on holding Courts-leet. Comp. Court Keep.

RESIDENCE, Residen(sia.) Is peculiarly used both 
in the Canon and Common Laws, for the continuance of 
a Parson or Vicar on his benefice: And personal Resi- 
dence is required of ecclesiastical persons on their 
cures, on pain of forfeiting 10l. for every month, if they are 
absent one month at once, or two months at several 
times in the year: 57. to the King, and 5l. to the 
informer. Stat. 21 H. 8. c. 15. See title Page II.—But 
Scholars to the King, or other great persons, (Peers, 
&c. mentioned in this statute, and stat. 23 H. 8. c. 16,) 
may be non-resident.

The statute 21 H. 8. c. 15, must be put in suits by a com- 
oner informer within a year, or by the King within two 
years after the end of that year; so that twelve penalties, or 
120l. may be recovered at once by a Subject for himself 
and the King; or the King may recover at once twenty- 
five penalties, or 250l. See stat. 31 Eliz. c. 5; this 
Dictionary, title Limitation of Actions II. 2.; and 1 Comm. 
c. 11. 4. 921. in n. — Is there not a contradiction in the 
above, and may not more than twenty-five penalties be 
recovered by the King?

Independent of this statute, the Bishop in his Court 
can compel the Residence of all the Clergy, who have 
the cure or care of souls within his diocese. 3 Barn's EccL 
Law 281: Giff. 887.—This statute is not confined to 
parsonages and vicarages, but extends to all archdeces- 
sories, deaneries, and dignities in cathedral and col- 
legiate churches. Those who have two benefices or di- 
ginities, upon each of which Residence is required, must 
reside upon one or the other. But the incumbent of an 
assembled cure cannot be proceeded under the statute 
for the penalties of Non-Residence. 4 Term Rep. 625.

A Bishop is not punishable under this statute, for Non- 
Residence on his bishopric; but if he hold a deanery, 
parsonage, &c. in commendam, he must reside thereon, 
under the penalties of this statute. Bishops are liable 
to ecclesiastical censures for Non-Residence on their 
bishopric; and the King may issue a mandatory writ to 
force their attendance, and compel them to it, by seiz- 
ing their temporalities; as King Henry III. did, by the 
Bishop of Hereford. 2 Litt. 625.

One of the great duties incumbent on clergymen, is 
that they be resident on their livings: And on the first 
erec ting parochial churches, every clergyman was 
obliged to reside on his benefice, for reading of prayers, 
prayers, &c. by the laws and canons of the church; and by 
statute, the parson ought to abide on his rectory 
in the parsonage-house; for the statute is intended not 
only for serving the cure, and for hospitality, but to 
maintain the house in repair, and prevent dilapidations: 
though lawful imprisonment, rentless, &c. being things of 
nece ssity, are good cause of excuse for absence, and excused 
out of the act by construction of Law; And it is the 
fame where a parson is employed in some important 
business for the Church or King; or is entertained in 

In an ecclesiastical court, it was adjudged, that 
the parson is to live in the parsonage-house, and not in 
any other, though in the same parish. Under stat. 
13 Eliz. cap. 20, leases made by parsons are declared 
void, where the parson is absent above eighty days in any 
one year, &c. On this act, the defendant pleaded to 
an agreement for tithes, that the parson was absent from 
his parsonage by the space of eighty days in one year; 
and the jury found that he dwelt in another town ad- 
joining, and came conjunctly to his parish church four 
days in every week, and there read divine service; and 
it was held, that this was not such an absence as is in- 
tended by the statute to avoid any agreement or lease 
made by the parson. 12 Eliz. c. 12. burnt Leigh II.

A parson allowed to have two benefices, may demesne 
lease one of them (on which he is non-resident) to 
his curate only: but if the curate leaves over, such lease 
shall last no longer than during the curates residence, 
without absence above forty days in any one year. 
I Law. 130. See Crot. Eliz. 123. Somewords in the act 
13 Eliz. c. 20. to leases by parsons not resident, 
repealed. See stat. 14 Eliz. c. 11.

An incumbent presented by the University to a recur- 
seant's living, shall lose it by sixty days absence in a year. 
1 W. & M. c. 25. § 6.

See further 19 Fin. Abr. title Residence.

RESIDUARY LEGATEE, is he to whom the re- 
§iduums of the estate is left by will. See titles Executor; 
Legacy.

RESIGNATION, Resignatio.] The yielding up a 
bene ince into the hands of the Ordinary, called, by the 
Canons, Renunciation; and though it is all one in na- 
ture with the word Surrender, yet it is, by use, restrained 
to yielding up a spiritual living to the Bishop; a sur- 
render is the giving up of temporal land into the hands 
of the lord. And a Resignation may now be made into 
the hands of the King as well as the Diocesan, because 
he has suprema autoritatem ecclesiasticam, as the Pope 
had in ancient times; though it has been adjudged that 
a Resignation ought to be made only to the Bishop of 
the diocese, and not to the King; because the King is 
not bound to give notice of the Resignation to the patron, 
as the Ordinary is; nor can the King make a collation 
himself, without preconcerting to the Bishop. P Island. 498: 
Ord. Abr. 353.

Every parson who resigns a benefice, must make the 
Resignation to his superior; as an incumbent to the Bi- 
shop, a Bishop to the Archibishop, and an Archibishop to 
the King, as supreme Ordinary; A donation is to be 
resigned to the patron, not the Ordinary; for in that 
case the clerk received his living immediately from the 
patron. 1 Rep. 137.

A common benefice is to be resigned to the Ordinary, 
by whose admission and institution the clerk first came 
into the church: And the Resignation must be made to 
that Ordinary who hath power of institution; in whose 
discretion it is either to accept or refuse the Resignation; 
as the Law hath declared him the proper person to whom 
it ought to be made, it hath likewise empowered him to 
judge thereof. Crot. Abr. 198.

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

Before.
RESIGN

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

It seems to be clear, that the Bishop may refuse to accept a Resignation upon a sufficient cause for his refusal: But whether he can, merely at his will and pleasure, refuse to accept a Resignation without any cause, and who shall finally judge of the sufficiency of the cause, and by what mode he may be compelled to accept, are questions undecided. In the case of the Bishop of London v. Fyfield, the Judges in general declined to answer whether a Bishop was compellable to accept a Resignation: One thought he was compellable by Mandamus, if he did not think sufficient cause; and another observed, that, if he could not be compelled, he might prevent any incumbent from accepting an Indulgence, till he has resigned all his benefices in England. But Lord Thurlow seemed to be of opinion, that he could not be compelled, particularly by Mandamus, from which there is no appeal on writ of error. 1 Comm. c. 11. p. 393; in n. 4.

A parsonage is not to be granted over by the incumbent, but it may be resigned, and Resignations are to be absolute, and not conditional; for it is against the nature of a Resignation to be conditional, being a judicial act. 3 Nefl. Abr. 177.

If any incumbent corruptly resign his benefice, or take any reward for resigning the same, he shall forfeit double the value of the same, &c. given, and the party giving it, to be incapable to hold the living, Stat. 31 Edw. c. 6, § 8. But a man may bind himself by bond to resign, and it is not unlawful, but may be on good and valuable reasons; as, where he is obliged to resign if he take a second benefice, or if he be not resident by the space of to many months, or to resign on request, if the patron shall present his son or kinsman, when he shall be of age capable to take the living. 2 Edw. c. 24, §§ 9-11. Though bonds for Resignation of benefices have no encouragement in Chancery; for on such bonds, generally, the incumbent is relieved, and not obliged to resign. 1 Rol. Abr. 444. On duty upon a bond to resign a benefice, the Court would not let the defendant's counsel argue the validity of the bond, these bonds having been so often established ever a Court of Equity. 1 Strange 227. But such a bond will not be allowed, where money has been paid on it. Ibid. 534. See further, title Simony.

A parson's refusal to pay his tithes, it is said, is a Resignation, and he may be deprived. Owen 5. And where Resignation is actually made de ecclesiâ, it extends to all the lands and possessions of the church. Corp. Jact. 63.

The usual words of a Resignation are Resignation, Cede, Dimitto, and Resigno; and the word Resigno is not a proper term alone. 2 Rol. 350.

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

A Burgess of a Corporation came to the Mayor, and defied the Mayor to remove and dismiss him from the place of Burgess. On return of this, a Mandamus was denied to restore him; for having resigned voluntarily, he is not entitled to a Mandamus, that the Mayor had no power to remove him; and the case being sent to Hall, Ch. B. he agreed, and said, that a Corporation, as such, have power to take such Resignation. 6 Sid. 14.

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

Resignation by a Common-Councilman need not be by deed. Lord. 405.

Where an Alderman is a Justice of Peace for life, by force of the patent of the King, who created the Corporation, he cannot resign his office of Justice of Peace, because he cannot resign it to a superior; per Cole, Ch. J.: 2 Rol. Rep. 135, p. 19.

So, if a man can have no title to the profits of an office, without the admission or confirmation of a superior, there the Resignation of that office must be to him. 3 Nefl. Abr. 178. See Titles Corporations; Mandamus; Quo Warranto.

RESORT, Reformation; The authority or jurisdiction of a Court, Speed's L. D. 

Deminister Rotari, the last refuge. — The House of Lords is the Dernier Resort in cases of Appeal.

RESPECTU COMPUTI VICECOMITIS HABENDO, A Writ for requiring a Sheriff's account, directed to the Treasurer and Barons of the Exchequer. Reg. Orig. 139. See title Sheriff.

RESPITE, Rejeclam.] A delay, forbearance, or continuation of time. Glanv. lib. 12. c. 9. See this Dist. title Execution of Criminals.

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

RESPITE OF JURY; See titles Jury; Nisi Prius; Trial.

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

RESPONDEAT SUPERIOR. If Sheriffs of London are insufficient, the Mayor and Commonalty must answer for them: And for insufficiency of bailiff, &c. responsibility domini libertatis. 4 Inq. 114. Stat. 44 Edw. 3. cap. 13.

If a Coroner of a county is insufficient, the county shall answer for him. Wm.'s Inq. 84.

A Gaderer constitutes another under him, and he permits an etale, if he be not insufficient, Respondent Superior; and superior officers must answer for their deputies in civil actions, if they are insufficient to answer damages. 4 Rob. 2. c. 24. See titles Deputy; Officers.

RESPONDENTIA; See Bowdery; Inference IV.

RESPONSALIS, Or response diligent. He who appears and answers for another in Court at a day assigned. Glen, lib. 12. c. 9. Flota makes a difference between
RESTITUTION.

Regali, altoritatem, et iusuanam; he says, that repugnans was for the tenant, not only to exclude his admission, but to signify what trial he meant to undergo, the combat or the country. Plin. lib. 6. c. 21.

This word is made use of in the Canon Law for a Process. RESTITUTION, Restitutio.] The reordering any thing unjustly taken from another: It signifies also the putting him in possession of lands or tenements, who had been unlawfully distillicd of them. Cump. Jfl. 144. And Restitution is a Write, which lies where judgment is reversed, to restore and make good to the defendant what he hath lost; The Court which reverses the judgment, gives, on reversal, a judgment for Restitution; whereas a ficta facias quae restitutioem habere one debts, rectifying the reversal of the judgment, and the writ of execution, &c. must issue forth. But the Law doth often restore the possession to one without a Writ of Restitution, i.e. by writ of habeas facias possidendum, &c. in the common proceeding of justice on a trial at Law. 2 Lif. Abr. 472, 3.

See title Execution.

There is a Restitution of the possession of lands in cases of forcible entry; a restitution of lands to an heir, on his ancestor's being attainted of treason or felony; and Restitution of stolen goods, &c.

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

A judgment for land is reversed in B. R. by Writ of Error, the Court may grant a Writ of Restitution to the sheriff to put the party in possession of the lands recovered from him by the erroneous judgment; though there ought to be no Restitution granted of the possession of lands, where it cannot be grounded on some matter of record appearing to the Court. Hil. 22 Car. And persons who are to reforest, are to be parties to the record; or they must be made fo by special ficta facias. Cso. Cas. 325. 2 Salk. 587.

If a leafe is taken in execution on a Fi. fa. and fold by the sheriff, and afterwards the judgment is reversed; the restitution must be of the money for which it was sold, not the term. Cso. Jfl. 244: Mor. 788. But where a sheriff extended goods and lands on an effectus, and returned that he took a leafe for years, which he fold and delivered to the plaintiff as bona & Catalo of the defendant for the debt, and afterwards the judgment was reversed for error; it was adjudged, that the party shall be restored to the leale, because the effectus gave the sherriff no authority to sell the term, therefore a Writ of Restitution was awarded. 2 Lif. 179. And there has been, in this case, a distinction made between compulsory and voluntary act done in execution of justice; where the sheriff is commanded by the writ to sell the goods, and where he is not, when the goods are to be restored, &c.

8 Rep. 96.

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

In a ficta facias quae restitutioem &c. the defendant pleaded payment of the money mentioned in the ficta facias, and it was held to be no plea. Goo. Cas. 323. But now payment is a good plea to a ficta facias by the jurt. 4 & 5 Ann. c. 10. 122: 2 Lif. Abr. 479.

Upon a Writ of Restitution rendered a pardon was put out of possession; and on a suggestion thereof, and affidavit made, Restitution was ordered. Cso. law. 465.

The Justice of Peace, before whom an indictment for forcible entry is found, must give the party Restitution of his lands, &c. who was put out of possession by force. Stat. 8 H. 6. c. 9. But where the one is indicted for a forcible entry, and the party indicted strives the indictment, there cannot be Restitution before trial and a verdict, and judgment given for the party, though the indictment be erroneous; it being too late to move to quash the indictment after the traverse, which puts the matter on trial. 2 Lif. 473, 474. See titles Indictment, &c.

A person being attainted of treason, &c. he or his heirs may be restored to his lands, &c. by the King's charter of pardon; and the heir, by petition of right, may be restored if the ancestor is executed: But Restitution of blood must be by act of Parliament; and Restitutions by Parliament are some of blood only, some of blood, honour, inheritance, &c. The King may restore the party, or his heirs, to his lands, and the blood, as to all things begotten after the attaint. 3 Lif. 250: Cso. law. 543. See titles Attainted, Forfeiture, &c.

On a conviction of larceny, the prosecutor shall have Restitution of his goods, by virtue of jurt. 21 H. 8. c. 11: for, by the Common Law, there was no Restitution of goods upon an indictment: it being considered as at the suit of the King only; and therefore the party was enjoined to bring an Appeal of Robbery, in order to have his goods again. 3 Lif. 241. But it being considered, that the party prosecuting the offender by indictment deferves, to the full, as much encouragement as he who prosecutes by appeal; this statute was made, which enacted, that if any person be convicted of larceny, by the evidence of the party robbed, he shall have full Restitution of his money, goods, and chattels, or the value of them, out of the offender's goods, if he has any, by a writ to be granted by the Judges. And the construction of this act having been in a great measure conformable to the Law of Appeals, it has therefore in practice superseded the use of appeals of larceny. For instance: As formerly upon appeals, so now upon indictments, of larceny, this Writ of Restitution shall reach the goods: no larceny, notwithstanding the property of the same is endeavoured to be altered by false in market-open. 1 Hal. P. C. 543. And, though this may seem somewhat hard upon the buyer, yet the rule of Law is, that adscita debet, non omnis, restitutus; especially when he has used all the diligence in his power to convict the felon. And, since the case is reduced to this hard necessity, that either the owner or the buyer must suffer; the Law prefers the right of the owner, who has done a meritorious act, by pursuing a felon to confound punishment, to the right of the buyer, whose merit is only negative.
that he has been guilty of no unfair transaction. See 2 Inf. 714; 3 Inf. 242; 5 Rep. 109. And it is now usual for the Court, upon the conviction of a felon, to order (without any writ, no influence of the finding out of which has occurred for three hundred years) immediate Restitution of such goods, as are brought into Court, to be made to the several proprietors. Or, else, secondly, without such Writ of Restitution, the party may peaceably retake his goods, wherever he happens to find them, unless a new property be fairly acquired therein. Or, lastly, if the felon be convicted and pardoned, or be allowed his clergy, the party robbed may bring his action of trover against him for his goods; and recover a satisfaction in damages. But such action lies not before prosecution; for the felonies would be made up and healed; 1 Hal. P. C. 546: And also reparation is unlawful, if it be done with intention to smother or compound the larceny; it then becoming the heinous offence of Thieft. See 4 Comm. c. 27. p. 363.

If goods stolen are not waived by flight, or seized for the King, the party robbed may take his goods again without prosecuting the felon; but after they are seized for the King, they may not be restored without appeal or indictment. K. B. 45: 2 Haw. P. C. c. 23. § 49.

A servant took gold from his master, and changed it into silver; the master shall have Restitution of the silver by this statute. Cro. Eliz. 561. c. 6.

A horse and cattle were stolen at Coventry, in an open market, and immediately he was apprehended by the Sheriff of Coventry, and they seized the money; and afterwards the thief was arraigned and hanged, at the suit of the owner of the cattle. And by the Court, the party shall have Restitution of the money, notwithstanding the words of the Statute 21 H. 8. c. 111, the goods stolen, &c.

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

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

If the owner of goods loses them by a fraud, and not by a felony, and afterwards convicts the offender, he is not entitled to Restitution; or to retain them, against a person (as a pawnbroker) who has fairly acquired a new right of property in them. 5 Term Rep. 175.
c. 7, on pain of imprisonment and forfeiture to the King; and again, by stat. 16 R. 2. c. 4. 20 R. 2. c. 4. 1 H. 4. c. 7, by which the offender should make amends at the King's will; and any Knight or Esquire thereby duly attainted should lose his livery, and forfeit his fees for ever. 36. Which statutes were further confirmed and explained by stat. 2 H. 4. c. 21. 7 H. 4. c. 3. 8 H. 5. c. 4. Yet this offence was so deeply rooted, that Edward the Fourth was necessitated to confirm the former statutes, and further to extend their meaning, as appears by stat. 8 Edw. 4. c. 2, adding a special penalty of five pounds on every man who gave such colour, as well as much on every one so retained, either by writing, oath, or promise, for every month.

These were, by the freewill, called Afdates, sic enim dicentur qui in alius agant & tacitum recepto finit. And as our Retainers were thus forbidden, so were those afdates in other countries. But most of the above-mentioned statutes were repealed by stat. 3 Car. 1. c. 1. Cowell. And the provisions of these obsolete and expired laws, are rendered useless by the alteration of manners. See further, title Maintenance.

Repayment of Debts, by an Executor or Administrator. See title Executor V. 6.

Retaining: see Merchants retained. The first see given to any Servant or Counsellor at Law, whereby to make him fore that he shall not be on the contrary part.

Retaliation; see Lex Talionis.

Retennementum; see widowed withholding, or keeping back. An ex parte retenementum was an usual expression in old deeds and conveyances of lands. Cowell. Retenentia, A Retinue, or perons retained to a Prince or Nobleman. Stat. 14 R. 2.

Retorno Habendo; see Retorno habendo; Replication.

Retractus Aequae, The ebb or return of a tide. Plac. 30 Ed. 1.

Retraction, Is when a plaintiff cometh in person in Court where his action is brought, and faith he will not proceed in it; and this is a bar to that action for ever. It is so called, because it was the emphatical word in the Latin entry. See Seller's Pratil; and this Dictionary, titles Nonpost; Non prosequi.

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

A Retraction is a bar to any action of equal nature, brought for the same cause or duty; but a nonsuit is not.

1 Edw. 208. See Wilk. 90.

If a plaintiff says, he will not appear, this is not a Retraction, but a nonsuit. But if the plaintiff says, he will not sue, it is a Retraction. 2 Danu. Abr. 477. And Retraction is always on the part of the plaintiff or demandant; and it cannot be before a declaration, for before the declaration it is only a nonsuit. 3 Leoni. 47: 2 Ed. Abr. 476.

If a plaintiff enter a Retraction against one joint-trespasser, it is a release to the other. Cro. Eliz. 472. See 99. For if a Retraction be entered as to one appealee in appeal of murder, the suit may be continued against the rest; because the appellant is to have a special execution against every one of them. H. P. C. 150. In a prohibition by three, 2 Retraction of one shall not bar the other two plaintiffs. Nett. 162: Nett. Abr. 165. A Retraction in its operation is mostly similar to a Nelle prosequi, entered to the whole cause of action. See that title.

Return, Retraction, Retum, or Return, from the Fr. return, i.e. reditus, recusavit. Both have many applications in Law; but they are most commonly used for the Return of writs, which is the certificate of the Sheriff made to the Court, of what he hath done touching the execution of any writ directed to him; and where a writ is executed, or the defendant cannot be found, &c., when this matter is inquired on the back of the writ by the officer, and delivered into the Court, wherein the writ is directed, at the day of the return thereof, in order to be filed. Stat. Wettam. 2. 13 E. 1. c. 39: 2 P1. Abr. 476. See titles Sheriff; Writ.

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

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

If a Sheriff return a vouchee summoned, where in truth he is dead, and there is no such person; or in a præcipe quad reditum that the tenant is dead, &c., there may be an averment against such Returns, by the stat. 14 Ed. 3. c. 18: Plen. Cont. 123, 122.

Some Returns are a kind of declaration of an ac­­cussion; as the Return of a releas, and the like; and these must be certain and peremptory, or they will be ill. 11 Rep. 40: Plen. 63, 117: Kebi. 165.

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

There is also a Return of Juries by Sheriffs; and Returns of commissions by Commissioners, &c. See the several appropriate titles.

Return, Days, Certain Days in Term, for the Return of Writs, or Days in Bank. See Term.

Retorno Habendo, A Writ which lies where cattle are disfrowned and reprieved, and the person who took the distress justifies the taking, and proves it lawful; on which the cattle are to be returned to him.

This writ also lieth when the plaint in reprieve is removed by recordatio, into the King's Bench or Common Pleas, and he whole cattle are disfrowned makes default; and doth not prosecute his suit. F. N. B. 74. See title Reprieve.

Returns of Members to Parliament; See Parliament.

Returnum Avexorum, A judicial Writ, the same with Return Habendo. Reg. Jacks. 4.

Returnum in Replevin, A writ judicial, directed to the Sheriff for the final restitution or return of cattle to the owner when unjustly taken or disfrowned,
REV

and is found by verdict; and it is granted after a non
fuit in a second deliverance. Reg. Judic. 27. See title
Replevin.

REV. or Revera, from the Saxon word, Geofa, Præfa-
tur. Lambard's explication of Saxon words, verb.
Præfectur. The bailiff of a franchise or manor, espe-
cially in the Western part of England: Hence Sire-reve
for Sheriff. See Kirkton 43.

REVELACH, Rebellion, from revellare, to rebel.
Gait. Domesday, title Cymbere.

REVELAND, Terra Regis. Hæc terra sita tempore
Edwardi Regis Tideland, id est fæstra concussa est in Reve-
land. Et item diocet legionis Regis, quod ipsa terra & cenous

The land here laid to have been Tideland, T. R. &
and after converted into Reveland, seems to have been
such land as having reverted to the King after the death
of his Thane, who had it for life, was not since granted
out to any by the King, but refted in charge on the ac-
count of the Rev or bailiff of the manor; who (as it
seemeth) being in this lordship of Hereford, like the
Reeve in Chancery, a false brother, concealed the land
from the auditor, and kept the profit of it; till the for-
veyors, who are here called Legati Regis, discovered this
falsehood, and presented to the King that furtim aucto-
ritur a Regis.

This passage from Domesday-book is imperfectly
quoted by Sir Edward Coke, who, from these words,
draws a false inference, that land held by knight-ser-
vice was called Tideland, and land held by fiefage
was called Reveland. Cowell. See Spilman of Fendi,
c. 24: 1 Inq. 66. a. and u.

Dallymples attempts to establish a distinction be-
tween Backland, or Tideland; and Reveland, also
called Folkland: and to shew that the former was feudal,
and the latter alodial. Dallymp. Fend. prop. c.
See titles Tenures; Copyhold; Backland; Folkland.

REVELS, Sports of dancing, making, &c. former-
ly used in Princes' Courts, the Inns of Court, and
nobleman's houses; commonly performed by night; there
was an officer to order and punish all them, who was in-
titled Master of the Revels. Cowell.

REVENUE. Fr.] Properly the yearly rent which ac-
crues to any man from his lands and possessions; and is
generally used for the Revenues or profits of the Crown.

Whenever chooses to be informed of the fiscal prerog-
avatives of the King, or such as regard his Revenue; which
the British Constitution hath vested in the Royal per-
on, in order to support his dignity, and maintain his power,
will find them very curiously and learnedly treated of
by Blackstone, in the 8th chapter of the first volume of
his Commentaries. And see this Dict. titles King; Tax.

REVERSAL, OF judgment; It is the making it void
for error; and when, on the return of a writ of error, it
appears that the judgment is erroneous, then the Court
give judgment, Quod judicium reversor, adulator &
punitur pro sodete babacet. 2 Litt. Abr. 461.

The eldest Judge of the Court, or, in his absence, the
next in seniority, always pronounces the Reversal of an
erroneous judgment openly in Court, on the prayer of
the party; formerly it was the course to pronounce it in
French; to this effect, Parc huius error amendi, & auter
errors manifest in te record. fuit le judgment reversor, &c.

REV

Triv. 23 Car. 1. R. The judge now only says, Judg-
ment affirmed, or Judgment reversed, as the case happens.

Reversal of a judgment may be pronounced condi-
tionally, i. e. That the judgment is reversed if the de-
fendant in the writ of error doth not shew good cause
to the contrary at an appointed time; and this is called
a reverser nifi et; and if no cause be then shewn, it stands
reversed without further motion. 2 Litt. 452.

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

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

REVERSION, Reverfis, from Reverver.] A return-
ing again. 1 Inq. 142.

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

But the usual definition of a Reversion is, that it is the
refuse of an estate left in the grantor after a particular
estate granted away, continuing in him who granted the
particular estate; and where the particular estate is de-
vised of out of his estate. Also a Reversion takes place
after a Remainder, when a person makes a disposition of
a less estate, than that whereof he was seized at the time
of making thereof. 1 Inq. 23, 142: Wood's Inq. 151.

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

Blackstone, with his usual accuracy and perspicuity,
shortly defines a Reversion thus: 'The refuse of an
estate left in the grantor, to commence in possession after
the determination of some particular estate granted out
by him.' Coke describes a Reversion to be the returning
of land to the grantor, or his heirs, after the grant is over:
As, if there be a gift in tail, the Reversion of the fee is,
without any special reservation, vested in the donor by
act of Law; and so also the Reversion, after an estate for
life, years, or at will, continues in the lessor: For
the fee-simple of all lands must abide somewhere; and if he,
who was before possessed of the whole, carves out of it
any smaller estate, and grants it away, whatever is not
so granted, remains in him. A Reversion is never there-
fore created by deed or writing, but arises from con-
traction of Law; a Remainder can never be limited,
The doctrine of Reversions is plainly derived from the feudal constitution: For, when a feud was granted to a man for life, or to him and his issue male, rendering either rent, or other services; then, on his death, or the failure of issue male, the feud was determined and reverted back to the lord or proprietor, to be again disposed of at his pleasure: And hence the usual incidents to Reversions are said to be fealty and rent. When no rent is reserved on the particular estate, fealty however results of course, as an incident quite inseparable, and may be demanded as a badge of tenure, or acknowledgment of superiority; being frequently the only evidence that the lands are held at all. Where rent is reserved, it is also incident, though not inseparably so, to the Reversion. 1 Inst. 143. The rent may be granted away, reserving the Reversion; and the Reversion may be granted away, reserving the rent; by special words: but by a general grant of the Reversion, the rent will pass with it, as incident thereunto: though by the grant of the rent generally, the Reversion will not pass. The incident passes by the grant of the principal, but not à courtiso. 1 Inst. 151, 2.

These incidental rights of the Reversioner, and the respective modes of descent, in which remainders very frequently differ from Reversions, have occasioned the Law to be careful in distinguishing the one from the other, however inaccurately the parties themselves may describe them: For if one, feised of a paternal estate in fee, makes a lease for life, with remainder to himself and his heirs, this is properly a mere Reversion, to which rent and fealty shall be incident; and which shall descend to the heirs of the tenant for life; and no evidence of descent shall be required limited to him by a third person would have done: For it is the old estate, which was originally in him, and never yet was out of him. And so likewise, if a man grants a lease for life to A., reserving rent, with Reversion to B. and his heirs, B. hath a remainder descendent to his heirs general, and not a Reversion to which the rent is incident; but the grantor shall be entitled to the rent, during the continuance of A.'s estate. 2 Comm. c. 11, cites Cro. Eliz. 321: 3 Lev. 407: 1 And. 23.

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

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

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

If one have a Reversion in fee, expectant on a lease for years, he may make a bargain and sale of his Reversion for one year, and then make a release to the bar-
REVERSION.

A Reversioner may bring an action on the case for spoil- ing trees; so, for any injury to his Reversion, he may have this action, but he cannot have trespass, which is founded on the possession. 3 Lev. 269, 725: 3 Co. 55.

He in Reversion shall have a writ of entry ad communem legem, where tenant for life, &c.; aliens the lands; And writ of intrusion, after their deaths, &c. New Nat. Br. 461. But see title Recovery.

How to plead a Reversion in Fees 2 Leav. 174.

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

Reversions in Offices: Vide Office.

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

A Bill of Review, upon new matter discovered, has been permitted, even after an affirmance of the decree in Parliament; but it may be doubted, whether a Bill of Review, upon error, in the decree itself, can be brought after such affirmance. If, upon a Bill of Review, a decree has been reversed, another Bill of Review may be brought upon the decree of reversal; but see PERV. 447. But when twenty years have elapsed from the time of pronouncing a decree, which has been signed and enrolled, a Bill of Review cannot be brought; and after a demurrer to a Bill of Review has been allowed, a new Bill of Review on the same ground cannot be brought.

It is a rule of the Court, that the bringing a Bill of Review shall not prevent the execution of the decree imposed; and if money is directed to be paid, it ought regularly to be paid before the Bill of Review is filed, though it may afterwards be ordered to be refunded. Miss. Treat. 79, 80. Vol. II.

REVIEW.

In a Bill of this nature it is necessary to state the former Bill, and the proceedings therein; the decree, and the point in which the party exhibiting the Bill of Review concedes himself aggrieved by it; and the ground of Law, or new matter discovered, upon which he seeks to impeach it; and if the decree is impeached on the latter ground, it seems necessary to state in the Bill the leave obtained to file it, and the fact of the discovery; though it may be doubted, whether after leave given to file the Bill that fact is traversable. The Bill may prays simply, that the decree may be reviewed, and reversed in the point complained of, if it has not been carried into execution. If it has been carried into execution, the Bill may also pray the further decree of the Court, to put the party complaining of the former decree into the situation in which he would have been if that decree had not been executed. If the Bill is brought to review the reversal of a former decree, it may pray that the original decree may stand. The Bill may also, if the original decree has become abated, be at the same time a Bill of Reviver: (See title Reviver.)

A supplemental Bill may likewise be added, if any event has happened which requires it; and, particularly, if any person, not a party to the original suit, becomes interested in the subject, he must be made a party to the Bill of Reviver, by way of supplement. Miss. Treat. 80, 81.

To render a Bill of Review necessary, the decree sought to be impeached must have been signed and enrolled. If, therefore, this has not been done, a decree may be examined and reversed upon a species of supplemental Bill in nature of a Bill of Review, where any new matter has been discovered since the decree. As a decree not signed and enrolled may be altered upon a rehearing, without the affiance of a Bill of Review, if there is sufficient matter to reverse it appearing upon the former proceedings; the investigation of the decree must be brought on by a petition of rehearing and the office of the supplemental Bill, in nature of a Bill of Review, is to supply the defect which occasioned the decree upon the former Bill. It is necessary to obtain the leave of the Court to bring a supplemental Bill of this nature; and the same affidavit is required for this purpose, as is necessary to obtain leave to bring a Bill of Review on discovery of new matter. The Bill, in its frame, nearly resembles a Bill of Review; except, that instead of praying that the former decree may be reviewed and reversed, it prays, that the cause may be heard with respect to the new matter, made the subject of the supplemental Bill, at the same time that it is reheard upon the original Bill; and that the plaintiff may have such relief as the nature of the case made by the supplemental Bill requires. Miss. Treat. 31—33.

If a decree is made against a person who had no interest at all in the matter in dispute, or had not such an interest as was sufficient to render the decree against him, binding upon some person claiming the same, or a similar interest, relief may be obtained against error in the decree by a Bill in the nature of a Bill of Review. That, if a decree is made against a tenant for life only, a remainder-man in tail, or in fee, cannot defeat the proceedings against the tenant for life, but by a bill shewing the error in the decree, the incompetency in the tenant for life to sustain the suit, and the accrual of his own interest, and the coupon praying that the proceedings in
the policy and propriety of these punishments, even at
of the debt, a suit may be revived accordingly. See Mitf. Treat. 71, 72.

An order to revive may also be obtained, in like man-
for the third shall, in like manner, be deprived, and suffer
in the nature of an original Bill. If a defendant
may not admit the defendant to the contrary; and in
default, unless the defendant has obtained an order for
further time to answer, the suit may be revived without
answer, by an order made upon motion as a matter of
courte. The ground for this is an allegation, that the
time allowed the defendant to answer by the court of
the Court is expired, and that no answer is put in; it is
therefore presumed, that the defendant can shew no
cause against reviving the suit in the manner prayed by
the Bill. Mitf. Treat. 71, 72.

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

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

Voluntary estates made with power of Revocation, as to purchasers, are held in equal degree with conveyances made by fraud and gross to defraud purchasers, under § 27 Eliz. c. 11; 1 Rep. 55. See title Fraud.

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

If power is referred to a man to revoke a deed by writing, subscribed and sealed in the presence of two or more credible witnesses: if he makes his will in writing, without making any express Revocation, it will be a good Revocation, and the will a good execution of the power. 2 Vent. 312: 3 Rep. 205. See title Power.

If a person make a revocation in fee, or levy a fine, &c. of the land, before the deed of Revocation is executed, their amount to a Revocation in Law, and extinguish the power of Revocation. 2 Vent. 371: 1 Rep. 111.

Power of Revocation may be released; and where a man has an entire power of Revocation, and he suspends or extinguishes it as to part, he may revoke as to the residue, if the conveyance was by way of use, but when no condition is annexed to the land. 1 Rep. 174: 9 Mod. 644.

A Will is revocable; and a last will revokes the former. And a new publication of the last will, if made in due form, will revoke the last. 2 Vent. 475: 2 Sid. 2: 3 Mod. 2071. See title Wills.

Letters of Attorney, and other authorities, may be revoked, by the persons giving the powers; and as they are revocable in their nature, it has been adjudged, that they may be revoked, though they are made irrevocable, 9 Rep. 8: Wood's Ltd. 386. Their Revocations of all powers regularly must be made after the same manner they are given; and there ought to be notice to the party, &c. But if once the power be executed, a Revocation after will come too late. 2 Dyer 210.

A warrant of attorney from a defendant to appear and accept a declaration, and plead for the defendant, may not be revoked with an intent to stay the plaintiff's proceedings; but the defendant, on good cause shown to the Court, may change his attorney, so as he may plead by another in due time. 2 Litt. 489.

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

REVOCATIONE PARLIAMENTI, An ancient Writ for recalling a Parliament; and now 5 Ed. 3, the Parliament being summoned, was recalled by such writ before it met. Pryn's Animad. on 4 Inf. fol. 44. See title Parliament.

REWARDS. In order to encourage the apprehending of certain felons, Rewards, and immunities are bestowed, or such as bring them to justice, by divers statutes. The Stat. 4 & 5 W. & M. c. 8; et seq. Such as apprehend a highwayman, (and by Stat. 6 Geo. 1. c. 25, highway robbers in the streets of London, or other towns, and prosecute him to conviction, shall receive a Reward of £10 from the public,) to be paid to them (or, if killed in the endeavour to take him, their executors), by the sheriff of the county; besides the horse, furniture, arms, money, and other goods taken upon the person of such robber; with a reservation of the right of any person from whom the same may have been stolen: to which Stat. 8 Geo. 2. c. 16, superseded the, to be paid by the
REWARDS.

Hundred indemnified by such taking. By stat. 6 & 7 W. 3. c. 17: 15 Geo. 2. c. 28, persons apprehending and convicting any offender against those statutes, respecting the coinage, shall (in case the offence be treason or felony) receive a reward of forty pounds; and ten pounds if it be only amount to counterfeiting the copper coin. By stat. 10 & 11 W. 3. c. 25, any person apprehending and procuring to convicting a felon guilty of burglary, housebreaking, horsestealing, or private larceny to the value of 5s., from any shop, warehouse, coach-house, or stable, shall be exculped from all parish offices; (which is vulgarly termed, having a Tyburn ticket). And by stat. 5 Ann. c. 31, any person so apprehending and procuring to convicting a burglar, or felonious housebreaker, (or, if killed in the attempt, his executor), shall also be entitled to a Reward of 40l. By stat. 6 Geo. 1. c. 24, persons discovering, apprehending, and procuring to conviction, any person taking Reward for helping others to their stolen goods, shall be entitled to 40l. — By stat. 14 Geo. 2. c. 6, explained by stat. 15 Geo. 2. c. 54, any person apprehending and procuring to conviction such as sheep, or lent with intent to steal, any shire, lamb, bullock, or steer, or calves, shall for every such case receive a Reward of 10l. Lastly, by stat. 16 Geo. 2. c. 15: 8 Geo. 3. c. 15, persons discovering, apprehending, and convicting felons, and others, being found at large during the term for which they are ordered to be transported, shall receive a Reward of 20l.

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

In the spirit of the above statutes, the statutes, 9 Geo. 1. c. 22: 10 Geo. 2. c. 32, allow a recompence of 50l. to persons maid in endeavouring to apprehend offenders against the Black Act, destroyers of bee-hives, cutters of hop-bounds, and forres of collieries. And by stat. 19 Geo. 2. c. 34, several analogous regulations are made for recompensing persons wounded or plundered by smugglers; and Rewards of 50l. are given to accomplices in imagining and discovering two or more offenders, and one of 50l. for detecting proclaimed smugglers in certain cases.

RIWEY, A term among clerks, signifying cloth unwovenly wrought, or foul of Rewes. See stat. 43 Eliz. cap. 10.

RHANDIR, A part in the division of Wales before the Conquest; every township comprehended four gavels, and every gavel had four Rhandirs, and four houses or temples contiguously every Rhadir. Taylor's Hist. Gw. p. 69.

RIAL, from the Span. Rialo, i.e. Royal Money, because it is stamped with the King's effigies. In England, a Rial was a piece of gold coin, current for 10s. in the reign of King Henry VI. at which time there were Half-Rials passing for 5s. and Quarter Rials, or Rial Farthings, going for 2s. 6d. In the beginning of Queen Elizabeth's reign, golden Rials were coined at 15s. a-piece; and 3 Rials there were Rofe-Rials of gold at 30s. Spor-Rials at 15s. Lewis's Essay on Coins, p. 38.

RIBAUD, Fr. Ribaudy, Ribadit. A rogue, vagrant, poisoner, or person given to all manner of wickedness; Ann. 50. E. 3, there was a petition in Parliament against Ribauds and Scurdy Beggars.

RICE, As to the importation of, see titles Navigation Act; Customs or Merchandise.

RICHMOND IN SURRY, Richmond Old Park settled on Queen Charlotte for life. Stat. 2 Geo. 3. c. 1. See title Queen.

RICHMOND IN YORKSHIRE, Spiritual persons in the archdeaconry of Richmond, shall not exact portions of the deceased's goods. Stat. 26 Hen. 8. c. 15.

RIDER-ROLL, A schedule, or small piece of parchment, often added to some part of a Roll, Record, or Act of Parliament.

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

RIDING ARMED; See Armer and Arme.

Riding-Clerk, One of the six Clerks in Chancery, who in his turn, for one year, keeps the compartment-books of all grants that pass the Great Seal. Hounslow Rides, corrupted from Thirskley. Are the names of the parishes or divisions of Yorkshire, which are three, viz. East-Riding, West-Riding, and North-Riding, mentioned in stat. 22 Hen. 8. c. 5: And in indentures for offences in that county, the Town and the Riding must be expressed, &c. See W. Sym. p. 2. See 1 Comm. 116: and this Dictionary, titles Rape; Rigifly of Deeds.

RIENS ARREAR, A plea used in an action of debt for Arrearages of Account, whereby the defendant alleges that there is nothing in Arrear. See titles Account; Debt; Pleading.

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

RIENS PER DESCENT, The plea of an heir, where he is sued for his ancestor's debt, and hath no land from him by Decedent, or affects in his hands. 5 Geo. 1. 511. In an action of debt against the heir, who pleads Rien per Decedent, judgment may be had presently; and when affects descend, a fieri facias lies against the heir, &c. 8 Rep. 134. See title Heir.

RIB COUNTY, Raro Comitatus, from the Fr. Arrear, i.e. posterior. Is opposed to full and open County; and appears to be some public place, which the Sheriff appoints for receipt of the King's money, after the end of his County-Court. See stat. 2 Ed. 3. cap. 3; and also stat. West. 25 Ed. 1. c. 58: Etts. l. 2. c. 67.

RIFELLAKE, from the Saxon, rife, rapeina. To take away any thing by force; from whence comes our English word rife. Leg. Hist. 1. c. 17.

RIFELLA, A Right wound in the flesh. Etts. lib. 1. c. 41.

RIGHT, title Right. In general signification, includes not only a Right for which a Writ of Right lies, but also any title or claim, either by virtue of a condition, mortgage, or the like, for which no action is given by Law, but only an entry. Co. Litt. 1. & 2. c. 8. § 445.

There is jus proprietatis, a Right of Property; jus possessorium, a Right of Possession; and jus proprietatis & possessorium, a Right both of Property and Possession; and this was anciently called jus duplicatum: For example, if a man be dispossessed of an acre of land, the disseisee hath
hath jus proprietatis, the disseisor hath jus possessioni; and if the disseisor release to the disseisor, he hath jus proprietatis & possessioni. Co. Lit. 1 3. 447. 4.


The disseisor has only the naked possession, because the disseisor may enter and exit him; but against all other persons the disseisor has Right, and in this respect only can be said to have the Right of possession; for in respect to the disseisor, he has no Right at all. But when a tenant is cast, the heir of the disseisor has jus possessioni, because the disseisor cannot enter upon his possession, and evict him, but is put to his real action, being the freehold cast upon the heir. The notions of the Law do make this title to him, that there may be a person in being to do the feudal duties, to all the possession, and to answer the actions of all persons whatever; and hence it is the Law that gives him this Right, and obliges him to these duties, antecedent to any act of his own, it must defend such possession from the act of any other person whatever; till such possession be evicted by judgment, which being also the act of Law may destroy the heir's title. Gilb. Ten. 13. See further, titles Eject; Property; Relief; Title.

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

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

Sir Edward Coke tells us, That of such an high estimation is Right, that the Law preserves it from death and destruction, trodden down it may be, but never trodden out: And there is such an extreme enmity between an estate gained by wrong and an ancient Right, that the Right cannot possibly incorporate itself with the estate gained by wrong. 1 Inst. 279. 6 Rep. 70; 8 Rep. 105. A Right may sometimes sleep, though it never dies; a long possession, exceeding the memory of man, will make a Right; and if two persons are in possession by divers titles, the Law will adjudge the possession in him that hath the Right. Co. Lit. 478; 6 Lit. § 138. When there is no remedy, there is presumed to be no Right by Law. Vaught. 38.

RIGHT CLOSE, Writ of; See titles Relief; Writ of Right.

RIGHT CLOSE, sequenter Conjugationem Manum. A Writ which lies for the King's tenants in ancient demeine, and others of a similar nature, to try the Right of their lands and tenements in the Court of the Lord exclusively. See Writ.

RIGHT IN COURT; See Relief in Curia.

RIGHTS AND LIBERTIES; See title Liberty.

RINE, Sax. Ryn. A water-course, or little stream, which rives high with floods.

RINGA, A military girdle; from the Sax. Ring, i.e. annulus, circulus, because it was girt round the middle; But, according to Bracton, Ringa enim decem quadrates rectangulorum, undique a circulo circumspecta. Brad. lib. 1. cap. 8.

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

RINGILDRE, A kind of bailiff or seigneur; and such Ringild signifies in Welsh, Chart. Harv. 7.

RIOT; ROUT; AND UNLAWFUL ASSEMBLY.

RIOT, Rota and Rictum, from the French, Rétro; quod non solum rixam et jurgium significat, sed vinculum eiet, quas plura in unum, facultatum inferit, colligatione. The forcible doing of an unlawful thing by three, or more persons assembled together for that purpose.

Wit. Symbol. part 2. title Indictments, § 65.

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

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

II. The Punishment of these Offences: And the Proceedings against them, by Statute Law.

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

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

A Rout seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intent to do a thing, which, if it be executed, will make them Ritiers, and actually making a motion towards the execution thereof; but, by some books, the notion of a Rout is confined to such assemblies only, as are occasioned by some grievance common to all the company, as the inclosure of land, in which they all claim a right of common, &c. However, inasmuch as it generally agrees with a Riot, as to all the rest of the above-mentioned particulars, requisite to constitute a Riot, except only in this, that it may be a complete offence without the execution of the intended enterprize, it seems not to require any farther explanation. 1 Harv. P. C. c. 65, § 9.

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

These offences are thus defined and distinguished by Blackstone: An Unlawful Assembly is, when three or more do assemble themselves together to do an unlawful act, as, to pull down inclosures, to destroy a warren, or the game therein; and part, without doing it, or make any motion towards it. 3 Inst. 176. A Riot, is where three or more meet to do an unlawful act upon a common quarrel; as, forcibly breaking down fences, upon a right claimed of common, or of way, and make some advances towards it. Br. Abs. tit. Riot 4, § 5. A Riot, is where three or more actually do an unlawful act of violence, either with or without a common cause or quarrel. 3 Inst. 176: As if they beat a man, or hunt and kill game in another's park, chase, warren, or liberty; or do any other unlawful act, as removing a nuisance in a violent and tumultuous manner, 4 Com. r. 8, p. 146.

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

But if a man be menaced or threatened, that if he comes to the market of B. or to C. that he shall be beat, he cannot make an Assembly of people to assist him to go there, and this in safeguard of his person, for he need not go there, and he may have remedy by force of the law; but the house of a man is to him his cattle and his defence, and where he properly ought to abide, 49. Br. Riots, pl. 1. cites 46 Hen. 8. 39.

Hawkes, citing the above case, remarks, That such violent methods cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace.—Though a man may ride with arms, yet he cannot take two with him to defend himself, even though his life is threatened; for he is in the protection of the law, which is sufficient for his defence. See 1 Hawkes. P. C. c. 65. § 10: Dalh. J. c. 157: 11 Mod. 116, 117.

If a number of people be assembled together in a lawful manner, and upon a lawful occasion, as for electing a Mayor, or the like, and during the Assembly a sudden affair happens, this will not make it a Riot; for it is only a common affair. Lad. Raym. 985.

If a number of people assemble in a riotous manner to do an unlawful act, and a person, who was upon the place before upon a lawful occasion, and not privy to their first design, comes and joins himself with them, he will be guilty of a Riot equally with the rest. Lad. Raym. Rep. 985.

If several are assembled lawfully without any ill intent, and an affair happens, none are guilty, but such as

II. The punishment of unlawful Assemblies. If to the number of twelve, may, as hereafter fully noticed, be capital; according to the circumstances that attend them; but from the number of three to twelve, is by fine and imprisonment only. The same is the case in Ritters and Rout by the Common Law; to which the pillory, in very enormous cases, has been sometimes superadded. 4 Com. r. 11.

By statute 34. E. 3. c. 1. Justices of the peace have power to restrain Ritters, &c. to arrest and imprison them, and cause them to be duly punished. By stat. 17. R. c. 8, the Sheriff, and other the King's Ministers, generally have power to arrest Ritters with force. And by stat. 13. H. 4. c. 7, any two Justices, together with the Sheriff or Under-Sheriff of the county, may come, with the poile consilium, if need be, and suppress any Riot, Assembly, or Rout, arrest the Ritters, and record, upon the spot, the nature and circumstances of the whole transaction; which record alone shall be a sufficient conviction of the offenders; and if the offenders are departed, the said Justices, &c. shall, within a month after, make inquiry thereof, and hear and determine the same; and if the truth cannot be found, then, within a further month, the Justices and Sheriffs are to certify to the King and Council, &c. on default whereof, the Justices, &c. shall forfeit ten pounds.

These statutes are under foot of great and notorious Ritters; and the record of the Riot within the view of the Justices, by whom it is recorded, is such a conviction as cannot be traversed, the parties being concluded thereby; but they may take advantage of the insufficiency of the record, if the Justices have not purged the statute, &c. It is said, that the offenders being convicted
RIOT; ROUT; AND UNLAWFUL ASSEMBLY II.

visited upon the record of their offence, in the presence of the Justices, ought to be sent immediately to gaol, till they pay a fine assessed by the same Justices; which fine is to be eftreated into the Exchequer; or the Justices may record such Riot, and commit the offenders, and after certify the record into B. R. or to the Alizies or Sessions: If the offenders are gone, then the Justices shall inquire by a Jury; and the Riot being found, they are to make a record of it, and fine them, or receive their traverse, to be sent by the Justices to the next Quarter-Sessions, or into the King's Bench, to be tried according to Law. Dole. 280, 281, 282.

It hath been adjudged, that where Rioters are convicted upon the view of two Justices, the Sheriff must be a party to the inquisition on the flat. 1 Hen. 4. c. 7. But if they disperse themselves before conviction, the Sheriff need not be a party; for in such case the two Justices may make the inquisition without them; and this is pro Domino Rigo. And if the Justices neglect to make an inquisition within a month after the Riot, they are liable to the penalty for not doing it within that time; but the lapse of the month does not determine their authority to make an inquisition afterwards. 2 Sel. 392.

In the interpretation of the above flat. 1 Hen. 4. c. 7, it hath also been held, that all persons, noblemen and others, except women, clergymen, persons decertis, and infants under fifteen, are bound to attend the Justices in suppressing a Riot, upon pain of fine and imprisonment: And that any battery, wounding, or killing the Rioters, that may happen in suppressing the Riot, is justifiable. 1 Hals. P. C. 455; 1 Hawk. P. C. c. 05, § 20, 21.

On the above, Blackstone remarks, that our ancient Law seems pretty well to have guarded against any violent breach of the public peace; especially as any riotous Assembly, on a public or general account, as to redress grievances, or pull down all inclosures, and also refilling the King's forces, if sent to keep the peace, may amount to overt acts of high treason, by levying war against the King.—This observation will appear confirmed, by a statement of the following statutes, also made on this subject. And see further 1 Hawk. P. C. c. 05.

Rioters convicted on view of two Justices, and of the Sheriff of the county, are to be fined by the two Justices and the Sheriff; and if the Sheriff do not join in setting the fine, it is error; for the statute requires that he should be joined with the Justices in the whole proceedings. Raym. 386. By flat. 2 Hen. 5. § 1 c. 8, If the Justices make default in inquiring of a Riot, at the instance of the party grieved, the King's commission shall be iss'd to inquire, as well of the Riots as of the default, by sufficient and indifferent men of the county, at the discretion of the Chancellor; and in case the Sheriff is in default, the Coroners shall make the panel of inquest upon the said commission, which is returnable into the Chancery, &c. and by this statute, heinous Rioters are to suffer one year's imprisonment.

The Lord Chancellor, having knowledge of a Riot, may send the King's writ to the Justices of peace, and to the Sheriff of the county, &c. requiring them to put the statute in execution; and the Chancellor, upon complaint made, that a dangerous Rioter is fled into places unknown, and on suspicion, under the seals of two Justices of peace and the Sheriff, that the common fame runneth in the county of the Riot, may award a commission against the parties, returnable in Chancery upon a certain day, and afterwards a writ of proclamation, returnable in the King's Bench. Stat. 2 H. 5. c. 8 H. 6. c. 14.

Where riots are committed, the Sheriff, upon a precept directed to him, is to return twenty-four persons dwelling within the county, to inquire thereof, Stat. 10 Hen. 7. c. 13.

A Mayor and Alderman of a town making a Riot, are punishable in their natural capacities; but where they have countenanced dangerous Riots within their precincts, their liberties have been seized, or the corporation fined. 3 Cor. 252: Dal. 304, 326. Women may be punished as Rioters; but infants, under the age of fourteen years, are not punishable. Dal. 325: Wood's Inst. 429.

The riotous assembling of twelve persons, or more, and not differing upon proclamation, was first made high treason by Stat. 3 & 4 Edw. 6. c. 5, when the King was a minor, and a change in religion was to be effected: but that statute was repealed by Stat. 1 Mar. c. 1, among the other treasons created since the 25 Edw. 3, though the prohibition in substance re-enacted, with an inferior degree of punishment, by Stat. 1 Mar. ft. 2. c. 12, which made the same offence a single felony. These statutes specified and particularized the nature of the Riots they meant to suppres; as, for example, such as were set on foot with intention to offer violence to the Privy Council, or to change the Laws of the kingdom, or for certain other specific purposes: in which cases, if the persons were commanded by proclamation to disperse, and they did not, it was by the statute of Mary made felony, but within the benefit of clergy; and the act also indemnified the peace-officers and their attaintants, if they killed any of the mob in endeavouring to supress such Riot. This was thought a necessary security in that sanguinary reign, when Popery was intended to be re-established, which was like to produce great discontent: but at first it was made only for a year, and was afterwards continued for that Queen's life. And, by Stat. 1 Bizi. c. 16, when a reformation in religion was to be once more attempted, it was revived and continued during her life also, and then expired. From the accession of James I. to the death of Queen Anne, it was never once thought expedient to revive it: but, in the first year of George I. it was judged necessary, in order to support the execution of the Act of Settlement, to renew it, and at one stroke to make it perpetual, with large additions. For, whereas the former acts expressly defined and specified what should be accounted a Riot, the statute 1 Cor. 10 c. 3), enacts generally, That if any persons, the number of twelve, are unlawfully assembled, to the disturbance of the peace, and any one Justice of the peace, Sheriff, Under-Sheriff, or Mayor of a town, shall think proper to command them by proclamation to disperse, if they contemn his orders, and continue together for one hour afterwards, such contempt shall be felony without benefit of clergy. And farther, if the reading of the proclamation be by force opposed, or the reader be in any manner willfully hindered from the reading of it, such opposers and hinderers are felons without benefit of clergy; and all persons to whom such proclamation ought to have been made, and knowing of such hinderance, and not differing, are felons without benefit of clergy. There is in this also an indemnifying clause, in case any of the mob be unfortunately killed in the endeavour to disperse them;
and, by a subsequent clause, if any persons, so riotously assembled, begin, even before proclamation, to pull down any church, chapel, meeting-house, dwelling-house, or out-houses, they shall be felons without benefit of clergy: and inhabitants of towns and Hundreds are to yield damages for rebuilding or reparation, to be levied and paid in such manner as money recovered against the Hundred, by persons robbed on the highway, &c. Proclamations on this act are to be commenced within one year after the offence: This statute, being wholly in the affirmative, doth not take away any authority in the suppressing a Riot by Common Law, or by other statutes. Wood's Inf. 456.

The owners of houses may recover damages for the destruction of their furniture, or for any injury to their property, done at the same time that the buildings are demolished, or in part pulled down. Doug. 673, (699). Hyde v. Cogan.

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

Nearly related to this head of Riots, is the offence of Tumultuous Petitioning: which was carried to an enormous height in the times preceding the Grand Rebellion. Wherefore, by stat. 13 Car. 2. c. 5. it is enacted, That not more than twenty names shall be signed to any petition to the King, or either House of Parliament, for any alteration of matters, established by Law, in Church or State; unless the contents thereof be previously approved, in the Country, by three Justices, or the majority of the Grand Jury at the Assizes or Quarter Sessions; and, in London, by the Lord Mayor, Aldermen, and Common Council: and that no petition shall be delivered by a company of more than ten persons on pain, in either case, of incurring a penalty not exceeding 100l. and three months imprisonment. See this Dictionary, titles Petition; Liberty.

Proceedings of the same nature, and manifestly tending to the same end, as the tumultuous petitions above alluded to, by Assembling the lower class of people in public meetings on Political Questions, and by reading Lectures on Political Subjects, had arrived to such a height in the year 1795, through the machinations of persons friendly to, and not improbably connected with, the French Revolutionists, that the Legislature found it necessary to interpose: and the following Act was passed: after several debates, in both Houses, in which the perseverance of the opposers of the measure was more remarkable than their numbers. It is but justice to say, that the evils dreaded from this fresh restraint of the liberty of the Subject never appear to have taken place, while the benefits were unquestionable: Though the Act was in some measure eluded, particularly in the provision against Political Lectures.

The full part of the stat. 36 Geo. 3. c. 8, after reciting that "Assembly of divers persons collected for the purpose, or under the pretense, of deliberating on public grievances, and of agreeing on petitions, complaints, non-contents, declarations, or other addresses to the King, or to both Houses, or either House of Parliament, had of late been made use of to serve the ends of factions and sedite persons, to the great danger of the public peace; and might become the means of producing confusion and calamities in the Nation;" enacts, That no meeting of any description of persons, exceeding the number of fifty persons, (except county-meetings, or meetings called by two Justices, or by the major part of the Grand Jury of the county; or meetings of corporate bodies, or of towns corporate, and their divisions, called by the proper officer,) shall be held for the purpose, or on the pretext, of considering or preparing any petition, &c. to the King, or Parliament, for alterations of matters established in Church or State; or for the purpose, or on pretext of deliberating upon any grievance in Church or State; unless previous notice of the time, place, and purpose of such meeting shall be given, by seven householders of the place, in some public news-paper, five days previous to the meeting. Such notice not to be served in any paper, unless the authority for so doing shall be signed by seven householders, at the fact of the notice for the meeting. The notice and authority to be preferred and produced to a Justice, if required; and a penalty of 50l. is imposed on the person inserting the notice in a paper without such authority, or refusing to produce the notice and authority when required. § 1.

Or a notice, signed as above by seven householders, may be delivered to the Clerk of the Peace, who shall send a copy of the same to three Justices of the place, at least. § 2.

All meetings of any description of persons, exceeding fifty in number, (except as aforesaid,) which shall be held without such notice, for the purpose, or on the pretext of any petition before stated, shall be deemed and taken to be Unlawful Assemblies. § 3.

If twelve or more persons, of a greater number than fifty assembled contrary to this statute, shall continue together one hour, after being required by a Justice to disperse; they shall be guilty of felony without benefit of clergy. § 4. For the proclamation for dispersing, see at the end of this title.

In case any meeting shall be held, in pursuance of such notice, and the purpose for which the same shall in such notice have been declared to be held, or any matter which shall be in such notice proposed to be proposed or deliberated upon at such meeting, shall purport that any thing by Law established may be altered, except by authority of King, Lords, and Commons, in Parliament, a Magistrate may order them to disperse: And if twelve or more shall then continue together, they shall be guilty of felony without benefit of clergy. § 5.

At the meetings so held, Justices may order any persons to be taken into custody, who shall propound or maintain propositions for altering any thing by Law established, except by authority of the King and Parliament; or who shall willfully and advisedly make any proposition, or hold any discourse, for the purpose of inciting and stirring up the people to hatred or contempt of the King, or the Government and Constitution: And in case of any such declaration, prosecution may be made, and the Assembly shall disperse, on the penalties before imposed. § 6.

Magistrates may refer to all such Meetings and Assemblies, and act according to Law, and require the assistance of peace-officers. § 8. And persons obstructing Magistrates attending, or going to attend, the meetings, are declared capital felons. § 10: And the other provisions of the Riot Act, 1 Geo. 1. c. 5, are adopted for enforcing this Act.

The other part of the statute relating to Political Lectures, after reciting "That certain houses, &c. in London, Westminster and the neighbourhood, and in other places, had of late been frequently used for the purpose of delivering lectures and discourses on supposed public grievances;" and...
RIOT.

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RIVAGIUM, rivage, or rivage.] A duty paid to the
king on some rivers for the passage of boats or vessels.
—Livid. post ab omnibus ivage, paffage, taffage, rivage,

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

RIVERS. By the statute of Wills, 2 c. 47. The King
may grant commissions to persons to take care of Rivers,
and the liberty therein: — The Lord Mayor of London is
to have the conservation in breaches and ground overrun
as far as the water ebbs and flows in the river Thames.
Stat. 4 Hen. 7. c. 15. — Persons annoying the
River Thames, making themselves there, calling dung therein,
or taking away flowers, boards, timber-work, &c. off the
banks, incurred a forfeiture of 5 l. under Stat. 27 Hen. 8.
c. 18. Commissioners appointed to prevent executions of
the occupiers of locks, weirs, &c. upon the River Thames
well-warded from the city of London, to Cripplegate in
the county of Wilt., and for ascertaining the rates of water
carriage, on the said River, &c. Stat. 6 & 7 W. 3. c. 16.
Which statute was revived with authority for the Com-
missoners to make orders and confinements, to be observed
under penalties, &c. Stat. 3 Geo. 2. c. 11 ; 14 Geo. 2. c. 8.
As to annuities in River, or other positively by actual
obstructions, or negatively, by want of reparations, the
persons so obstructing, or such individuals, are bound
to repair and cleanse them, or in default of these last
the path at large, may be indicted, disjoined to repair
and amend them, and in some cases fined. 4 Comm. 167.

See title nuisance.

By Stat. 6 Geo. 2. c. 37 ; 10 Geo. 2. c. 32. it is made
felony, without benefit of clergy, maliciously to cut down
any River or sea-bank, whereby lands may be overflowed.
 Sectile Mischief, Malicious. By Stat. 1 Geo. 2. b. 2. c. 19.
(now expired). To destroy the toll-houses, or any flutes
or lock on any navigable River, was made felony to be
punished with transportation for seven years. And by
Stat. 8 Geo. 2. c. 20. Destroying flutes upon Rivers,
or refucing any person in custody for the same, is made
felony without benefit of clergy, and the offence may be tried
as well in an adjacent county, as in that where the fact
is committed. By Stat. 4 Geo. 2. c. 13. Maliciously to
damage or destroy any bank, flutes, or other works on such
navigable River, to open the flood-gates or otherwise ob-
struct the navigation, is again made felony, punishable
with fourteen years transportation. Persons may justify
the going of their servants or horses upon the banks of
navigable Rivers, for treading of barges, &c. to whomso-
ever the right of the foil belongs. 1 Ed. Rast. 725.

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

ROBA, A robe, coat, or garment. Walsingham, 267.
See Raimier.

ROBBERY, Rebaru.] A felonious taking away of
another man's goods, from his person or in his presence,
against his will, by putting him in fear, and of purpose
to theke the same. West. Symbol. part. 2. title Indictments,
§ 60. And this offence was called Robbery, either because
they bereave the true man of some of his robes or gar-
ments; or because his money or goods were taken out of
some part of his garments or robe about his person. Co
14.

What is or amounts to a Robbery in respect of the Movable,
or the Purse from whom any Thing is taken.

Open and violent Larceny from the person, or Rob-
bery, is the felonious and forcible taking; from the per-
son of another, of goods or money to any value, by
violence or putting him in fear. 1 Hawk. P. C. c. 34.
If there must be a taking, otherwise it is no Robbery.
A mere attempt to rob was indeed held to be felony, to
laxe as Henry the Fourth's time: 1 Hal. P. C. 532. But
afterwards it was taken to be only a misdemeanor, and
punishable with fine and imprisonment; till the Statute
7 Geo. 2. c. 21. which makes it a felony, (transportable
for seven years,) unlawfully and maliciously to affault
another, with any offensive weapon or instrument; — or by
menaces, or by other forcible or violent manner, to
demand any money or goods; — with a felonious intent to
rob. If the thief, having once taken a purse, return it,
still it is a Robbery; And so it is, whether the taking be
strictly from the person of another, or in his presence only;
As, where a Robber by menace and violence puts a man
in fear, and drives away his sheep or his cattle before his
face. 1 Hal. P. C. 537. But if the taking be not either
directly from his person, or in his presence, it is no Robbery.
Com. 473: Strait. 10. 15.

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

Lastly, The taking must be by force, or a previous
putting in fear; which makes the violation of the
person more atrocious than privately stealing. This
previous violence or putting in fear, is the criterion that
distinguishes Robbery from other larcenies. For if one
privately steals a purse from the person of another, and
afterwards keeps it by putting him in fear, this is no
Robbery; for the fear is insuflicient: Neither is it capital,
as privately stealing, being under the value of twelvem-
ence, 1 Hal. P. C. 514. Not that it is indeed neces-
Sary, though usual, to lay in the indictment that the Rob-
bery was committed by putting in fear; it is sufficient,
if laid to be done by violence, and against the will of him
robbed. 57. And when it is laid to be done by
putting in fear, this does not imply any great degree of
terror or affright in the party robbed: It is enough
that, so much force, or threatening by word or gesture,
be used, as might create an apprehension of danger, or
influence a man to part with his property without or against
his consent. Thus, if a man be knocked down without
previous warning, and fripped of his property while
senseless, though firstly he cannot be said to be put in
fear, yet this is undoubtedly Robbery. Or, if a per-
son with a sword drawn begi an aims, and I give it him
through misfortunes and apprehension of violence, this is a
felonious Robbery, 1 Hawk. P. C. c. 45. § 6. So if,
ROBBERY

under a pretence of sale, a man forcibly extorts money from another, shall not be sufficiently availed with. But it is doubted, whether the forcing a higger, or other charger, to sell his wares, and giving him the full value of them, amounts to a holdious a crime as Robbery. 

Hawk. P. C. c. 34. § 7.

This species of larceny is decreed by the benefit of clergy by Stat. 23 Hen. 8. c. 1, and other subsequent statutes: not indeed in general, but only when committed in a dwelling house, or in or near the King's highway. A Robbery therefore in the principles and accessories before the fact, is committed in prosecutions for Robbery, and putting in fear. 3 Ant. 16. pl. 16; 1 S. P. 116. pl. 16; 1 Style 156.

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

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

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

Taking cattle from A. which he is driving on the highway, is a taking from his person, and so a Robbery; 2 Salk. 641.

As to recovering against the Hundred, see this Dictionary, title Hon and Cry: And as to Robberies from the person without violence and others, see tit. Larceny.
ROBBERSMEN, or ROBBERDSMEN. Were a sort of great thieves, mentioned in the statutes 5 Edw. 3. c. 145; 7 R. 2. c. 5; of whom Coke says, That Robin Hood lived in the reign of King Rich. I. on the borders of England and Scotland, by robbing, burning of houses, raping and spoiling, &c. and that these Robbersmen took name from him. 3 Hid. 197.

ROCHEL. That linen garment which is worn by bishops, gathered at the wrists; it differs from a surplice, for that hath open sleeves hanging down; but a Rochet hath close sleeves.

ROCK-SALT. See Salt.

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

ROD KNIGHTS, From the Sax. Rad. Equitatis & Capt. Formarum, quos Minijri Equitatis.] Certain servitors who held their land by serving their lords on horseback. Bract. lib. 2. c. 55.

ROGATION-WEEK. Dies Rogationum; Rogationalia. A time so called, because of the special devotion of prayer and fasting then enjoined by the Church for a preparation to the joyous remembrance of Christ's Ascension. Convall.

ROGUE, Fr.] An idle burly beggar, who, by ancient statutes, for the first offence, was called a Rogue of the first degree, and punished by whipping, and boring through the gristle of the right ear, with a hot iron; and for the second offence, he was termed a Rogue of the second degree, and executed as a felon, if he were above eighteen years old; suits 27 H. 8. c. 25; 11 Eliz. c. 5; but repealed by suit. 35 Eliz. c. 7. f. 24; as relates to vagrants of the second degree. See further title Vagrants.

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

ROLL, Rolla.] A schedule of patents by which any may be turned up with the hand in the form of a pipe. Stannif. P. C. 11. Rolls are parchments on which all the pleadings, memorials, and acts of Courts are entered and filed with the proper officer; and they become records of the Court. 2 Lit. Ait. 491. By a rule made by the Court of King's Bench, every Attorney is to bring in his Rolls into the office fully engrossed by the times thereof limited, viz. The Rolls of Trinity, Michaelmas, and Hilary terms, before the beginning of every subsequent term; and the Rolls of Easter term before the first day of Trinity term; and no Attorney at law, or any other person, shall file any Rolls, &c. but the clerks of the chief clerks of this Court. Ord. B. R. Mich. 1705.

If Rolls are not brought into the office in time, it has been ordered that they shall not be received without a particular rule of Court for that purpose. Mich. 9 W. 3. See titles Parchment; Pleadings.

ROLL OF COURT, Rollus Curiae.] The Court-Roll is a manor, wherein the names, rents, and services of the tenants are entered and enrolled. See tit. Copyhold.

ROLLS OFFICE OF THE CHANCERY, An Office in Chancery Lane, London, which contains all the Rolls and Records of the High Court of Chancery, the Master whereof is the second person in the Chancery, &c. See titles Chancery; Master of the Rolls.

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

ROLES OF PARLIAMENT. The manuscript registers of the proceedings of our old Parliaments: in these Rolls are like wise a great many decisions of difficult points in Law; which were frequently, in former times, referred to the determination of this supreme Court by the Judges of both Benches, &c. Nicol. Hist. Libr. part. 3. cap. 4, edit. 1714.

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


ROME, Church of, its acclamations of power, here, and how suppressed: See titles Papists; Popes; Prerogative.

ROME-SCOT. See Peter-Pence.

ROMNEY-MARSH, A large tract of land in the county ofKent, containing 24,000 acres; and is governed by certain ancient and equitable laws of fowlers composed by Henry de Bathe, a venerable Judge in the reign of King Henry III. from which laws all Commissioners of Sewers in England may receive light and direction. 4 Inst. 276. King Henry III granted a charter to Romney-Marsh empowering twenty-four men thereunto chosen, to make ditches as equally upon all those who have lands and tenements in the said Marsh, to repair the walls and water-gates of the same against the dangers of the sea. There are also several laws and customs observed in the said Marsh, established by ordinance of Justices thereto appointed in 42 Hen. 3: 16 Ed. I. 13 Eliz. 3. &c. The Commissioners of Sewers, in other parts of England, may act according to the laws and customs of Romney Marsh, or otherwise at their own discretion. See title Sewers.

ROOD, or Holy Rood, Holy Cross.

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

ROOTS, Trees, shrubs, or plants. See this Dia. title Miscellenious; Medicines.

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

ROPES, Old ones may be imported duty-free. Stat. 11 Geo. 1. c. 7. § 10. See title Navigation Acts.

ROB, A kind of ruhbe, which some tenants were obliged, by their tenures, to furnish their lords with. Bray.

ROSE-TILE, To lay upon the ridge of a house; is mentioned in the statute 1 Edw. 4. c. 4.

ROSETUM, A low water-side place of reeds and rushes; and hence the covering of houses with a thatch made of reeds, was so called. Card. Glyn. MS. 107.

ROSLAND, Brit. Rh. How earthy land, or ground full of ling; also watery and marshy land. 1 Inst. 5.

ROSE BEASTS. Under this name are comprehended oxen, cows, deer, hogs, and such like horned beasts. See stat. 21 Jac. c. 18.

ROTULUS WINTONIÆ, Was an exact survey of all England, by Canatius, Gurnian, &c. beyond, made by King Alfred, not unlike that of Doomesday; and it was so called, for that it was of old kept at Winchester among other records of the kingdom; but this roll time hath consumed. Ingulf. Hist. 516.
ROUT.

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

ROYAL ASSENT, Regias afferens.] That Assent which the King gives to a thing formerly done by others, as to the election of a Bishop by Dean and Chapter: which given, then he sends a special writ for the taking of seisin. See F. N. B. jil. 179. When the Royal Assent is given to an Act of Parliament, it is inscribed in the proper terms upon the Act. See title Parliament VII.

ROYAL FAMILY, See titles King; Queen; Prince.

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

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

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

RUBRICA, a rubra cohors, because anciently written in red letters. Constitutions of the Church, founded upon the statutes of uniformity and public prayer, vts. statutes 5 & 6 Ed. 6. c. 1. 1 Eliz. c. 2. 13 & 14. Cpr. 2. c. 4. See titles Nonconformists; Religion, &c.

RUDMAS-DAY, From the Sax. Roda, Crow, and Mafi-day.] The feast of the Holy Cross: there are two of these feasts, one on the 3d of May, the invention of the Cross; and the other the 14th of September, called Holy Redeemer, or the exaltation of the Cross.

RULES OF COURT. An order made either between parties to a suit on motion: or to regulate the practice of the Court. See titles Mellon in Court; Practice.

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

The Rules of the King's Bench Prison, are certain limits without the walls, within which prisoners in custody are allowed to live, on giving security to the Marshal, not to escape. The benefit of these Rules may be had by one in custody in an excum. cap. but is never granted to a prisoner in execution on a criminal account, or for a contempt. See Rule Easter, 30 Geo. 3., 3 Term Rep. 583: Tidd's Pract. K.B.

RUMNEY MARSH; See Romney Marsh.

RUMOURS, Spreading. See title False News; and 19 Fin. Abr. 272.

RUNCARIA, from Runcar.] Land full of brambles and briars. 1 Inf. 5. a.

RUNCILUS; RURCINUS; is used in Domedgel (fays Spelman) for a load-horse, Equus apparatus colonatus; or a lumpster-horse, and sometimes for a cart-horse, which Obadiah, in the Stowian's Tale, calls a Rowney, Cowell.

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

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

SABALLINE FELLES, Sable furs, mentioned in Housd. p. 573; Brompt. anno 1188.

SABELLONARIUM, A gravel pit: or liberty to dig gravel and sand; also the money paid for the same.

SAC; See Sake

SAC, In the Saxon is properly synonymous with Caerbo latini, whence we in England still retain the expression, For whole sake, i.e. For whose sake, &c.

SACABURTH, SACABERF, SACABERF: He that is robbed, or by theft deprived of his money or goods, and puts in forgey to prosecute the felon with freight suit. Brit. c. 15 & 29; with whom agrees Bradt. f. 3. c. 32.

The Scots term it Sikirbergh, that is certain vel secum lugurium vel pigmes in for with them Sikir signifieh secures, and borg legibus. Psalm.

SACCHI. Monks so called, because they wore next their loin a garment of goat's hair; and faces is applied to coarse cloth made of such hair. Wanting.

SACCHI, Frater de Sacchis, the sack-cloth brethren, or the penitential order. Plact. 8 Ed. 2.

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

SACK OF WOOL, A quantity of twenty-six stone of Sheep's Wool; and of Cotton Wool, from one hundred and a half to four hundred. Stat. tit. 14 Ed. 3 & f. 1 c. 2.

SACRAMENT, Sacramentum. Usually applied to the Holy Sacrament of The Lord's Supper. By the Rubric there must be three at the least to communicate, and a minister is not without lawful cause to deny it to any who shall devoutly and humbly desire it: But notorious sinners are not to be admitted to it till they have repented; nor those who maliciously contend, until they are reconciled, &c. also the Sacrament is not to be administered to such as refuse to be present at the prayers of the church, or to strangers; for a minister is not obliged to give it to any but those of his own parish; and the parsoners of the Holy Sacrament ought to signify their names to the curate at least a day before it is administered. Can. 27.

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

SACRAMENT. The Sacrament of the Lord's Supper. And this is to be administered three times in the year, (whereof the feast of Easter to be one) and every layman is bound to receive it thrice every year, &c. In Colleges and halls of the Universities, the Sacraments are to be administered the first or second Sunday of every month, and in cathedral churches, upon all principal feast-days. Can. 21, 22, 23.

The Churchwardens, as well as the Minifter, are to take notice whether the parsoners came to offer to the Sacrament as they ought; and on a Churchwarden's presenting a man for not receiving the Sacrament, he may be labelled in the Ecclesiastical Court and excommunicated, &c. See further, title Receiving, &c.

SACRAMENTUM, An oath: The common form of all inquisitions might, in Latin, by a Jury, run thus: Qui dicit supra Sacramentum juro, &c. whence probably the proverbial offering to take the Sacrament of the truth of a thing, was first meant by ascribing upon oath.

SACRAMENTUM ALTARIS, The Sacrifice of the Mass, or what is now called, the Sacrament of the Lord's Supper. Parish. Antiq. 488.

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

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

All persons not in holy orders, who shall be indicted, whether in the same county where the fact was committed, or in a different county, of robbing any church, chapel, or other holy place, are excluded from their clergy, by Stat. 23 Hen. 8. c. 1; 25 Hen. 8. c. 3; 5 & 6 Ed. 6. c. 19. And all persons in general are oust of their clergy for the felonious taking of any goods out of any parish church, or other church or chapel, by Stat. 1 Ed. 6. c. 12. See title Larceny II. 1. But the word robbing being always taken to carry with it some force, it seems no Sacrilege is within these statutes, which is not accompanied with the actual breaking of a church, &c. Kel. 56, 69: Dyer 224. And the Stat. 23 Hen. 8. c. 1, is the only act which extends to ecclesiastics to these robberies; except the offence amount to burglary, in which
which safe necessaries before are ousted of clergy, by Stat. 3 Ed. IV. & M. c. 9. See titles Val unpay; Burg- lars. The term Sacro-fige was also antiquely applied to the alienation to laymen, and to publica or common purposes, of what was given to religious persons to pious uses: This was a guilt which our forefathers were very tender of incurring; and therefore when the order of the Knights Templars was dissolved, their lands were, under this pretense, afterwards violated, given to the Knights Hospitallers of Jerusalem, for this reason: Nc in post us us regata contra donatorum voluntatem in aliis usus di- fra-pretatione. Parac. Antig. 390. SACRISTA, Lat. A lexion, belonging to a church, in old times called Sagrifer and Sagitum. SAFE-CONDUCT, Satius Conducir. A security given by the Prince, under the Great Seal, to a stranger, for his safe-coming into, and passing out of, the realm, the form whereof is in Reg. Orig. 25. The royal prerogative of granting Safe-conducts is considered by Blackstone as nearly related to, and plainly derived from, that of making war. See this Dictionary, title King V. 3. Grefl tenderness is shown by our laws, not only to foreigners in distress, (see title Writs,) but with regard also to the admission of strangers who come sponta- neously; for as long as their nation continues at peace with ours, and they behave themselves peaceably, they are under the King's protection; though liable to be sent home whenever the King sees occasion. But no Sub- ject of a nation at war with us can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized by our Subjects, unless he has letters of Safe-conduct; which by divers ancient statutes must be granted under the King's Great Seal, and enrolled in Chancery, or else are of no effect; the King being supposed the best judge of such emergencies, as may defend Asi in the general law of arms. But passports under the King's sign-man- ual, or licences from his embassadors abroad, are now more usually obtained, and are allowed to be of equal validity. 1 Comm. c. 7. p. 259, 260. See Stats. 15 H. 6. c. 3: 18 Hen. 6. c. 8: 20 Hen. 6. c. 1: and further, title Alien. Indeed the Law of England, as a commercial country, pays a very particular regard to foreign merchants in innumerable instances. One is highly proper to be mentioned in this place. By Magna Carta, c. 30, it is provided, that all merchants (unless publicly prohibited beforehand) shall have Safe-conduct to depart from to come into, to tarry in, and to go through England, for the exercise of merchandise, without any unreasonable impediments, except in time of war: And if a war breaks out between us and their country, they shall be attache (in England) without harm of body or goods, till the King or his chief justice be informed how our merchants are treated in the land with which we are at war; and, if ours be secure in that land, they shall be secure in ours. See 1 Comm. p. 260: Montisc. Sp. L. xx. 13. The Violation of Safe-conducts or Passports, or the committing acts of hostility against such as are in amity, league, or truce with us, who are here under a general implied Safe-conduct, are breaches of public faith; without the preservation of which there can be no intercourse or commerce between one Nation and another; and they are considered as one just ground of national war. And as, during the continuance of any Safe-conduct, either express or implied, the foreigner is under the protection of the King and the Law; and, more especially, as we have seen that it is one of the articles of Magna Carta, that for- eign merchants should be entitled to Safe-conduct and security throughout the kingdom; there is no question but that any violation of either the person or property of such foreigner may be punished, by indictment in the name of the King, whose honour is more particularly engaged in supporting his own Safe-conduct. And when this malicious capacity was not confined to private individuals, but broke out into general hostilities, by Stat. 2 Hen. 5. § 1. c. 6, the breaking of truce and Safe-conducts, or sheltering and receiving the truce breakers, was (in affirmation and support of the Law of Nations) declared to be high treason against the Crown and dignity of the King; and conservators of truce and Safe-conducts were appointed in every port, and empowered to hear and determine such treasons (committed at sea) according to the ancient Marine Law, then practiced in the Admiral's Court; and together with two men learned in the Law of the land, to hear and determine according to that Law the same treasons, when committed within the body of any county. Which statute, so far as it made their offences amount to treason, was suspended by Stat. 14 Hen. 6. c. 8, and repealed by Stat. 20 Hen. 6. c. 11, but revived by Stat. 29 Hen. 6. c. 2; which gave the same powers to the Lord Chancel- lor, associated with either of the Chief Justices, as belonged to the conservators of truce and their sub- stitutes: and enabled that, notwithstanding the party be convicted of treason, the injured stranger should have restitution out of his effects, prior to any claim of the Crown. And it is further ensured by Stat. 31 Hen. 6. c. 4, that if any of the King's Subjects attempt or offend upon the sea, or in any port within the King's obedience, against any stranger in amity, league, or truce, or under Safe-conduct; and especially by attacking his person, or spoiling him or robbing him of his goods; the Lord Chancellor, with any of the Justices of either the King's Bench, or Common Pleas, may cause full restitution and amends to be made to the party injured. It is observed, that the suspending and repealing acts of 14 & 20 Hen. 6, and also the reviving act of 29 Hen. 6, were only temporary; so that it should seem that, after the expiration of them all, the Stat. 2 Hen. 5, continued in full force: but yet it is considered as extinct by the Stat. 14 Ed. VI. c. 4, which revives and confirms all statutes and ordinances, made before the accesion of the House of Towk, against breakers of amity, truces, leagues, and Safe-conducts, with an express exception to the Stat. 2 Hen. 5. But (however that may be) it seems to have been finally repealed by the general statutes of Ed. VI., and Queen Mary, for abolishing new-created treasons; though Halle seems to question was to treasons committed on the sea. 1 Halle, P. C. 267. But certainly the Stat. 31 Hen. 6, remains in full force to this day. 4 Comm. c. 5. p. 69, 70. SAFEGUARD, Salva Guardia. A protection of the King to one, who is a stranger, that fears violence from one of his Subjects, for seeking his right by course of Law. Reg. Orig. 26.
SAFE

SAFE-PLEDGE, Salvus pleian.] A surety given for a man's appearance at a day asigned. Bras. lib. 4. cap. 2. See Pledge.

SAGAMAN, from Saxon Saga, Fabula.] A tale-teller; or secret accuser. Leg. Hen. 1. cap. 63.

SAGIBARO, alias SACHBARO, is the same that we now call Justiciar, a Judge. Leg. Inq. c. 6.

SAGITTA BARBATA, A bearded arrow. Bount. Sagittarii, A sort of small sails or vessels, with cars and sails. R. de Dictis, anno 1770.

SAIL-CLOTH. For encouraging the manufacture of Sail-cloth, any person may import into this kingdom undressed flax, without paying any duty for the same, so as a due entry be made thereof at the Custom-house, &c. And no drawback is to be allowed on re-exportation of foreign Sail-cloth: But an allowance shall be made of 3d. per ell for British Sail-cloth exported, &c. All foreign sail-cloth imported, from which duties are grained, shall be lampled, expressing from whence imported, &c. And manufacturers of Sail-cloth in this kingdom are to affix, to every piece by them made, a lample containing their names, and places of abode; or, exposing it to sale, shall forfeit 50l. And if any persons cut off or obliterate such lamples, they incur a forfeiture of 5l. upon conviction before one or more Justices, to be levied by differtes, &c. Stat. 4 Geo. 2. c. 27.

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

Masts of ships are to make entry of all foreign-made sails on board, under the penalty of 50l. and pay duty for the same, unless they choose to deliver up the sails as forfeited: Sails brought from the East Indies are exempted from duty: Foreign made sail-cloth imported, is to be lampled at the landing: Forger of lamples, &c. shall forfeit 50l. A sail-maker making foreign Sail-cloth unlamped into sails, shall forfeit 50l. A sail-maker shall not repair or amend the same under the penalty of 20l. Stat. 3 Geo. 2. c. 27. continued by subsequent acts. By the 23 Geo. 2. c. 52. duties are laid on Sail-cloths imported from Ireland. See also duties 23 Geo. 2. c. 21. § 20: 20 Geo. 2. c. 32. 29 Geo. 3. c. 55.

SAINT MARTIN LE GRAND, Court of. The chief of the several Courts in London are the Sheriff's Courts, holden before their steward or judge; from which a writ of error lies to the Court of Higbtigs, 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 Sainr Martin le Grand; and from the judgment of those Justices a writ of error lies immediately to the House of Lords. 3 Comm. 2d. n. cites F. N. b. 37.

SAL, or salt, A Tippall, or forjeant at arm: derived from the Saxon Sagi, saltis, because they used to carry a red or salt. Spiss.

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

SALE, Vendita.] The transferring the property of goods from one to another, upon valuable consideration: If a bargain is that another shall give me 4l. for such a thing, and he gives me earnest, which I accept, this is a perfect Sale. Wood 3. Inq. 310. On Sale of goods, if earnest be given to the seller, and part of them are taken away by the buyer, he may pay the residue of the money upon fetching away the rest, because no other time is appointed; and the earnest given the bargain, and gives the buyer a right to demand the goods; but a demand without paying the money is void: And if it has been held, that, after the earnest is taken, the seller cannot dispose of the goods to another, unless there is some default in the buyer; therefore if he doth not take away the goods and pay the money, the seller ought to require him so to do; and then if he doth not do it in convenient time, the bargain and Sale is dissolved, and the seller may dispose of them to any other person. 1 Sal. 115. A seller of a thing is to keep it a reasonable time, for delivery: But where no time is appointed for delivery of things fold, or for payment of the money, it is generally implied that the delivery be made immediately, and payment on the delivery. 3 Sal. 61. Where one agrees for wares fold, the buyer must not carry them away before paid for: except a day of payment is allowed him by the seller. Noy 87.

It is laid a perfect bargain and Sale between parties, will be good, though the seller knows of an execution that is against him; and doth sell the goods to prevent the falling of it upon them. 3 Ses. Abr. 115. A Sale may be of any living or dead goods in a fair or market, or in any way that people will, or however the seller come by them; if made within the time required by Law. But, if one fell my goods unduly, I may have them again. Dall. & Stod. 328. Per. § 93. If a man affirm a thing is of such a value when it is not, this is not actionable; but if he actually warrants it, at the time of the Sale, and not afterwards, it will bear an action, being part of the contract. 2 Cris. 5. 386. 670. a. Rol. Abr. 97. See titles Agreement; Consideration; Contract; Fraud; Market, &c.

SALET, from Fr. Salut, Salar.] A head piece; a Sale, or scull of iron, &c. See flat. 20 R. 2. c. 1.

SALICETUM, An other bed. 1 Inf. 4.

SALINA, A salt-plot, or place wherein salt is made. And Jalisus is sometimes wrote for Jala. 1. c. a pound weight. Chart. 17 Ed. 2.

SALIQUE LAW, Lex Salica.] A law by which males only are allowed to inherit. It was an ancient law made by Thermo, King of the Franks, part of which seems to have been borrowed by our Henry I. in compiling his laws, Qui suo pecun. iudietum legem saxalem moratur, &c. cap. 89.

SALMON. No person may take Salmon in rivers, between the 1st of May and the 1st of November; and Salmon are not to be taken under eighteen inches long, &c.
SAL

SALT. The price of Salt is to be set by Justices of the peace in their Sessions; and performed selling it at a lower rate than forfeit. Also Salt shall be sold by weight as at the rate of 56 lb. to the bushel, under the like penalty. See Stat. 7 & 8 W. 3, c. 31. § 44. 9 c. 10 W. 3, c. 8. A duty is imposed on Salt; pits to be entered, &c. at the Salt-office on pain of 40l. penalty; and proprietors removing Salt from any pit, before being in possession of the proper officer, to forfeit 20l. &c. Stat. 10 & 11 W. 3, c. 22: 1 Bl. 1. c. 21.

The duties on Salt made in this kingdom were taken off, and duty on foreign Salt to continue, except for the Irish fisheries, &c. by Stat. 3 Geo. 2. c. 20. Since then, the duties on Salt have been revived and continued, to be managed by commissioners, &c. who may grant licences, to erect houses for refining of Rock-Salt, at certain places in the counties of Essex and Suffolk. Stat. 5 Geo. 2. c. 5: 7 Geo 1. c. 6. — The Salt duties continued for a further term, and under the same provisions, &c. with a clause of loan of 500,000l. And proprietors of Salt-works in Scotland are not to pay their work-people in Salt, under the penalty of 20l. Stat. 9 Geo. 2. c. 12. — The Salt duties further continued, with a penalty of 1,200,000l. at 4l. per cent. interest, &c. Rock-Salt may be used in the making of Salt from sea-water in works in Wales, paying the duties on both. 14 Geo 2. c. 22. — The Salt duties are made perpetual by Stat. 26 Geo 2. c. 3. The duties on this article are further regulated, for the maintenance, and provisions made in place of Salt in the fisheries, by a vast variety of statutes. See Stat. 26 Geo 2. c. 32: 2 G. 5. c. 43: 12 G. 3. c. 58: 10 G. 3. c. 52: 20 G. 2. c. 24: 22 G. 3. c. 32: 26 Geo 3. c. 90: 25 Geo 3. c. 8: 53: 26 Geo 3. c. 81. — As also this Dictionary, title Navigation Acts; and Barra; Just. title Excise (Salt).

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

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

SALT-SILVER. Our penny paid at the feast of St. Martin, by the tenants of some manors, is a commutation for the service of carrying their Lord's Salt from market to his larder. Paraeb. Antig. 496.

SALTUS. A high thick wood or forest. See Bosan. S.

SALVA-GARDA; See Safe-guard. Vol. II.

SALVAGE; See title Insurances II. 6.

SALVAGIUS, Wild, savage. Rat. Cart. 1 Jac.

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

SANCTA, Thesauris of the saints; jurat pater familiae was to make oath on their relics. Leg. Can. c. 37.

SACRAMENT, Sanctorisation. A place privileged for the safeguard of offenders' lives, being founded upon the Law of Mercy, and the great reverence and devotion which the Prince bears to the place whereunto he grants such privilege. Sanctuaries were first granted by King Lewis to our churches and their precincts, and among all other nations, our ancient Kings of England seem to have attributed most to their Sanctuaries, permitting them to shelter such as had committed both felonies and treasons; so as within forty days they acknowledged their fault, and submitted themselves to punishment, during which space, if any layman expelled them he was excommunicated; and if a cleric, he was made irregular. Mat. West. Ann. 187: S. P. C. lib. 2. cap. 38: Flora lib. 1. c. 29.

St. John's of Beverley in Yorkshire had an eminent Sanctuary belonging to it in the time of the Saxons: And St. Barins in Cornwall had the like grant by King Athelstan, ano 935; to had Wulffredon granted by King Edward the Confessor: and St. Martin de Grand in London. 21 Hen. 6. 85. Starbuck.

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

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

There were several statutes made relative to Sanctuarys,
whil. they existed, viz. Art. Cler. 9 Ed. 2. f. 1. c. 16, 15; 3 R. 2. f. 2. c. 3; 4 H. 8. c. 2; 23 H. 8. c. 2; 54 H. 8. c. 15, Sandhay was taken from offenders in high treason. See further,
titles Abjuration; Arreft; Privilege 1.

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

SAND-GAVELL, A payment due to the lord of the
manor of Rosley in the county of Gloucester, for liberty granted to the tenants to dig Sand for their

SAN-E MEMORY, i. e. Perfect and found mind
and Memory, to do any lawful act, &c. See title Idiots
and Lunatics.

SANGUINE EMBER, Was where villains were
bound to buy or redeem their blood or tenure, and make
themselves freemen. Lib. niger Herif.

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

SAN and SANG, Old Fr. Blood.

SARABARA, A covering for the head. Mat. Westm.
am. 1256.

SARCLANTIME, from Fr. Sarcler, Lat. Sarclana.
The time or season when husbandmen weed their corn.
Cowell.

SARCULATURA, Weeding of corn: Upra Sarcula-
tura, the tenant's service of one day's weeding for the

SARKE, Isle of; see Jersey.

SARKELLS, An unlawful net or engine for de-

SARPLER or WOOL, Serpulæae, otherwise
called a pocket.] Half a sack. Pletia, lib. 2. c. 12.

SARSPARILLA, May be imported from the Amer-
ican plantations, &c. if of the growth of America.

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

SARUM, Salisbury. There was a form of church-
service called formanum from Sarum, composed by Od-
mund the second Bishop of Sarum in the time of William
the Conqueror. Hollingsed, p. 17. ed. B.

SASSE, A kind of wear with flood gates, most com-
monly in navigable and cut rivers; for the damming and
shutting up and loosing the stream of water, as occasion
requires, for the better passing of boats and barges;
thus in the West of England is called a Lock; and in
some places a Stuice. Cowell.

SASSONs, The corruption of Saxons, a name of
contempt formerly given to the English, while they af-
fected to be called Angles; they are still so called by the
Weeks.

SATISFACTION, Is the giving of recompence
for an injury done; or the payment of money due on bond,
judgment, &c. In which last case, it must be entered
on record. 2 Lit. Abr. 455. See title Payment.

Where money given one by will, shall be held to be in
Satisfaction of a debt, and where not; see title Legacy.
The laws on which this action is grounded, are

Wifin. 1. 3 E. 1. c. 34; 2 Rich. 2. ft. 1. c. 5, which, after speaking of "devilers of the word of God, and horrible lies, of Prelates, Duke's, Barons, and other nobles and great men of the realm," enacts, "That none controve or tell any false news, whereby disordered or slander may grow between the King and his people; or controve or tell any false things of Prelates, Lords, and of others aforesaid, whereby disordered or slander might rise within, or any Scandal to, the realm; and he that doth the same shall be imprisoned till he have brought him forth that did speak the same." This statute is recited by Stat. 12 E. 2. c. 11; and thereby it is further provided, that the offender not producing his author shall be punished by the advice of the Council. 4 Inst. 51; 4 Co. 12, b.

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

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

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

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

II. Of the Proceedings in this Action.

I. It hath been held, that the King is not included in the words "great men of the realm," as the statute begins with an enumeration of persons of an inferior rank, as Prelates, Dukes, &c. Cremp. Jurisfl. 19; 35.

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

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

It hath been adjudged, that though there was no Viscount at the time of making this statute, (the first Viscount being John Beaumont who was created Viscount, 18 Hen. 6,) yet when created noble, though by a new title, he was entitled to his action on this statute. Cro. Car. 136: Palm. 565, S^y and Seal (Visc.) v. Stephens.

Also it hath been adjudged, that since the Union, a Peer of Scotland may have an action on this statute, and that it is not necessary for him to allege that he hath a fait and voice in Parliament; for by Stat. 5 Ann. c. 8, art. 23, All Peers of Scotland, after the Union, shall be Peers of Great Britain, and have rank and precedence, &c. be tried, &c. and enjoy all privileges of Peers as the Peers of England now do, or hereafter may enjoy; except the right and privilege of sitting in the House of Lords, and the privilege depending thereon. Cro. Car. 439; Falkland's LD. v. Phillips.

It hath been contended, that no words of slander are punishable by this statute, unless they are actionable at Common Law; and that they are only aggravated by the statute, which, in this respect, is like the King's proclamation. 2 Mod. 101: Freem. 222.

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

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

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

Scom. mag. brought for laying of a Judge, "You are a corrupt Judge," and held actionable. Cremp. Jurisf. 35: 8. Ch. 7. Dyer's case—so for these words, "He imprisoned me till I gave him a release." 3 Leon. 376; Lord Winchelsea's case, cited Freem. 221.—So they held, "You have writ a letter to me, which I have now to shew, which is against the word of God, against the Queen's authority, and to the maintenance of superstition, and that I will stand to prove against you," were held actionable, and 500 marks damages given. Cro. Eliz. 1.
Bishop of Norwich v. Prickett.—So of these words, "My Lord Norrant did know that Prude robbed Stockbolt, and bid me compound with Stockbolt for the fame, and laid he would see me satisfied for the fame, though it cost him real. which for him, being my matter, otherwise the evidence I could have given would have hanged Prude." Cro. Eliz. 67: For these words written in a letter, "I have heard that your Lordship hath sought by uncharitable means to benefit me of my life, lands, and liberty," an action lies. Moray 142: Ld. Lumby v. Forc, 4 Co. 16. That the action as well lies for words written as those spoken; see 2 Show. 502.

An action of feam. mag. was brought for these words, "There are more Jesuits come into England since the Earl of Northampton was Lord of the Cinque Ports than everthere were before," and held actionable. 12 Co. 132.

In feam. mag. for these words spoken by a patron in the pulpit, "The Lord of Lichfield is a wicked and cruel man, and an enemy to the Reformation in England," adjudged actionable; and real damages given. 2 Sid. 21.

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

If one says, "I met J. S. whom I do not know, but my Lord P. sent after me to take my purse;" an action of scandalum magnatum lies, though not positively said my Lord P. sent him, or that it was to take the purse feloniously; which last, in case of an action by a common person, might be a good exception. 1 Lev. 277: 1 Sid. 453: 2 Keb. 337: E. of Pembroke v. Sir John Meriant. Vide 1 Sid. 133: 1 Keb. 813: 1 Lev. 145: Marquis of Dorchester v. Preby. If one says of a Peer, "He is an unworthy man, and acts against law and reason," an action of feam. mag. lies, notwithstanding the words are general, and charge him with nothing certain; and so adjudged by North, Windham, and Stagg, against the opinion of Atkin; who saith the statute extended not to words of so imploy and trivial a nature, but to such only which were of greater magnitude, by which elicitum might arise, &c. and therefore the words "horrible lies" were inferred in the statute. Note: The rule laid down by the Court in this case was, that words should not be confirmed either in a rigid or mild sense; but according to the general and natural meaning and agreeable to the common understanding of all men.


II. It is now clearly agreed, that though there be no express words in the statute which give an action, yet the party injured may maintain one, on this principle of Law, that when a statute prohibits the doing of a thing, which if done might be prejudicial to another, in such a case he may have an action on that very statute, for his damages. 1 Mod. 52.

Though the action is to be brought in pro dominio rege quod præstipserat, yet the party is to recover all the damages. 1 P. Wm. 650. If the words are actionable at Common Law, the Peer hath his election to proceed on the statute, or at Common Law. Freeman. 49. It hath been held, that this being a general law, the plaintiff need not recite it particularly; and that if he sets forth so much thereof as shews his case to be within the statute, it is sufficient. Cro. Car. 139: 2 Sid. 21: Freeman. 425. It is now settled, that no new trial is to be granted in feam. mag. for excessive damages; which point seems to have been first determined in the case of Lord Townshend v. Dr. Hughes, where the Jury gave 4000l. damages. 2 Mod. 151: 1 Med. 231.

It has been ruled, that in feam. mag. the defendant cannot justify, let the words be ever so true, because the action is brought qui tam, in which the King is concerned; but it hath been held, that the defendant may explain the words by showing the occasion of speaking of them, and thereby extenuate the meaning of them, as was done in Lord Cromwell's case. 4 Co. 14: 2 Med. 166: Freeman. 259: Poph. 67.

In feam. mag. the Court will never change the venue on the common affidavit that the words were spoken in another county, because a Scandal raised on a Peer of the realm reflects on him through the whole kingdom; and he is a person of so great notoriety, that there is no necessity of his being tried down to try his cause among his neighbours. 4 Bea. 2 Kel. 689. Vide 1 Lev. 567: 1 Keb. 514: 1 Sid. 185: 2 Med. 210.

But in the case of Lord Shaf'sbury v. Graham, the Court, in feam. mag. on a special affidavit of the plaintiff's power and interest in the county where the act was laid, made a rule for changing the venue; yet note, that the books, which report and cite this case, mention it as a case of the times, and that it was owing to the great influence that Lord had in the city of London that the Court varied from the general rule, and which rule hath ever since, notwithstanding this case, been adhered to. 2 T. 168: 1 Vent. 563: Sirn. 49: 2 Show. 359.

It hath been held, that the statute 27 Eliz. c. 8, giving the writ of error in the Exchequer-chamber, does not extend to feam. mag. 31 Car. 269. 583: 1 Sid. 143: That in an action of feam. mag., special bail is not required. 3 Mod. 8: Holt. 640. That no costs are to be given the plaintiff on his obtaining a verdict. 2 Show. 566.

SCARBOROUGH, Persons incorporated there, with power to disfrain every man for the fifth part of houses and lands, towards the repairs of the pier and key, &c. See Stat. 37 H. 8. c. 11.

SCAVAGE, SCHAVE, or SCHEWAGE, from the Sax. Schevagen, i.e. adscire.] A kind of toll or custom, exacted by Mayors, Sheriffs, or of Merchants, for wares shewed or exposed to sale within their liberties; prohibited by the statute 19 Hen. v. c. 7., But the City of London still retains this ancient custom to a good yearly profit. And the Lord Chancellor, Treasurer, President of the Council, Privy Seal, Steward, and two Justices of the King's Bench and Common Pleas, are to ascertain their duties, and order tables to be made, mentioning the particulars. 8. Stat. 22. H. 8. c. 8. § 4.

SCAVAUDUS, The officer who collected the Scavage-money, which was sometimes done with great extortion. Cas. 110.

SCAVENGERS, from the Belg. Schaven, to scrape or carry away.] Persons chosen into this office in London and its suburbs, who hire rakers and carts to clean off the streets, and carry the dirt and filth thereof away.

In
In Easter week yearly, two tradesmen in every parish within the weekly bills of mortality must be elected Scavengers by the constables, churchwardens, and other inhabitants, who are to take upon them the office in seven days, under the penalty of 10s. These Scavengers, every day, except Sundays or holidays, are to bring their carts into the streets, and give notice by a bell, or otherwise, of carrying away dirt, and to lay a convenient time, or shall forfeit 40s. and Justices of the peace in their petty sessions may give Scavengers liberty to lodge their dirt in vacant places near the streets, satisfying the owner for the damage, &c. All persons, within the weekly bills, are to sweep the streets before their houses, every Wednesday and Saturday, on pain of forfeiting 214d. Persons laying dirt or ashes before their houses, incur a forfeiture of 5s. Inhabitants and owners of houses are also to pave the streets before their houses, on the penalty of 20s. for every perch; and constables, churchwardens, &c., may make a Scavenger's tax, being allowed by two Justices of the peace, not exceeding 4d. in the pound, &c. Stat. 2 W. & M. c. 2, &c.; and see flats, 5 W. & M. c. 12: 8 & 9 W. 3, c. 22. 16 Geo. 1, c. 69.; 18 Geo. 3, c. 33. § 2, &c.; and this Dict. title Police.

A Scavenger's rate cannot be made for a division in which there is no churchwarden or overfeer resident.

1 Stat. 670. See further, title Highways.

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

SCEITHMAN, Sax. A pirate or thief.

SCERUM, A barn or granary. Ing. Hist., p. 862.

SCAFFA, A Sheaf, as Scapha fugitavera, a sheaf of straw. See Scaevola, Scaevola, Scaevola.

SCHAPENNY, A small duty or compensation.

SCHARENY, A sherd of crockery. And some curfew tenants were obliged to put up their cattle at night in the pound or yard of the lord, for the benefit of their dung; or if they did not, they paid a small compensation called Sharpenny or Sharpeny, i.e., dung penny, or money in lieu of dung; the Saxon sceatn signifying muck or dung. In some parts of the North they still call cow-dung by the name of cow-benn; and in Westmorland a Scary Houghs is a nasty, dirty dung-hill-wench.

COWELL.

SCHAVALDUS; Vide Scribaldus.

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

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

SCELETS, An ancient term for Ulurry; and the Common pray that order might be taken against this horrid vice, practised by the Clergy as well as the Laity. Res. Parl. 14 R. 2. Cowell.

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


SCHISMS, schisms. A rent or division in the church. See title Heresy.

SCHOOLMASTER. No person shall keep or maintain a Schoolmaster, who does not confidently go to church, or is not allowed by the Ordinary, in pain of 10s. a month; and the Schoolmaster shall be disabled, and suffer a year's imprisonment. Stat. 23 Eliz. c. 1.

Receipts are not to be Schoolmasters in any public Grammar-school, nor any other, unless licensed by the Bishop; under the penalty of forfeiting 40s. a day. Stat. 1 Jac. 1, c. 4. — Every Schoolmaster keeping any public or private School, and every tutor in any private family, shall subscribe the declaration, that he will conform to the Liturgy of the Church of England as by Law established, and be licensed by the Ordinary; or he shall for the first offence suffer three months' imprisonment, &c. Stat. 13 & 14 Geo. 2, c. 4. — If any Papist shall be convicted of keeping a School, or taking upon him the education of youth, he shall be adjudged to perpetual imprisonment. Stat. 11 & 12 W. 3, c. 4. See titles Papists; Dissenters; as to the mitigation of these by later statutes, under certain conditions. The stat. 12 Ann. b. 2. c. 7, which imposed the penalty of three months' imprisonment on persons keeping School without a licence from the Bishop, was repealed by stat. 5 Geo. 1, c. 3.

By the Canons, no man shall teach in a public School, or private house but such as is examined and allowed by the Bishop, and of sober life: And all Schoolmasters are to teach the catechism of the Church in English or Latin; and bring their Scholars to church, and afterwards examine them how they have benefited by sermons, &c. Can. 77, 79. — Though the Act of Uniformity obliges Schoolmasters only to attend to and subscribe the declaration, yet it adds, according to the laws and statutes of this realm, which presupposes some necessary qualification. And therefore a Bishop may take time to inquire into the character of an elected Schoolmaster, before he licenses him. 2 Strange 1253.

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

SCHILCET, An adverb, signifying, that is to say; to wit; Hobart, in his exposition of this word, says, it is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but intermedias; neither is it a subtilitative clause of itself; but it is rather to other in the sense of another, and to particularize that which was too general before, or distribute that which was too gross, or to explain what was doubtful and obscure; and it must neither increase, nor diminish the meaning of benefaction, or it gives nothing of itself: But it may make a restriction, where the precedent words are not so very express, but that they may be restrained. Hob. 171, 172. See 1st. 1 P. Wm. 181: and the case of a bond to two with a Sellicet, severing the money between them, 1 M. 131. The word Sellicet, in a declaration, shall not make any alteration of that which went before.
SCIRE FACIAS.

A Writ judicial, most commonly to call a man to shew cause to the Court whence it issues, why execution of judgment passed should not be made out. This writ is not granted until a year and a day be elapsed after a judgment given. "Old Nat. Br. w. 3. 151. Seire facias upon a fine lies not, but within the same time after the fine levied, otherwise it is the same with the writ of habeas facias Postn. W. Sym. part. 2. title Fines. § 137. See instal. 25 Ed. 3. fl. 5. cap. 2. 39 Eliz. c. 7.

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

All Writs of execution must be found out within a year and a day after the judgment is entered; otherwise the Court concludes prida facta; that the judgment is fled and extinct: But it will grant a writ of s. scire facias in pursuance of stat. W. Sym. 2. 15 Ed. c. 45, for the defendant: to shew cause why the execution should not be revived, and execution had against him: to which the defendant may plead such matter as he has to allege, in order to shew why process of execution should not be issued. 3 Comm. 421.

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

II. Of the Sci're facias to revive Judgments, and after what Time necessary.

III. Of the Sci're facias on Recognizances and Statutes.

IV. Of the Pleadings and Proceedings on a Sci're facias: And in cases, of Tenants. See ante I.

A S. SCIRE FACIAS is deemed a judicial writ, and founded on some matter of record, as judgments, recognizances, and letters patent, on which it lies to enforce the execution of them, or to vacate or set them aside; and though it be a judicial writ of execution, yet it is so far in nature of an original, that the defendant may plead to it, and is in that respect considered as an action; and therefore it is held, that a Release of all actions, or a release of all executions, is a good bar to a scire facias. Litt. § 505: Co. Lit. 229. b. 291. a. F. N. B. 267.

But though it be held that a scire facias is in nature of an original, yet it hath been adjudged, that no writ of error lies into the Exchequer-chamber on a judgment given in B. R. on a scire facias; the statute 27 Eliz. c. 8. which gives the writ of error, mentioning only suits or actions of debt, detinue, covenant, account, actions upon the exchequer, ejectiones, fines, or trespas. Cro. Car. 286. 300. 464. 1 Rol. Rep. 296. 1 Vent. 38. 1 Sulk. 265. If a bill of exceptions be tendered to a Judge, and he signs it, and dies, a scire facias lies against his executors, or administrators to certify it. 4 Inst. 428: See 2 Inst. 428.


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

Upon an e. actione returned by the Sheriff, a scire facias lies against the pledges in replevin, by the plaintiff in the Sheriff's Court, transmitted to the h坍lings, and to B. R. by certositas. Comb. 1. And a scire facias lies against the Sheriff for taking insufficient pledges in replevin. Haiz. 77.

If one such judgment in a quare impedit, and afterwards, before execution, the party is outlawed, the King may have a scire facias to execute the judgment; the King having privy right enough in this case to shew execution, because the thing, as it was in the plaintiff, vested in the King, Mor. 284: Cro. Eliz. 444. 325. Where having the thing gives a sufficient privy to maintain a scire facias; see Salk. 168, 169.

On a motion to discharge an outlaw which was purposed by the act of oblivion, the Court held that it could not be done on motion, but that the party must bring a scire facias on the act. Salk. 348. See title Oblivious.

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

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

A scire facias was brought in the Court of C. B. to reverse a Fine in ancient demense, and it was ruled, that no such writ lay, but that the party ought to bring his writ of defective. Salk. 210: 3 Sulk. 35: 3 Lev. 417: 1 Ed. Raym. 177.

Where either party dies, between the verdict and the judgment, it is enabled, by the statute 12 Car. 2. c. 8, "That his death shall not be alleged for errors, so as the judgment be entered within two terms after the verdict." In the construction of this statute, it has been held, that the death of either party before the Affizies is not remedied: but if the party die after the Affizies begin, though before the trial, that is within the remedy of the statute; for the Affizies are considered but as one day in Law, and this is a remedial act, which shall be construed favourably. The judgment upon this statute is entered by or against the party, as though he were alive; and it should be entered, or at least signed, within two terms after the verdict. But there must be a scire facias to revive it, before execution can be taken out: and such scire facias, purifying the form of the judgment, should be general, as on a judgment recovered by or against the party himself. Tidd's Prat. B. 35: and the authorities there cited.
SCIRE FACIAS II.

By Stat. 8 & 9 W. 3. c. 11, it is enabled, "That in all actions to be commenced in any Court of Record, if the plaintiff or defendant happen to die, after interlocutory and before final judgment, the action shall not abate by reason thereof, if such action might have been originally prosecuted or maintained, by or against the executors or administrators of the party dying; but if the plaintiff, or, if he be dead after such interlocutory judgment, his executors or administrators, shall and may have a

facer facias against the defendant, if living after such interlocutory judgment, or, if he died before, then against his executors or administrators, to swear cause, why damages in such action should not be assented and recovered by him or them. And if such defendant, his executors or administrators, shall appear at the return of such writ, and not swear or allege any matter sufficient to arrest the final judgment, or being returned warned, or, upon two writs of facer facias, it being returned that the defendant, his executors or administrators, had nothing whereby to be summoned, or could not be found in the county, shall make default, that thereupon a writ of inquiry of damages shall be awarded; which being executed and returned, judgment final shall be given for the said plaintiff, his executors or administrators, professing such writ or writs of facer facias, against such defendant, his executors or administrators, respectively."

This statute has been held not to extend to cases, where the party dies before interlocutory judgment; though it be after the expiration of the rule to plead. 1 Wils. 315.

Where either party dies, after interlocutory judgment, and before the execution of the writ of inquiry, the facer facias upon this statute ought to be, for the defendant, or his executors or administrators, to swear cause why the damages should not be assented and recovered against them, and to hear the judgment of the Court thereupon. Lib. East. 647; 6 Mad. 144. But where the death happens after the writ of inquiry is executed, and before the return, the facer facias must be to swear cause, why the damages assented by the Jury should not be adjudged to the plaintiff, or his executors or administrators. 1 Wils. 243; 1 Term Rep. 328. And where the plaintiff dies, after interlocutory and before final judgment, in an action against another, the defendant cannot plead to the facer facias a judgment upon bond against his tertainment, and no action ultra: for the statute never intended, that the executor should be in a better situation, as to the assenting of damages upon the inquiry, than his tertainment, who could have pleaded nothing but a release, or other matter in bar, arising pois dacione consequent. 1 Salk. 345; 6 Mod. 142.

The judgment upon this statute is not entered by or against the party himself, as upon Stat. 17 Car. 2. c. 8, but by or against his executors or administrators. 1 Salk. 42. And where the defendant dies, after interlocutory and before final judgment, two writs of facer facias must be sued out by the plaintiff, before he can have execution: one before the final judgment is signed, in order to make the executors or administrators parties to the record; the other after final judgment is signed, in order to give them an opportunity of pleading no affets, or any other matter, in their defense: for it would be unreasonable that the executors or administrators should be in a worse situation, where their tertainment or intermate died before the final judgment was signed, than they would have been in if they had died afterwards. Say. 265. See this Dictionary, title Abatement 1. 6. c.

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

A facer facias lay as well in mixed as real actions, and upon a judgment in assis. So it lay upon a judgment in a writ of annuity. Salk. 258, 600.

It hath been adjudged, that if there be judgment in ejectment, and no execution sued thereon in a year and a day, an aliament facias poiffessinn cannot be sued out after, without a facer facias; and Held, Ch. J. said, that as to the possession of the land an ejectment was real, and the only remedy a termor for years had, and that a recovery therein bound the right of inheritance. Salk. 258, 600; Comb. 250; 7 Mod. 64.; And see 1 Salk. 307, 351; 2 Rep. 307; 5 Key. 163; 5 Leav. 1208.

But though, after a year and a day, there can be no execution of a judgment without a facer facias, yet if the plaintiff hath been delayed by a writ of error, he may take out execution within a year after the judgment given or fine, or recognizance acknowledged, the plaintiff within a year after the judgment given or fine, or recognizance acknowledged, the plaintiff within a year after the judgment, though before the writ of error brought the plaintiff, so that the writ of error may be continued: for though in these cases there is no new original lie upon the judgment or fine. 6 Mod. 15: 7 Mod. 64.

So, if after the year the judgment is confirmed, it brings a writ of appeal, and the judgment is affirmed, though before the writ of error brought the recovee was put to his facer facias, yet the affiurance is a new judgment, and the recovee may have, within the year after the affiurance, a facer facias or reparis, without a facer facias. 1 Rel. Abr. 899. And see 1 Cor. 499; Lack. 193.

So, if he be nonsuit in the writ of error, or if the writ of error be discontinued: for though in these cases there is not any new judgment given, yet the bringing of the writ of error revives the first judgment. Cor. Jac. 364; 1 Rel. Rep. 104, 117; Vide 1 Rel. Abr. 899.

If upon a judgment there be a certif execute for a year after the judgment, the plaintiff within the subsequent year may take out execution without a facer facias. 6 Mod. 288; 7 Mod. 64.

And it hath been held, that where execution hath been taken out after the year and day, it is not void, but voidable only. 6 Leav. 103; 7 Salk. 273.

If the execution is stayed by injunction, though the act of the defendant, yet the Court will not take notice thereof. See title Execution.

In such case there must be a facer facias; the staying the proceedings by injunction, does not appear to the Court, by any record of its own: Nor is the filing a bill in equity.
equity any revival of the judgment, as in the case of a writ of error. 6 Mod. 248: 5 Blk. 322. See id. to Injunction. But where it appeared that the whole delay had arisen, on
the part of the defendant, by bills in Chancery for injunctions, and by obtaining time for payment, &c., the Court were unanimous that this rule of reviving a judgment, above a year old, by *facias* before execution, was intended to prevent a forfeiture upon the
defendant, ought not to be taken advantage of by one, who was as far from being forfeited by the delay, that he himself had been trying all manner of methods, whereby he might delay the plaintiff; and therefore the Court charged the rule for letting slide the execution, with
care. 2 Bur. 660.

If judgment be given in debt, and no execution issued out within the year, yet the plaintiff may, after an award of an *elegant* on the judgment roll, as of the same term with the judgment, continue it from thence, by *viectum non vestri brevis*; as held on a motion to set aside the execution; and though the Court said that an *elegant* ought to be actually taken out within the year, yet being informed by the clerks of the Court, that it had been the practice for many years to make such entry, &c., it was said to be the law of the Court, and they ordered the execution to stand. 250: 2 Dowl. 235: Comb. 253.

If the defendant, or plaintiff, take his process of execution within the year, though it be not served within the year, yet if he continue the same, he may have execution at any time after the year. 2 Inst. 471: C. Lit. 236: 2. And see 2 Leoni. 77, 78, 87: 3 Leoni. 239: 4 Leoni. 44: 1 Stik. 419: 1 Kenn. 113: 2 Blk. 286.

If the plaintiff delay the executing of a writ of inquiry till a year after the interlocutory judgment, he cannot execute it after without a *facias*.

In the case of the King, there need not be any *facias* after the year and day. 2 Salk. 635.

After a judgment, if the plaintiff within the year files a *facias*, he cannot have a *captains* within the year, until he hath a new judgment on the *facias*. 1 Rob. Abr. 903: 2 Danw. 343, 4, p. 1.

Where there is any change or alteration of parties, a *facias* is in general necessary to warrant an execution, as in case of debt, &c. Where there are two or more plaintiffs or defendants in a personal action, and one of them dies before judgment, his death should regularly be fud with on the roll, and judgment entered for or against the survivors. But where one of two plaintiffs died before interlocutory judgment, and the first notwithstanding went on in execution in the name of both; on a motion to set aside the proceedings for this irregularity, the Court permitted the plaintiff to fudg off the death of the other before interlocutory judgment on the roll, and to amend the *facias* without paying costs. And where one of several plaintiffs died after judgment, execution may be had for or against the survivors without a *facias*; but the execution, in such case, should be taken out in the joint names of all the plaintiffs or defendants, otherwise it will not be warranted by the judgment. 2 Bald. Pract. K. B. c. 41, and the authorities there cited. If proceedings are removed out of the County Court, or other Courts, not of Record, by writ of false judgment, and the plaintiff is nonproved, the execution shall issue out of the Court above, and a *facias* seems to be necessary for this purpose. 3 Tallis' Pract. K. B. c. 41. See this District abatement.

A *facias* seems necessary under the Lords' Act, 22 Geo. II. c. 25, which gives execution against the future goods of a delinquent debtor taking the benefit of that act. 3 Term Rep. 85.

When a prisoner is charged in execution, the execution is considered as executed, and therefore, though the prisoner afterwards dies, his executors are not bound to revive the judgment by *facias*; but even to charge the defendant in execution, upon such. 2 Tallis' Pract. K. B. 214, cites King v. Mellor, 3 Co. 56a.

III. Recognisances and Statutes are considered as judgments, being obligations solemnly acknowledged, and entered of record, and the *facias* thereon to the judicial writ and proper remedy which the confeque hails; but herein we must distinguish between Recognisances at Common Law and Statutes-merchants, &c., for, upon the former, if the confeque did not take out execution within a year, after the day of payment alleged in the recognizance, he was obliged to commence the suit again by original; the Law presuming the debt might have been paid, if execution was not sued within the year after the money became payable; but this Law is altered by Stat. 1 Geo. IV. c. 67, which provides the *facias* given him for a recognizance to revive the judgment, and put it in execution; if the confeque cannot slip it by pleading such matter as the Law judges sufficient for that end, such a release, &c. But the confeque of a statute merchant, &c., may at any time sue for execution on them without the delay or charge of a *facias*. 2 Inst. Rep. 89.

That a *facias* lies not on a recognizance, but only a *facias* is given in 1 Brod. 85: 2 Rob. 407: F. N. B. 296: 2 Inst. Rep. 17.

Also as to recognizances at Common Law, and statutes and recognizances introduced by Statute Law, we must further distinguish; that if on the first the confeque dies after execution sued, his executor shall not sue it, even within the year, without bringing a *facias* against the confeque; the reason is, because the Law presumes the debt might have been paid to the tellor, and therefore will not suffer the debtor to be molested, unless it appear that he hath omitted to perform the judgment; and this is to be done by *facias* brought by the executor, for the alteration of the person altering the process at Common Law; but this tending to delay, the *facias* is taken away in statutes and recognizances by Statute Law, by the several Acts of Parliament which introduced them; and therefore upon the death of the confeque of a statute merchant, &c., his executors may come into Chancery, and upon their producing the testament and the statute, shall have execution without a *facias* as the tellor himself might. 2 Inst. 395: 471: Bro. 2Inst. 16: 43: 50.

If a man be bound in a recognizance to the King, upon condition to be of good behaviour, &c., he cannot be indicted for breach of the good behaviour, by which he forfeits his recognizance, without a *facias*; for if a *facias* had been brought, he might have pleaded some matter in discharge thereof. 4 Inst. 181: 1 Rob. Abr. 900. What shall be said a breach, see 3 Brod. 458; and how to be aligned, see 3 Buff. 220: 2 Crac. 415: Stil. 369; And this District title Sence the Peace.
SCIRE FACIAS III. IV.

If a man acknowledges a recognizance, to be paid at a day within the year after the date of the recognizance; in this case, he may have execution by fieri facias or ejectment within the year, the day of payment, though the year be past from the date of the recognizance. 21 Ed. 3. 22: B. 1 Rol. Abr. 899, 900: 2 Inst. 471. See 2 Rol. Abr. 468: 5 Lit. 292.

If a man recovers an annuity, he shall have execution for every time that occurs after by fieri facias or ejectment within the year after the time incurred; though the year be past from the judgment; but not after the year without a fieri facias. 1 Rol. Abr. 500: 2 Inst. 471: 5 Lit. 238, 600.

If two acknowledge a recognizance of 100l. jointly and severally, the cause may sue several fieri facias against the co-owners upon this recognizance. 2 Inst. 395.

Fieri facias upon a recognizance in Chancery, may be sued to secure lands, &c. If, upon a fieri facias upon a recognizance in Chancery, the record be transmitted into B. R. to try the suit, and the plaintiff is not of record, he may bring a new fieri facias in B. R. upon the record there. 2 Saund. 278. Where a mistake is acknowledged, and the cognisance afterwards confirmed, it is said to be extended thereon; in this case, the cognisance shall have a fieri facias to avoid the extent of the lands; but if the judgment be on goods, it is otherwise. 1 Brownd. 37: 3 Nils. Abr. 180. Fieri facias lies upon recognizance of the peace, &c. removed into B. R. See title Scurvy of the Peace.

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

Whatever is pleasurable to the original action in abatement, shall not be pleaded to disable the plaintiff from having execution on a fieri facias; because the defendant had admitted him to have judgment. 1 Salk. 2. If a judgment be obtained against an executor, and afterwards a fieri facias is brought against him upon that judgment, he cannot plead a judgment recovered against his testator, and that he had not affixed nuncup, &c. because he might have pleaded it to the first action; for it is a settled rule that if a defendant hath a matter proper for his defence, and he neglects to plead it in bar to the action at the time he may, he shall not take advantage of it after. 2 Strange 732. In fieri facias on a judgment in debt, or other personal action, the defendant cannot plead non-tenure of the land generally, where it is contrary to the return of the Sheriff; though he may plead a special non-tenure: But on a fieri facias to have execution in a real action, the defendant may plead non-tenure generally, because the freehold is in question, and that is favoured in Law; and the ter-tenants may plead there are other ter-tenants not named, and pray judgment if they ought to answer till the others are summoned, &c. though it would be otherwise if the fieri facias had been against particular tenants by name. 2 Salk. 601.

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

On a fieri facias against the heir and ter-tenants to reverse a common recovery of lands, the fieri facias is to issue against all the ter-tenants, for they are to gain or lose by the judgment in the recovery. Raym. 16: 3 Mod. 274. A fieri facias to have execution of a fine, shall not be sued against the heir for years; but against him who hath the freehold, who may have some matter to bar the execution. Cro. Eliz. 471: 2 Brownl. 144. In ejectment, it was adjudged, that a fieri facias might be brought by the lessee, though he was but nominal, and that it may be had by the lessor himself; as either of them may have a writ of error on the judgment: And that it might be brought against those who were strangers to the judgment, and against the executors of the defendant, &c. 2 Lew. 1297.

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

In the King's Bench, and in all cases, there must be either one fieri facias, with a fieri faci return, or two fieri facias with nihil. 2 Inst. 272: 2 Mod. 217. But in C. B. whenever the fieri facias is to revive a judgment against the same defendant, who was party and privy to the judgment, one fieri facias is sufficient, though a nihil be returned thereto. By. 186: Salk. 599. —But not so, where the defendant is not party to the record. The time however between the teffe and return, in both Courts, is in effect the same: For in C. B. the one fieri facias must have fifteen days between the teffe and return; whereas, in K. B. there must be fifteen days between the teffe of the first and the return of the second fieri facias. So, in C. B., where two fieri facias are necessary. —If only one fieri facias and a fieri faci in K. B. such fieri facias should have fifteen days between the teffe and return. So must every fieri facias when the proceeding is by original: But if inclusive both of teffe and return, it is good. Selden's Prati.

Although the intent of the fieri facias is to give the party, against whom execution is about to issue, notice or warning thereof, yet by the general practice it is wholly defeated, for the defendant may be summoned or not, as the party thinks fit: And, indeed, the usual way is to revive the judgment without giving the party any notice. Selden's Prati. And it inverts that the party may always
always search the office, and on finding a scire facias left there for a return, he may appear though he is not warned or summoned. J. M.

No alias scire facias must issue till the first writ of scire facias is returnable. R. T. 8 W. 3. — And in C. B. not until the appearance day of the return of the first.

—The alias shall bear date of the day of the return of the first. Saik. 599. And in C. B. on the appearance day, as not the alias scire facias by original. Sillons Pract.

A defendant being summoned upon a scire facias, and the summons returned, if he doth not appear, but lets judgment go by default, it is for ever barred. *Lev. 41, 42.* If the Sheriff hath returned him warned, he shall not have audita querela on a release, &c. for the defendant might have pleaded the same on the return of the scire facias; but if the Sheriff return nihil, on which an execution is awarded, he shall have audita querela. New Nat. Br. 270. —In the first case, he might have appeared and pleaded; in the other, not being bound to appear, he was not bound to appear. Where there was no scire facias, and only two nihil, the Court will often relieve upon motion, and not put the party to an audita querela. Saik. 93. 264. *Strange 1775.*

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

Damages are not recoverable in a scire facias. *3 Burr. 1791.* Also it was formerly held that the plaintiff could not in a scire facias recover costs; but this is now remedied by *Flut.* 8 & 9 W. 3. c. 11. Del. 95; *3 Burr.* 332.

But the plaintiff is not entitled to costs unless the defendant has appeared and pleaded. And no costs are payable by the plaintiff, on moving to quash his own writ before plea, nor after a plea in abatement. *Cof. Prac.* C. B. 74. *1 Sira.* 62. *Burr.* —There is a proviso in the statute, that it shall not extend to executors or administrators; and hence it has been determined that in scire facias they are not liable, when plaintiffs, to the payment of costs. *1 Sira.* 188.

For more learning on this subject, see *4 New Abr.* 99 Farn. Abr. title Scire facias; *Wilson’s Rep.* vol. 1. p. 243; *Cay.* 2. 913; *372.* the Book of Practice, particularly Sillons; and this Dictionary, titles Error; Execution; Judgment, &c.

**SCIRE FACIAS; AGAINST BAIL.** If a Captus ad satisfaciendum (see that title, and title Execution) is sued out against a defendant, and a non est inventus is return thereon, the plaintiff may sue out a process against the bail (where bail were given); for they object, in this triple alternative; that the defendant shall, if condemned in the suit, satisfy the plaintiff his debt and costs; or, that the defendant shall surrender himself a prisoner; or, that they will pay it for him. —As therefore the two former branches of the alternative are neither of them complied with, the latter must immediately take place. In order to which a writ of scire facias may be sued out against the Bail, commanding the Sheriff to make known to them the judgment, and that they pay costs why the plaintiff should not have execution against them for his debt and damages: And in such writ, if they shew no sufficient cause, or the defendant does not surrender himself on the day of the return, or of showing cause, (for afterwards it is not sufficient,) the plaintiff may sue judgment against the Bail, and take out a writ of *ca. fa.* or other process of execution against them. 3 *Comm.* c. 26. p. 4:6: See this Dictionary title Bail 1.

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

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

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

On a scire facias, or action of debt on recognizance, against Bail, when a writ of error is allowed, and the Bail apply within their time for surrendering the principal, the Court will stay the proceedings, until the writ of error is determined; the Bail undertaking to pay the condemnation-money, or surrender the defendant into the custody of the Marshal, within four days next after the determination of the writ of error, in case the same shall be determined in favour of the defendant in error. And in one case, where the writ of error was allowed before the time was expired for surrendering the principal, the Court gave the Bail the same terms, as are usual when they apply within the time granted, by the course of the Court, for surrendering the principal. But, in general, when the Bail do not apply to stay the proceedings, pending error, till their time to surrender is out, the Court will not give them any time for that purpose, but they are to pay the money in, after the judgment is affirmed, *Tidd’s Prat.* K. B. and the authorities there.
Where error was not brought till it was too late for the Bail to surrender, the Court, in one case, would not stay the proceedings. But, in a subsequent case, proceedings were had; the Bail undertaking to pay the condemnation-money, and the costs on the "scire facias", in four days after affirmance; but in this case, there being no Bail on the writ of error, the Court made the Bail also undertake to pay the costs, on the writ of error, in case the judgment was affirmed; and said, it was a favour they were asking, and they would make them submit to equitable terms. 1 Str. 413: 2 Term. 337. By the affirmance of the judgment, in these cases, is meant the final affirmance of it; and therefore where the judgment, on a writ of error, was affirmed in the Exchequer-chamber, and afterwards another writ of error was brought, returnable in Parliament, the proceedings against the Bail were further had, till the determination of the second writ of error. 5 Burr. 1819.

The plaintiff got judgment on the "scire facias" against Bail, pending error by the principal, and took them in execution; and on their moving to be discharged, the Court said, though they might have applied, and had the proceedings had, yet the Court would not set them aside. 1 Str. 526: Barnes 228: See 4 Burr. 2544: 3 Term Rep. 643: 1 Term Conr. 39.

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

There must be a particular warrant of attorney to a "scire facias" against the Bail; for a warrant in the principal action is no warrant to the "scire facias", because these are distinct actions; and the particular warrant is to be entered when the suit commences, which is when the writ is returned. 2 Sal. 603. When a "scire facias" is brought against the Bail, it must be in two parts; and where it is brought against the defendant in the principal action, it is to be in one part. 2 Sal. 599.

"Scire facias ad audiendum errores", To hear the errors assigned.—When a Writ of Error is brought, as soon as the transcript is entered on record, and the plaintiff hath also assigned his Errors, and entered the name on record, if the defendant does not immediately plead or join in Error, the plaintiff may sue out this "scire facias": And if the defendant in Error does not come in, and plead or join to the assignment of Errors, upon the return of this writ the plaintiff may have an alias "scire facias", and upon default thereto the plaintiff must proceed to argument, and will be heard on part. But this writ of "scire facias" is now seldom sued out, as the defendant usually appears gratis; or the plaintiff in Error, after his assignment of Errors, takes out a rule for defendant to appear thereto, and serves a copy on the defendant. 40th 402 Selwyn's Pradts.

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

"Scire facias to remove an Ugener's Clerk." On a "scire facias", and no admission sued out, if the Bishop after receipt of the latter writ, admit any person, even though the Patentee's right may have been found in a "scire patronalis", then the plaintiff, after he has obtained judgment in the "quare impedit", may remove the Incumbent, if the Clerk of a stranger, by writ of "scire facias", 3 Comm. 239. See "Quare impedit" 238. "Quari incuriosus".

"Scire facias to repeal Letters-patent and Grants." Where the Crown hath unadvisedly granted any thing by Letters-patent, which ought not to be granted; or where the Patentee hath done an act that amounts to a forfeiture of the Grant, the remedy to repeal the Patent, is by writ of "scire facias" in Chancery. This may be brought either on the part of the King, in order to rehearse the thing granted; or if the Grant be injurious to a Subject, the King is bound of right to permit him upon his petition to use his royal name for repealing the Patent in a "scire facias". And to, also, if upon an office untruly found for the King, he grants the land over to another, he who is grievous thereby, and traver's the office itself, is entitled, before suit joined, to a "scire facias" against the Patentee, in order to record the Grant. 3 Comm. c. 17. p. 260. 1. See this Dictionary, tit. Grant of the King; Impair of Office.

A "scire facias" to repeal a Patent, must be brought where the record is, which is in Chancery; and there are to be two of these writs sued out of the Petty-bug office directed to the Sheriff of Middlesex, who, by a letter under the seal of his office, must send notice to the Corporation, or person whole concern the Patent is, that there is a "scire facias" issued out returnable at such a time, and remaining with him, for the revocation of such a Patent, and that if they do not appear thereunto, judgment will be had against them by default; and this letter to be delivered to the Corporation, or person interested in such Patent, by some person who can make oath thereof. 40th 402 Selwyn's Pradts. On a "scire facias" out of Chancery returnable in B. R. to repeal Letters-patent, it was held, that if the Letters-patent are granted to the prejudice of any person, as if a fair is granted to the damage of the fair of another, &c. he may have a "scire facias" on the impound of such Grant in Chancery, as well as the King in other cases; but it may be a question, whether a "scire facias" upon a record in Chancery is returnable in B. R. though after it is made returnable into B. R. that Court, and not the Chancery, hath the jurisdiction of it. 50th 502. In all cases at Common Law, where the King's title accrues by a judicial record, and he grants his estate over; the party grieved could not have a "scire facias" against the Patentee, but was forced to his petition to the King; otherwise it is when his title is by conveyance on record, which is not judicial. 4 Rep. 59. The King hath a right to repeal a Patent by "scire facias", where he was deceived in his Grant, or it is to the injury of the Subject. 3 Lev. 220. And where a common person is obliged to bring his action, there, upon an inquisition or office found, the King is put to his "scire facias", &c. 9 Rep. 95. A "scire facias" to repeal Letters-patent doth not abate by the demise of the Crown. 1 Strange 45.

"Scire facias" have been issued to repeal the grants of offices, for conditions broken, non-attendance, &c. For disability, or in case of forfeiture, the offices may be seized without "scire facias". 3 Nyl. Ab. 201, 202. See title Office V.

"Scire facias in appeal of murder, before a pardon shall be allowed." See title Appeal II.
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fity of practice in two large and uncommunicating jurisdictions; and from the acts of two distinct and independent Parliaments, which have in many points altered and abrogated the old Common Law of both kingdoms. See Comm. Intro. 4. P. 95, and the note there.

In the reigns of King James II. and King Charles II. Commissioners were appointed to treat with Commissioners of Scotland, concerning an union. But the bringing about this great work was referred for the reign of Queen Anne. The stat. 1. ch. 1. s. 14, ordained articles to be settled, by Commissioners, for the union of the two kingdoms, and by stat. 5. Ann. c. 8, the Union was effected.

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

1. That on the first of May 1707, and for ever after, the Kingdoms of England and Scotland shall be united into one Kingdom, by the name of GREAT BRITAIN.

2. The succession to the Monarchy of Great Britain shall be the same as was before settled with regard to that of England.

3. The united Kingdom shall be represented by one Parliament.

4. There shall be a communication of all rights and privileges between the Subjects of both Kingdoms, except where it is otherwise agreed.

5. When England raises 2,000,000l. (accurately 1,099,705l. 8s. 4d.) by a Land-tax, Scotland shall raise 48,000l.

10. The standards of the coin, of weights, and of measures, shall be reduced to those of England, throughout the united Kingdoms.

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

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

23. The sixteen Peers of Scotland shall have all privileges of Parliament; and all Peers of Scotland shall be Peers of Great Britain, and rank next after those of the same degree at the time of the Union, and shall have all privileges of Peers, except sitting in the House of Lords, and voting on the trial of a Peer.

It was formerly resolved by the House of Lords, that a Peer of Scotland claiming to sit in the British House of Peers, by virtue of a patent, passed under the Great Seal of Great Britain, had no right to vote in the election of the sixteen Scotch Peers; and that no patent of honour granted to any Peer of Great Britain, who was a Peer of Scotland at the time of the Union, should entitle him to sit in Parliament. But in 1782, on the claim of the Duke of Hamilton to sit at Duke of Brudenel, the question being referred to the Judges, they were unanimously of opinion, that the Peers of Scotland were not disabled from receiving, subsequently to the Union, a patent.
SCOTLAND.

patent of Peerage of Great Britain, with all the privileges usually incident thereto; and the House accordingly admitted the Duke of Hamilton to sit as Duke of Brandon. No objection was ever made to an English Peer's taking a Scotch Peerage by descent; and therefore, formerly, when it was designed to confer an English title on a noble family of Scotland, the eldest son of the Scotch Peer was created in his father's lifetime an English Peer, and this creation was not affected by the annexation by inheritance of the Scotch Peerage. It seems now to be settled, that a Scotch Peer, made a Peer of Great Britain, has a right to vote in the election of the sixteen Scotch Peers: and that if any of the sixteen Scotch Peers are created Peers of Great Britain, they thereby cease to fit as representatives of the Scotch Peerage; and new Scotch Peers must be elected in their room. See 1 Comm. 97, n. 7.

25. All laws and statutes in either kingdom, so far as they are contrary to these articles, shall cease and become void; and hence it seems, that the Royal prerogative of granting a charter to unrepresented places to send Members to Parliament, is virtually abolished; since the exercise of it would necessarily destroy the population of the representatives of the two kingdoms. 1 Comm. 97, n. See this Dictionary, title Parliament VI (B) 1. (5).

In the said statute, 5 Ann. c. 8, two acts of Parliament were also recited; the one of Scotland, whereby the Church of Scotland, and after the four Universities of that kingdom, are established for ever, and all succeeding Sovereigns are to take an oath inviolably to maintain the same; the other of England, 5 Ann. c. 6, whereby the Acts of Uniformity of 15 Eliza, and 13 Car. 2. (except as the law had been altered by Parliament at that time) and all other acts then in force for the preservation of the Church of England, are declared perpetual; and it is stipulated, that every subsequent King and Queen shall take an oath inviolably to maintain the same within England, Ireland, Wales, and the town of Birsich upon Tweed. And it is enacted, that these two acts shall for ever be observed as fundamental and essential conditions of the Union.

Upon these Articles and Act of Union, it is to be observed, 18. That the two kingdoms are now so inseparably united, that nothing can ever disunite them again; except the mutual consent of both, or the forced restitution of either, upon apprehending an infringement of those points which, when they were separate and independent nations, it was mutually stipulated should be fundamental and essential conditions of the Union. 20thly, That whatever else may be deemed fundamental and essential conditions, the preservation of the two churches, of England and Scotland, in the same slate that they were in at the time of the Union, and the maintenance of the Acts of Uniformity which establish our common prayer, are expressly declared so to be. 30thly. That therefore any alteration in the constitution of either of those churches, or in the Liturgy of the Church of England, (unless with the consent of the respective churches, collectively or representatively given,) would be an infringement of those fundamental and essential conditions, and greatly endanger the Union. 40thly. That the municipal laws of Scotland are ordained to be still observed in that part of the island, unless altered by Parliament; and, as the Parliament has not yet thought proper, except in a few instances, to alter them, they still (with regard to the particulars unaltered) continue in full force. Wherefore the municipal or common laws of England are, generally speaking, of no force or validity in Scotland. See 1 Comm. 97, 96; and the note there.

At the time of the Union it was agreed, that the mode of the election of the Peers and Commons should be settled by an act passed in the Parliament of Scotland; which was afterwards recited, ratified, and made part of the Act of Union. As to the election of the sixteen Peers, see 6 Ann. c. 23. With respect to the forty-five Commoners, it was, by an act of the Scotch Parliament, (and see 5 Ann. c. 6,) enacted, that of the forty-five, thirty should be elected by the Shires, and fifteen by the Boroughs: That the City of Edinburgh should elect one; and that the other Royal Boroughs should be divided into fourteen districts, and that each district should return one: and it was also provided, that no person should elect or be elected one of the forty-five, but who would have been capable of electing, or of being elected, a representative of a shire or borough to the Parliament of Scotland: Hence the eldest son of any Scotch Peer cannot be elected one of the forty-five; so that eldest son being incapable, prior to the Union, of sitting in the Scotch Parliament. Neither can such eldest son be entitled to be enrolled, and vote as a freeholder for any commissioner of a shire, though otherwise qualified; as determined by the House of Peers in Lord Dacre's case, 1703. But the eldest sons of Scotch Peers may represent any place in England, as many do. 2 Hats. Pret. 12.

The two acts, 9 Ann. c. 5; 53 Geo. 2. c. 20, requiring knights of shires and members for boroughs to have respectively 600l. and 300l. a year, are expressly confined to England: But a commissioner of a shire must be a freeholder; and it is a general rule, that none can be elected but those who can elect. And it was formerly supposed, that it was necessary that every representative of a borough should be admitted a burgess of one of the boroughs which he represented; till the contrary was determined by a Committee of the House of Commons in the case of the Borough of Wigtown, 2 Doug. El. 1. It still holds generally true in shires in Scotland, that the qualifications of the electors and elected are the same; and this eligibility and a right to elect are convertible terms. See 1 Comm. 97, n. 6.

The election of members of Parliament for Scotland, is farther regulated by English statutes: the Magistrates are required to summon the Councils of boroughs; and an oath is to be taken by every freeholder and voter as to the suffrages to qualify them, that they are actually their own, and not fictitious: Sheriffs or stewards not to make any false return, &c. under the penalty of 100l. recoverable in a summary way: No Judge of the Court of Seisin, or Baron of the Exchequer, in Scotland, shall be elected a member of Parliament. Stat. 7 Geo. 2. c. 16; 16 Geo. 2. c. 11; and see 4 Ann. c. 81.

Acts of Parliament in general, passed since the Union, extend to Scotland; but where a statute is not applicable to Scotland, and where Scotland is not intended to be included, the method is to declare by prefix to that it does not extend to Scotland. 3 Ann. 332. As to Birsich, see this Dictionary under that title.

Several acts of Parliament have been passed, from time to time, for the internal regulation of this part of the kingdom; for which see the Index to the Statutes.
and Williams's Digest of the Statute Law. It may be
sufficient in this place to notice the following acts.

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

Act for disarming the Highlanders of Scotland; and
requiring bail of persons for their loyal and peaceable
behavior, &c. Stat. 1 Geo. 1. c. 2. c. 54.—Persons sum-
momed to are to bring in and deliver up their arms, or
refusing to do it, shall be taken as seditious soldiers to
serve His Majesty beyond the seas; and concealing their
arms, are liable to penalties: Also the Lords Lieutenants, or
Judges of the Peace, may appoint persons to search

By the Stat. 19 Geo. 2. c. 59: 20 Geo. 2. c. 51; 21
Geo. 2. 34: 26 Geo. 2. c. 29; provisions are further
made for disarming the Highlanders, and restraining the
use of the Highland dress; and the masters, and teach-
ers of private schools, chaplains, tutors, and governors
of youth and children, are to take the oaths to his Majesty.

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

The City of Edinburgh, in Scotland, was fined 1000l.
account of the murder of Captain Purdon; who was
hung by the mob, on pretence that he had ordered
his soldiers to fire upon persons sitting at an execution;
and a reward of 200l. ordered for apprehending the
offenders. Stat. 10 Geo. 1. c. 34.

By Stat. 20 Geo. 2. c. 47; the heritable jurisdictions
are taken away and restored to the Crown, and more
effectual provision is made for the administration of ju-
tice by the King's Courts and Judges there: And all
persons acting as procurators, writers or agents in the
Law, are to take the oath.—By Stat. 20 Geo. 2. c. 50,
the tenure of ward-holding is taken away, and con-
verted into fine and ten-holding. The casualties of
ingle and lifieret: escheats; incurred by heresies and
denunciation for civil causes, are taken away. A sum-
mary process is given to heirs and successors against
upholders. The attendance of vaissals at Head-Courts is
discharged. Heirs and possessors of taillied estates, are
empowered to fell to the Crown.

By Stat. 25 Geo. 2. c. 20, certain doubts are obvi-
ated, that had arisen with regard to the admission of
the vaissals of the principality of Scotland, and payment
of their rents and dues.

Peers of Scotland, and all officers, civil and military,
&c. are to take the Oath of Abjuration. &c. A Peer
committing High Treason or felony in Scotland may be
tried by commission under the Great Seal, constituting
Judges to inquire, &c. in Scotland: And the King may
grant commissions of oyer and terminer in Scotland, to
chap. 21.

Persons having lands in Scotland, guilty of High Tre-
ason by corresponding with, afflicting, or remitting money,
&c. to the Pretender, on conviction, are to be liable to
the pains of treason; and their vaissals, continuing in du-
tiful allegiance, shall hold the said lands of his Majesty
in fee and heritage for ever, where the lands were so
held of the Crown by the offender. And tenants con-
nued peaceable, and occupying land, are to hold the
same two years, rent-free. Stat. 1 Geo. 1. c. 2. c. 20.

By Stat. 19 Geo. 2. c. 29, every Jury for trial of High
Treason, or misprision of treason, shall be posted in his
own or his wife's right of lands, &c. as proprietor or lie-
rester within the stature, &c. of the yearly value of 40l.
flouring at least, or valued at 30l. flouring per annum, in
the tax-roll.

By Stat. 21 Geo. 2. c. 10, offences of High Treason,
committed in the thire of Dumfartoun, Stirling, Perth,
Kincardine, Aberdeens, Laurence's, Nairn's, Crummat, Argyl,
Inverness, Banff, Skye, and the other Scottish islands,
may be incurred of in any stature in Scotland, as shall be
allowed by the King, &c. The jurors may come out of
adjoining counties. The practice of taking down evidence in
writing, in crimes not affecting life or member, abrogated.

By the Stat. 22 Geo. 2. c. 18, the Court before whom
any indictment for High Treason, or misprision of High
Treason, in Scotland, shall be found, may issue writs of
capias, proclamation, and exigent against the party, if
not in custody; whereon the defendant not appearing,
shall be deemed outlawed and attainted of High Treason,
or misprision of High Treason; persons out of the
kingdom, and returning within a year, may traverse the
indictment.

By Stat. 25 Geo. 2. c. 41, forfeited estates in Scotland
were annexed to the Crown inalienably, and satisfaction
made to the lawfull creditors thereupon; and the rents
thereof applied for the better civilizing the Highlanders.

SCOTS. Affidavits by Commissioners of Sewers are
so called.

SCRIPTURE. All profane scoffing of the Holy
Scripture, or exposing any part thereof to contempt and
ridicule, is punished by fine and imprisonment. 1 Howk, P.
C. See Reading, &c

SCRIVENERS. Are mentioned in the statute against
Usury and excessive interest of money. 13 Ann. c. 2. c. 10.
Money-Scriveners were underfoot to be those who re-
cieved money to place it out at interest; and who sup-
plied those who wanted to raise money on security; thus
rendering themselves useful to, and receiving a profit from,
both parties. If a Scrivenor is intrusted with a bond, he
may receive the interest; and if he fails, the obligee shall
bear the loss; and so it is if he receive the principal,
and deliver up the bond; for being intrusted with the
security itself, it shall be presumed he is trusted with
power to receive the principal and interest: and the
money being paid in by the bond in the payment of the money is a dis-
charge thereof: But if a Scrivenor be intrusted with a
mortgage deed, he hath only authority to receive the
interest, not the principal; the giving up the deed in this
case not being sufficient to release the estate, but there
must be a reconveyance, &c. 1 Salis. 157. It is held,
where a Scrivenor puts out his client's money on a bad
security, which on inquiry might have been easily found
so, yet he cannot be charged in equity to answer the
money; for no one would venture to put out money of
another upon a security, if he were obliged to warrant and
make it good, in case a loss should happen, without
any fraud in him. Preced. Chans. 149, 149. See 18 Vin.
Abr. 280—292: and this Dictionary, titles Bond; Mort-
gage; Trustee; Attorney, &c.

SCOTAGE,
SCUTAGE;  Scutagium, Sax. Scildfenig.] Was a tax or contribution, rated by those that held lands by knights' service, towards furnishing the King's army, at one, two, or three marks for every knight's fee. Henry the Third, for his voyage to the Holy Land, had a tenth granted by the Clergy, and Scutage, three marks of every knight's fee, by the Laity. Baronage, Angl. Hist., Part. i., fol. 211, b. This was also levied by Henry II., Richard I., and King John. See titles Taxor; Tenures; II. 8.

SCUTAGIO HABENDO, A writ that anciently lay against tenants by knights' service, to serve in the wars, or fend sufficient persons, or to pay a certain sum, &c. F. N. B. 3. See titles Taxor; Tenures.

SCUTE, A French gold coin of 52. 4d. In the reign of King Henry V., Catherine Queen of England had an assurance made her of sundry cattle, manors, &c. valued at the sum of forty thousand Scutes, every two whereof were worth a noble. Rot. Parl. 1 Hen. 6.

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

SCUTELLA ELEMSOMYNARIA, An alms basket or scuttle. Paroch. Antiq.

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

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

SCYRA, A fine imposed on fish as neglected to attend the fyregemot Court, which all tenants were bound to do. Mon. Ang. i. 52.

SCYRE GEMOT, Sax.] Shiremol; A Court held by the Saxons twice every year by the Bishop of the diocese, and the earldorman, in thires that had earldormen: and by the Bishop and Sheriff, where the counties were committed to the Sheriff, &c. wherein both the ecclesiastical and temporal Laws were given in charge to the county, Sel. Tit. Hen. 6. 28. This Court was held three times in the year, in the reign of King Canute the Dane. Leg. Canut. c. 38. And Edward the Confessor appointed it to be held twelve times in a year. Leg. Edw. Conf. c. 35. See Terms.

SEA, Mare.] By statute 13 Ed. 3. c. 3, the Sea is to be open to all merchants. The main Sea, beneath the low water mark, and round England, is part of England; for there the Admiralty jurisdiction. 1 Inst. 260; 5 Rep. 207. The Seas which environ England are within the jurisdiction of the King of England. 1 Roll. Abr. 528. Ato the sovereignty of the Sea, see title Navy.

SEA-BANKS. See. Banks. By the statute 6 Geo. 2. c. 37. § 5, made perpetual by stat. 3 Geo. 2. c. 42. § 5, it is made felony without benefit of clergy, maliciously to cut down any river or Sea-bank, whereby lands may be overflowed. And by stat. 10 Geo. 2. c. 32, a penalty of 20l. is imposed on any person cutting up or removing any piles, onak, &c. used in securing Sea walls. And stat. 15 Geo. 2. c. 33, imposes penalties on persons cutting or pulling up star or bent on the sand banks on the north-west coast of England.

SEA, Sigillum.] Is taken either for wax impressed with a device, and attached to deeds, &c. or for the instrument with which the wax is impressed. In Law the former is the most usual sense. The first-feated charter we find extant in England, is that of King Edward the Confessor, upon his foundation of Westminster Abbey.

Scutelius, Warwicke, fol. 158, b. Yet we read of a Seal in the manuscript history of Offa, King of the Mercians. And that Seals were in use in the Saxons' time, see Taylor's History of Coaeelkind, fol. 73. It was usual in the time of Henry II. and before, to seal all grants with the sign of the Cross, made in gold, on the parchment. Monast. iii. fol. 7: Ordinans Vitialis, lib. 4. That most of the charters of the English Saxons Kings were thus signed, appears by Ingulphus, and in the Monkishon. But it was not so much used after the Conquest, Cowell. The Royal Seal was most frequently in green, to signify (as it has been quaintly exprest) rom inperfecto vigore perpetuam. Chants of arms on Seals were introduced about the year 1218. We read of a charter sealed with the royal tooth, called his young-tooth. Wang is the jaw. Cowell. See title Dieil. 11. 6; and see further as to the Great and Privy Seal, titles Treason; Grant of the King; Privy Seal, &c. As to Seals of Corporations, see that title.

Writs touching the Common Law must not go out under any of the petty Seals, 25 Ed. 1. ft. 5. c. 5. See Writs.

SEAL, LAWs. Laws relating to the seal; as the Laws of Olros, &c. See Olron Laws.

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

SEAL, MARKS; See title Beaco.

SEAMEN; See title Navy, particularly under Division II.

SEAMEN'S WAGES, Are one proper object of the Admiralty jurisdiction, even though the contract be made for them upon the land. 11 Vent. 146. Yet the Courts of Common Law have jurisdiction; and an action may be maintained for work and labour. See title Admiral and Admiralty.

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

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

SEA-REEVE, In wilis marinimis est quia marinimam Dominii jurisdicitionem curavit, diem legislati; et ejusdem marii (quod necesse est appellatur) Domino collegit, Spalin.

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

SECONDARY, Secondarius.] An officer who is second, or next to the chief officer; as the Secondaries to the Prothonotaries of the Courts of B. R. and C. B. The Secondary of the Remembrancer in the Exchequer; Secondary of the Comptor, &c. 2 Litt. Abr. 586. Secondary of the King's Bench, may have clerks. Stat. 2 Geo. 2. c. 23.

SECONDARY OF THE OFFICE OF PRIVY SEAL, Is taken notice of in the old stat. 1 Edw. 4. c. 1.

SECONDARY CONVEYANCES, Those which presuppose some other Conveyance, precedent; and only serve to confirm, alter, restrain, restore, or transfer the interest granted by such original Conveyance. See titles Conveyance; Deed IV.
SECOND DELIVERANCE, secunda deliberatione. Is a judicial writ that lies, after a nonuit of the plaintiff in replevin, and a return habendi of the cattle reprieved, adjudged to him that disclaim them; commanding the Sheriff to reprieve the same cattle again, upon security given by the plaintiff in the reprieve for the re-delivery of the same, if the disclaim is justified. It is a second writ of replevin. F. N. B. 67. See title Replevin.

SECOND MARRIAGE; See titles Bigamy; Polygamy.

SECONDS, To duellers. See title Hostility.

SECOND SURCHARGE, Writ of. If after an admission of coram non, upon a writ of an admission of a party, the plaintiff sues the common again, the plaintiff may have this writ of Second Surcharge, de secundis superacionibus, which is given by the statute Wefja. 21 Ed. 1. c. 8. See title Convos III.

SECRETARY, Secretarise, &c. A title given to him that is ab Epijtole & Scriptis Secretis; as to the Secretaries of State, &c. The Secretaries of State have an extraordinary trust which renders them very considerable in the eyes of the King, and of the Subject also; all secrets and petitions are for the most part lodged in their hands, to be represented to his Majesty, and to make dispatches thereupon, pursuant to his Majesty's directions. They are Privy Councilors, and a Council is seldom or never held without the presence of one of them; they wait by turns, and one of these Secretaries always attends the Court, and by the King's warrant, prepares all bills or letters for the King to sign, not being matter of Law. And depending on them is the office called the Paper Office, which contains all the public writings of State, negotiations, and dispatches, all matters of State and Council, &c. and they have the keeping of the King's seal, called the signet, because the King's private letters are signed with it.

There was but one Secretary of State in this kingdom, till about the end of the reign of King Hen. VIII. but then that great and weighty office was thought proper to be discharged by two persons, both of equal authority, and styled Principal Secretaries of State. The correspondence with all parts of Great Britain is managed by either of the Secretaries, without distinction; but in respect to foreign affairs, all nations which have intercourse of business with Great Britain, are divided into two provinces, the Southern and the Northern; of which the Southern is under the senior, and the Northern under the junior, Secretary, &c. There are now in fact several persons holding the offices of Principal Secretaries of State; for the Home Department; for Foreign Affairs; the Colonies, &c.

As to the power of Secretaries of State to commit, see this Dictionaire, titles: Comminut; JUSTICES BAD, &c. Blackstone states shortly, that they are allowed the power of commitment in order to bring offenders to trial; and cites 1 Leon. 70; 2 Leon. 175; Comb. 143; 5 Mod. 84.

SECUTITATEM INVENIENDI quad. see dict. ad partes externas sine Litigio Regis: An ancient writ lying for the King against any of his Subjects, to lay them from going out of this kingdom to foreign parts; the ground whereof is, that every man is bound to serve and defend the commonwealth, as the King shall think fit. F. N. B. 68. See Ne extat Regnum.

SECTA FACIENDA PERSIOM QM HABIT SIECIAE PARTIS; IS A writ to compel the heir, who hath the estate, part of the coheirs, to perform service for all the coparceners. Reg. Orig. fol. 177.

SECTA AD MOVENDUM, A writ lying for the King against any of his Subjects, who, in king's mill, &c. hath ground his corn at the mill of a certain person, and afterwards goeth to another mill with his corn, thereby withdrawing his suit to the former. And this writ lies especially for the Lord against his tenant, who holds of him to do suit at his mill. Reg. Orig. 175: F. N. B. 122. The count in this writ may be on the tenure of the land; or upon prescription, viz. That the tenant, and all those who hold those lands, have used to do their suit at the plaintiff's mill. &c. New Stat. 87. 2. A writ ad movendum, like allies of nuisance, and many other old suits are now much turned into actions of the court, to repair the party injured in damages. See 3 Com. c. 15. p. 235.

SECTA REGALIS, A suit by which all persons were bound twice in a year to attend the Sheriff's town. It was called Regalis, because the Sheriff's town was the King's lie, wherein the people were to be obliged by oath to bear true allegiance to the King, &c.

SECTA UNICA TANTUM FACIENDA PRO PLURIEMUS HEREDITATIBUS; A writ for an heir who is disclaimed by the Lord to do more suits than one, in respect of the land of divers heirs defended to him. Reg. Orig.

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

SECONDARY; See Secondary.

SECONVA SUPERONERATIONE PASTURJE; See Second Surcharge, Writ of.

SECGURITATEM INVENIENDI quod. see dict. ad partes externas sine Litigio Regis: An ancient writ lying for the King against any of his Subjects, to lay them from going out of this kingdom to foreign parts; the ground whereof is, that every man is bound to serve and defend the commonwealth, as the King shall think fit. F. N. B. 68. See Ne extat Regnum.

SECURITATIS PACIS, IS A writ that lies for one who is threatened with death or bodily harm by another, against him which so threatens; and is issued out of the Chancery directed to the Sheriff. &c. Reg. Orig. 88.

SECURITATIS PACIS, A plea for him that is charged with the death of another person, by alleging that he was
was driven unto what he did in his own defence; and the other so assaulting him that, if he had not done as he did, he must have been in danger of his own life; which danger ought to be so great, as that it appears to have been otherwise inevitable. Stainsh. P. C. lb. 4, c. 7.

See title Homicide II.

SEDENTIOUS CONVENTICLES, To the disturbance of the peace, &c. See titles Conventicles; Riots.

SEDENTIOUS MEETINGS and ASSEMBLIES; See title Riots.

SEDUCTION OF WOMEN CHILDREN; See title Marriage.

SEED-COD, from the Sax. sæd, feed, and cadde, a purée, or such like consistence. A bafset, or other vessel of wood, carried on one arm of the husbandman or fower of ground, to bear the feed or grain which he sows, and spreads abroad with the other hand. In Westmorland, a bolster or pillow is called a cod; and in other Northern parts a pin-cushion is termed a pin-cod.-Pro uno Seed-cod impo. 44. Parv. Antq. 349. Kemet's Gloss. SEEDER, A feedman, or one who sows the land. Blunt.

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

SEIGNOR IN GROSS, Stemeth to be one that is a Lord, but of no manor, and therefore can keep no Court. F. N. B. fol. 3. See Seignior.

SEIGNIORAGE, A royalty or prerogative of the King, whereby he claims an allowance of gold and silver brought in the mass, to be exchanged for coin. As Seigniorage, out of every pound weight of silver, the King had for his coin 6s. 8d. Upon every pound weight of silver, the Seigniorage answereth to the King, in the time of Edw. III., was eighteen pennyweights, which then amounted to a pound, of which he sometimes paid 8d., at others 6d. to the Matter: In the reign of King Hen. V. the King's Seigniorage of every pound of silver was 15d. &c. Stat. antiq. 9 Hen. 5. c. 1: Hale's Sibcr. Acc. p. 3.

SEIGNIORY, Dominium, from the French seigneurie, i.e. dominus, imperator, principatus.] A manor or lordship. Seignior de Sokensham: Kitchen, fol. 80. Seigniory in gross seems to be the title of him who is not Lord by means of any manor, but immediately in his own person as tenure in capite, whereby one holds of the King as of his crown, is Seigniory in gross. Kitchen, fol. 206. See Seignior.

SEISEN, Fr. jeifina. Lat. jeifina.] In the Common Law signifies possession. To jeifin is to take possession of a thing; and jeifin de fine is the first possession. Co. Lit. 152. There is a Seisen in deed or in fact, and a Seisen in Law; a Seisen in deed is when an actual possession is taken; and Seisen in Law is where lands descendent, and one hath not actually entered on them, &c. 1 Inst. 31. Seisen in Law is a right to lands and tenements, though the owner is by wrong dispossessed of them: And he who hath an hour's actual possession quietly taken, hath jeifin de droit et de clameur, whereof no man may dispossess him, but must be driven to his action. Park. 457, 458. A Seisen in Law is sufficient to avow upon; but, to the bringing an alia, actual Seisen is required, &c. 4 Rep. 9. Seisen of a superior service, is Seisen of all inferior services which are incident thereto. And Seisen of homage is a Seisen of all other services, because in the doing thereof the tenant takes upon himself to do all services. 4 Rep. 80: 1 Dane. Abr. 647. The Seisen of rent, or other annual services, is a sufficient Seisen of casual services. 4 Rep. 80. But Seisen of one annual service is not Seisen of another annual service; as if there be lord or tenant by fealty, ten shillings rent, and three days' work in the year; in this case Seisen of the rent is no Seisen of the work, nor is Seisen of the rent Seisen of the suit of Court, which is annual. 4 Rep. 9: 1 Danes. Abr. 647: 2 Ed. 507. The Seisen of the father is not sufficient for the heir; though if a fine be levied to one for life, the remainder to another in tail, and the tenant for life takes Seisen of the services, this will be a good Seisen for him in remainder; and the Seisen of a life for years is sufficient for him in reversion. 2 Hen. 6. 7: 45 Ed. 3. 20: 1 Danes. 646, 805. Where a man is seised of a reversion, depending upon an estate for life, the pleading of it is that he was seised of it at de fefta, leaving out the word dominus; but if it be a reversion in fee, expectant upon the determination of a lease for years, there he may plead that he was seised of it in domino de fefta de fefta, Dyer 184, 257: 1 Rep. 20, 27: 4 Rep. 62. Seisen is never to be alleged, but where it is traversable: and when a defendant allegeth a Seisen in fee in any one under whom he claims, the plaintiff cannot allege a Seisen in another, without traversing, confessing, or avoiding of the Seisen alleged by the defendant. Cro. El. 30: 1 Brew. 70. If a Seisen in fee is alleged, it shall be intended a lawful Seisen till the contrary appears. 4 Litt. 155. But the party is to shew what estate he is seised, &c. 3 Nelf. Abr. 215. See further, tit. Liberty of Seisen; Diffiitn; Estate, &c.

SEISINA HABENDA, quae Rex habuit Annam. Dixit et Vostrum. A writ for delivery of Seisina to the Lord of lands or tenements; after the King, in right of his prerogative, hath had the year, day, and waife, on a feignor, committed, &c. Reg. Orig. 165.

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

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

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

SELDAM, from the Sax. seald, a seat, or stool.] A shop, thred, or stall in a market. Scot. 9 R. 1. It is also made to signify a wood of fallows or willows; And Sir Edward Coke takes feldes for a fall-pit. Co. Lit. 4.
SELF

SELF-MURDER. Sax. self-bana.] Self-murder; See title Homicide III. 1.

SELF-DEFENCE; See title Homicide II.

SELF-MURDER; See title Homicide III. 3.

SELF-PRESERVATION; See titles Homicide I. 3; II.

SELECO. Lat. seliæ; the French selic; from the Latin selicium, a ridge of ground rising between two furrows, containing no certain quantity, but sometimes more and sometimes less: Therefore Crompton says, that a Selen of Land cannot be in demand, because it is a thing uncertain. Crompt. Jurid. 221.

SHEME. Sax. scheme, i.e. cause.] A horse-load or eight bushels of corn. Blount. A Scheme is twenty-four stone, each stone five pounds weight.

SEMEBLE, A pipe or half a ton of wine. Merch. Dict.

SEMINARIES, Papish; See Papish: Premonstratensian.

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

SENATOR, Lat.] A Member of Parliament. In the Laws of King Edward the Confessor, we are told, that the Britons called those Senators whom the Saxons afterwards termed aldermen, and borough-masters; though not for their age, but their wisdom; for some of them were young men, but very well skilful in the Laws. Kemble, King of the Mercians, granted a charter, which ran thus, viz., Confitebo conuenientis episcoporum et Senatorum gentis fuerunt finiti duces manet. See Staunf. P. C. cap. 18.

SENDAL, A kind of thin fine silk, mentioned in the Stat. 2 R. 2. 681.

SENeschal, seneschall, from the Germ. Sen, a house or place, and Schale, an officer.] A Steward; and signifies one who hath the dispensing of justice, in some particular cases: As the High Seneschal, or Steward of England; Seneschal de la Hotel de Ro, Steward of the King's Household; Seneschal, or Steward of Courts, &c. Co. Lit. 61: Cur. Jus. 102: Kitch. 83. See Steward.

SENeschal et Marshallo quo non tenent placita de libero tenemento; A writ directed to the Steward, and Marshal of England, inhibiting them to take cognizance of an action in their Court that concerns freehold. Reg. Orig. 185, 191.

SENEVIA, Widowhood. If a widow, having dower after the death of her husband shall marry, vel filiam vel filiam et senectud peperit, the half forfeit and lose her dower in what place ever, in Kent, Sussex, in Gwilliam. Plac. Triv. 17 E. 3.

SENEY-DAYS. Play-days, or times of pleasure and diversion. Regist. Escl. Ebor. ante 1562.

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

SEPARIA, sepuraria.] Several, or severed and divided from other grounds. Parch. Antig. 336.

SEPARATION, separation.] Is the living together of man and wife. See titles Baron and Baroness: Divorce.

SEPTENNIAL ELECTIONS; See Parliament:VIII.

SEPTUAGESIMA, The Third Sunday before Quadragesima Sunday in Lent. It is called Septuagesima, because it is about the seventeenth day before Easter; as Quadragesima and Quinqueagesima, are thus denominated from their being the one about fifty, and the other about fifty days before the same feast: which are all of them days appropriated by the church to acts of penance and mortification, preparatory to the devotion of Lent. From Septuagesima Sunday until the Octave after Easter, the solemnizing of marriage is forbidden by the Canon Law: and the Laws of King Canute ordained a vacancy from Judicature, from Septuagesima to Quinquagesima. See Tit. Wynn. I. 3 E. 1 c. 5.

SEPTUAGINT. The seventy interpreters of the Bible: who were in truth seventy-two, viz. for everyone of the twelve tribes. Lat. Dict.

SEPTUAGESIMA. An enclosure; so called, because it is encompassed with a hedge and a ditch, at least with a hedge; and it signifies any place paled in.

SEPULCHRE, sepulcrum.] The place where any body lies buried; but a monument is set up for the memorial of the deceased, though the corpse lie not there.

SEPULTURA, An offering made to the priest for the burial of a dead body. Domest. See Mortuary.

SEQUACIUS SUB SUO PARICULO; A writ that lies where a person is warranted to be, and the Sheriff is required to return the party that hath no where whereby he may escheat; then goes forth an alias and a pluries, and if he come not in the pluries, this writ shall issue. Old Stat. Br. 161.

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


SEQUELA MOLENDINI; Vide SECA et Molendini.

SEQUELA VILLANORUM. The tenure and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the Lord. In former times, when any Lord sold his villein, it was said dedicavit et materium munem cum tota sequela judi; which included all the villein's offprings. Parch. Antig. 216, 188.

SEQUENDUM; At PROSEQUENDUM. To follow a case; as where a guardian is admitted ad prosequendum for an infant, &c. 1 Vent. 74.

SEQUESTRER, sequturare.] A term used in the Civil and Ecclesiastical Law for renouncing; as when a widow comes into Court, and disclaims having anything to do, or to intermeddle with her husband's estate who is deceased, she is said to sequestrate. Now, more usually, to renounce. See title Executor.

SEQUESTRATION.

SEQUESTRATION. Signifies the separating or setting aside of any thing in controversy, from the possession of both the parties that contend for it; and it is two-fold, voluntary and necessary; voluntary, is that which is done by consent of each party; necessary, is that which the judge of his authority doth, whether the party will or not.

Fortesc. c. 50: Dyer 232, 256.

There is also a Sequestration, in the nature of a defect in title, in a person's finding out all the protections of contest for non-appearance in Chancery, upon a bill exhibited; so, where obedience is not yielded to a decree, the Court will grant a Sequestration of the lands of the party, &c.

A Sequestration is also a kind of execution for debts: especially in the case of a benefited clerk, of the profits of the benefice, to be paid over to him that hath the judg-
SEQUESTRATION.

Sequestrations were first introduced (according to the Commentaries) by Sir Nis. Bacon, Lord Keeper, in the reign of Queen Elizabeth; before which the Court found some difficulty in enforcing its powers and decrees. See 1 Fern. 421, 435. After an order for a Sequestration issued, the plaintiff's bill is to be taken pro confesso, and a decree to be made accordingly; so that this Sequestration does not seem to be in the nature of process to bring in the defendant, but only intended to enforce the performance of the decree. 3 Comm. 444.

I. In what Cause a Sequestration is to be awarded: by the Court of Chancery.

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

A Sequestration nisi is the first process against a Peer or Member of the House of Commons. 2 P. Wms. 383: 1 Ch. Ca. 61, 138. A Sequestration is also the first process against the minister servant of a Peer, within the words and meaning of the statute 12 & 13 W. 3, c. 3; for that otherwise such servant would have greater privilege than his Lord. 1 P. Wms. 555. If there be a Sequestration nisi against a Peer for want of an answer, and the Peer puts in an answer, that is insufficient; yet the order for a Sequestration will not be absolute, but a new Sequestration nisi. 2 P. Wms. 385. See this Dict. title Privilege III.

Notwithstanding the superintendent power formerly possessed by the Courts in this kingdom over those in Ireland, and what is said in some of our books, it seems to have always been the better opinion, that the Court of Chancery here could not award a Sequestration against lands in Ireland. 1 Fern. 76: 2 Ch. Ca. 189: 2 P. Wms. 281.

It was said, that such process had been awarded to the Governor of North Carolina; but herein it was doubted whether such Sequestration should not be directed by the King's Council, to which alone an appeal lies from the decrees in the Plantations. 2 P. Wms. 281.

Copyholds may be sequestrated, though not extendible at Common Law, or under the statute of Winst. 2, for Courts of Equity have potestatem extraordinam & absolutam; but it seems a doubt whether such a Sequestration can be revived against the heir of a copyholder, which arises from the difficulty of obliging the Lord to admit, and depriving the Lord of his fine, &c. upon the death of his tenant. 2 Ch. Ca. 46. Vide 1 Barn. C. 431.

A Sequestration out of Chancery is more effectual than an execution by fieri factum at Law, for a Sequestration may lie against the goods, though the party is in custody upon the attachment; whereas in Law, if a capias ad satisfaciendum is executed, there can be no fier. fa. fine. Capias in Lord Talbot's Time. 222.

Where the Sequestrators seize the real estate of the party, any tenant or other person who claims title to the estate, so sequestrated, either by mortgage, judgment, lease, or otherwise, who hath a title paramount to the Sequestration, shall not be obliged to bring a bill to contest such a title; but he shall be left to contest such a title in a summary way. He may move by his counsel, as of course, to be examined pro interesse fis, and in this case the plaintiff is to exhibit interrogatories, in order to examine him for a discovery of his title to the estate.
estate, and he must be examined upon such interrogatories accordingly; and the Master must state the matter to the Court; and the parties may enter into proof touching the title to the estate in question; and when the Master hath stated the whole matter, the Court proceeds to give judgment therein upon the report; and if it appears that the party who is examined pro infrajus hath a plain title to the estate, and is not affected with the Sequestration, then it is to be discharged as against him, with or without costs, as the Court shall determine upon the circumstances of the case, and so vice versa.

See Cons. 712: 1 P. Wms. 308.

The Sequestration binds the party of the first part only from the time of executing it and its being laid on by the Commissioners; for if that should be admitted, then the inferior officer would have ligandis & non agentis petisitatem. 1 Vern. 58.

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

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

Sequestrators on mesne process are accountable for all the profits, and can retain only so far as to satisfy for contempt. 1 Vern. 493.

If Sequestrators, having power to fell timber, dispose of goods or goods of the party, the officers and agents of the Court, are responsible, and not the plaintiff. 1 Vern. 105.

A Sequestration is in nature of a levant at Common Law, and the party sequestrating has neither jus in re, mel in re, the legal estate of the premises remaining in every respect as before. 1 P. Wms. 307.

Sequestrators being in possession of a great house in St. James's Square, and the party sequestrating had neither jus in re, mel in re, the legal estate of the premises remaining in every respect as before, 1 P. Wms. 307.

It was moved, that the irregularity of a Sequestration might be referred to the deputy, which was taken out against the defendant for not appearing, by reason of its being taken out sooner than by the course of the Court, it could, and yet the Sequestrators had taken the goods off the premises, and threatened to sell them; the Chief Baron said, that as to the carrying the goods off the premises, it was clear the Sequestrators could do that, because a Sequestration upon mesne process answers to a
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not so limited as to be restrained from pleading in any other Court, where the Judges call them brothers, and hear them with great respect; and of which one or more are styled the King's Serjeants, being commonly chosen out of the rest, in respect of their great learning, to plead for the King in all his causes, especially upon indictment for treason, &c. In other kingdoms the King's Serjeant is called Advocate Regius; and here in England, in the time of King Edward the Sixth, Serjeant Bunce wrote to me, that services and legacies, there being for some time none but himself, and in Ireland at this time there is only a King's Serjeant. Serjeants at Law are made by the King's writ, directed unto such as are called, commanding them to take upon them that degree by a certain day; and by the writ or patent of creation it appears, that the honour of Serjeant at Law is a late and dignity of great respect: In conferring these degrees, much ceremony was anciently used; and the Serjeants now make presents to the Judges, &c. of gold rings to a considerable value, &c. See Fennement, c. 50; 3 Cr. 15; Dyer 72; 2 Inst. 213, 214. As to their privilege of being imploined in C. B. &c. See Privilege.

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

SERJEANTS AT ARMS. Their office is to attend the person of the King; to arrest perons of condition offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, &c. There may not be above thirty Serjeants at Arms in the realm, who shall not oppress the people, on pain to lose their offices, and be fined. Stat. 13 Eliz. c. 2, 16. Two of these, by the King's allowance, do attend on the two Houses of Parliament; the office of the House in the Office of Commons is, the keeping of the doors, and the execution of such commands touching the apprehension and taking into custody of any offender, as that House shall assign him. Another of them attends on the Lord Chancellor in the Chancery; and one on the Lord Treasurer of England. Also one upon the Lord Mayor of London on extraordinary solemnities, &c. They are in the old books called Vizagatari, because they carried silver rods gilt with gold, as they now do maces, before the King. Compt. Jus. 9; Fleas, lib. 2, c. 38.

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

SERJEANTY.

And we read of Serjeants of Manors, of the Peace, &c.

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

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

Knight-Services proper, (see title Tenures III. 25) confided in attending the King in his wars. There were also some other species of knight-service, so called, though improperly, because the service or render was of a free and honourable nature, and equally certain as to the time of rendering as that of knight-service proper; and because they were attended with similar fruits and consequences. Such was the tenure by Grand Serjeanty, per magnum servitium; whereby the tenant was bound, instead of serving the King generally in his wars, to do some special honorary service to the King in person; as to carry his banners, his horn, or the like; or to be his butler, champion, or other officer, at his coronation. Lit. § 157. It was in most other respects like Knight-service, only he was not bound to pay aid or escheat; and when tenant by Knight-service paid 5l. for a relief on every Knight's fee, tenant by Grand Serjeanty, paid one year's value of his land; and this is either Grand Serjeanty, or Petit; and may also concern matters military, or services of honour in peace, as to be the King's butler, carver, &c. Petit Serjeanty, is where a man holds lands of the King, to furnish him yearly with some small thing towards his wars; and in effect payable as rent. Though all tenures are turned into socage by Stat. 12 Car. II. c. 24, yet the honorary services of Grand Serjeanty still remain, being therein excepted. Lit. § 153, 159: 1 Inst. 105, 108.

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

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

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

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

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

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

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

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

There is yet a fourth species of Servants, if they may be so called, being rather in a superior, a ministerial, capacity;
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capacity; such as Stewards, Factors, and Bailiffs; whom however the Law considers as Servants pro tempore, with regard to their acts as affecting their master’s or employer’s property. This leads to the consideration of the manner in which this relation, of service, affects either the master or servant. And, first, by hiring and service for a year, or apprenticeship under indentures, a person gains a settlement in that parish wherein he last served forty days. See title Pro. IV. — In the next place persons serving seven years as apprentices to any trade, have, by stat. 5 Eliz. c. 4, § 31, an exclusive right to exercise that trade in any part of England. This Law, with regard to the exclusive part of it, has by turns been looked upon as a hard Law, or as a beneficial one, according to the prevailing humour of the times; which has occasioned a great variety of reflections in the Courts of Law concerning it; and attempts have been frequently made for its repeal, though hitherto without success. At Common Law every man might use what trade he pleased; but this statute restrains that liberty to such as have served as apprentices: the adversaries to which provision was made that all restrictions which tend to introduce monopolies are pernicious to trade; the advocates for it allege, that unskilfulness in trades is equally detrimental to the public, as monopolies. This reason indeed only extends to such trades, in the exercise whereof skill is required; but another of their arguments goes much farther; viz. that apprenticeships are useful to the Commonwealth, by employing of youth, and learning them to be industrious; but that no one would be induced to undergo a seven years’ servitude, if others, though equally skilful, were allowed the same advantages without having undergone the same discipline; and in this there seems to be much reason. However, the regulations of the Courts have in general rather confined than extended the restriction. No trades are held to be within the statute, but such as were in being at the making of it: For, trading in a country village, apprenticeships are not requisite: And following the trade seven years without any effectual procreation (either as a master or a servant) is sufficient, without an actual apprenticeship. 1 Comm. 428. See title Apprentice III.

A master may by Law correct his apprentice for negligence or other misbehaviour, so it be done with moderation: Though if the master or master’s wife beats any other Servant of full age, it is good cause of departure; or at least of complaint to a Magistrate, in order to be discharged. But if any Servant, workman, or labourer assails his master or dame, he shall suffer one year’s imprisonment, and other open corporal punishment, not extending to life or limb. Stat. 5 Eliz. c. 4.

By service, all Servants and labourers, except apprentices, become entitled to wages: According to their agreement, if mental Servants; or, according to the appointment of the Sheriff or Sessions, if labourers or Servants in husbandry: for the statutes for regulation of wages, in strictness, seem to extend to such Servants only; and the reason given is, that it is impossible for any Magistrate to be a Judge of the employment of mental Servants, or of course to fix their wages. But it is the practice of Justices in disputed cases to assess the wages of all Servants; a practice which probably may be supported under stat. 20 Geo. 2. c. 19. See 1 Comm. 428, &c. and ante.

-Next as to frauds or robberies committed by Servants on their masters.

Where a servant damages goods of his master, action lies against him; and being employed to sell goods in his master’s shop, if the servant carries away and converts them to his own use, action of trepas may be brought by the master against the servant; for the servant cannot meddle with them in any other manner than to sell them. 5 Rep. 14: 1 Leon. 88: Moz. 244.

But if a servant be robbed, without his default, &c. he shall be excused, and allowed it in his account. 1 Inf. 9.

Servants being of the age of 18, and not apprentices, going or making away, with embezzling or purloining any of their master’s goods, to the value of 40s. are guilty of felony, by the statute 21 Hen. 8. c. 7.

By the statute 27 H. 8. c. 17, Clergy was taken away in this case, if the indenture was laid specially upon the statute 21 H. 8. c. 7; and pursuant to the same, and by the statute 28 H. 8. c. 2, this suit. of 21 H. 8. c. 7, was made perpetual; but by the statute 1 E. 6. c. 12, these acts were both repealed: But again, by the statute 5 Eliz. c. 10, this statute 21 H. 8. c. 7, was re-enacted and revived; but it did not revive the statute 27 H. 8. c. 7, for taking away clergy. The statute 12 Ann. 3. § 1. c. 7, however, takes away the benefit of clergy from perions dealing in a dwelling-house or out-house to the value of 40s. unless committed against their masters by apprentices under the age of 15. See title Larceny II. 1. and 1 Hawk. P. C. c. 33. § 16.

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

Therefore a receiver, who having received his master’s rent, runs away with them, or a Servant, who being intrusted to sell goods, or receive money due on a bond, sells the goods, &c. and departs with the money, is not within the statute. A Servant who receives his master’s goods from another Servant to keep for the master, is as much guilty as if he had received them from the master’s own hands; because such delivery is looked upon as a delivery by the master. Dyer 5. p. 23: 3 Inf. 105: 1 Hawk. P. C. c. 33. § 13.

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

By stat. 33 H. 6. c. 1, the Servants of persons deceased, accused of embezzling their master’s goods, may by writ out of Chancery, (inewed by the advice of the Chief Justices)
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2. A proclamation made thereupon, be summoned to appear personally in the Court of K. B. to answer their master's executors in any civil suit for such goods, and shall on default of appearance be attainted of felony. 4 Comm. 230.

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

And, first, the master may maintain, that is, abet and suffer, his servant in any action at Law against a stranger: whereas, in general, it is an offence against public justice to encourage suits and animosities, by helping to bear the expense of them; and is called in Law maintaining a cause against the plaintiff. S. R. P. 115. A master may also bring an action against any man for beating, confining, or disabling his servant: but in such case he must affirm, as a special reason for so doing, his own damage by the loss of his service; and this loss must be proved upon the trial. 9 R. P. 115.

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

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

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

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

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

But there are many cases, where Servants may be retained for a longer or shorter term than a year, not within the above statute, in which cases, enticing away or retaining after notice of such Servants, will subject the offender to an action. Dict.

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

As for those things which a servant may do on behalf of his master, they seem all to proceed upon this principle, that the master is answerable for the act of his servant, if done by his command, either expressly given or implied; nam qui facit per alium, facit per se. 4 I. T. 100. Therefore, if the servant commit a trespass by the command or encouragement of his master, the master shall be guilty of it, though the servant is not thereby excused, for he is only to obey his master in matters that are honest and lawful. If an innkeeper's servants rob his guests, the master is bound to restitution; for as there is a confidence reposed in him, that he will take care to provide honest Servants, his negligence is a kind of implied consent to the robbery; nam qui son prohibet, cum problematis, jubeat. See title Inn. So likewise, if the drawer at a tavern tells a man bad wine, whereby his health is injured, he may bring an action against the master; for although the master did not expressly order the servant to tell it to that person in particular, yet his permitting him to draw and sell it at all, is impliedly a general command. 1 Comm. 430.

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

If a man has a Servant known to be such, and he sends him to fairs and markets to buy or sell, his master shall be charged, if the thing come to his use; though if the Servant makes a contract in his master's name, the contract will not be binding unless it were by the master's command or affent; and where a Servant borrows money in his master's name, without order, that does not bind the master. Dict. & Stu. dial. 2. c. 42. A Servant buys things in his own name, the master shall not be charged, except the things bought come to his use, and he have notice of it. Kitch. 371.

A master
A master used to give his Servant money every Saturday, to defray the charges of the foregoing week, and the Servant kept the money; see Hall's Ch. J. the master is here chargeable; for the master at his peril ought to take care what Servant he employs; and it is more reasonable that he should suffer for the cheats of his Servants, than strangers and tradesmen who do not employ them. 3 Sav. 234. Where a Servant usually buys goods for his master upon tick, and takes up things in his master's name, but for his own use, and buys the goods upon tick, yet the master is answerable, if the goods come to his use; otherwise he is not. Also a note under the hand of an apprentice shall bind his master, where he is allowed to deliver out notes, though the money is never applied to the master's use; but if he be not allowed or accustomed to deliver out notes, his note shall not bind the master, & the money be not applied to the use of the master. 3 Sav. 234, 235.

The act of a Servant shall not bind the master, unless he acts by authority of his master; and therefore if a master sends his Servant to receive money, and the Servant instead of money takes a bill, and the master as soon as told thereof discovers, he is not bound by this payment: But acquiescence, or any small matter, will be proof of his master's consent, and that will make the act of the Servant the act of his master. 3 Sav. 442. For what is within the compass of a Servant's business, the matter shall be generally chargeable; and also have advantage of the same against others. Noy's Case. An attempt of the Servant, by order and appointment of the master, shall be as his own, and chargeable to his master. If my bailiff buy cattle to flock my ground, I shall be chargeable in deed for the money; and if he fell corn for me, I may have action in my own name against the buyer. Bros. 24. Gid. 362. If one owe me money, and I lend my Servant for it, and he pay it to him, this is a good payment and discharge, though the Servant do not bring the same to me; but if I lend him not, it is otherwise. Dray. & Sted. 158.

If a Servant is cozened of his master's money, the master may have action on the case against the person that cozened him. 9 Rep. 113. 10 Rep. 150. 1 Roll. Abr. 98.

If a Servant, lastly, by his negligence, does any damage to a stranger, the master shall answer for his negligence; if a smith's Servant lames a horse while he is shoeing him, an action lies against the master, and not against the Servant. But in these cases the damage must be done while he is actually employed in the master's service, otherwise the Servant shall answer for his own misbehaviour. Upon this principle, the Common Law is, if a Servant keep his master's fire negligently, so that his neighbour's house was burned down thereby, an action lies against the master, because this negligence happened in his service; otherwise if the Servant, going along the street with a torch, by negligence set fire to a house; for there he is not in his master's immediate service, and must himself answer the damage personally. But now the Common Law is, in the former case, altered by 6 Ann. c. 31, which ordains that no action shall be maintained against any, in whose house or chamber any fire shall accidentally begin; for their own loss is sufficient punishment for their own or their Servant's carelessness. See title Waste. But if such fire happens through negligence of any Servant, (whose loss is commonly very little,) such Servant shall forfeit 100l. to be distributed among the sufferers; and, in default of payment, shall be committed to some workhouse, and there kept to hard labour for eighteen months. See 14 Geo. 5. c. 78; and this Dictionary, title Fire. A master is also chargeable, if any of his family layeth or causeth any thing out of his house into the street or common highway, to the damage of any individual, or the common nuisance of his Majesty's liege people; for the master hath the superintendence and charge of all his household. 1 Comm. 431. See title Mischief.

A master sends his Servant with deceitful wares to market, and orders him to sell them, but says not to whom; if he sells them, no action will lie against the master: Though he had bid the Servant sell them to such a man in particular, and he had done so, the master would be chargeable in an action on the case. Ed. 4. Ket's 125. Where a carrier's Servant loses things delivered to him, the master must answer it, and action lies against him; and if goods be undertaken to be carried safely for hire, but by negligence are spoiled, it has been held, that whatever employs another, is answerable for him, and undertakes for his care to all that makes use of him. 5 Sav. 442. See title Carrier. If a surgeon undertakes the cure of a person, and, byarding medicines by his Servant, the wound is hurt and made worse, the patient shall have action against the master, and not against the Servant. 18 Hen. 8.

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

The Law which obliges masters to answer for the negligence and misconduct of their Servants, though oftentimes apparently severe on an innocent person, is founded upon principles of public policy; in order to induce masters to be careful in the choice of their Servants, upon whom both their own security and that of others so greatly depends. And to prevent masters from being imposed upon in the characters of their Servants, it is enacted by 14 Geo. 3. c. 56, that if any person shall give a false character of a Servant, or a false account of his former service; or if any Servant shall give such false account, or shall bring a false character, or shall alter a certificate of a character, he shall, upon conviction before a justice of the peace, forfeit 20l. with ico. costs. The informer is a competent wit.
SERVA

of their service, and the reference to the public, and there can be no doubt but it was founded in strict principles of law and justice. 1 Comm. 432, in n.

See Stat. 15 Geo. 2. c. 17, § 12, as to breach of trust by Officers and Servants employed by the Bank of England: And Stat. 5 Geo. 3. c. 25, § 17; 7 Geo. 3. c. 50, by Officers of the Post Office, which are made felony without clergy. See also title Manufacturers; and in particular, as to the whole of the subject, Burn's Justice, title Servants, at length.

SERVUS, Bondmen, or servile tenants. Our Northern Servi had always a much easier condition than the Roman slaves. Servus non in usum, non rem descripti, potest familiaris ministerius sustiner. Suum quisque fecundus, jus penitut regitr. 

Finiti solum domini, at pecoris, aut peculis, colonos, injungit, et servii haec tenemur. — Tacitus, German. 1. 2. 

Which plainly describes the condition of our Saxon and Norman servants, natives, and villains, whose servitude did more respect their tenure, than their persons. No author has fixed the distinction between Servus and Villani; though undoubtedly their servile state was different, for they are all along in the Domesday Book distinguished from each other. So in Barter there were — Quique Servi, et scilicet ali Villani, &c. 

It is supposed the Servi were those, whom our Lawyers have since called paravillani, and villani in grifo, who, without any determined tenure of land, were at the arbitrary pleasure of the Lord appointed to such servile works, and received their wages or maintenance at discretion of the Lord. The other were of a superior degree, and were called villani, because they were called & globi descripti, i.e. held some cottages and lands, for which they were burdened with such floven servile officers, and were conveyed as appertaining to the manor or estate to which they belonged. See Kennett's Glossary.

The name and quality of their bondage do often occur in Domesday register: And their condition, no doubt, was worse than that of the bordarii or cottarii, who performed likewise some servile offices for their Lord, and yet as to their persons and goods were not obnoxious to servitude, as the proper Servi were. There were of four sorts: 1. Such as hold themselves for a livelihood: 2. Debtors that were to be held, for being incapable to pay their debts: 3. Captives in war, retained and employed as servile slaves: 4. Nativi, such as were born tenants, and by such descent belonged to the soil property of the Lord — All these had their parions, their children, and their goods, at the disposal of their Lord, incapable of making any will, or giving away any thing. Conwill. There are also said to be servio seminla, those which we now call covenant servants. Ligg. Aedij. c. 34. See titles Villain; Slave.

SERVICE, Servici. That duty which the tenant, by reason of his fee or estate, owed unto the Lord.
叫做servitus and servorum, because it was done for,
and extra servitium quod fit domino capitali: And we find.
several grants of liberties with the appurtenances, servos

Servitium Intrinsecus. That Service which
was due to the chief Lord alone from his tenants within his
manor. Bracton, lib. 2: Plata, lib. 3.

Servitium Liberum, A Service to be done by
feudatory tenants, who were called libri homines, and
distinguished from vassals, as was their service; for they
were not bound to any of the bate services of ploughing
the Lord's land, &c. but were to find a man and a horse,
or go with the Lord into the army, or to attend his Court, &c.
and sometimes it was called servitium liberum armorum; as in an old rental of the manor of
South Malling in Essex, mentioned by Somner in his treatise of
Gavelkind, p. 56. See title Tenure.

Servitium Regale, Royal Service, or the preroga-
tives that within a royal manor belonged to the Lord of
it; which were generally reckoned to be the follow-
ing; viz. power of judicature in matters of property;
and of life and death in felonies and murders; right to
waifs and deforis; mining of money; ale of bread and
beer; and weights and measures: All which privi-
leges, it is said, were annexed to some manors by grants
from the King. Parch. Antiq. 60. See title Manor.

Servitium Testamentales, Covenant Servants;
mentioned in the Laws of King Athelstan, c. 34. See title
Servant.

Servitius Acquitandis, A writ judicial
for a man discharged for services to one, when he owes
and performs them to another, for the acquitall of such
services. Reg. Judic. 27.

Servitior, servitor. A serving man; particularly
applied to Scolar in the colleges of the Universitites,
who are upon the foundation.

Servitors of Bills, Such servants or messengers
of the Marshal of the King's Bench, as were sent abroad
with bills or writs to summon men to that Court. Stat.
2 H. 4 c. 27.

Sesseur, to signify the appraising or rating

Session, Sess. A Sitting of Juries in Court
upon their commission; as the Sessions of Oyer and
Terminus, &c.

Session of Parliament, Sess. Parl. The
Sitting of the Parliament; and the Session of Par-
liament continues till it be prorogued or dissolved,
and breaks not off by adjournment. 4 Stat. 27. See title
Parliament.

c. 26, a Session is to be held in Wales, twice in every
year, in each county, by Judges appointed by the King, to be
called the Great Sessions of Wales, in which all pleas of
real and personal actions shall be holden, with the same
form of process, and in as ample a manner, as in the
Court of Common Pleas at Westminster: And writs of
error shall lie from judgments therein (it being a Court
of Record) to the Court of King's Bench at Westminster.
4 Comm. 77. See title Wales.

Session of Gaol Delivery. A Session held for
delivering a Gaol of the prisoners therein being. See
titles Justices: Gaol-Delivery.
S E S S I O N S  O F  T H E  P E A C E.

county, by Stat. 8 & 9 W. 3. c. 50. In both corporations and counties at large, there is sometimes kept a special or petty Session, by a few Justices, for dispatching smaller businesses in the neighborhood between the times of the General Sessions, as for licensing alehouses, passing the accounts of parish officers, and the like.

As to the jurisdiction of the Sessions, in points relative to the Poor-laws, the following summary of decisions is taken from Conyngham's edition of Brett's Poor Laws: For its connection with the subject, see this Dict. title Poor; and for further information, Barnet's Justice, and Conyngham, as above referred to.

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

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

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

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

By Stat. 5 Geo. 2. c. 19, "No such Certiorari shall be allowed unless the party enter into a recognizance of 50l. with condition to prosecute the same at his own costs and charges, with effect and without delay; and to pay the party, in whole favour the judgment or order was made, within a month after the same shall be confirmed, his full costs: and if he shall not enter into such recognizance, he shall not perform the condition, the Justice may proceed, and make such further order for the benefit of the party for whom judgment shall be given, as if no Certiorari had been granted. And if the order shall be confirmed by the Court, the person entitled to the costs, for the recovery thereof, within ten days after demand made, upon oath of such demand, and refusal of payment, shall have an attachment granted for the contempt; and the recognizance not to be discharged till the costs are paid, and the order complied with."
SET-OFF.

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

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

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

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

SETTLEMENT OF POOR. See title Poor IV.

c. 2, is so called; whereby the crown was limited to his
present Majesty’s illusrious house. See title King 1.

SEVEN-OAKE. Wool-key, how vested in Truftees
for the King, subjected to an agreement concerning the
free-school in Seven-oake. Stat. 8 Geo. 1. c. 31.

SEVERAL ACTION; See title Action.

SEVERAL COVANT, A Covante by two or more
everally; i.e. separately. See title Covenant.

SEVERAL FISHERY; See Fishery, Right of.

SEVERAL INHERITANCE, An Inheritance con-
veyed, so as to defend or come to two persons severally
by moieties, &c. See titles Esate; Limitation; Inhe-
ritances.

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

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

SEVERALTY, Esates in. He that holds lands or
tenements in Severalty, or is sole tenant thereof; i.e.
that holds them in his own right only, without any
other person being joined or connected with him in point
of interest, during his ellate therein. 2 Comm. c. 12.
P. 179.

SEVERANCE. The separating or severing of two
or more, joined in one writ or action. There is a Se-
verance of the tenants in an affize, when one of two dif-
fees appear upon the writ, and not the other. Book
Intr. 81. A Severance in delit, where two executors,
&c. are plaintiffs, and one refeth to act or prosecte.
Ibid. 250. Severance in quare impedit; in attains, &c.
5 Rep. 97. And it lies in real, as well as personal actions;
and on writs of error. F. N. B. 78: 10 Rep. 135. In
writ of error, if three defendants in the action bring
eror, and one releaces the errors, he may be dismissed
and severed, and then the other two shall proceed to re-
verse the judgment. 6 Rep. 26. And if in error where
there are several plaintiffs, one only appears and affirms
errors; this is not good, without summoning and se-
vering the rest. Cro. Eliz. 893.

It has been held, that Summons and Severance lies in
partition; yet he who was severed shall have his part:
For partition must be made of the whole. 1 Venk Cent.
211. And in case of joint-tenants of lands, by Se-
verance the protection of the suit is sever’d, but not
the jointure; for where one alone recovers afterwards,
the other may enter into the moiety recovered. Ibid. 40.
Summons and Severance is usually before appearance;
as nonuit is after appearance. 10 Rep. 134. But, ac-

SEWER.

or defendant on a writ of Summons and Severance,
fixed out against him by another, does not come in upon
it; judgment shall be had ad profigandum solun; and
this hath been done in R. B. by giving a rule to appear and
come in. 2 Hil. Abr. 139. See Summons and Severance.

SEVERANCE OF CORN. The cutting and carrying
it from off the ground; and sometimes the setting out
the tiches from the rest of the corn, is called Severance.
2 Gren. 352. See title Tithes. Where executors of ten-
ants for life, &c. dying before Severance, shall have
corn grown, see Emblements.

SEVERANCE OF JOINT-TENANCY; See title Joint-
tenants.

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

SEWARD, (rather Sea-ward, A Saxon word for
him who guards the sea-coasts; it signifies Watcher.
SEWER, Sewers) A fresh water trench, or little
river encompassed with banks on both sides, to carry the
water into the sea, and thereby preserve the lands against
inundations, &c. The Kings of England used to grant
Commissions of Sewers long before any Statute was en-
cated in Parliament for the purpose: and during the
reigns of King Henry VI., Ed. IV., and Hen. VII., se-
veral Statutes were made for appointing Commissions of
Sewers in all parts of the realm where needful; some to
endure ten years, some fifteen years, and others five
years, &c. with certain powers to the Commissioners: which
Commissions, by Stat. 23 Hen. 8. c. 5, are to be
brought by the Lord Chancellor, Lord Treasurer, and
the two Chief Justices, or any three of them, whereof
the Lord Chancellor to be one; and are to continue ten
years, unless repealed by a new Commission: And by
this Law, the Commissioners’ oath is appointed: they
are to be qualified as to esates, by having lands, ten-
ements, or hereditaments, in fee or for life, worth forty
marks per annum, besides reprises; (except they are re-
cipient in and free of a corporation; and have moveables
worth 100l.) and if they execute the commission, not
being thus qualified, or before twom, they incur a for-
tune of 40l. Commissioners that may lawfully act,
have an allowance for their pains 4s. per Diem, and their
clerks 2s. out of the taxes to be laid and levied.

By the said Stat. 23 H. 8. c. 5, the Commissioners of
Sewers had power to make and ordain Laws, but they
were not to continue in force longer than their com-
mission. But by a subsequent Statute, all Laws, and or-
dinances of the Commissioners, are to remain in force
till repealed, notwithstanding the determination of their
commission; and Clerks of Commissioners of Sewers are
to erect fines and penalties imposed by the Commission-
iers yearly into the Exchequer. Stat. 13 Eliz. c. 9.

The business of the Commissioners of Sewers is to re-
pair seas, banks and walls, survey rivers, public streams,
ditches, &c. and make orders for that purpose. They
have authority, grounded on the Statutes, to require of all
authorities, and of persons committed by the sheriff of
rivers, erecting mills, not repairing of banks and bridges,
&c. and to tax and assess all whom it may concern, for
the amend ing of defaults, which tend to the obstruction
or hindrance of the free passage of the water through its
ancient courses; and they may arrest carts and horses,
and take trees, paying a reasonable price for them, for
repairs;
SEWER.

The Court of Commissioners of Sewers is stated, by Blackstone, among those whose jurisdiction is private and special: Their jurisdiction being confined to such county or particular district, as the Commission expressly names. The Commissioners are a Court of Record, and may fine and imprison for contempt. See 5. Ed. 2. 75. And in the execution of their duty may proceed by a jury, (who may amerce for neglects,) or upon their own view; and may take order for the removal of any annoyances, or the safeguard and conservation of the Sewers within their commission, either according to the laws and customs of RomneyMarsh; (see that title;) or otherwise at their own discretion; but they may not imprison persons for disobedience to their orders: Nor can they interfere where there is not a public prejudice; nor can they make a new river. See 2. Ed. 2. 6. 5.

Upon the statute 23 Hen. 8. c. 5, the Commissioners decreed, that a new river should be made out of another large river, through the main land for seven miles, unto another part of the old river, and for that purpose they laid a tax of a sum in gross upon several towns: As judged that the Commissioners have no power to make a new river, or any new invention to carry water, &c. for such things are to be done in Parliament; but they may order an old bank to be new made, or alter a Sewer upon any inevitable necessity. The tax of a sum in gross is not warranted by their commission, they being to tax every owner or possessor of the lands, according to the quality of their lands, rents, and number of acres, and their respective portions and profits, whether of pasture, fishing, &c. 10 Rep. 141.

The commissioners may assess such rates or fees upon the owners of lands within their district, as they shall judge necessary: And if any person refuses to pay them, the Commissioners may levy the same by distress of his goods and chattels: or if they may, by the Statute 23 H. 8. c. 5, sell his freehold lands; and by Stat. 7 Ann. c. 10, his copyhold also, to pay such rates and assessments.

The Commissioners are to tax all equally, who are in danger to receive any damage by the waters, and not only those whose lands are next adjoining; because the range of the waters may be so great, that the land contiguous may not be of the value to make the banks; and therefore the statutes will have all that are in danger to be contributors. 5 Rep. 100.

There are several cases and considerations for persons which persons may be obliged to repair and maintain Sewers; as frontages were bound to the repairs of the walls and banks, &c. by reason of frontage. 37 Lib. Alf. pl. 10. The being owner of a bank, wall, or other defence, is a sufficient inducement to impose the charge of the repairs thereof upon such owner. 1 Hen. 7. —Preemption and cordon are much of the same nature, and the Law takes notice of them in this case; but preemption doth not bind a man to the repairs, except he be requisite tenant. 21 Ed. 4. 38; 17 Hen. 7. —By tenure of land, a periton may be bound to repair a wall, bank, or defence mentioned in the Statute of Sewers. 12 H. 4. —A man may bind himself and his heirs by covenant expressly to repair a bank, wall, or sewer, and be good; yet this shall not bind the heir after his death, where facts are not left from the ancestor, who entered into the covenant. Callis's Reading on Sewers.

The use of defences may lie a man to the repairation thereof: if one and his ancestors have had the use of a river by falling up and down the same, or have used a ferry on or over it, &c. —If no person or grounds can be known, who ought to make repairs by tenure, prescription, custom, or otherwise, then the Commissioners are to tax the level. See 2. Ed. 2. 67, 68.

The decrees of Commissioners of Sewers are to be certified into Chancery: Their conduct is under the control of the Court of King's Bench, which will prevent or punish any illegal or arbitrary proceedings. See 5. Ed. 3. And yet in the reign of King Jac. I. (8th Nov. 1616,) the Privy Council took upon them to order that no action or complaint should be prosecuted against the Commissioners, unless before that Board: and committed several to prison who had brought such actions at Common Law, till they should release the same; and one of the reasons for discharging those proceedings at Law, was for countenancing those proceedings at Law. See 3 Comm. 55, 74. But now it is clearly established that this (like other inferior jurisdictions) is subject to the denominational coercion of the Court of King's Bench. See 66. 67, 151. 146.

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

The Court commonly hears counsel on both sides, where orders of Commissioners of Sewers are removed by certiorari, before such orders are filed; for, if good, the Court will grant a proceeding, which cannot be done after they are filed: But they will file them in any case, where there is no danger likely to ensue. See 1 Salt. 145. —If Commissioners of Sewers proceed after a certiorari delivered out of B. R. attachment will follow against them, and they may be fined. 3 Nott. 14, 21. An order of Sewers was made for levying of 6s. per acre on thirteen hundred and twelve acres, to be paid to the clerk, to be applied towards defraying of charges in and about the execution of the commissioners; and held to be good; the said does not require it should be on the occupiers; and there is an express power to allow charges. See 8 Str. 1127; 10 Co. 139.

Orders of Sewers being removed by certiorari, the Court would not file the orders till they had heard the objections debated, so as to have it in their power to fend the orders back again. See 2 Str. 125. —The Court held, that a certiorari to bring upon order made by the Commissioners, for the removal of their own clerk, was of common right, and not discretionary, as in the case of other orders, where great inconvenience may follow by inauditions in the mean time. See 1 Str. 609.

The fea, creeks, and bays, on the coasts, are all within the States of Sewers, in point of extent; but they and the shores, and the re-inquantified grounds, are out of the commission of Sewers, to be determined by a
but ports and havens, as well as the walls and banks of waters, are within the commisson of Sewers; and the shore and grounds left by the sea, when they are put in garnage and made profitable, are then within the power of the commission of Sewers: And though before, the ground left by the sea is not, as to defence, within the commision of Sewers; yet a wall or bank may be thereon raised, for the fucour of the country, although not for any private commodity: the commision of Sewers being now, as at the general good. Callis 4. 39. The fect. 1. Stat. 1. cap. 14. ordains, that all ditches, banks, bridges, streams, and watercourses, within two miles of London, falling into the Thames, shall be subject to a commision of Sewers: And the Lord Mayor, &c. is to appoint persons who have power of Commissioners of Sewers.

Breaking down sea-banks, whereby lands shall be damaged, is felony, by Stat. 6 Geo. 2. c. 37. And persons removing piles, &c. used to prevent inundations of rivers, shall forfeit 20l. or be sent to the houfe of correction for six months. Stat. 10 Geo. 2. c. 32. See title Mischief, Malicious.

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

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

SEXTARY. Sextarius ] Was an ancient measure, containing about our pint and a half. The town of Lewes, among other things, to the King yearly, twenty-five sextaries, of honest, as we read in Domesday. See Mon. Angl. ii. 849. b. and i. 136. b. i. in which latter place it seems to have been used for a much greater quantity. A Sextary of ale contained sixteen Lagenas. Cowell. See title Talfer.

SEXTERY LANDS, Lands given to a church or religious house, for maintenance of the Sexton or Sacristan. Cowell.

SEXTONS. Parish Clerks and Sextons are regarded by the Common Law, as persons who have freeholds in their offices; and therefore, though they may be punished, yet they cannot be deprived by ecclesiastical censure. 2 Rol. Abr. 233. 1 Comm. c. 11. See titles Office; Maudamus.

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


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

SHARNBURN in Norfolk. Pleas held at, temp. Wills i. for the purpose of confecrating the elettes of luch as op- pofed that Conqueror. See Spelm. Gloss in v. Drenge; where it is mentioned as quidam libellus of the family of Sharnburne in Norfolk. See Wrighi, Tenures 623. who also mentions pleas held at Pinudden, for the same pur- pose.—Hume says, There is a paper or record of the family of Sharnburne, which pretends that that family, which was Saxon, was reformed upon, proving their inno-
SHERIFF I. II.

II. It is provided by several acts of Parliament, that no man shall be Sheriff in any county, except he have sufficient lands within the same county where he shall be Sheriff, whereof to answer the King and his people, in case that any person shall complain against them; and that none that is bounded or bailiff to a great lord shall be made Sheriff. St. 9 Ed. 2. 2 Ed. 3. c. 4. 9 Ed. 3. c. 4. 15 & 14 C. 2. c. 1. § 7.

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

1 Comm. c. 9. p. 316, n.

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

It is held that the King hath an interest in every Subject, and a right to his service; and no man can be exempt from the office of Sheriff, but by Act of Parliament, or letters-patent. Sav. 43: 2 Co. 46.

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

2 Mod. 397.

Though, in the above case, it was admitted that the Subject was bound to serve the King in such capacity as he is in the time of the service commanded, yet it was insisted upon, that he was not obliged to qualify himself to serve in every capacity; and that therefore a prisoner for debt is not bound nor compellable to be Sheriff, no more than a person is bound to purchase lands to qualify himself to be either a Coroner or Justice of the peace: And it was likewise said that, by statute, every recusant is disabled; he may conform, but he is not bound to; for if he submits to the penalty, it is as much as is required by Law. 2 Mod. 301. And it is now settled that Diffenters are not compellable to serve the office of Sheriff.
SHERIFF. II. III.

The High Sheriff hath his authority given him by two patents; by the one the King commits to him the custody of the county; by the other the King commands all other his Subjects within that county to be aiding and assisting to him in all things belonging to his office. 

III. The High Sheriff hath his authority given him by two patents; by the one the King commits to him the custody of the county; by the other the King commands all other his Subjects within that county to be aiding and assisting to him in all things belonging to his office.

The Earl of Leven is hereditary Sheriff of Westmorland, which office may descend to and be executed by a female, for Anne Countess of Pembroke had the office, and executed it in person; and, at the Assizes at Appleby, late with the Judges on the Bench. 

The election of the Sheriffs of London and Middlesex was granted to the citizens of London, in consideration of their paying 300l. a-year to the King's Exchequer.

The reason of these popular elections is assigned in flat. 28 Ed. 1. c. 15. "That the Commons might choose such as would not be a burthen to them." And herein appears plainly a strong trace of the democratic part of our constitution, in which form of government it is an indispensable requisite, that the people should choose their own Magistrates. This election was in all probability not absolutely vested in the Commons, but required the royal approbation. For, in the Gothic constitution, the judges of the County Courts (which office is executed by our Sheriffs) were elected by the people, but confirmed by the King; and the form of their election was thus managed: The people, or in our territories chose twelve electors, and they nominated three persons, ex quaibus rex unum confirmatam. But with us in England these popular elections, growing tumultuous, were put an end to by the flat. 9 Edw. 2. c. 2; which enacted, that the Sheriffs should from thenceforth be appointed by the Chancellor, Treasurer, and the Judges; as being persons in whom the same trust might with confidence be reposed. By flat. 14 Edw. 3. c. 7: 23 Hen. 6. c. 8, the Chancellor, Treasurer, President of the King's Council, Chief Justices, and Chief Baron, are to make this election; and that on the Morrow of All Souls in the Exchequer. And the King's letters patent, appointing the new Sheriff, used commonly to bear date the third day of November, Stat. 11 Edw. 4. c. 1. The statute of Cambridge, 12 Ric. 2. c. 2, ordains that the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls, the Justices of the one Bench and the other, Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of the peace, Sheriffs, and other officers of the King, shall be sworn to act indifferentely, and to appoint no man that shall either privately or openly be put in office, but such only as they shall judge to be the best and most skilful. And the custom now is (and has been at least ever since the time of Fortunatus, who was Chief Justice and Chancellor to Henry the Sixth) that all the Judges, together with the other great officers and Privy Counsellors, meet in the Exchequer on the Morrow of All Souls, yeastly, (which day is now altered to the Morrow of St. Martin) by the said Act for abbreviating Michaelmas term.) and then and there the Judges propose three persons, to be reported (if approved of) to the King, who afterwards appoints one of them to be Sheriff. See 1 Comm. c. 9. p. 340. 341: Fort. de L. L. c. 24.

The following is the present mode of nominating Sheriffs in the Exchequer, on the Morrow of St. Martin. The Chancellor, Chancellor of the Exchequer, the Judges and several of the Privy Council assemble, and an officer of the Court administers an oath to them, in old French, that they will nominate no one from favour, partiality, or any improper motive: This done, the same officer, having the list of the counties in alphabetical order, and of those who were nominated the year preceding, reads over the three names, and the last of the three he pronounces to be the present Sheriff: But where there has been a Pocket Sheriff (see p. 56) he reads the three names upon the list, and then declares who is the present Sheriff. If any of the Ministrors or Judges has any objection to a person named, he mentions it and another gentleman is nominated in his room: If no objection is made, some one rises and says, "To the two gentlemen I know no objection, and I recommend A. B. Esq. in the room of the present Sheriff." Another officer has a paper, with a number of names, given him by the Clerk of Almoe for each county, which paper generally contains the names of the gentlemen upon the former list, and also of gentlemen who are likely to be nominated; and whilst the three are
are nominated, he prefixes 1, 2, or 3 to their names according to the order in which they are placed; which, for greater certainty, he afterwards radiates over twice. Several objections are made to gentlemen; some perhaps at their own request; such as, that they are abroad, that their estates are small and incumbered, that they have no equipage, that they are practising barristers, or officers in the militia, &c.

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

This custom, of the twelve Judges propounding three persons, seems borrowed from the Gothic constitution before mentioned; with this difference, that, among the Goths, the twelve nominees were first elected by the people themselves. And this usage, it is suggested by Blackstone, was, at its first introduction, founded upon some statute, though not now to be found among our printed laws. First, because it is materially different from the direction of all the statutes before mentioned, which it is hard to conceive that the Judges would have countenanced by their concurrence, or that Fortescue would have inferred in his book, unless by the authority of some statute: And also, because a statute is expressly referred to in the record, which Sir Edward Coke says he transcribed from the Council-Book of 30 March, 34 Hen. VI. and which is in substance as follows:—The King had of his own authority appointed a man Sheriff of Lincolnshire, which office he refused to take upon him; whereupon the opinions of the Judges were taken, what should be done in this behalf: And the two Chief Justices, Sir John Fortescue and Sir John Fryst, delivered the unanimous opinion of them all; "that the King did an error, when he made a peron Sheriff that was not chosen and presented to him according to the statute; that the person refusing was liable to no fine for disobedience, as if he had been one of the three persons chosen according to the tenor of the statute; that they would advise the King to proceed to the three persons that were chosen according to the statute, or that some other thrity may be entreated to occupy the office for this year; and that, the next year, to either of such inconveniences, the order of the statute, in this behalf made, be observed." 1 Comm. c. 9.

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

Notwithstanding the unanimous resolution of all the Judges of England, entered, as before mentioned, in the Council-Book, and the flat. 34 & 35 H. 8. c. 26. §61, which expressly recognizes this to be the Law of the land; some have affirmed that the King, by his prerogative, may name whom he pleases to be Sheriff, whether chosen by the Judges or not. Jenk. 225. This is grounded on a very particular case in the fifth year of Queen Elizabeth, when, by reason of the plague, there was no Michaelmas Term kept at Westminster, so that the Judges could not meet there in Graffino Antiquum, to nominate the Sheriffs; whereupon the Queen named herself, without such previous assembly, appointing for the most part one of the two remaining in the last year's list. Dyer 245. And this case, thus circumstances, is the only authority in our books for the making these extraordinary Sheriffs. It is true, the Reporter adds, that it was held that the Queen by her prerogative might make a Sheriff without the election of the Judges, non obstante aliqua statuto in contrarium: but the doctrine of non obstante's, which sets the Prerogative above the Laws, was essentially demolished by the Bill of Rights at the Revolution, and abdicated Westminster-Hall when King James abdicated the kingdom. However, it must be acknowledged, that the practice of occasionally naming what are called Pocket-Sheriffs, by the sole authority of the Crown, hath uniformly continued to the reign of his present Majesty; in which, few (if any) compulsory inances have occurred. 1 Comm. c. 9.

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

The sheriffs in every of the shires of Wales shall be nominated yearly by the Lord President, Council, and Judges of Wales, and shall be certified by them; and after, appointed and elected by the King, as other Sheriffs be. 34 Hen. 8. cap. 26: Dals. 8b. 6. See title Wales.

The Sheriff, before he doth exercise any part of his office, and before his patent is made out, is to give security in the King's Rememrance's Office in the Exchequer, under pain of 100 l. for the payment of his provers, and all other profits of the Sheriffwick; but these securities are never used, unless there is a deficiency in the Sheriff's effects. Dals. 8b. 7.

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

If a person refused to take upon him the office of Sheriff, it was usual to punish him in the Star-chamber; and he may now be proceeded against by information in the Court of King's Bench. Also, if he refuses to take
the oaths enjoined him, or officiates in the office before
he hath thus qualified himself, the Court, which hath a
general superintendence over all officers and ministers of
justice, will grant an information against him: And it
hath been held, that a refusal of oaths enjoined to be
taken, amounts to a refusal of the office. Dal. St. 15:
A Sheriff, at the entrance into his Shrievalty, is to go
to the Remembrancer's Office in the Exchequer, and
there enter into a recognizance with sureties, with condi-
tions for payment of his proffers or accounts. Then
his attorney, &c. will write him a note, signifying that
he is chosen Sheriff of such a county, and hath entered
a recognizance; which he must deliver to one of the
Six Clerks in Chancery, to make his patent by; with
the writ of assistance, and writ of discharge to his prede-
cessor: And, in the next place, the new Sheriff is to go
to a Master in Chancery, if he be in London, to take the
oaths. Dal. Sher. 291.
If the Sheriff be not in London, the oath may be taken
by dedication posteaeterum, directed to any two Justices of
the peace of the same county, one to be of the quorum, or
to any other commissioner or commissioners, or before one
of the Judges of alaife for that county, or one of the Mat-
ters in Chaucery, who, it is said, may, as well as the
Judge, administer such oath without any dedication. Dal.
Sher. 13, 14.
If the commissioners return the commissi0n or writ,
and that the oaths are taken, when they are not taken,
When a Sheriff is chosen, the old Sheriff continues
Sheriff of the county till the new is sworn, which com-
pletes him in his office: But the office of the old Sheriff
cases is at an end when the writ of discharge comes to
him.

SHERIFF III IV.

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

Hence it is clear that a Sheriff hath no jurisdiction in
any other county, nor can he do a judicial act, in which
his personal presence is required, out of his county; but
it is held, that he may do a ministerial act, as make a
panel, or return a writ, out of his county, unless he is
beyond seas. Dalt. St. 27: 9 H. 4. 1.—See further,
Ploth. 57: Dal. Sher. 31.
A Sheriff may make and deliver the return of a writ
any where. 1 Will. 328. A Sheriff gives out a blank
warrant upon a writ which is filled up by an attorney,
this is ill. 2 Will. 47. See title Commitment.

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

It will appear to be of the utmost importance to have
the Sheriff appointed according to Law, when we con-
sider his power and duty. These are either as a Judge,
as the Keeper of the King's Peace, as a ministerial officer
of the superior Courts of justice, or as the King's Bailiff.
1 Com. c. 9.

In his judicial capacity, he is to hear and determine all
cases of 40s. value, and under, in his County Court (see
title that title); and he also has a judicial power in divers
other civil causes. Dal. c. 4. He is likewise to decide the
elections of Knights of the Shire, (subject to the control
of the House of Commons,) of Coroners, and of Ver-
derors; to judge of the qualifications of voters, and to
return such as he shall determine to be duly elected.
1 Com. c. 9.

As the Keeper of the King's Peace, both by Com-
mon Law and Special Commission, he is the first man in
the county, and superior in rank to any nobleman therein
during his office. 1 Rol. Rep. 237. He may apprehend,
and commit to prison, all persons who break the peace,
or attempt to break it; and may bind any one in a re-
cognition to keep the King's peace. He may, and is
bound, ex officio, to pursue, and take all traitors, mur-
derers, felons, and other malefactors, and commit them to
gaol for safe custody. He is also to defend his county
against any of the King's enemies when they come into
the land; and for this purpose, as well as to keep the peace
and pursuing felons, he may command all the people of
his county to attend him; which is called the
pall committatus, or power of the county: And this com-
mons every person above fifteen years old, and under the
degree of a Peer, is bound to attend upon warning, under
pain of fine and imprisonment. Stat. 2 Hen. 5. 1. c.
8. See title Riet. But though the Sheriff is thus the
principal conservator of the peace in his county, yet by
the express directions of the great charter, (c. 17,) he,
together with the constable, coroner, and certain other
officers of the King, are forbidden to hold any pleas of
the Crown; or, in other words, to try any criminal offence.
For it would be highly unbecoming, that the execu-
tors of justice should be also the Judges; should im-
pose, as well as levy, fines and amercements; should
one day condemn a man to death, and personally ex-
cute him the next. Neither may he act as an ordinary
Judge of the peace during the time of his office: For this
SHERIFF V.

this would be equally inconsistent; he being in many respects the servant of the Judges. Stat. 1 Mar. ii. 2. c. 8.

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

As the King's Bailiff, it is his business to preserve the rights of the King within his Bailiwick; for to his county is frequently called in the words: A word introduced by the Princes of the Norman line; in imitation of the French, whose territory is divided into bailiwicks, as that of England into counties. Fort. de L. c. 74. He must seize to the King all lands devoted to the Crown by attainder or forfeit, must levy all fines and forfeitures; must live and keep all writs, warrants, commission and like papers; while they be granted to any Subject; and must also collect the King's rents within the bailiwick, if commanded by process from the Exchequer. Dall. c. 9.

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

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

It hath been held, that a lease thereof, though no rent was ever received, is within the statute: the intent thereof of being that Sheriffs should keep their counties in their own hands. 20 Hen. 7. 13. See Dall. Scler. 23. 24: Plowd. 87: Mer. 571.

To execute his various duties, the Sheriff has under him many inferior officers; an Under-Sheriff, Bailiffs, and Gaolers; who must neither buy, sell, nor farm their offices, or farms of 500l. Sall. c. 1. c. 1. *it shall not be lawful for any person to buy, sell, let, or to take, the office of Under-Sheriff or Deputy-Sheriff, Seal keeper, County-clerk, Sheriff's-gaoler, Bailiff, or any other office pertaining to the office of High-Sheriff, or to contract for any of the said officers, or offices of 500l. one moiety to his Majesty, the other to such as shall have in any Court at Winchester, within two years after the offence." § 10.

Provided, that nothing in this act shall hinder any High-Sheriff from constituting an Under-Sheriff or Deputy-Sheriff, as by Law he may; nor to hinder the Under-Sheriff in any case of the High-Sheriff's death, when he acts as High-Sheriff. From constituting a Deputy; nor to hinder the receipt of, or accounting to the Sheriff, for legal fees. See Dall. 3. 574: Rot. 13: 2 Brow. 221.

The High-Sheriff may execute the office himself; and the Under-Sheriff hath not, nor ought to have, any estate or interest in the office itself; neither may he do any thing in his own name, but only in the name of the High-Sheriff, who is answerable for him. Dall. Scler. 3: Salk. 26.

SHEW

By § 9 of the above statute, 3 Geo. 1. c. 15, it is enacted, "that if any Sheriff shall die before the expiration of his year, or before he be ceased, the Under-Sheriff shall nevertheless continue in his office, and execute the same in the name of the deceased, till another Sheriff be appointed and sworn; and the Under-Sheriff shall be answerable for the execution of the office during such interval, as the High-Sheriff would have been, and the security given by the Under-Sheriff, and his pledges, shall stand a security to the King, and all persons whatsoever, for the performance of his office during such interval."

The Under-Sheriff, before he intermeddle with the office, is to be sworn; this was first enjoined by Stat. 27 Eliz. c. 12, and the form of the oath there preferred. Before this statute the Under-Sheriff was never sworn. 1 Rot. Reg. 2744 per Coke. And now by Stat. 3 Geo. 1. c. 15. § 19, it is enacted, that all Under-Sheriffs of any counties in South Britain, except the counties in Wales, and county palatine of Chester, before they enter upon their offices, shall take an oath, appointed by that act, for the execution of their office.

A Sheriff cannot appoint two Deputy-Sheriffs extraordinary. 2 Wis. 378.

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

See further, as connected with this title, this Dictionary, titles County; County Court; Town; Exchequer, Escape, &c. &c.: As also Ven. &c.: As also Ven. &c.: Inns of Court, &c.

SHERIFF'S COURT IN LONDON; See title London.

SHERIFF'S TOURN; See Town or Turn.

SHERIFFALTY, or ecclesiastics.] The Sheriff, sheriff, or time of a man's being Sheriff. Stat. 14 Car. 2. c. 21.

SHERIFFWICK, The extent of a Sheriff's authority.

SHERIFFGELD, A rent formerly paid by the Sheriff; and it is prayed that the Sheriff in his account may be discharged thereof. Rot. Parl. 56 Ed. 5.

SHERIFF-TOOTH, Seems to be a tenure by the service of providing entertainment for the Sheriff at his County Courts. Rot. Parl. in Litu. 804 Ed. 14 H. 7.

In Derbyshire, the King's bailiffs anciently took Ed. of every acre of land, in the name of Sheriff's-tooth. Rot. Parl. 654. And it is laid to be a common tax levied for the Sheriff's diet.

SHEWING, monfortis.] Is specially used to be quit of attachment in a Court, in plaints shewed and not avowed. Sall. Epist. 1170. See Monfortes.
SHIELD, Scutum. An instrument of defence; (from the Sax. scilden) to cover, or the Greco. scutum, a skin; shields anciently being made with skins. And hence Scutage and Eiscutage. See title Tenures.

SHIFTING USE; See title Ufe.

SHILLING, Sax. scilling, Lat. solidus. Among the English Saxons pupil but for 5d. afterwards it contained 1s. and often 2d. In the reign of William I. called the Conqueror, a Shilling was of the same denominative value as at this day. Leg. Hen. 1. Dom. Day.


SHIP-MONEY. An imposition charged upon the ports, towns, cities, boroughs, and counties of this realm, in the time of King Charles I. by writ commonly called Ship-writes, under the Great Seal of England, in the year 1625 and 1626, for the providing and furnishing certain ships for the King's service, &c. which was declared to be contrary to the laws and statutes of this realm, the Petition of Right, and liberty of the Subject, by stat. 17 Car. 1. c. 14.

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

SHIPS AND SHIPING; See Navigation Acts. No owner of a Ship shall be able to answer loss, by reason of imbecility any gold, silver, jewels, &c. taken in or put on board, or for any forfeiture incurred, without the privity or knowledge of such owner, further than the value of the ship and freight due: But other remedies, against the master and seamen of such Ships, are not taken away. Stat. 7 Geo. 2. c. 15. As a master or owner of a Ship may have an action for the freight; either the one or the other are answerable, where goods are damaged in the Ship. But where there are several owners, and one disagrees to the voyage, he shall not be liable to any action after for a miscarriage, &c. Com. 116. Where the owner, and not the freighter, is liable for a loss of gold sent by the Ship; See 2 Stoa. 1251. Owners of Ships are liable for the goods on account of the freight, though robbed of them, and for default of the master. Annul. 86. See title Carrier.

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

SHIRE, comitatibus, from the Sax. secrum, to part or divide. Is well known to be a part or portion of this kingdom, called also County. The old Latin word was secura; and secura, provincia indicatur. Brompt. 659. King Alfred divided this land; and his division in subregiones, now called Shires, in centurias, now called Hundreds, and decaniis, now called Tithings. Leg. Alfred. See Brompton 536, and this Diff. title County.

SHIRE-CLEARK. He that keeps the County Court; his office is so incident to the Sheriff, that the King cannot grant it. Milton's cafe. 4 Rep.
SIGNUM, A croft prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons. See title Seals.

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

SILENTIARIUS, One of the Privy Council; and silentium was formerly taken for concussus praeconis. Matt. Paris, anno 171. According to Littleton, it is an other, who feeth good rule and silent kept in Court. Lit. Dict.

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

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

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

SIMILITUDE OF HAND-WRITING; See title Evidence, col. 6 of the Introduction, div. 2.

SIMNEL, or SIMNELL, simmelius, vel simnellus.] Is mentioned in the affile of bread, and is still in use, especially in Kent: The English Simnel is panis parvus, or the purest white bread. Stat. 13 H. 3. b. 1: Ord. pro jüster invenient imp. c. 1.

It is said to come from the Lat. similis, which signifies the finest part of the flour; panis simulacrum, Simnell-bread. It is mentioned in fr. adfisi panis, bread made into a Simnell shall weigh two shillings less than Waitell-bread. Cowell.

SIMONY.

SINONIA; Vendita rei faciæ.] So called from the resemblance it is said to bear to the sin of Simon Magus: Though the purchasing of holy orders seems to approach nearer to this offence. See title Parafon II.

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

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

I. SIMONY.
I. SIMONY is defined to be Studio valetans emundis et
emendit abraced ex opere et spirituali et spirituali anonyma transferro
facto. — Allo venetio reificato. And some authors mention
Simony per manus triplex; as per manus à manu, i.e. by
bribery, where money is paid down for a benefice per
manus à lingua, by favour and flattery; per manus ab ob-
ficio, i.e. by a forfide subjection to the patron, or doing
him services. To which has been added, the making of
premises, without taking any notice of expecting a church
benefice.

Some authors tell us of a person who took off the cap
of Grofinan, an Archbishop of Milan, and making it
told the people, *ch. Grofinan qui obt habita capita
(qui non debo dicere) ost Simoniacus, i.e. per manus à
manu, i.e. by bribery; per manus à lingua, i.e. by fa-
vour and flattery; per manus ab obficio, i.e. by a forfide
subjection to the patron. Crowell.

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

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

Simony is mentioned as a thing so detestable in the
eye of the Common Law, that a plaintiff in quare ingen-
cidit could not, before the statute of Welfin. 2, recover
damages for the loss of his presentation, it being considered
as a thing of no value; nor could a guardian in forage
pretent to an advowson in the right of his heir, because
as he could take nothing for it, he could not bring it to
account. 1 Inst. 17, 61, 89, a.

In Cro. Ob. 353, it is said that this has, by the law of
God and of the land, been always accounted a great
offence. In Hul. 167, it is laid down, that a bond on a
Simoniacal contract is against Law, because ex turpi
causa, and contra bonus mores. And if it, that it is as void as
an immoral bond, which, if paid by an executor, is a
detractio. The same is held in Cro. Cor. 425. In
Carth. 252, such bonds are said to be void as being against
law, although they are not so declared by the statute.

But as has been already remarked, since neither the con-
federation of the heinousness of the offence, nor the provi-
sion made against it by the Canon or Common Law,
was sufficient: to put a stop to this mischief, it was at
length restrained by the statute laws.

By the stat. 31 Eliz. c. 6, if is, for avoiding of Simony,
established, that if any patron for any corrupt confedera-
tion, by gift or promise, directly or indirectly, shall
pretent or collate any person to an ecclesiastical benefice
or dignity; such presentation shall be void, and the pre-
fentee declared incapable of ever enjoying the same
benefice; and the Crown shall pretend to it for that turn
only. The words of the statute are, *that if any person
or persons, Bodisc-politick or corporate, shall for any sum
of money, reward, gift, profit, or benefit, or by reason
of any promise, agreement, grant, bond, or covenant, of
or for any sum of money, reward, gift, profit, or benefit,
present or collate any person to any benefice, &c. every
such presentation, collation, &c. shall be utterly void,
and it shall be lawful for the Queen, her heirs and suc-
cessors, to present, &c. unto such benefice, &c. and that
every person or persons, Bodisc-politick or corporate,
that shall give or take any such sum of money, &c. or
take or make any such promise, &c. shall forfeit the
double value of one year's profit of every such benefice,
&c. and the person to corruptly taking, &c. such benefi-
ce, &c. shall be adjudged a disabled person in law to
enjoy the same.* § 5.

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

But if the preseantee dies, without being convicted of
such Simony in his life-time, it is enacted by statutes of
the Common Law, that the simulacal contract shall not
prejudice any other innocent patron, on present of land
in or to the Crown or otherwise. Also by the stat. 12 Am.
4, c. 18, if any person for money or profit shall pro-
cure, in his own name, or the name of any other, the
next presentation to any living ecclesiastical, and shall be
preseanted thereupon, this is declared to be a simulacal
contract; and the party is subjected to all the eccle-
siastical penalties of Simony; is disabled from holding
the benefice, and the presentation devolves to the Crown.

Before this statute, it was doubted whether it was Simony
for a clerk to purchase the next turn in a living for himself.

Upon these statutes many questions have arisen, with
regard to what is, and what is not Simony. And,
among others, these points seem to be clearly settled:
1. That to purchase a presentation, the living being ac-
tually vacant, is open and notorious Simony; this being
expressly in the face of the statute. Cro. Eliz. 728:
Burr 914. Lord Hardwicke was of opinion, that the sale
of an advowson, during a vacancy, is not within the
statute of Simony, as the sale of the next presentation is:
but it is void by the Common Law. Ambel. 268. See
2 Comm. 2, a, a, a.

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

3. For a father to purchase such a presentation, in order to provide for his son, is not Simony; for the son is not concerned in the bargain, and the father is by nature bound to make a provision for him. 

C. R. Eliz. 68; More 916. — But where a father, the church being void, contracts with the grantee of the void turn to permit the grantor to present his son, and it is done, this is a simoniacal promotion. 

C. J. 533. 

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SIMONY II.

unfit person, for having at that time been capable of intending to buy a living corruptly. It also implies some defect in him; for the presumption is, that persons well qualified will always be preferred, and have therefore no need to purchase. This offence may be by a corrupt contract between strangers, even when neither the patron nor incumbent is privy to it; for if there be a corrupt contract, it matters not by whom it is made: But in this case the presentee is not simoniacal, and only simoniacal presentee. Cro. Car. 131: Sid. 329: 3 Lev. 377: Law. 73, 103.

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

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

In an action by the Incumbent for the use and occupation of his glebe, the defendant cannot give in evidence the simoniacal presentation of the plaintiff. 5 Term Rep. 49. But it may be given in evidence by a defendant who is sued for the tithes. 2 H. 168. See title Resignation.

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

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

A bond with condition to resign within three months after being required, to the intent that the patron might present his son when he should be capable, was held good; and the judgment was affirmed in the Exchequer Chamber: for that a man may, without any colour of simony, bind himself for good reasons, as if he takes a second benefice, or if he be non-resident, or that the patron may present his son to resign; But if the condition had been to let the patron have a lease of the glebe or tithes, or to pay a sum of money, it had been simoniacal. Cro. Fac. 234, Jones v. Lawrence.

The doctrine laid down in Jones and Lawrence, which was in the case of a special bond, was not many years after, extended to that of a general bond, and the judgment in this last was also affirmed in the Exchequer Chamber. Cro. Car. 120, Babington v. Wood.

The authority of those two cases having been repeatedly recognised, at length it was considered as a point settled, that a general bond of resignation was good, and the Court have even refused to let the validity of it be called in question. Str. 257, Pelo v. Countess of Cardiﬀ.

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

An injunction has been granted where an ill use has been made of the bond, i.e. by taking an annuity from the incumbent, for the use of the nephew, for whom the living was intended. 3 Pern. 534.

A bill being brought to be relieved against a judgment obtained on a bond to resign upon request, it appeared to have been offered to the incumbent, that if he would give 700l. he should not be faced upon it. Satisfaction was ordered to be entered upon the judgment, and a perpetual injunction was granted. A new bond of resignation in penalty of 1000l. a much less sum, was indeed decreed; but no acton was to be brought on it without leave of the Court: And the Lord Keeper said, he did not know that such bonds were used before the statute; that they had been since allowed only to preserve the benefice for the patron himself, or some child or friend of his, or to prevent non-residence or a vitious course of life in an incumbent; and that though a bond to resign generally, he would not allow it to be put in full, unless some such reason was shown for requiring a resignation, because a door would be thereby opened for simony. Eq. C. Abr. 86.

On a bill to be relieved against a judgment on such a bond, the defendant proved misbehaviour, and it was for that reason dismissed. Eq. C. Abr. 238. So a bond to resign on request shall not be made use of to turn out the incumbent, unless there be non-residence or gross misbehaviour; and if any other use be made of it, the Court will grant an injunction. Chron. Proc. 735.

Even when it seemed to be settled, that such bonds were good both in Law and Equity; a question arose, whether the Ordinary was obliged to accept a resignation on such a bond? It was laid to be in the power of the Ordinary to discourage the use of such bonds, for he might refuse to accept a resignation made by contrivance of one of them. Wast. Com. Inc. 24.

The Bishop refused to accept a resignation on such a bond, and ordered the incumbent to continue to serve the cure, declaring that he would never countenance such unjust practices. 2 Chan. Rep. 358. An Ordinary is not obliged to accept a resignation on such a bond, unless there be just cause to turn the incumbent out of the benefice. Chron. Proc. 513.

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

Whatever doubt was entertained as to the Ordinary's being obliged to accept a resignation bond, two points were determined; that the patron could not present again till he had accepted it; and that, whether he did or not, the obligor was liable to the penalty of the bond, if he undertook, as is usual, to do, for the acceptance of the Ordinary. 4 New Abr. 473. If a presentation be made before the Bishop accepts the resignation of the last incumbent, it is void. Nuy 147; Cro. Jac. 198. If the obligor binds himself to resign a benefice, it is upon him to procure the Ordinary's acceptance of it. 1 Law. Eq. 91.

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

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

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

Another objection is, that when the patron takes a general bond of resignation, it is only a presentation during pleasure. Is it so (it has been answered) and suppose, which is the utmost that can be supposed, that it is not taken with a design to awe the incumbent into greater care in the discharge of his duty, but to let him know he is in danger of being stopped, if he does not give a bond every year? Mr. C. the patron, presented Mr. Ever, his clerk, to the Bishop of London for insertion. The Bishop refused to admit the prestation, because Mr. Ever had given a general bond of resignation. Upon this Mr. Ever took a Square in ejectment against the Bishop; to which the Bishop pleaded, that the presentation was simoniacal and void, by reason of the bond of resignation; and to this plea Mr. Ever demurred. From a series of judicial decisions, (many of them noticed above,) the Court of Common Pleas thought themselves bound to determine in his favor; and that judgment was affirmed by the Court of King's Bench. But these judgments were afterwards reversed by the House of Lords. The principal question was this, viz., whether such a bond was a reward, gift, profit, or benefit to the patron, under 51 Eliz. c. 67. If it were so, the statute had declared the presentation to be simoniacal and void. Such a bond is so manifestly intended by the parties to be a benefit to the patron, that it seems surprising that it should have been ever argued and decided, that it was not a benefit within the meaning of the statute. Yet many learned men have expressed themselves dissatisfied with this determination of the Lords, and are of opinion that their judgment would be different if the question were brought before them a second time. But it is generally understood that the Lords, from a regard to their dignity, and to preserve a similarity in their judgments, will never permit a question, which they have once decided, to be again debated in their House. See a Com. c. 13. p. 289, n. 1; and Bro. P. C. Svo. ed. title Clergy. ed. 39, where it appears that So.
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Judges delivered their opinions in favour of the bond, and only two against it. The decision of the House was made by a division of 19 to 18.

In subsequent cases it has been determined that a bond given by an incumbent to the patron on presentation, to reside on the living, or to resign if he did not return to it after notice, and also not to commit waste, &c. on the parsonage-house, was good. 4 Term Rep. 73.

And where a bond was given to resign a rectory when the patron's son came of age, and before that time to reside and keep the chancel and rectory-house in repair; it was decided by the Court of King's Bench in favour of the bond, without argument. 4 Term Rep. 330.—

Though it is suggested that this determination was expected to be carried by appeal to the House of Lords, it is believed the parties acquiesced in it, on the ground that it essentially differed from that of the Bishop of London v. Epsom. See 2 Comm. c. 18. p. 280; and Treat. Eq. c. 5. n. 4.

SIMPLE-CONTRACT, Debt by. Debts by Simple-contract are such, where the Contract upon which the obligation arises, is neither afterwards by matter of record, nor yet by deed or special instrument, but by mere oral evidence, the most simple of any; or by notes unsealed, which are capable of a more easy proof, and (therefore only) better than a verbal promise. 2 Comm. c. 30. p. 456. See titles Affidavit; Fraud, &c.

SIMPLE-LARCENY; See title Larceny.

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

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

SIMPLEX JUSTICIARIUS; This style was anciently used for any puseful judge, that was not chief in any Court: And there is a form of a writ in the Register, beginning thus:—A, John Wood, a simple Judge of the Court of Common Pleas, &c.

SIMPLICUM, or together with.] Words used in indictments, and declarations of trespasses against several persons, where some of them are known, and others not known: A, the plaintiff declares against A, B, the defendant, together with C.D., E.F., and divers others unknown, for that they committed such a trespass, &c. 2 Lit. Abr. 490. If a writ is generally against two or more persons, the plaintiff may declare against one of them, with a summum; but if a man bring an original writ against one only, and declares with a summum, he abates his own writ. Comber. 260. See titles Action; Trespass in Action.

SINE ASSENSU CAPITULI, A Writ, where a Bishop, Dean, Prebendary, or Maker of an hospital, alien the lands holden in right of his bishoprick, deanry, W. &c. without the assent of the chapter or fraternity, in which case his successor shall have this writ. F. N. B. 195. And if a Bishop or Prebendary be dispossessed, and afterwards he release to the defendant, this is an alienation, upon which may be brought a writ De finis affinis capituli: But the successor may enter upon the defendant, if he doth not die dispossessed, notwithstanding the release of his predecessor; for, by the release, no more palteth than he may rightfully release. A person may have this writ of lands upon demises of several predecessors, &c. New Nat. Br. 452.

SINE-CURE, Is where a Rector of a parish hath a Vicar under him, endowed and charged with the Cure, so that the Rector is not obliged either to duty or residence. And when a church is fallen down, and the parish becomes desolate of parochioners, it is said to be a Sine cure. Wood's Lfs. 153. See title Pastors.

SINE DIES, without days; See title Day.

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

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

SINKING FUND; See title National Debt.


SI RECOGNOSCAT, A Writ that, according to the old Books, lay for a creditor against his debtor, who had acknowledged before the Sheriff in the County-Court, that he owed his creditor such a sum received of him. Old Nat. Br. 68.

SITE; See Site.

SITHCUNDMAN, S.] Such a man as had the office to lead the men of a town or parish. Leg. Inae. cap. 56. Dugdale says, that in Warwickshire the hundreds were formerly called Sibthorpes; and that Sibcundman and Sibcundman was the chief officer within such a division, i.e. the High Constable of the Hundred. Dugd. Anesia, Worcs.

SITHESOCA; See Sibepoca.

SIX CLERKS in CHANCERY; Officers in Chancery of ancient continuance; who were hereof spiritual persons, as may appear by Hist. 14 & 15 Hen. 8, which was made to enable them to marry. They transact all proceedings by bill and answer; and also issue some patents that pass the Great Seal, as pardons of men for chance-medley, patents for ambassadours, sheriff's patents, and some others. They likewise sign all office copies in order to be read in Court, and also certificates; and attend upon the Court in Term, by two at a time, at Westminster, and there read the pleadings. See title Chancellor.

SIXHINDI, Servants of the same nature with Rod-knight, sons bound to attend their Lord wherever he went; but they were accounted among the English Saxons as freemen, because they had lands in fee, subject only to such tenure. Leg. Inae. cap. 26. See Hindus.

SIZEL; Where pieces of money are cut out from the flat bars of silver, after being drawn through a mill, into the respective sizes or dimensions of the money to be made; the residue is called by this name, and is melted down again. Lowndes's Eff. upon Coin, p. 96.
he bound to render when brought to England and made a Christian. See 1 Comm. c. 14.

In the celebrated case of James Somerseft, it was decided, that a heathen Negro, when brought to England, owes no service to an American, or any other, master. James Somerseft had been made a Slave in Africa, and was sold there; from thence he was carried to Virginia, where he was bought, and brought by his master to England. Here he ran away from his master, who found him and carried him on board a ship, where he was confined, in order to be sent to Jamaica to be sold as a Slave. While he was thus confined, a habeas corpus was granted, ordering the captain of the ship to bring up the body of James Somerseft, with the cause of his detainer. The above-mentioned circumstances being stated on the return to the writ, after much discussion in the Court of King's Bench, the Court were unanimously of opinion, that the return was insufficient, and that Somerseft ought to be discharged. See Mr. Hargrave's excellent argument for the Negro. 11 St. Tr. 340; and the case reported in Left's Reports 1.

In consequence of this decision, if a ship laden with Slaves was obliged to put into an English harbour, all the Slaves on board might (and Mr. C. lyres ought to be set at liberty. Though there are acts of Parliament which recognize and regulate the Slavery of Negroes, yet it exists not in the contemplation of the Common Law; and the attempt they are not declared free before they reach an English harbour, is only because their complaints cannot otherwise be heard and redressed by the process of an English Court of Justice. 1 Comm. c. 14, p. 425, n.

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

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

SLIPPA. A Sledge or hurdle is generally allowed to draw offenders guilty of high treason to the gallows, to preserve them from the extreme torture of being dragged on the ground or pavement. 1 Hal. P. C. 82. See titles Execution of Criminals; Treason.
SLIPPA, A fisrep; and there is a tenure of land by holding the King's hireup, in Cambridgesh. Cant. 5. 

SLROUGH-SILVER, A rent paid to the castle of Wymans, in lieu of certain days' work in harvest, here-before referred to the Lord from his tenants. Pat. 43 Eliz. 

SLUICE, Excula. A frame to keep or let water out of a ground. By Stat. 8 Geo. 2. c. 20, to destroy any Sluice or lock on any navigable river, is made felony without benefit of clergy. See title Locks.

SMAKA, A smack, or small light vessel. Cowell.

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

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

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

SMOKE-SILVER. Lands were helden in some places by the payment of the sum of 6d. yearly to the Sheriff, called Smoke-silver. Pat. 4 Ed. 6. — Smoke-silver and Smoke-penny are to be paid to the ministers of divers parishes, as a moiety in lieu of tithe-wood. And in some manors, formerly belonging to religious houses, there is still paid, as appendant to the said manors, the ancient Prior-pence, by the name of Smoke-money. Ten. And. Hid. Vin. 77.

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

SNOTTERING-SILVER. There was a custom in the village of Wylyg, that all the serfve tenants should pay for their tenements a small duty called Snattering-silver, to the Abbot of Glynval: Placit. 18 Edw. 1.

SNUFF, or SNUSH. Mixing and colouring it with oaken, amber, or sulbrick, yellow ebony, tobacco dust, &c. incurs a penalty of 3l. for every pound weight. Stat. 1 Geo. 1. c. 2. c. 46. The penalties of assisting therein extended to snuff, Stat. 5 Geo. 1. c. 11. See titles Excise, Navigation-AILS, Tobacco.

SOAP. See Salt.

SOC; See Soke.

SOCAGE, or SOCCAGE, Sicangium; from Fr. Soc, soverain, a coulter or plough-share. A tenure of lands by or for certain inferior services of husbandry, to be performed to the Lord of the fee. See further, title Tenures. Ill. 5.

Squant de verber, figall, says, Socage is a tenure of lands, when a man is enchoised freely, without any service, ward, relief, or marriage; and pays to his lord such duty as is called petit perjany, &c.

This was a tenure of so large an extent, that Littleton tells us, all the lands in England, which were not held in knight's-service, were held in Socage. So that it seems the land was divided between these two tenures, and as they were of different natures, so the defect of these lands was in a different manner; for the lands held in knight's-service, descended to the eldest son; but these held in villanus Socage, equally among all the sons; yet if there was but one manorial, the eldest son was to have it, so as the rent had the value of that messuage to be divided between them. Bradton, l. 2. c. 35. 36. See title Tenures. Ill. 5, &c.

SOCAGERS, SOCMANS, SOCMEN, or SOKEMANS, Socemer. Such tenants as hold their lands and tenements by Socage tenure. Kitchin, f. d. 51. Socemans of base tenures, ibid.; and Socemans of ancient demesne, which last seem most properly to be styled Socemans. Cowell. See title Tenures.

The husbandmen among our Saxons ancestors were of two sorts; one, that hired the Lord's outland, or tene- mentary land, like our farmers; the other, that tilled and managed his inlands or demeans; (yielding epernum, not consumo, work, not rent;) and were therewith called his Sokemans, or ploughmen. Spelmers of Feudis, cap. 7. But after the Conquest, the proper Socemans, or Sokemans, often mentioned in Domesday, were those tenants who held by no servile tenure, but commonly paid their rent as a Soke or sign of freedom to the Lord, though they were sometimes obliged to customary duties for the service and honour of their Lord. Cowell. See also Britton, c. 66: Plina, i. 1. c. 8.

SOCNA; See Soke.

SOCOME, A custom of grinding corn at the Lord’s mill, and paid in cash. Soca, or Socome is where the tenants are bound to it. Brabour.

SODOMY; See B.

SODOR AND MAN, BISHOPIACE OR, was formerly within the province of Canterbury, but annexed to that of York, by Stat. 33 H. 8. c. 31. See title MAN, Isle of.

SOKE, SOK, SOC, SOCA; Liberty or privilege of tenants excused from customary burdens and impositions. Soka, or Soke, also signifies the power of administering justice, and the territory or precinct in which the chief Lord did exercise his Soc, Sales, or Saks, his liberty of keeping Courts, or holding trials within his own Soke or jurisdiction. Sometimes it signifies a payment or rent to the Lord for using his land with such liberty and privilege as made the tenant a Soeman or freeholder, upon no other conditions than a quit-rent. Cowell. Vide Brabour, lib. 3; Lamb. Leg. H. 1. c. 24; Plina., lib. 1. cap. 6.

SOKE-MENs; See Socagers; Villagers; Tenures.

SOKE-RREEVE, The Lord's rent-gatherer in the Soke or Sokem. Plina.

SOLARIUM, A Sollar, upper room, or garret.

SOLDIERS.

THE MILITARY STATE of the Kingdom includes the whole of the Soldiers; or, such persons as are peculiarly appointed among the rest of the people for the safety and defence of the realm.

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

In the time of our Saxons ancestors, as appears from Edward the Confessor’s Laws, the military force of this kingdom was in the hands of the Dukes and Heretechs, who were constituted through every province and county in the kingdom; being taken out of the principal nobility; and such as were most remarkable for being ‘‘ jurisdiction, and able to attend the King in his wars, for forty days in a year; in which space of time, before war was reduced to a science, the campaign was generally finished, and a kingdom either conquered or victorious. By this means the King had, without any expense, an army of sixty thousand men always ready at his command. This personal service, however, as early as the reign of Hen. II. degenerated into pecuniary communions or aids; and at length all military tenures were entirely abolished by Stat. 12 C. 2. c. 24.

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

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

But, as the fashion of keeping standing armies has of late years universally prevailed over Europe, it has also, for many years past, been annually judged necessary by our Legislature, to maintain, even in time of peace, a standing body of troops, under the command of the Crown; who are, however, ipso facto disbanded at the expiration of every year, unless continued by Parliament. And it was enacted by Stat. 10 W. 3. c. 1, that not more than twelve thousand regular forces should be kept on foot in Ireland, though paid at the charge of that kingdom; which permission is extended by Stat. 8 Geo. 3. c. 13. to 16,235 men, in time of peace.

To prevent the Executive Power from being able to oppose, says Montesquieu, it is requisite that the armies with which it is entrusted should consist of the people, and have the same spirit with the people. Nothing then, according to these principles, ought to be more guarded against in a free State, than making the military power, when such a task is necessary to be kept on foot, a body too distinct from the people. Like ours, it should wholly be composed of natural Subjects; it ought only to be enlisted for a short and limited time; the Soldiers also should live intermixed with the people, no separate camp, no barracks, no inland fortresses, should be allowed. And perhaps it might be still better, if, by dissolving a flated number, and enlisting others at every renewal of their term, a circulation could be kept up between the army and the people, and the citizen and the Soldier be more intimately connected together. 1 Comm. c. 11.

It has been well remarked, that since the above was written with a genuine love of liberty by the Author, experience has proved that the most formidable enemy the people of England have to dread, is their own laws and modes. Care ought, therefore, to be taken that Soldiers may not become too familiar with the people in great towns, lest they should be more inclined to join, than to quell a riot. Christian’s Note on 1 Comm. ob. fap. — As to the principles of Martial Law, as modified to the state of present times, see this Dictionary, title Court Martial.

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

However expedient the most strict regulations may be in time of actual war, yet, in times of profound peace, a little relaxation of military rigour would not, one should hope, be productive of much inconvenience. And, upon this principle, though by our statute laws (still remaining in force, though not attended to) defertion in time of war is made felony, without benefit of clergy, and the offence is tried by a jury, and before Justices at the Common Law; yet by our militia laws, a much lighter punishment is inflicted for defertion in time of peace. But our Mutiny Act makes no such distinction: for any of the faults above-mentioned are, equally at all times, punishable with death itself, if a Court Martial shall think proper. This discretionary power of the Court Martial is indeed to be guided by the directions of the Crown; which, with regard to military offences, has almost an absolute Legislative power. * * * His Majesty, says the act, may form articles of war, and constitute Courts Martial, with power to try any crime by such articles, and inflict penalties by sentence or judgment of the same.* A vast and most important trust! an unlimited power to create crimes, and annex to them any punishments, not extending to life or limb! These are indeed forbidden to be inflicted, except for crimes declared to be so punishable by this act; which crimes, have been just enumerated, and, among which, any disobedience to lawful commands is one. 1 Car. c. 13.

Blackstone observes, that one of the greatest advantages of our English Law is, that not only the crimes themselves which it punishes, but all the penalties which it inflicts, are ascertained and notorious: nothing is left to arbitrary discretion: the King by his Judges determines what the Law has previously ordained; but is not himself the legislator: The learned Commentator then expresses his regret, that a list of men, whose bravery has so often preferred the liberties of their country, should be reduced, to what he terms, a state of servitude in the midst of a nation of freemen! The policy of his observations, at least in the strong manner in which he enforces them, may perhaps be a little doubted, when the absolute necessity of prevailing discipline, and of guarding against seduction and disloyalty in this powerful body of men, is fully considered. See note; and further, title Court Martial.

But as Soldiers, by this annual act, are thus put in a worse condition than any other Subjects, to by the humanity of ourstanding laws, they are in some cases put in much better. By 25 Eliz. c. 3. a weekly allowance is to be raised in every county, for the relief of Soldiers that are sick, hurt, and maimed; and the Royal Hospital at Chelsea is established for such as are worn out in their duty. Officers and Soldiers, that have been in the King's service, are, by several statutes enacted at the close, or during the continuance of wars, at liberty to use any trade or occupation they are fit for, in any town in the kingdom, except the two Universities, notwithstanding any statute, custom, or charter to the contrary. And Soldiers in actual military service may make nuncupative wills, and dispose of their goods, wares, and other personal chattels, without those forms, solemnities, and expenses, which the Law requires in other cases. Stats. 29 Car. 2. c. 3. 5 W. 3. c. 21. § 6. See title Wills.

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

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

By stat. 34 Car. 2. c. 1, no Soldiers shall be quartered on any persons without their consent; and inhabitants of places may refuse to quarter any Soldier, notwithstanding any order whatsoever.

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

By stat. 5 Geo. 1. cap. 5. [not now in force] when an officer or Soldier was accused of a capital crime, the commanding officer, on application made to him, was to use his utmost endeavours to deliver over the criminal to the civil Magistrate; and he was not to be tried by a Court Martial in eight days, within which time application was to be made; but after that the criminal might be tried by a Court Martial. See title Court Martial.

If any Subject, here or in Ireland, shall lift or enter himself, or any one procure him, to go beyond the seas, with an intent to be enlisted as a Soldier to serve any foreign Prince or State, without leave of his Majesty, he shall be guilty of felony; but if such person came, in fourteen days after, discover, upon oath before any Justice, &c. the person by whom he was drawn in, to him as he may be apprehended and convicted, the party discovering is to be indemnified. Stat. 6 Geo. 2. c. 50. See stat. 23 Geo. 3. c. 50, as to quitting money for army services, and the duty of the Paymaster-general.

SOLE CORPORATIONS: See Corporation.

SOLE ET DEBIT: Vide Debit et Solis.

SOLE TENANT, &c. See tenant.

SOLICITOR. He that holds land by his own right only, without any other joined; and if a man and his wife hold lands for their lives, with remainder to their son for life; here the man dying, the lady shall not have an heir, because he dies not join Tenant. Kitch. 13.

SOLICITOR, Solicitor.] A person employed to follow and take care of suits depending in Courts of Equity.
Equity. Solicitors are to be sworn and admitted by the judges, like unto attorneys, before they shall practice in the Common Law Courts; and attorneys may be admitted Solicitors in the Courts of Equity, &c. Stat. 2 Geo. 2. cap. 23. See title Attorney.

There is also a Solicitor General to the King, who is a great officer next the Attorney General. See title Attorney-General.

SOLIDATUM. Used in the neuter gender, is taken for that absolute right or property which a man hath in any thing. Malpigh. lib. 1.

SOLINUS TERRÆ. In Demosthenes book this word is only used in Kent, and no other county. Septem solini terræ sunt 17 Carucata. 1 Inq. fol. 15. According to this computation solini terræ is about 160 acres, and 7 solini are about 1120 acres, which is less than 17 carucata, for at the lowest carucata there is 100 acres. But Lord Coke was of opinion, that it did not consist of any certain number of acres. This word solini was probably from the Sax. ægâ a plough, but what quantity of land this solini, fulling, or fulling did contain, is not so easily determined. It seems to have been the same with a plough land; so that in Domædæ, se deducto pro uno solini, is, it is taxed for one carucate or plough-land. Cowel.

SOLLER, or SOLAR, soleirium. A chamber or upper room. Cowel.

SOLOMON, or SOLOMOS, a term of art, signifying that a man hath wherewith to pay, or is a man hath in any thing. Malpigh. lib. 1.

SOLVENDO ESSE, A term of art, signifying that a man hath wherewith to pay, or is a man hath in any thing. Malpigh. lib. 1.

SOLVET AD DIEM, A plea in an action on debt or bond, &c. that the money was paid at the day limited. See title Bond. Payment.

SOLUTIONE fœdrit militis Parliamenti, & Solutione fœdri Burgum. Parliament, Write whereby Knights of the Shire and Burgesses might recover their wages or allowance, if they were denied. Stat. 35 H. 8. c. 11. See title Parliament.

SOMERSET-HOUSE, Affured to Queen Charlotte for life. Stat. 2 Geo. 3. c. 1. See title Queen.

SOMERSETSHIRE, its history as preserved, Stat. 1 Jac. 1. c. 53. See title Parliament.

SON ASSAULT DEMENS. A justification in an action of Assault and Battery; because the plaintiff made the first Assault, and what the defendant did was in his own defense. 2 Lid. Abr. 523. See titles Assault; Plaunting.

SONTAGE, A tax of forty shillings heretofore laid upon every Knight's fee. Stowe, p. 284.

SOP, is one of the many articles liable to the duty of Excise. See that title.

SOPHIA, (Princes,) Naturalized, Stat. 4 Ann. c. 34. See title King.

SORENCY; See Conjunction.

SORS, in sums of money lent upon usury, the principal was anciently called Sors, to distinguish it from the interest. Pryse's Collect. ii. 161.

SORS ACIPITRÉ, A for, or foul hawk; King John granted to Robert de Hove, lord in Berton of the honour of Nottingham, to be held by the service of yielding the King yearly one foul-hawk, &c. Cartular. S. Edmund. MSS.

SOTHAIL, or SOTHAIL. Is conceived to be mistaken for Scotiale. Erast. lib. 3. Vol. II.
directors of the said Company, and for regulating the election of the governors and directors of the said Company.

Creation of the old South-Sea Annuities—Stat. 9 Geo. 1. c. 6. § 3: 2 Geo. 2. c. 16.—Redemption of South-Sea annuities out of sinking fund, Stat. 4 Geo. 2. c. 5: 6 Geo. 2. c. 51: 9 Geo. 2. c. 34: 10 Geo. 2. c. 17: § 35. —New South-Sea annuities created, Stat. 6 Geo. 2. c. 28. —Refrained from issuing bonds without a General Court, Stat. 6 Geo. 2. c. 28. § 20: 7 Geo. 2. c. 17. The Company continued till the annuities shall be redeemed, Stat. 24 Geo. 2. c. 2. § 31. The first and second subscribored South-Sea annuities to be consolidated, Stat. 25 Geo. 2. c. 27. § 36. See further, title Taxes.

SOUTHWARK, King Edward III. by charter granted to the City of London the village of Southwark, paying at the Exchequer the farms thereof due: Also the manor and Borough were granted; except the capital messuage called Southwark-place, by Chart. Ed. VI.—The Inhabitants of the same not to be returned in Juries, Stat. antigo. 11 Hen. 6. c. 2. —No market to be held in the high street of Southwark, or hackneys, &c. to play there, Stat. 26 Geo. 2. c. 9. —That thereof a market be held in a place called the Triangle. Stat. 28 Geo. 2. c. 27. § 36 Geo. 2. c. 31. See title London.

SWOLGROVE, An old name of the month of February, so called by the inhabitants of South Wark.

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

SPADAURIUS, for Spatarius, A sword-bearer. Blunt.


SPATULARIA, Is numbered among the holy vestments, Stat. in Mon. Aug. iii. 331.

SPAWN AND FRY OF FISH; See title Fish.

SPINISTER, An addition in law proceedings usually given to all unmarried women; and it is a good addition for the estate and degree of a woman. See title Abatement 1. 3. (c).

SPIRITS AND STRONG WATERS; See Brandies, Spiriting Away Men and Children.

SPIRITUAL COURTS; See title Courts Ecclesiastical, Spiritualties of a Bishop; See Guardians of the Spiritualities.


SPIRITUOUS LIQUORS; See title Excise.

SPIRITUAL CORPORATION; See title Corporations.

SPIRITUAL COURTS; See title Courts Ecclesiastical, Spiritualties of a Bishop; See Guardians of the Spiritualities.

SPITTING-HOUSE, A corruption from Hospital; or it may be taken from the Teuton, Spital, an hospital or almshouse: It is mentioned in Stat. 15 Car. 2. c. 9.

SPOILATION, [spoliatio.] A writ or suit for the fruits of a church, or the church itself, to be sued in the Spiritual Court, and not in the temporal; that lies for one incumbent against another, where they both claim by one patron, and the right of patronage doth not come in question: As if a patron be created a Bishop, and hath dispensation to hold his benefice, and afterwards the patron prevails another incumbent, who is instituted and indicted; now the Bishop may have a Spoliation in the Spiritual Court against the new incumbent, because they both claim by one patron, and the right of patronage doth not come in question; and for that the other incumbent came to the possession of the benefice, by the course of the Spiritual Law, viz. by institution and induction: for otherwise, if he be not instituted and indicted, a Spoliation lies not against him, but writ of trespass, or suit of Novel diffein. F. N. B. iii. 36, 37. So it is where a patron that hath a plurality accepts of another benefice, by reason whereof the patron prevails another clerk, who is instituted and indicted; in this case one of them may have Spoliation against the other, and then shall come in question, whether he hath a sufficient plurality, or not: And it is the fame of deprivation, &c. Terzo di Lay. And see 3 Comm. 7. B. 59.

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

SPOUSE-BREACH, Adultery, as opposed to simple fornication: The Lady Katherine was accused to the King of incontinent living before her marriage, and of Spouse-breach after the marriage. Fox Acts, Educ. ii. 540.

SPRINGING USES, or Contingent uses; See title Uses.

SPULLERS OF YARN, Persons that work at the spool or wheel; or triers of Yara to see that it be well spun, and fit for the loom. Stat. 1 Mar. 6. 1. c. 7.


SQUALLEY, A fault in the making of cloth. Stat. 43 Eliz. c. 10. See Revery.

SQUIBS; See Five-works.

STABBING; See title Homicide III. 2.

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

STABILITAT VENATIONIS, The driving deer to a Stand. Stabulitam, the place where one ought to stand in hunting. Stat. 1 Mar. 6. 1. c. 17.

STABLE-STAND, Squadrius, vel jams in quadra.] Is where a man is found at his Standing in the forest, with a cross or long bow bent, ready to shoot at any deer; or standing close by a tree, with greyhounds in a leach, ready to slip: And it is one of the four evidences or presumpitions, whereby a person is convicted of intending to steal the King's deer in the forest: the other three are dog-draw, back-bear, and bloody-hand. Manwood, ver. 2. cap. 18.

STACK, A quantity of wood three feet long, as many feet broad, and twelve feet high. Merch. Dict.

STADIUM, A furlong of land; the eighth part of a mile. Domeinay.

STAFF-HERDING, The following of cattle within a forest: And where persons claim common in any forest, it must be inquired by the ministers whether they use Staff-herding, for it is not allowable of common rigat; because by that means the deer, which would otherwise come and feed with the cattle, are frightened away, and the keeper or follower will drive the cattle into the best grounds, so that the deer shall only have their leavings: Therefore if any man who hath right of common, under colour thereof use Staff-herding, it is a causing of feizing his common till he pay a fine for the abufe. 1 Jan. Rep. 282.

STAGE-COACHES; See Coaches.

STAGE-PLAYS; See Plays.

STAGIARIUS, A resident as J. B. Canonici & Staginarus Sancti Pauli, a canon-refidentary of St. Paul's church. Hig. Eccl. S. Paul. This distinction was made between residentarius, and Stagiarus: Every canon intailled to the privileges and profits of residence, was residentarius; and while he actually kept such state, residence, he was Stagiarus. Statut. Ecles. Pauli. MS. 44. Stagiaria, the residence to which he was obliged; Stagiari, to keep residence.

STAGNIES, Stagna.] Pools of standing water. Stat. 5 Eliz. c. 21. A pool conflits of water and land; and therefore, by the name of Stagnis, the water and land shall pass also. Inf. 5.

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

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

STALKERS, Certain fishing-nets. See flat. 13 R. 2. c. 10.

STALLAGE, Stallagium, from the Sax. stali, i.e. stabulum stabili.] The liberty or right of pitching and erecting Stalls in fairs or markets: or the money paid for the same. Keene's Gloss.

STALLARIUS, Is mentioned in our historians, and signifies profetus stabuli; it was the same officer which we now call matter of the horse. Sp. Thefe cattle are employed near the market, sometimes it hath been used for him who hath a Stall in a market. Fleot, lib. 4. c. 28.

STAMP-DUTIES, A branch of the perpetual revenue of this kingdom. (See title Taax.) They are a tax imposed upon all parchment and paper whereon any legal proceedings, or private instruments of almost any nature whatever, are written; and also upon licences for retailing wines, letting houses to hire, and numerous other purposes: And upon all almanacks, newspaper, advertisements, cards, dice, and pamphlets containing less than six sheets of paper. These impotts are very various, according to the nature of the thing stamped or taxed, rising gradually from one penny to ten pounds; (and indeed in many cases, as legacies, administrations, &c. to an amount proportioned to the property conveyed.) The first institution of the Stamp-duities was by flat. 5 & 6 W. & M. c. 21; and they have since been increased to an amount which nothing but the absolute necessity of their being imposed could prevent us from flying enormous. These Duties are managed by Commissioners appointed for the purpose. They now extend to such an astonishing variety of articles, and depend on such a multiplicity of statutes, which are continually varying (by increasing) the amount, that no table or compendium which could be framed would probably be of any service to the reader after one Session of Parliament: nor would it be consistent with the general nature of this Work to enter into any further elucidation of the subject.

STAND, A weight from two hundred and a half to three hundred of pitch. Merch. Dict.

STANDARD, From the Fr. Estandart, &c. signum, vel stantum.] In the general significatio, is an Ensign in War. And it is used for the standing measure of the King, to the feasting whereof all the meares in the land are or ought to be framed, by the clerks of markets, aldermen, or other officers, according to Magna Charta and divers other statutes. This is not without good reason called a Standard, because it standeth constant and immovable, having all meares coming to-wards it for their conformity; even soldiers in the field have their Standard or colours, for their direction in war.
their march, &c. to repair to. Britton, c. 30. There is
a Standard of Money, directing what quantity of fine
silver and gold, and how much alloy, are to be con-
tained in coin of old Sterling. &c. And Standard of
Plates, and silver manufactures. Stat. 6 Geo. 1. c. 11.
See titles Gold; Money; Alloy, Weights and Measures, &c.
STANDARDUS, True Standard, or legal weight
or measure. Curritul & Edmund. 33. 268.
STANDEL, A young fore oak-tree, which in time
may make timber; and twelve such young trees are to
be left standing in every acre of wood, at the setting
c. 25. § 18; and this Dict. tite Wood.
STANDING-ARMY, Not to be kept in time of
peace without consent of Parliament. Stat. 1 W. & M.
1. § 2. 2. See title Soldiers.
STANLAW, A town hill. Demus.
STANNARIES, Stannaries, from the Lat. stannum,
tin. The mines and works belonging to tin.
and gold, and how much alloy, are
purified, and this Dict. title Wood.
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STARCH.

...to several regulations accordingly, by various Statutes. Thus, Starchmakers are to make use of square or oblong boxes only, for boxing and draining green Starch, before it is dried in the flour, under the penalty of 10l. and shall give notice to the officers for the duties, when they box and dry their Starch; and not remove the Starch made, before it is weighed, and an account taken thereof, on pain of forfeiting 50l. Officers may search for Starch concealed, by virtue of a Justice's warrant, and seize the same, &c. A penalty is likewise inflicted on makers of hair-powder, perfumers, perfume-makers, barbers, &c., mixing any powder of alabaster, chalk, lime, &c. with Starch-powder, or making hair-powder of any other materials than powder of Starch. And makers of powders for hair, are to make entries of their workhouses at the office of Excise, &c. &c.

STATED DAMAGES; See titles Damage; Bond; Covenant, &c.

STATICKS, Statices, scientia ponderum.] Knowledge of weights and measures; or the art of balancing or weighing in scales. Merc. Dict.

STATIONARIUS; The name as Statarius.

STATUARIUM, A tomb adorned with Statues. Ingulph. 853.

STATUS DE MANERO, The state of a manor: All the tenants within the manor, met in the name of their Lord to do their customary suit, and enjoy their rights and privileges, were termed omnis Status de maniero. Parch. Ant. 456.

STATUTE.

STATUTUM.] Has divers significations: First, It signifies an act of Parliament; and Secondly, it is a short writing called a Statute-Merchant, or Statute-Plac. (see those titles,) which are in the nature of bonds, &c. and called Statutes, as they are made according to the form expressly provided in certain Statutes.

The Acts of Parliament, Statutes of Edicts, made by the King's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, compose the Leges Scriptae, the written laws of the kingdom. The oldest of these now extant, and printed in our Statutebooks, is the famous Magna Charta, as confirmed in Parliament 9 Hen. 3; though doubtles there were many acts before that time, the records of which are now lost, and the determinations of them perhaps at present considered or exist. But the Statutes since the time originally received for the maxims of the Old Common Law, and the making of these Statutes has been already considered under title Parliament, Div. VII. — To what is that field we may here only add, that the Royal affent, when given, is indorsed upon the several acts. That till the reign of Rich. III. all the Statutes were either in Latin or Latin, generally French. And that by Stat. 23 Geo. 3. c. 13, it is enacted, that when the operation of an act of Parliament is not directed to commence from any time specified within it, the clerk of the Parliament shall indorse upon it the day upon which it receives the Royal assent: (and which, since this act, is added, in the printed Statutes immediately after the title:) And that day shall be the date of its commencement.—This Statute has obviated much inconvenience (not to say injustice) which arose from the former maxim, that an act of Parliament operated from the first day of the Session; the whole Session, like the whole term, being considered as one day; and thus many Statutes had the force of ex post facto laws.

The method of citing these acts of Parliament is various. Many of our antient Statutes are called after the name of the place where the Parliament was held that made them; as the Statutes of Morton and Marlborough (Marlborough), of Westminster, Gloucester, and Winchester. Others are denominated entirely from their subject; as the Statutes of Wales and Ireland, the Articles Cleri, and the Prerogation Regis. Some are distinguished by their initial words, a method of citing very antient: As the Statute of Quia Emptores, and that of Circumplecta Agatis. But the most usual method of citing them, especially the time of Edward II. is by naming the year of the King's reign in which the Statute was made, together with the chapter, or particular act, according to its numeral order, as, 9 Car. 2. c. 4. For all the acts of one Session of Parliament taken together make properly but one Statute: And therefore when two Sessions have been held in one year, we usually mention both 1 or 2. Thus the Bill of Rights is cited, as 1 W. & M. b. 2. c. 5; signifying that it is the second chapter or act, of the second Statute, (or the Laws made in the second Session of Parliament,) in the third year of King William and Queen Mary.

We are now to consider,

I. The different Kind of Statutes.

II. Some general Rules with regard to their Conformities.

I. Statutes are either general or special, public or private. A general or public act is an universal rule, that regards the whole community: And of this the Courts of Law are bound to take notice judicailly and ex officio; without the Statute being particularly pleaded, or formally set forth by the party who claims an advantage under it. Special or private acts are rather exceptions than rules, being those which only operate upon particular persons, and private concerns: And of these (which are not promulgated with the fame notoriety as the former) the Judges are not bound to take notice, unless they be formally shown and pleaded. Thus, to shew the distinction, the Statute 13 Eliz. c. 10, to prevent Spiritual Persons from making leaves for longer terms than twenty-one years, or three lives, is a public act: It being a rule prescribed to the whole body of Spiritual Persons in the nation: But an act to enable the Bishop of Chester to make a lease to A. B. for sixty years, is an exception to this rule; it concerns only the parties and the Bishop's successors; and is therefore a private act. 1 Comm. Instud. § 3. 4. 85. 86.

Some Statutes (says another authority) are general, and some are special: And they are called general from the genus, and special from the species; as for instance: The whole body of the Spirituallity is the genus, but a Bishop, Dean, and Chapter, &c. is the species: Therefore Statutes which concern all the Clergy, are general laws: but those which concern Bishops only are specialist. 4 Rep. 76. The Statute 21 H. 8. c. 13, which makes the...
the acceptance of a second living by clergymen, an avoidance of the first, is a general law, because it concerns all spiritual persons.

All Statutes concerning mysteries and trades in general, are general or public acts; though an act which relates to one particular trade is a private Statute. Dyer 75. A Statute which concerns the King is a public act; and yet the Stat. 23 H. 8, concerning Sheriffs, &c. is a private act. Plowd. 38: Dyer 119. — It is a rule in Law, that the Courts at Westminster ought to take notice of a general Statute, without pleading it; but they are not bound to take notice of particular or private Statutes unless they are pleaded. 1 Inst. 98.

Statutes are also either declaratory of the Common Law, or remedial of some defects therein; or to speak more briefly, they are either declaratory of the old law, or introductory of a new law. Remedial Statutes being generally mentioned in contradistinction to penal Statutes. Declaratory, where the old custom of the kingdom is almost fallen into dilute, or become dispensible, in which case the Parliament has thought proper, in perpetuum rei statuendum, and for avoiding all doubts and difficulties, to declare what the Common Law is and hath been. Thus the Statute of Treasons, 25 Edw. 3. fl. 5. c. 2, doth not make any new species of treasons; but only, for the benefit of the Subject, declares and enumerates those several kinds of offence, which before were treason at the Common Law. Remedial, or Introductory, Statutes, are those which are made to supply defects, and abridge such superfluities, in the Common Law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and undiscovered determinations of unlearned (or even learned) judges, or from any other cause. Wherever it is said, that this being done, either by enlarging the Common Law where it was too narrow and cessibribed, or by restraining it where it was too lax and luxuriant, hath occasioned another subordinate division, of these remedial Introductory Acts of Parliament, into Enlarging and Restraining Statutes. To infalce again in the case of treason. Clipping the current coin of the kingdom was an offence not sufficiently guarded against by the Common Law; therefore it was thought expedient by the Stat. 5 Eliz. c. 11, to make it High Treason, which it was not at the Common Law: So that this was an enlarging Statute. At Common Law all spiritual Corporations might lease out their estates for any term of years, till prevented by the Statute 13 Eliz. c. 10, before mentioned: Thus was this a restraining Statute. 1 Comm. 86, 87.

It is remarked by Mr. Christian, that the Stat. 5 Eliz. c. 11, above referred to, hardly corresponds with the general notion either of a remedial, or an enlarging statute. In ordinary legal language, remedial Statutes are (as has been already noticed) contradistinguished to penal Statutes. An enlarging or an enabling Statute is one which increaseth, not restrains, the power of action: As Stat. 32 H. 8. c. 28, which gave Bishops and all other sole Ecclesiastical Corporations, except persons and vicars, a power of making leases which they did not possess before, is always called an enabling Statute. The Stat. 13 Eliz. c. 10, which afterwards limited that power, is, on the contrary, styled a restraining or disabling Statute. 1 Comm. 87. n. See also 2 Comm. c. 20: and this Dictionary, title Linfe II.

II. These rules to be observed with regard to the construction of Statutes are principally these which follow:

1. That there are three points to be considered in the construction of all remedial Statutes; the old law, the mischief, and the remedy: that is, how the Common Law stood at the making of the act; what the mischief was for which the Common Law did not provide: and what remedy the Parliament had provided to cure this mischief. And it is the business of the judges to continue the act, as to suppress the mischief and advance the remedy, 3 Rep. 7: Co. Litt. 11. 42. Let us infalce again in the same restraining Statute, 13 Eliz. c. 10. By the Common Law, Ecclesiastical Corporations might let as long leases as they thought proper: the mischief was, that they let long and unreasonable leases, to the impoverishment of their succelfors. The remedy applied by the Statute was, by making void all leases by Ecclesiastical Bodies, for longer terms than three lives or 21 years. Now in the construction of this Statute it is held, that leases, though for a longer term, if made by a Bishop, are not void during the Bishop’s continuance in his See; or, if made by a Dean and Chapter, they are not void during the continuance of the Dean: for the act was made for the benefit and promotion of the successor. Co. Litt. 45. 3 Rep. 60: 10 Rep. 58. The mischief is therefore sufficiently suppressed by vacating them after the determination of the interest of the grantees; but the leases, during the continuance of that interest, being not within the mischief, are not within the remedy. 1 Comm. 87.

2. A Statute, which treats of things, or persons of an inferior rank, cannot, by any general words, be extended to those of a superior. So a Statute, treating of “Deans, Prebendaries, Parsons, Vicars, and others having spiritual promotion,” is held not to extend to Bishops, though they have spiritual promotion; Deans being the highest persons named, and Bishops being of a still higher order. 2 Rep. 46.

3. Penal Statutes must be construed stringly. Thus the Statute 1 Edw. 6. c. 12, having enabled that those who are convicted of stealing horses should not have the benefit of clergy, the Judges conceived that this did not extend to him that should steal but one horse, and therefore procured a new act for that purpose in the following year, Stat. 4 & 5 Edw. 6. c. 33: Bac. Elem. c. 12. Tho’ Lord Hale takes the true reason of the difficulty to have arisen from the circumstance of a doubt, as to the benefit of clergy, attaching where only one horse was stolen, on account of the words in the old Stat. 37 H. 8. c. 8, respecting stealing a horse. 2 H. C. 965. To mention a more modern and more applicable instance; by the Statute 14 Geo. 2. c. 6, stealing sheep, or other cattle, was made felony without benefit of clergy. But these general words, “or other cattle,” being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next Sessions, it was found necessary to make another Statute, (15 Geo. 2. c. 14.) extending the former to bulls, cows, oxen, fheep, bullocks, heifers, calves, and lambs by name. 4. Statutes.
4. Statutes against frauds are to be liberally and bene-

ficially expounded. These are generally called remedial

Statutes. And it is a fundamental rule of construc-

tion, that penal Statutes shall be construed strictly, and
these remedial Statutes liberally. See 1 Comm. 88, & c.

This may seem a contradiction to the last rule, most

Statutes against frauds being in their consequences penal.

But this is here to be taken: where the Sta-

tute acts upon the offender, and directs a penalty, as the
pillory or a fine, it is to be understood, that the

Statute acts upon the offended, by setting aside the
fraudulent transaction, here it is to be construed liber-

ally. Upon this footing, the stat. 13 Eliz. c. 4, which

avoids all gifts of goods, &c., made to defraud creditors
and others, was held to extend, by the general words, to

a gift made to defraud the Queen of a forerature. 3
Rep. 82. It has also been held, that the same words

of the same Statute will bear different determinations,

according to the nature of the suit or prosecution inflicted

upon them. For example; the stat. 9 Ann. c. 14,

against gaming, enacts, that if any person shall loate at
any one time or sitting 13d, and shall pay it to the win-
ner, he may recover it back within three months; and

if the loser does not within that time, any other per-

son may sue for it, and treble the value besides: In a
cafe where an action was brought to recover back 14
guineas which had been won and paid after a continu-
ance at play, except an interruption during dinner; the
Court held the Statute was remedial, as far as it pre-
vented the effects of gaming, without inflicting a pe-

nalty; and therefore, in this action, they considere it

one time or sitting: But they said, if an action had been

brought by a common informer for the penalty, they

would have construed it strictly, in favour of the defend-

ant, and would have held that the money had been

lost at two sittings. 2 Black. Rep. 1226: 1 Comm. 88,
89, & c.

5. One part of a Statute must be so construed by an-
other, that the whole may, if possible, stand; ut res

magis valeat, quam percut. As if land be vested in the
King and his heirs by act of Parliament, faving the right
of A.; and A. has at that time a lease of it for three

years: Here A. shall hold it for his term of three years,
and afterwards it shall go to the King. For this inter-

pretation furnishes matter for every claue of the Sta-
tute to work and operate upon. But, 6. A faving,
totally repugnant to the body of the act, is void. If,

therefore, an act of Parliament vests land in the King
and his heirs, faving the right of all persons whatsoever;
or vests the land of A. in the King, faving the right of
A.: In either of these cases, the faving is totally repug-

nant to the body of the Statute, and (if good) would
render the Statute of no effect or operation; and there-
fore the saving is void, and the land vests absolutely in
the King. 1 Rep. 47: 1 Comm. 89.

7. Where the Common Law and a Statute differ, the
Common Law gives place to the Statute; and an old
Statute gives place to a new one. And this upon a ge-

neral principle of universal Law, Leges posteriores priores

contrariarum abrogant. But this is to be understood only

when the latter Statute is couched in negative terms, or
where its matter is so clearly repugnant that it necessarily
implies a negative. As if a former act lays, that a juror
upon such a trial shall have 20 pounds a-year; and a

new Statute afterwards enacts that he shall have 20
marks; here the latter Statute, though it does not ex-

press, yet necessarily implies a negative, and virtually

repeals the former. For if 20 marks be made qualifica-
tion sufficient, the former Statute which requires 20
pounds is at an end. Jern. Cant. 2, 73. But if both
acts be merely affirmative, and the substance such that
both may stand together, here the latter does not repeal
the former, but they shall both have a concurrent ef-
cacy. If, by a former Law, an offence be indelible at
the Quarter Sessions, and the latter Law makes the same
offence indelible at the Assizes; here the jurisdiction of
the Sessions is not taken away, but both have a concur-
rent jurisdiction, and the offender may be prosecuted at
either; unless the new Statute subjoins express negative
words, as, that the offence shall be indelible at the
Assizes, and not elsewhere. 1 Rep. 63: 1 Comm. 89, 90.

8. If a Statute, that repeals another, is itself repealed

afterwards, the first Statute is hereby revived, without
any formal words for that purpose. So when the Sta-
tutes of 26 H. 8. c. 1: 35 Hen. 8. c. 3, declaring the
King to be the Supreme Head of the Church, were re-
pealed by a Statute 1 & 2 P. & M. and this latter Sta-
tute was afterwards repealed by an act of 1 Eliz. there
needed not any express words of revival in Queen Eliza-

beth’s Statute, but these acts of King Henry were im-

pliedly and virtually revived. 4 Inst. 325: 1 Comm. 90.

Acts of Parliament derogatory from the power of sub-
sequent Parliaments bind now. So the Statute 11 Hen. 7.
c. 1, which directs, that no person for affiencing a
King de facto shall be attainted of treason by act of
Parliament or otherwise, is held to be good only as to
common prosecutions for high treason; but will not re-
strain or clog any parliamentary attainder. 4 Inst. 41.

Because the Legislature, being in truth the Sovereign
Power, is always of equal, always of absolute authority: it
acknowledges no superior upon earth, which the prior
Legislature must have been, if its ordinances could bind
a subsequent Parliament. 1 Comm. 96.

Statutes against the power of subseqent Parliaments
are not binding; notwithstanding the Statute 42 Ed. 3.
c. 3, declares that any Statute made against Magna
Charta shall be void: and this is evident, seeing many
parts of Magna Charta have been repealed and altered
the Law has been mislaken in this point: for the Sta-
tutes which intervene between the 9 Hec. 3, and 42 Ed. 3,
are not repealed, though they vary from, and are con-
trary to, Magna Charta: Jern. Cant. 2.

10. Lastly, Acts of Parliament that are impossible to
be performed are of no validity: and if there arise out
of them collateral any absurd consequences, manifestly
contrary to common reason, they are, with regard to
thofe collateral consequences, void. Blackstone lays down
the rule with these reservations; though he allows it is
generally laid down more largely, that acts of Parliament
contrary to reason are void. But if the Parliament
will positively enact a thing to be done which is unreas-
onable, I know of no power (says the Commentator)
in the ordinary forms of the Confirmation, that is vested
with authority to control it: and the examples usually
alleged in support of this sense of the rule do none of
them prove, that, where the main object of a Statute is
unreasonable, the Judges are at liberty to reject it; for

that
STATIVE II.

that were to set the judicial power above that of the Legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable; there the Judges are in deceny to conclude that this consequnmce was not foreseen by the Parliament, and therefore they are at liberty to expound the Statute by equity, and only quad bee disregard it; or, to state it perhaps more correctly, it will not be presumed that any construction can be agreeable to the intention of the Legislature, the consequences of which are unreasonable. Thus, if an act of Parliament gives a man power to try all causes, that arise within his manor of Dale; yet if a cause should arise in which he himself is party, the act is continued not to extend to that, because it is unreasonable that any man should determine his own quarrel. 8 Reg. 118. But, if we could conceive it possible for the Parliament to enact, that he should try as well his own cause as those of other persons, there is no Court that has power to defeat the intent of the Legislature, when couched in such evidence and express words, as leave no doubt whether it was the intent of the Legislature or no. 1 Comm. 91, and n.

The following notes will still further assist the student in his researches on this subject; though perhaps some few lines in them may seem a little tautological, compared with the foregoing copious extracts from Blackstone. It is the general rule, that to Statutes enacted in Parliament, there must be the assent of the King, Lords, and Commons, without which there can be no good act of Parliament; but there are many acts in force, though these three assents are not mentioned therein, as Dominus Rex Statuit in Parlamento, and Dominus Rex in Parlamen- to sua Statuta edit, and de communi consilio Statutis, &c. Plead. 97: b Bull. 186. And Sir Edou. Coke says, that several Statutes are penned like charters in the King's name only: though they were made by lawful authority. 4 Jnft. 24. Before the invention of printing, all Statutes were proclaimed by the Sherif in every county, by virtue of the King's writ. 2 Inf. 536, 644.

Statutes continue in force although the records of them are destroyed, by the injury of time, &c. 2 Inf. 587.

Statutes consist of two parts, the words, and the sense; and it is the office of an expounder, to put such a sense upon the words of the Statute, as is agreeable to equity and right reason: Equity must necessarily take place in the exposition of Statutes; but explanatory acts are to be construed according to the words, and not by any manner of intendement; for it is incongruous for an explanation to be explained. Plead. 363, 465; Cro. Car. 24.

The preamble of a Statute, which is the beginning thereof, going before it, as it were, a key to the knowledge of it, and to open the intent of the makers of the act; it shall be deemed true, and therefore good arguments may be drawn from the same. 1 Inf. 11. It is the most natural and genuine exposition of a Statute, to construe one part by another part of the same Statute, for that both expresses the meaning of the makers; the words of an act of Parliament are to be taken in a lawful and rightful sense, and though, as has been already said, the construction of Statutes in general must be made in suppression of the mischief, and for the advancement of the remedy, intended by the Statute; but so that no inno-
The Statute of Acton Barnet, 11 Ed. 1, and Stat. de Mercatoribus, 13 Ed. 1. stat. 3, enact, that the merchant shall cause his debtor to appear before the Mayor of the city of London, or other city or town, and there acknowledge the debt, &c. by recognizance, which is to be enrolled; the roll whereof must be double, one part to remain with the Mayor, and the other with the clerk appointed by the King; and then one of the clerks is to write the obligation, which shall be sealed with the debtor's seal, and that of the King. &c.

By these Statutes, if the debt be not paid at the day upon the merchant's account, the Mayor is to cause the debtor to be imprisoned, if to be found, and in prison to remain until he hath agreed the debt; and if the debtor cannot be found, the Mayor shall send the recognizance into the Chancery, from whence a writ shall issue to the Sheriff of the county where the debtor is, to arrest his body, and keep him in prison till he agree the debt; and, within a quarter of a year, his lands and goods shall be delivered to him to pay the debt; but if the debtor do not satisfy the debt within that time, all his lands and goods shall be delivered to the merchant by a reasonable extent, to hold until the debt is levied thereby; and in the mean time he shall remain in prison; but when the debt is satisfied, the body of the debtor is to be delivered, together with his lands. If the Sheriff return a non est inventor, &c. the merchant may have writs to all the Sheriffs where he hath any land; and they shall deliver all the goods and lands of the debtor, by extent; and the merchant shall be allowed his damage, and all reasonable costs, &c.

All the lands in the hands of the debtor, at the time of the recognizance acknowledged, are chargeable; (but see Stat. 29 C. 2. c. 3, before referred to;) though, after the debt is paid, they shall return to grantees, if they are granted away, as shall the rest to the debtor:

The debtor or his sureties dying, the merchant shall not take the body of the heir, &c. but shall have his lands until the debt is levied. If the debtor have sureties, they shall be proceeded against in like manner as the debtor; but so long as the debt may be levied of the goods of the debtor, the sureties are to be without damage. Also the merchant shall, besides the payment of his debt, be satisfied for his stay and detention from his business. In London, out of the commonalty two merchants are to be chosen and sworn by this Statute, and the seal shall be opened before them, whereof one piece is to be delivered to the said merchants, and the other remain with the clerks; and before these merchants, &c. recognizances may be taken. A fee of 14. per pound is allowed to the clerk for fixing the King's seal; and a seal is to be provided that shall serve for fairs, &c. but the Statute extends not to fines. Cre. Car. 444. 457.

Statutes-Merchant were contrived for the security of merchants only, to provide a speedy remedy to recover their debts; but at this day they are used by others who follow not merchandize, and are become one of the common assurances of the kingdom. Bridg. 21: Owen 82. And all obligations made to the King are of the nature of these Statutes-Merchant. 12 Rep. 2. 3.

Statute-Staple. A Bond of record, acknowledged before the Mayor of the Staple, in the presence of all or one of the Constables; to this end, says the
the Statute, there shall be a seal ordained, which shall be
affixed to all obligations made on such recognizance ac-
knowledged in the Staple: This seal of the Staple is
the only seal the Statute requires to attest this con-
tract; but it is no more under the power or disposal of
the Mayor, than that appointed by the Statute-mer-
chant: for though the Statute appoints him the custody
of it, yet it is in such a manner, that he cannot albe
no obligation without their consent, it being to re-
main in the Mayor's hands under the security of their
own seals. 2 Rol. Abr. 426: Stat. 27 Ed. 3. c. 9. See
tide Statute-Merchant.

To understand a little of the original and constitution
of the Staple, and the advantage the nation had by
this establishment, we must observe, that the place of re-
dence, whither the merchants resorted with their Staple
commodities, was antiquely called Staple, which signi-
fies no more than mart or market; and this was for-
merly appointed out of the realm, as at Calais, Antwerp,
&c. and other ports on the Continent, which were
nearest to us, and whither the merchants might with
safety conduct it. 4 Infr. 238.

But besides these Staple ports appointed abroad, there
were others appointed at home; whither all the Staple
commodities were carried in order to their exportation,
such as London, Wapping, Hull, &c. This was found to
be of great use and consequence to the Prince in par-
ticular, and to the interest and credit of the nation in
general; for at these Staple ports were the King's cus-
toms easily collected, and were by the officers of the
Staple, at two several payments, returned into the Ex-
chequer; besides, at these Staples, all Merchants' goods
were carefully viewed and marked by the proper officers
of the Staple; and this necessarily avoided the exporta-
tion of decayed goods, or ill-wrought manufactures,
and consequently fixed a stamp of credit on the mer-
chandizes exported, which, upon the view, always an-
swered the expectation of the buyer. Malins's Lex Merc.
337. 338.

The Staple merchandizes, according to Lord Coke,
are only wool, woollens, leather, lead, and tin: others,
butter, cheese, and clothes; but, whatever they were,
the Mayor and Constables had not only converse of
all contracts and debts relating to them, but they had
likewise jurisdiction over the people, and all manner of
touching the Staple; this power was given them,
the merchants should be diverted and drawn from
their business and trade, by applying to the Common
Law, and running through the tedious forms of it, for
a determination of their differences; and for the greater
encouragement of merchants, that they might have any
imaginary security in their contracts and dealings,
and the most expeditious method of recovering their debts,
without going out of the bounds of the Staple. 4 Infr. 238:
Malins's Lex Merc. 337.

By this it appears, that this security was only de-
digned for the merchants of the Staple and for debts
only on the sale of merchandizes brought thither; yet
in time others began to apply it to their own ends, and
the Mayor and Constable would take recognizances from
strangers, furnishing it was made for the payment of
money for merchandizes brought to the Staple. To
prevent this mischief, the Parliament, in 25 H. 8, re-
duced the Statute-Staple to its former channel, and laid
a penalty of 40 l. on the Mayor and Constables who
should extend the benefit of the Statute to any but those
of the Staple. But though the Stat. 23 H. 8. c. 6, de-
prived them of this benefit, yet it framed the new fort
of security known by the name of a Recognizance,
in the nature of a Statute-Staple; so called because this
is limited and appoints the same process, execution, and
advantage, in every particular, as is set down in the

A Recognizance, therefore, in nature of a Statute-
Staple, as the words of the act declare, is the same
with the former, only acknowledged under other per-
pos; for, as the Statute runs, the Chief Justices
of the King's Bench and Common Pleas, or, in their absence,
ought out of Term, the Mayor of the Staple at Wapping,
and the Recorder of London, jointly together, shall have
power to take Recognizances for payment of debt in
the form set down in the Statute. In this, as in the for-
mer case, the King appoints a seal to attest the contract.

Debts thus are well upon a Statute Staple as upon a bond:
And a Statute acknowledged on lands is a present duty,
and ought to be satisfied before an obligation; a debt
due on an obligation being but a chose in action, and
recoverable by law, and not a present duty by law,
as a debt upon a Statute, judgment, or recognizance is,
and is in every particular, as according to Lord Coke,
merchants on lands is a present duty, and not a future

But a judgment in a Court of record shall be prefer-
red, in case of execution, before a Statute: Though,
if one acknowledge a Statute, and afterwards con-
judgment, if the land be extended thereon, the cognize
shall have a fiere facias to avoid the extent upon the
judgment. It is otherwise as to goods, for there, he
thatcomes first shall be first served. 6 Rep. 45: 1 Bro.wel. 37. The cognizer of a Statute grants his
right to the cognizee; by this the execution of the Sta-
tute will be suspended. 2 Cro. 424. But if the cognizee,
before execution of a Statute, refers to the cognizer all his right to the land; it will not be a discharge
of the whole execution: for, notwithstanding, he may
have execution of his body and goods. 3 Step. Abr. 326.
Upon a Statute-Staple, a Capita and extent of lands,
goods, and chattels, are contained in one writ; but it
is not so in a Statute-Merchant. 424. In
Chancery, the proceedings on a Statute-Staple are in
the Petty-bag Office, and Statute-Staple are made
in the King's Bench or Common Pleas, as well as
in Chancery. Cro. Eliz. 208. On a Statute's being sa-
ished, it is to be vacated by entering satisfaction, &c.
 Statutes-Staple and Statutes-Merchant are to be entered
within six months, or shall not be good against pur-
c. 5, for preventing delays in extending Statutes.

He that is in possession of land on a Statute Merchant,
or Staple, is called Tenant by Statute-Merchant, or Statute-
Staple, during the time of his possession: And creditors
shall have freehold in the lands of debtors, and recovery
by personal suit, if put out; but if tenant by Statute-
Merchant or Statute-Staple hold over his term, he hath
right may sue out a Pari facias ad remendant, &c.
enter, as upon an eject, Stat. 27 Ed. 3. c. 9.
STATUTAE OF A CORPORATION. See Corporation.

STATUTAE MERCATORII. The ancient writ for imprisoning him that had forfeited a Statute-Merchant bond, until the debt were satisfied: And of these writs, one was against lay-persons, and another against persons ecclesiastical. Reg. Orig. 146, 149.

STATUTAE STAPULAE. The ancient writ that lay to take the body to prison, and feise upon the lands and goods of one who had forfeited the bond called Statute-Staple. Reg. Orig. 151.

STATUTAE DE LABORARIIS. An ancient writ for the apprehending of such labourers as refused to work according to Statute. Reg. Judic. 27.

STATUTAE SESSIONUM. The Statute- sessions; a meeting, in every Hundred, of constables and householders, by custom, for the ordering of servants, and debating of differences between the masters and servants, rating of servants’ wages; &c. See Stat. 5 Eliz. cap. 4.

STEALING; See Larceny; Robbery.

STEALING AN HEIR; See title Marriage.

STEEL; See Iron.

STEELER, Scafinum; A pilot.

STERLING, Stealing.] Was the epithet for silver money current within this kingdom, and took its name from this; that there was a pure coin stamped first in England by the Earls of Northumberland, or merchants of East Germany, by the command of King John; and Hovedes writes it Stealing. Instead of the pound Sterling, we now say so many pounds of lawful English money; but the word is not wholly disused, for though we ordinarily say lawful money of England, yet in the Mint they call it Sterling Money; and when it was found convenient, in the fabrication of monies, to have a certain quantity of bafer metal to be mixed with the pure gold and silver, the word Sterling was then introduced; and it has ever since been used to denote the certain proportion or degree of fineness, which ought to be retained in the respective coins. Lovelace’s Essay on Coins 4. See title Coin.

STEWARDS, Stewards; composed of the Sax. Stewards, Steward, Court Steward, house Steward, and Steward, a ward or keeper; i.e. a man appointed in my place or stead. The term hath many applications, but always denotes an officer of chief account within his jurisdiction. The greatest of these officers is, The Lord High Steward of England, who, from the time of Edward the Confessor, and the valley of the Wye, and the king’s court, and there is a whole body of officers, with their titles, in the several courts of law and equity. See Lord Steward.

STICK, Sticklin. A rod or rudder.

STICK OF EELS, A quantity or measure of twenty-five. A kind of Eels containing ten Sticks, and each Stick twenty-five Eels. Stat. of Weights and Measures.


STILE; See Style.

STILYARD, or STEELYARD; Otherwise called the Style-house, in the palace of Alkabulos in London, was by authority of Parliament assigned to the merchants of the House; and to Ambrosius or the English merchants, to have their abode in for ever, with other privileges, rendering to the Mayor of London a certain yearly rent. Stat. 14 Ed. 1. In some records it is called Galbula. Testamentaria; and it was at first designated Stilyard of a broad place or court where steel was stored, upon which that house was founded. See Stat. 19 H. 8. c. 8: 1 Ed. 9. c. 39.

STINT, Common without, See title Common.

STIPULAE. Stubble left standing in the field after the corn is reaped and carried away. Corn. Ant. 32.
STIPULATION IN THE ADMIRALTY COURTS. The first process in these Courts is frequently by arrest of the defendant's person; when they take recognizances or stipulation of certain seamen to conform to a duty in the nature of bail, and, in case of default, may imprison both them and their principal. 3 Comm. 108. See title Admiralty.

STIPULANDUS, suumnumus, Sax. storn-man.] A pilot of a ship, or Steer-man. Don. day.

STIRPES, Distribution per; See title Executors V. c. 3. Steer, Succession in; See titles Defunct; Canon IV.

STOCK AND STOVEL, A forfeiture where any one is taken carrying stock & pabulum out of the woods; for the signifies sticks, and Stovel pabulum. Antiqu. Chart.

Stock, or Stock, Syllables added to the names of places, from the Sax. Stock, i.e. Steppes, Frangis; as Woodstock, Burying Stock, &c.

Stock and Family. If lands were devised generally to a Stock or Family; it shall be understood of the heir principal of the house. Hob. 33. See Title; and titles Wild; Defunct.

STOCKJOBBERS, in Exchange Acts. All Stock-jobbing not authorized by act of Parliament, or by charter, or used by obsolete charters, shall be void, and the undertakings are declared Nuisances. Stat. 6 Geo. 1. c. 18.—All premiums to deliver or receive, accept or refuse any public Stock, or share therein, and contracts in nature of wagers, puts and refusals relating to the value of the Stock, shall be void; and the premiums, shall be returned, or may be recovered by action, with double costs; and the persons entering into or executing any such contract, shall forfeit 500L. No money shall be given to compound any difference, for not delivering or transferring Stock, or not performing contracts; but the whole money agreed, is to be paid, and the Stock transferred, on pain of 100L. Persons buying, on refusal or neglect to transfer at the day, may buy the like quantity of Stock, of any other person, and recover the damage of the first contractor; and contracts for sale of any Stock, where contractors are not actually possessed or entitled to the same, to be void; and the pards agreeing to sell, &c, incur a penalty of 500L. Brokers making agreements, &c, and acting contrary, are also liable to penalties. But this act not to hinder trading money on Stocks, or contracts for re-delivering or transferring thereof, so as no premium be paid for the loan more than legal interest. Stat. 7 Geo. 2. c. 8; made perpetual by Stat. 10 Geo. 2. c. 8. It is to be lamented, that these acts of Parliament are openly and impudently transgressed, by gambling in the Public Funds: The bargains are understood to be upon honours: It has been in contemplation of the gamblers, who have for years been in the daily habit of violating the laws of their country, ever since the passing of the above statutes, to attempt a repeal of these statutes; and obtain a law by which their iniquitous bargains should be rendered binding. An inference, however, which has hitherto received very little encouragement.

Stock, or Public Funds; See titles National Debt; Taxes.

Stocks, sippa.] A wooden engine to put the legs of mine-owners in, for the securing of disorderly persons, and by way of punishment: in divers cases ordained by statute, &c. And it is said that every vill within the precinct of a town is liable to him, that he has a pair of Stocks, and shall forfeit 50. 1 K. 13. See title Drunkard.

STOCKLAND (or STOCKELAND) AND BOND-LAND. In the manor of Wodhull in Suffolk, there are two forts of copyhold estates, called Stockeland and Bondland, defendable by custom in several manners: As if a man be first admitted to Stockeland, and afterwards to Bondland, and dies seized of both, his eldest son and heir shall inherit both estates; but if he be admitted first to Bondland, and after to the other, and of these dieth seized, his youngest son shall inherit. And Bondland held alone, descents to the youngest son. 2 Lev. 75.

STOLA, A garment or hood formerly worn by plebs. Sometimes it is taken carrying stoles & pabulum out of the woods; for the signifies sticks, and Stovel pabulum. Antiqu. Chart.

STOKE, Syllables added to the names of places, from the Sax. Stock, i.e. Steppes, Frangis; as Woodstock, Burying Stock, &c.

STOLEN GOODS; See titles Larceny; Restitution; Rewards.

STONE, A weight of 14 pounds, used for weighing of wool, &c. The Stone of wool ought to weigh 14 pounds; but in some places, by custom, it is less, as 12 pounds and a half. A Stone of wax is eight pounds; and in London the Stone of beef is no more. 11 Hen. 7. c. 4: Rot. Parl. 17. Ed. 3. See St. Weights and Measures.

STORES OF WAR; See Naval Stores.

STORETARIUS, He who had the care of the State or breed of young horeses. Leg. Alfred, c. 9.

STOWN, Sax. A place; it is often joined to other words; as Stanford is a place dedicated to God.

STOWAGE, Money paid for a room where goods are laid. See Housage.

STRAITS, A narrow sea between two lands, or an arm of the sea. Also there is a narrow coarse cloth anciently so called. Stat. Antig. 18 Hen. 6. c. 16.

STRAND, Sax. Any shore or bank of a sea or great river. Hence the street in the western suburbs of London, which lay next the shore or bank of the Thames, is called the Strand. An immunity from custom, and all impositions upon goods or vessels, by land or water, was usually expressed by Strand and stream. Min. Angl. comm. 3. p. 4.

STRANDED Goods; See this Dictionary, titles Wrecks; Infrance XI.

STRANGER, from the Fr. étranger, alienius.] Born out of the realm, or unknown: An alien. In law it hath also a special signification, for him that is not privy to an act: As a Stranger to a judgment, is he whom a judgment doth not affect; and in this sense it is directly contrary to party or privy. Old Nat. Br. 128. Strangers to deeds shall not take advantage of conditions of entry, &c, as parties and privies may; but they are not obliged to make their claims on a fine levied till five years; whereas privies, such as the heirs of the party that passed the fine, are barred prefently. 1 Inst. 214: 2 Inst. 516: 3 Rep. 79. Strangers have either a present or future right; or an apparent possibility of right, growing afterwards, &c. Wood's Inst. 245. See titles Privies; Fine; Judgments, &c.

STRAY; See Hoy.

STRAY; See Hory.

STREAM-WOKES, A kind of Works in the Streams, mentioned in Rot. 27 H. 8. c. 27.

STREEMAN, Sax. 1. Rebus sic stantibus: 19 text; see Leland, vol. 2. p. 188.

STREETS
STREETS of London. See titles London; Police; Robbery; Assault.

STREPITUS JUDICIALIS. The circumstances of noise and crowd, and other turbulent formalities at a process or trial in a public Court of Justice. And therefore our wise ancestors did in many cases provide, that right and justice should be done in a more private and quiet manner. Cowell, Parab. Antiq. p. 344.


STRIKING in the King's superior Courts of Justice, in Westminster-Hall, or at the Assizes, whether blood be drawn or not: or even assaulting the judge sitting in the Court, by drawing a weapon, without any blow struck, is punishable with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels, and of the profits of the offender's lands during life. Stamp'd, P. C. 38; 3 Inq. 140, 141; 4 Comm. 125: And see title Refuse. Maliciously Striking in the King's palace, wherein his Royal person resides, whereby blood is drawn, is punishable by perpetual imprisonment, and fine at the King's pleasure: and also with the loss of the offender's right hand, the solemn execution of which sentence is described at length in the Stat. 33 H. 8. c. 12. This offence is triable in the Court of the Lord Steward of the Household; by a Grand and Petit Jury, as at Common Law, taken out of the officers and sworn servants of the King's Household. 4 Comm. 276. As to Striking in Churches, see title Church. And also see title Assault.

STRIP; See Ejection.

STROND, Sax. J. Strand.

STAMPED, meavorin. A whore, harlot, or courte¬lan: This word was heretofore used for an addition. Plut. apud Caesar. 6 Hen. 5.

STRYKE, The eighth part of a load or quarter of corn, a Strike or bushel. Cartular. Rading MS. 116.

STUD of Mares; A company of Mares kept for breeding of colts: from the Sax. Bred-more, i.e. equus ad hor. Fortuna.

STULTIFYING ONE'S SELF; See title Idiot and Lunatick.

STURGEON. The King shall have Sturgeon taken in the sea, or elsewhere within the realm, except in certain places privileged by the King, see title King; and Stat. 17 E. 2. f. 1. c. 11.

STYLE, appella.] To call, name, or intitle one: as, the Style of the King of England is George the Third, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c. There is an Old and New Style of the Calendar. See title Year.

SUB-DEACON; An ancient officer in the church, made by the delivery of an empty platter and cup by the Bishop, and of a pitcher, basin, and towel by the Archdeacon: His office was to wait on the Deacon with the linen on which the body, &c. was consecrated, and to receive and carry away the plate with the offerings at sacraments, the cup with the wine and water in it, &c. He is often mentioned by the Monkish historians, and particularly in the Apostolical Canons, 42, 43.

SUBJECTS, subditi:] The members of the Commonwealth under the King their Head. Wood's Inf. 10.

SUBINFEUDATION; See Feudment; Was where the inferior lords, in imitation of their superiors, began to carve out and grant to others minister estates than their own, to be held of themselves, and were to proceeding downwards, in infinitum, till stopped by various legislative provisions. See this Dict. title Manor; and also title Tenures.

SUBJUGALIS, Any beast carrying the yoke. Matt. 17, 1240.

SUBLEGGERIUS, from Sax. jubeger, incoqui.] One who is guilty of incestuous whoremongram.

SUB-MARSHAL, An officer in the Marshalsea, who is Deputy to the Chief Marshal of the King's House, commonly called the Knight Marshal, and hath the custody of the prisoners there. He is otherwise termed Under-Marshall. Cresp. Juris. 104.

SUBMISSION to award; See title Award.

SUBLERVARE, To ham-string, by cutting the fleshes of the legs and thighs: And it was an old custom in England,ievices & impudica mulieres prevare.

SUBLORNATION, Subornation.] A secret underhand preparing, instructing, or bringing in a false witness; and from hence Subornation of Perjury is the preparing or corrupt alluring to perjury. Subornation of Witness, we read of in Stat. 32 Hen. 8. c. 9. See title Perjury.

SUBPOENA, A writ whereby common persons are called into Chancery, in such cases where the Common Law hath provided no ordinary remedy, the name of which proceeds from the words therein, which charge the party called to appear at the day and place assigned, &c. and to testify; whereby blood is drawn, punishable, and fine at the King's pleasure; and with the loss of the offender's right hand, the solemn execution of which sentence is described at length in the Stat. 33 H. 8. c. 12. This offence is triable in the Court of the Lord Steward of the Household; by a Grand and Petit Jury, as at Common Law, taken out of the officers and sworn servants of the King's Household. 4 Comm. 276. As to Striking in Churches, see title Church. And also see title Assault.

SUBPOENA; See title Court.

SUBSIDIARY; See title Condition.

SUBSEQUENT CONDITIONS; See title Condition.

SUBSEQUENT EVIDENCE; See titles Action; Decrees; New Trial; Review, Bill of.

SUBSIDY.
SUBSIDY, subsidium. An aid, tax, or tribute, granted to the King for the urgent occasions of the kingdom, to be levied on every Subject of ability, according to the value of his lands or goods.

History does not mention that the Saxon Kings had any Subsidies after the manner of ours at present; but they had both levies of money and personal services towards the building and repairing of cities, castles, bridges, military expeditions, &c. which they called Burgホテ, Brigt Hate, Herefate, Her engaged, &c. But when the Dases harrased the land, King Ecbold submitted to pay them for redemption of peace several great sums of money yearly. This was called Dangold, for the levying of which every hide of land was taxed yearly at twelve pence, lands of the church only excepted, and thereupon it was after called, hydramium, and that name remained afterwards upon all taxes and burthens imposed upon lands; but sometimes it was laid upon cattle, and then was termed forage. The Normans called these sometimes taxes, sometimes tallage, otherwise auxilia & subsidia. The Conqueror had these taxes, and made a Law for the manner of their levying, as appears in De mandata Dux ejus, pag. 15. ser. Volumes & litera, &c. Many years after the Conquest they were levied otherwise than as, every ninth lamb, every ninth fleece, and every ninth sheaf. See Law. autiq. 14 E. 3. c. 1. c. 10. Of which you may see great variety in Raphael's Abridgment, titles Taxes; Feasts; Fifteenth; Subsidies, &c. and 4 Inst. 26, 53. Wherein we may gather there is no certain rate, but as the Parliament shall think fit. Subsidy is in our statutes sometimes confounded with customs. 1 H. 4. c. 7. Cowell. See this Dict. titles Taxes; Customs and Merchandize.

SUBSTITUTE, substitutus. One placed under another person to transact some business, &c. See Attorney; Militia.

SUBTRACTION OF CONJUGAL RIGHTS; See Marriage.

SUBTRACTION OF LEGACIES; See Legacy.

SUBTRACTION OF RENTS AND SERVICES, &c. This happens, when any person, who owes any duty, debt, rent, or service to another, withdraws or neglects to perform or pay it, &c. See 3 Comm. c. 15: and this Dictionary, titles Rent; Differti, &c.

SUBLATION OF TITHES; See title Tithes.

SUBURBAN, Hubundmen, Monastic. ii. 461.

SUCCESSION to the Crown; See King 1.

SUCCESSION AB INTENTATO; See Executor V. 8.

SUCCESSION TO GOODS and CHATTLES; Vide Successor.

SUCCESSOR, Lat. He that followeth or cometh in another's place. Sole Corporations may take a fee-simple estate to them and their Successors; but not without the word Successors: And such a Corporation cannot regularly take in succession goods and chattels; and therefore if a lease for a hundred years be made to a person and his Successors, it hath been adjudged only an estate for life: Nor may a Sole Corporation bind the Successors. 4 Rep. 65: 1 Inst. 8, 46, 94: 4 Inst. 249.

An Aggregate Corporation may have a fee-simple estate in succession without the word Successors; and take goods and chattels in action or pothuism, and they shall go to the Successors. Wood's Inst. 111. See further, titles Corporation; King.

SUCCISIONES ARBORUM, The cuttings and croppings of trees. Chart. 2 Hen. 5.

SUFFERANCE. Tenant at Sufferance, is he who holdeth over his term at first lawfully granted. Term: de Lev. A person is Tenant at Sufferance that continues after his estate is ended, and wrongfully holdeth against another, &c. 3 Inst. 57.

An Estate at Sufferance, is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all. As if a man takes a lease for a year, and, after the year is expired, continues to hold the premises without any title from the owner of the estate. Or, if a man maketh a lease at will, and dies, the estate at will is thereby determined; but if the tenant continueth pothuism, he is Tenant at Sufferance. Co. Litt. 57. But a lease at will being here considered as a lease from year to year, which cannot be vacated without half a year's notice to quit, the tenant cannot be ejected at the death of the lessor, without half a year's notice from his heir. 2 Term. Rep. 159. And it is also necessary, in case of the death of the tenant, to give that notice to his personal representative. 3 Will. 25.

No man can be Tenant at Sufferance against the King, to whom no laches or neglect, in not entering and ouiting the tenant, is ever imputed by Law; and his tenant, so holding over, is considered as an absolute intruder. 1 Inst. 57. But, in the case of a Subject, this estate may be destroyed whenever the true owner shall make an actual entry on the lands and ouit the tenant; for, before entry, he cannot maintain an action of trespass against the tenant by Sufferance as he might against a stranger; and the reason is, because the tenant being once in by a lawful title, the Law (which presumeth no wrong in any man) will suppose him to continue upon a title equally lawful, unless the owner of the land, by some public and avowed act, such as entry is, will declare his continuance to be tattious; or, in common language, wrongful. 1 Inst. 57: 2 Comm. c. 9. p. 150.

Thus hands the Law with regard to Tenants by Sufferance; and landlours are obliged, in those cases, to make formal entries upon the lands, and recover possession by the legal process of ejectment: And at the utmost, by the Common Law, the tenant was bound to account for the profits of the land so by him detained. But now, by just. 4 Geo. c. 22, in case any tenant for life or years, or other person claiming under or by collation or such tenant, shall wilfully hold over after the determination of the term, and demand made and notice in writing given by the landlord, or him to whom the remainder or reversion of the premises shall belong, for delivering the possition thereof; such person, if holding over or keeping the other out of possition, shall pay, for the time he detaineth the lands, at the rate of double their yearly value. And, by just. 11 Geo. 2. c. 19, in case any tenant, having power to determine his lease, shall give notice of his intention to quit the premises, and shall not deliver up the possition at the time contained in such notice, he shall therefor pay double the former rent for such time as he continues in possession. See also just. 6 Ann. c. 18, § 1, against holding over by guardians or trustees of infants, and by husbands sealed in right of their wives, and by all others having particular estates determinable on any life or lives, by which they are considered as trustees. These statutes have
have almost put an end to the practice of tenancy by
Suffrance, unless with the tacit consent of the owner of
the tenement. 2 Com. c. 9. ad finem.

Where a tenant has a lease for a term certain, and
holds over after the expiration of it, it is not necessary
for the landlord to give him any notice to quit, in order
to recover possession by ejectment, 1 Term Rep. 53, 162.

But if the landlord afterwards receives rent, or does any
act by which he proves his assent to the continuance of
the tenant, this turns the estate at Suffrance into a
tenancy from year to year. The notice under Stat. 4 Geo.
2. c. 28, may be given previous to the end of the
Term. Black. Rep. 1075. And it seems that it may
also be given afterwards; though the double value can
only be recovered from the delivery of the notice and
demand of the possession. This notice by the landlord
must be in writing; but that by the tenant, under
Stat. 11 Geo. 2. c. 19, may be by parole. 3 Burr. 1609.
The double value can only be recovered by action of debt;
but the double rent may be recovered by dilsens or other­
wise, like single rent. 1 Black. Rep. 535. No length of
time is necessary to the validity of these notices, under
the Statutes, to entitle the landlord to double value or
double rent. 2 Com. c. 9. ad finem in n.

SUFPERENTIA PACIS, A grant or suffrance of
peace or truce. Clauf. 13 Ed. 3.

SUFPFRAGAN, Suffragans, Cothercygni, Episcopi
amicarum. A Titular Bishop, ordained to aid and assist
the Bishop of the diocese in his spiritual functions; or one
who supplieth the place instead of the Bishop. Some
writers call these Suffragans by the name of Subsidii Bishops,
whose number is limited by the Stat. 26 H. 8.
c. 14: by which statute it was enacted, That it should be
lawful for every Bishop, at his pleasure, to elect two
honest and discreet spiritual persons within his diocese,
and to present them to the King, that he might give to
one of them such title, style, and dignity of such of the
Sees in the said diocese mentioned, as he should think fit:
And that every such person should be called Bishop Suff-
ragan of the same See. 2 C. 4. This act lets forth
for large for what places such Suffragans were to be nomi-
nated by the King; and if any one elects the junior
Bishop of a Suffragan, without the appointment of the
Bishop of the diocese, he shall be guilty of a presump-
tion. See Kent's Paroch. Antig. 639: and this Dic-
tionary, title Bishops.

SUGAR, Is liable to certain duties of Custom on its
importation; which is regulated by the Navigation Acts,
and other statutes. See the respective titles.

SUGGESTION, suggestio. A summons, or repre-
senting of a thing: By Magna Charta no person shall
be put to his law on the Suggestion of another, but by lawful
writs. 2 H. 3. c. 28.—Suggestions upon record are
grounds to move for prohibitions to suits in the Spi-
rnal Courts, &c. See title Prohibition III. Though
matters of record ought not to be laid upon the bare
Suggestion of the party; there ought to be an affidavit
made of the matter suggested, to induce the Court to
grant a rule for staying the proceedings upon the record,
2 Edw. 3. 537. There are Suggestions in replevin, for a
return balance, which, if it is laid, are not traversible; as
they are not, or prohibitions to the Spiritual or Admiralty
Courts. 1 Plowd. 749. Breaches of covenants and deaths
of persons must be suggested upon record, &c. Stat. 8 &
9 W. 3. c. 10. See titles: Abatement; Amendment, Black.
SUMMER-HUS-SILVER. A payment to the Lords of the wood in the Worlds of Kent, who used to visit those places in Summer-time, when their under-tenants were bound to prepare little Summer-houses for their reception, or else pay a composition in money. Cystum. de Sittinburne, 313.

SUMMONNEAS, A writ judicial of great dignity, according to the divers cases wherein it is used. Tab. Reg. Judic. See title Process.

SUMMONERS, summoners.] Petty officers that cite and warn men to appear in any Court; and these ought to be bona homines, &c. Flota, lib. 4. The summoners were properly the apparatus, who warned in delinquents at a certain time and place, to answer any charge or complaint exhibited against them: And in citations from a superior Court, they were to be equals of the party cited; at least the Baron's were to be summoned by none under the degree of Knights. Parch. Antiq. 177. See title Process.

SUMMONITORES SCACCARI, Officers who assisted in collecting the King's revenues, by citing the defaulters therein, into the Court of Exchequer.

SUMMONS, summon.] In the English Law, it is as much as vocatio in jus, or citation among the Civilians. Flota, lib. 6. c. 6. In general, it is a writ to the Sheriff, to warn one to appear at a day; and must be by certain summoners on the tenant's land, not his goods, &c. And, if against an heir, shall be on the lands that did not defend; or making default, at the grand jury he may have his law of Non-Summons. 6 Rep. 54. As to the summons in real actions, see title Process. 1.

SUMMONS AND SEVERANCE. This title is distinguished in the books by the names of Summons and Severance: but the proper name is Severance; for the Summons is only a process, which must, in certain cases, issue before judgment of Severance can be given. 4 New Abr. 660. Severance is a judgment, by which, where two or more are joined in an action, one or more of these is enabled to proceed in such action without the other or others. 4 New Abr. 660. See Severance.

It is a principle of Law, where two or more have a joint right to a thing, they must join in an action for the recovery thereof. 4 New Abr. 660. Joint-tenants must imply jointly; for they claim under one and the same title. 1 Inq. 180. So Parceners, who make but one heir, must, in order to recover the possession of their ancestor, be joined in princi. 1 Inq. 163, 164. So Executors, because the right of their testator devolves on all of them, must likewise all join in an action for the recovery thereof. Salk. 3: 2; Earle, 61.

And wherever the right of action is in two or more persons, and they have not all joined in any action that is brought, the defendant may plead in abatement: for if he could recover in such case singly, every other might do the same; and by this means a defendant would be liable to answer in divers actions for the same thing. Cro. Eliz. 554; 9 Rep. 37; Salk. 3: 32; 2 Lev. 113; 3 Lev. 354; 1 Moz. 132. See title Abatement.

It is indeed in the power of any one or more, where two or more have a joint right of action, to commence a suit in the name of all whose suit right is: but, notwithstanding that a plea in abatement would be thereby prevented, it would still be in the power of any one of them, by neglecting to appear, or refusing to proceed afterwards in such suit, to render it fruitless. 1 Inq. 139.

—Bro. Summ. & Sco. pl. 17. For if two or more join in bringing an action, and one makes default, the non-fuit of him is the non-fuit of them all. Bro. Summ. & Sco. pl. 5, 7. So, if divers join in a writ of error, the assignment of errors cannot be by one without the others. Cro. Eliz. 192.

To prevent the great inconvenience, and the failure of justice, which would be, if persons, in whom there is a joint right of action, should be precluded, by the negligence or collusion of any one of them, from having the effect of a suit for the recovery of such right, the law has provided, that if any one of the persons, in whose name a joint action is commenced, does not appear, or after appearance makes default, the other or others may have judgment ad sequendum illum, or, in other words, a judgment of Severance. Hard. 48; Bro. Summ. & Sco. 4. 16. And see ib. pl. 18: F. B. 128: 1 Inq. 139.

The consequence of this judgment is, that, notwithstanding the Severance of one or more who did not appear, or who made default, the other plaintiff or plaintiffs in the action may proceed in the suit. 4 New Abr. 661.

Where two or more are plaintiffs in an action, and one of these has not appeared, he must be summoned before judgment of Severance can be given against him: For it is a general rule, that a non-fuit in no case peremptory before appearance, becaufe a writ may have been purchased in the plaintiff's name without his privy. 1 Inq. 139: Bro. Summ. & Sco. pl. 10: 2 Rot. Abr. 488.

But if two joint plaintiffs have both appeared, and afterwards one makes default, the Court may, without infusing any Summons, immediately give judgment of Severance. Bro. Summ. & Sco. pl. 10. Rej. 135: Hard. 317. No judgment of Severance can be given in a writ of error, unless it is prayed before the defendant has pleaded in nulla quod erratum. Cro. Jac. 117. But such judgment may be after joinder in the assignment of error. 2 Lil. Pr. Reg. 665.

For more learning on this subject, see Vin. Abr. and 4 New Abr. title Summons and Severance; and this Dic. titles Abatement; Error, &c.

SUMMONS TO PARLIAMENT; See title Parliament. Summon ad warrantandum, Summons ad warrantandum; The process whereby the voucher in a common recovery is called. Ca. Lit. 101: See title Recovery.

SUMP'TUARY LAWS, Sump'tuaria Lex, from Sumptarius, of or belonging to expenses.] Are laws made to restrain excesses in apparel, and prohibit costly clothes, of which heretofore we had many in England; but they are all repealed by Stat. 1 Jac. 1: c. 25: 3 Inq. 199. See title Luxury.

SUNDAY, Dies Dominicus.] The Lord's Day; set apart for the service of God, to be kept religiously, and not be profaned.

Profanation of the Lord's Day, vulgarly (but improperly) called Sabbath-breaking, is censured by Blackstone amongst offences against God and religion, punished by the Laws of England: For, besides the notorious indecency and scandal, of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in seven holy, as a time of relaxation and refreshment, 6
SUNDAY.

as well as for public worship, is of admirable service to a State, considered merely as a civil institution. The Laws of King Albion forbid all merchandising on the Lord's Day, under very severe penalties. And by the Stat. 27. Hen. 6. c. 5, no fair or market shall be held on the principal festivals, Good Friday, or any Sunday, (except the four Sundays in harvest,) on pain of forfeiting the goods exposed to sale. And, by the Stat. 1. Car. 1. c. 7, no person shall assemble, out of their own parishes, for any feast whatsoever, upon this day; nor, in their parishes, shall use any bull or bear baiting, interludes, plays, or other unlawful exercises, or pastimes; on pain that every offender shall pay 2s. ad. to the poor. This statute does not prohibit, but rather implies all lawful, any innocent recreation or amusement, within their respective parishes, even on the Lord's Day, after divine service is over. But by Stat. 29. Car. 2. c. 7, no person is allowed to do any worldly labour on the Lord's Day, (except works of necessity, or to use any beast or barges, or expose any goods to sale;) except in public houses, and milk before nine in the morning, and after four in the afternoon, on forfeiture of 3s. Nor shall any drover, carrier, or the like, travel upon that day, under pain of 20s. Stat. 3. Car. 1. c. 2.

The goods exposed to sale on Sunday, to be forfeited to the poor. Etc. on condition before a Justice of the Peace, who may order the penalties and forfeitures to be levied by ditto, and may allow one third to the informer: but this is not to extend to dressing meat in families, inns, cook-shops, or victualing-houses.

Mackarel may be sold on Sundays, before and after divine service. Stat. 10. & 11. W. 3. c. 24. Forty water-men are permitted to ply on the Thames, between Vauxhall and London, on Sundays; Stat. 11. & 12. W. 3. c. 21. Five carriages are allowed to travel on Sundays, either laden or returning empty; Stat. 2. Geo. 3. c. 15. Bakers were permitted to dress dinners on a Sunday, as a work of necessity. 4 Coryn. 469. But, by Stat. 24. Geo. 3. c. 61, every baker shall be subject to a penalty of 10s. to the afe of the poor, for exercising his business in any manner as a baker on the Lord's Day: except that he may sell bread between nine in the morning and one in the afternoon; and may also, within that time, bake meat, puddings, and pies for any person who shall carry or send the same to be baked. By Stat. 21. Geo. 3. c. 49, pulled to refrain an indecent practice which had become very prevalent; it is enabled, that any house or place opened for public entertainment, or for publicly debating on any subject, upon the Lord's Day, and to which persons shall be admitted by money or tickets sold, shall be deemed an disorderly house. And the keepers (or person acting as such) shall forfeit 500l. and be punished as in the case of keeping a disorderly house. And the person managing such entertainment, or acting as President, Etc. of any public debate, shall forfeit 100l. And every server receiving money or tickets from the persons coming, or delivering out tickets of admission, shall forfeit 50l. § 1. 2. And every person advertising, or printing an advertisement, of such meeting, shall also forfeit 50l. Alcoves to be brought within six months. § 5.

An indictment for exercising the trade of a butcher must be laid to be contra formam natura; for it was no offence at Common Law. 1 Strange 702. Vol. II.

Perfons exercising their calling on a Sunday are only subject to one penalty; for the whole is but one offence, or one act of exercising, though continued the whole day. Conep 540.

Law processes are not to be served on Sunday, unless it be in cases of treason or felony; or on no escape, by virtue of Stat. 5. Ann. c. 9. See title Escape. Sunday is not a day in Law for proceedings, contracts, &c. And hence it is, that a sale of goods on this day in a market overt is not good: And if any part of the proceedings of a suit, in any Court of Justice, be entered and recorded to be done on a Sunday, it makes it all void. 2 Lev. 264; 3 Sheb. Abr. 181. The service of a citation on a Sunday is good; and not restrained by the Stat. 29. Car. 2. c. 7.

As, by two Judges, the delivery of a declaration upon a Sunday may be well enough, if not being a process; but Held, Ch. J. thought it ill, because the act intended to supersede all forces of legal proceedings. 1 Ed. Reign. 706. A writ of inquiry cannot be executed on a Sunday. 1 Strange 357. See title Letters.

SUNDAY CARGO. A person employed by merchants to go a voyage, and oversee their cargo, and dispose of it to the best advantage. Merch. Dict.

SUPER-INSTITUTION, supra-institution. One Institution upon another; as where A. B. is admitted and instituted to a benefice upon one title, and C. D. is admitted and instituted in the title or prebend of another. 2 Cre. 463. See title Institution.

SUPER JURARE, A term used in our ancient Law, when a criminal endeavoured to excufe himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious, that he was convicted by the oaths of many more witnesses; This was called super jurare. Leg. Hen. 1. c. 74; Leg. Albion. c. 15.

SUPER INERATIONE PASTURAE, A judicial writ that lies against him who is implicated in the County-Court for the furnishing or overbathing a common with his cattle, in a case where the state was formerly implicated for it in the same Court, and the cattle is removed into one of the Courts at Westminster. Reg. Judic. See title Common III.

SUPER PRÆROGATIVA REGIS, A writ which formerly lay against the King's tenant's widow for marrying without the King's licence. F. N. B. 174.

SUPERSEDÆAS, A writ which lies in a great many cases; and signifies in general a command to stay some ordinary proceedings at Law, on good cause shown, which ought otherwise to proceed. F. N. B. 236. A superæfœa is used for the staying of an execution, after a writ of error is allowed, and bail put in. But no superæfœa can be made out on bringing writ of error, till bail is given, where there is judgment upon verdict, or by default, in debt. Stat. 3. Jac. 1. c. 8. Not in actions for titles, promises for payment of money, treaver, covenant, election, and trespass. Stat. 13. Car. 2. & 3. c. 2. And execution shall not be stayed in any judgment after verdict (except in the case of executors) by writ of error, or a superæfœa, unless bail be put in. Stat. 15. & 17. Car. 2. & 3. § 3. See title Error Intro. & II. 2.

A writ of error is said to be in judgment of Law a superæfœa, until the errors are examined, &c. that is to say, to the execution; not to action of debt on the judgment at Law. From the time of the allowance, a writ of error is
a supersedeas: And if the party had notice of it before the
allowance, it is a supersedeas from the time of such notice;
but this must be where execution is not executed, or be-
gan to be executed. Cro. Jac. 534. Royn. 100:
Med. Ca. 130: 1 Salk. 321.
If, before execution, the defendant bring a writ of error,
and the Sheriff will execute a fieri facias and levy the
money, the Court will award a supersedeas, nisi error
emanavit, and to have restitution of the money. Syst
414. After an execution, there was a supersedeas, nisi ex-
ecutio improvidet emanavit, &c.; and there being
no clause of restitution in the supersedeas, it was inferred
that the execution was executed before the supersedeas
awarded, and that a faulty supersedeas is no supersedeas;
but the Court ordered another supersedeas, with a clause
of restitution. Mor. 496.
The supersedeas, nisi error emanavit, lies to restore
a possession, after an habeas corpus damnum, when issued
equocumque; so of a supersedeas after execution upon
a capias ad satisfaciendum, if it be immediately delivered
to the Sheriff. Stig. Cent. 58, 92. It appearing, upon af-
fidavit, that there were two writs of execution executed
upon one judgment; the party moved for a supersedeas;
because there cannot be two such executions, but where
the plaintiff is hindered either by the death of the de-
fendant, or by some act in Law, that he can have no be-
 nefit of the first; and so it was adjudged. Syst. 255.
A supersedeas is grantable to a Sheriff to stay the return of
an habeas corpus; and if he return it afterwards, and
the parties proceed to trial, it is error; and so are all the
proceedings in an inferior Court, after an habeas corpus
delivered, unless a proceeding is awarded, in which case
a supersedeas is not to be granted. Cro. Car. 43, 370.
When a certiorari is delivered, it is a supersedeas to in-
ferior Courts below; and being allowed, all their pro-
ceedings afterwards are erroneous; and they may be
punished. If a Sheriff holds plea of 40l. debt in his
County-Court, the defendant may sue forth a supersedeas,
that he do not proceed. Ed. C. 5. Or, after judgment, he may
have a supersedeas directed to the Sheriff, requiring him
not to award execution upon such judgment; and upon
that an alias, a phantes, and an attachment, &c. New Nat.
Br. 432. See title Certiorari.
Supersedeas may be granted by the Court for setting
aside an erroneous judicial process, &c. Also a prisoner
may be discharged by supersedeas; as a person is im-
prisoned by the King's writ, so he is to be set at liberty;
and a supersedeas is as good a cause to discharge a person,
as the first process is to arrest him. Financ 453: Cro.
Jact. 379. If a privileged person is sued in any juris-
diction foreign to his privilege, he may bring his super-
cedeas, Vaugh. 155. It is false imprisonment to detain
a man in custody after a supersedeas delivered, for the super-
cedeas is to be obeyed; and in such case it is a new capi-
cition without any cause. 2 Cro. 179. There is a super-
cedeas where an audita querela is sued; and out of the
Chancery, to set a person at liberty, taken upon an ex-
igent, on giving security to appear, &c. And in cases of
fear of the peace and good behaviour, where a person
is already bound to the peace in the Chancery, &c.
New Nat. Br. 524, 529, 534. So where a warrant issues
against a man, on an indictment found against him, for a
misdemeanor, or other bailable offence, and he, hav-
ing notice of it, does, before capition, duly put in bail,

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to appear and traverse the indictment, &c., he is entitled
to a supersedeas, to prevent a capition. See further 4 New
Abb., and 20 Sir. Abb., title Supersedeas: this Dictionary,
titles Error; Execution, &c. and the Books of Practice.
Superesting a Commission of Bankrupt, See title Bankrupts.
Super Statuto I. Ed. 3. cap. 12, 13. A writ
that lay against the King's tenants holding in chief,
who aliened the King's land without his license. F. N. B.
fol. 175. See title Tenures.
Super Statuto de Articulis Clerici, Cap. 6.
A writ against the Sheriff or other officer that disclaims
in the King's highway, or in the lands anciently belong-
ing to the church. F. N. B. 173.
Super Statuto factt1 pour Serenclal et
Marlal de Roy, &c. A writ against the Steward,
or Marshal, for holding plea in his Court, of freehold,
or trespasses or contracts not made and arsing within
the King's household. F. N. B. 241.
Super Statuto versus Servantes et Labora-
tories. A writ against him who keeps Servants depar-
ted out of their services contrary to Law. F. N. B. 167.
Super Statuto de York, que null serra
vitellor, &c. A writ against a person that uses vic-
tualling, either in gists, or by retail, in a city or bor-
oughtown, during the time he is mayor, &c. F. N. B. 172.
Superstitious Uses, See title Minimain.
Supervisor, Lat. A Surveyor or Overseer:
It was formerly and still is a custom, in cafes of great con-
cern, to make a supervisor of a will, to superintend
and oversee the executors that they punctually perform
the will of the testator; but this office is of late very care-
lessly executed, so as to be to little purpose or use-—
supervisor (now Surveyor) of the Highways is mentioned
in the act 5 Eliz. c. 13. See title Highways.
Supplemental Bill in Equity. A suit
in Equity, imperfect in its frame, (or become so by acci-
dent, before its end has been obtained,) may in certain
causes be rendered perfect by a new Bill which is not con-
federed as an original Bill, but merely as an addition to,
or continuance of, the former Bill; or both. A Bill of
this kind may be, 1st, A Supplemental Bill, which is merely
an addition to the original Bill—2d, A Bill of Receiver,
which is a continuance of the original Bill: See title Re-
cever—3d, A Bill both of Receiver and Supplement,
which continues a suit upon abatement, and supplies de-
cents arisen from some event subsequent to the institu-
And see further p. 59—67; and this Dict. title Receiver.
If the interest of a plaintiff or defendant, suing or de-
defending in his own right, wholly determines, and the
fame property becomes vested in another person, not
claiming under him; as in the case of an ecclesiastical
person succeeding to a benefice, or a remainder-man in
a settlement becoming entitled upon the death of a prior
tenant under the same settlement: The suit cannot be
continued by Bill of Receiver (see that title); nor can
its defects be supplied by a Supplemental Bill: For
though the suffecor in the first case, and the remainder-
man in the second, have the same property which the
preceding or prior tenant enjoyed; yet they are not,
in many cases, bound by his acts, nor have they, in some
causes, precisely the same rights: But in general, by an
original Bill, in the nature of a Supplemental Bill, the
benefit
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A Supplemental Bill must state the original Bill and the proceedings thereon; and if it is occasioned by an event subsequent to the original Bill, it must state that event, and the consequent alteration with respect to the parties, and, in general, the Supplemental Bill must pray, that all the defendants may appear and answer to the charges it contains. For if the Supplemental Bill is not for a discovery merely, the cause must be heard upon it at the same time that it is heard on the original Bill, if it has not been before heard: And if the cause has been before heard, it must be further heard upon the supplemental matter. — If, indeed, the alteration or acquisition of interest happens to a defendant, or a person necessary to be made a defendant, the Supplemental Bill may be exhibited by the plaintiff in the original suit against such person alone, and may pray a decree upon the particular supplemental matter alleged against that person only; unless, which is sufficiently the case, the interests of other defendants may be affected by that decree. Where a Supplemental Bill is merely for the purpose of bringing formal parties before the Court as defendants, the parties, defendants to the original Bill need not, in any case, be made parties to the Supplemental Bill. Mitford's Treatise 69, 70.

A Bill in the nature of a Supplemental Bill, in the cases above mentioned, must state the original Bill, the proceedings upon it, the event which has determined the interest of the party by or against whom the former Bill was exhibited, and the manner in which the property has vested in the person become entitled. It must then show the ground upon which the Court ought to grant the benefits of the former suit to or against the person to become entitled; and pray the decree of the Court, adapted to the case of the plaintiff in the new Bill. This Bill, though purporting of the nature of a Supplemental Bill, is not an addition to the original Bill, but another original Bill, which, in its consequences, may draw to itself the advantage of the proceedings on the former Bill. Mitford's Treatise 80.

SUPPLETORY OATH. See 3 Comm. 270; and this Dictionary, title Evidence.

SUPPLICAVIT. A writ issuing out of Chancery, for taking surety of the peace, when one is in danger of being hurt in his body by another; it is directed to the Justices of the Peace and Sheriff of the county, and is grounded upon the statute Ed. 3. 9. 2. c. 15, which ordains that certain persons in the King's name may cause a Governor or Sheriff to take care of the peace, &c. F. N. B. 80, 81.

When a man hath purchased a writ of supplicavit, directed to the Justices of the Peace, against any person, then he, against whom the writ is found, may come into the Chancery, and there find sureties that he will not do hurt or damage unto him that saith the writ; and upon that he shall have a writ of supersedeas, directed to the Justices, &c. reciting his having found sureties in Chancery, according to the writ of supplicavit; and also reciting that writ, and the manner of the security that he hath found, &c. commanding the Justices, that they cease to arrest him, or to compel him to find sureties, &c. And if the party who ought to find sureties cannot come into the Chancery to find sureties, his friend may sue a supersedeas in Chancery for him; reciting the writ of supplicavit, and that such a one and such a one were bound for him in the Chancery in such a sum, that he shall keep the peace according to it; and the writ shall be directed to the Justices, that they take surety of the party himself according to the supplicavit, to keep the peace, &c. and that they do not arrest him; or if they have arrested him for that cause, that they deliver him. New Nat. Br. 180.

Sometimes the writ of supplicavit is made returnable into the Chancery at a certain day; and if to, and the Justices do not certify the writ, nor the recognizance, and the security taken, the party who sued the supplicavit shall have a writ of certiorari directed unto the Justices of Peace to certify the writ of supplicavit, and what they have done thereupon, and the security found, &c. New N. B. 180. If a recognizance of the peace be taken in pursuance of a writ of supplicavit, it must be wholly governed by the directions of such writ; but if it be taken before a Justice of Peace below, the recognizance may be at the discretion of such Justice. Lamb. 109. Dall. 670.

At the Common Law it was sufficient, in order to obtain this process for surety of the peace from the Court of Chancery, if the party who demanded it made oath, that he was in fear of some corporal hurt, and that he did not crave the fame out of malice, but for the safety of his body. F. N. B. 79, 80.

But by stat. 21 Jac. 1. c. 8, all processes of the peace shall be void, unless granted on motion in open Court on affidavit in writing.

When articles of the peace are exhibited in the Court of Chancery, and oath is made that the surety of the peace is not craved by the party through malice, but for the safety of his life, a writ of supplicavit suisses, directed to the Justices of the peace generally, or to some one Justice of the peace, or to the Sheriff, commanding them or him to take security in the sum therein indorsed, and, if the party refuses to find such security, to commit him to the next gaol, until he does find such security. F. N. B. 80. Vide Bro. Off. pl. 39; F. N. B. 81. Bro. Peace, pl. 9; Lamb. 101, 107.

If there be no proceedings on a supplicavit within a year, the recognizance is of course discharged; and if the party be committed after the expiration of that time, he shall be discharged upon very slight security. Fitz. 168. If taken below, and the party appear purport-
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ant to the condition, no indictment being lodged, he
must be discharged. Harv. Co. But the Court in di-
ference may refuse a reconocnance, even
though the exibitant appear and confest; for a breach
against any other person is equally a forfeiture. 11 Edw.
109. See title Surety of the Peace.

SUPPLIES, Extraordinary grants to Government, by
Parliament, to supply the exigencies of the State. See
title Taxes.

SUPREMACY, Sovereign dominion, authority, and
pre-eminence; the highest estate. King Henry VIII. was the
first Prince that took off the yoke of Rome here in
England, and establisht the Supremacy in himself, after it had
been long held by the Pope. See stat. 25 H. 8. c. 19.
26 H. 8. c. 11. 1 Eliz. c. 1. By these laws the great
power of Rome was suppressed, and the act of 1 Eliz.
Sir Edward Coke says, was an act of restitution of the
ancient jurisdiction ecclesiastical, which always belonged
of right to the Crown of England; and that it was not
introductory of a new law, but declarative of the old;
and that which was, or of right ought to be, by the funda-
mental laws of this realm, parcel of the King's jurisdic-
tion; by which laws, the King, as Supreme Head,
had full and entire power in all causes ecclesiastical as
well as temporal. And as, in temporal causes, the King
doeth judge by his Judges in the Courts of Justice, by
the temporal laws of England; so, in cases ecclesiastical,
they are to be determined by the Judges thereof; ac-
cording to the ancient laws, and the King's jurisdiction;
by our ancient laws, and in our ancient courts, is the
same. And in this case it was rejoiced on by all the
Judges, that, by our ancient laws, this kingdom is an
absolute empire and monarchy, consisting of one head,
which is the King, and of a body politic, made up of
many well-agreeing members; all which the law divides
into two several parts, the Clergy and the Laity, both of
them, immediately under God, subject and obedient to
the head. And the king's head of this politic body, is
furnished with prerogative and jurisdiction, to render
judice and right to every part, and member of this body,
of what estate or degree soever, otherwise he would not
be at the head of the whole. 5 Rep. 8.

There are several changes of ecclesiastical jurisdiction
exercised by the Kings of England in former ages;
and, in this respect, the King is said to be primum mixtum
& unica cum jure dictum. The King is the supreme Or-
dinary, and by the ancient laws of the land; without
any act of Parliament, make ordinances for the go-
vernement of the Clergy; and if there be a controversy
between spiritual persons concerning jurisdiction, the
King is arbitrator, and it is a right of his Crown to de-
clar their bounds; 3 Mor. 775; 10 St. 3; 2 Hels. 17. See
titles King V. 3; Parliam. Proc. com.

SURCHARGE, An over-charge, beyond what is
just and right. Mirab. Dict.

SURCHARGE OF COMMON; See title Common III.

SURCHARGE OF THE FOREST; Superintendency of
Forest. Is when a commoner puts on more beafts in
the forest than he has a right to. Manw. part 9. c. 14.
num. 7. And is taken from the writ De sacratula superintend
atione Forestarum, in the tame fente when the Commoner
forchargeeth. 5 Lib. 323. See title Forest.

SUR CUL IN VITA; See Cui in Vita.

SURETY, Fides Vatis.] A bail that undertakes for
another man in a criminal case, or action of trespass, &c.

SURETY OF THE PEACE,
AND GOOD BEHAVIOUR.

SECURITAS PACIS.] Either because the party who
was in fear, is thereby secured; or for that the suppleted
party gives such security.

I. What this Security is.
II. Who may take or demand it.

1. As relates both to the Peace and good Beha-
vour.
2. As to the Peace only.
3. As to good Behaviour, or good Abeyance
only: which includes Security for the
Peace, and, somewhat more.

III. How it may be forfeited; or discharge
1. As to both Peace and good Behaviour.
2. As to the Peace.
3. As to the good Behaviour.

IV. That is considered by Blackstone as a species of
preventive justice; by obliging persons, whom there is
a probable ground to suspect of future misbehaviour, to
reconcile with, and to give full assurance to the Pub-
lick, that such offence as is apprehended from them shall
not happen; through the means of Pledges or Sureties
for keeping the peace, or for their good behaviour.
2 Com. 118.

By the Salus constitution these Sureties were always at
hand, by means of King Alfred's wife institution of de-
portee or frankpledges, wherein the whole neigbour-
hood or tithing of freemen were mutually pledges for
each other's good behaviour. But this great and gen-
eral security being now fallen into disuse, and neglected, ther hath appeared to the method of making sup-
pleted persons and particular and special Securities for their future conduct, of which we find mention in the
Laws of King Edward the Confessor; 'tradat justitias de pace et felicissime sanciann.' Cap. 18.

This security, therefore, at present consists in being
bound, with one or more Sureties, in a recognizance or
equation to the King, entered on record, and taken in
eone Court, or by some judicial officer; whereby the
parties acknowledge themselves to be indebted to the
Crown in the sum required, (for instance 100l.) with
condition to be void and of none effect, if the party
shall appear in Court on such a day, and in the mean-
time shall keep the peace; either generally, towards the
King, and all his liege people; or particularly, also, with
regard to the person who craves the security. Or, if it
be for the good behaviour, then on condition that he
shall demean and behave himself well, (or be of good
behaviour,) either generally or specially, for the time
therein limited, as for one or more years, or for life.
This recognizance, if taken by a Justice of the Peace,
must be certified to the next Session, in pursuance of the
stat. 3 Hen. 7. c. 1; and if the condition of such recogni-
zance be broken, by any breach of the peace in the one
case, or any misbehaviour in the other, the recognizance
becomes forfeited or absolute; and, being elected or
extradited, (taken out from among the other records,) and
sent up to the Exchequer, the party and his Sureties,
having
having now become the King's absolute debtors, are
fixed for the several sums in which they are respectively
bound. 4 Comm. c. 18.

II. 1. Any Judges of the Peace, by virtue of their
commission, or those who are ex officio conservators of
the peace, may demand such Security according to their
own discretion: But a Secretary of State or Privy
Councillor are not, ex officio, such conservators, and there-fo
they cannot bind to the peace or good behaviour.
18. 3. It may be granted at the request of any Subject,
or person accused, upon due cause shown, provided such de-
mandant be under the King's protection; for which rea-
son it has been formerly doubted, whether Jews, Pagans,
or persons convicted of a treason, were entitled thereto.
1 Hawk. P. C. c. 60. § 8. Or, if the Justice is averse to
it, it may be granted by a mandatory writ, called a
supplication, issuing out of the Court of King's Bench or
Chancery; which will compel the Justice to act, as a
municipal and not as a judicial officer; and he must
make a return to such writ, specifying his compliance,
See title Supplication. But this writ is seldom used; for,
when application is made to the Superior Courts, they
usually take the recognizances there, under the direc-
tions of the Stat. 21 Jac. 1. c. 8. And indeed a Peer or
Peeress cannot be bound over in any other place, than
the Courts of King's Bench or Chancery; though a
Judge of the Peace has a power to require Security of any
other person, being comus mentis, and under the degree
of nobility, whether he be a fellow Justice or other ma-
gistrate, or whether he be merely a private man.
1 Hawk. P. C. c. 60. § 5. Wives may demand it against
their husbands; (6 Peeresses against their Lords) or
husbands, if necessary, against their wives. But femme-
tovers, and infants under age, ought to find Security by
their friends only, and not to be bound themseives: for
they are incapable of engaging themselves to answer any
debt; which is the nature of these recognizances or ac-

If the person against whom it is demanded, be pre-
fect, the Justice of the Peace may commit him imme-
diately, unless he offers Security; and if another he may
be committed to find Sureties; and be committed for
not doing it. Br. Mainp. pl. 32. 1: Hawk. P. C. c. 60.
But if he is absented, a warrant for committing him can-
not be granted, till a warrant is issued commanding him
to find Sureties; and this warrant, which must be under
seal, ought to shew the cause for which it is granted,
and at whose suit. Lamb. 83: 1 Hawk. P. C. c. 60.

The Justice of the Peace who grants this last-men-
tioned warrant, may in this case make it special for
bring ing the party before himself only; for, as he has
most knowledge of the matter, he is best qualified to
do justice in it. 5 Co. 59; Fosler's case: 1 Hawk. P. C.
c. 60. But if the warrant be in general terms to carry
the party before any Justice of the Peace, the officer
who executes it has his election to carry him before
what Justice he pleases; and may carry him to good by
virtue of the same warrant, if he refuses to find Sureties
before such Justice; for the warrant has these words in
it, if he shall refuse to find Surety, &c. Br. Fam. Infrmp.
pl. 11: 1 Hawk. P. C. c. 60. § Co. 59.

If one, however, who apprehends that the Surety of
the Peace will be demanded against him, finds Sureties
before any Justice of the Peace of the same county,
either before or after a warrant is issued against him,
he may have a supersedeas from such Justice, and this
shall prevent or discharge him from an arrest, under
the warrant of any other Justice, at the suit of the same
party for whose security he has found such Sureties.
Lamb. 95, 96: 1 Hawk. P. C. c. 60.

The recognizance for keeping the peace, which a Ju-
stice of the Peace takes upon complaint below, is to be
regulated, as to the number and sufficiency of the Sure-
ties, the largeness of the sum, and the time it is to
continue in force, by the discretion of such Justice.
Lamb. 100: 1 Hawk. P. C. c. 60. It has been said
that a recognizance taken by a Justice of Peace, to keep
the peace as to A. B. for a year, or for life, or without
expressing any certain time, which shall be intended to
be for life, although no time or place is fixed for the
party's appearance, or he is not bound to keep the peace
as to all the King's liege people, is good. 1 Hawk.
P. C. c. 60: Lamb. 100. But it seems to be the safest
way to bind the party to appear at the next Sessions of
the Peace, and in the mean time to keep the peace as
to the King and all his liege people, and especially as
to the party who has demanded the Surety of the Peace,
Lamb. 105: 1 Hawk. P. C. c. 60.

If one of the Sureties of a man who is bound to keep
the peace dies, he shall not be obliged to find a new
Surety; for the executors or administrators of him who
is dead are bound by the recognizance. Lamb. 113:
Bro. Peace, pl. 17: 1 Hawk. P. C. c. 60.

2. Any Justice of the Peace may, ex officio, bind all
those to keep the peace, who, in his presence, make any
affray; or threaten to kill or beat another; or contend
together with hot and angry words; or go about with
unusual weapons or attendance, to the terror of the Peo-
ple; and all such as he knows to be common barsters;
and such as are brought before him by the Constable for
a breach of the peace in his presence; and all such per-
sons as, having been before bound to the peace,
have broken it and forfeited their recognizances. Also
wherever any private man hath just cause to fear that
another will burn his house, or do him a corporal injury,
by killing, imprisoning, or beating him; or that he will
procure others so to do; he may demand Surety of the
Peace against such person: And every Justice of the
Peace is bound to grant it, if he who demands it will
make oath that he is actually under fear of death or bo-
dily harm; and will swear that he has just cause to be so,
by reason of the other's menace, attempts, or having
laid in wait for him; and will also further swear, that
he does not require such Surety out of malice or for mere
vexation. This is called Swearing the Peace against
another: And, if the party does not find such Sureties
as the Justice in his discretion shall require, he may im-
mediately be committed till he does. 1 Hawk. P. C.
c. 60.

Surety of the Peace may be demanded by a wife,
if her husband gives her unreasonable correction.
39. 84; Godb. 213: F. N. B. 80. Surety of the
Peace ought not to be granted to a man for fear of
danger to his servant or castle. Lamb. 83. It hath how-
never
SURETY OF THE PEACE II. 2, 3.

ever been said, that a man may have the Surety of the Peace against one who threatens to hurt his wife or child. 

It is said, the fear of one cannot be the fear of another; and therefore every recognizance must be separate. But in Mids. 23 Geo. 2. B. R. the Court allowed three women to file joint articles of the peace against three men. R. v. Netts, cited 1 Hawk. P. C. 620, § 5, Leach's note. Although the fact from which the fear arises be pardoned, the Court of K. B. will receive it as a ground to grant the Security upon. Str. 473.

Where Articles of the Peace are exhibited in the Court of King's Bench, and oath is made that the party does not crave the Security of the Peace out of hatred or malice, but merely for the preservation of his life and person from danger, an attachment of the peace filler to the Sheriff, commanding him to take bond for the appearance of the party at the return of the writ, to put in bail to the articles in this Court; and, if such bond is not given, to commit the party to the next gaol. Comb. 427; Raiffel's case: F. N. B. 79. Where the party, against whom Articles of the Peace are exhibited, comes into Court to put in bail, the Articles must be read to him. 6 Med. 192. An affirmation is not sufficient on which to grant Surety of the Peace. Str. 527: 12 Med. 245.

The Court will not permit the truth of the allegations to be controverted by the defendant, but will order Security to be taken immediately, if no objections arise upon the face of the Articles themselves. Str. 1202. But if, upon application for the aflistance of the Court to enforce the subsequent process, the Articles should manifestly appear, from the corroborated affidavit of the defendant, to have been a malicious, voluntary, and gross perjury, the Court will refuse the application, and commit the offender. 2 Burr. 800: 3 Burr. 1922.

Robert Parmell having exhibited Articles of the Peace against Sir Thomas Allen, Bart. and three others, an attachment of the peace issued against them. Before bail was put in, Parnell, in a petition to the Court, recited some of the facts sworn to in the Articles, and endeavoured to explain them. Hereupon the counsel for the defendants moved for a rule to review the Articles, and some affidavits were read to contradict the facts therein charged. Upon reading the petition and these affidavits, in which the facts were flatly contradicted by five or six persons, a rule was made to shew caufe why the Articles should not be reviewed, and that Parnell should attend upon the day for shewing caufe. He did attend; and the Court was, upon the whole, satisfied of his

having been guilty of perjury, that he was immediately committed for wilful and corrupt perjury; and a rule was made, that all further proceedings upon the Articles should stay. The rule was pronounced in these terms: "and not to take the Articles off the file; in order to give the defendants an opportunity, which could not otherwise have been done, of prosecuting Parrall for perjury." MS. Rep. Rex v. Sir Thomas Allen, Bart. and others, Hil. 32 Geo. 2.

Articles of the Peace having been exhibited by John Brown against Hannah Bennett and three others, a rule was made, upon reading the affidavits of the defendants, to shew caufe why these Articles should not be reviewed. In these affidavits it was sworn, that the defendant did not know any such person as Brown the Articulatant; and, besides other strong facts sworn to, it was suggested, that this was a contrivance of the defendant, Bennett's husband, to oppress her. No cause being shewn, the Articles were ordered to be taken off the file. MS. Rep. Rexx. Bennett and others, Eng. 32 Geo. 2.

If a defendant, through infirmity of age orricknells, be unable to attend the Court, a mandamus will be granted to the Justices in the country, to take such Security. See Str. 635: Comb. 457. But, that this is a singular instance, see Say, 753.

The Court will not receive Articles of the Peace, if the parties live at a distance in the country, unless they have previously made application to a Justice in the neighbourhood. 2 Burr. 760. And if the Court do receive them, the Secondary may indorse the attachment in the form required, and order a Justice of the County to take the security. 2 Burr. 1039: 1 Bl. 235.

When Surety of the Peace is granted by the Court of King's Bench, if a hopeless case comes from the Court of Chancery, to the Justices of that Court, their power is at an end; and the party as to them discharged. Br. Peace, pl. 17. Slat. 44.

3. Justices of Peace are empowered by the stat. 34 Edw. 3. c. 1, to bind over to the good behaviour towards the King and his People, all them that be not of good fame, wherever they be found; to the intent that the People be not troubled nor endangered, nor the peace diminished, nor merchants and others, passing by the highways of the realm, be disturbed nor put in the peril, which may happen by such offenders. Under the general words of this expression, that be not of good fame, it is held that a man may be bound to his good behaviour for causes of scandal, contra bona mores, as well as contra pacem; as, for haunting bawdy-houses with women of bad fame; or for keeping such women in his own house; or for words tending to scandalize the Government, or in abuse of the Officers of Justice, especially in the execution of their office. Thus also a Justice may bind over all night-walkers; cave-droppers; such as keep sordid companies, or are reported to be pifferers or robbers; such as sleep in the day and wake in the night; common drunkards; whoresellers; the putative fathers of bastards; cheats; idle vagabonds; and other persons whose misbehaviour may reasonably bring them within the general words of the statute, as persons not of good fame; an expression, it must be owned, of too great a latitude, as leaves much to be determined by the discretion of the Magistrate himself. But, if he

commits
commits a man for want of Sureties, he must express the cause thereof with convenient certainty; and take care that such cause be a good one. 1 Hawk. P. C. c. 61: 4 Comm. 256.

III. 1. A Recognizance may be discharged, either by the demise of the King, to whom the recognizance is made; or by the death of the principal party bound thereby, if not before forfeited; or by order of the Court to which such recognizance is certified by the Justices, (as the Quarter-Session, Affizes, or King's Bench,) if they see sufficient cause: Or, in case he at whose request it was granted, if granted upon a private account, will release it, or does not make his appearance to pray that it may be continued. 1 Hawk. P. C. c. 60.

2. Such recognizance for keeping the peace, when given, may be forfeited by any actual violence; or if an affray, or menace, to the person of him who demanded it, if it be a special recognizance; or, if the recognizance be general, by any unlawful action whatsoever, that either is or tends to a breach of the peace; or, more particularly, by any one of the many species of offences against the public peace; or by any private violence committed against any of his Majesty's Subjects. But a bare trespass upon the lands or goods of another, which is a ground for a civil action, unless accompanied with a wilful breach of the peace, is no forfeiture of the recognizance. Neither are mere reproachful words, as calling a man knave or liar, any breach of the peace, so as to forfeit one's recognizance, (being looked upon to be merely the effect of unmeaning heat and passion,) unless they amount to a challenge to fight. 1 Hawk. P. C. c. 60: 4 Comm. 255, 6.

By the 5 H. 7, c. 1, before-mentioned, it is enacted, "That if the party who is called at a Sessions of the Peace, upon a recognizance for keeping the peace, makes default, his default shall be then and there recorded, and the same recognizance, with the record of the default, be sent and certified into the Chancery, or before the King in his Bench, or into the King's Exchequer."

He who is bound to keep the peace, and to appear at the Sessions, must appear there, and record his appearance, otherwise his recognizance is forfeited. And although the party who erred the Surety of the Peace, comes not to pray that it may be continued, the Justices may in their discretion order it to be continued till another Sessions. Bro. Peace, pl. 17: Lamb. 109.

But if an excuse, which is judged by the Court to be a reasonable one, is given for the non-appearance of a party, it seems the Court is not bound peremptorily to record his default, but may discharge the recognizance, or repel it till the next Sessions. 1 Hawk. P. C. c. 60. A recognizance for keeping the peace may be forfeited by any actual violence to the person of another, whether it be done by the party bound, or others by his procurement. Lamb. 115, 127: Bro. Peace, pl. 2: 1 Hawk. P. C. c. 60. In support of a rule to stay proceedings in a facia facias, upon a recognizance for keeping the peace, it was said, that the assaut, which had been made, was not upon him at whole request the Surety of the Peace was granted, but upon another person. It was held that this makes no difference; and the rule was discharged. MS. Rep. 40. R. v. Stanley and his bail, Trin. 27 Gen. 2. But a recognizance for keeping the peace is not forfeited, where an officer, having a warrant against one who will not suffer himself to be arrested, beats or wounds him in the attempt to take him. Lamb. 128: 1 Hawk. P. C. c. 60.

So it is not forfeited, if a parent in a reasonable manner chastises his child; a master his servant, being actually in his service at the time; a schoolmaster his scholar; a gaoler his prisoner: a husband his wife. 1 Sid. 176, 177: Lamb. 127, 128: Htitl. 149, 150: 1 Hawk. P. C. c. 60: F. N. B. 80.

And, without enumerating all the actual assaults, which a man may make upon the person of another, and not forfeit his recognizance for keeping the peace, it may be laid down as a principle, that such a recognizance is not forfeited by any assault which could have been justified in an action, or upon an indictment, for that assault. 4 N. Abr. 594.

It has been held, that a recognizance for the peace may be forfeited by any treason against the person of the King, or by an unlawful assembly in terrorism populi. Lamb. 115: 1 Hawk. P. C. c. 60. Words which tend directly to a breach of the peace, as challenging a man to fight, or threatening to beat one who is present, amount to a forfeiture of such recognizance. Lamb. 115: 1 Hawk. P. C. c. 60: Cro. Eliz. 85. A recognizance is likewise forfeited by threatening to beat a person who is absent, if the party, who has so threatened, does afterward lie in wait to beat him. Lamb. 115.

A man shall not forfeit a recognizance for keeping the peace, who does a hurt to another in playing at cudgels, or such like sport, by consent; for these sports, which tend to promote activity and courage, are lawful. 2 Dem. 254: 1 Hawk. P. C. c. 60. But he who wounds another in fighting with naked swords, forfeits his recognizance; because no consent, nor even the command of the King, can make so dangerous a diversion lawful. Cro. Cas. 259: 1 Hawk. P. C. c. 60. If a soldier hurts another soldier, by discharging his gun in exercising without sufficient caution, it is no forfeiture of a recognizance for keeping the peace: For although he would be liable in an action for the damage occasioned by his negligence, this, it not being a wilful breach of the peace, is not within the purport of the recognizance. 1 Hawk. P. C. c. 60: 1 Roll. Abr. 543: 2 RoI. Abr. 548.

A Court of Quarter Sessions cannot in any case proceed against the parties, for a forfeiture of a recognizance for keeping the peace; but the recognizance must be sent into some of the King's Courts in Westminster-Hall. 1 Hawk. P. C. c. 60. All proceedings upon a forfeited recognizance must be for facia facias, and not by indictment, because, where a facia facias is brought, the parties have an opportunity of pleading any matter in their discharge. 1 Roll. Abr. 900, Perrow's case: Cro. Jac. 598: 1 Hawk. P. C. c. 60.

The demise of the King is a discharge of a recognizance for keeping the peace: For the condition being for pace pacem noftram, his successor cannot take advantage of a breach thereof. Bro. Peace, pl. 15: 1 Hawk. P. C. c. 60.

After such a recognizance is forfeited, the King may pardon the forfeitures: But he cannot release the condition before
SURETY.

before it is broken; because the party, at whose complaint it was taken, has an interest therein. *Bro. Reckon.*

If no time for the continuance of a recognizance for keeping the peace is therein mentioned, it is perhaps in the power of the Court, in which it was taken, or to whom it has been certified, to discharge it at their discretion. *4 New. Abr.* 695.

The usual practice of a Court of Quarter Sessions is to continue a recognizance for keeping the peace from Sessions to Sessions, until the Court thinks proper to discharge it. It is the constant course of the Court of King's Bench, to take a recognizance for twelve months, and, if no indictment be within that time preferred against the party bound, to keep the peace, it may, at the expiration thereof, be discharged. *4 Ed. 3.* 251; *Str. 895.* This seems also to be the practice of the Court of Chancery; for, upon a motion to discharge a writ of *supplication,* it was refused; And by my Lord Macclesfield, Chancellor—This application is too early; let the party pay till the suit is out, and be himself quite out at that time. *2 P. Wms.* 103, *Clawing's Case.* See title *Supplication;* and further on this subject, *Sav. 55;* *1 Lev. 253;* *1 Hawk. P. C. c. 60;* *Bro. Pice,* pl. 17; *Lamb. 111;* *11 Mod.* 109; *Croc. F.* 282; *Tidg.* 207.

3. A recognizance for the Good Behaviour may be forfeited by all the same means as one for the Security of the Peace may be, and also by some others; as by going armed with usual attendance, to the terror of the people; by speaking words tending to sedition; or by committing any of those acts of misbehaviour which the recognizance was intended to prevent. But not by barely giving false cause of suspicion of that which perhaps may never actually happen; for though it is just to compel suspected persons to give Security to the Public against such misbehaviour that is apprehended, yet it would be hard, upon such suspicion, without the proof of any actual crime, to punish them by a forfeiture of their recognizance. *1 Hulst. P. C.* c. 61; *4 Comm.* 257.

SURGEON, Chirurgus, from the Fr. *Chirurger.* Signifying him that dealteth in the mechanical part of physic, and the outward cures performed with the hands. Originally the names of the two Greek terms *σεκαλια σημεια;* and for this cause Surgeons are not allowed to administer any inward medicine. By the *Stat.* 32 H. 8. c. 42, the Barbers and Surgeons of London were incorporated and made one Company; and it was directed that there should be chosen yearly four Masters for the said Company, of which two were to be expert in Surgery, and the other two in barbery, who should have power to punish and correct all defaults; and the Company, and their successors, were to have the oversight and correction, as well of freemen as foreigners, for such offences as they should commit against the good order of barbery and Surgery; They were exempted from bearing of arms, serving on juries, and all manner of parish offices, &c. but to pay suit, and to have their charges, as formerly; and the said Company had free liberty to take four persons condemned for felony, for anatomies yearly. No barber in London, or within one mile thereof, was to practice Surgery, lesting of blood, or any other thing relating thereto, except drawing of teeth; nor was any person who practised Surgery within those limits, to exercise the craft of a barber: Though any man, not being a barber or Surgeon, might retain in his house, as a servant, a barber or Surgeon, who might exercise his art in his master's house, or elsewhere, &c. All persons praetising Surgery in London, were to have an open sign in the street where they dwell, that people might know where to resort to them when wanted: And every person offending in any of the articles contained in this statute, were to forfeit 5s. a month, one money to the King, and the other to him who would sue for the same, &c. By the *Stat.* 18 Geo. 2. c. 15, the Surgeons of London, and the Barbers of London, are made two separate and distinct Corporations; referring the privileges each were entitled to under *Stat.* 32 H. 8, to each Company separately.—By the latter act, Examiners are appointed to admit Surgeons, &c.

S.U.R. L.D. JUR, i. e. Upon oath. *Leg. W.* i. 1. 16. SURMISE, Something offered to a Court, to move it to grant a prohibition, *or an Old Querel,* or other writ greatable therein. See title *Sagacity.*


SURPLUSAGE OF ACCOUNTS, Signifies: a greater disbarrement than the charge of the accountant amounts unto. In another sense, *Surplusage is the remainder of overplus of money left.* *Litt. Dist.*

SURPLUSAGE OF INTESTATES' EFFECTS. See title *Executor.* V. 8.

SURRENDER, The replication or answer of the plaintiff to the defendant's Rebutter. See this Dist. titles *Placing;* *Rebutter.*

SURRENDER. A second defence (as the replication is the third) of the plaintiff's Declaration in a cause, and is an answer to the Rejoinder of the defendant. *W. & W.* p. 2. As a Rejoinder is the defendant's answer to the replication of the plaintiff; so a Surr. is the plaintiff's answer to the defendant's Rejoinder. *W. & W.* p. 8. Where a plaintiff in his Surr. is to conclude to the country, and not with an averment; see *Ray*. 84. After Rejoinder and Surr., and Rebutter, &c., there may be a demurrer. See *Placing;* *Surrender.*

SURRENDER. Young *Rejoinder.* A deed or instrument conveying that the particular tenants for life or years, of lands and tenements, doth yield up his estate to him that hath the immediate estate in remainder or reversion, that he may have the present possession thereof; and wherein the estate for life or years may merge or be extinguished by the mutual agreement of the parties. *G. & L.* 337.

A Surr. is of a nature directly opposite to a release; for as that operates by the greater estate's defending upon the less, a Surr. is the falling of a less estate into a greater. It is made by these words, *Habe *sur' renditer,** granted, and yielded up. *2 Com. 20.* p. 326.
SURRENDER.

Of Surrenders there are three kinds: A Surrender, properly taken, at Common Law; a Surrender of copyhold or customary estates; and a Surrender, improperly taken, as of a deed, a patent, rent newly created, &c.

The Surrender at Common Law is the usual Surrender, and is of two sorts; viz. A Surrender in Deed, or by express words in writing, where the words of the lesesee to the lessor prove a sufficient act to give him his estate back again; and a Surrender in Law, being that which is wrought by operation of Law, and not actual; as if a lesesee for life or years take a new lease of the same land, during the term, this will be a Surrender in Law of the first lease. 1 Inf. 338; 5 Rep. 111: Perk. 601. And, in some cases, a Surrender in Law is of greater force than a lesesee, before the first; and both the cases cannot take a case of the same lands for forty years, to come to another person. 2 Temp. 4.21. And if a lease be made for life or years to A., the remainder for life to B., remainder in fee-tail to C., and the first tenant surrenders to C.; this will not take effect as a Surrender, by reason of the intervening estate. Dyr 112. The lesesee for life or years may surrender to him that is next in remainder in fee-simple or fee-tail. And if lesesee for life surrenders his estate to one in remainder, that is tenant for his own life, it is a good Surrender; for a man's estate for his own life, in judgment of Law, is greater than that for another's. And where an estate is surrendered for life, there needs no livery and fealties, as in a grant. 1 Inf. 338; Dyr 251, 280.

Yet, in some cases, an estate, &c. may have continuance, though it be surrendereed; as where lesesee for life makes a lease for years, and after doth surrender, the term for years doth continue; and so of a rent charge granted by such lesesee, &c. Brew. 47; 1 Inf. 338. If the lesesee for years, rendering rent, surrenders his estate to the lessor, hereby the rent is extinguished; but if the rent were granted away before the Surrender, it would be otherwise. 8 Rep. 145; Bro. Surr. 42. Tenant for life is diffolved, or for years ousted; and before entry, or possession gained, he surrenders to him in reversion; this surrender is void: And yet if lesesee for years, after his term is begun, before he enters, and when nobody doth keep from him the profits, surrenders, it will be good. Perk. 4605.

If there be lesesee for years, the remainder for life, remainder in fee; the lesesee for years may surrender to the lesesee during life, and to may he to him in the remainder in fee. Perk. 4605.

In case of tenant for life, the remainder for life, reversion in fee; it was a question formerly, whether the remainder-man for life, by and with the consent of the tenant for life, could surrender to him in reversion without deed, only by coming on the land and saying, that he did surrender to him in reversion: The Courts were divided: but two Judges held, that if tenant for life, and he in remainder for life, surrendered to the reversioner, it should pass as several Surrenders, viz. first of him in remainder to the tenant for life, and then by the tenant for life to him in reversion. Perk. 157.
SURRENDER.

If tenant for life grant his estate to him in reversion, this is a Surrender; and it must be pleaded according to the operation it hath in Law, or it will not be good. 4 Med. 151. Though if life-leases for life or years grant their estates to him in remainder or reversion, and to another, it shall enure as a Surrender of the one half to him in reversion, and as a grant of the other moiety to the stranger. 1 Inst. 335.

In a Surrender there is no occasion for Livery of Seisin; for there is a privy of estate between the Surrenderor and Surrenderee: The particular estate of the one, and the remainder of the other, are one and the same estate. (See titles Remainder ; Remainder.) And livery having been once made at the creation of it, there is no necessity for having it afterwards. 1 Inst. 50. And for the same reason it is that no livery is required on a release, or confirmation in fee, to tenant for years or at will, though a freehold thereby passes; since the reversion of the Releffor or Confirmor, and the particular estate of the Releffe or Confirmee, are one and the same estate: And where there is already a possession derived from such a privy of estate, any further delivery of possession would be vain and nugatory. 2 Comm. 326. See this Dict. titles Release ; Livery of Seisin.

By Stat. 29 C. 2. c. 2, no estates of feehold, or of terms for years, shall be granted or surrendered, but by deed in writing, signed by the parties, or in wills by operation in Law, &c. And by Stat. 4 C. 2. c. 29, § 4, leases may be renewed without Surrender of underleases.

By Stat. 29 C. 2. c. 31, infants, lunatics, and femes covert, may surrender leases in order to renew them, under the direction of a Court of Equity. See further, 20 Pin. Abr. 119-140; and this Dictionary, title Leases.

A Surrender of a Prebendary’s lease, upon condition that if the then Prebendary did not, within a week after, grant a new lease for three lives, the Surrender shall be void: Held to be a good Surrender within the statute. 2 Strange 1201.

SURRENDER OF A BANKRUPT; See tit. Bankrupt.

SURRENDER OF COPYHOLDS, Is the yielding up of the estate by the tenant into the hands of the Lord, for such purposes as in the Surrender are expressed. This method of conveyance is so essential to the nature of a Copyhold Estate, that it cannot properly be transferred by any other assurance. But Courts of Equity will, in some particular cases, supply the want of a Surrender. See 2 Comm. 222; and this Dictionary, title Copyhold.

SURRENDER OF LETTERS PATENT, AND OFFICES. A Surrender may be made of Letters Patent to the King, to the end he may grant the estate to whom he pleases, &c.; and a second Patent for years to the same person, for the same thing, is a Surrender in Law of the first Patent. 10 Rep. 66. Letters Patent for years were delivered into Chancery to be cancelled, and new Letters Patent made for years; but the first were not cancelled: It was held that the second were good, because they were a Surrender in Law of the first, and the good cancelling was the fault of the Chancery, which ought to have done it. 10 Rep. 66. 2 L. Abr. 445.

If an Officer for life accepts of another grant of the same Office, it is in Law a Surrender of the first grant; but if such an Officer takes another grant of the same Office to himself and another, it may be otherwise. 1 Pestr. 297; 3 Cestr. 198. See Dyer 167, 198; Gold. 415; and this Dict. titles Grant of the King ; Office.

SUGROGATE, Surrogatus. Is one that is substitute or appointed in the room of another; as the Bishop or Chancellor’s Surrogato, &c.

SURSISE, Surintef. A word especially used in the Castle of Dover, for penalties and forfeitures laid upon those that pay not the duties or rent of Castle-ward, at their days limited. It probably comes from the Fr. Sursiff, i.e. forborn or neglected. Bract. 52. And Bractan hath it so in a general signification. Bract. ib. 5.

SURVEY, To measure, lay out, or particularly describe a manor, or estate in lands; and to ascertain not only the bounds and royalties thereof, but the tenure of the respective tenants, the rent and value of the same, &c. On the falling of an estate to a new Lord, consisting of manors, where there are tenants by eale, and copyholders, a Court of Survey is generally held; and at certain other times, to apprise the Lord of the present terms and interests of the tenants, and as a direction on making further grants, as well as in order to improvements, &c. In this Court, a Survey, or Particular in the nature of a Rent-roll, is made out, specifying the tenants, and terms of their tenure, &c. See Comp. Court-Kap.

SURVEYOR, from Fr. Sur., i.e. Super, and Fori, Coram.; One that has the overseeing or care of some person’s lands or works. A Court of Surveyors was erected by Stat. 33 H. 8. c. 39, for the benefit of the Crown.

SURVEYOR OF THE KING’S EXCHANGE, An ancient officer belonging to the Mint and Coinage, mentioned in the stat. 9 H. 5. c. 4.


SURVEYORS OF THE HIGHWAYS; See tit. Highways.

SURVEYOR OF THE NAVY, An officer appointed over all stores; and to survey hulls and marks of ships, &c. Chamber.

SURVEYOR OF THE KING’S ORDNANCE. This officer surveys the Ordnance and provisions of war, allows bills of debt, and keeps the checks on labourers’ work, &c.

SURVEYORS OF THE WARDS AND LIBERTIES. This office was abolished, with the Court of Wards and Liveries, by Stat. 12 Car. 2. c. 24. SURVIVOR, from Fr. Survivre, Lat. Survivere;] The longer liver of two joint-tenants, or of any two persons joined in the right of a thing. He that remaineth alive, after others be dead, &c. Bracte 33. See title Joint tenant.

SUSANA TERRA, Land worn out with ploughing.

SUSPENSE, Suspensio. A temporal stop, or hanging up, as it were, of a man’s right, for a time; and, in legal understanding, is taken to be where a rent, or other quit-rent out of lands, by reason of the unity of possession of the rent, &c. and the land out of which it issues, is not in use for a certain time, i.e. time dormant, but may be revived or awaked: And it differs from extinguishment, which is when it dies or is gone for ever. Co. Litt. 213. A Suspension of rent is, when either the rent
rent or land is so conveyed, not absolutely and finally, but for a time, after which the rent will be revived again. Fawc. 109. A rent may be suspended by act for a time; and if a lessor does any thing which amounts to an entry on the land, though the intent is in him sufficient to suspend the rent, until the lessor do some act which amounts to a re-entry. 

There is likewise a Suspension which relates to the Lat. i.e. suspensa ab officio, or suspensa in beneficio, and ab officio & beneficio. Wood's Inf. 510.

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Swearing.

he may convict without further proof. If the offence be committed in the hearing of a confable, if the offender be unknown to him, he shall secure him, and carry him before a Justice of Peace; but if the offender be known to the constable, he shall make information against him before a Justice of Peace.

On information, a Justice orders to order the offender to appear, and if on conviction he do not pay or give security for the penalty, he shall be sent to the house of correction for ten days; or, being a common offender, be let in the flocks. On default of duty, Justices to forfeit 5/., and confable 40s. All convictions are to be written on parchment, and returned to the next Sessions. The penalties to go to the poor of the parish, and the offender to pay all charges of conviction, or be committed to the house of correction for six days extraordinary. All prosecutions to be within eight days. This act to be read in all churches four times a year, under the penalty of 5/.

The Justice's clerk may take for the information, summons, and conviction, 1s. and no more. Each oath or curfe being a distinct or complete offence, a person may incur any number of penalties in one day.

A Comm. 60. n. Though the conviction cannot be removed by endeavor, yet an information will lie against a Magistrate corruptly convicting under it, without hearing the defendant's suffices. Bur. J. title Swearing. — Conviction for swearing 100 oaths, viz. "by G. —", and 100 curfes, viz. "G. — ye —", is good, without repeating them 100 times in the conviction. 2 Ed. Rym. 1376: Sra. 698.

Sweating the Peace; See tit. Sweaty of the Peace.

Swept, or Sweet Wines; Made in Great Britain for sale, are liable to a duty of excise. &c. See Excise.

Swine, Court of the Swines or Countrymen.

One of the Forest Courts; which is to be holden before the Verderors as Judges, by the Steward of the Sweinmote, thrice in every year, the swains and freeholders within the forest compounding the Jury. The principal jurisdiction of this Court is, first, to inquire into the oppressions and grievances committed by the officers of the forest; and, secondly, to receive and try pretensions, certified from the Court of Attachments, against offenders in vert and venison. Stat. 54 Ed. 1. § 5. c. 1. And this Court may not only inquire, but convict also; which conviction shall be certified to the Court of Justice-peat, under the seals of the Jury; for this Court cannot proceed to judgment. 4 Inf. 289. See title Fowry.


Swolning of Land, Solungo vel Swolning Terra; Sax. Sulango, from Sul, sullum, as to this day, in the west country, a plough is called a Sul.] So much land as one plough can till in a year. A hide of land; though some writers say it is an uncertain quantity.

Sworn Brothers, Fratres Jurati.] Persons who, by mutual oath, covenant to share each other's for-